



Mary M. Fowler's

A

LAW DICTIONARY

AND

GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL

TERMS OF THE COMMON AND CIVIL LAW,

TOGETHER WITH TRANSLATIONS AND EXPLANATIONS OF THE VARIOUS

TECHNICAL PHRASES

IN DIFFERENT LANGUAGES, OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND STANDARD TREATISES; EMBRACING, ALSO, ALL THE PRINCIPAL COMMON AND CIVIL

LAW MAXIMS.

COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY, AND ADAPTED TO THE

JURISPRUDENCE OF THE UNITED STATES;

WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.

BY

ALEXANDER M. BURRILL,

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AUTHOR OF A TREATISE ON VOLUNTARY ASSIGNMENTS, A TREATISE ON CIRCUMSTANTIAL EVIDENCE, AND A TREATISE ON PRACTICE, &C.

Vecum origines rationesque [Labeo] percalluerat; eaque præcipue scientia ad enodandos plerosque juris laqueos utebatur.—A. Gellius, Noct. Att. xiii. 10.

SECOND EDITION.

VOL. I.

NEW-YORK:

JOHN S. VOORHIES, LAW BOOKSELLER AND PUBLISHER,

No. 20 Nassau Street.

MDCCCLIX.

Entered according to Act of Congress, in the year 1850, by
ALEXANDER M. BURRILL,
In the Clerk's office of the District Court of the United States for the Southern District of New-York.

Entered according to Act of Congress, in the year 1859, by
ALEXANDER M. BURRILL,
In the Clerk's office of the District Court of the United States for the Southern District of New-York.

JOHN W. AMERMAN, LAW PRINTER,
47 CEDAR-STREET, N. Y.

TO THE

HON. WILLIAM KENT, LL. D.

Dear Sir,—

I am sensible of a peculiar propriety in availing myself of your permission to inscribe to you the following work. It embodies (in however imperfect a form) the results of studies which received their earliest impulse and direction under the eye of your venerated father, and it is chiefly designed for use in a profession, in the practical duties of which I first received instruction from yourself. Knowing that, in you, professional eminence has ever been accompanied and adorned by the accomplishments of literature, I feel the less hesitation in offering to your notice a work which, in its general scope and bearing, belongs, perhaps, quite as much to the department of literature as to that of law. Knowing, too, that you are not one of those who, in their desire for improvement, would dissever the science of jurisprudence from its close dependence on the wisdom and learning of the past, I have hoped that you would not view with disapprobation or distaste the frequent references its pages contain to the lore of an almost forgotten age. But my highest satisfaction is in dedicating it to you, as a testimonial of personal esteem and regard, and as an expression of my sense of the unvarying kindness I have ever experienced at your hands.

With every wish for your future happiness, and with sentiments of the greatest respect,

I remain faithfully,

Your friend and servant,

ALEX. M. BURRILL.

New-York, Dec. 20th, 1850.

PREFACE.

In the present edition of the following work, the author has merely endeavored to fill up more completely the outline of his plan, as explained in the original preface, preserving throughout the double character of Dictionary and Glossary.

I. As a Dictionary, the work has been strictly confined, as before, to the province of *definition;* and, within this limit, ample materials for enlargement and improvement have been found to present themselves. Considerable additions have been made under both of the two leading divisions of subjects belonging to this department, namely, technical words, or *law terms*, properly so called, and *common words* which have been made the subjects of judicial definition, in the course of construing or expounding written instruments.

In regard to the first of these, little occasion has been found for special remark in giving the appropriate definitions in each case,—technical words being almost invariably understood in technical senses, and in accordance with certain fixed rules, derived, in most instances, from a long and uniform course of professional usage.

In regard to the definition of common words, however, the case has been somewhat different, for reasons which may be now explained. The two great standards of exposition, or guides to verbal interpretation, which have always been recognised and followed by lexicographers in all languages, are—first, *etymology*, as indicating the origin and composition of words, and secondly, *usage*, as determined by the example of the best authors. Etymology has always and deservedly been regarded as of the highest value and service in definition. It presents on the faces of words, the ideas they were purposely framed to express, and exhibits, in most cases with clearness, the particular objects and reasons of their formation. It was said of the great Roman jurist, Antistius Labeo, that he was thoroughly versed in these "origins and reasons of words," and that he made effective use of this species of learning in unravelling many complicated law questions.* But the meaning of words, however clearly indicated by their etymology, is confessedly often affected and controlled by usage. Lapse of time, especially of very long periods, has constantly the effect of introducing new senses, or of modifying and extending the original and radical ones; and, in this way, words sometimes come to be used in senses entirely at variance with their strictly appropriate significations. These senses become legitimated by use, and pass as current without objection; but it is nevertheless true, as might (with some labor) be shown, that, in many instances, they are obvious perversions of language, originating either in ignorance or carelessness, and perhaps uncalled for by any real exigency.

* See the title-page.

In the *judicial* exposition of ordinary words, the recognised standards and guides are somewhat different. The courts look sometimes to their origin and reason, and sometimes to their ordinary acceptation as fixed by popular usage, but more frequently to the supposed *intent* of the parties (whether individuals or legislators) by whom they are used. But this system of interpretation, however commendable on grounds of principle, is sometimes unfortunate in its practical effects upon language, from its natural tendency to introduce and cherish diversity of opinion, resulting, in some instances, in positive uncertainty and confusion. The definitions of one or two ordinary words, intimately connected with important instruments in every day use, may be selected as examples of the tendencies just alluded to.

Indorsement is a word of the class already mentioned as carrying on their face the true elements of their meaning, and requires nothing more than simple translation to discover it. Respecting its origin and etymology, there can be no doubt. It is a word of comparatively modern formation, growing out of the necessities attending the use of written instruments during the middle ages, and rudely made up, in a law Latin form, on the peculiar principle of the times — convenience and expressiveness, rather than elegance. The object and sole object of its formation obviously was, to express the idea of a writing made upon the outside or back (*in dorso*) of another writing, either as descriptive of its contents, or of some act done to give it legal effect, or done in the course of giving it such effect. It was a term of practice, essentially directory in its character, and suggesting at once the idea of the *back* of the writing as the place, and the only place, where the additional writing was made, or was required to be made. It was sometimes termed *backing*, and, in practice, was always (as it still is) carefully confined to the sense which the word *backing* more strikingly, perhaps, but not more properly, conveys. It acquired new importance from being adopted at an early period in mercantile law and practice, as descriptive of the act by which bills of exchange and promissory notes acquired their peculiar and valuable quality of negotiability. The *back* of the instrument was, for obvious reasons of convenience, appropriated to the signature of the party who assumed a liability secondary to that of the maker or drawer, and, from the uniformity of practice in this particular, soon had the effect of giving to that party his distinctive name; so that the local position of the signature came to express, in the briefest and clearest manner, the peculiar species of liability which that signature carried with it. Here were additional reasons for adhering strictly to the essential import of the word, as it has been, in fact, preserved in mercantile usage, to this day. Notwithstanding these considerations, it has been judicially decided that the word *indorsement* does not necessarily or exclusively import a writing on the back or outside of a bill or note, but that it may be used to express a writing on the inside or *face*. This was held in England as early as the year 1717, in a case* which is of considerable interest, as affording the means of tracing this material enlargement of signification to its source in fact. It seems that, according to a former practice of the Bank of England, receipts of money paid on the notes of the bank had been written on the back, and very properly termed *indorsements*. They afterwards introduced the practice of writing them on the face of the notes, and thought proper to call them *indorsements*, also, whether from ignorance or disregard of the meaning of the word, it is not material to inquire. The prisoner, in the case just cited, was indicted for eras-

* Rex *v.* Bigg, 3 *P. Wms.* 419. 1 *Stra.* 18, S. C.

ing such a writing on the face of a bank note, which was called in the indictment an indorsement, and claimed to be within the statute declaring the erasure of indorsements on bank notes to be a felony. The court held that, as the bank had *called* the writing in question an indorsement, and as it had always been accepted and taken to be such, it was within the words of the indictment, and they held the prisoner to be guilty. Whatever may be said of this decision, it is clear that the action of the bank in affixing to the word in question a sense the very reverse of its proper meaning, was a perversion of language calculated to introduce confusion, by breaking down important and long recognised distinctions of meaning.

Sign is another ordinary word intimately connected with the use of written instruments of every description. Like *indorsement*, it claims a Latin origin and etymon, but, unlike that word, its history goes back to a much higher antiquity—the practice of the ancient Romans. Unlike that word, too, it has materially departed from its original import, and a literal translation would scarcely be descriptive of its modern use. Its primary meaning is said to be, to write one's name on paper, or to show or declare assent or attestation by some sign or mark. There is no occasion, however, for going beyond the practice of the Romans, with whom the word *signare*, from which *sign* is formed, signified *to seal*. In the times of the Saxons it was applied to the *sign* of the cross affixed to written instruments by the parties subscribing them. At what particular period it acquired the sense of writing a name *underneath* or *at the foot* or *end* of an instrument, it is not necessary to consider. It is certain that the word has long been fixed in that sense, and is not now (either in its mercantile or popular acceptation) used in any other. In construing the celebrated provision of the Statute of Frauds in relation to promises and agreements of certain kinds, requiring a memorandum or note in writing of the agreement, *signed* by the party to be charged, or his agent, the court chose to adopt what has been termed the primary meaning of the word *sign*, and held it to be a sufficient compliance with the statute, if the name of the party to be charged appeared *in any part* of the instrument, either at the top, in the middle or at the bottom; and this exposition of the word has been settled by a long course of decisions. On the revision of the statutes of New-York, in which the provision had been literally copied from the English statute, the attention of the Revisers was directed to this word *signed*, in connection with its judicial interpretation, and they seem to have been struck with the vague and indefinite character which it gave to the whole provision, or as they themselves expressed it, "the courts found themselves perfectly at large as to what should be considered a signing." To prevent difficulties of this sort in future, or, in other words, to avoid the evils of so latitudinary a construction of the word, they proposed to strike it out altogether, and recommended in its place the use of the word *subscribed*, respecting the meaning of which, as expressive of an actual signing or *under-writing*, there could, it was thought, be no doubt, which recommendation was adopted. Notwithstanding this, however, when the new word came before the Supreme Court for construction,* it was treated as a synonyme of the word which had been expunged; and, adopting the view that there was no greater judicial effort in enlarging the term *subscribed* into a secondary sense than had been made by their predecessors upon the word *signed*, they actually construed it to mean as *signed* had been construed,—written on any part of the instrument, and held that the law was

* In Davis *v.* Shields, 24 *Wendell's R.* 328.

not changed by the revision. But this decision was very properly reversed by a higher court, and the reversal has since been thoroughly sustained;* the court holding that the word *subscribed* in the statute must be interpreted to mean an actual signing, in writing, of the name of the party *at the end* of the contract or of the memorandum thereof; a sense, it may be remarked, not only demanded by the obvious etymology of the word, but sustained by universal and unvarying usage.

Other examples might be adduced in illustration of the difficulties sometimes encountered in accepting judicial definitions of ordinary words; and the term *fixture* might also be referred to, as an instance of even a technical word, the import of which has become involved in almost hopeless confusion, in consequence of too wide a departure from the strictly appropriate meaning. But the limits of a preface forbid any further detail under this head.

II. As a Glossary, the work will be found to be enlarged considerably beyond its original limits. In this department, the author has endeavored to keep closely in view his primary design, to present as complete a collection as possible of technical terms in other languages than English, which are so copiously scattered through the books in ordinary professional use. With this view, and in order to the more complete elucidation of their meaning and application, he has freely resorted to the works from which they were originally taken. Several of these, including some which had not been previously consulted, have been read in course, and an additional variety of terms and illustrations have, by this means, been obtained from sources not ordinarily accessible. From the same sources many other words have been extracted, not properly falling under the denomination of law or technical terms, but a knowledge of which has nevertheless been found essential to any satisfactory perusal of the works in which they occur.

The archæological character thus necessarily imparted to the work may, perhaps, be considered by some readers an objection. In an age of new ideas and progressive impulses like the present, in which the technicalities of the *common law* (hitherto the principal source of our jurisprudence) have been made the object of especial attack and condemnation, and strenuous (though not always judicious) efforts employed to expunge from use even the traces and relics of the peculiar language in which those technicalities have always been expressed, the utility of a work, the avowed object of which is to preserve and perpetuate a knowledge of this language, may, perhaps, be regarded as questionable.

There are considerations, however, which go to justify the author's course even under the circumstances mentioned. Not to dwell on the admitted fact, that the more rapid the progress of change in any age, and the greater the number of words discarded from use, from whatever cause, the more obvious the necessity of works expressly devoted to their exposition—it may be doubted whether the present progressive tendencies of things are destined to lead to permanent results of the kind which have been anticipated. It may be doubted whether works, like many referred to in the following pages, which have left an indelible impression on the system to which they belong, are really destined to the complete oblivion which has been predicted for them. But however this may be, it, at least, will not be denied that a compilation claiming, like

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* Davis *v.* Shields, 26 *Wendell's R.* 341. James *v.* Patten, 2 *Selden's R.* 9, S. P.

the present, to illustrate the *language of law in general*, would hardly be considered true to its object, or complete in its design, unless it exhibited with clearness the connections which necessarily exist between the old law and the new, and kept open, with all possible care, the paths to those "fountains" of learning, from which the leading minds of the profession have in all ages "preferred" to draw.

So far as terms and phrases of the character just mentioned have been derived from the *civil law*, their introduction into the present work, and even their somewhat minute illustration in some instances, appear to rest on additional grounds of utility which may secure them from objection. A marked feature of several of the reforms of the day has been an inclination in favor of the ideas and methods peculiar to the civil law, occasionally resulting in their formal adoption in practice. It is clear that whatever movements may tend to bring that system into a state of prominence which it has not hitherto enjoyed in this country, must tend to the examination and study of its peculiar fountains, also,—the collections of Justinian in their original languages. The fact that the civil no less than the common law has always had its technical terms, expressed in nearly the same language, must not be overlooked. On the whole, the ultimate result in prospect would appear to be not so much the extinction of the French and Latin of the age of Britton and Fleta, as the creation of a new necessity for an acquaintance with the Latin and Greek of the Lower Empire.

III. It remains to notice briefly, in conclusion, the principal particulars in which the work has, in the present edition, been enlarged.

As already intimated, many additional words have been extracted from the Corpus Juris Civilis, especially from the Digests, Code and Novels. Among these, including, in particular, such as are taken from the celebrated title of the Digests, De Verborum Significatione, will be found a variety of words which were made the subjects of definition and exposition by eminent Roman jurists. Several of these afford analogies of value, especially in questions arising upon the equivalent words in English.

Under the head of Law Maxims, considerable additions will be found to have been made. Those of the civil law have been chiefly taken from the title De Diversis Regulis Juris in the Digests. Those of the common law have been extracted from the best authorities, and are illustrated in the same manner as in the first edition. The plan of distributing these maxims throughout the whole body of the work, in a character which renders them easy of reference, having been approved, has also been continued without change.

Other additions comprise such as have been made from the laws of Scotland, France and Spain, both ancient and modern. The laws of Spain in particular, including what is sometimes termed Spanish-American law, having acquired new and increasing importance to American students and practitioners in some of the new states, its peculiar terms and phrases have been treated with a corresponding degree of attention.

New-York, August 1st, 1859.

PREFACE TO THE FIRST EDITION.

The object aimed at in the following work has been solely to illustrate the *language* of the law, and, with this view, its plan has been purposely confined to the exposition of *words and phrases only*, to the exclusion of much of the matter contained in most of law dictionaries now in use. In this respect, the example of the older lexicographers, such as Cowell and Spelman, has been followed, in preference to that of writers of more modern date.

The "Interpreter" of Cowell, the earliest systematic English work of the kind, possesses also the merit of being the basis of the best English law dictionaries which have been given to the public. The unsparing use, indeed, made of this author (frequently without acknowledgment) by those who have followed him, has justified to the letter the strong expression of Spelman,*—*à plagiario nequiter devoratus.* The "Nomo-Lexicon" of Blount is little more than a re-print of the Interpreter, (with, however, some valuable corrections,) and a very large portion of the Dictionary of Jacob has obviously been derived from the same source. The last named author seems to have been the first to introduce the practice of superadding to the definition and exposition of the terms of the law, *summaries of the law itself*, under the titles indicated by the terms explained; a practice which, though tending to give to dictionaries the form and bulk of cyclopædias, has been followed in several modern works of merit and authority.

The exclusion of this superadded matter from the plan of the present work, (as already mentioned,) has left room for more fully presenting the explanations which it is intended to convey, and which are given, it will be seen, through the double medium of *definition* and *translation*. In other words, it will be found to unite the qualities of a Dictionary and Glossary indicated in its title;—a combination which has enabled the author to present not only the ordinary terms of the law, but those also of rarer occurrence, those which are chiefly used for the purpose of illustration, and those which exclusively belong to the ancient law and to foreign systems. In both these aspects, its plan will now be more particularly explained.

As a Dictionary, it is devoted to the *definition* of *law terms*, including not only technical terms, or "words of art," properly so called, but also ordinary words which have been used in technical senses, or which have been made the subjects of judicial or legislative construction or definition.

As a Glossary, it is devoted to the translation and explanation of such law terms and phrases as are either partially or entirely obsolete, of terms belonging to foreign systems of law, of ordinary words occurring in old law writers, and of that great variety of entire and fragmentary phrases in various languages, (principally Law Latin and Law French, but occasionally Greek, Saxon, and the modern languages,) which are to be met with in the ancient and modern books: consisting of Law Maxims, quotations from old authors having the force of maxims, occasional lines or couplets in verse, detached portions of sentences, and initial or emphatic words of old writs, statutes and judicial formulæ.

The terms and phrases, thus defined and explained, comprise those of the common, civil, canon, and feudal law, the principal codes of the middle ages, the law of nations,

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* *Glossar. in præf.*

the general maritime law of Europe and America, and the ancient and modern municipal law of Scotland, France and Spain, together with such as may be considered peculiar to the jurisprudence of the United States.

I. As a Dictionary, the work, as already observed, is exclusively devoted to *definition;* the matter being arranged in the following order: First, the word to be defined is given in its ordinary form, with such varieties in orthography as have been noticed, and followed by an abbreviation indicative of the language to which it belongs. Next are given, in brackets, the equivalent words, if any, of the old law, which are generally in Law Latin or Law French; and the composition or etymology of the word, according to the best authorities. To this succeeds a notice of the department of law to which the word belongs, briefly expressed; as, "In the civil law," "In English law," "In maritime law," "In criminal law," &c., according to the case; and where a term or proceeding is no longer in use, it is distinguished as being "In *old* English law," "In *old* practice," &c. After these preliminary explanations, the definitions follow. These have been either literally extracted, or made up from the best sources within the author's reach, and are illustrated, in most cases, by examples and quotations. Where a term has received various definitions from writers of authority, a selection has generally been made of the one which was deemed the best, but in the case of leading or important words, all the definitions which have been examined are given at length. In a few instances, new definitions are submitted, which are distinguished either by an asterisk at the end, or by the absence of any reference. Where a term has several significations, care has been taken to give all that could be collected, with the proper references; and the same is done where a word has been used in different senses, at different periods of time.

It has sometimes happened that no mere definition, however carefully expressed, would suffice to convey the full meaning of the term or phrase under consideration. In such cases, resort has been had to the aids of what may be called *descriptive definition*, and of illustration by *example;* the utility of which, it is believed, will be apparent. In addition to these, however, illustrations of a still more extended kind have occasionally been subjoined, somewhat on the plan of the "*Diatribæ*" of Spelman; and as these *supplementary notices* constitute one of the peculiarities of the work, the objects and uses of them will now be briefly explained. With a view to greater distinctness, they are separated from the other matter by a very obvious mark, and are chiefly occupied with the following subjects: etymology—history of the introduction of terms and of the changes they have undergone in meaning—and critical observations on the definitions given.

The abuses to which etymology has at times been subjected, have contributed to give that branch of legal philology a much lower place in general estimation than it once enjoyed. Hence the comparatively slight attention paid to it in the modern law dictionaries, as contrasted with the laborious researches of Spelman, Calvin, and other early lexicographers. Its obvious value, however, in throwing light upon the meaning of language, cannot be obscured by any mere mistakes of judgment in its application. The failures of some of the great Roman jurists, as well as of Lord Coke and other eminent common lawyers, in matters of verbal derivation, seem to have arisen partly from a desire to accommodate the etymology of words to what, it was supposed, *ought to be* their meaning, and partly from an *undue extension* of the process of *analysis* itself, simple words being often needlessly, sometimes absurdly, separated into what were imagined to be, or to have been their component parts. Another source of error in etymology seems to have been, the neglect to treat it in a *historical* light. It is not enough to pursue a word back to its remotest literal elements, without reference to its legal use and application as fixed by *time*. The true legal elements of a word often lie at a much lower point in this scale than is generally supposed, and beyond this point there is no advantage, nay, often actual confusion and error, in tracing them. It is easy, for instance, to refer *libel*, (a defamatory publication,) to the Latin *libellus*, (a little book,) its undoubted origin as a *mere word*, but this throws no light on the essential meaning of libel, as a *term of law*. To reach such meaning, we must descend to the lower period when *libellus* was used to express not so much the outward form of the material and the writing, as the object intended by it, and when certain of these *libelli*

had become distinguished, as a class, by an epithet (*famosi*,) peculiarly expressive of their character, and which became thereafter inseparably annexed to them. To find the period when the term *libellus famosus* first acquired a settled meaning, is to fix the origin of the modern word *libel*. Indeed, without this reference to *time*, and its important influence in modifying, changing, and sometimes even reversing the sense of words, the most accurate and unquestionable derivations lose all their value as illustrations of meaning. The significance of the radical ideas of such words as "*adjourn*" and "*assets*," cannot be appreciated without reference to the periods when they first appear to have been used. Mere speculation, in short, is of little value in etymology, unless verified by examples of the *actual use* of words at former periods, and the process, (laborious as it may be,) of tracing words upwards through ancient records and writers, always keeping in view the influences which have been mentioned, seems to be the only accurate means of reaching what may, with any confidence, be pronounced the elements of their composition.

II. As a Glossary, the following work is necessarily devoted, in a great degree, to translation; a large proportion of the phrases explained being taken either from the Latin of the civil law, or the Law Latin and Law French of the old common law. In translating, care has been taken to follow the originals as closely as the English idiom would permit. In many instances, freer translations have been added for the purpose of clearer illustration, but in no case substituted for the others. Whenever it was practicable, phrases of a fragmentary character have been restored to their places, as portions of the clauses or sentences to which they were found to belong, and the entire clauses or sentences have themselves been presented and translated for the purpose of more clearly explaining their use and application.

Law maxims, it will be seen, occupy a prominent place in this department. In the translations of these, particular attention has been paid to accuracy, and errors and misconceptions of other translators have occasionally been pointed out. Short illustrations of their use have generally been given by examples and quotations from eminent writers and judges; and the maxims themselves have been traced, whenever practicable, to their sources in the old common law writers, or in the civil law.

A Glossary of names of places, and another of surnames will be found at the end of the work. These have been taken from the dictionaries of Cowell and Blount, with such corrections as appeared necessary, and with such additions as the limited time of the author would permit.

III. The principal authorities which have been followed or consulted in the preparation of this work are the Interpreter of Cowell and the Glossary of Spelman. Both these, indeed, may be said to constitute its basis; the latter, also, (which it were superfluous to commend,) being generally adopted as a model. The old Law French work entitled "*Termes de la Ley*," and the Dictionaries of Jacob, Tomlins, Whishaw, Holthouse and Wharton, with the American Dictionary of Bouvier, and the general Dictionaries of Webster and Richardson have also been referred to. A large number of new illustrations and many additional terms and phrases have been obtained from the civil law, and the best sources of English and American jurisprudence, including the well-known treatises of Bracton, Britton, Littleton, Coke, Blackstone, Wooddesson, Chitty, Stephen, Kent and Story, besides the principal common law and equity Reports.

Among the more ancient of the treatises just named, that of Bracton has been quoted with perhaps the greatest frequency. No apology is believed to be necessary for this, considering the important bearing of that great work upon the theory and practice of English jurisprudence ever since it was written. A large proportion of the Latin quotations scattered through the old books, (particularly the Reports and Institutes of Sir Edward Coke,) is taken directly or indirectly from Bracton's treatise, and several important maxims of English and American law, with many technical terms still in use, may be traced to the same source. A peculiar interest, moreover, attaches to this writer, from the circumstance that his is not only the first systematic law treatise of magnitude ever written in England, but was written at a time when the common law itself was in process of formation, and constitutes a principal channel through which many rules of the civil law, accompanied by more or less of its language, were engrafted upon the native jurisprudence.

Frequent reference has also been made to the early contemporary treatise of Britton, chiefly for illustrations of the meaning of terms and phrases in early law French, but occasionally, also, as throwing valuable light upon the sense of passages or single words in Bracton. The works of these two writers, indeed, may be said to represent respectively the Latin and French of the periods at which they were written, and are chiefly relied on as authorities for that purpose. The Latin of later periods has been illustrated by references to the Register, to the principal statutes and treatises composed in that language, and to the old reports and books of practice; the French, by references to the old French statutes, to the Year Books and later reports, and to the treatises of Littleton and other writers. The Norman Dictionary of Kelham has also been consulted, but the barbarous or corrupt forms of most of the terms given in that work, the occurrence of known typographical errors in some cases, and the general absence of reference to authority (which might furnish a ready means of correction) have prevented any very extensive use of its contents. The utility of the last named publication, it may be observed, would have been greatly enhanced, had the words it contains been accompanied in all cases by explicit references to the sources from which they were taken.

The Civil Law has contributed, it will be seen, a considerable proportion of the terms and phrases translated and explained in the course of this work. Most of these have been directly taken from the Institutes, Code, Digests, and Novels of Justinian; and the passages in which they occur have generally been quoted and translated as furnishing the best explanations of their meaning and application. Additional illustrations have been derived from the writings of the civilians: and among these, the elementary works of Heineccius and Mackeldey, and the valuable Analysis of Hallifax have been most frequently referred to. A variety of definitions have also been extracted from the standard lexicons of Calvin, (who is mentioned by Cowell* in terms of peculiar commendation,) Prateus, Spiegelius, Oldendorpius, and others. These civil law terms do not appear to have been hitherto presented, to any extent, in any English law dictionary. A few are to be met with in Cowell, next to none in Spelman, and those which are given in later works are taken rather from the modern civil law, than the original collections of Justinian. From the constant reference made to the latter, however, in all the modern systems, as well as in American jurisprudence, their peculiar terms, as expressed in the original languages, have been thought to be of sufficient general importance to justify the particular attention which has been bestowed upon them. A number of important law maxims have also been quoted from the same sources, which are not to be found in the maxim books now in general use.

Next to the law of England, from which our own has been so extensively derived, that of Scotland is perhaps the most important to an English or American student, considered with reference to the terminology of the science. A marked peculiarity of this law, especially in its older periods, is its close adherence to the Latin in the forms of its technical terms, many of which are essentially Latin, the termination only being slightly varied; e. g. *caution*, *cedent*, *decedent*, *decern*, *decreet*, *dispone*, *excambion*, *lucrative*, *successor*, *terce*, *transumpt*, *vitious*, *intromission*, &c. The same law is valuable, also, from having preserved the meaning of several Saxon words and feudal terms which cannot be satisfactorily traced through the English books. These considerations will account for the particular attention paid to Scotch law terms in the following pages.

Throughout the work, it has been deemed an important part of the explanations given, to distinguish as accurately as possible between such terms and phrases as are *still in use*, and those which have become partially or entirely *obsolete;* and the same object has been kept in view in regard to such rules of law and practical proceedings as have been introduced or referred to, in the way of illustration. The proper distinction, in these cases, has been expressed either by the brief preliminary designation of the term, phrase or proceeding, as one "In old law," "In old practice," &c., or by compendiously noticing at the end of the definition or description, the changes by which proceedings have been abolished, laws repealed, or rules or customs abrogated. The Commentaries of Blackstone, in particular, have been compared throughout with

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* Interpreter, ed. 1607, pref.

the valuable "New Commentaries" of Mr. Serjeant Stephen, by which they have been more closely accommodated to the present state of the law in England.

In adapting the work to the uses of American readers and students, care has been taken to introduce such matter as appeared to be of the most general and permanent interest and value. To keep accurately in view the terminology applicable to the jurisprudence of each particular State, especially in its dependence on the changes now so frequent and sudden in State legislation, would seem to be scarcely attainable by any degree of attention or industry that could be devoted to the subject. The difficulties attending definition as fixed by local statute law, arising from the entire absence of any common standard, have recently been placed in a strong light by an eminent American judge.* The definitions given in the standard treatises, and in the opinions of the bench, partake of a much greater degree of uniformity, and for this reason they have been more generally quoted and relied on.

With this prefatory notice of its plan and purpose, the work is now submitted to the examination of the profession. That its execution has fallen far short of its design, is already but too apparent to the author's own observation. Of the defects that may be discovered in its pages, some seem to be inseparable from the task of first compiling any matter of the kind from sources so numerous, and scattered over so wide a field. But it is hoped that neither these nor such as may be fairly chargeable to want of judgment, care or information, will be found seriously to impair its general utility, or occasion regret for the time and labor devoted to its composition.

New-York, Dec. 31*st*, 1850.

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* Mr. Justice Catron, in Nelson *v.* Carland, 1 *Howard's R.* 265, 271.

EXPLANATION

OF

ABBREVIATIONS AND MARKS USED IN THIS WORK.

a, b, in the old books, denote the first and second pages of a folio or leaf.
acc. according, accordingly.
ad fin. (*ad finem,*) at the end.
antepenult. before the last but one.
apud, in; contained or quoted in.
arg. (*arguendo,*) in arguing; in argument.
b. book.
B. Baron.
Belg. Dutch.
Brit. British or Welsh.
c. cap. (*caput,*) chapter.
cc. capp. (*capita,*) chapters.
c. ch. chap. chapter.
C. Chancellor.
C. B. Chief Baron.
C. J. Chief Justice, or Chief Judge.
Cart. (*carta,*) charter.
Chart. (*charta,*) charter or deed.
const. constitution.
d. (*dorso,*) on the back.
Dan. Danish.
dial. dialogue.
diss. dissertation.
e. g. (*exempli gratia,*) for example.
Eng. English.
et seq. (*et sequens;*) *et seqq.* (*et sequentia,*) and the following.
fol. folio or leaf.
fr. (*fragmentum,*) fragment.
Fr. French.
Germ. German.
Goth. Gothic.
Gr. Greek.
Græco-barb. barbarous Greek, Greek of the lower empire.
Græco-Lat. Greek-Latin; essentially Greek, but in a Latin form.
h. t. (*hoc titulo,*) under this title.
h. v. (*hac voce,*) under this word.
Heb. Hebrew.
ibid. (*ibidem,*) in the same place.
Id. (*idem,*) the same.
Id. ibid. (*idem ibidem,*) the same in the same place.
in an. (*in anno,*) under the year.
in dors. (*in dorso,*) on the back.
in fin. (*in fine,*) at the end.
in loc. (*in loco,*) in or on the place.
in marg. (*in margine,*) in the margin.
infra, below.
Ital. Italian.
J. Justice, or Judge.
l. (*lex,*) law.
ll. (*leges,*) laws.
L. Fr. Law-French.
L. Lat. Law-Latin, or low Latin.
Lat. Latin.
Latino-barb. barbarous Latin; Latin of the lower empire or middle ages.
Latino-Gr. Latin-Greek, Latin in Greek letters.
lib. (*liber,*) book.
liv. (*livre,*) book.
Lomb. Lombardian or Lombardic.
m. memb. membr. (*membrana,*) skin of parchment.
max. maxim.
n. num. (*numerus* or *numero,*) number.
Norm. Norman.
not. (*nota,*) note.
O. Eng. old English.
O. Fr. old French.
O. Sc. old Scotch.
obs. (*observatio,*) observation.
Op. (*opera,*) works.
P. J. Presiding Judge; President Judge.
par. (*pars* or *parte,*) part.
par. paragraph.
passim, every where; in various places.
Pat. Patent.
per, by.
per tot. (*per totum,*) throughout.
pl. placitum.
pr. (*principium,*) beginning.
procem. (*procemium,*) preface or introduction.
q. d. (*quasi dicas,*) as though you would say; as much as to say.
q. v. (*quod vide,*) which see, (referring to one.)
qq. v. (*quæ vide,*) which see, (referring to several.)
qu. (*quæstio,*) question.
qu. (*quære,*) inquire; a note of doubt.
R. Reports.
reg. (*regula,*) rule.
rot. (*rotulus*, or *rotulo,*) roll.
rott. (*rotuli*, or *rotulis,*) rolls.
s. sect. section.
Sax. Saxon.
Sc. Scotch.
sess. session.
Span. Spanish.

ss. sections.
st. stat. statute.
supra, above.
Swed. Swedish.
t. tit. (*titulus* or *titulo*,) title.
temp. (*tempore*,) in the time.
Teut. Teutonic, or old German.
titt. tittt. (*tituli* or *titulis*,) titles.
tom. (*tome*,) volume.
tr. tract. (*tractatus*,) tract or treatise.
ub. inf. (*ubi infra*,) in the place below, or next cited.
ub. sup. (*ubi supra*,) where above quoted; in the place or passage last cited.
ult. (*ultimus, ultimo*,) the last.
vet. (*vetus*,) old.
Vet. Cart. (*vetus carta*,) old deed.
Vet. MS. old manuscript.
voc. (*voce* or *vocabulo*,) word; in or on the word.
vocc. (*vocibus* or *vocabulis*,) words; in or on the words.

Brackets, [ ] are used to distinguish such matter as is added or inserted by the author in definitions and translations, for the purpose of clearer explanation of the meaning; and also such occasional emendations of passages in old authors as seemed to be required by the context. The marginal pages of authorities referred to, are sometimes distinguished in the same manner.

An asterisk, * at the end of a definition, denotes that it is of the author's compo-ition. The same mark prefixed to a reference, denotes that the definition or other matter is not literally quoted, but made up, or substantially extracted from the authorities referred to. The same mark, prefixed to the number of a page, denotes a marginal paging.

A dash, — is used to separate, in the same paragraph, definitions given by different authorities, where the term defined has but one meaning: definitions which express *distinct* meanings, being arranged in distinct paragraphs.

*** is used to separate the definitions from the illustrative matter which has been explained in the preface.

Law Maxims are invariably distinguished by the type.

ABBREVIATIONS

OF

REFERENCES, USED IN THIS WORK.

A. Gell. Noct. Att. Auli-Gellii Noctes Atticæ.
A. K. Marsh. R. A. K. Marshall's (Kentucky) Reports.
Abb. on Ship. Abbott on Shipping.
Adam's Rom. Ant. Adam's Roman Antiquities.
Ad. on Eject. Adams on Ejectment.
Ad. & Ell. Adolphus and Ellis' Reports.
Ad. & Ell. (N. S.) Adolphus and Ellis' Reports, New Series.
Addams' R. Addams' Reports.
Alabama R. Alabama Reports.
Alis. Crim. Pr. Alison's Criminal Practice.
Am. & Fer. on Fixt. Amos and Ferard on Fixtures.
Am. Lead. Cas. American Leading Cases.
Ambl. Ambler's Reports.
And. Anderson's Reports.
Andrews on Rev. Laws. Andrews on the Revenue Laws of the United States.
Ang. on Carriers. Angell on Carriers.
Ang. and Ames on Corp. Angell and Ames on Corporations.
Ang. on Life & Fire Ins. Angell on Life and Fire Insurance.
Ang. on Tide Waters. Angell on Tide Waters.
Ang. on Limit. Angell on Limitation.
Ang. on Watercourses. Angell on Watercourses.
Anstr. Anstruther's Reports.
Arch. Bankr. Law. Archbold's Bankrupt Law.
Arch. Civ. Pl. Archbold's Civil Pleading.
Arch. Cr. Pl. Archbold's Criminal Pleading.
Arch. Landl. & Ten. Archbold's Landlord and Tenant.
Arch. N. Prius. Archbold's Nisi Prius.
Arch. N. Pract. Archbold's New Practice.
Arch. Pr. Archbold's Practice.
Arkansas R. Arkansas Reports.
Arkley's R. Arkley's (Scotch) Reports.
Arn. on Ins. Arnould on Insurance.
Art. sup. Chart. Articuli super Chartas.
Artic. Cleri. Articuli Cleri.
Atherley on Mar. Sett. Atherley on Marriage Settlements.
Assis. de Jerus. Assises de Jerusalem.
Atk. Atkyn's Reports.
Ayl. Pand. Ayliffe's Pandect.
Ayl. Parerg. Ayliffe's Parergon.
Azuni's Marit. Law. Azuni's Maritime Law.

B. & A. or *B. & Ald.* Barnewall and Alderson's Reports.
B. & Ad. Barnewall and Adolphus' Reports.
B. & C. Barnewall and Cresswell's Reports.
B. & P. Bosanquet and Puller's Reports.
B. Monroe's R. B. Monroe's (Ky.) Reports.
Bab. on Auct. Babington on Auctions.
Bac. Abr. Bacon's Abridgment.
Bac. Max. Bacon's Maxims.
Bac. Read. Us. Bacon's Reading on the Statute of Uses.
Bailey's R. Bailey's (S. C.) Reports.
Baldwin's R. Baldwin's Circuit Court Reports.
Barbour's Chanc. Pr. Barbour's Chancery Practice.
Barbour's R. Barbour's (N. Y.) Reports.
Barbour's Ch. R. Barbour's Chancery Reports.
Barr. Obs. Stat. Barrington's Observations on the Statutes.
Bell's App. Cas. Bell's (Scotch) Appeal Cases.
Bell's Com. Bell's Commentaries on the Law of Scotland.
Bell's Dict. Bell's Dictionary of the Law of Scotland.
Benedict's Adm. Pr. Benedict's Admiralty Practice.
Benl. Benloe's Reports.
Benth. Jud. Ev. Bentham's Rationale of Judicial Evidence.
Best on Evid. Best on Evidence.
Best on Pres. Best on Presumptions.
Bibb's R. Bibb's (Ky.) Reports.
Bing. R. Bingham's Reports.
Bing. N. C. Bingham's New Cases.
Binn. or *Binney's R.* Binney's Reports.
Bl. Com. Blackstone's Commentaries.
Bl. R. Sir W. Blackstone's Reports.

Blackf. R. Blackford's (Indiana) Reports.
Blatchford's R. Blatchford's Circuit Court Reports.
Bligh's R. Bligh's Reports (House of Lords.)
Blount. Blount's Nomo-lexicon.
Bohun's Curs. Canc. Bohun's Cursus Cancellariæ.
Bohun's Inst. Leg. Bohun's Institutio Legalis.
Boote's Hist. Boote's Historical Treatise of a Suit at Law.
Bos. & Pull. Bosanquet and Puller's Reports.
Bouvier. Bouvier's American Law Dictionary.
Bract. Bracton de Legibus et Consuetudinibus Angliæ.
Bradford's R. Bradford's Surrogate's Reports.
Branch's Pr. Branch's Principia Legis et Æquitatis.
Brande. Brande's Dictionary of Science, &c.
Brissonius. Brissonius De Verborum Significatione.
Britt. Britton.
Bro. Abr. Brooke's Abridgment.
Bro. C. C. Brown's Chancery Cases.
Bro. Civ. Law. Browne's Civil and Admiralty Law.
Bro. P. C. Brown's Parliamentary Cases.
Brock. R. Brockenborough's Reports.
Brod. & Bing. Broderip & Bingham's Reports.
Broom's Max. Broom's Legal Maxims.
Browne on Act. Browne on Actions.
Brownl. Brownlow's Reports.
Brownl. & Golds. Brownlow and Goldsborough's Reports.
Brown's R. Brown's (Scotch) Reports.
Bull. N. P. Buller's Nisi Prius.
Bulstr. Bulstrode's Reports.
Burge on Suret. Burge on Suretyship.
Burge Col. & For. Law. Burge on Colonial and Foreign Law.
Burn's Eccl. Law. Burn's Ecclesiastical Law.
Burr. Burrow's Reports.
Burr. Sett. Cas. Burrow's Settlement Cases.
Burr. Assign. Burrill on Assignments.
Burr. Circ. Ev. Burrill on Circumstantial Evidence.
Burr. Law Dict. Burrill's Law Dictionary.
Burr. Pr. Burrill's Practice.
Burton's Real Prop. Burton's Law of Real Property.
Butler's Co. Litt. Butler's Notes to Coke Littleton.
Butler's Hor. Jur. Butler's Horæ Juridicæ.
Bynk. Quæst. Jur. Pub. Bynkershoek's Quæstiones Juris Publici.

C. & F. Clarke and Finelly's Reports.
C. & J. Crompton and Jervis' Reports.
C. & K. Carrington and Kirwan's Reports.
C. & M. Carrington and Marshman's Reports.
C. & P. Carrington and Payne's Reports.
Caines' R. Caines' (N. Y.) Reports.
Call. on Sew. Callis on Sewers.
Call's R. Call's (Virginia) Reports.
Calthr Calthrop's Reports.
Calv. Lex. or *Calv. Lex. Jur.* Calvini Lexicon Juridicum.
Calv. on Part. Calvert on Parties to Suits in Equity.
Camd. Brit. Camden's Britannia.
Camph. Campbell's Reports.
Carr. & M. Carrington and Marshman's Reports.
Cart. de Forest. Carta de Foresta.
Carth. Carthew's Reports.
Cas. temp. Hardw. Cases tempore Hardwicke.
Cas. temp. Talb. Cases tempore Talbot.
Cassiod. Var. Cassiodori Variarum.
Chan. Cas. Chancery Cases, or Cases in Chancery.
Chanc. Prec. Chancery Precedents.
Chart. Forest. Charta de Foresta.
Chart. Civit. Lond. Charta Civitatis Londini.
Chitt. Arch. Pr. Chitty's Archbold's Practice.
Chitt. on Bills. Chitty on Bills.
Chitt. Bl. Com. Chitty's Blackstone's Commentaries.
Chitt. Com. Law. Chitty's Commercial Law.
Chitt. Contr. Chitty on Contracts.
Chitt. Gen. Pr. Chitty's General Practice.
Chitt. Pl. Chitty on Pleading.
Chitt. R. Chitty's Reports.
Civ. Code Louis. Civil Code of Louisiana.
Clerke's Prax. Cur. Adm. Clerke's Praxis Curiæ Admiralitatis.
Co. Coke's Reports.
Co. Entr. Coke's Entries.
Co. Litt. Coke on Littleton.
Cod. Codex Justiniani.
Cod. Theodos. Codex Theodosianus.
Code Civ. Code Civil.
Code Nap. Code Napoleon.
Cole on Crim. Inform. Cole on Criminal Informations.
Com. Comyn's Reports.
Com. Dig. Comyn's Digest.
Comb. Comberbach's Reports.
Comstock's R. Comstock's (N. Y.) Reports.
Cond. R. Condensed Reports.
Conf. Chart. Confirmatio Chartarum.
Conkl. Treat. Conkling's Treatise on Jurisdiction.
Conn. R. Connecticut Reports.
Consol. del Mare. Consolato del Mare.
Cooke on Def. Cooke's Law of Defamation.
Cooke's R. Cooke's (Tenn.) Reports.
Coop. Just. Inst. Cooper's Justinian's Institutes.
Coote on Mortg. Coote on Mortgages.
Corp. Jur. Can. Corpus Juris Canonici.
Corp. Jur. Civ. Corpus Juris Civilis.
Coventry on Conv. Evid. Coventry on Conveyancer's Evidence.
Cowell. Cowell's Interpreter.
Cowp. Cowper's Reports.
Cowen's R. Cowen's (N. Y.) Reports.
Crabb's Hist. Crabb's History of English Law.
Crabb's Real Prop. Crabb's Law of Real Property.
Crabbe's R. Crabbe's District Court Reports.
Craig or *Crag Jus Feud.* Craig's Jus Feudale.
Cranch's R. Cranch's Reports.
Cro. Car. Croke's Reports. (Charles I.)
Cro. El. Croke's Reports. (Elizabeth.)
Cro. Jac. Croke's Reports. (James I.)
Crompt. Jurisd. Crompton's Jurisdiction of Courts.
Crompt. & Mees. Crompton and Meeson's Reports.
Cr. Mees. & Rosc. Crompton, Meeson and Roscoe's Reports.
Cruise's Dig. Cruise's Digest.
Curteis' R. Curteis' Reports.
Curtis' R. Curtis' Circuit Court Reports.
Cushing's R. Cushing's (Mass.) Reports.

D. & Ch. Deacon and Chitty's Reports.
D. & Cl. Dow and Clarke's Reports.
D. & R. Dowling and Ryland's Reports.
Dal. Dalison's Reports.
Dallas' R. Dallas' Reports.
Dalrymple Feud. Dalrymple on Feudal Property.
Dane's Abr. Dane's Abridgment.
Daniell's Chanc. Pr. Daniell's Chancery Practice.
Dav. Davies' R. Davies' Reports.
Day's R. Day's (Conn.) Reports.
Decret. Childeb. ad L. Salic. Decreta Childeberti ad Legem Salicam.
Denio's R. Denio's (N. Y.) Reports.
Desaus. R. Desaussure's (S. C.) Reports.
Dev. R. Devereux's (N. C.) Reports.
Dev. & Bat. R. Devereux and Battle's (N. C.) Reports.
Dial. de Scacc. Dialogus de Scaccario.
Dickens' R. Dickens' Reports.
Dig. Digestum or Digesta. The Digest or Digests of Justinian.
Diss. ad Flet. Selden's Dissertatio ad Fletam.
Doct. and Stud. Doctor and Student.
Doct. Plac. Doctrina Placitandi.
Domat. Domat's Civil Law.
Domesd. Domesday Book.
Dougl. Douglas' Reports.
Dowl. & Ryl. Dowling and Ryland's Reports.
Dow's P. C. Dow's Parliamentary Cases.
Dudley's R. Dudley's (S. C.) Reports.
Duer on Ins. Duer on Insurance.
Duer's R. Duer's (N. Y.) Reports.
Dufresne. Dufresne's Glossary.
Dugd. Orig. Jur. Dugdale's Origines Juridiciales.
Duke Charit. Us. Duke on Charitable Uses.
Dunkin's Address. Dunkin's Address at the bar of the Legislative Assembly of Canada.
Durand. Spec. Jur. Durandi Speculum Juris.
Dwar. on Stat. Dwarris on Statutes.
Dyer. Dyer's Reports.

East. East's Reports.
East's P. C. East's Pleas of the Crown.
Eden. Eden's Reports.
Eden's Bankr. Law. Eden on the Bankrupt Law.
Edw. Adm. R. Edwards' Admiralty Reports.
Edw Ch. R. Edwards' (N. Y.) Chancery Reports.
Edw. on Part. Edwards on Parties.
Edw. on Rec. Edwards on Receivers.
Emerig. Tr. des Ass. Emerigon Traite des Assurances.
Encycl. Am. Encyclopedia Americana.
Eng. Law & Eq. R. English Law and Equity Reports.
English's R. English's (Arkansas) Reports.
Eq. Cas. Abr. Equity Cases Abridged.
Ersk. Inst. Erskine's Institute of the Laws of Scotland.
Ersk. Pr. Erskine's Principles of the Law of Scotland.
Esp. N. P. R. Espinasse's Nisi Prius Reports.
Esprit des Lois. Montesquieu's Spirit of Laws.

F. N. B. Fitzherbert's Natura Brevium.
Fearne Cont. Rem. Fearne on Contingent Remainders.
Fell Merc. Guar. Fell on Mercantile Guaranties.
Fet Ass. Fet Assaver.
Feud. Lib. Feudorum Libri or Liber.
Finch L. Finch's Law.
Fitzg. Fitzgibbon's Reports.
Fitzh. Just. Fitzherbert's Justice.
Fleta. Fleta, seu Commentarius Juris Anglici.
Flor. Wigorn. Florentius Wigornensis, Florence of Worcester.
Fonbl. Eq. Fonblanque on Equity.
Forbes' Inst. Forbes' Institutes of the Law of Scotland.
Formul. Solen. Formulæ Solemnes.
Fortesc. de L. L. Angl. Fortescue de Laudibus Legum Angliæ.
Fost. C. L. Foster's Crown Law.
Foster's R. Foster's (N. H.) Reports.
Francis' Max. Francis' Maxims.
Freem. Freeman's Reports.

Gaius, or *Gaius Inst.* Gaius' Institutes.
Gale & Dav. Gale and Davison's Reports.
Gale & Whatl. Gale and Whatley's Law of Easements.
Gall. or *Gallison's R.* Gallison's Circuit Court Reports.
Gerv. Dorobern. Gervase of Canterbury.
Gibbon's Rom. Emp. Gibbon's Decline and Fall of the Roman Empire.
Gibs. Cod. Gibson's Codex.
Gilb. C. Pleas. Gilbert's History and Practice of the Court of Common Pleas.
Gilb. For. Rom. Gilbert's Forum Romanum.
Gilb. Ten. Gilbert on Tenures.
Gill's R. Gill's (Md.) Reports.
Gill & Johns. R. Gill and Johnson's (Md.) Reports.
Gilman's R. Gilman's (Ill.) Reports.
Glanv. Glanville, De Legibus et Consuetudinibus Regni Angliæ.
Godb. Godbolt's Reports.
Godolph. Godolphin's Orphan's Legacy.
Golds. Goldsborough's Reports.
Gord. Dig. Gordon's Digest of the Laws of the United States.
Gould's Pl. Gould on Pleading.
Gow on Partn. Gow on Partnership.
Grady on Fixt. Grady on Fixtures.
Grah. Pr. Graham's Practice,
Grand Coust. Norm. Grand Coustumier of Normandy.
Grattan's R. Grattan's (Va.) Reports.
Gray's Chanc. Pr. Gray's Chancery Practice.
Gray's R. Gray's (Mass.) Reports.
Greenl. Cruise's Dig. Greenleaf's Cruise's Digest.
Greenl. on Evid. Greenleaf on Evidence.
Green's R. Green's (N. J.) Reports.
Greg. Turon. Gregory of Tours.
Grot. de Æquit. Grotius de Æquitate.
Grot. de Jur. Bell. Grotius de Jure Belli ac Pacis.
Guyot Inst. Feod. Guyot's Institutes Feodales.

H. Bl. Henry Blackstone's Reports.
Hagg. Eccl. R. Haggard's Ecclesiastical Reports.
Hale's Anal. Hale's Analysis of the Law.
Hale's Hist. Com. Law. Hale's History of the Common Law.
Hale's P. C. Hale's Pleas of the Crown.
Hallam's Mid. Ag. Hallam's History of the Middle Ages.

Hallifax Anal. Hallifax's Analysis of the Roman Civil Law.
Halst. R. Halsted's (N. J.) Reports.
Hamm. N. P. Hammond's Nisi Prius.
Hardr. Hardres' Reports.
Hargr. Co. Litt. Hargrave's Notes to Coke Littleton.
Hargr. L. Tr. Hargrave's Law Tracts.
Hargr. St. Trials. Hargrave's State Trials.
Harper's R. Harper's (S. C.) Reports.
Harr. Dig. Harrison's Digest.
Harr. & Gill's R. Harris and Gill's (Md.) Reports.
Harr. & Johns. R. Harris and Johnson's (Md.) Reports.
Harr. & McH. R. Harris and McHenry's (Md.) Reports.
Hawk. P. C. Hawkins' Pleas of the Crown.
Heath's Max. Heath's Maxims.
Heinec. Elem. Jur. Civ. Heineccii Elementa Juris Civilis.
Heinec. Elem. Jur. Camb. Heineccii Elementa Juris Cambialis.
Hen. & Munf. R. Hening and Munford's (Va.) Reports.
Hengh. Mag. Hengham's Summa Magna.
Het. Hetley's Reports.
Hickes' Thes. Hickes' Thesaurus.
Hill on Trust. Hill on Trustees.
Hilliard's Real Prop. Hilliard's Abridgment of the American Law of Real Property.
Hill's R. Hill's (N. Y.) Reports.
Hill's R. Hill's (S. C.) Reports.
Hincmar. Epist. Hincmari Epistolæ.
Hob. Hobart's Reports.
Hoffm. Mast. in Chanc. Hoffman's Master in Chancery.
Holt's R. Holt's Reports.
Holthouse. Holthouse's Law Dictionary.
Hotom. in Verb. Feud. Hotomannus de Verbis Feudalibus.
Houard's Ang. Sax. Laws. Houard's Anglo Saxon Laws.
How. St. Trials. Howell's State Trials.
Hoved. Ann. Hoveden's Annals.
Howard's R. Howard's Reports (S. C. U. S.)
Hub. Præl. Jur. Civ. Huberi Prælectiones Juris Civilis.
Hubback's Ev. of Success. Hubback's Evidence of Succession.
Hughes' Eq. Drafts. Hughes' Equity Draftsman.
Hughes on Ins. Hughes on Insurance.
Hume's Com. Hume's Commentaries on the Criminal Law of Scotland.
Humph. R. Humphrey's (Tenn.) Reports.
Hutt. Hutton's Reports.

Ingulph. Hist. Croyl. Ingulphi Historia Croylandiæ.
Inst. Institutes of Justinian.
Inst. Institutes of Lord Coke.
Inst. Cler. Instructor Clericalis.
Indiana R. Indiana Reports.
Iredell's Eq. R. Iredell's (N. C.) Equity Reports.
Iredell's Law R. Iredell's (N. C.) Law Reports.

J. J. Marsh. R. J. J. Marshall's (Ky.) Reports.
Jac. & Walk. Jacob and Walker's Reports.
Jac. Sea Laws. Jacobsen's Sea Laws.
Jacob. Jacob's Law Dictionary.
Jarm. on Wills. Jarman on Wills.
Jenk. Cent. Jenkins' Centuries or Reports.
Johns. Cas. Johnson's (N. Y.) Cases.
Johns. Ch. R. Johnson's (N. Y.) Chancery Reports.
Johns. R. Johnson's (N. Y.) Reports.
Jones on Bailm. Jones on Bailment.
Jones' Law R. Jones' (N. C.) Law Reports.
Jones' Eq. R. Jones' (S. C.) Equity Reports.
Jornand. de Reb. Get. Jornandes De Rebus Geticis.
Joy on Conf. Joy on the Admissibility of Confessions.
Joy on Evid. Joy on the Evidence of Accomplices.
Jul. Frontin. Julius Frontinus.

Kames' Eq. Kames' Principles of Equity.
Kaufm. Mackeld. Civ. Law. Kaufmann's edition of Mackeldey's Civil Law.
Keb. Keble's Reports.
Keilw. Keilway's Reports.
Kel. Kelyng's Reports.
Kelham. Kelham's Norman Dictionary.
Kelly's R. Kelly's (Geo.) Reports.
Kennett's Par. Ant. Kennett's Parochial Antiquities.
Kennett's Gloss. Kennett's Glossary.
Kent's Com. Kent's Commentaries.
Kernan's R. Kernan's (N. Y.) Reports.
Kitch. Kitchin of Courts.

L. Alam. Law of the Alemanni.
L. Baiwar. or *Boior.* Law of the Bavarians.
L. Ripuar. Law of the Ripuarians.
L. Salic. Salic Law.
L. Fr. Dict. Law French Dictionary.
L. Lat. Dict. Law Latin Dictionary.
LL. Aluredi. Laws of Alfred.
LL. Athelst. Laws of Athelstan.
LL. Burgund. Laws of the Burgundians.
LL. Canuti R. Laws of King Canute.
LL. Edw. Conf. Laws of Edward the Confessor.
LL. Gul. Conq. Laws of William the Conqueror.
LL. Hen. I. Laws of Henry I.
LL. Inæ. Laws of Ina.
LL. Longob. Laws of the Lombards.
LL. Malcolm. R. Scot. Laws of Malcolm, King of Scotland.
LL. Neapolit. Laws of Naples.
LL. Will. Noth. Laws of William the Bastard.
LL. Wisegothor. Laws of the Visigoths.
Lamb. Archaion. Lambard's Archaionomia.
Lamb. Eiren. Lambard's Eirenarcha.
Lamb. Explic. Lambard's Explication.
Las Part. Las Siete Partidas.
Latch. Latch's Reports.
Ld. Raym. Lord Raymond's Reports.
Lee on Abstr. Lee on Abstracts of Title.
Leon. Leonard's Reports.
Lev. Levinz' Reports.
Lewis on Perp. Lewis on Perpetuity.
Lewis' U. S. Crim. Law. Lewis' United States Criminal Law.
Lib. Feud. Libri Feudorum; the Books of Feuds. See *Feud. Lib.*
Lib. Nig. Scacc. Liber Niger Scaccarii; Black Book of the Exchequer.
Lib. Rames. Liber Ramesiensis; Book of Ramsey.

Lib. Rub. Scacc. Liber Ruber Scaccarii; Red Book of the Exchequer.
Lill. Abr. Lilly's Abridgment.
Litt. Littleton's Tenures.
Litt. R. Littleton's Reports.
Littell's R. Littell's (Ky.) Reports.
Loccen. de Jur. Mar. Loccenius de Jure Maritimo.
Lofft. Lofft's Reports.
Louis. R. Louisiana Reports.
Lutw. Lutwyche's Reports.
Lyndew. Prov. Lyndwode's Provinciale.

M. & G. Manning and Granger's Reports.
M. G. & S. Manning, Granger and Scott's Reports.
M. & K. Mylne and Keen's Reports.
M. & M. Moody and Malkin's Reports.
M. & P. Moore and Payne's Reports.
M. & S. Maule and Selwyn's Reports.
M. & W. Meeson and Welsby's Reports.
McCord's R. McCord's (S. C.) Reports.
McLean's R. McLean's Circuit Court Reports.
Mackeld. Civ. Law. Mackeldey's Civil Law.
Macnal. Ev. Macnally on Evidence.
Macph. on Inf. Macpherson on Infants.
Macq. Hus. & W. Macqueen on Husband and Wife.
Madd. Chan. Maddock's Chancery.
Mad. Form. Angl. Madox' Formulare Anglicanum.
Mad. Hist. Exch. Madox' History of the Exchequer.
Mag. Chart. or *Cart.* Magna Charta, or Carta.
Mag. Rot. Pip. Magnus Rotulus Pipæ; Great Roll of the Pipe.
Maine R. Maine Reports.
Man. & Gr. Manning and Granger's Reports.
Man. Gr. & Scott. Manning, Granger & Scott's Reports.
Manwood. Manwood's Forest Law.
Mans. on Dem. Mansel on Demurrer.
Marculf. Form. Marculfi Formulare.
Marsh. on Ins. Marshall on Insurance.
Martin's (La.) R. Martin's Louisiana Reports.
Marv. Leg. Bibl. Marvin's Legal Bibliography.
Maryland Law R. Maryland Law Reports.
Maryland Ch. R. Maryland Chancery Reports.
Mascard. de Prob. Mascardus de Probationibus.
Mason's R. Mason's (Circuit Court) Reports.
Mass. R. Massachusetts Reports.
Mat. Par. Matthew Paris.
Mees. & W. Meeson and Welsby's Reports.
Menoch. de Præs. Menochius de Præsumptionibus.
Merivale. Merivale's Reports.
Merl. Repert. Merlin's Repertoire.
Metcalf's R. Metcalf's (Mass.) Reports.
Michigan R. Michigan Reports.
Miller's Eq. Mortg. Miller's Law of Equitable Mortgages.
Mirr. Mirror of Justices.
Missouri R. Missouri Reports.
Mitford's Ch. Pl. Mitford's Chancery Pleading.
Mod. Modern Reports.
Molloy de Jur. Mar. Molloy de Jure Maritimo.
Mon. Angl. Monasticon Anglicanum.
Moo. & Malk. Moody and Malkin's Reports.
Moore. J. B. Moore's Reports.
Moore & P. Moore and Payne's Reports.
Moore & S. Moore and Scott's Reports.
Murat. Antiq. Med. Ævi. Muratori's Antiquitates Medii Ævi.

Myl. & Cr. Mylne and Craig's Reports.
Myl. & K. Mylne and Keen's Reports.

N. Hamp. R. New-Hampshire Reports.
N. Y. R. L. New-York Revised Laws (ed. 1813.)
N. Y. Rev. St. New-York Revised Statutes.
Nev. & Man. Nevile and Manning's Reports.
Nev. & P. Nevile and Perry's Reports.
New R. New Reports.
Nott & McCord's R. Nott and McCord's (S. C.) Reports.
Nov. Novellæ, Novels.
Nov. Recop. Novisima Recopilacion.
Noy's Max. Noy's Maxims.

O. N. B. or *Old Nat. Brev.* Old Natura Brevium.
O'Brien's Mil. Law. O'Brien's Military Law.
Ohio R. Ohio Reports.
Ohio St. R. Ohio State Reports.
Onuphr. de Interp. Voc. Eccles. Onuphrius de Interpretatione Vocum Ecclesiæ.
Ord. Mar. Ordonnance de la Marine.
Ought. Oughton's Ordo Judiciorum.
Owen. Owen's Reports.
Owen on Bank. Owen on Bankruptcy.

P. Wms. Peere Williams' Reports.
Paige's R. Paige's (N. Y.) Chancery Reports.
Paine's R. Paine's Circuit Court Reports.
Paley on Ag. Paley on Agency.
Palg. Rise, &c. Palgrave's Rise and Progress of the English Commonwealth.
Palm. Palmer's Reports.
Par. Ant. Parochial Antiquities.
Park on Ins. Park on Insurance.
Parker's Cr. R. Parker's (N. Y.) Criminal Reports.
Pars. on Contr. Parsons on Contracts.
Peake's Evid. Peake on Evidence.
Penn. Law Journ. Pennsylvania Law Journal.
Penn. R. Pennsylvania Reports.
Penn. St. R. Pennsylvania State Reports.
Perk. Perkins' Profitable Book.
Pet. Adm. Dec. Peters' Admiralty Decisions.
Peters' R. Peters' Reports (S. C. U. S.)
Phill. Evid. Phillipps on Evidence.
Phill. Ins. Phillips on Insurance.
Phill. Pat. Phillips on Patents.
Phillim. Dom. Phillimore on Domicil.
Pick. R. Pickering's (Mass.) Reports.
Pitcairn's Cr. Trials. Pitcairn's (Scotch) Criminal Trials.
Pitisc. Lex. Pitisci Lexicon.
Pitm. Princ. and Sur. Pitman on Principal and Surety.
Plac. Abbrev. Placitorum Abbreviatio.
Plowd. Plowden's Commentaries and Reports.
Pol. Pollexfen's Reports.
Poph. Popham's Reports.
Porter's R. Porter's (Ala.) Reports.
Poth. Obl. Pothier on Obligation (transl.)
Poth. Contr. Sale. Pothier on the Contract of Sale (transl.)
Pow. on Dev. Powell on Devises.
Prest. Est. Preston on Estates.
Prest. Abstr. Preston on Abstracts of Title.
Prest. Leg. Preston on Legacies.
Pulling Merc. Acc. Pulling on Mercantile Accounts.
Purdon's Dig. Purdon's (Pa.) Digest.

Q. B. or *Q. B. R.* Queen's Bench Reports. The same with *Ad. & Ell.* N. S.
Quon. Attach. Quoniam Attachiamenta.

R. & M. Russell and Mylne's Reports.
R. & M. C. C. Ryan and Moody's Crown Cases.
R. & R. C. C. Russell and Ryan's Crown Cases.
Rand. R. Randolph's (Va.) Reports.
Ranulph. Cestr. Ranulph of Chester.
Rast. Entr. Rastell's Entries.
Rawle Const. Rawle on the Constitution.
Rawle's R. Rawle's (Pa.) Reports.
Reeves' Hist. Eng. Law. Reeves' History of the English Law.
Reg. Brev. Registrum Brevium.
Reg. Jud. Registrum Judiciale.
Reg. Maj. Regiam Majestatem.
Reg. Orig. Registrum Originale.
Rhode Island R. Rhode Island Reports.
Richardson's Eq. R. Richardson's (S. C.) Equity Reports.
Richardson's Law R. Richardson's (S. C.) Law Reports.
Rob. Adm. R. Robinson's Admiralty Reports.
Rob. Charles V. Robertson's History of the Reign of Charles V.
Rob. Fr. Conv. Roberts on Fraudulent Conveyances.
Rocc. de Nav. et Nau. Roccus de Navibus et Naulo.
Roll. or *Ro. Abr.* Rolle's Abridgment.
Roll. R. Rolle's Reports.
Rop. Husb. & W. Roper on Husband and Wife.
Rop. on Leg. Roper on Legacies.
Rosc. Crim. Ev. Roscoe on Criminal Evidence.
Rosc. Real Act. Roscoe on Real Actions.
Rot. Claus. Rotuli Clausi; Close Rolls.
Rot. Parl. Rotuli Parliamenti; Parliament Rolls.
Rot. Pat. Rotuli Patentes; Patent Rolls.
Russ. Russell's Reports.
Russ. & M. Russell and Mylne's Reports.
Russ. on Crim. Russell on Crimes and Misdemeanors.
Russ. on Fact. Russell on Factors.
Russ. & Ry. C. C. Russell and Ryan's Crown Cases.
Ruth. Inst. Rutherforth's Institutes.
Ry. & Mo. C. C. Ryan and Moody's Crown Cases.

S. Car. Rep. South Carolina Reports.
S. & R. Sergeant and Rawle's (Pa.) Reports.
Salk. Salkeld's Reports.
Sand. Us. & T. Sanders on Uses and Trusts.
Sandf. R. Sandford's (N. Y.) Chancery Reports.
Santerna de Ass. Santerna de Assecurationibus et Sponsionibus Mercatorum.
Saund. Saunders' Reports.
Saund. Pl. & Ev. Saunders on Pleading and Evidence.
Sav. Savile's Reports.
Savig. Hist. Rom. Law. Savigny's History of the Roman Law.
Say. Sayer's Reports.
Scammon's R. Scammon's (Ill.) Reports.
Sch. & Lef. Schoales and Lefroy's Reports.
Schmidt's Civ. Law. Schmidt's Civil Law of Spain and Mexico.
Schult. Aq. R. Schultes on Aquatic Rights.
Scott's R. Scott's Reports.
Sedgw. on Dam. Sedgwick on the Measure of Damages.
Sedg. on Stat & Const. Law. Sedgwick on Statutory and Constitutional Law.
Seld. Mare Claus. Selden's Mare Clausum.
Seld. Tit. of Hon. Selden's Titles of Honor.
Selden's R. Selden's (N. Y.) Reports.
Selw. N. P. Selwyn's Nisi Prius.
Serg. & Rawle. Sergeant and Rawle's (Pa.) Reports.
Sewell's Sher. Sewell's Law of Sheriff.
Shelf. Mar. & Div. Shelford on Marriage and Divorce.
Shelf. Mortm. Shelford on Mortmain.
Shep. Touch. Sheppard's Touchstone.
Shepl. R. Shepley's (Maine) Reports.
Show. Shower's Reports.
Sid. Siderfin's Reports.
Sim. & Stu. Simon and Stuart's Reports.
Skene de Verb. Sign. Skene de Verborum Significatione.
Smedes & Marsh. R. Smedes and Marshall's (Miss.) Reports.
Smedes & Marsh. Ch. R. Smedes and Marshall's (Miss.) Chancery Reports.
Smith on Contr. Smith on Contracts.
Smith's Lead. Cas. Smith's Leading Cases.
Smith's Merc. Law. Smith's Mercantile Law.
Somn. on Gav. Somner's Law of Gavelkind.
Spelman. Spelman's Glossary.
Spence's Chancery. Spence on the Equitable Jurisdiction of the Court of Chancery.
St. Tri. State Trials.
Stair's Inst. Stair's Institutions of the Law of Scotland.
Stark. Ev. Starkie on Evidence.
Stark. Stand. Starkie on Slander.
Stat. Gloc. Statute of Glocester.
Stat. Marlb. Statute of Marlbridge.
Stat Mert. Statute of Merton.
Stat. Mod. Lev. Fin. Statute Modus Levandi Fines.
Stat. Westm. Statute of Westminster.
Staundf. Pl. Cor. Staundford's Placita Coronæ.
Stephen's Com. Stephen's New Commentaries on the Laws of England.
Steph. Crim. Law. Stephen's Criminal Law.
Steph. Pl. Stephen on Pleading.
Steph. Lect. Stephen's Lectures on the History of France.
Stev. on Av. Stevens on Average.
Stev. & Ben. on Av. Stevens and Benecke on Average.
Stock N. Comp. Ment. Stock on Non Compotes Mentis.
Story on Ag. Story on Agency.
Story on Bailm. Story on Bailment.
Story Confl. Laws. Story on the Conflict of Laws.
Story on Const. Story on the Constitution of the United States.
Story's Eq. Jur. Story's Equity Jurisprudence.
Story's Eq. Pl. Story on Equity Pleading.
Story on Bills. Story on Bills of Exchange.
Story on Notes. Story on Promissory Notes.
Story on Partn. Story on Partnership.
Story's R. Story's Circuit Court Reports.
Stra. Strange's Reports.
Straccha de Ass. Straccha de Assecurationibus.

Sty. Styles' Reports.
Sugd. Prop. Sugden's Law of Property.
Sugd. Vend. Sugden on Vendors.
Sumner's R. Sumner's Circuit Court Reports.
Swanst. Swanston's Reports.
Swinb. on Wills. Swinburne on Wills.

T. & G. Tyrwhitt and Granger's Reports.
T. & P. Turner and Phillips' Reports.
T. Jon. Sir Thomas Jones' Reports.
T. R. Term Reports.
T. & R. Turner and Russell's Reports.
T. Raym Sir Thomas Raymond's Reports.
Taml. on Ev. Tamlyn on Evidence.
Taunt. Taunton's Reports.
Tayl. Civ. Law. Taylor's Elements of the Civil Law.
Tayl. Med. Jur. Taylor's Medical Jurisprudence.
Term R. Term Reports.
Texas R. Texas Reports.
Thach. Crim. Cases. Thacher's Criminal Cases.
Thel. Dig. Theloall's Digest.
Tidd's Pr. Tidd's Practice.
Toll. Ex. Toller's Law of Executors and Administrators.
Tomlins. Tomlins' Law Dictionary.
Toth. Tothill's Reports.
Towns. Pl. Townsend's Preparative to Pleading.
Troubat on Com. & Lim. Part. Troubat on the Law of Commandatary and Limited Partnership.
Trye's Jus Filiz. Trye's Jus Filizarii.
Tucker's Com. Tucker's Commentaries.
Turn. R. Turner's Reports.
Turn. & Phill. Turner and Phillips' Reports.
Turn. & Russ. Turner and Russell's Reports.
Tyrw. Tyrwhitt's Exchequer Reports.
Tyrw. & Gr. Tyrwhitt and Granger's Reports.
Tytl. Mil. Law. Tytler on Military Law.

U. S. Dig. United States Digest.

V. & B. Vesey and Beames' Reports.
Vattel. Vattel's Law of Nations.
Vaugh. Vaughan's Reports.
Vent. Ventris' Reports.
Vermont R. Vermont Reports.
Vern. Vernon's Reports.
Ves. Vesey's Reports.
Ves. Jr. Vesey, Junior's, Reports.
Ves. & Bea. Vesey and Beames' Reports.
Vet. Na. Br. Old Natura Brevium.
Vin. Abr. Viner's Abridgment.
Vinn. ad Inst. Vinnius' Commentary on the Institutes of Justinian.

W. Jon. Sir William Jones' Reports.
Ward on Leg. Ward on Legacies.
Ware's R. Ware's District Court Reports.
Wash. C. C. R. Washington's Circuit Court Reports.
Wash. (Va.) R. Washington's (Virginia) Reports.
Watk. Conv. Watkins on Conveyancing.
Wats. Abr. Watson on Arbitration.
Watts' R. Watts' (Pa.) Reports.
Watts & Serg. Watts and Sergeant's (Pa.) Reports.
Welsb. H. & Gord. Welsby, Hurlstone and Gordon's Reports.
Wendell's R. Wendell's (N. Y.) Reports.
Wentw. Off. Ex. Wentworth's Office of Executor.
Wentw. Pl. Wentworth's Pleading.
West's Symb. West's Symboleography.
Whart. Am. Crim. Law. Wharton's American Criminal Law.
Whart. Lex. Wharton's Law Lexicon.
Whart. Prec. of Indict. Wharton's Precedents of Indictments.
Whart. R. Wharton's (Pa.) Reports.
Whart. & Stille's Med. Jur. Wharton and Stille's Medical Jurisprudence.
Wheaton's R. Wheaton's Reports. (*S. C. U. S.*)
Wheat. on Cap. Wheaton on Captures.
Wheat. Intern. Law. Wheaton's International Law.
Wheat. Law of Nat. Wheaton's History of the Law of Nations.
Whishaw. Whishaw's Law Dictionary.
White's Eq. Cas. White's Leading Cases in Equity.
White's New Recop. White's New Recopilacion of the Laws of Spain and the Indies.
Wilc. on Cons. Wilcock on the Office of Constable.
Wilc. Mun. Cor. Wilcock on Municipal Corporations.
Wilk. Leg. Ang. Sax. Wilkin's Leges Anglo-Saxonicæ.
Willes' R. Willes' Reports.
Williams' Exec. Williams on Executors.
Wills' Circ. Ev. Wills on Circumstantial Evidence.
Wils. Wilson's Reports.
Wing. Max. Wingate's Maxims.
Woodb. & Min. R. Woodbury and Minot's Circuit Court Reports.
Wood's Inst. Wood's Institutes.
Wooddes. Lect. Wooddesson's Lectures.
Wordsw. J. Stock Co. Wordsworth on Joint Stock Companies.
Worth. on Jur. Worthington on Juries.
Wright Ten. Wright on Tenures.
Wyatt's Prac. Reg. Wyatt's Practical Register.

Yearb. Yearbook.
Y. & C. Younge and Collyer's Exchequer Reports.
Y. & J. Younge and Jervis' Exchequer Reports.
Yelv. Yelverton's Reports.
Yerger's R. Yerger's (Tenn.) Reports.

Zabriskie's R. Zabriskie's (N. J.) Reports.
Zasius de Feud. Zasius de Feudis.

A

LAW DICTIONARY

AND

GLOSSARY.

A

A. Lat. The letter marked on the ballots by which, among the Romans, the people voted against a proposed law. It was the initial letter of the word ANTIQUO, I am for the old law. *Taylor's Civil Law*, 191.

A. Lat. The letter inscribed on the ballots by which, among the Romans, jurors voted to acquit an accused party. It was the initial letter of ABSOLVO, I acquit. *Tayl. Civ. Law*, 192.

A. Lat. From. *A datû;* from the date. 2 *Salk.* 413.

By. *A non judice;* by one not a judge. *Bract.* fol. 205 a.

On, at. *A latere;* on the side, collaterally. *Id.* fol. 62 b.

Of, in. See *A consiliis.*

Used also, anciently, in the composition of official titles; as *à cancellis, à consiliis, à libellis, à responsis,* (qq. v.) in the sense of relation, position, charge, or duty.

A. L. Fr. Of. *A fine force;* of necessity. *Litt.* sect. 455.

At. *A la requeste des prelates, counts et barons, a son parliament a Westm. &c.;* at the request of the prelates, earls and barons, at his parliament at Westminster. *Stat. Articuli sup. Chartas,* pr.

To. *A tout la commune Dengleterre;* to all the people of England. *Id.* c. 1.

For. *A touts jours;* for ever. *Litt.* sect. 625.

In. *Nul common plee ne soit desormes tenus a leschequer;* no common plea (action) shall henceforth be held in the exchequer. *Art. sup. Chart.* c. 4.

With. *A force et armes;* with force and arms. *Yearbook*, II 3 Edw. III. 7. T. 5 Edw. III. 23.

A AVER ET TENER. L. Fr. [L. Lat. *habendum et tenendum.*] To have and to hold. *Litt.* sect. 523, 524. *A aver et tener a luy et a ses heires, a touts jours;* to have and to hold to him and his heirs for ever. *Id.* sect. 625. See *Aver et tener.*

A CANCELLIS. L. Lat. A chancellor; anciently so called from the *cancelli,* (lattices, or latticed enclosure,) within which he performed his office. *Cassiodorus Variar.* lib. 11. form 6. *Spelman,* voc. *Cancellarius.* See *Cancellarius.*

A CE. L. Fr. For this purpose. *Kelham. A causa de cy;* for this reason. *Id.*

A communi observantia non est recedendum. From common observance there should be no departure; there must be no departure from common usage. 2 *Co.* 74. *Co. Litt.* 186 a. 229 b. 365 a. *Wingate's Maxims,* 752, max. 203. A maxim applied to the practice of the courts, to the ancient and established forms of pleading and conveyancing, and to professional usage generally. *Id.* 752–755. Lord Coke applies it to common professional opinion. *Co. Litt.* 186 a. 364 b. See *Communis opinio.*

A CONFECTIONE. L. Lat. From the making. 5 *Co.* 1. 1 *Ld. Raym.* 480. See *Confectio.*

A CONSILIIS. Lat. A counsellor; one

who is *of*, or in another's *counsels;* one whose office is to give counsel. A term formerly applied, in ecclesiastical law, to an advocate or *responsalis*, who gave answers or counsel, on being consulted for that purpose. *Spelman*, voc. *Apocrisiarius.* The common professional phrase, "*of counsel*," (q. v.) seems to be derived from this source. See *De consilio.*

A DATU. L. Lat. From the date. 2 *Salk.* 413. *A die datûs;* from the day of the date. *Id. ibid.* 2 *Crabb's Real Property*, 248, § 1301. 1 *Ld. Raym.* 84, 480. 2 *Id.* 1242. *A dato;* from the date. *Cro. Jac.* 135. See *Datus, Datum, Date.*

A digniori fieri debet denominatio. Denomination ought to be from the more worthy. The description [of a place] should be taken from the more worthy subject, [as from a vill.] *Fleta*, lib. 4, c. 10, § 12. **Denominatio est a digniore.** *Bacon's Works*, iv. 261. **A digniori fieri debet denominatio et resolutio.** The title and exposition of a thing ought to be derived from, or given, or made with reference to the more worthy degree, quality, or species of it. *Wingate's Maxims*, 265, max. 75. Thus, if father and son are of one name, viz. J. S., if J. S. be named generally in a writ, count or other record, this shall be intended of the father, for he is the more worthy. *Id.* pl. 4.

A DROIT. L. Fr. To right; to do right; to answer in law. *Qu il i ait à droit en la curt;* that he will have him to answer the charge in the court. *LL. Gul. Conq.* 6. The same with the L. Lat. *ad rectum*, (q. v.)

A FINE FORCE. L. Fr. Of necessity; of pure necessity. *Litt.* sect. 455. See *Fine force.*

A FORCE. L. Fr. Of necessity. *Britt.* c. 119.

A FOY. L. Fr. [L. Lat. *ad fidem*, q. v.] In or under allegiance. *A lour foy;* in their allegiance. *Yearbook*, P. 8 Edw. III. 6.

A ISSUE. L. Fr. At issue. *Yearb.* M. 3 Hen. VI. 9. *Bendl.* pl. 21.

A LARGE. L. Fr. At large. *Litt.* sect. 366, 367. *Dyer*, 41, (Fr. ed.)

A LATERE. Lat. [L. Fr. *de coste.*] From the side; on, or at the side; collaterally. A term used in the old law of descent, to denote collateral, as distinguished from lineal succession: lineal heirs being in the direct or right line, ascending or descending, and collateral heirs *on the side* of it. *Hæredes* à latere *venientes;* heirs coming from the side; succeeding collaterally; collateral heirs. *Bract.* fol. 20 b. *A latere ascendit* [*jus;*] collaterally, the right ascends. *Id.* fol. 62 b. Used in the civil law, and by Bracton, as the synonyme of *ex transverso*, (Gr. ἐκ πλαγίου) across; the lines denoting collateral succession being represented as crossing the main, or right line, or proceeding obliquely from it. *Inst.* 3. 6. pr. *Id.* 3. 8. 3. *Dig.* 38. 10. 1. pr. *Nov.* 118, c. 3. *Bract.* fol. 67 a. See *Linea recta.* Applied, also, to a process or proceeding. *Keilw.* 159.

Out of the regular or lawful course; incidentally, or casually. Applied to the acts of strangers, or persons having no legal interest. *Esto quod—venerit aliquis* à latere, *et procuratorem ejecerit;* suppose that some person came casually, and ejected the proctor. *Bract.* fol. 42 b. *Fleta*, lib. 3, c. 15, § 13. *Confirmatio* à latere *facta;* a confirmation made by one having no legal interest, (*à non domino.*) *Bract.* fol. 58 a.

On, or at the side of a person.—*A latere*, in this sense, denotes closeness or intimacy of connexion; a position of favor or distinction. The justices of the ancient court of *Aula Regis* are described as sitting at the king's side; (à latere *regis residentes.*) *Bract.* fol. 108 a. 2 *Reeves' Hist. Eng. Law*, 250.

From the side; from the person. A term denoting directness or fulness of authority. Fleta describes one of the ancient English courts as held before auditors, *specialiter* à latere *regis destinatis. Fleta*, lib. 2, c. 2, § 4. Papal ambassadors, possessing the highest degree of authority and confidence, are styled legates *à latere.* 4 *Bl. Com.* 106. See *Legate.*

A LIBELLIS. L. Lat. An officer who had charge of the *libelli* or petitions addressed to the sovereign. *Calvin's Lex. Jurid.* A name sometimes given to a chancellor, (*cancellarius,*) in the early history of that office. *Spelman*, voc. *Cancellarius.*

A MANIBUS. L. Lat. An officer who wrote for the emperor; whose hand (*manus*) was used for writing; an amanuensis. *Calv. Lex.*

A ME. Lat. From me. A term in feudal grants, expressing that the tenant

held directly from the chief lord, as distinguished from *de me*, (q. v.) 2 *Bell's* (Scotch) *Appeal Cases*, 133.

A MENSA ET THORO. Lat. From table and bed; from bed and board, as the phrase is commonly translated. Used as descriptive of one of the kinds of divorce. 1 *Bl. Com.* 440, 441. See *Divorce.*

A NATIVITATE. Lat. From birth. *Reg. Orig.* 266 b. 3 *Bl. Com.* 332.

A non posse ad non esse sequitur argumentum necessarie negative. From impossibility to non-existence, the inference follows necessarily in the negative. That which cannot be done is not done. *Hob.* 336 b. Otherwise in the affirmative. *Id. ibid.*

A OES. L. Fr. [L. Lat. *ad opus.*] To the use. *LL. Gul. Conq.* 3.

A ORE. L. Fr. At present; now. *Retornable a ore;* returnable immediately. *Yearb.* M. 8 Edw. III. 30.

For the present; for this time. *Id.* 29.

A PAIS. L. Fr. At or to the country; at issue. *Et sur ceo ils fueront a pais;* and upon this they were at issue. *Yearb.* M. 5 Edw. III. 131.

A PALATIO. Lat. From *palatium*, (a palace.) Counties palatine are hence so called. 1 *Bl. Com.* 117. See *Palatium.*

A PERTE. L. Fr. To lose. *A perte e a gayne;* to lose and to gain. *Fet. Ass.* § 64.

A piratis et latronibus capta dominium non mutant. Things taken or captured by pirates and robbers do not change their ownership. *Bynk. Quæst. Jur. Pub.* b. 1, c. 17. 1 *Kent's Com.* 108, 184. No right to the spoil vests in the piratical captors; no right is derivable from them to any recaptors in prejudice of the original owners. 2 *Wooddes. Lect.* 258, 259.

A piratis aut latronibus capti liberi permanent. Persons taken by pirates or robbers remain free. *Dig.* 49. 15. 19. 2. *Grotius de Jure Belli*, lib. 3, c. 3, s. 1.

A PRENDRE. L. Fr. To take. *Bref* à prendre *la terre;* a writ to take the land. *Fet Ass.* § 51. A right to take something out of the soil of another is a profit *à prendre*, or a right coupled with a profit. 1 *Crabb's Real Prop.* 125, § 115. Distinguished from an easement. 5 *Ad. & Ell.* 758. Sometimes written as one word, *apprendre*, *apprender.* 8 *Co.* 126, 127.

A claim of right to angle and to catch and carry away the fish, is a profit *à prendre*, and cannot be claimed by custom. 30 *Eng. Law & Eq. R.* 189. But a right claimed by the inhabitants of a township to enter upon the land of a private person and take water from a well therein for domestic purposes, is an easement, and not a profit *à prendre*, and may therefore properly be claimed by custom. 30 *Eng. Law & Eq. R.* 187.

A QUA. Lat. From which. See *A quo.*

A QUO. Lat. From which. A term used, with the correlative *ad quem*, (to which,) in expressing the computation of time, and also of distance in space. Thus, *dies à quo*, the day from which, and *dies ad quem*, the day to which a period of time is computed. See *Dies à quo, From.* So, *terminus à quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned. See *Terminus, From.*

From which; from whom. A term applied to courts, as expressive of their relation one to another. Thus, a court or judge *à quo* is one from which an appeal is taken, (the court below,) and a court *ad quem* is one to which an appeal is taken, (the court above.) This use of the term is common in the civil and canon law. 4 *Reeves' Hist. Eng. Law*, 33. *Halifax Anal.* b. 3, c. 11, n. 34. *Dig.* 49. 3. 6 *Martin's* (La.) *Rep.* 520. *A qua* is more grammatically proper in connexion with the word *court*, (*curia à quâ.*)

Applied, also, to the courts of sovereigns. "The king *à quo*, and the king *ad quem* an ambassador is sent." 10 *Mod.* 4, arg.

A RENDRE. L. Fr. To render, to yield. Profits *à rendre* comprise rents and services. *Hammond's N. Prius*, 192. (Am. ed.)

A rescriptis valet argumentum. An argument drawn from original writs in the Register is good. *Co. Litt.* 11 a. See *Rescripta, Registrum Brevium.*

A RESPONSIS. L. Lat. In ecclesiastical law. One whose office it was to give or convey *answers;* otherwise termed *responsalis*, and *apocrisiarius.* One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed *à consiliis. Spelman*, voc. *Apocrisiarius.*

A RETRO. L. Lat. Behind; in arrear. *Et reditus proveniens inde* à retro *fuerit;* and the rent issuing therefrom be in arrear. *Fleta*, lib. 2, c. 55, § 2. *Quæ*

ei à retro *sunt;* which are in arrear to him. *Id.* c. 62, § 14. See *Aretro.*

A RUBRO AD NIGRUM. Lat. From the red to the black; from the rubric or title of a statute, (which, anciently, was in *red* letters,) to its body, which was in the ordinary *black. Bell's Dict.* voc. *Rubric.*

A SECRETIS. L. Lat. An officer who committed to writing or signed orders made in secret council; an officer entrusted with private matters or secrets of state; a secretary. *Calv. Lex. Spelman,* voc. *Cancellarius.* A name anciently given to a chancellor, (*cancellarius.*) *Hincmar. Epist.* 3, c. 16.

A summo remedio ad inferiorem actionem non habetur regressus, neque auxilium. From [after using] the highest remedy, there can be no recourse [going back] to an inferior action, nor assistance [derived from it.] *Fleta,* lib. 6, c. 1, § 2. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. *Bract.* fol. 104 a. 112 b. 3 *Bl. Com.* 193, 194.

A TEMPORE. Lat. From time. *A tempore cujus contrarii memoria non existit;* from time of which there exists not memory to the contrary; time out of mind. *Reg. Orig.* 46 a. The proper words for setting forth a prescription. 1 *Leon.* 273.

A TERME. L. Fr. For a term. *A terme de sa vie;* for the term of his life. *Yearbook,* T. 1 Edw. II. 16. M. 3 Edw. II. 55, 57. *A terme que passe est;* for a term which is passed. M. 4 Edw. III. 59.

A TORT. L. Fr. Of, or by wrong; wrongfully. *De ses avers* à tort *pris;* of his beasts wrongfully taken. *Yearb.* M. 3 Hen. VI. 20.

A UN. L. Fr. At one; of one mind; agreed. *Nous sumus* à un *de la tenaunce;* we are at one respecting the tenancy. *Yearb.* P. 1 Edw. II. 5. T. 7 Edw. II. 240.

A verbis legis non est recedendum. From the words of the law there must be no departure. 5 *Co.* 119. *Wingate's Max.* 25. A court is not at liberty to disregard the express letter of a statute, in favor of a supposed intention. 1 *Steph. Com.* 71. *Broom's Max.* 268, [480.]

A VEYER. L. Fr. To be seen; to be observed or considered. *Dyer,* 22 b. 71. (Fr. ed.) *Ore est à veyer;* now it is to be seen. *Keilw.* 2 b.

A VINCULO MATRIMONII. L. Lat. From the bond of marriage. 1 *Bl. Com.* 440. 2 *Kent's Com.* 95. See *Divorce.*

AB. Lat. From, by, of. See A.

At, in. See *Ab initio.*

Used in the composition of official titles, as *ab actis, ab epistolis,* (qq. v.) See A.

AB ACTIS. Lat. An officer having charge of *acta,* public records, registers, journals, or minutes; an officer who entered on record the *acta* or proceedings of a court; a clerk of court; a notary or actuary. *Calv. Lex.* See *Acta.* This, and the similarly formed epithets *à cancellis, à secretis, à libellis,* were also anciently the titles of a chancellor, (*cancellarius,*) in the early history of that office. *Spelman,* voc. *Cancellarius.*

AB ANTE. Lat. In advance. Story, J. 1 *Sumner's R.* 308.

AB ANTECEDENTI. Lat. Beforehand. Lord Ellenborough, C. J. 5 *M. & S.* 110.

AB ANTIQUO. Lat. Of old, anciently. *Magna Charta,* 9 Hen. III. c. 15. *Bract.* fol. 76 a. 3 *Bl. Com.* 95.

AB ARDENDO. Lat. From *ardendo;* from burning. 4 *Bl. Com.* 220. See *Arson.*

Ab assuetis non fit injuria. From things to which one is accustomed, (or in which there has been long acquiescence,) no injury arises. *Jenk. Cent.* Introd. viii. If a person neglect to insist on his right, he is deemed to have abandoned it. *Ambl.* 645. 3 *Bro. C. C.* 639. See *Laches.*

AB EPISTOLIS. Lat. An officer having charge of the correspondence (*epistolæ*) of his superior or sovereign; a secretary. *Calv. Lex. Spiegelius.*

AB EXTRA. L. Lat. From without. 3 *Rob. Adm. R.* 322.

AB INCONVENIENTI. Lat. From what is inconvenient; from inconvenience. See **Argumentum ab inconvenienti,** &c.

AB INDE. L. Lat. From thence. *Towns. Pl.* 22. Applied to place only. *Id. ibid.*

AB INITIO. Lat. From the beginning; from the first act. A party is said to be a trespasser *ab initio,* an estate to be good *ab initio,* an agreement or deed to be void *ab initio,* a marriage to be unlawful *ab initio,* and the like. *Plowd.* 6 a. 16 a. 1 *Bl. Com.* 440.—The word *ab,* in this sense,

is expressive not only of a point or period of time, but of continuity from that to a subsequent time, without change. Thus, to say a deed or marriage is void *ab initio*, is as much as to say, it was void when made, and has never been otherwise. See *Trespasser ab initio.*

At the beginning; at first; originally. *Ab* here has the sense of *in*, as denoting merely a separate period of time, without any necessary continuity to a subsequent time; or rather, it is used in connections denoting actual *contrast* or *change*. *Fleta*, lib. 3, c. 9, § 21. Thus, it is said a gift or conveyance may be valid at the beginning, (*ab initio*,) that is, when first made, and become invalid by a subsequent act, (*ex post facto*,) and *è converso*. *Bract.* fol. 11 b. 51 a. 171 a. 336 b. 2 *Bl. Com.* 308. And see *Fleta*, lib. 4, c. 26, § 4. *In initio* is used in the same sense. *Bract.* fol. 18 a. 58 a. So, *ab initio, in principio donationis;* at the beginning, at the commencement of the gift. *Id.* fol. 17 b. So, *ab initio, sive post tempus;* at the beginning, or afterwards: *ab initio, vel ex post facto;* at the beginning, or by a subsequent act. *Id.* fol. 213 a. *Fleta*, lib. 4, c. 17, § 1. The phrase has the same sense in the civil law. *Inst.* 2. 17. 6. *Id.* 4. 1. 16. *Dig.* 30. 41. 2. And in the law maxim, **Quod ab initio non valet tractu temporis non convalescet**; that which is originally void shall not acquire validity by lapse of time. See *Convalescere.* It is constantly used in the civil law and by Bracton, in contrast with the phrase *ex post facto*, (q. v.) And see *Perkins*, ch. 3, s. 191.

AB INITIO MUNDI. Lat. From the beginning of the world. *Ab initio mundi usque ad hodiernum diem;* from the beginning of the world to this day. *Yearb.* M. 1 Edw. III. 24. Formal words in old releases. The equivalent English words are still retained in the modern forms.

AB INTESTATO. Lat. [Gr. ἐξ διαθέτου.] In the civil law. From an intestate; from the intestate; in case of intestacy. *Hæreditas* ab intestato; an inheritance derived from an intestate. *Inst.* 2. 9. 7. *Successio* ab intestato; succession to an intestate, or in case of intestacy. *Id.* 3. 2. 3. *Dig.* 38. 6. 1. This answers to the descent or inheritance of real estate at common law. 2 *Bl. Com.* 490, 516. *Story's Conflict of Laws*, § 480. "Heir *ab intestato*." 1 *Burr.* 420. The phrase *ab intestato* is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel* ab intestato [*hæreditates*] *pertinent;* inheritances are derived either from a will, or from an intestate, (one who dies without will.) *Inst.* 2. 9. 7. *Id.* 3. 10. 3. *Dig.* 29. 4. *Cod.* 6. 14. 2. See *Ex testamento, Intestatus.*

AB INVITO. Lat. By or from an unwilling party. A transfer *ab invito* is a compulsory transfer. See *In invitum.*

AB OLIM. L. Lat. Of old. 3 *Bl. Com.* 96.

ABACTOR. Lat. [from *abigere*, to drive away.] In the Roman law. A driver away of cattle and other animals; one who drove away cattle from the herd, or smaller animals in numbers, with the intention of stealing them; a cattle stealer. *Cowell. Blount.* 3 *Gibbon's Rom. Emp.* ch. 44, (Am. ed.) 185, note. More commonly called *abigeus*, (q. v.)

ABACTORES. Lat. Cattle stealers. Plural of *abactor*, (q. v.) *Paulus Sentent.* l. 5, tit. 20. *Calv. Lex. Brissonius*, voc. *Abigei.*

ABALIENARE. Lat. [from *ab*, from, and *alienare*, to alienate or transfer.] In the Roman law. To transfer to another; to make that which is ours, another's; to transfer wholly, or without reserve. *Calv. Lex.* This word occurs in the Digests. *Dig.* 10. 3. 14. 1. *Dig.* 32. 38. 7.

ABALIENATIO. Lat. [from *abalienare*, q. v.] In the Roman law. The transfer, conveyance, or alienation of property from one person to another. This compound term occurs frequently in classical writers, and was peculiar to the citizens of Rome, denoting the perfect transfer of a thing. *Calv. Lex.* It gave place to the simple *alienatio*, which is the term used in the Digests and Institutes, as well as in the feudal law, and from which the English *alienation* has been formed. *Inst.* 2. 8. pr. *Id.* 2. 1. 40. *Dig.* 50. 16. 28. *Feud. Lib.* 1, tit. 13, lib. 2, tit. 9. See *Alienatio.*

ABAMITA. Lat. In the civil law. A great great grandfather's sister, (*abavi soror.*) *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *amita maxima. Id.* 38. 10. 10. 17. Called in Bracton, *abamita magna. Bract.* fol. 68 b. The edition of 1569 has *abavita.*

ABANDON. To relinquish or surrender a right or property to another.

To give up a thing absolutely, without reference to any particular person or purpose.

To forsake or desert a person. See *Abandonment.*

ABANDONEE. A party to whom a right or property is abandoned or relinquished by another. Applied to the insurers of vessels and cargoes. Lord Ellenborough, C. J. 5 *M. & S.* 82. Abbott, J. *Id.* 87. Holroyd, J. *Id.* 89.

ABANDONMENT. [Lat. *cessio, derelictio, destitutio.*] The relinquishment, cession, or surrender of a right, or of property, by one person to, or for another. See *Cession.*

The giving up a thing absolutely, without reference to any particular person or purpose; as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; desertion, or dereliction. 2 *Bl. Com.* 9, 10. See *Dereliction.*

The voluntary leaving of a person to whom one is bound by a particular relation, as a wife, husband, or child. See *Malicious Abandonment.*

ABANDONMENT. [Fr. *delaissement, abandon.*] In marine insurance. A relinquishment, or cession of property by the owner to the insurer of it, in order to claim as for a total loss, when in fact it is so by construction only. 2 *Steph. Com.* 178.—The exercise of a right which a party having insured goods or vessels has to call up the insurers, in cases where the property insured has, by perils of the sea, become so much damaged as to be of little value, to accept of what is, or may be saved, and to pay the full amount of the insurance, as if a total loss had actually happened. *Park on Ins.* 143. 2 *Marshall on Ins.* 559. 3 *Kent's Com.* 318—335, and notes. Its effect is to transfer to the underwriter only that interest of the insured which is covered by the policy. 2 *Arnould on Ins.* 1159. 6 *Ohio State R.* 200. Abandonment may be made either by a formal instrument called a deed of cession; or, which is more usual, by letter, no particular form being necessary. 6 *Cranch R.* 268. 1 *Wash. C. C. R.* 400, 530. See 18 *Pick. R.* 83. *Peters' Digest*, Abandonment. *United States Digest*, Abandonment, Insurance.

ABANDONMENT. [Lat. *cessio.*] In French law. The act by which a debtor surrenders his property for the benefit of his creditors. *Merlin Repert.* Abandonment.

ABARNARE. L. Lat. [from Sax. *abarian*, to uncover, disclose, or make bare.] In old English law. To detect, discover, or disclose any secret crime. *LL. Hen.* I. c. 91. *Cowell. Abarnatus;* discovered, detected. *LL. Canuti*, c. 104. *Cowell.*

ABATAMENTUM. L. Lat. [from *abatare*, q. v.] In old English law. An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor, and the entry of the heir. *Co. Litt.* 277 a. *Yelv.* 151. See *Abatement of freehold.*

ABATARE. L. Lat. [from Fr. *abater*, q. v.] In old English law. To abate. *Abatavit;* she abated. *Yelv.* 151. See *Abate.*

ABATE. [from Fr. *abater, abatre*, to beat, or throw down; L. Lat. *abatare.*] To beat, break, pull or throw down; to overthrow, demolish, or destroy a material object, as a house, castle, sheep-fold, &c. See *Abater.* This original meaning of the word is still preserved in modern law, in its application to nuisances. To *abate* a nuisance is to remove it, by pulling, cutting, or breaking it down, or otherwise destroying it. 3 *Bl. Com.* 168.

To overthrow, destroy or defeat a right, or a judicial proceeding. To *abate* a freehold, is to overthrow it by the intervention of a stranger. 3 *Bl. Com.* 168. See *Abatement of freehold.* To *abate* a writ or action, is to defeat, overthrow, prostrate, (*prosternere,*) quash, (*cassare,*) or put an end to it by some fatal exception. 3 *Bl. Com. ub. sup. Co. Litt.* 134 b. *Steph. Plead.* 47. See *Abatement in pleading.*

To be reduced, or diminished, (lowered or brought down;) as the claim of a legatee, or creditor. 2 *Fonbl. Equity*, 369. See *Abatement among legatees.*

To cease, terminate, or come to an end prematurely, as a suit, or other judicial proceeding; (to drop or fall; L. Lat. *cadere.*) 2 *Archb. Pract.* 299. 6 *Wheaton's R.* 260. See *Abatement in practice, Cadere.*

ABATEMENT. [L. Lat. *abatamentum.*] The act of abating; the state of being abated. See *Abate;* and *infra.*

ABATEMENT OF A NUISANCE. The taking away of a nuisance by pulling, cutting, or breaking it down, or otherwise removing or destroying it.* The remedy which the law allows a party injured by a nuisance, of destroying or removing it by his own act, so as he commits no riot in doing it, nor occasions (in the case of a private nuisance,) any damage beyond what the removal of the inconvenience necessarily requires. 3 *Bl. Com.* 5, 168. 3 *Steph. Com.* 361. 2 *Salk.* 458. 1 *Chitt. Gen.*

Pract. 647—656. 2 *Crabb's Real Prop.* 1078, § 2475.

ABATEMENT OF FREEHOLD. [L. Lat. *abatamentum.*] The overthrow of a freehold by the unlawful entry of a stranger, where the possession is vacant. The act of a stranger in entering upon lands, after the death of the ancestor, or person last seised, and before the entry of the heir, devisee, or person next entitled, and keeping the latter out of possession. *Co. Litt.* 277 a. 3 *Bl. Com.* 168. 3 *Steph. Com.* 482. 2 *Crabb's Real Prop.* 1063, § 2454 b. A species of ouster of the freehold, the technical peculiarity of which consists in its being effected by *intervention*, that is, by stepping in, or interposing between the ancestor and heir. Hence called in the books an *entry by interposition. Co. Litt.* 277 a.

ABATEMENT AMONG LEGATEES. [L. Lat. *defalcatio.*] The proportionate reduction, or diminution which legatees are subject to have made in the pecuniary legacies bequeathed to them, when the funds or assets out of which such legacies are payable are not sufficient to pay them in full. 2 *Fonbl. Equity*, 369. *Ward on Legacies*, 369, ch. vi. sec. vii. 1 *Story's Equity Jurispr.* § 555. *Bract.* fol. 61 a. 2 *Bl. Com.* 512, 513.

ABATEMENT IN PLEADING. [L. Lat. *cassatio.*] The defeating, overthrowing, prostration, quashing, or putting an end, for the present, to a writ or action, by some matter of fact pleaded by a defendant; the plea itself being termed a plea *in abatement. Co. Litt.* 134 b. 277 a. 3 *Bl. Com.* 168. *Steph. Pl.* 47, Appendix, Note (22). See *Plea in abatement.*

ABATEMENT IN PRACTICE. The cessation or determination, (falling, or dropping) of a *suit*, or the suspension of all proceedings in it, from the want of proper parties capable of proceeding therein; as in consequence of the death of one of the parties during its pendency. 2 *Archb. Pr.* 299. 2 *Tidd's Pract.* 932. *Story's Eq. Plead.* § 354. 6 *Wheaton's R.* 260. *Bac. Abr.* Abatement. *U. S. Digest*, Abatement. See *Cadere.* At common law, a suit when abated is absolutely dead, but in equity, a suit when abated is, (if such an expression be allowable,) merely in a state of suspended animation, and may be revived. *Story's Eq. Pl. ub. sup.*

ABATER, *Abatre.* L. Fr. To abate; to beat or break down; to overthrow; to demolish or destroy. *Le roy, pur le trespas et pur le despite, face* abate *le chastell ou le forcelet;* the king, for the trespass and for the contempt, shall cause the castle or fortalice to be demolished. *Stat. Westm.* I. c. 17. Abater *un faude;* to abate a fold. *Yearb.* P. Edw. III. 48.

To cut down. *Il ad abatu les keynes;* he hath cut down the oaks. T. 3 Edw. III. 14.

To abate or quash. Abatre *un bref. Fet Assaver*, § 32. *Ceo* abateroit *le briefe*, this would abate the writ. *Reg. Orig.* 229 b. regula.

To abate; to fall or fail; to come to an end; to become or be declared void. *Le bref* n' abatera *pas;* the writ shall not abate. *Keilw.* 20 b.

ABATOR. One who abates; one who removes a nuisance; one who enters upon land by way of interposition, before the entry of the heir, or person lawfully entitled. *Litt.* sect. 475. *Co. Litt.* 277 a. *Cowell.* See *Abatement of freehold.*

ABATUDA. L. Lat. In old records. Diminished. *Moneta abatuda;* money clipped, or diminished in value. *Dufresne.*

ABATUS, *Abatu.* L. Fr. [from *abater*, q. v.] Beaten or thrown down. *Mur abatu;* a wall thrown down. *Britt.* c. 61. *Bois abatu;* wood cut or fallen. *Kelham. Arbres* abatues *de vent;* trees blown down by the wind. *Yearb.* T. 5 Edw. III. 16.

Abated, quashed. *Un briefe fuit abatus;* a writ was quashed. *Reg. Orig.* 97 b. *nota. Ne soit le briefe* abatus; the writ shall not be quashed. *Stat. Westm.* 1, c. 47.

ABAVIA. Lat. In the civil law. A great great grandmother. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Bract.* fol. 68 b.

ABAVITA. A great great grandfather's sister. *Bract.* fol. 68 b. This is a misprint for *abamita*, (q. v.)

ABAVUNCULUS. Lat. In the civil law. A great great grandmother's brother; (*abaviæ frater.*) *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *avunculus maximus. Id.* 38. 10. 10. 17. Called by Bracton and Fleta *abavunculus magnus. Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ABAVUS. Lat. In the civil law. A great great grandfather. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Bract.* fol. 67 a.

ABBACIA, *Abbatia.* L. Lat. In old English law. An abbey. *Magna Charta*, 9 Hen. III. c. 33.

ABBAIAUNCE. L. Fr. Abeyance. See *Abeyance.*

ABBAS. L. Lat. An abbot. *Reg. Orig.* 238 a. 303 a. *Fleta*, lib. 3, c. 5, § 9.

Abbates; abbots. *Id.* § 8. *Spelman.*

ABBATISSA. L. Lat. An abbess. *Reg. Jud.* 4 b.

ABBETTARE, *Abettare.* L. Lat. In old English law. To abet. *Rast. Entr.* 54. *Abettasse et procurasse;* to have abetted and procured. *Reg. Orig.* 134 a. See *Abet.*

ABBETTATOR, *Abettator.* L. Lat. In old English law. An abettor. *Spelman. Stat. Westm.* 2, c. 12. See *Abettor.*

ABBETTUM. L. Lat. In old English law. Abetment. *Reg. Orig.* 270 a. *Stat. Westm.* 2, c. 12. See *Abetment.*

ABBREVIATE. In Scotch law. An abstract. *Ersk. Inst.* b. 2, tit. 12, § 43.

ABBREVIATIO. L. Lat. In old English law. Abbreviation; an abbreviation. *Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis;* in abbreviations, that number [whether singular or plural,] and that sense is to be taken, by which the grant is not rendered void. 9 *Co.* 48.

ABBREVIATION. A short or contracted mode of writing, very common in old records, law treatises and reports, especially those in Latin and French, and still used to a limited extent in the practice of the courts, and in printed books. There are various kinds of abbreviations; as,

By using the initial letters of words instead of the words at length; as *B. R.* for *Banco Regis; Q. B.* for *Queen's Bench; N. P.* for *Nisi Prius; S. C.* for *Same Case; S. P.* for *Same Point*, and the like.

In the Roman law, this mode of abbreviation was sometimes carried to a great extent; as, in their *senatus consulta*, *Q. D. E. R. F. P. D. E. R. I. C.*, which stood for *Quid de ea re fieri placeret, de ea re ita censuerunt. Tayl. Civ. Law*, 576.

By using the first syllables instead of the entire words; as *def'* for *defendens, bre'* for *breve, vic'* for *vicecomes, ven'* for *venit, dic'* for *dicit; re. fa. lo.* for *recordari facias loquelam; sus. per col.* for *suspensus per collum;* and the more modern and familiar *cur. adv. vult*, for *curia advisari vult; fi. fa.* for *fieri facias; sci. fa.* for *scire facias*, and the like. So in references to authorities; *lib.* for *liber, cap.* for *caput*, and the like.

By doubling the initial letter to denote the plural; as *LL.* for *leges*, laws; *cc.* for *capita*, chapters. All the foregoing kinds of abbreviation are still in common use.

Another mode of abbreviation, now for the most part disused, consisted in omitting one or more of the letters of a word; as *dns* for *dominus, het* for *habet, hmdi* for *hujusmodi, io* for *ideo, oibs* for *omnibus, qd* for *quod;* and the French *boe* for *bone, dde* for *demande, pols* for *parols*, and the like; and sometimes in substituting a different letter for those omitted; as *acco* for *actio, cassaco* for *cassatio, administracon* for *administration*, and the like. But abbreviations of this kind were more properly called contractions. See *Contraction.*

Abbreviations and contractions formed one of the peculiarities of the *court hand* in which the records of the courts were anciently written, and are followed in some of the old printed books, as Bracton, and the Register. Domesday Book abounds in them. They were accompanied by various arbitrary marks (dashes, turns, &c.) upon, through, or over the letters retained, to denote the omissions. *Towns. Pl. per tot.* 1 *Instr. Cleric.* 1–20. See *Court hand.* They were prohibited by the English statute of 4 Geo. II. c. 26, the provisions of which have generally been adopted in the United States. 3 *Bl. Com.* 323. 2 *N. Y. Rev. St.* [275,] 205, § 9. A very few of them, however, continue to be retained, though without any of the ancient marks; as *vs.* for *versus; adsm.* for *ad sectam*, and the like.

The principal abbreviations used in the books will be found in this work under the proper alphabetical heads. Others, including those used in references to authorities, may be found in the tables of explanations.

ABBROCAMENTUM, *Abrocamentum.* L. Lat. In old English law. Abbrochment, or abroachment. *Spelman.* See *Abbrochment.*

ABBROCHMENT, *Abrochment, Abroachment.* [L. Lat. *abrocamentum;* from *abroch*, or *abroach*, Sax. *abrœcan*, to break.] In old English law. The buying up of goods by wholesale, (*emptio mercium integrarum,*) before they are brought to a market or fair, and selling them again, (*breaking* them up, —*per portiones distractio,*) by retail; a forestalling of the market. *Spelman*, voc. *Abrocamentum. Cowell.*

ABBUTTALS. See *Abuttals.*

ABBUTTRE. L. Fr. To abut, (q. v.) *Abbuttant et adjoynant al haut estret;* abutting and adjoining the highway. *Yearb.* P. 11 Hen. VI. 2.

ABCARIARE. L. Lat. In old Eng-

lish law. To carry away. *Cepit et abcariavit:* (he) took and carried away. *Dyer*, 70 a.

ABDICATION. [Lat. *abdicatio*, from *abdicare*, to renounce.] The renunciation or relinquishment of an office, either formally and expressly, or by actions inconsistent with the proper discharge of its duties. Commonly used to express the voluntary renunciation of supreme power. 1 *Bl. Com.* 211. 4 *Id.* 78. *Termes de la ley.*

ABDITORIUM. L. Lat. [from *abdere*, to hide.] In old records. A place to hide and preserve goods, plate or money; an abditory. 3 *Mon. Angl.* 173. *Cowell.*

ABDUCERE. Lat. In old English law and practice. To lead away; to carry away. *Abduxit;* (he) led away. Applied in old writs to the taking of live animals, as distinguished from *asportavit*, (q. v.) *F. N. B.* 86 A. note. See *Cepit et abduxit.* Applied also to the taking of persons. *Rapuit et* abduxit; (he) ravished and carried away. *Stat. Westm.* 2, c. 35. 2 *Inst.* 440. *De hæredibus vi* abductis; concerning heirs carried off by force. *Stat. Merton*, c. 6.

ABDUCTION. [Lat. *abductio*, from *abducere*, to lead away.] In criminal law. The offence of taking away a man's wife, child or ward, by fraud and persuasion, or open violence. 3 *Bl. Com.* 139–141. 3 *Steph. Com.* 538, 539. 1 *Russell on Crimes*, 701. The term is applied also to the unlawful taking or detention of any female, for the purpose of marriage, concubinage, or prostitution. *Stat.* 9 Geo. IV. c. 31, sects. 19, 20. 4 *Steph. Com.* 129. See 2 *N. Y. Rev. Stat.* [663, 664,] 553, §§ 24–26. See *Kidnapping.*

ABEARANCE, *Abearing.* [from *abear*, or *bear*, to behave; L. Lat. *gestus.*] In old English law. Bearing or carriage; deportment, conduct, or behavior.* 4 *Bl. Com.* 256. See *Good abearance.*

ABEISSEMENT, *Abbessement*, *Abbassement.* L. Fr. A lowering, lessening, abatement. *Kelham.*

ABEREMURDER. [Sax. *æberemord*, or *eberemord*, from *æbere*, evident or open, and *mord*, killing, murder: L. Lat. *aberemurdrum*, *apertum murdrum.*] In Saxon law. Plain or apparent murder, open killing, (*cædes manifesta,*) as distinguished from the less heinous crimes of manslaughter and chance-medley. Declared a capital offence, without fine or commutation, by the laws of Canute and of Henry I. *LL. Canuti*, c. 93. *LL. Hen.* I. c. 13. *Spelman. Cowell.*

ABESSE. Lat. In the civil law. To be absent; to be away *from* a place. Said of a person who was *extra continentia urbis*, (beyond the suburbs of the city.) *Dig.* 50. 16. 173. 1. Within that limit he was not considered as absent, unless he concealed himself. *Id. Dig.* 50. 16. 199. pr. *Dig.* 3. 3. 5, 6.

To be out of one's possession, as a thing was when lost or stolen. *Dig.* 50. 16. 13, 14.

To be out of existence, not *in rebus humanis. Dig.* 50. 16. 13. 3.

ABET. [from Sax. *a*, on, or onward, and *betan*, or *gebetan*, to stir up, or excite; L. Lat. *abettare.*] In criminal law. To encourage, set on, stir up, or excite to commit a crime. *Spelman*, voc. *Abbettator. Cowell. Whishaw.* Always taken in a bad sense, and generally used in connection with the word *aid;* as in the phrases, "to aid and abet," "aiding and abetting."

ABETMENT. [L. Lat. *abettum*, *abbettum;* L. Fr. *abette.*] In old criminal law. An encouraging, or instigation. *Staundf. Pl. Cor.* 105. *Cowell. Blount.*

ABETTARE. L. Lat. In old English law. To abet, (q. v.) *Abettans;* abetting. 2 *Show.* 512. *Abettans, confortans et manutenens;* abetting, comforting, and maintaining. 2 *How. State Trials*, 746.

ABETTATOR. L. Lat. In old English law. An abettor. *Fleta*, lib. 2, c. 65, § 7. See *Abettor.*

ABETTOR. [L. Lat. *abettator*, *abbettator.*] In criminal law. An instigator, or setter on, (*incitator;*) one who promotes or procures a crime to be committed; one who commands, advises, instigates, or encourages another to commit a crime, (*qui alium ad facinus aliquod perpetrandum excacuit, tutaturve facturum.*) *O. N. Br.* 21. *Spelman*, voc. *Abbettator. Cowell.* Now generally applied to a person present, either actually or constructively, at the commission of a crime, who does not commit it with his own hands, but assists, facilitates, or encourages its perpetration. 1 *Russell on Crimes*, 26, 27. 4 *Bl. Com.* 33. Sometimes called a principal in the second degree. *Id. ibid.* See *Abet.* Mere presence (though actual) at the commission of a crime, does not make a person an aider and abettor. It is neces-

sary that he should *do* or *say* something showing his consent to the felonious purpose, and contributing to its execution. 9 *N. Carolina R.* 440. 13 *Missouri R.* 382. 1 *Wisconsin R.* 159.

ABEYANCE, *Abeiance, Abbayance, Abbaiaunce.* L. Fr. & Eng. [from Fr. *bayer*, or *abbayer*, to expect, to wait for earnestly, to gape after, to bay at; L. Lat. *abeyantia.*] In the law of estates. Expectation, waiting, suspense; remembrance and contemplation in law. Where there is no person in existence in whom an inheritance can vest, it is said to be *in abeyance;* that is, in expectation; the law considering it as always potentially existing, and ready to vest whenever a proper owner appears. 2 *Bl. Com.* 107. Or, in other words, it is said to be in the remembrance, consideration and intendment of the law. *Litt.* sect. 646, 650. Thus, in a grant to J. for life, and afterwards to the heirs of R., the inheritance is plainly neither granted to J. nor R., nor can it vest in the heirs of R. till his death: it remains, therefore, in waiting, or *abeyance*, during the life of R. 2 *Bl. Com. ub. sup. Plowd.* 29 a. 35 a. 556.

The term *abeyance* is also sometimes applied to personal property. Thus, in the case of maritime captures during war, it is said that "until the capture becomes invested with the character of prize by a sentence of condemnation, the right of property is in *abeyance*, or in a state of legal sequestration." 1 *Kent's Com.* 102. It has also been applied to the franchises of a corporation. "When a corporation is to be brought into existence by some future acts of the corporators, the franchises remain in *abeyance*, until such acts are done, and when the corporation is brought into life, the franchises instantaneously attach to it." Story, J. 4 *Wheaton's R.* 691.

*** An inheritance in abeyance has been otherwise said to be *in nubibus*, (in the clouds;) a figure intended to denote a condition of suspension, indefinite and intangible existence, remoteness from human view and enjoyment, or molestation; in connection with the quality of readiness to descend and vest at the proper time. *Litt. ub. sup. Co. Litt.* 342 b. *Hob.* 335. 2 *Crabb's Real Prop.* 8, § 951. 4 *Kent's Com.* 258, 260, note. So, it has been said to be *in gremio legis*, (in the bosom of the law,) that is, under the special protection of the law, and existing only in its view, intendment or consideration. 1 *Co.* 131, 134, *arg. Spelman*, voc. *Abeyantia. Litt. ub. sup.* So the fee, in such case, has been said by Britton to be *in the balance*, (*le fee est en balaunce.*) *Brit.* fol. 249. And Bracton uses the corresponding phrase, *in pendenti*, (in suspension.) *Bract.* fol. 19 a. 20 a. Spelman prefers giving to *abbayer*, the root of the word, the sense of fixedness of position, (*certæ stationi inhærere,*) the fee being stopped or arrested in its transit from one party to another. Mr. Stephen objects to *expectation* as the proper import of abbeyance, and prefers Littleton's exposition of the term,—remembrance, intendment and consideration of the law; referring to the case of the parson of a church, where the fee is in *perpetual* abeyance. 1 *Steph. Com.* 223, note (*l*). Mr. Fearne treats the whole notion of abeyance as an absurd and unintelligible fiction. *Fearne on Remainders*, 452, [360.] And the inclination in modern law seems to be, to substitute in its place the doctrine, that where there is no person in existence in whom an inheritance can vest, it remains in the grantor or his heirs, or (in case of a devise,) in the heirs of the testator, until the contemplated contingency happens. 2 *Chitt. Bl. Com.* 107, notes.

An inheritance in abeyance answers to the *hæreditas jacens*, or *caduca* (q. v.) of the civilians and feudists, which, by a figure directly opposite to that of suspension, was considered as waiting in a state of *prostration* for the heir to take it up. *Bract.* fol. 8 a. 160 a. *Co. Litt.* 342 b. *Incertam et caducam hæreditatem relevabat;* raised, or took up the doubtful and fallen inheritance. 2 *Bl. Com.* 56.

ABEYANTIA. L. Lat. Abeyance. *Spelman.* See *Abeyance.*

ABIATICUS. *Aviaticus.* L. Lat. In feudal law. A grandson; the son of a son. *Spelman. Lib. Feudorum*, Baraterii, tit. 8, cited *ibid.*

ABIDING BY. In Scotch law. Committing one's self to the consequences of an act. A term used in cases where a deed is challenged as forged. The party founding on the deed must appear in court and *abide by* it. This is done by his signing a declaration that he *abides by* the deed quarrelled, [contested,] *sub periculo falsi*, which has the effect of pledging him

to stand to the consequences of founding on a forged deed. *Bell's Dict.*

ABIGEATORES. Lat. [from *abigere*, to drive away.] In the civil law. Cattle-stealers; those who drove away cattle or other animals, with the intention of stealing them. A rarer form of *abigei*, (q. v.) *Calv. Lex. Brissonius*, voc. *Abigei.*

ABIGEATUS. Lat. [from *abigere*, to drive away.] In the civil law. The offence of stealing, or driving away cattle. *Dig.* 47. 14. 2. See *Abigere, Abigeus.*

ABIGEI. Lat. In the civil law. Cattle stealers. *Dig.* 47. 14. 1. 1. *Calv. Lex. Brissonius.* 4 *Bl. Com.* 239. See *Abigeus.*

ABIGERE. Lat. [from *ab*, from, and *agere*, to drive.] In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. *Dig.* 47. 14, *de abigeis.* Applied, also, to the similar offence of cattle stealing on the borders between England and Scotland.—*Scott's Minstrelsy of the Scottish Border, Introd. Append.* No. vii.

To drive out; to expel by force; to produce abortion. *Dig.* 47. 11. 4. *Brissonius.*

ABIGEUS, *Abigevus, Abigeator, Abactor.* Lat. [from *abigere*, to drive away.] In the civil law. A stealer of cattle: one who drove, or drew away (*subtraxit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them; and who followed this as a business, or trade, (*quasi artem.*) Abigei *proprie hi habentur qui pecora ex pascuis, vel ex armentis subtrahunt, et quodammodo deprædantur, et abigendi studium quasi artem exercent; equos de gregibus vel boves de armentis abducentes. Dig.* 47. 14. 1. 1. The term was applied also to those who drove away the smaller animals, as swine, sheep and goats. *Id.* 47. 14. 1, 2. In the latter case, it depended on the *number* taken, whether the offender was *fur* (a common thief,) or *abigeus. Id.* 47. 14. 3. *Quantitas discernit furem ab* abigeo. *Id.* 48. 19. 16. 7. Or, as Bracton quotes it, *quantitas discernit furem ab* abigevo. *Bract.* fol. 105 a. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus. Dig.* 47. 14. 3. And those who *frequently* did this were clearly *abigei*, though they took but an animal or two at a time. *Id.* 47. 14. 3. 2. See *Cod.* 9. 37. *Nov.* 22, c. 15, § 1.

ABINDE. L. Lat. In old English law. From thence. 2 *Mod.* 27. 6 *Id.* 252.

ABISHERSING, (properly *Mishersing.*) In old English law. A freedom or immunity from forfeitures, or amercements. *Spelman.* See *Mishersing.*

ABJECTIRE. L. Lat. In old European laws. To forfeit one's recognizance, (*vadimonium deserere;*) to neglect a plea or suit, (*placitum negligere;*) to fail in an action, (*deficere in lite;*) to lose a cause by default or neglect to prosecute, (*causam per defaltam, vel non prosequendo amittere.*) *Spelman.*

ABJUDICARE. L. Lat. [from *ab*, out of, and *judicare*, to adjudge.] In old English law. To deprive of a thing by the judgment of a court; the same with *forisjudicare*, (q. v.) *Ubi custos* abjudicatus *est de custodia sua;* where a guardian is deprived of his guardianship. *Bract.* fol. 256 a. *Abjudicetur medius de feodo et servitio suo;* the mesne shall be forjudged of his fee and service. *Fleta*, lib. 2, c. 50, § 8.

ABJUDICATIO. L. Lat. [from *abjudicare*, q. v.] In old English law. The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, forjudgment, forjudger. *Fleta*, lib. 2, c. 50, § 8. *Co. Litt.* 100 a, b. *Towns. Pl.* 49. See *Forisjudicatio.*

ABJUDICATUS. L. Lat. Forjudged. See *Abjudicare.*

ABJURARE. Lat. [from *ab*, from, and *jurare*, to swear; L. Fr. *forjurer.*] In old English law. To swear from; to swear to give up, or leave a thing, or place; to renounce or abandon by, or upon oath; to forswear. *Abjurare regnum;* to abjure the realm, to swear to leave it. *Bract.* fol. 135 b. 136 a. *Cart. de Forest.* c. 10. *Si fur convictus fuerit, aut morti tradatur, aut regnum* abjuret, *vel patriam, comitatum, civitatem, burgum vel villam;* if the thief be convicted, he shall either be delivered up to death, or he shall abjure the realm, or the country, the county, city, borough, or town. *Bract.* fol. 151 b. *Abjurare terram;* to abjure the land. *Articuli Cleri*, c. 10.

ABJURATION. [Lat. *abjuratio*, from *abjurare*, q. v.] A renunciation or abandonment by, or upon oath; the taking or making oath to leave a place. *Abjuration* in this sense, in English law, usually was of the realm, but it might also be of a par-

ticular county, city, borough, or town. See *Abjurare.*

The taking an oath to renounce one's allegiance to a particular sovereign, prince, or state. See *Abjuration of allegiance.*

ABJURATION OF ALLEGIANCE. In political law. A declaration under oath, before a competent authority, that the party making oath renounces and *abjures* all the allegiance and fidelity which he owes to a particular sovereign. A formality required of all aliens, by the laws of the United States, previously to their being naturalized. *Act of Congress*, April 14, 1802. 2 *Kent's Com.* 64, 65. An oath, abjuring all allegiance to the descendants of the Pretender, is required in England from all persons holding office. 1 *Bl. Com.* 368. 2 *Steph. Com.* 422. 3 *Id.* 106. See *Allegiance.*

ABJURATION OF THE REALM. [Lat. *abjuratio regni.*] In ancient English law. The taking an oath to depart from the kingdom, and never return, unless by permission; a species of sworn, or self-banishment, formerly allowed to offenders who confessed their crimes, after fleeing to a sanctuary, as the means of saving their lives. *Bract.* fol. 135 b. 3 *P. Wms.* 38, note [B.] 4 *Bl. Com.* 332. The blood of the person thus *abjuring* was attainted, he forfeited all his goods and chattels, and was considered as dead in law. *Id.* 333. 1 *Id.* 443. *Co. Litt.* 133 a.

*** Abjuration of the realm is generally considered as having been abolished by statute 21 Jac. I. c. 28; but it is mentioned in the books at a later period. 2 *Inst.* 629. 11 *East*, 301. 2 *Kent's Com.* 156, note. The old oath of abjuration, as given by Bracton, was in this form: "Hear this, ye justices, or coroners, that I will depart from the realm of England, and that I will not return thither again, unless by permission of the lord the king, or his heirs. So help me God," &c. *Bract.* fol. 136, lib. 3, c. 16. In Britton and Fleta, the oath is given in fuller terms. *Britt.* c. 16, fol. 25. *Fleta*, lib. 1, c. 29, § 3. According to Britton, it was required to be taken at the churchyard gate. The party thus *abjuring* was then obliged to select a port where he would embark, and a certain time, computed by reasonable days' journeys, was allowed him to reach it. He was not allowed to quit the king's highway, nor to stay in any one place more than two nights, nor to turn aside from the road, unless for sufficient cause; but was bound to go straight to the port, so as to be there at the day given him, and to embark as soon as he could obtain a vessel and a wind, unless detained by stress of weather. If he failed in any of these particulars, it was at his peril. *Bract.* fol. 135 b. 136. According to Britton and Fleta, he was obliged to travel ungirded, with head and feet bare, in nothing but his coat, like a criminal about to be hung, (*in pura tunica, tanquam in patibulo suspendendus,*) and with a cross in his hands. *Fleta*, lib. 1, c. 29, § 5. Fleta records the still more remarkable circumstance, that when he came to the sea, he was bound to walk into it, up to his neck, (*ingredi debet usque ad collum,*) if he could not find the means of crossing, and having set up a cry, (*hutesio levato,*) to rest on the shore until he found such means. *Id. ibid.* But he might pass out of the kingdom by land, as into Scotland. *Britt.* c. 16.

ABJURE. [L. Lat. *abjurare;* L. Fr. *forjurer.*] To renounce, or abandon, by, or upon oath. See *Abjurare, Abjuration.*

ABLE. L. Fr. [L. Lat. *habilis*, q. v.] In old English law. Fit; proper; *Ables e'e vend';* fit to be sold; merchantable. *Yearb.* H. 11 Hen. VI. 13.

ABMATERTERA. Lat. In the civil law. A great great grandmother's sister, (*abaviæ soror.*) *Inst.* 3. 6. 4. *Dig.* 38. 10. 3. Called *matertera maxima. Id.* 38. 10. 10. 17. Called by Bracton, *abmatertera magna. Bract.* fol. 68 b.

ABNEPOS. Lat. In the civil law. A great great grandson. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6.

ABNEPTIS. Lat. In the civil law. A great great granddaughter. *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6.

ABOLERE. Lat. In civil and old English law. To obliterate. *Abolitum;* obliterated. *Cod.* 6. 33. 3. *Rasum vel abolitum;* razed or obliterated. *Fleta*, lib. 2, c. 54, § 12. *Id.* c. 13, § 6. See *Id.* lib. 6, c. 50, § 2.

ABOLITIO. Lat. [from *abolere*, to abolish or obliterate.] In the civil law. Leave to discontinue an accusation. *Dig.* 48. 16. *Cod.* 9. 42, 43, 45.

Obliteration; effacement; a putting out of memory; amnesty; pardon. *Dig.* 48. 16. 8–10.

ABOLITION. In old practice. A destroying, or putting an end to an action or

prosecution. Leave given to a criminal accuser to desist from further prosecution. *Stat.* 25 Hen. VIII. c. 21. *Cowell.* Answering to the entry of a *nolle prosequi* in modern practice. See *Abolitio.*

ABONDANCE. L. Fr. In old practice. Surplusage. *Yearb.* P. 7 Hen. VI. 12.

ABORDAGE. Fr. In French commercial law. Collision of vessels. *Emerigon, Traite des Ass.* ch. 12, sect. 14.

ABORTION. In criminal law. The premature exclusion of the human fœtus, after the period of quickening; which, when procured or produced with a malicious design or for an unlawful purpose, is a criminal offence. 4 *Steph. Com.* 128. 1 *Russell on Crimes*, 671. 1 *Chitt. Gen. Pr.* 35. 2 *N. Y. Rev. Stat.* [661,] 550, § 9. *Id.* [694,] 578, § 21. *Statutes of Ohio*, chap. 35, p. 252. *Whart. Am. Crim. Law*, b. 4, ch. 6, § 1214, *et seq.*

"ABOUT." Near; nearly; in the neighborhood of. An expression constantly used, where a time or sum cannot be precisely stated, importing the possibility of a small variation from it. Where the words, "about three hundred quarters, more or less," were used in an agreement, it was held that the parties could not be taken to have contemplated so large an excess as fifty over three hundred quarters. 2 *B. & Ad.* 106.

Around. "About the breast," in an indictment, might mean only *near* the breast; but "about the neck" means *around* it. Parke, J. 5 *Carr. & P.* 121.

ABOUTIR. L. Fr. To abut. See *Abut.*

ABOUTISSEMENT. L. Fr. An abutment, or abuttal. See *Abuttal.*

ABOVE. [Lat. *super, supra.*] In practice. Higher; superior. The court to which a cause is removed by appeal or writ of error, is called the court *above.*

Principal; as distinguished from what is auxiliary or instrumental. Bail to the action, or special bail, is otherwise termed bail *above.* 3 *Bl. Com.* 291. See *Below.*

ABPATRUUS. Lat. In the civil law. A great great grandfather's brother, (*abavi frater.*) *Inst.* 3. 6. 4. *Dig.* 38.10. 3. Called *patruus maximus. Id.* 38. 10. 10. 17. Called by Bracton and Fleta, *abpatruus magnus. Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 17.

ABRADERE. Lat. [from *ab*, from, and *radere*, to scrape.] In old practice. To scrape off, (as the writing of an instrument,) to erase. *Abrasum;* erased. *Bract.* fol. 413 b. *Fleta*, lib. 6, c. 50, § 2.

ABRASIO. Lat. [from *abradere*, to scrape off.] In old English law. A scraping off; erasure in a writ. *Bract.* fol. 413 b. *Fleta*, lib. 2, c. 13, § 6.

ABRIDGE. [from Fr. *abreger;* L. Lat. *abbreviare.*] In old practice. To make shorter; not, however, in words only, as in the popular sense, retaining the substance, but by subtracting, severing, or leaving out some of the substance itself. Applied to plaints or declarations in the old real actions. *Bro. Abr.* Abridgment. *Cowell.* Story, J. 3 *Peters' R.* 99, 183.

ABROACHMENT. See *Abbrochment.*

ABROCAMENTUM. See *Abbrocamentum.*

ABROCEUR. L. Fr. A broker. *Kelham.* See *Broker.*

ABROGARE. Lat. [from *ab*, from, off, or away, and *rogare*, to propose or pass.] In the civil law. To take away, annul, or repeal; to abrogate. *Rogare legem*, among the Romans, signified to propose a law for adoption, (literally, to ask for a law,) and also to adopt a law proposed; to pass or make it. See *Rogare. Abrogare legem*, or *legi*, signified the reverse of this, viz., to annul a law; to undo what had been done in passing it; to repeal it. *Abrogatur legi cum prorsus tollitur;* a law is abrogated when it is entirely taken away. *Dig.* 50. 16. 102. **Leges posteriores priores contrarias abrogant.** Later laws abrogate former ones that are contrary to them. *Cro. Jac.* 121. 11 *Co.* 62 b. Where two laws are contrary to, or in conflict with each other, that which was last made is always understood as abrogating the other.

From *abrogare* has been formed the English *abrogate*, but no corresponding word has been framed from the simple *rogare.* In the Roman law, various other words compounded of *rogare* were in use; as *derogare, subrogare, obrogare, exrogare,* (qq. v.) *Tayl. Civ. Law*, 155.

ABROGATE. [Lat. *abrogare*, q. v.] To undo what has been done in passing a law; to annul a law by an act of the same power which made it; to annul by an authoritative act; to repeal. See *Abrogare.* Applied also to the abolition of established customs, by a different and long-continued usage.

ABROGATION. [Lat. *abrogatio*, from

abrogare, q. v.] The act of abrogating; the annulling or repeal of a law by authority of the legislative power. See *Abrogate*, *Express abrogation*, *Implied abrogation*.

ABSCOND. [from Lat. *abscondere*, to hide away.] To hide or conceal one's self; to keep close; to go away privately. Applied to a debtor who clandestinely withdraws from the place of his residence or business, or who secretes himself to avoid legal process. 2 *Kent's Com.* 401. *N. Y. Rev. Stat.* Part II. ch. v. tit. 1. A debtor may *abscond*, without actually leaving the state. 7 *Maryland R.* 209.

ABSENCE. In Scotch law. Want, or default of appearance. A decree is said to be *in absence* where the defender [defendant] does not appear. *Wharton's Lex.* *Ersk. Inst.* b. 4, tit. 3, § 6. See *Decreet*.

ABSENS. Lat. In the civil law. Absent. *Absentem accipere debemus eum qui non est eo loci in quo petitur;* we ought to consider him absent who is not in the place where he is demanded. *Dig.* 50. 16. 199. See *Abesse*.

ABSENTE. Lat. [abl. of *absens*.] Being absent. A common term in the old reports. "The three justices, *absente* North, C. J. were clear of opinion." 2 *Mod.* 14.

ABSENTEE. [Fr. *absent;* Lat. *absens*.] One who is away from his domicil, or usual place of residence. *Bouvier*. One who has resided in the state, and has departed without leaving any one to represent him. *Civil Code of Louisiana*, Art. 3522, n. 3.

One who never was domiciliated in the state, and resides abroad. *Id. ibid.*

ABSENTIA. Lat. Absence. *Absentia ejus qui reipublicæ causâ abest, neque ei neque alii damnosa esse debet;* the absence of him who is away in behalf of the republic, [on business of the state,] ought neither to be prejudicial to him nor to another. *Dig.* 50. 17. 140.

ABSIS, *Absida*. Lat. [Gr. ἀψίς.] In ecclesiastical law. An arch or vault; (*fornix*, *arcus*,) any thing made in the shape of an arch, (*quod in curvamen arcuatum constituitur.*) *Spelman*.

A bishop's seat or bench, (*pro episcoporum subselliis.*) *Id.*

The choir of a church, or *presbyterium*. *Id.*

A receptacle or coffer, in which images were kept, upon the altar. *Id.*

A church-porch. *Id.*

ABSOILE. *Absoller*, *Absouldre*, *Absodre*. L. Fr. [from Lat. *absolvere*.] To absolve, acquit, forgive, pardon. *Kelham*. Hence the old English *assoil*.

ABSOLUTA. Lat. Absolute, complete, without exception, or condition. **Absoluta sententia expositore non indiget.** An absolute sentence or proposition, [one that is plain without any scruple, or absolute without any saving,] needs not an expositor. 2 *Inst.* 533.

ABSOLUTE. [Lat. *absolutus*, *absoluta*, *absolutum;* from *absolvere*, to discharge, or perfect.] Complete and perfect in itself, without relation to, or dependence on other things or persons; as an *absolute* right.

Without condition, exception, restriction, qualification, or limitation; as an *absolute* conveyance, an *absolute* estate.

Final, peremptory; as an *absolute* rule. See *infra*.

ABSOLUTE CONVEYANCE. A conveyance by which the right or property in a thing is transferred, free of any condition, or qualification, by which it might be defeated, or changed; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance.* See *Mortgage*, *Defeasance*. A deed, absolute on the face of it, may, however, be valid and effectual as a mortgage, as between the parties, if it was intended by them to be merely a security for a debt. 4 *Kent's Com.* 142, 143.

ABSOLUTE ESTATE. An estate in lands not subject to, or defeasible upon any condition.* See *Estate upon condition*.

ABSOLUTE PROPERTY. Full and complete ownership of chattels in possession, as distinguished from that of a special, qualified, or temporary kind. 2 *Bl. Com.* 388. 2 *Steph. Com.* 73. 2 *Kent's Com.* 347.

ABSOLUTE RIGHTS. Those rights which belong to natural persons, as individuals, in contradistinction to those which arise from the civil and domestic relations; consisting of the right of personal security, the right of personal liberty, and the right to acquire, enjoy, and dispose of property. 1 *Bl. Com.* 123, 129, 141. 2 *Kent's Com.* 1.

ABSOLUTE RULE. In practice. A rule of court commanding something to be done *absolutely*, and at all events, as distin-

guished from a rule *nisi*, which commands something to be done, *unless* cause be shown against it; (or, as the latter is more commonly called, a rule to *show cause* why a thing should not be done.) 3 *Steph. Com.* 680. 1 *Tidd's Prac.* 485. See *Nisi, Rule.*

ABSOLUTE WARRANDICE. In Scotch law. A warranty against all incumbrances whatever. 1 *Kames' Equity*, 290, 293.

ABSOLUTELY. Completely, wholly; without qualification; without reference or relation to, or dependence upon, any other person, thing, or event. To give property to a person *absolutely*, is to create such person the absolute and uncontrolled owner of it. But it has been held that the word *absolutely*, in a will, may be so far qualified by accompanying expressions as to convey only a limited interest. See 2 *Penn. St. R.* 120, 133.

ABSOLUTUM ET DIRECTUM DOMINIUM. L. Lat. Absolute and direct, (or right) ownership. 2 *Bl. Com.* 105. *Co. Litt.* 1 b. See *Directum, Dominium.*

ABSONIARE. L. Lat. In Saxon law. To detest and avoid. *Cowell.*

ABSQUE. Lat. Without. *Absque generali senatûs et populi conventu et edicto;* without the general convention and order of the council and people. *Will. of Malms.* lib. 3. 1 *Bl. Com.* 199. See *Sine.*

ABSQUE ALIQUO INDE REDDENDO. L. Lat. Without rendering, or returning any thing therefrom, or therefor. 9 *Co.* 123. A phrase applied to ancient grants, where no tenure was reserved or mentioned. *Id. ibid. Bacon's Arg.* Low's Case of Tenures. "As free as the crown." *Id.*

ABSQUE CONSIDERATIONE CURIÆ. L. Lat. In old practice. Without the consideration of the court; without judgment. *Stat. Marlbr.* cited in *Fleta*, lib. 2, c. 47, § 13.

ABSQUE HOC. L. Lat. Without this; (*absque hoc quod*, &c.; without this, that, &c.) In pleading. Technical words of denial, made use of in pleading by way of special traverse; which is hence sometimes called a traverse with an *absque hoc. Steph. Plead.* 165—186. 9 *Co.* 13. See *Special traverse, Sine hoc quod, Sans ceo que, Without this that.*

This seems to have been originally an ordinary phrase, its barbarous form arising from its peculiar mode of application in composition. Thus, in the statute of Westminster 2: *Cum duo vel plures teneant boscum, turbariam, piscariam, vel alia, hujusmodi in communi,* absque hoc quod *aliquis sciat suum separale:* where two or more hold a wood, turbary, piscary, or other such things in common, without this, that any one knows, (i. e. without any one knowing, or where none knows,) his several. *Stat. Westm.* 2, c. 22. *Fleta*, lib. 1, c. 12, § 21. Spelman supposes it to be of Gallic origin, and refers to a constitution of Alan, Duke of Bretagne, A. D. 1087, in which the phrase occurs: *absque eo quod cognosceret*, without this, that he knows, or without knowing.

ABSQUE IMPETITIONE VASTI. L. Lat. [L. Fr. *sans* (or *sauns,*) *empeschement de wast* (or *gast.*)] Without impeachment of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases, (as the equivalent English phrase sometimes is,) signifying that the tenant or lessee shall not be liable to suit, (*impetitio,*) or challenged, or called to account, for committing waste. 2 *Bl. Com.* 283. 4 *Kent's Com.* 78. *Co. Litt.* 220 a. *Litt.* sect. 352. See *Bacon's Arg.* Case of Impeachment of Waste; *Works*, iv. 225. See *Impetitio, Vastum.*

ABSQUE TALI CAUSA. L. Lat. In pleading. Without such cause. See *De Injuriâ suâ propriâ absque tali causâ.*

ABSTRACT OF A FINE. In old conveyancing. One of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 *Bl. Com.* 351. *Id.* Appendix, No. IV, sect. 4. *Shep. Touchst.* 3. More commonly called the *note* of the fine. See *Fine, Concord.*

ABSTRACT OF TITLE. In conveyancing. An abstract or summary of the most important parts of the deeds, and other instruments composing the evidences of a title to real estate; arranged usually in chronological order, and intended to show the origin, course and incidents of the title, without the necessity of referring to the deeds themselves. It also contains a statement of all charges, incumbrances, liens, and liabilities to which the property may be subjected, and of which it is, in any way, material for purchasers to be apprised. Abstracts of title constitute an important part of the learning of conveyancing, and in England have been illus-

trated by treatises expressly devoted to the subject. See *Preston on Abstracts*, *Lee on Abstracts*.

ABUNDANS. Lat. [from *abundare*, q. v.] Abundant; overflowing; superfluous; more than necessary. *Abundans cautela;* abundant or superfluous caution. *Cod.* 6. 23. 17.

Abundans cautela non nocet. Abundant caution does no harm. *Fleta*, lib. 1, c. 28, § 1. 11 *Co.* 6. Applied to proceedings in practice, adopted in cases of doubt, in order to make sure. *Id. ibid.* See **Superflua non nocent.**

ABUNDARE. Lat. [from *ab*, from, and *unda*, a wave.] In the civil law. To abound; to be more than full; to overflow, as a river. *Quum flumen sic abundasset. Dig.* 2. 11. 2. 8. To be superfluous, or unnecessary; to be more than necessary. **Non solent quæ abundant vitiare scripturas.** Superfluous matters do not usually vitiate writings. *Dig.* 50. 17. 94. Calvin makes a distinction between *abundare* and *redundare*.

ABUSE. [Lat. *abusus*, q. v.] Departure from use, (*ab usu;*) immoderate or improper use. An abuse of the law, according to Lord Bacon, is "a wandering, or going astray, or digressing from the ancient practice of the law." "That may be an abuse of the law," he observes, "which is not against law." *Bac. Read. Uses; Works*, iv. 137.

ABUSIVE. Lat. In the civil law, Improperly; by an abuse or misuse of language, (*improprie*, *minus proprie*, Gr. καταχρηστικῶς.) *Dig.* 29. 3. 2. 1.

ABUSUS. Lat. In the civil law. Abuse; departure from use; excess of ordinary use; destruction by use or in process of use. *Calv. Lex. Brissonius.*

ABUT. [L. Lat. *abuttare;* from Fr. *abutter*, *abouter*, to limit or bound, from *bout*, an end or limit, butt or mark.] To thrust forth the end, (*finem exerere;*) to meet; to come up to a mark, (*scopum appetere;*) to bound end ways; to terminate. *Spelman*, voc. *Abuttare.* Called by Spelman a feudal term; (*vox feodalis.*)

To come to an end, as a boundary does when it takes a new direction.* See *Abuttals.*

In modern law. To come up to, touch, meet, lie, or border upon. See *Abuttals.* A close is sometimes described in pleading as *abutting* on the east, on a certain close, &c.; on the west, on a certain field, &c.; on the north, &c.; and on the south, &c. 2 *Chitt. Pl.* 660—662.

ABUTI. Lat. In the civil law. To abuse; to depart from or exceed use; to use a thing for another purpose than that for which it was intended. *Calv. Lex.*

To consume in the use; to use wholly; to destroy. *Id.*

ABUTTALS, *Abbuttals*, *Buttals.* [from *abut*, q. v.] Commonly defined "the buttings and boundings of lands, east, west, north, and south, showing on what other lands, highways, or places, they *abut*, or are limited and bounded." *Cowell. Tomlins.*

Properly, the limits or boundary lines of lands on the *ends*, as distinguished from those on the sides. Well expressed in the old phrase, "buttals and sidings." *Cro. Jac.* 183. Perhaps, also, the angles or terminating points of the lines, especially in lands of an irregular shape.* *Abuttal*, in its strict sense, includes the idea of contiguity. 1 *Taunt.* 495.

*** *Abuttal* is sometimes used in the more modern books in the sense of *boundary* in general; thus, in pleading, a close is sometimes required to be described by its *abuttals* on other lands. 2 *Chitt. Pl.* 660. The word is also used, but more rarely, as a verb, in the same general sense. *Buttal* is a form to be met with in the older books, but with the particular meaning of a boundary at the *end*, as in the phrase, "buttals and sidings," already quoted. *Butt* is a form still sometimes used, but without much precision, in the phrases, "butts and bounds," "buttings and boundings," "butted and bounded." The particular manner of *abuttaling*, (to use the word in its looser sense,) together with the term itself, is said to have originated with the Normans; in proof of which, reference is made to the Custumary of Normandy, where the expression occurs, that the declaration must be made *par bouts et costes des dites terres*, &c., (by the ends and sides of the said lands, &c.) *Spelman*, voc. *Abuttare. Id. Anc. Deeds & Charters*, c. 5. These *bouts*, or ends, were otherwise called heads, (*capita,*) and fronts, (*frontes,*) and were always said to *abut* (*abuttare*) upon the next land, and sometimes to head (*capitare*) on it. *Spelman. Cowell.* The sides, (*latera*, or *costes,*) on the other hand, were never said to *abut*, but to *lie* or border *upon*, to adjoin the next land; (*ad terram proximam adjacere.*)

Spelman, ub. sup. See *Headland, Siding.* This shows a marked distinction between the two kinds of boundaries, though it is now lost in the general, and not strictly accurate term, *abuttal.* A still further distinction was sometimes anciently made between one of the ends of a piece of land, and the other, or opposite end, as in the phrases, *caput terræ, cauda terræ,* (qq. v.) This formal division, however, of the boundary lines of lands into ends and sides, seems necessarily predicated on a regular four-sided figure in the land itself.

There is another sense in which the term *abuttal* or *butt* (*bout,*) was probably, and perhaps originally used; appearing as it does, to involve the radical meaning of the word, besides being applicable to lands of every shape, and not merely to those where the ends were distinguishable from the sides, viz. the *end* of a boundary line, or the point where it *stopped,* and *turned* in a new direction. These points, or angles were, from the earliest times, distinguished by some visible object, or landmark, as at the present day. According to Camden, there were hillocks raised upon the lines on purpose, which were called *botentines,* from which Cowell conjectures the term *butting* to have sprung. In confirmation of the opinion here advanced, it may be observed that the words *mete* and *butt,* in the common phrases, "metes and bounds," "butts and bounds," and which appear to be the synonymes of *abuttal,* as they are of each other, have both the same double meaning of a *terminating* and *turning* point. See *Butts, Bounds, Metes.*

ABUTTALATUS. L. Lat. In old pleading. Abuttalled. *Towns. Pl.* 26.

ABUTTARE. L. Lat. In old English law. To abut. *Abuttans;* abutting. *Spelman. Towns. Pl.* 26, 49.

AC. Lat. And. See *Ac etiam.*

As. See *Ac si.*

ACA. L. Fr. Then. *Kelham.*

ACAPTE. Fr. [L. Lat. *accapitum.*] In French feudal law. A species of relief; a seignorial right due on every change of a tenant. A feudal right which formerly prevailed in Languedoc and Guyenne, being attached to that species of heritable estates which were granted on the contract of *emphyteusis. Guyot, Inst. Feod.* c. 5, s. 12.

ACATE. See *Achate.*

ACC., ACCORD. Abbreviations of the Fr. *accordant,* and Eng. *accordingly;* frequently used in the books, especially in the reports, to denote the *accordance* or agreement between one adjudged case and another, in establishing, or confirming the same doctrine, and sometimes, the accordance of judges in opinion in the same case. See *Accordant.* The disagreement or opposition of cases is denoted by *contra.*

ACCAPITARE, *Acapitare, Acaptare.* L. Lat. [from *caput,* head, or chief.] In old English law. To pay homage to a chief lord, on becoming his vassal. *Bract.* fol. 78 a. *Fleta,* lib. 3, c. 16, § 6.

To acknowledge the sovereignty of a chief lord in special cases, as against a mesne; to attorn; (*acapitare et se atturnare.*) *Bract.* fol. 389 a. *Fleta,* lib. 3, c. 16, § 38. *Id.* lib. 6, c. 28, § 1.

To attorn to another person than the chief lord, and in derogation of his rights. *Fleta,* lib. 2, c. 50, § 16.

To pay a relief to a chief lord. *Montesquieu, Esprit des Loix,* liv. 31, c. 24, note.

ACCAPITUM. L. Lat. [Fr. *acapte,* q. v.] In old records. Money paid by a vassal upon his admission to a feud; the relief due to the chief lord. *Whishaw.* See *Accapitare.*

ACCEDAS AD CURIAM. L. Lat. (You go to the court.) In English practice. A writ which lies at common law, to remove a cause from an inferior court not of record, such as a hundred court, or court baron, into one of the superior courts. 3 *Bl. Com.* 34. *F. N. B.* 18. 145 E. *Termes de la ley.* 1 *Tidd's Pract.* 38. The writ is directed to the sheriff, commanding him to *go to the court* designated, where the suit or plaint is pending, and there to make a record of such plaint, (*recordari facias loquelam,*) and to have such record before the superior court, at a day specified. *Reg. Orig.* 5 b. *Dyer,* fol. 169, n. 20. It is peculiar for the most part to the action of replevin, and is merely a *recordari facias loquelam,* with a clause of *accedas ad curiam,* whence its name. 2 *Tidd's Pr.* 414, 415. See other forms of the writ, *Reg. Orig.* 5 a. 9 b. 10. And see *Recordari facias loquelam.*

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone,* and to deliver a writ to him requiring him to return it. *Reg. Orig.* 83. See *Pone.*

ACCEDERE. Lat. [from *ad*, to, and *cedere*, to go, to belong or appertain.] In the civil law. To go to or with; to be added or joined to; to belong to. *Calv. Lex. Brissonius.* See *Accessio.* Less used than the simple word *cedere*, which constantly occurs. See *Cedere.*

To approach; to be near or next to. *Calv. Lex.* See *Accessus.*

To accede; to assent or agree. *Id.*

ACCEPTANCE. [Lat. *acceptatio*, from *acceptare*, to accept.] A receiving with approbation, or satisfaction; or, in the language of the old books, "a taking in good part." *Termes de la ley. Cowell.*—Approval of, assent to, or acquiescence in a thing received; an agreement to keep a thing received.*

Acceptance is receipt, and something more. There cannot be acceptance without receipt, but there is often receipt without acceptance. *Smith on Contracts*, 71, note (*a*). The purchaser of goods may, on receiving them from the seller, *accept* them, or return them as not answering the contract. If he neglect to return them within a reasonable time, or to give notice to the seller that he does not intend to take them, he is considered as having accepted them, and will be held to the purchase.* 2 *M. & W.* 653, 656. 11 *Id.* 534. *Smith on Contracts, ub. sup.* So, the drawee of a bill of exchange may, on receiving it, either *accept* it, or return it without acceptance; and the same distinction has been made between the receipt and the *acceptance* of a deed. *Ersk. Inst.* b. 3, tit. 2, § 45.

ACCEPTANCE OF A BILL OF EXCHANGE. [L. Lat. *acceptatio.*] In mercantile law. The act by which the person on whom a bill of exchange is drawn, (called the *drawee*,) assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable to pay it, when due. 4 *East*, 57, 72. 2 *Bl. Com.* 469. It may be by parol, or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly given. 3 *Kent's Com.* 83, 85. *Story on Bills*, §§ 238, 242—248, 251. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "*accepted*," and subscribing his name; after which he is termed the *acceptor*. *Id.* § 243. See 2 *Hill's* (N. Y.) *R.* 582. 10 *Foster's R.* 256. See *Acceptor.*

ACCEPTANCE AU BESOIN. Fr. In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept. *Story on Bills*, §§ 65, 254, 255.

ACCEPTANCE SUPRA PROTEST. In mercantile law. Acceptance over protest. An acceptance of a bill by a third person, *after protest* for non-acceptance by the drawee; such acceptance being for the honor of the drawer, or some particular endorser. 3 *Kent's Com.* 87. *Story on Bills*, § 121. Called in French law, acceptance *par intervention. Id.* § 256.

ACCEPTARE. Lat. In old pleading. To accept. *Acceptavit;* he accepted. 2 *Stra.* 817. *Non acceptavit;* he did not accept. 4 *Man. & Gr.* 7.

In the civil law. To accept; to assent; to assent to a promise made by another. *Grotius de Jur. Bell.* lib. 2, c. 11, § 14.

ACCEPTATIO. Lat. [from *acceptare*, q. v.] In mercantile law. Acceptance of a bill. *Heinecc. de Camb.* c. 2, § 16. *Id.* c. 6, § 9.

In the civil law. The assent of a person to whom a promise is made. *Grot. de J. B.* lib. 2, c. 11, §§ 14–16.

ACCEPTILATIO. Lat. [from *acceptum*, a thing received, and *latio*, a putting down.] In the civil law. A holding, considering, or acknowledging as received. A form of releasing one from an obligation, without payment, called an imaginary payment; one of the modes of dissolving obligations in the civil law. *Inst.* 3. 30. [29.] 1. *Dig.* 46. 4. *Bract.* fol. 101. It was made verbally, in the usual form of question and answer, thus: the debtor said to the creditor, *Quod ego tibi promisi habesne acceptum?* (Do you consider what I promised you as received?) The creditor answered, *Habeo*, (I do.) It might also be made in Greek, provided it were in the same form. But it was only verbal contracts that could be thus dissolved. *Inst.* 3. 30. 1. *Dig.* 46. 4. 8. 4. *Cod.* 8. 44.

There was also a more general form of *acceptilatio*, by which obligations of all kinds might be dissolved, after being reduced to the form of a verbal stipulation. *Inst.* 3. 30. 2. *Dig.* 46. 4. 18. 1. This is the kind mentioned in Bracton. *Omne quod tibi debui ex quacunque causa, habesne acceptum?* (Do you consider everything that I have owed you, on whatever account, as received?) To which the answer

was, by word or writing, *Habeo*, acceptumque fero; (I hold it so, and put it down as received.) *Bract.* fol. 101 a. *Fleta*, lib. 2, c. 60, § 11. The last clause in this example shows the etymology of the word; (*latio*, from *ferre*.) It was sometimes written as two words, *accepti latio*. *Fleta*, *ubi supra*.

Acceptilation is used in modern civil law, and in Scotch law. *Bell's Dict.* It is also used as an ordinary English word, by some of the old writers. *Richardson's Dict.*

ACCEPTOR. L. Lat. In mediæval law. A hawk. *L. Salic.* tit. 7, § 1. *L. Ripuar.* tit. 36, § 11. *Spelman.*

ACCEPTOR. In mercantile law. The party who accepts a bill of exchange, and who is the principal debtor, the drawer being the surety. 3 *Kent's Com.* 75, 86. See *Acceptance.*

ACCESS. [Lat. *accessus*, q. v.] Approach, or means of approach; opportunity of intercourse, as between husband and wife. 1 *Bl. Com.* 457.

Actual intercourse. *Sugd. Prop.* 182.

ACCESSARIUS. Lat. In old pleading. Accessary; an accessary. *Towns. Pl.* 49. See *Accessorius.*

ACCESSARY. [L. Lat. *accessarius.*] In criminal law. One who, without being present at the commission of a felonious offence, becomes guilty of such offence, not as a chief actor, but as a participator, as by command, advice, instigation or concealment, either before or after the fact or commission; a *particeps criminis*. 4 *Bl. Com.* 35. *Cowell.* See *infra.*

ACCESSARY BEFORE THE FACT. In criminal law. One who, being absent at the time a crime is committed, yet procures, counsels, or commands another to commit it; and, in this case, absence is necessary to constitute him an accessary, for if he be present at any time during the transaction, he is guilty of the crime as principal. *Plowd.* 97. 1 *Hale's P. C.* 615, 616. 4 *Steph. Com.* 90, note (*n.*) Thus, if A. advises B. to kill another, and B. does it in the absence of A., in this case B. is principal, and A. is accessary in the murder. 4 *Bl. Com.* 37.

ACCESSARY AFTER THE FACT. [L. Lat. *accessarius ex post facto,—post effectum scelus. Spelman.*] In criminal law. One who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon. 1 *Hale's P. C.* 618, 622. *Hawk. P. C.* b. 2, c. 29, s. 32. And generally, any assistance whatever, given to a felon, to hinder his being apprehended, tried or suffering punishment, makes such assistor an accessary; as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue him. *Hawk. P. C.* b. 2, c. 29, ss. 26, 27, 28. 1 *Hale's P. C.* 620, 621. 4 *Bl. Com.* 38. 4 *Steph. Com.* 91. 2 *N. Y. Rev. Stat.* [699,] 583, § 7.

ACCESSEMENT. L. Fr. [Lat. *accessio.*] Addition. *Kelham.*

ACCESSIO. Lat. [from *accedere*, to go to or with; to be added to; to belong to.] In the civil law. Accession; a going or passing of one thing to, or with another as its principal; addition or adjunction; an addition, or increase.* That mode of acquiring property by which according to the rule, **Res accessoria sequitur rem principalem**, (an accessory thing follows the principal thing,) or **cedit rei principali**, (belongs to the principal thing,) the proprietor of the principal thing becomes, *ipso jure*, proprietor of all that belongs to it, [or is added to, or connected with it,] as an accessory thing; whether such addition be by its own increase, as the fruits of the earth, the young of animals; or the operation of natural causes, as the gradual deposit, (*alluvio*,) made upon land by a stream; or by the voluntary act of another uniting his property with it, (*adjunctio*;) as by the interweaving of materials, welding of iron, painting on another's tablet, writing on his parchment, building or planting on his soil; or by the mixing together of things dry, (*commixtio*,) or liquid, (*confusio.*) *Inst.* 2. 1. 26—38. *Dig.* 6. 1. 23. *Id.* 41. 1. 7. 7. *Id.* 41. 1. 26. *Id.* 44. 3. 14. *Bract.* fol. 9 a. 10 a. 1 *Mackeld. Civ. Law*, 279—285, §§ 266—270. See *Adjunctio.* The mode of acquisition by transforming a thing belonging to another, especially by working up his material into a new species, as grapes into wine, was called *specificatio*, and was distinguished from *accessio*, properly so called. 1 *Mackeld. Civ. Law*, 277, § 265. See *Specificatio.*

A thing joined or added to another thing. *Calv. Lex.* The Romans did not use the word *accessio* to denote the title arising from the addition of one thing to

another, but understood by it the thing itself which comes to be joined to another. 1 *Mack. Civ. Law*, 279, § 266, note (*d.*) *Id.* 155, § 153.

An incident or appurtenant to another thing. *Dig.* 34. 2. 19. 13.

The profit, fruit, or increase of a thing. More commonly used in the plural, (*accessiones.*) *Dig.* 22. 1.

An incidental or auxiliary obligation, as that of a surety. *Calv. Lex.*

A party contracting such obligation. *Id. Brissonius.*

ACCESSION. [Lat. *accessio*, q. v.] A species of title by which a person acquires a right to, or property in a thing, in consequence of its *belonging to* another thing; as by growing out of it, or being added to, or combined with it.* See *Accessio.* A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another,) even where such addition extends to a change of form or materials: and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor, is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape.* 2 *Kent's Com.* 360—365. *Bract.* fols. 9, 10. *Code Civil*, Nos. 546, 547. *Civil Code of Louisiana*, Art. 490. *Schmidt's Civ. Law*, 48, 49. 3 *Comstock's R.* 379, and authorities cited *ibid.* See *Accessio.*

ACCESSION, *Deed of.* In Scotch law. A deed executed by the creditors of a bankrupt or insolvent debtor, by which they approve of a trust given by their debtor for the general behoof, and bind themselves to concur in the plans proposed for extricating his affairs. *Bell's Dict.*

ACCESSORIUM. Lat. [from *accedere*, to go to, or with.] In the civil law. An accessory thing; an incident; a thing which goes with another thing; a thing which belongs to, is connected with, or dependent upon another thing, as its principal, (*res principalis.*)* *Calv. Lex. Cowell. Bract.* fol. 22 b. *Fleta*, lib. 4, c. 22, § 1.

Accessorium non ducit sed sequitur suum principale. The incident does not draw, but follows its principal. *Co. Litt.* 152 a. 151 b. *Broom's Max.* 203. [368.] The incident passes by the grant of the principal, as rent by the grant of a reversion, and not *è converso.* 2 *Bl. Com.* 176. **Accessorium sequitur principale.** *Bell's Dict.* 6 *Bell's* (Scotch) *Appeal Cases*, 222.

ACCESSORIUS. L. Lat. [from *accedere*, q. v.] In the civil law. Accessory, incident; belonging to something else. *Res accessoria;* an accessory thing. 1 *Mackeld. Civ. Law*, 155, § 152. See *Accessorium.*

ACCESSORIUS. L. Lat. [from *accedere*, q. v.] In old English law. An accessory, or accessary. *Spelman.* **Accessorius sequitur naturam sui principalis.** An accessary follows the nature of his principal. 3 *Inst.* 139. An accessary cannot be guilty of a higher crime than his principal. *Broom's Max.* [374.]

Accessorius sequitur principalem. An accessary follows, or depends upon the principal. 4 *Co.* 44. Where there is no principal, there can be no accessary.

ACCESSORY. [L. Lat. *accessorius, accessorium*, qq. v.] Incident, appurtenant, or belonging to. **Things accessory are of the nature of the principal.** *Finch, Law*, b. 1, c. 3, num. 25. *Wingate's Max.* 226, max. 64. *Accessorial* is sometimes used in this sense. *Story, Bailm.* § 54.

An incident; a thing belonging to another thing. When a subject is conveyed, every one of its *accessories* are understood to be conveyed with it, unless the contrary be expressed. 1 *Kames' Equity*, 240.

ACCESSORY. In criminal law. Contributory to, or aiding in the commission of a crime. Called in the Roman law, *ope et consilio*, and in the Scotch law, *art and part.* (qq. v.) *Ersk. Inst.* b. 4, tit. 4, § 10. More commonly written *accessary*, especially when used as a substantive. See *Accessary.*

ACCESSORY ACTION. In Scotch practice. An action which is subservient or auxiliary to another. Of this kind, are actions of "proving the tenor," by which lost deeds are restored; and actions of "transumpts," by which copies of principal deeds are certified. *Bell's Dict.*

ACCESSORY CONTRACT. In the civil law. A contract which is incident or auxiliary to another or principal contract; such as the engagement of a surety.

Pothier, Oblig. part 1, ch. 1, sect. 1, art. 2.

ACCESSORY OBLIGATION. In the civil law. An obligation which is incident to another or principal obligation; the obligation of a surety. *Pothier, Oblig.* part 2, ch. 1, § 6. The term is used in Scotch law. *Bell's Dict.*

ACCESSUS. Lat. [from *accedere*, to go to.] In old English law. Access, approach, admission, ingress; the liberty of going into a place. *Accessus et recessus;* the liberty of going on and off another's land, for the purpose of hunting, drawing water, &c. *Bract.* fol. 231 b. 232. *Fleta*, lib. 4, c. 27, § 1. The same liberty, as applied to the enjoyment of a right of common, was called *ingressus et egressus*, ingress and egress; a phrase still in use. *Id. ibid. Bract. ubi supra.* See *Ingress, Egress.*

ACCIDENS. Lat. [from *accidere*, to fall, to happen.] In the civil law. An accident; a thing happening; an event or circumstance. *Calv. Lex. Spiegelius.*

ACCIDENT. [Lat. *accidens*, from *accidere*, q. v.] A casualty; an act of providence; an event that takes place without one's foresight or expectation. See *Inevitable accident, Act of God, Casualty.*

In equity. Any such unforeseen event, misfortune, loss, act or omission, as is not the result of any negligence or misconduct.* 1 *Story's Eq. Jurispr.* § 78. According to Mr. Spence, "every attempt to define accident in its judicial acceptation, has failed." 1 *Spence's Ch.* 628.

ACCIDERE. Lat. [from *ad*, to, and *cadere*, to fall.] In the civil law. To happen; to fall; to take place. **Ea quæ raro accidunt non temere in agendis negotiis computantur.** Things which rarely happen are not [to be] rashly [or inconsiderately] taken into account, in the transaction of business. *Dig.* 50. 17. 64.

To happen to; to befall; usually in a bad sense. *Calv. Lex.* An euphemism to express death. *Id.*

ACCION, *Accyoun.* L. Fr. An action. *Kelham. Accion sur le cas;* an action on the case.

ACCIPERE. Lat. [from *ad*, to, and *capere*, to take.] In the civil law. To receive; to take, especially under a will. *Brissonius.* Distinguished from *capere*, (q. v.) *Dig.* 50. 16. 71.

To admit; to acknowledge. *Calv. Lex. Brissonius.*

To receive; to sustain, as an injury. *Id.*

To take; to understand; to construe. *Id.*

ACCO. L. Lat. An abbreviation of *actio. Towns. Pl.* 26. *Acconem*, of *actionem. Id.* 166, 167.

ACCOLA. Lat. [from *ad*, by, and *colere*, to dwell.] In the civil law. One who inhabits or occupies land near a place, as one who dwells by a river or on the bank of a river. *Dig.* 43. 13. 3. 6.

In feudal law. A husbandman, an agricultural tenant; a tenant of a manor. *Spelman.* A name given to a class of villeins in Italy. *Barringt. Obs. Stat.* 302.

ACCOMMODARE. Lat. [from *ad*, to, and *commodum*, benefit.] In the civil law. To accommodate; to allow, against strict rule, (*contra summi juris regulam;*) to grant or transfer as a matter of favor rather than right. *Calv. Lex.* Actions and exceptions which were granted by the prætor, *ex æquo et bono*, were said *accommodari. Dig.* 2. 11. 2. 8.

To lend, or loan. *Si tibi vendam quod tibi* accommodavi; if I sell you that which I have loaned to you. *Bract.* fol. 41 a.

ACCOMMODATION PAPER. In mercantile usage. A bill or note drawn, accepted, or endorsed by one person for another, there being no consideration between them, for the sole purpose of raising money upon it, for the accommodation of one or both of them.* *Story on Bills*, § 187. See 12 *M. & W.* 705. 1 *Id.* 212. It is distinguished from business paper. 6 *Ohio St. R.* 37. Accommodation paper in the hands of *bonâ fide* holders, is now governed by the same rules as other paper. 3 *Kent's Com.* 86, and note, *ibid.* The parties to every accommodation bill hold themselves out to the public, by their signatures, to be absolutely bound to every person who shall take the same for value, to the same extent as if that value were personally advanced to them, or on their account and at their request. *Story on Bills*, § 191. And see *Id.* §§ 192, 193.

ACCOMPLIAMENTUM. L. Lat. In old pleading. Accomplishment. *Co. Entr* 227. *Towns. Pl.* 49.

ACCOMPLICE. [from *ad*, to, and *complicare*, to fold up, or wrap together.] In criminal law. One who is joined or united with another; one of several concerned in a felony; an associate in a crime; one who co-operates, aids, or assists in committing

it. *Tomlins. Jacob.* This term includes all the *participes criminis*, whether considered in strict legal propriety as principals, or as accessories. 1 *Russell on Crimes*, 26. It is generally applied to those who are admitted to give evidence against their fellow criminals. 4 *Bl. Com.* 331. *Hawk. P. C.* b. 2, c. 37, § 7.

ACCOMPT. See *Account.*

ACCORD. Fr. & Eng. An agreement, consent, or concurrence. An agreement between a party injuring and a party injured, to make satisfaction for the injury; which, when performed, is a bar of all actions upon this account.* 3 *Steph. Com.* 373. As if a man contract to build a house, or deliver a horse, and fail in it, this is an injury for which the sufferer may have his remedy by action; but if the party injured accepts a sum of money, or other thing as a satisfaction, this is a redress of that injury, and entirely takes away the action. 9 *Co.* 79. 3 *Chitty's Bl. Com.* 16, and note. *Blount. Bac. Abr.* Accord. *Com. Dig.* Accord. *U. S. Dig.* Accord and satisfaction. Defined by Finch, "an agreement between the parties themselves, upon a satisfaction executed." *Law*, b. 2, c. 19.

ACCORD, abbr. of *Accordant*, (q. v.) Agreeing, agreed. "Denison, J. *accord.*" 1 *W. Bl.* 418.

To ACCORD. In practice. To agree or concur, as one judge with another. "I accord." Eyre, C. J. 12 *Mod.* 7. "The rest accorded." 7 *Id.* 360.

ACCORDANT. Fr. & Eng. Agreeing; concurring. "Baron Parker, *accordant.*" *Hardr.* 93. "Holt, C. J. *accordant.*" 6 *Mod.* 298, 299. "Powys, J. *accord.*" "Powell, J. *accord.*" *Id. ib.*

ACCOUNT, *Accompt.* [L. Lat. *compotus*, *computus*, from *computare*, to account.] In practice. A writ, or action at common law, (sometimes called *account render*,) which lies against a person who by reason of his office, or business, as bailiff, receiver, or guardian, ought to render an account to another, but refuses to do so. *F. N. B.* 116. P. Q. *Co. Litt.* 172. The writ in this action (which is termed in the old books, *breve de computo*, or *compoto*,) commands the defendant to render a reasonable account (*rationabile computum*, or *rationabilem compotum*,) to the plaintiff, or show the court good cause to the contrary. *Fleta*, lib. 2, c. 70. *Reg. Orig.* 135. *F. N. B.* 116, 117. If the plaintiff succeeds, there are two judgments; the first is that the defendant *do account*, (*quod computet*,) before auditors appointed by the court, and, when such account is finished, then the second judgment is that he *do pay* the plaintiff so much as he is found in arrear. 3 *Bl. Com.* 162.

*** The action of account was formerly the common remedy in mercantile transactions, and in almost all cases where there were dealings, and an unliquidated demand. 3 *Reeves' Hist. Eng. Law*, 77. In modern practice it has fallen into great disuse, in consequence of the substitution of the action of assumpsit, and the frequent resort to a court of equity. 3 *Bl. Com.* 163. 1 *Tidd's Pr.* 1, 2. 1 *Archb. N. Prius*, 196, 197. It seems, however, to have always been regarded with favor by the English judges, and in the case of Godfrey v. Saunders, in the C. B., where an action of this kind was brought, Lord C. J. Wilmot expressed his satisfaction at seeing it revived. 3 *Wils.* 94, 117. Latterly it has been revived in England to a considerable extent, in consequence of a decision of the court of exchequer, in relation to the exception of merchants' accounts in the statute of limitations. 8 *Mees. & W.* 769. *Smith on Contracts*, 301, 302, 321, and notes. It is retained in the practice of some of the United States, but its form has been modified, and, in general, it is rarely resorted to: in some of the states it has been expressly abolished. 4 *Kent's Com.* 359, note. 1 *Story's Eq. Jur.* § 442, and note. *Rev. Stat. of N. Jersey*, 46. *Rev. Stat. of Vermont*, 219, c. 36. 25 *Vermont R.* 340. *Rev. Stat. of Mass.* c. 118, § 43. *Purdon's Digest*, Account. See *United States Digest*, Account render.

ACCOUNT. A statement in writing, of debts and credits, or of receipts and payments; a list of items of debts and credits, with their respective dates.* 5 *Cowen's R.* 593.

The word *account* has been said to have no definite legal meaning. *Id.* 588, 593. "Any thing may enter into an account." Sanford, C. *Id.* 593.

ACCOUNT CURRENT. A running, or open account. See *Account stated.*

ACCOUNT STATED. An account balanced and rendered, with an assent to such balance, express or implied. Parker, C. J. 8 *Pick. R.* 187, 193. 1 *Kernan's R.* 170. An account current sent by a foreign merchant to a merchant in this country, and

not objected to for two years, is deemed an account stated, and throws the burden of proof upon him who received and kept it without objection. 7 *Cranch*, 147. 25 *Mississippi R.* 267. But an account closed by the cessation of dealings between the parties, is not an account stated. 5 *Cranch*, 15. 8 *Pick. ub. sup.* See *Insimul computassent.* To make an account stated, it is sufficient that the account has been examined, and assented to, as correct, by both parties. This assent may be express or implied from circumstances. Whether, on a given state of facts, the transaction constitutes a stated account, is a question of law. 1 *Kernan's R.* 170. And see 26 *Mississippi R.* 212. 22 *Penn. St. R.* 427.

ACCOUNTANT. A person skilled in accounts.

A person whose business or duty is to keep accounts.

A person who renders an account in a particular case; a party accounting.

ACCREDIT. [Fr. *accrediter*, from Lat. *ad*, to, and *credere*, to believe or trust.] In international law. To give credit to; to express confidence in; to acknowledge the authority of. To acknowledge the authority of a diplomatic agent of another government; to receive him in his public character, and give him credit and rank accordingly.

ACCREDULITARE. L. Lat. In old records. To purge an offence by oath. *Blount. Whishaw.*

ACCRESCE. In Scotch law. To accrue. 1 *Kames' Equity*, 247. See *Accrescere.*

ACCRESCERE. Lat. [from *ad*, to, and *crescere*, to grow; L. Fr. *accresser.*] In the civil and old English law. To grow to; to pass to and become united with, as soil to land *per alluvionem. Dig.* 41. 1. 30, pr. *Id.* 41. 1. 56, pr.

To pass or be added to a person; to accrue. In Scotch law, literally translated "to *accresce.*" 1 *Kames' Equity*, 247. *Jus accrescendi;* (q. v.) the right of accretion, or accruer, the right by which a thing passes or accrues from one to another, especially from a deceased person to those who survive him; hence called the right of survivorship. *Pars decedentis* accrescere *debet superstitibus, per jus accrescendi;* the portion of the deceased ought to accrue to the survivors by the right of accruer, or survivorship. *Bract.* fol. 28. See *Id.* fol. 77 b. 262 b.

To accrue; to grow or arise; to begin to have existence. *Actio non* accrevit *infra sex annos;* (q. v.) the action did not accrue within six years. 3 *Chitt. Pl.* 941.

ACCRESSER. L. Fr. To increase, or accrue. *Kelham.* See *Accrescere.*

ACCRETION. [Lat. *accretio*, from *accrescere*, to grow to.] A growing to, adding to, increasing. Most commonly applied to the gradual and imperceptible accumulation and formation of soil, or land, out of the sea, or a river. 3 *Kent's Com.* 428. *Schmidt, Civ. Law*, 49. See *Alluvion.*

ACCROACH, *Accroche.* [Fr. *accrocher*, *acrocher*, q. v.] In old English law. To attempt to exercise. 4 *Bl. Com.* 76. 1 *Hale's P. C.* 80. 2 *Reeves' Hist. Eng. Law*, 451. 3 *Id.* 186. *Accroaching* of royal power was a usual charge of high treason anciently, though a very uncertain charge. 1 *Hale's P. C. ub. sup. Encroaching* is used in the articles against the Archbishop of York and others, A. D. 1388. 1 *How. St. Trials*, 101, 102.

To exercise without authority; to usurp authority. *Stat.* 13 *Ric.* II. st. 1. 3 *Reeves' Hist. Eng. Law*, 197.

To delay. See *Accrocher.*

ACCROCHER, *Acrocher.* L. Fr. In old English law. To pull or draw to, as with a hook; to accroach. *Ou home* acroche *a lui siwite;* where a man draws to himself suit. *Yearb.* M. 4 Edw. II. 88.

To usurp; to attempt to exercise. *Kelham.*

To delay. Accrocher *un proces;* to stay a process or the proceedings in a suit. *Cowell. Blount.*

ACCRUE. [Lat. *accrescere.*] To grow to, to follow, to be added to; as a thing or right passes from one person to another. See *Accrescere.*

To grow, arise, accumulate, or become due; as rent or interest.

To arise, or begin to have a legal existence; as an action *accrues* when the plaintiff has a right to commence it. See *Accrescere.*

ACCUMULATIVE. [from Lat. *accumulare*, from *ad*, to, and *cumulus*, a heap.] That accumulates, or is heaped up; additional. Said of several things heaped together, or of one thing added to another. See *infra.*

ACCUMULATIVE JUDGMENT. In criminal practice. A second or additional judgment or sentence given against or

passed upon one who has already been convicted, to go into effect after the expiration of the first. *Wharton's Lex.*

ACCUMULATIVE LEGACY. A double or additional legacy; a legacy given in addition to another given by the same instrument, or by another instrument. 4 *Vesey*, 90. 1 *P. Wms.* 424.

ACCUSARE. Lat. To accuse; to charge with some offence. *Calv. Lex. Cod.* 9. 1. **Accusare nemo se debet nisi coram Deo.** No man is bound to accuse himself, unless before God. *Hardr.* 139.

ACCUSATION. [Lat. *accusatio*, from *accusare*, q. v.] In criminal law. The act of charging with a crime or offence. A statement made before a competent magistrate or judge, charging a named person with the commission of some crime or offence. *Calv. Lex.* voc. *Accusatio.*

ACCUSATOR. Lat. [from *accusare*, q. v.] An accuser. **Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit.** An accuser is not to be heard after a reasonable time, unless he excuse himself satisfactorily for the omission. *Moor*, 817.

"ACCUSTOMED RENT," in the stat. 13 Eliz. c. 10, ought to be understood of the rent reserved in the last lease, and not upon the first, for that rent having been altered since, cannot be called the accustomed rent. Hale, C. B. *Hardr.* 325. 2 *Vern.* 540.

ACCUSTUMATUS, *Accustomatus.* L. Lat. In old pleading. Accustomed. *Co. Entr.* 69. *Rast. Entr.* 657. *Towns. Pl.* 26, 49.

ACENSEMENT. L. Fr. A letting to farm. *Kelham.*

ACENSEUR. L. Fr. A farmer. *Kelham.*

ACEPHALI. Græco-Lat. [Gr. ἀκέφαλοι, from ἀ, without, and κεφαλή, a head.] Persons without a head or superior. In the civil law, a sect of religious persons, enumerated among heretics, in *Nov.* 109, pr. and *Nov.* 115, c. 3, § 14. See also *Cod.* 1. 5. 19. Otherwise called *Acephalitæ.* So termed, according to Calvin, because their head or founder was unknown, or because they acknowledged no religious superiors, (bishops, presbyters and councils.) *Calv. Lex.* The word was used in a similar sense in the time of Charlemagne. *Synod. Mogunt. sub Carol. M.* cap. 22, cited in *Spelman.*

In feudal law. Persons without a feudal superior; persons who held of no one, as their lord. *Baronum homines, et* acephalos. *LL. Hen.* I. c. 22, cited in *Spelman.* This is probably the passage referred to in Cowell, (additions in the ed. of 1701,) as descriptive of a class of levellers who acknowledged no head or superior.

ACER. L. Lat. In old English law. An acre. *Spelman.* See *Acra.*

ACERES. L. Fr. Maple trees. *Kelham.*

AC ETIAM. L. Lat. And also. The name of a clause in a *capias ad respondendum*, so called from its initial words. See *Ac etiam billæ.* Anciently sometimes written as one word, *acetiam*, and *aceciam.* *Towns. Pl.* 49. 2 *Stra.* 922.

AC ETIAM BILLÆ. L. Lat. And also to a bill. The initial words of a clause inserted in a writ of *capias ad respondendum*, where bail is required, in order to express the true cause of action; the writ requiring the defendant "to answer the plaintiff of a plea of trespass; *And also to a bill* of the plaintiff" against the defendant, for whatever the real cause of action may be. 3 *Bl. Com.* 288. *Id.* Appendix, No. III. sect. 3. See *Capias ad respondendum.* This clause is now dispensed with, in the process of the English courts. *Stat.* 2 Will. IV. c. 39. See *Bill.*

ACHATA. L. Lat. [from Fr. *achate*, q. v.] In old English law. A purchase. *Mag. Rot. Pip.* 1 Hen. II. rot. 14, m. 2. *Spelman.*

ACHATE, *Achat, Achet, Acate.* L. Fr. [from *achater*, to buy.] In old English law. Purchase; a purchase, contract or bargain. *Bro. Abr.* Contract. *Per colour de achate;* by color of purchase. *Stat. Westm.* I. c. 1.

Bought. *Achate arere;* bought back. *Dyer*, 35 b, (Fr. ed.)

ACHATER, *Acater.* L. Fr. To buy. *Si le villeine* achate *biens;* if the villein buy goods. *Litt.* sect. 177.

ACHATOR, *Achatour, Achetour, Acatour.* L. Fr. [from *achater*, to buy.] In old English law. A buyer; a contractor. Purveyors were, by statute 36 Edw. III. st. 1, c. 2, ordained to be thereafter called *achetours*, or buyers; the name of *purveyor* being declared by the statute to be an odious one. *Barringt. Obs. Stat.* 389. 2 *Reeves' Hist. Eng. Law*, 370. *Parnours, purveyours, ou* achetours; takers, purveyors or buyers. *Artic. sup. Chart.* c. 2.

ACHERSET. [L. Lat. *achersetus.*] An ancient measure of corn or grain, supposed

to have been the same with the quarter, or eight bushels. *Cowell.*

ACHESON, *Achaysson.* L. Fr. Reason, occasion, cause, hurt. *Kelham.* See *Encheson.*

ACHEVER. L. Fr. To attorn. *Kelham.*

ACIA, *Acya.* L. Lat. In old English law. Malice, hate or hatred. *Fleta*, lib. 1, c. 25, § 5. *Id.* c. 26, § 3. See *Atia.*

ACLEA. L. Lat. [from Sax. *ac*, oak, and *lea* or *lega*, field.] In old English law. A field or place where oaks grow; an oak-ground, (*quercetum.*) *Florent. Wigorn.* A. D. 851. *Spelman.*

ACKNOWLEDGMENT. In conveyancing. The act by which a party who has executed an instrument, declares or *acknowledges* it before a competent officer, to be his, or her act and deed.

The certificate of the officer on such instrument that it has been so acknowleged. Both these are usual requisites to entitle an instrument to be recorded.

ACKNOWLEDGMENT MONEY. A sum of money paid by copyhold tenants, in some parts of England, on the death of their landlords, as an acknowledgment of their new lords. *Cowell. Blount. Holthouse.* The same with the Lat. *laudemium*, (q. v.)

ACOIGNE. L. Fr. Favor; association. *Kelham.*

ACONE. L. Fr. Some. A corrupted form of *aucun. Acone fei*, sometimes. *Kelham.*

ACORD, *Acort.* L. Fr. Agreement, accord, consent. *Kelham.*

ACOULPER. L. Fr. To accuse. *Kelham. Acoupes;* accused. *Id.*

ACQUEST. [L. Lat. *acquisitum*, q. v.] In old English law. An estate newly acquired, or acquired by purchase. 1 *Reeves' Hist. Eng. Law*, 29. See *Conquest.*

Acquisition. Used in this sense by Sir Matthew Hale. *Hale's Anal.* sect. iii. xxxiii. xxxiv.

ACQUETS. Fr. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. *Bouvier.*

Profits, or gains of property, as between husband and wife. *Civil Code of Louisiana*, § 2369.

ACQUIESCE. [from Lat. *acquiescere*, from *ad*, to, and *quiescere*, to be quiet, from *quies*, rest.] To rest satisfied or apparently satisfied; to rest without objection, opposition or dissent.* *Webster.*

ACQUIESCENCE. [from *acquiesce*, q. v.] A resting quiet or satisfied, without objection, opposition or dissent; omission to say or do any thing expressive of dissatisfaction or disapproval.

ACQUIETANTIA, *Acquietancia.* L. Lat. [from *acquietare*, q. v.] In old English law. An acquittance; a release or discharge from the obligation of a debt or contract, (*solutio a vinculo debiti, stipulationis, vel obligationis, quo quis alteri tenetur.*) *Spelman.*

The instrument itself, (*symbolum ipsum,*) by which such discharge is effected. *Id.* Sometimes called *litera acquietantiæ;* a letter of acquittance. *Reg. Orig.* 150.

Exemption or freedom from a service or duty. *Consuetudines et servitia de quibus illi nunquam* acquietantiam *habuerint;* customs and services from which they never had acquittance. *Bract.* fol. 27 b. Acquietancia *de shiris et hundredis;* the privilege of being free from suit and service in shires and hundreds. *Cowell.*

ACQUIETARE. L. Lat. [from *ad*, to, and *quietare*, to discharge; *quietum reddere*, to make quit, or quiet, i. e. content, or free from molestation; to give quiet, or keep in quiet, so that one may have no cause for further or future apprehension; to put at rest.] In old English law. To acquit; to discharge or release from a debt. *Spelman*, voc. *Acquietantia. Quod* acquietet *B. de viginti solidis;* that he acquit B. of twenty shillings. *Reg. Orig.* 158 a.

To acquit; to pronounce, or declare innocent of a crime or charge. See *Acquietatus, Acquit.*

To keep quiet, or quit; to preserve or protect from molestation, as from demands for services not due. *Acquietabimus*, (we will acquit,) was one of the formal words in the clause of warranty, with which the old charters concluded. By this word, the donor bound himself and his heirs to *acquit* the tenant, if any one should demand more or different service than what was contained in the charter. *Bract.* fol. 37 b. *Warrantizare*, acquietare *et defendere;* to warrant, acquit and defend. *Id.* fol. 30 a.

ACQUIETATUS. L. Lat. [from *acquietare*, q. v.] In old English law. Acquitted; discharged; released from a criminal charge; pronounced innocent by a jury. *Reg. Orig.* 134. 9 *Co.* 56. *Cro. Car.* 420. This word had the peculiar meaning of a discharge by a *jury*, (*per pais,*) from a very early period. *Reg. Orig.* 134 b, nota.

ACQUIRE. [from Lat. *acquirere*, q. v.] To get or gain by some lawful title; to make one's own according to some rule of law. See *Acquirere.*

ACQUIRERE, *Adquirere.* Lat. [from *ad*, to, and *quærere*, to seek.] In the civil law. To acquire; to gain by some lawful title; to make one's own, (*suum facere,*) according to some rule of law, (*jure aliquo.*) *Calv. Lex. Inst.* 2. 1. pr. *Dig.* 41. 1. 7. 1, *et passim.* It was distinguished from *nancisci* and *adipisci*, to get or obtain. *Calv. Lex.* The title *De acquirendo rerum dominio* was a fundamental one in the Roman law. *Dig.* 41. 1. See *Cod.* 7. 32.

ACQUISITION. [Lat. *acquisitio*, from *acquirere*, q. v.] The act of acquiring; the act of gaining by some lawful title; the act of making a thing one's own according to some rule of law.

ACQUISITUM, *Adquisitum.* L. Lat. [from *acquirere*, to acquire, or purchase.] In old English law. A purchase. 2 *Mon. Angl.* 380. *Towns. Pl.* 50.

Acquest, or newly acquired feudal rights. 1 *Reeves' Hist. Eng. Law*, 29. See *Conquest.*

ACQUISSER. L. Fr. To receive, to gather. *Kelham.*

ACQUIT. [L. Fr. *acquiter*, *quiter;* L. Lat. *acquietare*, q. v.] To free, clear or deliver from accusation. See *Acquittal.*

To discharge from obligation, properly in writing. See *Acquittance.*

To protect from molestation, or trouble. In the old common law, to see that a tenant be safely kept from any entries, or other molestation, for any manner of service issuing out of land, to any lord that is above the mesne. *Co. Litt.* 100 a. *Litt.* sect. 142.

ACQUITTAL, *Acquital.* In criminal practice. A judicial deliverance from an accusation of guilt; a deliverance or setting free from a criminal charge by the process of a trial at law, and the verdict of a jury, pronouncing the party not guilty.* 4 *Bl. Com.* 361. 1 *Nev. & Man.* 36. See *Acquietatus.*

In old English law. Exemption from entry and molestation by a superior lord, for services issuing out of lands. *Co. Litt.* 100 a. *Cowell.* See *Acquietantia.*

ACQUITTANCE. [L. Lat. *acquietancia*, q. v.] A discharge in writing, of a sum of money, or debt due, duty agreed to be performed, or any other obligation. *Spelman*, voc. *Acquietantia. Cowell. Termes de la Ley. Shep. Touchst.* 347. Applied as well to the act, as to the instrument by which it is effected. See *Acquietantia*, *Receipt*, *Release.*

ACRA. [pl. *acræ.*] L. Lat. In old English law. An acre. *Spelman. Fleta*, lib. 2, c. 71, §§ 3, 4, 5. *Co. Litt.* 5 b. *Towns. Pl.* 26, 196. *In Bokenhale, duas carucatas terræ, et dimidiam, et* 26 acras *prati, et* 50 acras *silvæ, et* 70 acras *de brushe.* In Bokenhale, two carves and a half of arable land, and twenty-six acres of meadow, and fifty acres of wood, and seventy acres of brush. *Charta Edredi Regis*, A. D. 948. *Spelman. Do tibi decem* acras *in tali loco;* I give you ten acres in such a place. *Bract.* fol. 16 a. See *Ager.*

ACRE. [Lat. *jugerum;* L. Lat. *acra*, *acer*, from Sax. *æcer*, from Lat. *ager*, a field. *Spelman.*] A measure of land containing forty perches in length, and four in breadth; or according to that proportion, be the length more or less; making an area of one hundred and sixty perches. *Ord. de Admens. Terræ*, 35 Edw. I. st. 1. *Stat.* 24 Hen. VIII. c. 4. *Crompt. Jurisd.* 222. *Cowell. Stat.* 5 Geo. IV. c. 74. Declared by statute, in New-York, to be equal to a rectangle sixteen perches in length and ten in breadth, making the same area. 1 *N. Y. Rev. Stat.* [607,] 617, § 7. See *Sergeant's Land Laws*, 185. See *Perch.*

*** Originally the word *acre*, (*acer*, *aker*, or Sax. *æcer*,) was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, (*latum quantumvis agrum,*) wide champaign, or field; which is still the meaning of the German *acker*, derived probably from the same source, and is preserved in the names of some places in England, as Castle Acre, South Acre, &c. *Spelman.* See *Acrefight.* When the word came to be applied as a measure of ground, the quantity denoted by it was still various, until determined by the English statutes above referred to. *Kennett's Paroch. Ant.* 534. *Cowell.* And even after the establishment of a standard acre, customary acres continued to be used in different parts of England, varying greatly from each other and from the standard. Thus, in the case of Barksdale v. Morgan, (in the C. B., E. T. 5 W. & M.) the common acceptation of the word *acre* in Cornwall was said by the court to amount to as much as a hundred of other counties. 4 *Mod.* 186. And see *Yearb.* T. 3 Edw. II. 98. But these customary measures were finally abol-

ished by stat. 5 Geo. IV. c. 74. *McCulloch's Dict.* At the great Domesday inquisition, the common pasture in England seems to have been measured by *hides*, the arable land by *carucates*, or carves, and the meadow by *acres*. *Cowell.* For the measure of the Scotch *aiker*, see *Skene de Verb. Sign.* v. *Particata.*

ACREFIGHT or ACRE. [Sax. *æcerfeoght*, from *æcer*, a field, and *feoght*, fight.] A camp or field fight: a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms, with sword and lance. Called *campfight*, and the combatants *champions*, (L. Lat. *campiones*, from *campus*,) from the open *field* that was the stage of trial. *Cowell.*

ACRESCER, *Acresser*, *Acrestre*. L. Fr. To increase; to multiply; to advance or rise; to accrue. *Kelham.*

AC SI. Lat. As if. *Towns. Pl.* 23. 27. These words frequently occur in old English statutes. Lord Bacon expounds their meaning in the Statute of Uses: "The statute gives entry, not *simpliciter*, but within an *ac si*." *Bac. Read. Uses*, Works, iv. 195.

ACT. [Lat. *actum*, *actus*; from *agere*, to do; Fr. *acte*.] A thing done; a thing done by an ordinary human agent; the deed of an individual. See *Actus*, *Actum.*

A thing done by a superior power, such as the law, the Almighty; an event happening from the operation of such superior power. See *Act of God*, *Act of law.*

A thing done in writing, or evidenced by writing; a record or instrument, public or private.

A thing done, or business formally transacted by a public body, and always expressed in writing; especially, a legislative proceeding: a written law, formally ordained or passed by the legislative power of a state, called in England an *act of parliament*, and in the United States an *act of congress*, or of the *legislature*: a statute.* See 26 *Penn. St. R.* 450. See *Statute.*

A thing done by a court, and expressed in writing; an order of court, or other judicial proceeding.* See *Acta.* In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called *acts.* *Encyclop. Americ.* See *infra.*

A thing done in writing before a public officer, as a notary; the record of such a thing; a notarial, or other public instrument.* *Poth. Oblig.* part iv. ch. 1, art. 1, sect. 1. See *Acta*, *Ab actis.*

Any instrument in writing to verify facts. *Webster.*

To ACT. In Scotch practice. To do or perform judicially; to enter of record. Surety "acted in the Books of Adjournal." 1 *Brown's R.* 4.

ACT. In Scotch practice. An abbreviation of *actor*, (proctor or advocate, especially for a plaintiff or pursuer,) used in records. "*Act.* A. *Alt.* B." an abbreviation of *Actor*, A. *Alter*, B.; that is—for the pursuer or plaintiff, A., for the defender, B. 1 *Brown's R.* 336, note. 2 *Id.* 144, note; 507, note.

ACT IN PAIS. L. Fr. & Eng. An act in the country, as distinguished from an act in court; an act which is not a matter of record, or done in a court of record. 2 *Bl. Com.* 294. *Story on Agency*, § 25, note. See *In pais.*

ACT OF BANKRUPTCY. An act done or suffered by a trader, tending to defraud his creditors, (as by endeavoring to avoid them, or evade their just demands,) by which he becomes a *bankrupt*, within the meaning of the bankrupt laws, and liable to be proceeded against as such. 2 *Bl. Com.* 477. See *Bankruptcy*, *Bankrupt.*

*** In English law, the following acts, when committed by a person who *trades*, within the meaning of the bankrupt laws, are acts of bankruptcy: 1. Departing the realm: 2. Being out of the realm, and remaining abroad: 3. Departing from his dwelling house, or otherwise absenting himself: 4. Beginning to keep his house: 5. Suffering himself to be arrested for any debt not due: 6. Yielding himself to prison: 7. Suffering himself to be outlawed: 8. Procuring himself to be arrested: 9. Procuring his goods, money, or chattels, to be attached, sequestered, or taken in execution: 10. Making or causing to be made within the realm, or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels: 11. Making or causing to be made any fraudulent surrender of any of his copyhold lands or tenements: 12. Making or causing to be made any fraudulent gift, delivery or transfer of any of his goods or chattels. 2 *Steph. Com.* 196; and see *Id.* 197. *Wharton's Lex.*

The following acts were designated by the late bankrupt acts of the United States, as acts of bankruptcy: 1. Departing from

the state, district, or territory of which the trader is an inhabitant, with intent to defraud creditors: 2. Concealment to avoid being arrested: 3. Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands or tenements to be attached, distrained, sequestered or taken in execution: 4. Removal or concealment of goods, chattels and effects, to prevent their being levied upon, or taken in execution, or by other process: 5. Making a fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, chattels, credits, or other evidences of debt. *Act of Congress*, August 19, 1841, § 1. *Owen on Bankruptcy*, 15—28.

ACT OF CONTRAVENTION. In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court. *Kames' Equity*, Pref. 1 *Id.* 228.

ACT OF CURATORY. In Scotch practice. The act extracted by the clerk, upon any one's acceptance of being curator. *Forbes' Inst.* part 1, b. 1, ch. 2, tit. 2. 2 *Kames' Equity*, 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF GOD. [Lat. *actus Dei;* Fr. *Dieu son acte.*] Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. *Story on Bailments*, § 25. 2 *Bl. Com.* 122. *Broom's Max.* 108. 2 *Crabb's Real Prop.* 825, § 2176. Sir William Jones objects to the use of this phrase as made too familiar by habit, and as bordering on irreverence, and suggests the substitution of the expression *inevitable accident. Jones on Bailments*, 104. *Story on Bailments*, § 489.

ACT OF GRACE. In Scotch law. A term applied to the act of 1696, c. 32, by which it was provided that where a person imprisoned for a civil debt is so poor that he cannot aliment [maintain] himself, and will make oath to that effect, it shall be in the power of the magistrates to cause the creditor by whom he is incarcerated, to provide an aliment for him, or consent to his liberation; which, if the creditor delay to do for ten days, the magistrate is authorized to set the debtor at liberty. *Bell's Dict.*

ACT OF SETTLEMENT. In English law. The statute of 12 & 13 Will. III. c. 2, by which the crown of Great Britain was limited to the present royal family. 1 *Bl. Com.* 128. 2 *Steph. Com.* 490.

ACT OF UNIFORMITY. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer as then recently revised, should be used in every parish church, and other place of public worship, and otherwise ordaining a uniformity in religious services, &c. 3 *Steph. Com.* 104.

ACT OF UNION. In English law. The statute of 5 Anne, c. 8, by which the articles of union between the two kingdoms of England and Scotland were ratified and confirmed. 1 *Bl. Com.* 97.

ACT BOOK. In Scotch practice. The minute book of a court. 1 *Swinton's R.* 81.

ACTA. Lat. [plur. of *actum*, q. v.] In the Roman and civil law. Acts, doings, transactions; especially those of which a record was or is kept.

The acts or proceedings of persons clothed with supreme authority, such as the sovereign, the legislative body; decrees; laws. The books, records or registers (*libri seu tabulæ*) of such acts. *Calv. Lex.*

The acts or proceedings of magistrates and public officers (things done by or before them,) of which a record was kept. *Id. Cod.* 1. 56. 2. Acts done, or contracts executed before notaries, of which a record is kept, are still sometimes called *acta*. In Louisiana, where a contract or other act is executed in a particular manner before a notary, the protocol, or original, remains in his possession *apud acta*, and the act is deemed what is technically called "an authentic act." Story, J. 9 *Peters' R.* 607, 625.

The acts or proceedings of courts of justice, of which a minute or record was kept. *Id. Dig.* 42. 1. 45. The minutes or records, (Gr. ὑπόμνηματα,) themselves. *Dig.* 42. 1. 46. *Cod.* 5. 50. 2. *Nov.* 47. *Brissonius. Actis insinuare;* to deposit among the records; to file. *Inst.* 4. 11. 3. *Acta sive irrotulationes;* acts or enrolments. *Bract.* fol. 1 b. *Extractum ex actis Curie Justiciarie;* extract from the minutes of the Court of Justiciary. 1 *Pitcairn's Crim. Trials*, part 1, p. 116. *Extractum de libris* actorum *Adjornalis;* extract from the books of minutes of Adjournal. *Id.* p. 118.

ACTA. Lat. [plur of *actum*, q. v.] In old English law. Acts; actions; the acts

of individuals. **Acta exteriora indicant interiora secreta.** Outward acts indicate inward, or secret purposes. 8 *Co.* 290, 291. Or, in Bracton's language, *per exteriora præsumi poterit de interioribus;* by outward acts we may judge of [presume, or infer,] inward motives, or designs. *Bract.* fol. 42 a. The law, in some cases, judges of a man's previous intentions by his subsequent acts. Thus, where an entry, authority, or license is given to any one by the law, and he abuses it, he shall be a trespasser *ab initio;* the law judging by the subsequent act, *quo animo*, or with what intent he entered. 8 *Co. ub. sup. Broom's Max.* 139, [221.]

ACTA DIURNA. Lat. In the Roman law. Daily acts; the public registers or journals of the daily proceedings of the senate, assemblies of the people; courts of justice, &c. *Tacit. Annal.* v. 4; xii. 24; xiii. 31. Supposed to have resembled a modern newspaper. *Brande's Dict. Acta quotidiana. Cod.* 1. 55. 6.

ACTA PUBLICA. Lat. In the civil law. Public acts; things done and recorded before public officers, judges, notaries, &c. *Calv. Lex. Dig.* 27. 7. 43. *Cod.* 2. 1. 2.

Books and records containing the public acts, laws or statutes of a state. *Spiegelius. Oldendorpius.*

ACTILIA. L. Lat. In old Scotch law. Armor; weapons; harness. *Cum* actiliis *et harnesiis suis;* with their armor and harness. *Stat.* 2 *Rob. Bruce*, c. ordinatum, 27. *Skene de Verb. Sign.*

ACTIO. Lat. [from *agere*, q. v.] In the civil law. An action; the right of pursuing, or suing for what is due to one, in the peculiar mode or form termed *in judicio*, i. e. before a *judex;* (q. v.) or, in the later civil law, the right of pursuing one's due by process of law, or before a judicial tribunal. *Actio nihil aliud est quam jus persequendi in judicio quod sibi debetur;* an action is nothing else than the right of pursuing, in a court of justice, that which is due to one. *Inst.* 4. 6. pr. This definition of the Institutes is copied, with a slight change in the order of the words, from the older definition of Celsus in the Digests: *Nihil aliud est actio quam jus quod sibi debeatur, judicio persequendi;* which may be translated in precisely the same language, with the exception of the word *judicio*, which has the sense of a proceeding before a *judex*, already noticed. *Dig.* 44. 7. 51. Bracton, who is followed by Fleta, adopts it, with a change in two words only, (*actio nihil aliud est quam jus* prosequendi *in judicio quod* alicui *debetur,*) accompanying it with a commentary intended to adapt it to the English law of his time. *Bract.* fol. 98 b. *Fleta*, lib. 1, c. 16, § 2. Later writers have endeavored to accommodate it still more closely to the English system, as will be explained under another head. See *Action.*

*** The precise nature of the Roman *actio* cannot well be understood from the very general definition of the civil law, (which, it will be seen, describes it not as a proceeding, but as a *right,*) without some explanation. And first, as to the peculiar meaning of the expression *in judicio*, it will be necessary to observe that the proceedings in civil causes, under the old Roman system, were always conducted before two different judicial officers; the *prætor*, or magistrate, before whom the parties (*actor* and *reus*) appeared, and stated the case and defence; and the *judex*, a private person appointed by the prætor, to investigate the facts and decide the cause, according to a written formula of instructions. See *Judex.* Hence arose the division of the proceedings into two stages; those before the prætor, which were said to be *in jure*, and those before the *judex*, which were said to be *in judicio. Gaius, Inst.* iv. § 119. 1 *Kaufm. Mackeld. Civ. Law*, 187, note. The *actio* itself, under the earliest system of what were termed *actiones legis*, (q. v.) was a formula for which the *actor* or plaintiff applied to the prætor, at the commencement of the proceedings, and which the latter, in his discretion, allowed, (*actionem dabat.*) In its general objects, it resembled, or at least corresponded with the original writ of the English system, and from the manner in which it is always contrasted with the *exceptio*, (a formula on the part of the defendant answering nearly to the modern plea,) seems to have partaken also of the nature of the English count, or declaration. Actionis *verbo non continetur* exceptio, (under the word *actio*, an *exceptio* is not included,) is a maxim of the Digests. *Dig.* 50. 16. 8. Like the original writ, the *actio* lay at the foundation of the proceedings, was essential to their due institution, and gave the right to proceed in the particular case; and from this last circumstance may itself, not unaptly, have been termed the

right of pursuing, or *jus persequendi*, &c. It should not be overlooked, however, that notwithstanding the express words (*nihil aliud*) of the definitions already given, the *actio* was practically regarded as *something else* than a mere *jus*, or right; it was not only a *jus persequendi*, but the *persecutio* itself. *Actionis verbo etiam* persecutio *continetur*. *Dig.* 50. 16. 34.

The epithet *jus* seems more appropriately to belong to the proceeding by *formula*, which took the place of the *actiones legis*, when the latter were abolished. This formula, which, like the technical *actio*, was obtained from the prætor by the plaintiff, appears to have combined the qualities, or something like the qualities of the writ, pleadings, and *nisi prius* record of the English practice; concluding with the appointment of a *judex*, to try the cause, and an express direction to him how to decide it, as the facts might appear. *Gaius, Inst.* iv. § 40—47. 1 *Spence's Chancery*, 210, 216, 251. It evidently constituted the plaintiff's warrant for proceeding before the *judex*, or *in judicio*, and therefore may well have been defined *jus persequendi in judicio*.

Before the time of Justinian, the practice of appointing a *judex* had been laid aside; the investigation of the facts and decision of the cause being given to the same officer before whom the proceedings were originally commenced. 1 *Kaufm. Mack. Civ. Law*, 188, note. There had ceased, therefore, to be any proceeding *in judicio*, in the proper technical sense of the term. And yet the ancient definition, framed doubtless with reference to that proceeding, was adopted by Justinian almost *in hæc verba*. This may be explained by the supposition that the word *judicium* had, by that time, acquired the larger sense of judicial investigation, procedure or process in general, just as *judex* had exchanged its technical meaning, (a private person appointed by the prætor to investigate the facts of the case, and decide it according to certain instructions,) for that of a public judge, having undivided control of the cause from beginning to end. See *Judicium*, *Judex*.

Bracton, as has been observed, adopts the definition of Justinian almost literally, giving to the word *jus* the full meaning of *right*, and to *judicium* the general sense of a judicial procedure, or process of law. *Bract.* fol. 98 b. The same author, however, uses *judicium* in numerous other passages, in the sense of a *court*, and as the synonyme of *curia*. See *Judicium*. *In judicio*, therefore, in his definition, if not in that of the Institutes, may not improperly be translated "in a court of justice," "before a judicial tribunal."

ACTIO. Lat. In ancient English law. An action; otherwise termed, *placitum*, and sometimes *loquela*. *Placitum sive actio*. *Bract.* fol. 102 b. See *Action*.

Actio non datur non damnificato. An action is not given to one who is not injured. *Jenk. Cent.* 69.

Actio quælibet it sua via. Every action proceeds in its own course. *Id.* 77.

Actionum genera maxime sunt servanda. The kinds or varieties of actions are especially to be preserved. *Lofft*, Appendix, 460.

ACTIO. L. Lat. In mediæval law. An office. Actio *comitatus*; the office of count. *Marculf. Form.* lib. 1. *Spelman.*

ACTIO NON ACCREVIT INFRA SEX ANNOS. L. Lat. The action did not accrue within six years. The emphatic words of the old plea of the statute of limitations, literally translated in the modern forms, and retained as the distinctive name of the plea. 3 *Chitt. Pl.* 941. See *Non assumpsit infra sex annos*.

ACTIO. NON. L. Lat. In pleading. An abbreviation of *actionem non*, the emphatic words anciently used at the commencement of a special plea in bar; the defendant first averring generally that the plaintiff "ought *not* to have or maintain his *action*," (*actionem non habere*,) and then proceeding to state the reason—"because he says that," &c. Hence this whole preliminary formula, (literally translated in the modern forms,) has been technically termed the *actio. non*, or *actionem non*. *Steph. Plead.* 394, (Am. ed. 1824.) 3 *Chitt. Pl.* 906. As orally delivered by the pleader, it ran thus: *Action ne deves aver, car nous disons que*, &c.; you ought not to have your action, for we say that, &c. *Yearb.* M. 4 Hen. VI. 1. P. 4 Hen. VI. 13. By the rules of the English courts, (Hil. T. 4 Will. IV. 1, s. 10,) this clause was dispensed with.

ACTIO. NON ULTERIUS. L. Lat. In English pleading. A name given to the distinctive clause in the new plea to the *further maintenance* of the action, introduced in place of the plea *puis darrein continuance*; the averment being that the plaintiff ought not *further* (*ulterius*,) to

have or maintain his action. *Steph. Pl.* 64, 65, 401.

ACTIO AD EXHIBENDUM. Lat. In the civil law. An action to compel the *exhibition* or production of a thing, together with what was called *rei causa;* under which was comprehended all that the claimant of the thing could demand in addition thereto, and especially what he could have had if the thing had not been withheld from him. *Inst.* 4. 17. 3. *Id.* 4. 6. 31. *Dig.* 10. 4. *Cod.* 3. 42. 1 *Mackeld. Civ. Law*, 155, § 153.

ACTIO ARBITRARIA. In the civil law. An arbitrary action; one depending upon the discretion of the judge, (*ex arbitrio judicis pendens;*) or in which the judge was allowed to determine according to equity and the circumstances of the particular case, how satisfaction should be made to the plaintiff; (*permittitur judici ex bono et æquo, secundum cujusque rei de quâ actum est naturam, æstimare quemadmodum actori satisfieri oporteat.*) If the defendant refused to conform to the decision of the judge, he might be condemned at discretion; (*nisi arbitrio judicis actori satisfaciat, —condemnari debeat.*) *Inst.* 4. 6. 31.

ACTIO BONÆ FIDEI. In the civil law. An action of good faith; a species of equitable action *ex contractu*, in which the *judex* was allowed a discretionary power of determining upon principles of justice and equity, (*ex bono et æquo,*) how much should be paid to the plaintiff, (*quantum actori restitui debeat;*) of allowing a set off (*compensatio,*) on the part of the defendant; and generally, of taking into consideration the circumstances of the case, the intentions of the parties, and whatever was understood *ex fide bonâ.** *Inst.* 4. 6. 28. 30. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, §§ 1183, 1185. 1 *Mackeld. Civ. Law*, 194, § 197. These actions were also called *arbitria*, and the *judex, arbiter;* they were always brought for an *incertum*, (something indefinite or not ascertained,) and were distinguished from the *actiones stricti juris*, which were governed by strict rules, and were always directed to a *certum. Id. ibid.* See *Actio stricti juris.*

ACTIO CIVILIS. In the civil law. A civil action; an action founded on the *jus civile*, or proper Roman law, as distinguished from the *actio honoraria*, or prætorian action. All actions, in the Roman law, were, with respect to their origin, either civil or honorary, (*aut civiles decuntur aut honorariæ.*) *Dig.* 44. 7. 25. 2. A distinction corresponding with the modern division into actions *at law*, and actions *in equity.* 1 *Story's Equity Jur.* § 37.

ACTIO CIVILIS. In the common law. A civil action, as distinguished from a criminal action. Bracton divides personal actions into *criminalia et civilia*, according as they grow out of crimes or contracts, (*secundum quod descendunt ex maleficiis vel contractibus.*) *Bract.* fol. 101 b.

ACTIO COMMODATI. In the civil law. An action of loan. See *Commodati actio.*

ACTIO COMMUNIS. A common action. A term applied by Bracton to an action where the thing demanded was common, and not several. *Bract.* fol. 103.

ACTIO COMMUNI DIVIDUNDO. In the civil law. An action for *dividing* a *common* property, or thing held in common. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. *Dig.* 10. 3. See *Communi dividundo.* Enumerated by Bracton and Fleta, among actions arising *quasi ex contractu. Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

ACTIO CONFESSORIA. In the civil law. An affirmative action; an action founded upon the affirmative allegation of some right in the plaintiff in another's land, as a right of way, &c.; and not upon the denial of the right of another in his land.* *Inst.* 4. 6. 2. *Confessoria dicitur, quia constituta est verbis affirmativis. Bract.* fol. 103. See *Actio negatoria.*

ACTIO CONTRARIA. In the civil law. A contrary or cross action, as distinguished from *actio directa*, (q. v.) *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, §§ 805, 816, 826. *Bract.* fol. 103.

ACTIO CRIMINALIS. In the common law. A criminal action. *Bract.* fol. 102 b. See *Actio civilis.*

ACTIO DE DOLO MALO. In the civil law. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions, (*cum omni causâ;*) or, where this was not practicable, for compensation in damages. 1 *Mackeld. Civ. Law*, 221, § 217. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1152. *Dig.* 4. 3. *Cod.* 2. 21. *Bract.* fol. 103 b.

ACTIO DE IN REM VERSO. In the civil law. An action concerning a thing

converted to the profit of another; an action granted to one who had contracted with a son or slave, in order to recover whatever the father or master, by means of such contract, had converted to their own advantage. *Inst.* 4. 7. 4. *Dig.* 15. 3. *Cod.* 4. 26. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1222. *Halifax Analysis*, b. 3, c. 2, n. 7.

ACTIO DE PECULIO. In the civil law. An action concerning, or against the *peculium*, or separate property of a party.* An action to which fathers and masters were liable on the contracts of their children and servants, to the extent of the latter's *peculium*, patrimony, or separate estate. *Inst.* 4. 6. 10. *Id.* 4. 7. 4. *Dig.* 15. 1. *Cod.* 4. 26. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1219.

ACTIO DE PECUNIA CONSTITUTA. In the civil law. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another, without any formal stipulation, (*nulla stipulatione interposita.*)* *Inst.* 4. 6. 9. *Dig.* 13. 5. *Cod.* 4. 18.

ACTIO DEPOSITI. In the civil law. An action of deposit; an action upon or for a deposit; an action to recover a thing deposited. *Dig.* 16. 3. *Cod.* 4. 34. Called an action *bonæ fidei.* *Dig.* 16. 3. 23.

ACTIO DIRECTA. In the civil law. A direct action, in the stricter sense of the word *directus;* (q. v.) an action founded on strict law, and conducted according to fixed forms; called also *vulgaris.** 1 *Mackeld. Civ. Law*, 189, § 194. *Id.* 268, note. *Dig.* 44. 7. 37. pr. *Bract.* fol. 103 a.

An action on a contract made through an agent, brought between the immediate parties to the contract, that is, the agent and the other contractor. *Story on Agency*, § 163.

An action for an injury directly committed by a person with his own hand or body, (*si quis corpore suo damnum dederit;*) or where the act done is immediately, and not consequentially injurious.* *Inst.* 4. 3. 16. All these are distinguished from the *actio utilis.* (q. v.)

An action brought to enforce an obligation, which is essential to a contract, and which therefore exists immediately after entering upon the same; as distinguished from *actio contraria*, or one brought for the payment of a counter claim. 1 *Mackeld. Civ. Law*, 191, § 195.

ACTIO EX CONDUCTO. In the civil law. An action upon hiring; an action which the hirer (*conductor*) of a thing, as a house, &c., might have against the letter or lessor (*locator.*) *Dig.* 19. 2. 15. *Cod.* 4. 65.

ACTIO EX CONTRACTU. In the civil and common law. An action of contract; an action arising out of, or founded on contract. *Inst.* 4. 6. 1. *Dig.* 44. 7. 25. 1. *Bract.* fol. 102. 3 *Bl. Com.* 117.

ACTIO EX DELICTO. In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. 1 *Mackeld. Civ. Law.* 191, § 195. 3 *Bl. Com.* 117. *Ex maleficio* is the more common expression of the civil law; which is adopted by Bracton. *Inst.* 4. 6. 1. *Bract.* fols. 102, 103.

ACTIO EX EMPTO. In the civil law. An action of purchase, or upon purchase; an action which a buyer is entitled to maintain against a seller, in order to cause him to deliver possession of the thing sold; with its titles and fruits, and every thing dependent upon it. *Pothier, Contr. of Sale*, part 2, ch. 1, art. 5. *Inst.* 4. 6. 28. Otherwise called *actio empti*, or *emti.* *Dig.* 19. 1. *Cod.* 4. 49. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24, § 912.

ACTIO EX FACTO. In the civil law. An action of fact, or upon fact. *Dig.* 44. 7. 25. 1.

ACTIO EX LOCATO. In the civil law. An action upon letting; an action which the person (*locator*) who let a thing for hire to another, might have against the hirer, (*conductor.*) *Dig.* 19. 2. *Cod.* 4. 65. See *Actio locati.*

ACTIO EX VENDITO. In the civil law. An action upon sale; an action which a seller is entitled to maintain against a buyer, to recover the price of a thing sold and delivered. *Inst.* 4. 6. 28. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24, § 915. Called *actio venditi. Id. ibid. Dig.* 19. 1. *Cod.* 4. 49.

ACTIO EXERCITORIA. In the civil law. An action against the *exercitor* or employer of a vessel. See *Exercitoria actio.*

ACTIO FAMILIÆ ERCISCUNDÆ. In the civil law. An action for the partition of an inheritance. *Inst.* 4. 6. 20. *Id.* 4. 17. 4. Called by Bracton and Fleta, a mixed action, and classed among actions arising *ex quasi contractu. Bract.* fol. 100 b. *Id.* fol. 443 b, 444. *Fleta*, lib. 2, c. 60, § 1.

Id. lib. 5, c. 9, § 2. See *Familiæ erciscundæ.*

ACTIO FINIUM REGUNDORUM. In the civil law. An action for the determination of boundaries between adjoining lands. *Inst.* 4. 17. 6. *Id.* 4. 6. 20. Enumerated by Bracton and Fleta, among mixed actions. *Bract.* fol. 444. *Fleta,* lib. 5, c. 9, § 3. See *Finium regundorum.*

ACTIO FURTI. In the civil law. An action of theft; an action founded upon theft. *Inst.* 4. 1. 13—17. *Bract.* fol. 444. This could only be brought for the penalty attached to the offence, (*tantum ad pœnæ persecutionem pertinet,*) and not to recover the thing stolen itself, for which other actions were provided. *Inst.* 4. 1. 19.

ACTIO HONORARIA. In the civil law. An honorary, or prætorian action. *Dig.* 44. 7. 25. 35. See *Actio civilis.*

ACTIO IN DUPLUM. In the civil law. An action for the double value of a thing. *Inst.* 4. 6. 21, 23. *Bract.* fol. 103 a.

ACTIO IN FACTUM. In the civil law. An action upon the fact, or adapted to the fact; an action not confined to any particular formula, but founded on the peculiar circumstances of the case; and intended to meet cases to which other forms of action were not applicable.* *Dig.* 19. 5. 1. pr. *Id.* 19. 5. 11. *Id.* 44. 7. 25. 1. It resembled the action *on the case* of the common law. 1 *Kames' Equity,* 147.

ACTIO IN PERSONAM. In the civil and common law. An action against the person; a personal action; an action founded on some personal liability, arising either out of contract, (*ex contractu,*) or malfeasance, (*ex delicto,*) as distinguished from an *actio in rem,* or one brought for the recovery of a thing, independently of any personal obligation. *Inst.* 4. 6. 1. *In personam actio est, qua cum eo agimus qui obligatus est nobis ad faciendum aliquid, vel dandum;* an action *in personam* is one which we may bring against him who is bound to us, to do or to give some thing. *Dig.* 44. 7. 25. It was otherwise called *condictio, actio personalis,* and *judicium personale,* (qq. v.) *Id. ibid. Inst.* 4. 6. 8. in tit. *Id.* 4. 6. 15. *Id.* 4. 11. pr. and 1. The great leading division of actions into those *in rem* and *in personam,* was established by the civil law, and introduced into the law of England chiefly through Bracton, who adopts it in terms. *Bract.* fol. 101 b.

ACTIO IN QUADRUPLUM. In the civil law. An action for the quadruple value of a thing. *Inst.* 4. 6. 21. *Bract.* fol. 103 a.

ACTIO IN REM. In the civil and common law. An action *for a thing;* an action for the recovery of a thing possessed by another. *Inst.* 4. 6. 1. *In rem actio est per quam rem nostram quæ ab alio possidetur petimus, et semper adversus eum est qui rem possidet;* an action *in rem* is one by which we demand a thing belonging to us which is possessed by another, and it is always brought against him who has the thing in possession. *Dig.* 44. 7. 25. Otherwise called *vindicatio. Id. ibid. Inst.* 4. 6. 15. Bracton confines this description of actions to those brought for the recovery of some immovable, corporeal thing, (*res corporalis immobilis,*) as land, (*fundum aliquem vel terram,*) or some right therein, (*jus quod rei adhæreat.*) *Bract.* fol. 102. Hence the meaning of the term real action (*actio realis,* q. v.) in the common law.

An action directed *against a thing,* out of which the party bringing it seeks to obtain satisfaction, instead of proceeding against the person.* Thus, in the courts of admiralty, where a vessel is libelled for the purpose of obtaining satisfaction of some claim, or on the ground of forfeiture, it is said to be a proceeding *in rem,* not touching the person. 3 *Dallas' R.* 297. 1 *Kent's Com.* 373. *Id.* 367, note. 3 *Id.* 196.

ACTIO IN SIMPLUM. In the civil law. An action for the single value of a thing. *Inst.* 4. 6. 21, 22. *Bract.* fol. 103 a.

ACTIO IN TRIPLUM. In the civil law. An action for the triple value of a thing. *Inst.* 4. 6. 21, 24. *Bract.* fol. 103 a.

ACTIO INDIRECTA. An indirect action. A species of action mentioned by Bracton, probably the reverse of the *actio directa,* (q. v.) *Bract.* fol. 103 a.

ACTIO INJURIARUM. In the civil law. An action for injuries done by beating, wounding, slanderous language, libel, and the like. *Inst.* 4. 4. pr. 1, 12. *Bract.* fol. 103 b. See *Injuria.*

ACTIO INSTITORIA. See *Institoria actio.*

ACTIO LEGIS AQUILIÆ. In the civil law. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another.

Otherwise called *damni injuriæ actio. Inst.* 4. 3. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 3. *Halifax Anal.* b. 2, c. 24. *Bract.* fol. 103 b.

ACTIO LOCATI. In the civil law. An action which lay for the letter (*locator*) of a thing against the hirer, where the terms of the contract were not complied with by the latter. *Inst.* 3. 25. pr. *Dig.* 19. 2. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 928. See *Actio ex locato.*

ACTIO MANDATI. In the civil law. An action founded upon the contract of *mandatum* (q. v.) or mandate; an action of mandate. *Dig.* 17. 1. Otherwise called *mandati actio*, (q. v.)

ACTIO MIXTA, or MISTA. In the civil law. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem*, and *in personam. Inst.* 4. 6. 16, 18, 19, 20. 1 *Mackeld. Civ. Law.* 193, § 196.

An action in which each party is *actor*, or plaintiff; such as the actions *finium regundorum, familiæ erciscundæ, communi dividundo*, and others. *Dig.* 47. 7. 37. 1.

Bracton adopts both these significations, describing the *actio mixta*, in the first sense, as one which claims a thing itself, and a penalty for its unjust detention, (*persequitur rem ipsam, et pœnam propter injustam detentionem.*) *Bract.* fol. 102 b. 372 a. See *Fleta*, lib. 5, c. 9. Hence the mixed action of the common law. See *Mixed action.*

ACTIO NEGATORIA, or NEGATIVA. In the civil law. A negatory or negative action; an action founded on the denial (*negatio*) of another's right; as where a right of way, or other servitude in a particular estate is denied. *Inst.* 4. 6. 2. *Bract.* fol. 103 a. *Heinecc. Elem.* lib. 4, tit. 6, § 1136. *Halifax Anal.* b. 3, c. 1, n. 8. See *Actio confessoria.*

ACTIO NEGOTIORUM GESTORUM. In the civil law. An action upon, or on account of *business done.* An action given in cases where a person transacted the business of another during his absence, (*cum quis* negotia *absentis* gesserit,) or without a commission, or authority, (*sine mandato.*) *Inst.* 3. 28. 1. This was of two kinds; a *direct* action, which lay for the person whose business had been transacted, against him who had transacted it, (*domino rei gestæ adversus eum qui gessit,*) and a *cross* action, which lay for the *negotiorum gestor*, as he was called, against the other. *Id. ibid. Heinecc. Elem.* lib. 3, tit. 28, §§ 973, 974. See *Negotiorum gestor.* This action is enumerated by Bracton and Fleta among actions arising *quasi ex contractu*, or *ex quasi contractu. Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

ACTIO NOXALIS. In the civil law. A noxal action; an action which lay against a master for a crime committed, or injury done by his slave; and in which the master had the alternative either to pay for the damage done, or to deliver up the slave to the complaining party. *Inst.* 4. 8. pr. *Heinecc. Elem.* lib. 4, tit. 8. *Halifax Anal.* b. 3, c. 2. So called from *noxa*, the slave or offending person, or *noxia*, the offence or injury itself. *Inst.* 4. 8. 1.

ACTIO PERPETUA. In the civil law. A perpetual or unlimited action; one not limited to any particular period within which it should be brought.* *Inst.* 4. 12. pr. The opposite of the *actio temporalis*, (q. v.)

ACTIO PERSONALIS. In the civil and common law. A personal action. The ordinary term for this kind of action in the civil law is *actio in personam*, (q. v.) the word *personalis* being of only occasional occurrence. *Inst.* 4. 6. 8. *in tit. Id.* 4. 11. pr. 1. *Dig.* 50. 16. 178. 2. Bracton, however, uses it freely, and hence the *personal action* of the common law. *Bract.* fol. 102 a. 159 b. See *Personal action.*

Actio personalis moritur cum persona. A personal action dies with the person; a right of personal action dies with the person. *Noy's Max.* c. 1, max. 14. Called "a general rule of law, under which are included all actions for injuries merely personal." Lord Ellenborough, C. J. 2 *M. & S.* 415. "All private criminal injuries as well as all public crimes, are buried with the offender." Lord Mansfield, C. J. *Cowp.* 375.

This maxim is understood in two senses, according to the meaning given to the word *actio;* (1.) the *right to bring* a personal action dies with the person having such right: (2.) a personal *action when brought* dies with the party who brought it, (or abates on his death,) and cannot be prosecuted further. The latter of these presents the most literal translation of the maxim, but is a clear consequence of the former, which is the one most frequently illustrated in the books.

This maxim is not now understood in

the general sense which the terms of it appear to convey, having long been restricted in its application to that description of personal actions which are founded in tort, and are in form *ex delicto*. Lord Mansfield, C. J. *Cowp.* 371, 374—376. *Broom's Max.* 404, [702.] And even in regard to these, its application has been still further narrowed, from time to time, by legislative provisions giving rights of action to, and against the representatives of deceased persons, for injuries done to, or in respect of property. So that the principle embodied in the maxim is now strictly true only in cases where a tort is committed against the person, as by assault, battery, libel, slander, and the like. *Id. ibid.* 404—407, [702—711.] 3 *Bl. Com.* 302. *Shep. Touch.* 481. *Stat.* 4 Edw. III. c. 7. *Stat.* 3 & 4 Will. IV. c. 42. 2 *N. Y. Rev. St.* [114] 51, §§ 4—6. *Id.* [447] 365, §§ 1, 2. 17 *Howard's R.* 212. That it was originally applied to contracts, appears from Bracton. *Item tollitur* [*obligatio*] *morte alterius contrahentium, vel utriusque*; the obligation is also destroyed by the death of one or both of the contracting parties. *Bract.* fol. 101 a. And see *Noy's Max. ub. sup.*

ACTIO PIGNORATICIA. In the civil law. An action of pledge; an action founded on the contract of pledge, (*pignus.*) *Dig.* 13. 7. *Cod.* 4. 24. See *Pignoratitia actio.*

ACTIO PŒNÆ PERSECUTORIA. In the civil law. An action prosecuted for a penalty only, and not for a specific thing. *Inst.* 4. 6. 16, 18.

ACTIO PŒNALIS. In the civil law. A penal action; an action brought to enforce the payment of a private penalty. 1 *Mackeld. Civ. Law*, 193, § 196.

ACTIO PRÆJUDICIALIS. In the civil law. A preliminary, or preparatory action. An action brought for the determination of some point or question arising in another or principal action; and so called from its being *determined before* (*prius*, or *præ judicari*,) the principal action could proceed. *Bract.* 104 a. *Cowell.* Of this nature were actions for determining a man's civil state or condition, as whether he was a freeman or a slave, legitimate or illegitimate. *Inst.* 4. 6. 13. *Heinecc. Elem.* lib. 4, tit. 6, § 1142. *Halifax Anal.* b. 3, c. 1, n. 14.

ACTIO PRÆTORIA. In the civil law. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis*, (q. v.) *Inst.* 4. 6. 3. 1 *Mackeld. Civ. Law.* 189, § 194.

ACTIO PROPRIA. An action brought for the recovery of a several thing, (*res propria*,) as distinguished from a thing held in common. *Bract.* fol. 103 a.

ACTIO PRO SOCIO. In the civil law. An action for a co-partner; an action which one co-partner (*socius*) might have against another. *Dig.* 17. 2. *Cod.* 4. 37.

ACTIO PUBLICIANA. In the civil law. An action which lay for one who had lost a thing of which he had *bonâ fide* obtained possession, before he had gained a property (*dominium*) in it, in order to have it restored, under color that he had obtained a property in it by prescription. *Inst.* 4. 6. 4. *Dig.* 6. 2. *Heinecc. Elem.* lib. 4, tit. 6, § 1131. *Halifax Anal.* b. 3, c. 1, n. 9. It was an honorary action, and derived its name from the prætor Publicius, by whose edict it was first given. *Inst.* 4. 6. 4.

ACTIO QUANTI MINORIS. In the civil law. An action given to a purchaser who had paid more for a thing than it was intrinsically worth, to recover back so much of the price *as* the thing was *of less* value (*quanti minoris*) or fell short in value, by reason of the defect.* *Pothier, Contract of Sale*, part 2, ch. 1, sect. 4, art. 5. 1 *Kames' Equity*, 271.

ACTIO QUOD JUSSU. In the civil law. An action given against a master, founded on some business done by his slave, acting under his *order*, (*jussu.*) *Inst.* 4. 7. 1. *Dig.* 15. 4. *Cod.* 4. 26.

ACTIO QUOD METUS CAUSA. In the civil law. An action granted to one who had been compelled by unlawful force, or fear (*metûs causa*) that was not groundless, (*metus probabilis* or *justus*,) to deliver, sell or promise a thing to another. *Bract.* fol. 103 b. 1 *Mackeld. Civ. Law*, 120, § 216.

ACTIO or INTERDICTUM QUOD VI AUT CLAM. In the civil law. An action which lay where one *forcibly or clandestinely*, (*vi aut clam*,) erected or demolished a building on his own or another's ground, and thereby unlawfully injured another; its object being to get everything restored to its former condition, and to obtain damages.* *Dig.* 43. 24. 1. Bracton gives this action a place in his system of remedies, defining it as one which lay against him who had erected or prostrated a building

on another's land, and concealed himself in order to avoid being prevented from doing it, (*et se occultavit, ne sibi prohiberetur ;*) and observes that the offender might by this action be compelled to restore everything to its former state, at his own expense. *Bract.* fol. 103 b. 104 a. See *Interdictum.*

ACTIO REALIS. In the civil and common law. A real action. More commonly termed in the civil law *actio in rem*, (q. v.) *Inst.* 4. 6. 3. *Id.* 4. 17. 2. The barbarous word *realis* is of frequent occurrence in Bracton. *Actionum civilium quædam sunt* reales, *et quædam sunt personales ;* of civil actions, some are real, and some are personal. *Bract.* fol. 159 b. *Si actio* realis *fuerit ;* if the action be real. *Id.* fol. 183 b. See *Realis.*

ACTIO REDHIBITORIA. In the civil law. An action which lay to compel a vendor *to take back*, (*redhibere*,) the thing sold, and return the price. *Dig.* 21. 1. 21. *Heinecc. Elem.* lib. 3, tit. 24, § 913. *Pothier, Contr. of Sale*, part 2, ch. 1, sect. 4, art. 4. 1 *Kames' Equity*, 270, 271.

ACTIO REI PERSECUTORIA. In the civil law. An action for the recovery of a specific thing, (*rei persequendæ causâ comparata*,) or damages; as distinguished from the *actio pœnæ persecutoria*, and the *actio mixta*. *Inst.* 4. 6. 16, 17. 1 *Mackeld. Civ. Law*, 192, § 196.

ACTIO RERUM AMOTARUM. In the civil law. An action for things removed; an action which, in cases of divorce, lay for a husband against a wife, to recover things carried away by the latter, in contemplation of such divorce, (*divortii consilio.*) *Dig.* 25. 2. *Id.* 25. 2. 25, 30. It also lay for the wife against the husband in such cases. *Id.* 25. 2. 7. 11. *Cod.* 5. 21.

ACTIO RESCISSORIA. In the civil law. An action for rescinding the title by prescription in certain cases; as where a person, while absent in the service of the state, had gained a prescriptive title to a thing belonging to a resident (*rem, ejus qui in civitate esset, usucceperit ;*) the owner was allowed (*permittitur domino*) within a year after the return of the possessor from foreign service, to demand the thing, by rescinding the prescription; (*rescissâ usucapione eam rem petere ;*) that is, to demand it by alleging that the possessor had not, in fact, gained a title by prescription, and that therefore the thing was still his own. *Inst.* 4. 6. 5. This action is differently described by Heineccius, Halifax, and other writers. *Heinecc. Elem.* lib. 4, tit. 6, § 1132. *Halifax Anal.* b. 3, c. 1, c. 10. See *Rescissory action.*

ACTIO SEPULCHRI VIOLATI. In the civil law. An action for violating a grave. *Dig.* 47. 12. *Cod.* 9. 19.

ACTIO SERVIANA. In the civil law. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. *Inst.* 4. 6. 7. *Heinecc. Elem.* lib. 4, tit. 6, § 1139. *Halifax Anal.* b. 3, c. 1, n. 12.

ACTIO SPECIALIS. In the civil law. A special action; an action brought to enforce the delivery of one or several single things. 1 *Mackeld. Civ. Law*, 193, § 196. *Dig.* 6. 1. 1.

ACTIO STRICTI JURIS. In the civil law. An action of strict right. A species of action *ex contractu*, in which the *judex* was limited to the precise words of agreement between the parties, as expressed in the formula of his instructions, without any discretionary power, as in the *actio bonæ fidei*, (q. v.)* *Inst.* 4. 6. 28. *Heinecc. Elem.* lib. 4, tit. 6, § 1182. It was regulated by the strict rules of the civil law, and was always directed to a *certum* (a certain and specific thing,) and to the fulfilment of unilateral obligations alone. *Gaius, Inst.* iii. 137. 1 *Mackeld. Civ. Law*, 194, § 197.

In English law, also, formal precise actions are said to be *stricti juris.* 1 *W. Bl.* 388.

ACTIO TEMPORALIS. In the civil law. A temporary action; an action limited to a certain *time*, within which it was to be instituted, on pain of losing it; the opposite of *actio perpetua*, (q. v.)* *Inst.* 4. 12.

ACTIO TRIBUTORIA. In the civil law. An action for distribution; (Lat. *tribuere*, to distribute ;) an action which lay for the creditor of a son or slave, who had traded upon his *peculium*, with the knowledge of his father or master, to obtain from the latter a distributive or proportionate share of the goods traded in, (*peculiares merces*,) or their proceeds.* *Inst.* 4. 7. 3. *Heinecc. Elem.* lib. 4, tit. 7, § 1217. *Halifax Anal.* b. 3, c. 2, n. 6.

ACTIO TUTELÆ. In the civil law. An action of tutelage. See *Tutelæ actio.*

ACTIO, or INTERDICTUM UNDE VI. In the civil law. An action, or interdict which lay to recover possession of an

immovable thing, as land, of which one had been deprived by force. So called from the formal words in it,—*unde tu illum vi dejecisti*, (from which you have ejected him by force.)* *Gaius, Inst.* iv. 154. *Inst.* 4. 15. 6. *Dig.* 43. 16. It resembled the modern action of ejectment, and is adopted by Bracton in his system of actions. *Bract.* fol. 103 b.

ACTIO UTILIS. In the civil law. An equitable, or beneficial action.* 1 *Kaufm. Mack. Civ. Law*, 268, note. An action which lay by, or against a principal, on the contract of his agent. *Story on Agency*, § 163. The opposite *of actio directa*, (q. v.)

An action *ex delicto*, which lay where the act of a party was not immediately, but only indirectly, or consequentially injurious to another.* *Inst.* 4. 3. 16. *Dig.* 44. 7. 37.

ACTIO VI BONORUM RAPTORUM. In the civil law. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or movables (*bona*,) had been taken from him by force, (*vi*;) to recover the things so taken, together with a penalty of triple the value. *Inst.* 4. 2. *Id.* 4. 6. 19. Bracton describes it as lying *de rebus mobilibus vi ablatis sive robbatis;* (for movable things taken away by force, or robbed.) *Bract.* fol. 103 b.

ACTIO VULGARIS. In the civil law. A common action; another name for the *actio directa.* 1 *Mackeld. Civ. Law*, 189, § 194. *Bract.* fol. 103 a.

ACTION. [Lat. *actio, lis;* L. Lat. *placitum, loquela*, qq. v.] The formal means or method of pursuing and recovering one's right in a court of justice. A formal proceeding (or series of proceedings,) in a court of justice, between parties plaintiff and defendant, by which the recovery of some alleged right is claimed by the one, and may be resisted by the other; and by which, also, such claim is enforced or denied by the court.

An action obviously partakes of the double character of a *remedial instrument* of justice, as it is described by Blackstone, (that is, an authorized instrument, or means by which a general remedy given by law is applied to, and enforced in a particular case;) and an established *formula of litigation*, as it is considered by Cicero, and the civil law writers. 3 *Bl. Com.* 3, 116, 117. *Actiones compositæ sunt, quibus inter se homines disceptarent;* actions were framed [as the means] by which men might litigate with one another. *Dig.* 1. 2. 2. 6. *Sunt jura, sunt formulæ,—ad quas privata lis accommodatur;* there are rules and forms—by which private litigation is regulated. *Cic. pro Q. Roscio*, § 8.

An action is, in another essential point of view, a proceeding *in judicio*, (in the ancient sense of that phrase,) that is, before a *court*, and between *parties.* It is a proceeding by which each party, (or the plaintiff only, as the case may be,) seeks to obtain a *judicium*, (in the modern sense;) a judgment or determination of the court in his favor, on the case as he exhibits it; and by which also the court grants and enforces such judgment. It is not simply (though it is primarily,) a proceeding for the recovery of a right; but it is equally, after its institution, a proceeding for, and an instrument of defeating an unfounded demand. It consists of a series of acts done by the parties and the court, embracing what Bracton terms *judicium*, and which he describes as *trinus actus trium personarum; judicis, viz. actoris et rei;* the threefold act of three persons, to wit, the judge, the plaintiff and the defendant. *Bract.* fol. 106 a. This important feature of an action seems to have been overlooked in the ordinary definitions, most of which represent it as an unilateral proceeding merely.

Again, an action is essentially a complex or *composite* proceeding, consisting of a variety of parts put together in a certain order, or a series of proceedings commenced and conducted in a certain course, and in accordance with certain prescribed rules and forms. This will be more fully explained *infra.* The expression of the civil law,—*actiones compositæ sunt*, (actions are framed, or fitted together,) is peculiarly applicable to the modern action.

*** The oldest definition of the term *action* (*actio*) is that of the civil law,—*jus persequendi in judicio quod sibi debetur;* (the right of pursuing judicially, or in a court of justice, that which is due to one;) which has been adopted by Bracton, quoted with approval by Coke and Blackstone, and referred to as authority by later writers. *Inst.* 4. 6. pr. *Bract.* fol. 98 b. 2 *Inst.* 40. 3 *Bl. Com.* 116. The peculiar feature of this definition consists in its describing an action as a *right*, (*jus*,) which the Roman *actio* seems to have strictly been. See *Actio.* That the Roman idea on this subject was fully transferred to the ancient English action, appears not only

from Bracton's unqualified adoption of the definition, but from the express words of Lord Coke, who, in distinguishing between an *action* and a *writ*, (the original writ of the old practice,) observes that "an action is *the right of a suit*, and the writ is grounded thereupon, and is the means to bring the demandant or plaintiff to his right." 2 *Inst.* 40. And see the observations of Lord Hardwicke, C. J. in Smith *v.* Boucher, *Cas. temp. Hardw.* 139. In its modern sense and use, however, the term *action* very clearly implies, not only a right, but the actual *exercise* of a right; the prosecution of means for the recovery of a right. *Ersk. Inst.* b. 4, tit. 1. And see *Bell's Dict.* in voc. Hence, even the civilian Heineccius, while adopting Justinian's definition of an action as a right, subjoins the following definition of an action as a remedy—*medium legitimum persequendi in judicio jura*, (the lawful means of pursuing rights in a court.) *Elem. Jur. Civ.* lib. 4, tit. 6, § 1126. A double definition of a similar kind is adopted by some of the Scotch writers. *Forbes' Inst.* part 4, b. 1, ch. 2, tit. 1.

The next oldest definition of the term *action* is that of the English common law, first given by the Mirror, and adopted by Lord Coke: *Action n'est autre chose que loiall demande de son droit;* an action is nothing else than the lawful demand of one's right. *Mirr.* c. 2, § 1. *Co. Litt.* 285 a. 2 *Inst.* 40. This presents an action in more of its modern character,—a right *actually exercised*, an act, or proceeding,—but still only as a *unilateral* proceeding,—the act of the *plaintiff*,—no reference being made to any opposing party, or his act in opposition, while all reference to a tribunal, (except what may be inferred from the word *lawful*,) is excluded. The more expanded definition of Erskine, "a demand regularly made, and insisted on before the proper judge, for the attaining or recovering of a right," while it admits the important idea of a court, seems otherwise liable to the same objection. *Ersk. Inst.* b. 4, tit. 1. A modern action is not only something more than a mere *right*, but also something more than the mere *demand* of a right; embracing clearly the ideas, not only of a demand which must be *made* in proper form, but of a demand which may be *resisted* by an opposing party, and which must be *acted upon* by the court to which it is presented. It includes, in other words, not only the act of the *plaintiff* in making a lawful demand, but the act of the *defendant*, in opposition, and the act of the *court* in passing judgment between the parties: so well embodied in the expression of Bracton,—*trinus actus trium personarum*,—already noticed.

For the reasons here given, the compiler has been induced to substitute, in the place of these celebrated definitions of the ancient law, others, supposed to be more fully expressive of the nature of an action in its modern acceptation. In further illustration of the definitions substituted, the following remarks are submitted:

The nature of an action, as a complex or *composite* proceeding, has been already adverted to. The proceedings of which it is made up may, indeed, be reduced under two general heads, viz. the *presentation* of a case to a court for its decision, and the *decision* of the court thereon; which are the two successive objects an action always contemplates. In order, however, to accomplish the first of these, the parties must properly *appear* in court, and the case itself must be *presented* in proper *form;* and to attain the last effectually, the case presented must be *made out* by proof or argument, and the judgment of the court when obtained, must be carried into *execution.* Hence an action, where it takes its regular course, always consists of the following successive proceedings: *process*, by which the party complained of is brought before the court; *pleadings*, by which the nature of the demand and the defence is exhibited to the court by the respective parties; *trial* or *hearing* by the court of the case so presented; *judgment* or *decree*, by which the court awards or denies the remedy sought by the action; and *execution*, by which the judgment is actually and specifically enforced. See *Process*, *Pleading*, *Trial*, *Hearing*, *Judgment*, *Execution.* These proceedings, again, are each composed of a variety of acts, having each its proper rule and form; besides which there are numerous others, of an incidental or occasional kind, growing out of the various circumstances attending the action, and by which its progress is modified, more or less interrupted, and sometimes prematurely terminated. See *Practice.*

An action, as we have seen, is a proceeding between *parties.* Of these, the plaintiff, or complainant is ordinarily con-

sidered as the *actor*, the *acting* party in an emphatic sense, (sometimes called in the old law *pars actrix*,) who sets the law in motion, (*qui lege* agit,) and pursues (*persequitur*) his remedy through the court; hence expressively termed in Scotch law, the *pursuer*. The defendant, or accused party (*reus*) opposes and resists him, *denying* (in the ancient sense of the term *defend*,) either the right of action generally, or the propriety of the particular action employed; and *defending himself*, (in the modern sense,) by such proceedings as the case from time to time admits or requires. See *Actor*, *Defendant*, *Plaintiff*, *Reus*.

The terms *action* and *suit* are now nearly, if not entirely synonymous. 3 *Bl. Com.* 3, 116, *et passim*. Marshall, C. J. 6 *Wheaton's R.* 264. Or, if there be a distinction, it is that the term *action* is generally confined to proceedings in a court of law, while *suit* is equally applied to prosecutions at law or in equity. Formerly, however, there was a more substantial distinction between them. An *action* was considered as terminating with the giving of judgment, and the execution formed no part of it. *Litt.* sect. 504. *Co. Litt.* 289 a. A *suit*, on the other hand, included the execution. *Id.* 291 a. So, an action is termed by Lord Coke, "the *right* of a *suit*." 2 *Inst.* 40. See *Suit*.

It is further to be observed that there are many judicial proceedings, conducted nearly in the same form as actions, before the same tribunals, and with the same general objects, viz., the enforcement of some legal right or remedy, which nevertheless are not technically considered as *actions*, nor so denominated. Of this description are the proceedings at law by *writ of error*, *scire facias*, *mandamus*, *certiorari*, *habeas corpus*, and the like. Originally, indeed, the terms *writ* and *action* were nearly synonymous. *Steph. Pl.* 8. *Gilb. C. Pleas*, 4. And Lord Coke has laid down the rule, that every writ to which the defendant may plead, be it original, or judicial, is in law an action. *Co. Litt.* 291 a. Practically, however, the term *action* is now exclusively appropriated to those forms of judicial remedy which are ranked under the threefold division of *real*, *personal* and *mixed* actions, (qq. v.)

By the New-York Code of Procedure, an action is defined to be "an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence. Every other remedy is a special proceeding." *Code*, §§ 2, 3.

ACTION ON THE CASE. [L. Lat. *actio super casum*.] In practice. A species of personal action of very extensive application, otherwise called *trespass on the case*, or simply *case*, from the circumstance of the plaintiff's whole *case* or cause of complaint being set forth at length in the original writ by which formerly it was always commenced. 3 *Bl. Com.* 122. See *Case*, *Trespass on the case*.

ACTION OF ABSTRACTED MULTURES. In Scotch law. An action to recover *multures*, that is, tolls due by tenure to a particular mill for grinding grain, and which have been *abstracted*, that is, withdrawn, or withheld by the tenants.* *Forbes' Inst.* part 2, b. 2, ch. 4, tit. 3, § 1. See *Multure*.

ACTION OF A WRIT. A phrase used in the old books, where a defendant pleaded some matter tending to show that the plaintiff had no cause to have *the writ he brought*, although it might be that he might have *another* writ or action for the same matter. Such a plea was called a *plea to the action of the writ*. If, however, it appeared from the plea that the plaintiff had no cause to have *any action* for the thing demanded, then it was called a *plea to the action*. *Termes de la ley*. *Cowell*.

ACTION PREJUDICIAL. See *Actio prejudicialis*.

ACTIONABLE. That which can legally be made the ground or subject of an action; that for which an action will lie.* Chiefly applied to slanderous words uttered or published of another. 3 *Chitty's Bl. Com.* 123, 125, and notes.

ACTIONARE. L. Lat. [from *actio*, an action.] In old records. To bring an action; to prosecute, or sue. *Thorn's Chron*. *Whishaw*.

ACTIONARIUS, *Accionarius*. L. Lat. [from *actio*, an office.] In old European law. An officer. *Spelman*, citing *Chart. Ethelb. Reg.* A. D. 748. *LL. Longob.* lib. 1, tit. 9, l. 28.

ACTIONES LEGIS. Lat. In the Roman law. Actions of or at law; legal or lawful actions; (*legitimæ actiones*.) *Dig.* 1. 2. 2. 6. One of the sources of the unwritten law of Rome. *Butler's Hor. Jurid.* 47. So called, according to Gaius,

either because they were expressly given by the laws (*quod legibus proditæ erant,*) or because they were adapted to, or expressed in the words of the laws, (*quia ipsarum legum verbis accommodatæ erant;*) being on that account regarded as immutable as the laws themselves, (*immutabiles proinde atque leges observabantur.*) *Gaius, Inst.* iv. § 11. These constituted the most ancient system of judicial remedy among the Romans, and were subject to very strict rules; the slightest error or deviation from the prescribed form being fatal to the action, (*ut qui vel minimum errasset litem perderet.*) *Id.* § 30. They were abolished by the *Lex Æbutia*, and the two *Leges Juliæ*, and the proceeding by *formula* (*per concepta verba*) substituted in their place. *Id. ibid.* See *Actio.*

ACTON BURNEL, *Statute of.* In English law. A statute, otherwise called *Statutum de Mercatoribus*, made at a parliament held at the castle of Acton Burnel in Shropshire, in the 11th year of the reign of Edward I. 2 *Reeves' Hist. Eng. Law*, 158—162. *Barringt. Obs. Stat.* 116. This statute was explained and new provisions added by the statute 13 Edw. I. st. 3, bearing the same title, (*De Mercatoribus*, q. v.) *Id.* 119. *Fleta*, lib. 2, c. 64, § 1.

ACTOR. Lat. [from *agere*, to act, to do, to move.] In the civil and common law. The party who institutes or prosecutes an action, (*qui lege agit;*) a plaintiff, (*querens.*) *Inst.* 4. 6. 30, 34, 38. *Id.* 4. 15. 7. *Bract.* fol. 106 a. 376 a. 2 *Bl. Com.* 25. Sometimes termed *agens*, and *pars actrix*, (qq. v.) *Inst.* 4. 6. 33. *Reg. Orig.* 9 a. *Fleta*, lib. 2, c. 63, § 11. In some cases, both parties are regarded as *actors;* (*uterque* actor *est;*) and such actions are termed in the civil law, *judicia duplicia*, and *mixtæ actiones;* double or mixed actions. *Dig.* 44. 7. 37. 1. 1 *Mackeld. Civ. Law*, 188, § 193. Of this description is the modern action of replevin. But the term *actor*, even in these cases, properly belongs to the party commencing the proceedings, (*ille* actor *qui primo provocaverit ad judicium.*) *Bract.* fol. 102 b. 372 a. *Eum* actorem *qui ad judicium provocasset. Dig.* 5. 1. 13.

Actor sequitur forum rei. The plaintiff follows the forum of the thing [in controversy.] He must sue in the court where the property is; that is, in the court of the place, or country, where the *thing* (*res*) in controversy is situate, (*sita est;*) or, as it is technically expressed, in the *forum rei sitæ*, (q. v.) 2 *Kent's Com.* 462, 463. *Story's Confl. of Laws*, § 325 k. Every question concerning a subject [*res*] movable or immovable, must be determined by the judge whose legal powers extend over that subject. 2 *Kames' Equity*, 343.

Actor sequitur forum rei. The plaintiff follows the court of the defendant, (*reus;*) that is, he must sue in the court of the place where the defendant resides. *Cod.* 3. 19. 3. *Id.* 3. 13. 2. 5. This was a maxim in the time of Bracton. *Verum est quod sive laicum sive clericum velit quis convenire, debet adire judicem et* sequi forum rei, *et judicem habebit illum apud quem reus habet domicilium, sive domicilium habuerit sub jurisdictione unius vel duorum.* It is true that whether one desires to sue a layman, or a clerk, he must apply to the judge, and follow the court of the defendant, and must have him as his judge with whom the defendant has his domicile, whether he has his domicile under the jurisdiction of one or two. *Bract.* fol. 401 a. But this maxim was not of universal application. *Id. ibid.* See *Fleta*, lib. 6, c. 37.

The apparently exact verbal similarity between this and the preceding maxim will not escape notice; the difference consisting in the circumstance that the word *rei* in the one, is the genitive of *res*, (a thing,) and in the other, of *reus*, (a defendant.)

Actore non probante absolvitur reus. The plaintiff not proving [his demand] the defendant is acquitted. *Hob.* 103.

Actori incumbit probatio, [onus probandi.] The burden of proof lies on the plaintiff. *Hob.* 103 a.

ACTOR. Lat. [from *agere*, to do, to act.] In the Roman law. One who acted for another; one who attended to another's business; a manager or agent. A slave who attended to, transacted or superintended his master's business or affairs, received and paid out moneys, and kept accounts, (*rationes.*) *Dig.* 10. 2. 8. *Id.* 11. 3. 1. 5. *Id.* 34. 1. 18. 3. *Id.* 34. 3. 12. *Id.* 40. 4. 53. *Id.* 40. 4. 59. pr. *Id.* 40. 5. 41. 4. *Id.* 40. 7. 40. 3. *Id.* 48. 5. 17. 5. Called in Greek πραγμάτευτης. *Dig.* 40. 5. 41. 4. Distinguished from *procurator. Cod.* 5. 61.

The manager, agent or attorney of a municipal or other corporation. *Dig.* 2. 4. 10. 4. *Id.* 3. 4. 1. 1. • *Id.* 3. 3. 74. *Id.* 13. 5. 5. 7, 9. *Id.* 36. 1. 27. *Id.* 36. 4. 12. *Id.* 37. 1. 3. 4. *Id.* 44. 2. 11. 7. *Id.* 50. 12. 8. A syndic. *Calv. Lex.*

A temporary guardian or tutor. *Inst.* 1. 23. 6.

In old European law. A proctor, advocate or pleader; one who acted for another in legal matters; one who represented a party and managed his cause. *Actor dominicus;* a lord's or king's advocate. *Capit. Carol.* lib. 4, c. 44. *Spelman. Cowell. Actor ecclesiæ;* the advocate or pleading patron of a church. *Add.* 3 *Ludovic. Imp. ad Capit.* c. 12. *Spelman. Cowell.*

An attorney, bailiff or steward; one who managed or acted for another. The Scotch "doer" is the literal translation. *Actor dominicus;* a lord's bailiff. *Spelman. Cowell. Actor regis;* a king's bailiff. *LL. Longob.* lib. 1, tit. 34, l. 1. *Actor villæ;* the steward or head bailiff of a town or village. *Capit. Carol.* lib. 4, c. 41. *Spelman. Cowell.*

ACTORNATUS. L. Lat. In old Scotch law. An actornay or attorney. *Reg. Maj.* lib. 4, c. si quis defendens, 46; cited in *Skene de Verb. Sign.*

ACTORNAY. O. Sc. [L. Lat. *actornatus*, q. v.] In old Scotch law. Attorney; an attorney. *Skene de Verb. Sign.* voc. *Actornatus.*

ACTRIX. L. Lat. In old English law. A female *actor*, or plaintiff; as the demandant in an action of dower. *Bract.* fol. 307 b. Actrix *dici poterit illa quæ prius ad judicium provocavit;* she may be called *actrix*, who first summons to court. *Id. ibid. Fleta*, lib. 5, c. 30, § 4.

ACTS OF SEDERUNT. In Scotch law. Ordinances made by the court of session, for regulating the forms of proceeding to be observed in all actions or matters which may be brought before them. *Ersk. Inst.* b. 1, tit. 1, § 40. So called from the word *sederunt*, [they sat,] with which anciently they used to begin; or because they are made by the lords *sitting* in judgment. *Forbes' Inst.* prel. diss. ch. 3, tit. 10. See *Arkley's R.* 270.

ACTUAL COST. The actual price paid for goods by a party, in the case of a real *bonâ fide* purchase, and not the market value of the goods. Story, J. 2 *Story's R.* 421, 429. 2 *Mason's R.* 48. So defined in construction of the 66th section of the U. S. Revenue Act of 1799, ch. 128. See 2 *Mason*, 393.

ACTUARIUS. Lat. [from *acta*, q. v.] In the Roman law. An officer who took down in short hand, (like the modern reporter,) what was said or *done*, (*acta*,) before the public magistrates; an actuary. *Suet. J. Cæs.* 55.

A keeper or writer of public records; an officer having charge of accounts. *Cod.* 12. 38. 5. *Id.* 12. 50. *Calv. Lex.* See *Actuary.*

ACTUARY. [Lat. *actuarius.*] A secretary, clerk, or register of any public body, or association; particularly of an ecclesiastical body, or court. *Cowell. Blount.*

The manager of a joint stock company, under a board of directors, particularly of an insurance company; combining with the duties of a secretary, those of a scientific adviser to the board which gives him his office, in all matters involving calculation; a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, &c. *Stat.* 59 Geo. III. c. 128. *P. Cyclopedia.*

ACTUM, pl. *Acta.* Lat. [from *agere*, to do.] In the civil law. Done; a thing done; an act, or deed. *Quodcunque scriptum sit quasi* actum, *videatur etiam* actum; whatever is written as done, (alleged in writing to be done,) shall be supposed to be actually done. *Inst.* 3. 21. 8. A distinction was made between *actum*, and *gestum;* the former was called a general term, (*generale verbum*,) applicable to any thing done, whether in words, or in fact, (*sive verbis sive re quid agatur;*) the latter was restricted to signify a thing done without words (*rem sine verbis factam.*) *Dig.* 50. 16. 19. *Actum* is less used in the singular, as a substantive, than *actus*, (q. v.) but the plural *acta* (q. v.) is of frequent occurrence.

ACTUM. Lat. In old records. Done; the initial word of the concluding clause of instruments, containing the date. See *Done.*

ACTUS, pl. *Actus*, [from *agere*, to do.] In the civil law. An act or action. *Non tantum verbis, sed etiam* actu; not only by words, but also by act. *Dig.* 46. 8. 5.

An act or proceeding; acts or proceedings. *Cod.* 3. 12. 8.

In old English law. An act; a deed; a proceeding. Acts; deeds; proceedings. *Publici actus;* public acts, or proceedings. *Bract.* fol. 336. *Actus curiæ;* an act of a court, or of the court. *Actus Dei;* an act, or the act of God. *Actus legis;* an act, or the act of the law. See *infra.*

Actus me invito factus non est meus actus. An act done by me, against my will, is not my act. *Branch's Princ.* The concurrence of a person's will (*voluntas*) in an

act, is essential to charge him with the act, or its consequences. *Tolle voluntatem, et erit omnis* actus *indifferens;* take away will, and every act becomes indifferent. *Bract.* fol. 101 b.

Actus non facit reum, nisi mens sit rea. An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. 3 *Inst.* 107. The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J. 7 *T. R.* 514. *Broom's Max.* 144, [226.] This maxim is exclusively applicable to criminal law, and to civil proceedings for slander and libel; in civil actions, the intent is immaterial, if the act done be injurious to another. *Id.* 155, 161. The maxim, **Affectio tua nomen imponit operi tuo,** (q. v.) embodies the same principle. *Bract.* fol. 101 b.

Actus curiæ neminem gravabit. An act of the court shall prejudice no man. *Jenk. Cent.* 118. Where a delay in an action is the act of the court, neither party shall suffer for it. Thus, if one party die during a *curia advisari vult,* (q. v.) judgment may be entered *nunc pro tunc,* (q. v.) for the delay is the act of the court. 1 *Stra.* 425. *Broom's Max.* 52, [86.]

Actus Dei nemini facit injuriam. The act of God does injury to no one. 2 *Bl. Com.* 122. 5 *Co.* 87. A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. *Broom's Max.* 108, [171.] Thus, if a tenant for his own life sows the lands, and dies before harvest, his executors shall have the emblements, or profits of the crop, for the estate was determined by the act of God. 2 *Bl. Com.* 122.

Actus Dei nemini est damnosus. The act of God is hurtful to no one. 2 *Inst.* 287. Another form of the last maxim.

Actus legis nemini facit injuriam. The act of the law does injury to no one. 5 *Co.* 116. Eyre, C. J. 2 *H. Bl.* 324, 334. Thus, if a lease be made to husband and wife during coverture, (which gives them a determinable estate for life,) and the husband sows the land, and afterwards they are divorced *a vinculo matrimonii,* the husband shall have the emblements in this case, for the sentence of divorce is the act of law. 2 *Bl. Com.* 123.

Actus legis nemini est damnosus. The act of the law is hurtful to no one. The law wrongs no man. 2 *Inst.* 287. *Broom's Max.* [89.] A different form of the last maxim.

Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest. An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. *Bacon's Max.* 79, reg. 20.

Actus judiciarius coram non judice irritus habetur, de ministeriali autem, a quocunque provenit, ratum esto. A judicial act before one who is not a judge is held void, but as to a ministerial act, from whomsoever it proceeds, let it be valid. *Lofft,* Appendix, 458.

Actus legitimi non recipiunt modum. Acts requiring to be done by law do not admit of qualification. *Hob.* 153. *Branch's Princ.*

ACTUS. L. Lat. [from *agere,* to do.] In old English law. An act of Parliament; a statute. 8 *Co.* 40, [20.] 4 *Reeves' Hist. Eng. Law,* 111. A distinction, however, was sometimes made between *actus* and *statutum. Actus parliamenti* was an act made by the Lords and Commons; and it became *statutum,* when it received the king's consent. *Barringt. Obs. Stat.* 46, note [*b*].

ACTUS. Lat. [from *agere,* to drive. In the civil law. A species of right of way, consisting in the right of driving cattle, or a carriage, (*jus agendi jumentum vel vehiculum,*) over the land subject to the servitude. *Inst.* 2. 3. pr. *Dig.* 8. 3. 1. It is sometimes translated a *road,* and included the kind of way termed *iter,* or path. *Id. ibid.* 1 *Mackeld. Civ. Law,* 343, § 313. See *Iter.* The three terms, *actus, iter* and *via,* appear to have been introduced into the old law of England, by Bracton. *Bract.* fol. 7 b. 232 a. *Fleta,* lib. 4, c. 27, §§ 1, 2.

Lord Coke, who adopts the term *actus* from Bracton, defines it a foot and horse way, vulgarly called pack and prime way; but distinguishes it from a cart way. *Co. Litt.* 56 a.

AD. Lat. To. *Ad damnum,* (q. v.); to the damage. *Ad* was formerly the usual word in judgment records, to express the amount recovered. *Damna sua prædicta ad cent' libras;* his damages aforesaid to one hundred pounds, &c. 2 *Show.* 88, 89.

For. *Ad tempus;* for a time. *Dig.* 50. 4. 12. *Ad litem;* for the suit. 2 *Steph. Com.* 333. *Ad vitam;* for life. *Bract.* fol. 41 a.

At. *Ad festum;* at the feast. *Fleta*, lib. 2, c. 64, § 3. *Ad largum;* at large. *Plowd.* 37.

Until. *Ad eum diem;* unto that day. *Dig.* 48. 5. 29. 7. *Ad culpam;* until misbehavior. See *Ad vitam aut culpam.*

By; near, (*juxta.*) *Calv. Lex.*

On account of, (*ob.*) *Id.*

Upon, (*super.*) *Id. Ad Edictum;* upon the Edict. *Dig. passim. Ad Sabinum;* upon Sabinus. *Id.*

AD. L. Fr. [from *aver*, to have.] Has. *Come ceo que il* ad *de son done;* as that which he has of his gift. See *Fine. Ad este;* has been. *Yearb.* P. 7 Hen. VI. 16.

AD ABUNDANTIOREM CAUTELAM. L. Lat. For more abundant caution. 2 *How. State Trials*, 1182. Otherwise expressed, *ad cautelam ex superabundanti. Id.* 1163.

AD ADMITTENDUM CLERICUM, (or *De clerico admittendo;* for admitting a clerk.) L. Lat. In English law. A writ, in the nature of an execution, in the action of *quare impedit*, founded on the judgment, (that the plaintiff recover his presentation,) and commanding the bishop to whom it is directed, to admit his clerk.* 3 *Bl. Com.* 250. 3 *Steph. Com.* 665. *Bract.* fol. 248 a.

AD ALIUD EXAMEN. L. Lat. To another tribunal. 2 *Inst.* 602. 5 *Mason's R.* 43. "It belongs *ad aliud examen*," is an expression frequently used in the opinions of courts, where cognizance or jurisdiction of any matter or question is disclaimed. 3 *Story's R.* 827. 11 *Peters' R.* 182. *Alium* is sometimes inaccurately used for *aliud. Id. ibid.* See *Aliud examen.*

AD ALIUM DIEM. L. Lat. At another day. A common phrase in the old reports. *Yearb.* P. 7 Hen. VI. 13.

AD ASSISAS CAPIENDAS. L. Lat. To take assises; to take or hold the assises. *Bract.* fol. 110 a. 3 *Bl. Com.* 185. *Ad assisam capiendam;* to take an assise. *Bract.* fol. 110 b.

AD AUDIENDUM ET TERMINANDUM. L. Lat. To hear and determine. *Stat. Westm.* 2, c. 29, 30. 2 *Reeves' Hist. Eng. Law*, 169, 170. See *Oyer and Terminer.*

AD BARRAM. L. Lat. To the bar; at the bar. 3 *How. St. Trials*, 112.

AD CAMPI PARTEM. L. Lat. For a share of the field or land, (*ut particeps fiat;*) for champert. *Fleta*, lib. 2, c. 36, § 4.

AD COLLIGENDUM BONA DEFUNCTI. L. Lat. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to *collect* and preserve the goods of the deceased, are so called. 2 *Bl. Com.* 505. 2 *Steph. Com.* 241. These are otherwise termed letters *ad colligendum*, and the party to whom they are granted, a *collector.* 2 *N. Y. Rev. St.* [76,] 19, §§ 38, 39.

AD COMMUNEM LEGEM. L. Lat. At the common law. The name of a species of writ of entry, now obsolete. Formerly, when tenant for life, in dower, or by the curtesy, aliened in fee, tail, or for life, the land which they held, the reversioner in fee, tail, or for life, might, after their death, have a writ of entry *ad communem legem*, to recover possession. *F. N. B.* 207 G. 1 *Roscoe on Real Actions*, 93, 94. 3 *Bl. Com.* 183, note (z). 3 *Reeves' Hist. Eng. Law*, 39.

AD COMPARENDUM. L. Lat. To appear. *Reg. Orig.* 60 a. *Ad comparendum, et ad standum juri;* to appear and to stand to the law, or abide the judgment of the court. *Cro. Jac.* 67.

AD COMPOTUM REDDENDUM. L. Lat. To render an account. *Stat. Westm.* 2, c. 11.

AD CONSULENDUM. Lat. To consult; for the purpose of consultation. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

AD CURIAM. L. Lat. At a court. 1 *Salk.* 195.

To court. *Ad curiam vocare;* to summon to court. *Feud. Lib.* 2, tit. 22.

AD CUSTAGIA. L. Lat. At the costs. *Reg. Jud.* 9 a. *Ad ejus propria custagia;* at his own proper costs. *Towns. Pl.* 18. *Ad propria onera et custagia partis;* at the proper costs and charges of the party. *Callis on Sewers*, 74. See *Custagia.*

AD CUSTUM. L. Lat. At the cost. *Ad custum ejus;* at his cost. *Bract.* fol. 234 a. *Ad custum suum, vel custum tuum;* at his cost, or yours. *Id.* fol. 328. *Ad custus;* at the costs. *Reg. Orig.* 279 b.

AD DAMNUM, *Ad dampnum.* L. Lat. To the damage. In pleading. The emphatic words of the clause at the end of the declaration, when in Latin, in which a cer-

tain amount of damages was claimed. *Ad damnum ipsius A. —, et inde*, &c. *Towns. Pl.* 418. This is literally translated in the modern forms, "to the damage of the said A. of —, and therefore," &c.; and hence the clause itself is technically termed the *ad damnum*. 1 *Chitt. Pl.* 419. See *Damnum*. A similar clause in libels in admiralty is so termed. Story, J. 3 *Mason's R.* 503, 504.

AD DEFENDENDUM. Lat. To defend. 1 *Bl. Com.* 227.

AD DIEM. Lat. At a day; at the day. *Towns. Pl.* 23. *Ad certum diem;* at a certain day. 2 *Stra.* 747. *Solvit ad diem;* he paid at, or on the day. 1 *Chitt. Pl.* 485.

Ad ea quæ frequentius accidunt jura adaptantur. Laws are adapted to those cases which most frequently occur. 2 *Inst.* 137. 5 *Co.* 128. 6 *Id.* 77. *Wingate's Max.* 716, max. 101. *Broom's Max.* [35,] 138, note. Curtis, J. 12 *Howard's R.* 312. *Jura constitui oportet, ut dixit Theophrastus, in his quæ ἐπὶ τὸ πλεῖστον accidunt, non quæ ἐκ παραλόγου*; laws ought to be established, as Theophrastus has said, in [for] those cases which most commonly happen, not for those which happen unexpectedly. *Dig.* 1. 3. 3. *Ad ea potius debet aptari jus, quæ et frequenter et facile, quam quæ perraro eveniunt;* the law ought rather to be adapted to those cases which happen frequently and freely, than to those which happen rarely. *Id.* 1. 35. See *Id.* 1. 3. 6. *Id.* 1. 3. 10.

AD EFFECTUM. L. Lat. To the effect, or end. *Co. Litt.* 204 a. 2 *Crabb's Real Prop.* 802, § 2143. *Ad effectum sequentem;* to the effect following. 2 *Salk.* 417.

AD EOSDEM TERMINOS. L. Lat. For or upon the same terms. *Bacon's Arg.* Low's Case of Tenures, *Works*, iv. 239.

AD ESSENDUM. L. Lat. To be. *Ad essendum coram justiciariis;* to be before the justices. *Fleta*, lib. 2, c. 50, § 12. *Ad essendum de consilio suo;* to be of his counsel. *Yearb.* P. 11 Hen. VI. 1.

AD EXCAMBIUM. L. Lat. For recompense; to make recompense. *Bract.* fol. 12 b. 37 b. *Ad escambium. Id.* fol. 27 a. See *Excambium.*

AD EXHÆREDATIONEM. L. Lat. To the disherison, or disinheriting; to the injury of the inheritance. *Bract.* fol. 15 a. 3 *Bl. Com.* 228. Formal words in the old writs of waste.

AD EXHIBENDUM. See *Actio ad exhibendum.*

AD EXITUM. L. Lat. At issue; at the end (of the pleadings.) *Steph. Pl.* 24. See *Exitus, Issue.*

AD FACIENDUM. Lat. To do; to make. *Co. Litt.* 204 a. 2 *Crabb's Real Prop.* 803, § 2145. *Ad faciendum, subjiciendum et recipiendum;* to do, submit to, and receive. See *Habeas corpus. Ad faciendum juratam illam;* to make that jury. *Fleta*, lib. 2, c. 65, § 12.

AD FACTUM PRÆSTANDUM. Lat. For performance of a specific act. *Shaw's* (Scotch) *R.* 265.

AD FEODI FIRMAM. L. Lat. To fee farm. *Fleta*, lib. 2, c. 50, § 30.

AD FIDEM. Lat. [L. Fr. *a foy.*] Under, or in allegiance; owing allegiance; bound to allegiance, or fealty. *Ad fidem regis;* under the king's allegiance. *Ab omnibus qui sunt ad fidem regis;* by all the king's liege-men. *Fleta*, lib. 2, c. 65, § 4. *Natus* ad fidem *regis;* born in allegiance to the king. *Bacon's Arg.* Case of Postnati of Scotland, *Works*, iv. 346. *Ad fidem regis Angliæ,—ad fidem regis Franciæ. Fleta*, lib. 6, c. 48, § 4. *Quia est* ad fidem *regis Franciæ, et nihil capere poterit antequam fiat fides regi Angliæ;* because he owes allegiance to the king of France, and can take nothing before allegiance (or fealty,) be sworn to the king of England. *Bract.* fol. 428 b. See *Fides, A foy.*

Ad fidem utriusque regis; owing allegiance to each king; the subject of both kings. *Sunt aliqui Francigenæ in Francia qui sunt* ad fidem *utriusque;* there are some Frenchmen in France who owe allegiance to both [kings.] *Bract.* fol. 427 b. This phrase is adopted by Lord Coke and Lord Bacon, and is freely used in modern law, in the discussion of questions of allegiance, and citizenship. 7 *Co.* 1, 27, 54. *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 357. 2 *Kent's Com.* 56.

AD FILUM AQUÆ. L. Lat. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquæ;* as far as the thread of the stream. *Bract.* fol. 208 b. 235 a. A phrase of frequent occurrence in modern law; of which *ad* medium *filum aquæ* (q. v.) is another form. See *Filum, Filum aquæ.*

AD FILUM VIÆ. L. Lat. To the thread of the way, road or street. See *Filum via.*

AD FIRMAM. L. Lat. To farm. *Ad*

firmam dimittere ; to let to farm. *Bract.* fol. 12 b. *Ad firmam ponere ;* to put or set to farm. *Nec vendam nec* ad firmam *ponam ;* nor will I sell, nor put to farm. *Chart. Hen.* I. A. D. 1100. See *Firma, Farm.*

For a farm, or term. See *Id.*

At a farm, or rent. See *Id.*

AD GAOLAS DELIBERANDAS. L. Lat. To deliver the gaols. *Bract.* fol. 109 b. *Reg. Jud.* 30. *Ad gaolam deliberandam ;* to deliver the gaol; to make gaol delivery. *Bract.* fol. 110 b.

AD GRAVAMEN. Lat. To the grievance, injury or oppression. *Fleta*, lib. 2, c. 47, § 10.

AD HOC. Lat. To this; hereunto. *Towns. Pl.* 22. *Ad hoc facit ;* [it] makes to, or for this; favors this doctrine; goes to establish this point, or principle. *Bract.* fol. 53 b. A common expression in Bracton. *Ad hoc facit lex imperatoria ;* with this agrees the imperial (Roman or civil) law. *Fleta*, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

AD HUNC DIEM. L. Lat. At this day. 1 *Leon.* 90.

AD IDEM. Lat. To the same point, or effect. *Ad idem facit ;* it makes to, or goes to establish the same point. *Bract.* fol. 27 b. 29 a. A very common expression in Bracton, in referring to adjudged cases. *Ad idem* is used also in the old reports, and not unfrequently in the modern books. *T. Raym.* 175. *Hardr.* 97, 98. 1 *Show.* 353, 390. 1 *Sumner's R.* 310, 463. In the Year Books it is used to denote concurrence in opinion or argument, in the same case.

AD ILLUD. Lat. To that; thereto, or thereunto. *Towns. Pl.* 22.

AD INDE. L. Lat. Thereunto. *Ad inde requisitus;* thereunto required. *Towns. Pl.* 22.

AD INQUIRENDUM. Lat. To inquire. *Breve ad inquirendum ;* a writ to inquire ; a writ of inquiry. A judicial writ, commanding inquiry to be made of any thing relating to a cause pending in court. *Cowell.*

AD INSTANTIAM. L. Lat. At the instance. 2 *Mod.* 44. *Ad instantiam partis ;* at the instance of a party. *Hale's Hist. Com. Law*, 28.

AD ITINERANDUM. L. Lat. To itinerate. *Justitiarii* ad itinerandum *de comitatu in comitatum ;* justices to itinerate from county to county. *Bract.* fol. 108 b. See *Iter, Justitiarius.*

AD JUDICIUM. Lat. To judgment; to court. *Ad judicium provocare ;* to summon to court; to commence an action. *Dig.* 5. 1. 13, 14.

AD JUNGENDUM AUXILIUM. L. Lat. To join aid; to join in aid. 1 *Roscoe's Real Act.* 280. See *Auxilium, Summoneas ad auxiliandum.*

AD JURA REGIS, or REGIA. L. Lat. For [preserving] the rights of the crown. The name of a writ, in English practice, brought by the king's clerk when presented to a living, against him who sought to eject him, to the prejudice of the king's title. *Reg. Orig.* 61—65. 4 *Co.* pref. *Cowell.*

AD LARGUM. L. Lat. At large; at liberty; free, or unconfined. *Ire ad largum ;* to go at large. *Plowd.* 37.

At large; giving details, or particulars; *in extenso.* A special verdict was formerly called a verdict at large. *Plowd.* 92.

AD LITEM. L. Lat. For a, or the suit; with reference to a suit; for the purpose of prosecuting or defending a suit. 2 *Steph. Com.* 333. A term commonly applied to guardians.

AD LUCRANDUM VEL PERDENDUM. L. Lat. To gain or lose. Emphatic words in the old warrants of attorney. *Reg. Orig.* 21, *et seq.* Sometimes expressed in English, "to lose and gain." *Plowd.* 201. See *Pro lucrari.*

AD MAJOREM CAUTELAM. L. Lat. For greater security. 2 *How. State Trials*, 1182.

AD MAJUS. L. Lat. At the most. *Towns. Pl.* 17.

AD MANUM. L. Lat. At hand; ready for use. *Et querens sectam habeat ad manum ;* and the plaintiff immediately have his suit ready. *Fleta*, lib. 2, c. 44, § 2.

AD MEDIUM FILUM AQUÆ. L. Lat. To the middle thread, or line of the water; to the centre of the stream. An expression frequently used in describing the extent of the rights of the proprietors of land bounded on a river, or stream. 3 *Kent's Com.* 428, 429, and notes. 2 *Smith's Lead. Cas.* 98, [147, 148, Am. ed.] *Ad filum medium aquæ, ad filum aquæ, usque filum aquæ, usque ad medium filum aquæ,* are different forms of this phrase. See *Filum aquæ.*

AD MEDIUM FILUM VIÆ. L. Lat. To the middle line, or thread of the way; to the centre of the road, or street. A

phrase used in describing the extent of the right of ownership of lands bounded on a street or highway. 2 *Smith's Lead. Cas.* 98, [144, 145, Am. ed.] See *Filum viæ.*

AD MINUS. L. Lat. At the least. *Ut* ad minus *teneatur ad interesse;* that he may at least be held to the extent of his interest. *Bract.* fol. 18 b. *Assignentur duo justiciarii,* ad minus, *in singulis com';* there shall be assigned two justices at least, in each county. *Fleta,* lib. 4, c. 5, § 11.

AD MORDENDUM ASSUETUS. L. Lat. Accustomed to bite. *Cro. Car.* 254. A material averment in declarations for damage done by a dog to persons, or animals. 1 *Chitt. Pl.* 388. 2 *Id.* 597.

AD NOCUMENTUM. L. Lat. To the nuisance, or annoyance. *Fleta,* lib. 2, c. 52, § 19. *Ad nocumentum liberi tenementi sui;* to the nuisance of his freehold. Formal words in the old assise of nuisance. 3 *Bl. Com.* 221.

AD OPUS. L. Lat. For the benefit or use. This phrase, and that of *ad opus et usum,* (for the benefit and use,) are called by Lord Bacon, "barbarous phrases, the Latin of which savours of the time of Richard II." *Bac. Read. Uses. Ad opus* seems to be a close rendering of the L. Fr. *al oeps,* (q. v.)

AD OSTENDENDUM. L. Lat. To show. Formal words in old writs. *Fleta,* lib. 4, c. 65, § 12. See *Ostensurus.*

AD OSTIUM ECCLESIÆ. L. Lat. [L. Fr. *al huis d'esglise.*] At the door of the church. *Bract.* fol. 92 a. 2 *Bl. Com.* 132, 133. See *Dower and ostium ecclesiæ.*

AD PROSEQUENDUM. L. Lat. To prosecute. 11 *Mod.* 363.

Ad proximum antecedens fiat relatio, (nisi impediat sententia.) Relation should be had, or made to the next antecedent, unless the sense forbid. *Jenk. Cent.* 180. *Noy's Max.* 4. Words in construction must be referred to the next antecedent, where the matter itself doth not hinder it. *Finch, Law,* b. 1, c. 3. *Wingate's Max.* 15, max. 10. Thus, where a devise was to H. and the heirs of his body, remainder to T. C. of W. and the heirs male of his body, upon condition that *he or they,* or any of them, should not alien, &c., the words *he or they* were held to refer not to H., but to T. C. of W., &c. 5 *Co.* 68 a. But where an award was that one party should pay before such a feast ten pounds to the other, and that *then* the other should make him a release, it was held that the word *then* should not be referred to the feast, but to the time of payment of the money. *Dyer,* 15 b. arg. Relative words generally must be referred to the next antecedent, where the intent upon the whole deed does not appear to the contrary, and where the matter itself doth not hinder it; the "last antecedent" being the last word which can be made an antecedent, so as to have a meaning. *Broom's Max.* 292–294, [529.] Tindal, C. J. 1 *Ad. & Ell.* 445. See 5 *Hill's (N. Y.) R.* 410. 4 *Foster's R.* 9.

The meaning of this maxim has been singularly mistaken in most of the translations of it. Thus, in Branch,—"Let the antecedent relate to that which follows next to it, unless a sentence intervene." In Noy, —"The antecedent bears relation to what follows next, unless it destroys the meaning of the sentence." In Wharton,—"Let the antecedent relation be connected with that which follows, unless it is intervened by a sentence." It is hardly necessary to add that the last of these reduces the maxim to an absurdity. The use of *impediatur* for *impediat,* in some of the books, has tended in a considerable degree to obscure the sense.

Ad quæstionem facti non respondent judices: ad quæstionem legis non respondent juratores. Judges do not answer to a question of fact: jurors do not answer to a question of law. *Co. Litt.* 295 b. 8 *Co.* 308, [155.] Or, as the converse is sometimes affirmatively stated: **Ad quæstionem juris respondent judices; ad quæstionem facti respondent juratores.** Judges answer to a question of law; jurors, to a question of fact. A maxim embodying the great leading principle of pleading, that a question or issue of *law* must be answered, that is, determined by the *court;* and a question or issue of *fact* must be answered, that is, tried by a *jury. Broom's Max.* 43, [77.] Used, also, as expressive of the general rule of proceeding on trials before a jury, viz.: that it is the office of the judge to instruct the jury in points of law, and of the jury to decide on matters of fact. *Co. Litt.* 295 b. See *Broom's Max.* 43—48, [77—84.]

*** In Vaughan's Reports, it is said,—"That *decantatum* in our books,—*ad questionem facti non respondent judices; ad questionem legis non respondent juratores,* literally taken, is true. For, if it be demanded, what is the fact, the judge can-

not answer it; if it be asked, what is the law, the jury cannot answer it." *Vaugh.* 149. There are, however, several exceptions to both branches of this maxim: thus,—

First, that judges have no right to respond to questions of fact, is not universally true. For, to say nothing of those courts in which all issues, as well of fact as of law, are determined by the judges, it constantly happens, even in common law courts, that there are questions or matters of fact connected with the issue before the jury, which it is unquestionably the province of the court to determine. Of this nature are questions as to the admissibility of evidence, (*Broom's Max.* [82.] 11 *M. & W.* 486. 33 *Eng. Law & Eq. R.* 393,) questions of reasonableness—reasonable cause, reasonable time, and the like. *Broom's Max.* [82.] 7 *Scott, N. R.* 280. *Co. Litt.* 566. 11 *M. & W.* 817. Even in the matter of weighing evidence, and saying what is the fact upon such evidence, which is conceded to be the peculiar province of the jury in all cases, judges are (according to the prevailing practice) allowed, in summing up the evidence in the case, to express opinions to the jury, as to the facts which such evidence conduces to prove, or to point out the conclusions which, in their opinion, ought to be drawn from it. This practice was approved by the Supreme Court of the United States in a recent case, (13 *Howard's R.* 115, 130, 131,) although the contrary was strenuously maintained by Daniel, J. in a dissenting opinion in the same case, in which he argued that such a practice was virtually a "responding to questions of fact," within the meaning of the maxim, and in violation of it. *Id.* 144, 145.

Again, it is not universally and literally true that juries have no right to respond to questions of law arising on trials. For, although, in all civil cases, where the issue before the jury is compounded of questions of law and fact united, it is undoubtedly the province of the court to decide the questions of law, or to declare to the jury what is the law of the case, yet the actual decision or response, which of course includes the law (as taken from the court) as well as the fact, always rests with the jury. In criminal cases, indeed, the maxim has been much more extensively qualified, and the rule broadly laid down, that jurors are the judges both of the law and the fact. 1 *Parker's Crim. R.* 595. *Id.* 603. 17 *Georgia R.* 497. 2 *Swan's R.* 482. But the rule has also been laid down in directly opposite terms—that the jury are not the judges of the law in such cases. Story, J. 2 *Sumner's R.* 240, 243. 1 *Parker's Cr. R.* 147, 474. 1 *Curtis' C. C. R.* 23.

AD QUERIMONIAM. L. Lat. On the complaint. *Statim* ad querimoniam *creditoris;* immediately on the complaint of the creditor. *Fleta*, lib. 2, c. 64, § 4.

AD QUOD CURIA CONCORDAVIT. L. Lat. To which the court agreed. *Yearb.* P. 20 Hen. VI. 27.

AD QUOD DAMNUM. L. Lat. (To what damage.) In English law. A writ (so called from these its emphatic words,) directed to the sheriff, commanding him to inquire by the oath of jurors, whether a grant intended to be made by the king would be to his damage, or prejudice, or to that of others; and if it be, then *to what damage*, (ad quod damnum *et quod prœjudicium nostrum*, *et* ad quod damnum, *et quod prœjudicium aliorum.*) *Reg. Orig.* 247 a, *et seq.* *F. N. B.* 221. Called "an ancient writ, and well known to the law." Le Blanc, J. 2 *M. & S.* 236. It is required to be issued before the crown can grant certain liberties, as a fair, market, &c., which may be prejudicial to others, and it was also formerly had for the turning and changing of ancient highways, watercourses, &c. *Termes de la ley. Whishaw.*

A writ under this name is given by the Revised Statutes of New-York, in cases where the governor of the state is authorized by law to take possession of any lands or tenements within the state for the use of the people, and he cannot agree with the owners of such lands for the purchase thereof. 2 *Rev. St.* [588,] 488, § 66. In other states, as in Virginia, Kentucky, Illinois, Missouri and Mississippi, it is issued on applications to build mills or mill-dams, on occasions of establishing or altering roads, and ferry landings, and for other purposes. *Code of Virginia*, (ed. 1849,) pp. 267, 328, 528. *Revised Statutes of Kentucky*, (ed. 1852,) pp. 357, 507, 581. 2 *Comp. Statutes of Illinois*, (ed. 1858,) p. 768. 2 *Rev. Stat. of Missouri*, (ed. 1855,) p. 1082. *Rev. Code of Mississippi*, (ed. 1857,) p. 202.

AD QUOD NON FUIT RESPONSUM. L. Lat. To which there was no answer. A phrase used in the reports, where a point

advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or noticed by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 *Co.* 9. 4 *Id.* 40. *Comb.* 474.

AD RATIONEM PONERE. L. Lat. To put to [give] a reason; to call upon for a reason; to put to the bar and interrogate as to a charge made; to arraign on a trial. A technical term in old Exchequer records. *Posit'* ad rationem, *&c. confes' quod &c. Mem. in Scacc.* M. 20 Edw. I. *Et posit' esset* ad rationem *quo warranto*, &c. *Id.* II. 22 Edw. I.

AD RECOGNOSCENDUM. L. Lat. To recognize. *Fleta*, lib. 2, c. 65, § 12. Formal words in old writs. See *Recognitura.*

AD RECTUM. L. Lat. To right; to do right; to meet an accusation; to answer the demands of the law.* *Habeant eos ad rectum;* they shall have them to answer the law, or to make satisfaction. *Bract.* fol. 124 b.

AD RESPONDENDUM. L. Lat. To answer. Emphatic words in the old writs of *capias*, and other writs. *Fleta*, lib. 2, c. 65, § 12. *Reg. Orig.* 273. See *Capias ad respondendum.* Sometimes the equivalent word *responsurus* (q. v.) was used.

AD SECTAM. L. Lat. At the suit; at the suit of. *Reg. Orig.* 273 a. *Bract.* fol. 131 b. 3 *How. State Trials*, 111. *Ad sectam querentis;* at the suit of the plaintiff. *Fleta*, lib. 2, c. 47, § 1. *Ad nullius sectam;* at the suit of no one. *Bract.* fol. 133 a. This term, (abbreviated to *adsm.* and *ads.*,) is still retained in practice, in entitling papers. See *Ads.*

AD STANDUM RECTO. L. Lat. [L. Fr. *ester a droit.*] To stand to the right; to meet an accusation or complaint; to stand a trial; to abide by the sentence of the law.* *Responsurus, et* ad standum recto, *si sit aliquis qui versus eum loquatur;* to answer, and to stand to the charge, if there be any one who shall complain against him. *Bract.* fol. 125 a. *Plegium ad standum recto;* security to appear and answer to an accusation. *Id.* fol. 154 a. *Plegios ad standum recto. Fleta*, lib. 1, c. 26, § 3. *Plegios de standa ad rectum. Bract.* fol. 336 a. See *Reg. Orig.* 270. The phrase *stare juri*, (q. v.) has the same meaning. *Reg. Orig.* 270 b. And so has the old Scotch phrase, *ad subeundum legem*, (q. v.)

AD STUDENDUM ET ORANDUM. L. Lat. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 *Bl. Com.* 467. *T. Raym.* 101.

AD SUBEUNDUM LEGEM. L. Lat. To undergo, [Scotticè, to underly] the law; to abide the sentence of the law. 1 *Pitcairn's Crim. Trials*, part 1, p. 92. A common phrase in old Scotch law.

AD TERMINUM. L. Lat. For a term. *Ad terminum vitæ vel annorum;* for a term of life or years. *Bract.* fol. 26 b. *Ad terminum annorum. Fleta*, lib. 3, c. 12, § 6. *Ad terminum, vel ad tempus;* for a term, or for a time. *Bract. ubi supra.*

AD TERMINUM QUI PRÆTERIIT. L. Lat. For a term which has passed. The name of a writ of entry which lay at common law for the lessor or his heirs, where a lease had been made of lands or tenements for life or years, and after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same; the writ commanding the tenant to restore to the demandant the land which the latter had demised to him *for a term which was passed;* (*ad terminum qui præteriit.*) *Bract.* fol. 318 a. *Reg. Orig.* 227 b. *F. N. B.* 201. 3 *Bl. Com.* 176. 3 *Reeves' Hist. Eng. Law*, 30. 1 *Roscoe's Real Act.* 97. This writ was superseded by the action of ejectment, and is now abolished in English law by statute 3 & 4 Will. IV. c. 27, s. 36.

AD TRACTANDUM ET CONSILIUM IMPENDENDUM. L. Lat. To discuss and give advice. 1 *Bl. Com.* 168.

AD ULTIMAM VIM TERMINORUM. L. Lat. To the most extended import of the terms; in a sense as universal as the terms will reach. 2 *Eden*, 54.

AD VALENTIAM. L. Lat. To, or of the value. *Bract.* fol. 315 b. *Yelv.* 71.

AD VALOREM. L. Lat. Upon the value. According to the value. *Ad valorem* duties are those which are imposed on goods, merchandise, and other articles, at a certain rate *per centum* on their value, and sometimes on their cost. See *Acts of Congress*, March 2, 1799, ch. 22, sect. 61; March 1, 1823, ch. 21, sect. 5; July 30, 1846, ch. 74; March 3, 1857, ch. 98.

"An *ad valorem* tax means a tax or duty upon the value of the article or thing subject to taxation." Yerger, J. 24 *Mississippi R.* 501. But the term *ad valorem*, in the various revenue laws of the United

States, charging a duty on imports, does not always mean the actual value of the article at the place of exportation. *Crabbe's R.* 499, 512. See Act of March 1, 1823, ch. 21, sect. 5; 3 *U. S. Statutes at Large*, 732.

AD VENTREM INSPICIENDUM. See *De ventre inspiciendo.*

AD VITAM. Lat. For life. *Bract.* fol. 13 b. *In feodo, vel ad vitam;* in fee, or for life. *Id. ibid.*

AD VITAM AUT CULPAM. L. Lat. In Scotch law. For life, or until misbehavior. 6 *Bell's Appeal Cases*, 112. A term of similar import with *quamdiu bene se gesserit* (q. v.) in English law. *Stat.* 28 *Geo.* II. c. 7. See *Culpa.*

AD VOLUNTATEM. L. Lat. At will. *Bract.* fol. 27 a.

AD WARACTUM. L. Lat. To fallow. *Bract.* fol. 228 b. See *Waractum.*

AD.EQUATIO. Lat. [from *adæquare*, to equal, or equalize.] In the civil law. A making equal; a sharing equally. *Hotom. Verb. Feud. Cowell*, voc. *Coparceners.*

ADÆRARE. Lat. In the civil law. To estimate in money, (*ære æstimare.*) *Calv. Lex. Brissonius.*

In old European law. To put a price or valuation on; to value; to appraise, (*adpræciare.*) *LL. Burgund.* Addit. 2, § 7. *Spelman.*

ADAYER. L. Fr. To provoke. *L. Fr. Dict. Kelham. Adayement;* provocation. *Id.*

ADDICERE. Lat. In the civil law. To adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the prætors. 1 *Kaufm. Mackeld. Civ. Law*, 187, note. See *Do, Dico, Addico.*

ADDICTIO. Lat. [from *addicere*, q. v.] An assignment by the sentence of a court. By the old Roman law, if the party who was cast in an action did not obey the sentence of the court within thirty days, he was assigned over (*addictus*) to the successful party, who might commit him to prison till satisfaction was made.* *Halifax Anal.* b. 3, c. 9, n. 44.

ADDICTIO IN DIEM. Lat. In the civil law. A sale made with a clause or agreement that the contract shall not hold if the seller afterwards, and within a certain space of time limited by the contract, shall find another buyer who will make him a more advantageous offer. *Dig.* 18. 2. 1. *Pothier, Contr. of Sale*, part 3, sect. 3. *Id.* part 5, ch. 2, sec. 4.

ADDITIO. Lat. Addition; an addition, (q. v.) **Additio probat minoritatem.** An addition, [to a name] proves, or shows minority, or inferiority. 4 *Inst.* 80. *Wingate's Max.* 211, max. 60. This maxim is applied by Lord Coke to courts, and terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege*, and the style of the court of chancery is *coram domino rege in cancellaria;* the addition showing the difference. 4 *Inst.* 80. So by the word *fee*, without more saying, is always intended *fee simple*, fee tail not being intended by it, unless there be added to it the *addition* of the word *tail.* See *Litt.* sect. 293. *Co. Litt.* 189 a. *Wingate's Max. ub. sup.*

ADDITION. The title or description of a person in law proceedings, given in *addition* to his name, for the purpose of more accurate designation, and showing his estate, degree, mystery and place of residence.* *Termes de la Ley. Cowell.* Called in Scotch law, *designation.* In English law, there are four kinds of *additions;* additions of *estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquess, duke; additions of *trade*, mystery or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, &c. The only additions recognised in American law are those of mystery, and residence.

*** The object of giving additions to the names of persons is very clearly stated in the statute of 1 Hen. V. c. 5, by which the practice was introduced, and which ordained that, in actions where process of outlawry lay, such additions should be to the name of the defendant, to show his estate, mystery and place of residence, in order that one *man might not be vexed or troubled by the outlawry of another;* [as where there were several of the same name,] but that by reason of the certain *addition*, every person might be known, and bear his own burden. *Cowell.* 2 *Inst.* 665. See *Barringt. Obs. Stat.* 381. A like provision was applied by the same statute to indictments, in order to identify the person of the offender. 4 *Bl. Com.* 306.

ADDONE, *Addonne.* L. Fr. Given to. *Kelham. L. Fr. Dict.*

ADDOUBEUR. L. Fr. A promoter, or setter up of causes. *Kelham.*

ADDRESSER, *Adresser.* L. Fr. To hold up; to erect. *Addresseroient en haut lour maynes dextres;* should hold up on high their right hands. *Kelham.*

ADEEM. [Lat. *adimere*, to take away.] To take away, take back, or revoke, as a legacy. *Ward on Legacies*, 261. See *Ademption.*

ADELANTADO. Span. In Spanish law. A governor of a province. *Las Partidas*, part 6, tit. 4, l. 2.

A president or president judge; a judge having jurisdiction over a kingdom, or over certain provinces only. So called from having authority over the judges of those places. *Id.* part 3, tit. 4, l. 1.

ADELING. [L. Lat. *Adelingus;* from Sax. *ædel*, or *ædelan*, noble, excellent.] A title of honor among the Saxons, given to the king's children, and heirs to the crown. Called by the Normans, *domicellus*, and by the Latin writers of the same period, *Clito. Spelman.*

ADEMPTIO. Lat. [from *adimere*, to take away, revoke, adeem.] In the civil law. A revocation of a legacy; an ademption. *Inst.* 2. 21. pr. Where it was expressly transferred from one person to another, it was called *translatio. Id.* 2. 21. 1. *Dig.* 34. 4.

ADEMPTION. [Lat. *ademptio*, q. v.] A taking away, or revocation; a term derived from the civil law. See *Ademptio. Ademption of a legacy* is the taking it away from the party to whom it has been given, arising from a supposed alteration in the testator's intention. Thus, if a man who has a sum of money due to him on a bond, expressly bequeaths it to some person named in his will, and after having done so, calls in the money himself, this is an *ademption* of the legacy, which is said to be *adeemed. Ward on Legacies*, 261, 268. *Ambl.* 401. *Holthouse. Whishaw.* So where a thing specifically bequeathed is not in existence at the time of the testator's decease, it is an ademption. 3 *Foster's R.* 212.

ADEO. Lat. So; as. *Adeo plene et integre;* as fully and entirely. 10 *Co.* 65. See *Adire.*

ADEPRIMES. L. Fr. First; at first; for the first time; in the first place. *Fet Assaver*, § 14. *Kelham. Pledes* adeprimes *v're plea, et puis desputes;* plead your plea first, and then argue. *Yearb.* P. 8 Edw. III. 9.

ADERERE. L. Fr. In arrear; behind. *Litt.* sect. 151.

ADESOUTH. L. Fr. Under; beneath. *Kelham.*

ΑΔΕΣΠΟΤΑ, *Αδέσποτα.* Gr. [from *α*, without, and *δεσποτης*, a master.] In the civil law. Without an owner or master, (*hero carentes.*) *Grot. de Jur. Belli*, lib. 2, c. 8, § 6. Things which have no owner or claimant. *Calv. Lex.*

ADESSE. Lat. [from *ad*, to, and *esse*, to be.] In the civil law. To be present; the opposite of *abesse. Calv. Lex.*

To advocate; to assist or defend in law; to undertake the management of a cause. *Id. Brissonius.*

ADEU. L. Fr. Without day. *Alez adeu. Yearb.* T. 5 Edw. II. 173. See *Adieu.*

ADEVANT, *Adavaunt.* L. Fr. Before. *Kelham.*

ADFERRUMINATIO. Lat. [from *ad*, to, and *ferrum*, iron.] In the civil law. The welding together of iron; a species of *adjunctio*, (q. v.) Called also *ferruminatio*, (q. v.) *Dig.* 6. 1. 23. 5. 1 *Mackeld. Civ. Law*, 281, § 268.

ADFINES, *Affines.* Lat. [from *ad*, to, and *finis*, a border, or limit.] In the civil law. Relations, or connections by marriage; so called, because the families (*cognationes,*) of the husband and wife are connected by the marriage (*per nuptias copulantur*), and the one comes *up to the line* which divides it from the other, (*et altera* ad *alterius cognationis* finem *accedit.*) *Dig.* 38. 10. 4. 3. Thus very expressively distinguishing them from relations by blood, between whom there exists an actual union, without any intervening barrier, (*finis,*) or dividing line.

ADGISANT, *Adgisantz.* L. Fr. Adjacent. *Kelham.*

ADGNOSCERE. Lat. In the civil law. To admit; to accept. The opposite of *repudiare. Brissonius.* To undertake; to assume. *Id.*

ADHIBERE. Lat. In the civil law. To apply; to employ; to exercise; to use. *Adhibere diligentiam;* to use care. *Dig.* 18. 6. 11. *Adhibere vim;* to employ force. *Dig.* 4. 2. 12. 2. *Id.* 4. 2. 14. 3.

ΑΔΙΑΘΕΤΟΣ, *Αδιαθετος.* Gr. [from *α*, priv. and *διατιθημι*, *dispono*, to dispose.] In the civil law. Intestate; an intestate; one who

fails or neglects to *dispose of* his property; one who dies without a testament, (διαθηκη). *Nov.* 22, c. 46, § 2. Ἡ ἐξ ἀδιαθετου διαδοχη; succession *ab intestato*. *Nov.* 118, c. 3.

ADIEU. L. Fr. Without day. A common term in the Year Books, implying final dismissal from court. Literally, "to God." Frequently written *adeu*, (q. v.) See *Aler a dieu*.

ADIEU, MONEY OF. See *Money of Adieu*.

ADIMERE. Lat. In the civil law. To take away; to remove. *Dig.* 43. 27. 1. pr. To take away; to deprive. *Id.* 39. 5. 7. 3. To take away; to take back, (as a legacy.) *Id.* 48. 10. 5.

ADIRE, *Adyre*. L. Fr. To say. *Kelham*.

ADIRE. Lat. In the civil law. To go to; to approach; to apply to. *Calv. Lex. Brissonius*.

To go to; to enter upon; to accept. *Cúm* adit *hæreditatem;* when he enters upon the inheritance. *Dig.* 29. 2. *Inst.* 2. 19. 4. *Bract.* fol. 227 a. *Aditus, adita;* entered upon. *Hæreditas dum jacet non* adita; an inheritance while it lies not entered upon. *Id.* fol. 44 a.

ADITIO. Lat. [from *adire*, q. v.] In the civil law. An entering upon an inheritance. *Dig.* 29. 2. See *Adire*.

ADITUS. Lat. [from *adire*, to go to.] In old English law. A public road; being not only a footway, (*iter*,) and horseway, (*actus*,) but also a cart or carriage way; and is either *regia via*, the king's highway for all men, or *communis strata*, a common street belonging to a city or town, or between neighbors. *Co. Litt.* 56 a.

ADJACENT. [Lat. *adjacens*, from *adjacere*, to lie to, at, or upon.] Lying near to, or in the neighborhood of. 1 *Cooke's R.* 128. 4 *Peters' Cond. Rep.* 96. This word formerly signified *adjoining*, as its etymology indicates, but has not now that meaning. *Id. ibid.* See *Abuttals, To lie to*.

ADJECTIO. L. Lat. [from *adjectire*, q. v.] In old European law. A summoning to court. *Spelman*, voc. *Abjectire*.

ADJECTION. L. Fr. In old English law. Addition; addition to a name. *Yearb.* M. 9 Edw. III. 40.

ADJECTIRE. L. Lat. In old European law. To summon to court, (*citare*.) *Marculf. Formul.* lib. 1, c. 37. *Spelman. Adjectivus, adjactivus*, summoned. *Id.*

ADJICERE. Lat. In the civil law. To add; to join to. *Brissonius*.

ADJORNAMENTUM. L. Lat. In old English law. Adjournment; an, or the adjournment. *Fleta*, lib. 6, c. 4, § 1. *Id.* c. 10, § 7.

ADJORNARE. *Adjournare, Adjurnare*. L. Lat. [from Fr. *adjourner*, q. v.] In old English law. To adjourn. *Adjornent assisas;* they shall adjourn the assises. *Stat. Westm.* 2, c. 30. Anciently, to summon. See *Adjourn*.

ADJORNATUR. L. Lat. [from *adjornare*, q. v.] It is adjourned; "adjourned." "*Adjornatur*, to be argued again, the first Friday in the next term." 2 *Show.* 271. "But because Holt, C. J. *hæsitavit, adjournatur*." 1 *Id.* 364. See 5 *Mod.* 74. *Hardr.* 353. A common term in the old reports. *Sed* adjornat' *pro resolutione curiæ*. 1 *Show.* 154.

ADJORNATUS, *Adjurnatus*. L. Lat. [from *adjornare*, or *adjurnare*, q. v.] In old English law. Adjourned. *Quæ quidem recordum et processus* adjornata *sunt coram vobis;* which record and process are adjourned before you. *Reg. Orig.* 3.

Summoned to appear at a day; summoned to court. See *Adjourn, Adjurnatus*.

ADJOURN. [L. Lat. *adjornare, adjournare, adjurnare*, from Fr. *adjourner*, from *jour*, a day.] To put off, or postpone to another or further day, (*ad diem ponere, in ulteriorem diem rejicere. Spelman.*) To assign a new or further day to a court, or party; to dissolve a court for the present, and appoint another day for it to meet again; to continue from one day to another.* Applied also to the meetings of legislative and other public bodies, and sometimes to the process of courts. *Spelman. Cowell. Blount.* 1 *Bl. Com.* 186. *Steph. Pl.* 31. 81, (Am. ed. 1824.) See *Continuance*.

*** The proper and radical meaning of the law Latin *adjornare*, and French *adjourner*, from which this word is derived, was to *assign a day* to a prosecuted party, (*diem alicui dicere*,) to appear in court; to summon to court, (*citare, in jus vocare*,) or, in the phrase of the old Salic law, *solem alicui collocare. Spelman*, voc. *Adjurnare*. Thus, in the capitularies of the early French kings,—*De hominibus ecclesiasticis qui non erant* adjurnati; concerning church vassals who were not adjourned, i. e. summoned. *Capit. Carol.* lib. 5, c. 151. The Saxon

andagan had nearly the same sense. *LL. Edw. Sen.* c. 1. *Spelman.* The day thus given was the *first day* of the party's appearance, answering to the *return day* of the process by which he was summoned. The use of the word *adjurnamentum* in the sense of a summoning to court, the assignment of a day to appear in court, (*diei dictio, citatio, evocatio, denunciatio,*) is frequent in the laws of the Burgundians. *Spelman, ub. sup.* See *Adjurnamentum.*

The French *adjourner*, or *ajourner*, has retained this original sense, but the English *adjourn*, and *adjournment*, have materially departed from it. The idea of a day given or assigned has been in some measure preserved in these words; but it is never a *first day* of appearance, but always a *subsequent* day after an appearance once made; a day after a dismissal from court; the idea of *dismissal* being in fact the primary one. The English words are used, in short, merely in the sense of *postponement* to another day or time, and frequently in that of a final dissolution *without any day.* The entire loss of original meaning appears strikingly in the familiar modern phrase "to adjourn without day," which once would have been an absurdity in terms.

ADJOURNAL. In Scotch law and practice. A term applied to the records of criminal courts. Books of Adjournal, (O. Scotch, "bukis of adiornale,") were the original records of criminal trials, many of which are now lost. *Pitcairn's Crim. Trials*, vol. 1, part 2, p. 225. An act of *adjournal* is an order of the Court of Justiciary, entered on its minutes. *Shaw's R.* Appendix.

ADJOURNATUR. L. Lat. [from *adjournare*, to adjourn.] It is adjourned. A word with which the old reports very frequently conclude a case. 1 *Ld. Raym.* 602. 1 *Show.* 7. 1 *Leon.* 88. See *Et adjournatur, Adjornatur.*

ADJOURNED TERM. In practice. A continuance, by adjournment, of a regular term. Thurman, C. J. 4 *Ohio St. R.* 473. Distinguished from an "additional term," which is a distinct term. *Id. ibid.* An *adjourned term* is a continuation of a previous or regular term; it is the same term prolonged, and the power of the court over the business which has been done, and the entries made at the regular term, continues. 22 *Alabama R.* 57.

ADJOURNER. L. Fr. [from *jour*, a day.] To give, or assign a day; to summon to appear at a day. *Spelman*, voc. *Adjurnare.*

To give another day, that is, a day after a day of appearance; to adjourn. *L. Fr. Dict.*

ADJOURNMENT. L. Fr. and Eng. [L. Lat. *adjornamentum, adjurnamentum.*] A putting off to another or further day, (*in ulteriorem diem.*) *Spelman*, voc. *Adjurnare. Cowell. Jacob.* An assignment of a new or further day for a meeting or proceeding. See *Adjourn.*

ADJOUSTER, *Adjuster.* L. Fr. To put to; to add or reckon; to make even; to set right. *L. Fr. Dict.*

ADJUDICARE. Lat. [from *ad*, to, and *judicare*, to judge; L. Fr. *adjudger.*] In the civil law. To adjudge; to determine; to decree to a person; to assign by judgment, i. e. by the act of a court. *Adjudicatum;* adjudged. *Inst.* 4. 17. 7. See *Adjudicatio.*

In old English law, to forjudge. *Adjudicetur medius de feodo et servitio suo;* the mesne shall be forjudged of his fee and service. *Stat. Westm.* 2, c. 9. See *Forjudicare.*

ADJUDICATIO. Lat. [from *adjudicare*, q. v.] In the civil law. An adjudication; an assignment by judgment; the adjudging of the ownership of a thing, by a court. One of the legal modes of obtaining property, viz. by the decision of a judge, which takes place in the three actions for partition, viz. *familiæ herciscundæ, communi dividundo*, and *finium regundorum*, (qq. v.) In these actions, the judge has the right to adjudge to one or the other co-heir or part-owner, the exclusive proprietorship of a thing hitherto held in common, and his judgment transfers, *ipso jure*, the property in the thing adjudged. 1 *Mackeld. Civ. Law*, 286, § 271. *Statim ejus fit cui adjudicatum est;* it immediately becomes his to whom it is adjudged. *Inst.* 4. 17. 7.

ADJUDICATION. [Lat. *adjudicatio*, from *adjudicare*, q. v.] The act of giving judgment, or pronouncing a sentence or decree; the judgment itself, so given.

A settlement by judgment, decree or sentence. *Stat.* 16 & 17 *Car.* II. c. 10. *Cowell.*

ADJUDICATION. In Scotch law. A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. *Ersk. Inst.* b. 2, tit. 12,

§§ 39—55. A species of judicial sale, redeemable by the debtor. *Id.* §§ 42—55. See *Bell's Dict.* A decreet of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right, to belong to his creditor, who is called the *adjudger*, for payment or performance. *Forbes' Inst.* part 3, b. 1, ch. 2, tit. 6.

ADJUNCTIO. Lat. [from *adjungere*, to join to, to annex.] In the civil law. Adjunction; a species of *accessio*, whereby two things belonging to different proprietors are brought into firm *connexion* with each other; such as interweaving, (*intertextura ;*) welding together, (*adferruminatio ;*) soldering together, (*applumbatura ;*) painting, (*pictura ;*) writing, (*scriptura ;*) building, (*inædificatio ;*) sowing, (*satio ;*) and planting, (*plantatio.*) *Inst.* 2. 1. 26—34. *Dig.* 6. 1. 23. 1 *Mackeld. Civ. Law*, 281, § 268. See *Accessio.*

ADJUNCTUM. Lat. Incident. See **Extincto subjecto**, &c.

ADJURNAMENTUM. L. Lat. [from *adjurnare*, q. v.] In old European law. A summoning to court at a certain day; the assignment of a certain day to appear in court, (*diei dictio, citatio, in jus vocatio, monitio, denunciatio, conventio ;*) adjournment, in the original sense. *Spelman*, voc. *Adjurnare. Skene de Verb. Signif.* voc. *Adjurnatus.*

ADJURNARE. L. Lat. [from Fr. *adjourner.*] In old European law. To give or assign a day to any one, (*diem alicui dicere;*) to summon to court, (*citare, in jus vocare.*) Corresponding with the Sax. *andagan*, to put to a day, (*ad diem ponere.*) *Spelman.*

Adjurnatus ; summoned or called to a certain day. *Id. Skene de Verb. Sign.*

ADJUSTMENT. In marine insurance. Settlement; settlement of a loss. The *adjustment* of a loss is the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions are made, is entitled to receive under the policy, and the fixing the proportion of this which each underwriter is liable to pay. 2 *Marsh. on Ins.* 529, ch. xv. A kind of account stated, or agreement between the parties, as to what the particular average, or partial loss shall amount to. *Smith's Merc. Law*, 244. 2 *Archb. N. Prius*, 200. 3 *Kent's Com.* 242, 335.

ADMALLARE. L. Lat. [from *ad*, to, and *mallum*, a court.] In old European law. To cite or summon to court; to sue; to attach. *L. Salic.* tit. 59. *Marculf.* lib. 1, c. 21. *Spelman. Id.* voc. *Attachiare.*

ADMEASUREMENT. [L. Lat. *admensuratio, amensuratio.*] A measuring out; an assignment by measure; an adjustment, or allotment according to certain fixed limits, or in certain proportions.

The name of the writ for making such assignment or adjustment, and which lay at common law against persons who usurped more than their share of any right or privilege. See *infra.*

ADMEASUREMENT OF DOWER, *Writ of.* [L. Lat. *breve de admensuratione dotis.*] In English law. The name of a writ to which an heir is entitled, where a man's widow, after his decease, holds from the heir more land, as dower, than of right belongs to her; or where the heir being within age, or his guardian, has assigned to her more than she ought to have. The operation of the writ, (which, however is, in a great measure, obsolete,) is to fix the amount of dower to which the widow is entitled, and to restore the overplus to the heir. *Reg. Orig.* 171 a. *F. N. B.* 148 F. *Termes de la Ley.* 2 *Bl. Com.* 136. 3 *Id.* 183. 2 *Crabb's Real Prop.* 145, § 1148. 5 *Richardson's Eq. R.* 254.

This writ has been abolished in New-York, and the term *admeasurement of dower* is there used to signify the statutory remedy for the assignment of dower, either by the widow, where her dower has not been assigned to her, or by the heirs, in cases where the widow has neglected to apply for her dower. 2 *N. Y. Rev. Stat.* [488,] 400.

ADMEASUREMENT OF PASTURE, *Writ of.* [L. Lat. *breve de admensuratione pasturæ.*] In English law. A writ which lies between those that have common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. *Bract.* fol. 229 a. *Reg. Orig.* 156 b. *F. N. B.* 125 B. *Termes de la Ley.* 3 *Bl. Com.* 238. 1 *Crabb's Real Prop.* 318, § 358. The writ is directed to the sheriff, reciting a complaint that the defendant has *surcharged*, (*superoneravit,*) the common, and commanding the sheriff to admeasure and apportion it. 3 *Bl. Com.* 238. Under this process, a jury, with the sheriff, apportioned the quantity of cattle to the extent of the ground, and the num-

ber of the proprietors. 3 *Kent's Com.* 419. In most of the United States, this remedy is now superseded either by the action of ejectment, or action on the case. *Id. ibid.* See *Common, Surcharge.*

ADMENSURARE, *Amensurare.* L. Lat. [from *ad*, to, and *mensura*, measure.] In old English law. To admeasure. *Breve de communi pastura admensuranda;* a writ for admeasuring common of pasture. *Reg. Orig.* 157. Bracton writes the word, *amensurare*, (q. v.)

ADMENSURATIO, *Amensuratio.* L. Lat. [from *admensurare*, q. v.] In old English law. Admeasurement. *Reg. Orig.* 156, 157. Admensuratio *nihil aliud est quam redactio ad mensuram;* admeasurement is nothing more than reducing to measure. *Fleta*, lib. 4, c. 23, § 2. See *Admeasurement.* In Bracton, the word is written *amensuratio*, (q. v.)

ADMEZATORES. L. Lat. In old Italian law. Persons chosen by the consent of contending parties, to decide questions between them. Literally, mediators (from Ital. *mezzatura*, from *mezzo*, middle.) *Spelman.*

ADMINICLE. [Lat. *adminiculum*, q. v.] In Scotch law. A collateral deed or writing, referring to another which has been lost, or tending to establish its existence, or the terms of it, and which it is in general necessary to produce, before the tenor of the lost deed can be proved by parol evidence. *Ersk. Inst.* b. 4, tit. 1, § 55. *Bell's Dict.*

Used as an English word, in the statute of 1 Edw. IV. c. 1, in the sense of aid, or support.

ADMINICULAR. [from *adminiculum*, q. v.] Auxiliary to. "The murder would be *adminicular* to the robbery," [i. e. committed to accomplish it.] Story, J. 3 *Mason's R.* 121.

ADMINCULATOR. L. Lat. [from *adminiculum*, q. v.] An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. *Spelman.*

ADMINICULUM. Lat. In the civil and old English law. Aid or support. Sometimes rendered "adminicle," (q. v.) *Non in toto sine* adminiculo *relinquebant;* they did not leave them wholly without assistance. *Inst.* 3. 2. 7. *Juris adminiculum;* the support of the law. *Dig.* 26. 7. 39. 9. *Cum juris* adminiculo *concurrente;* with the support of right concurring. *Bract.* fol. 38 b. 44 a.

A species of evidence, not conclusive in itself, but becoming so when conjoined with other proofs; [cumulative or corroborative testimony.] *Best on Presumptions*, 13, note (*f*). See *Adminicle.*

That which belongs to a thing as accessory; that which is necessary to its complete use and enjoyment. 1 *Maçkeld. Civ. Law*, 348, note (*d*).

Whatever appertains to any judicial proceedings, writs, records, &c. *Fleta*, lib. 2, c. 3, § 4. *Reg. Jud.* 30.

ADMINISTER. [from Lat. *administrare*, q. v.] To manage; to take charge and dispose of the personal property of an intestate, or a testator having no executor, according to law.* Used in this sense in the statute 31 Edw. III. stat. 2, c. 11. *Cowell.* 2 *Reeves' Hist. Eng. Law*, 387. Applied in the civil law to the management of the estate of a minor. See *Administrare.* Held to import alteration, change or conversion of the property in goods. 4 *Florida R.* 66, 67, 84. 5 *Randolph's R.* 51.

In modern practice. To perform the office of *administrator*, (q. v.)

To give; to cause to be taken, as medicine, poison. Poison may be administered without being directly delivered to the party poisoned. 4 *Carr. & P.* 369. 1 *Moody's C. C.* 114. See 28 *Mississippi R.* 267.

ADMINISTRACO. An old contraction of *administratio.* So, *administracon*, for *administration.* *Towns. Pl.* 26. 1 *Instr. Cler.* 4.

ADMINISTRARE. Lat. In the civil law. To manage, or conduct; to administer; to take, or have charge of. *Cod.* 5. 43. 6. *Tutelam administrare;* to undertake a guardianship. *Inst.* 1. 25. 9. *Cod.* 5. 51. 10. *Ut solus administret;* to have the sole administration or management. *Inst.* 1. 24. 1. Used in the same sense with *gerere. Id. ibid. Qui negotia administrat;* who manages the affairs, or transacts the business. *Dig.* 3. 5. 6. 12. For the various applications of this word, see *Brissonius.*

To execute an office. *Cod.* 4. 2. 3.

To govern; to have or conduct the government. *Calv. Lex. Rempublicam administrare. Cod.* 11. 30.

In the common law. To administer; to take charge and dispose of the effects of an intestate. *Plene administravit* (q. v.); he has fully administered. See *Administratio.*

ADMINISTRATIO. Lat. [from *administrare*, q. v.] In the civil law. Management, conduct or charge; administration; government. Management of affairs generally. *Dig.* 32. 34. 1.

Management of the estate or affairs of a minor or ward. *Inst.* 1. 24. 2. *Id.* 1. 26. 7. *Cod.* 5. 37. *Id.* 5. 43. 7, 8. *Id.* 5. 51. 9, 11.

Management by an attorney. *Dig.* 17. 1. 60.

Management of public affairs. *Cod.* 11. 30. Execution of an office. *Dig.* 50. 4. 14. 3. *Id.* 50. 8. *Cod.* 11. 30. 2. *Id.* 1. 49. *Id.* 1. 53. 1. *Id.* 12. 8. 2.

In old English law. Management, conduct, disposal or charge of property or affairs in general; power of disposal. *Fleta*, lib. 2, c. 64, § 8; c. 70, § 1. *Id.* lib. 3, c. 3, § 10.

Management, by one of full age, of his own affairs. *Bract.* fol. 11 b.

Management, by an attorney, of the business of his principal. *Id.* fol. 41 b.

Management, conduct or charge, and disposition of the property of a deceased person. *Plena administratio;* full administration. *Mem. in Scacc.* H. 5 Edw. I. *Libera administratio;* free administration. *Id.* H. 7 Edw. I.

Management by an executor. *De bonis defuncti nullam habent* administrationem; they have no administration of the goods of the deceased. *Fleta*, lib. 2, c. 62, § 10.

ADMINISTRATION. [Lat. *administratio*, q. v.] The management and disposition of the estate of an intestate, or of a testator having no executor.* 2 *Bl. Com.* 496. 2 *Steph. Com.* 232. 2 *Kent's Com.* 409. 2 *Reeves' Hist. Eng. Law*, 387.

The right to the management of such an estate, conferred by what are termed letters of administration, (q. v.) Used in this sense in the common expressions "to grant administration," "to take out administration."

This word, though ordinarily confined in its application to the management of an estate by an *administrator*, properly so called, includes also, in a larger sense, management by an *executor;* the strictly corresponding term *execution* not being now in use. Anciently, on the contrary, both terms were used interchangeably and indifferently; administration (*administratio*) being applied to executors, and execution (*executio*) to administrators. *Fleta*, lib. 2, c. 57, § 10. *Id.* lib. 2, c. 62, § 10. *Bract.* fol. 60 b. *Yearb.* T. 4 Edw. II. 108. *Bendl.* pl. 3. See *Executio bonorum.*

ADMINISTRATION CUM TESTAMENTO ANNEXO. Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 *Bl. Com.* 503, 504. 2 *N. Y. Rev. Stat.* [71], 15, § 14.

ADMINISTRATION DE BONIS NON, or DE BONIS NON ADMINISTRATIS. Administration of the goods not administered. Administration granted for the purpose of administering such *of the goods* of a deceased person as were *not administered* by the former executor or administrator. 2 *Bl. Com.* 506.

ADMINISTRATION DURANTE ABSENTIA. Administration during absence. Administration granted during the absence of an executor. 2 *Bl. Com.* 503. 1 *Lutw.* 342. See 8 *Cranch's R.* 9. In New-York, this is a case for granting special letters *ad colligendum.* 2 *Rev. Stat.* [76], 19, § 38.

ADMINISTRATION DURANTE MINORE ÆTATE. Administration during minority. Administration granted during the minority of an executor. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. In New-York, this is a case for granting administration *cum testamento annexo.* 2 *Rev. Stat.* [69], 13, § 3. *Id.* [71], 15, § 14.

ADMINISTRATION PENDENTE LITE. Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 2 *Bl. Com.* 503. In New-York, this is a case for granting special letters *ad colligendum.* 2 *Rev. Stat.* [76], 19, § 38.

ADMINISTRATOR. Lat. and Eng. [from *administrare*, q. v.] In the civil law. A manager or conductor of affairs, especially the affairs of another, in his name or behalf. A manager of public affairs in behalf of others. *Calv. Lex.* A public officer, ruler or governor, (*præses*, Gr. ἀρχων.) *Nov.* 95, gl. *Cod.* 12. 8.

In old English law. A manager; one who took care or had charge of another's property or affairs. *Quod nunquam fuit ballivus ejus, vel mercator, vel denariorum suorum receptor, vel administrator;* that he never was his bailiff, or merchant, or receiver of his moneys, or manager. *Fleta*, lib. 2, c. 70, § 9.

In modern law. He who administers; he who has authority to administer, that is, to manage and dispose of the estate of an intestate, or testator having no executor; he to whom the right of administration has been granted by law. See *Administer*, *Administration*. In the statute of 31 Edw. III. st. 2, c. 11, by which the law of administration was established, the administrator is called the *deputy* of the ordinary by whom he was appointed. 2 *Reeves' Hist. Eng. Law*, 387. *Theloall's Dig.* lib. 1, c. 19.

ADMINISTRATRIX. L. Lat. and Eng. [from *administrare*, q. v.] A female who administers, or to whom the right of administration has been granted. See *Administer*, *Administration*.

ADMIRAL. [Fr. *amerel*, *amiral*; L. Lat. *admirallus*, *admiralis*, *admiralius*, or *amiralius*; from Gr. ἀμηρᾶλιος, from Arab. *amir*, a chief, and Gr. ἅλιος, of the sea.] A naval commander, officer or magistrate; either chief, or subordinate.* *Spelman*, voc. *Admiralius*. Called also anciently *capitaneus et custos maris*, (captain and warden of the sea;) *præfectus maris, sive classis*, (governor of the sea, or of the fleet;) *archithalassus*, or *thalassiarcha*, (ruler of the sea, that is, of naval forces or affairs.) *Chart.* 48 *Hen.* III. *Co. Litt.* 260 b. In the Digests, mention is made of one Scius Saturninus who is styled *archigubernus ex classe Britannica*. *Dig.* 36. 1. 46.

The title of *admiral* is now considered as exclusively belonging to naval commanders of the highest rank. The office of admiral of England, or Lord high admiral, (*dominus magnus admirallus Angliæ*,) created in the reign of Edward I. is still recognised, although it has latterly been exercised by commissioners termed Lords of the Admiralty. *Spelman, ub. sup.* See 1 *Hale's Hist. Com. Law*, (Runnington's ed.) 36, note. *P. Cyclopedia.* An important feature of this office was the judicial cognizance of maritime causes which belonged to it, out of which has grown the present court of admiralty. Neither the office nor title has been adopted in the United States. Spelman, in his elaborate exposition of this word, has traced its origin to the *ameralius* of the Eastern empire. See *Ameralius*.

ADMIRAL. [L. Lat. *admiralius*.] In European law. An officer who presided over the *admiralitas*, or *collegium ammiralitatis*. *Loccenius de Jur. Mar.* lib. 2, c. 2, § 1. See *Admiralitas*.

ADMIRALITAS, *Ammiralitas*. L. Lat. Admiralty; the admiralty, or court of admiralty. *Clerke's Prax. Cur. Adm.* See *Admiralty*.

In European law. An association of private armed vessels for mutual protection and defence against pirates and enemies, (*navium privatorum coitio adversus piratas aut alios invasores*.) *Grot. de Jur. Belli*, lib. 2, c. 12, § 4. *Loccenius de Jur. Mar.* lib. 2, c. 2. Called by Loccenius, *societas navalis bellica*, and *collegium ammiralitatis*. *Id. ibid.* It corresponded with the Greek σύμπλοια, or δμόπλοια. *Grot. de J. B. ubi supra*.

ADMIRALTY, or COURT OF ADMIRALTY. [L. Lat. *admiralitas*, or *curia admiralitatis*.] The court of the admiral; a maritime court established in England about the reign of Edward III. and held before the Lord high admiral or his deputy, a judge of the admiralty, and now always held before the judge; having cognizance of all maritime causes, and injuries committed on the high seas, or on those parts of the coast which are not within the body or limits of an English county, (*infra corpus comitatus*,) or within the jurisdiction of the common law. *Spelman*, voc. *Admiralius*. 1 *Hale's Hist. Com. Law*, 41—51. 3 *Bl. Com.* 69. 4 *Id.* 268. 2 *Steph. Com.* 435, 724. 4 *Id.* 330. 2 *Gallison's R.* 398. 1 *Sumner's R.* 553—566. It is a court of criminal and civil jurisdiction, the latter being also twofold, and holden before distinct tribunals; one, the ordinary court for deciding controversies relating to contracts made at sea, [or maritime contracts,] called the *Instance court*, (q. v.);. the other, called the *Prize court* (q. v.), for determining the right to maritime captures and seizures. 1 *Wooddes. Lect.* 83, 84. 1 *Kent's Com.* 353, 354. See *Maritime causes*. By the statute of 3 & 4 Will. IV. c. 36, the criminal jurisdiction of this court was conferred upon the new court established in London, called the "Central criminal court;" and its civil jurisdiction has been extended, and its practice materially modified by the later statute of 3 & 4 Vict. c. 65. See 3 *Steph. Com.* 727. 4 *Id.* 331. Its proceedings are generally according to the course and method of the civil law, like those of the ecclesiastical courts, upon which account it is usually held at Doctors' Commons, in London; but it is no court of record, any

more than the spiritual courts. 3 *Bl. Com.* 69. 3 *Steph. Com.* 436. 2 *Chitt. Gen. Pr.* 508—539.

In the United States, the jurisdiction of the admiralty is not confined to tide-waters, but extends to all public navigable lakes and rivers, where commerce is carried on between different States, as well as foreign nations. 20 *Howard's R.* 296, 301. 12 *Id.* 443. The district courts of the United States possess all the powers of courts of admiralty, whether considered as instance or as prize courts; no distinction or division in that respect being recognised as in England. 3 *Dallas' R.* 6. And see further, 1 *Kent's Com.* 353—380. *United States Digest*, Admiralty.

ADMISSION. [Lat. *admissio*, from *admittere*, from *ad*, to, and *mittere*, to send.] A taking, or letting in; permission to exercise certain rights or privileges, to fill an office, &c.; as the *admission* of an attorney or counsellor to practice; the *admission* of an individual as a member of a corporation; the *admission* of a clerk to a benefice, &c.

Acknowledgment, allowance, concession, consent; as the *admission* of a fact in evidence; the *admission* of service of papers in practice. Strictly, *admission* refers to something already done; *consent*, to something proposed to be done. See *Consent.*

ADMISSION. In English ecclesiastical law. The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit, (or able, *habilem*,) to serve the cure of the church to which he is presented, by the words *admitto te habilem;* I admit thee able. *Co. Litt.* 344 a. 4 *Co.* 79. 1 *Crabb's Real Prop.* 138, § 123.

ADMISSIONALIS. L. Lat. In European law. An usher. *Spelman.*

ADMITTANCE. In English law. The form of giving seisin of a copyhold estate, corresponding with livery of seisin of a freehold; one of the formalities necessary for the conveyance of copyhold, the other two being surrender, and presentment.* 2 *Bl. Com.* 366—370. 2 *Steph. Com.* 52, 54. *Burton's Real Prop.* 390, pl. 1263. See *Copyhold, Surrender.*

ADMITTERE. Lat. [from *ad*, to, and *mittere*, to send.] In the civil law. To admit; to receive; to accept; to allow. *Dig.* 14. 19. 11. 1. *Brissonius. Calv. Lex.*

To admit; to acknowledge. *Id.*

To commit; as an offence. *Dig.* 4. 6. 38. pr. *Brissonius.*

ADNEPOS. Lat. In the civil law. A great grandson's grandson. *Inst.* 3. 6. 5. *Dig.* 38. 10. 7. *Id.* 38. 10. 10. 16. Written in the Florentine Pandects, *atnepos.*

ADNEPTIS. Lat. In the civil law. A great grand-daughter's grand-daughter. *Inst.* 3. 6. 5. *Dig.* 38. 10. 7. *Id.* 38. 10. 10. 16. Otherwise written, *atneptis.*

ADNIHILARE. L. Lat. [from *ad*, to, and *nihil*, nothing.] In old English law. To reduce to nothing; to treat as nothing; to hold as, or for nought; to avoid. *Judicia in curia regis reddita non* adnihilentur, *sed stent in suo robore quousque per errorem aut attinctam adnullentur;* judgments rendered in the king's court shall not be held for nought, but shall stand in force until they be annulled by error or attaint. 2 *Inst.* 360. *Dedici poterit vel* adnihilari *per quietam clamanciam;* may be denied or avoided by quit claim. *Fleta*, lib. 2, c. 63, § 1.

Adnichile is used in the statute 28 Hen. VIII. c. 7; and *adnichilate* by old English writers. *Richardson's Dict.*

ADNOTATIO, *Annotatio.* Lat. [from *adnotare*, to mark upon.] In the civil law. The subscription of a name or signature to an instrument. *Cod.* 4. 19, 5, 7. Otherwise called *subnotatio.*

A rescript of the prince or emperor, signed with his own hand, or sign manual. *Cod.* 1. 19. 1. *Id.* 1. 2. 10. "In the imperial law, casual homicide was excused by the indulgence of the emperor, signed with his own sign-manual, *annotatione principis.*" 4 *Bl. Com.* 187. *Cod.* 9. 16. 5.

ADNULLARE. L. Lat. To annul. See *Adnihilare.*

ADOLESCENTIA. Lat. [from *adolescere*, to grow.] In the civil law. Adolescence, or youth; the age between puberty and majority; commencing at fourteen in males, and twelve in females. 1 *Mackeld. Civ. Law*, 136, § 126.

ADONQUES, *Adonque, Adunque, Adoun.* L. Fr. Then. *Litt.* sect. 157. *Kelham.*

ADOPTIO. Lat. [from *adoptare*, which from *ad*, to, and *optare*, to choose.] In the civil law. A taking or choosing of another's child as one's own;* adoption. This was done in two ways; by imperial rescript, (*principali rescripto,*) which gave authority to adopt persons of either sex, who were *sui juris*, (i. e. independent;)

and by authority of the magistrate, (*imperio magistratûs,*) which allowed the adoption of persons actually under the power of their parents. *Inst.* 1. 11. 1. The last of these methods was properly *adoptio*, or adoption, the former being termed *arrogatio*, or *adrogatio*, (q. v.) *Id. ibid. Dig.* 1. 7. 1. *Cod.* 8. 48. The adoption of children is still regulated by law in Germany and France, but is not recognised in English or American law.

ADOPTION. See *Adoptio.*

ADOPTIVUS. Lat. [from *adoptare*, to adopt.] In the civil law. Adoptive. Applied both to the parent adopting, and the child adopted. *Inst.* 2. 13. 4. *Id.* 3. 1. 10—14.

ADPLUMBARE. Lat. [from *ad*, to, and *plumbum*, lead.] In the civil law. To solder; to unite by soldering. *Adplumbatum;* soldered. *Dig.* 6. 1. 23. 5. *Adplumbatura;* soldering. See *Applumbatura.*

ADPROMISSOR. Lat. [from *ad*, to, and *promissor.*] In the civil law. A surety; one who binds himself for another, or in addition to another; one who engages to do the same thing that the promissor does. *Dig.* 45. 1. 52.

ADQUIRERE. Lat. [from *ad*, to, and *quærere*, to seek.] In the civil and old English law. To acquire; to gain. See *Acquirere. Adquiritur possessio;* possession is acquired. *Fleta*, lib. 4, c. 18, § 2. *Res corporales animo* adquiruntur *et corpore, per traditionem;* corporeal things are acquired by the mind (will or intent,) and the body, (manual act,) by delivery. *Id. ibid.*

ADRECTARE, *Adretiare, Addressare.* L. Lat. [from *ad*, to, and *rectum*, right; *ad rectum ire, recto stare.*] In old English law. To do right; to satisfy; to make amends. *Gerv. Dorobern.* A. D. 1170. *Cowell.* See *Ad rectum.*

ADRESSER. L. Fr. To prepare. *Kelham.*

ADRHAMIRE, *Arhamire, Arramire, Arramare.* L. Lat. [from old Fr. *arramir.*] In old European law. To undertake, declare, or promise solemnly; to pledge; to pledge one's self to make oath. *Form. Vett.* sect. 1. *Bignonius. Spelman.* See *Arramare.*

ADS, *Adsm., Ats.* In practice. A contraction of *ad sectam*, used in entitling papers on the part of the defendant in a suit; as, "C. D. *ads.* A. B." See *Ad sectam.*

ADSALLIRE. *Assalire.* L. Lat. [from Fr. *assaillir*, from Lat. *assilire*, to assail.] In old European law. To assail or set upon; to make an assault or attack upon one, (*impetum in aliquem facere, adoriri, invadere.*) *Spelman. Marculf.* lib. 1, form. 29, 39, cited *ibid. L. Salic.* tit. 16, § 2.

ADSCENDENTES. Lat. In the civil law. Ascendants. *Dig.* 23. 2. 68. *Cod.* 5. 5. 6.

ADSCRIBERE, *Ascribere.* Lat. [from *ad*, to, and *scribere*, to write.] In the civil law. To add in writing, or by writing; as by a codicil. *Dig.* 28. 4. 5.

To add one's name to an instrument as a witness. *Dig.* 28. 2. 22. 4. *Cod.* 8. 38. 14. pr.

To annex or bind to, in writing. See *Adscriptus.*

ADSCRIPTUS, *Ascriptus.* Lat. [from *adscribere*, q. v.] In the civil law. Added, joined, annexed or bound by or in writing; enrolled, registered; united by writing or enrollment; united, joined, annexed, bound to, generally. *Servus colonæ adscriptus;* a slave annexed to an estate as a cultivator. *Dig.* 19. 2. 54. 2. *Fundus adscriptus;* an estate bound to, or burdened with a duty. *Cod.* 11. 2. 3.

ADSCRIPTUS GLEBÆ. Lat. In the civil law. Annexed to the soil. Slaves, in the middle ages, were *adscripti glebæ*, and were conveyed by sale, together with the farm or estate to which they belonged. 1 *Robertson's Charles V.* Appendix, note ix. In Scotland, as late as the reign of George III. laborers in collieries and salt works were bound to the coal-pit or salt-work in which they were engaged, in a manner similar to that of the *adscripti* of the Romans. *Bell's Dict.* voc. *Coaliers and Salters.*

ADSCRIPTITIUS, *Adscripticius, Ascriptitius.* Lat. [from *adscriptus*, q. v.] In the civil law. United, annexed, or bound to. *Adscriptitii*, (Gr. ἐναπόγραφοι,) were a class of cultivators who were annexed to the land, without the power of leaving it, and whose earnings or *peculium* belonged to their owners or masters, (τοῖς δεσπόταις ἀνῆκει.) *Cod.* 11. 47. 19. There was very little difference between them and slaves. See *Cod.* 11. 47. 21. And see further as to their condition. *Id.* 23, 24. *Nov.* 54. *Const. Imp. Just.* 2.

ADSCRIPTITII GLEBÆ. Lat. In old English law. Annexed, bound or adstricted to the soil; employed in cultivating it, and in performing other rural services for

the owner. *Hargr. Co. Litt.* note 1, to lib. 2. "Ascriptitious to the soil." *Blackst. Law Tr.* 96, 97, 98. A term applied to tenants by villein socage, and commonly supposed to denote a condition approaching nearer to that of slaves than of freemen. *Harg. Co. Litt. ub. sup.* But, according to Bracton, they were so called because, so long as they did the appointed services, they had the *privilege not to be removed from the soil*, (*gaudent privilegio quod* a gleba amoveri non *poterunt*,) and were in fact freemen. *Bract.* fol. 7 a. 209 a. *Id.* fol. 4 b. See *Fleta*, lib. 1, c. 8, § 3. The term is also used in old Scotch law. *Skene de Verb. Sign. voc. Bondagium.*

ADSECURARE. L. Lat. [from *ad*, to, and *securus*, secure.] In old English law. To make secure; to secure by giving pledges or sureties; (*pignore vel fidejussione interposita securum facere.*) *Spelman. Chart. apud Hoved.* an. 1174, cited *ibid.*

In commercial law. To insure or assure. See *Adsecuratio.*

ADSECURATIO, *Assecuratio.* L. Lat. [from *adsecurare*, q. v.] In commercial law. Assurance; insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, §§ 1—6.

ADSESSORES, *Assessores.* Lat. [from *adsidere*, to sit by.] In the civil law. Persons who were employed to assist magistrates and judges with advice in the discharge of their offices. *Dig.* 1. 22. *Cod.* 1. 51. Called also *comites* and *consiliarii. Dig.* 1. 22. 4, 5. See *Assessores.*

In old English law. Assessors or adsessors. An ancient title of masters in chancery. *Treatise of the Maisters of the Chauncerie; Harg. Law. Tr.* II.

ADSIGNARE. Lat. [from *ad*, to, and *signare*, to mark.] In the civil law. To affix a seal to an instrument; to seal it; to seal in company with others. *Dig.* 26. 8. 20. See *Assignare.*

To assign; to designate for a specific purpose. See *Assignare.*

ADTRACTUS. L. Lat. [from *attrahere*, to draw to.] In old European law. A thing acquired or purchased; a purchase; (*comparatum, acquisitum, perquisitum.*) *Spelman.* A term of frequent occurrence in Marculfus, and ancient charters.

ADTUNC. L. Lat. Then. 1 *Ld. Raym.* 123. 2 *Show.* 284. *Adtunc existens;* then being. *Yelv.* 28.

ADULT. [Lat. *adultus*, from *adolescere.*] In the civil law. One who has arrived at the age of *adolesentia*, or youth. A term applied to males after the age of fourteen, and to females after twelve. 1 *Mackeld. Civ. Law.* 136, § 126. See *Adolescentia.*

In the common law. One who is of full age. 1 *Swanst. R.* 553, 557—559.

ADULTER. Lat. [see *adulterium.*] In the civil law. An adulterer. *Dig.* 48. 5. 4. pr. *Id.* 48. 5. 15. 8. One who corrupts the wife of another, (*qui alienam matremfamilias corrumpit.*) *Id.* 50. 16. 225.

ADULTERA. Lat. [see *adulterium.*] In the civil law. An adulteress; a woman guilty of adultery. *Dig.* 48. 5. 4. pr. *Id.* 48. 5. 15. 8.

ADULTERARE. Lat. In the civil law. To adulterate; to corrupt; to falsify; to counterfeit or forge. *Adulterare rationes;* to forge accounts. *Dig.* 11. 3. 1. 5.

ADULTERATOR. Lat. [from *adulterare*, to corrupt or forge.] In the civil law. A forger; a counterfeiter. *Adulteratores monetæ;* counterfeiters of money. *Dig.* 48. 19. 16. 9.

ADULTERINE. [from Lat. *adulterinus*, q. v.] In old English law. Unlawful; unlicensed; unauthorized. Guilds or companies established without the royal license were called *adulterine.* In the year 1180, sixteen of these *adulterine* guilds were fined by Henry II. *Madd. Hist. Exch.* A. D. 1180. *Smith's Hist. London*, vol. i. p. 179.

ADULTERINUS. Lat. In the civil law. Illicit; unlawful; illegitimate; spurious; false or forged. *Adulterina moneta;* counterfeit money. *Dig.* 48. 13. 6. 1. *Adulterinum testamentum;* a forged will. *Id.* 48. 10. 6. pr.

In old English law. Corrupt; spurious; counterfeit; forged. *Sigillum adulterinum;* a spurious or counterfeit seal. *Fleta*, lib. 3, c. 14, § 4. *Id.* lib. 4, c. 10, § 3.

Unlawful; unauthorized; illegal; adulterine. *De castris* adulterinis *quæ ab initio guerræ constructa fuerunt;* concerning *adulterine* castles which have been built since the beginning of the war. *Claus.* 2, *Hen.* III. m. 11, d. *Castella* adulterina *quæ tempore regis a quocunque constructa sunt, diruentur; adulterine* castles which have been built during the king's reign by whomsoever, shall be demolished. *Matt. Par.* A. D. 1153. *Magna Carta*, Hen. I. A. D. 1217, c. 47. *Blackst. Mag. Cart.* Introd. lxii. lxiii.

ADULTERIUM. Lat. [from *ad*, to, and *alter*, another; quasi *adulterium.*] In

the civil law. Adultery; the crime of corrupting a married woman, or the wife of another. So called, according to Festus, *ex eo quod* ad alterius torum *accedatur;* because the offender goes to the bed of another; or, according to others, because the adulterer betakes himself *ad alteram;* (to another woman.) See *Calv. Lex.* The Roman lawyers distinguished between *adulterium* and *stuprum* (q. v.) but the Lex Julia used both terms indifferently, to express the same offence. *Dig.* 50. 16. 101. *Id.* 48. 5. 6. 1. *Id.* 48. 5. 34.

In old English law. A fine imposed for the offence of adultery and fornication, (Sax. *legerwite*, or *lairwite*, q. v.); the privilege of imposing such a fine, which the lords of some manors possessed. *Spelman. Domesday Book*, cited *Ibid.*

ADULTERY. [Lat. *adulterium.*] In criminal law. Criminal conversation between a married person and one of the opposite sex, whether married or single, being in the former case sometimes called *double*, and in the latter, *single* adultery.* In England, it was anciently punished as a crime, but is now left to the coercion of the spiritual courts, the temporal courts taking no cognizance of it, otherwise than as a private injury; for which, in the case of adultery by a wife, the husband may have an action of trespass against the adulterer. 4 *Bl. Com.* 65. 3 *Id.* 139.

In the United States, it is generally punished as a public offence, by fine and imprisonment. See *Statutes of the several States, United States Digest*, Adultery.

ADVANCEMENT. [L. Lat. *advanceamentum.*] A payment or appropriation of money, or a settlement of real estate made by a parent to, or for a child, in *advance*, or anticipation of the distributive share to which such child would be entitled after his death, and with a view to a portion or settlement in life.* 2 *Bl. Com.* 517. *Lovelass on Wills*, 140 *et seq.* 2 *N. Y. Rev. St.* [97,] 37, §§ 76—78. A giving by anticipation the whole, or a part of what it is supposed a child will be entitled to, on the death of the party making the advancement. Parker, C. J. 17 *Mass. R.* 356, 358.—A provision made by a parent for his child, of money or property, the entire interest in which passes out of the former in his lifetime, though it is not requisite, in all cases, that it should take effect in possession before the death of the parent. Ligon, J. 22 *Alabama R.* 233, 236; citing 2 *Wm.'s Exec.* 923. 2 *P. Wms.* 440, 445. *Toller, Exec.* 380. To constitute an advancement, the father must divest himself of all interest in the property the child receives. 24 *Mississippi R.* 619. See 21 *Alabama R.* 761.

An advancement is a gift. Where a father, on advancing a sum of money to a son, takes a bond for its re-payment, with or without interest, it is a debt, and not an advancement. 21 *Penn. St. R.* 283. A conveyance of property, to take effect at the death of the grantor, is an advancement. 13 *B. Mon.* 526. The maintenance or education, or giving of money to a child, without a view to a portion or settlement in life, is not an advancement. 2 *N. Y. Rev. St.* [98,] 37, § 78. *Lovelass on Wills*, 140, 220. 4 *Kent's Com.* 418. *United States Digest*, Advancement.

ADVANTAGIUM. L. Lat. In old pleading. An advantage. *Co. Entr.* 484. *Towns. Pl.* 50.

ADVENA. Lat. [from *advenire*, to come to.] In the civil law. One who comes from abroad, (*aliunde adveniens.*) Defined in the Digests by the Gr. ἀποικος, (one who is away from home, απο δικου.) *Dig.* 50. 16. 239. 4. One who makes a temporary stay in a place; a stranger or sojourner. *Calv. Lex. Advena mercator. Dig.* 5. 1. 19. 2.

ADVENIR. L. Fr. [from Lat. *advenire*, to come to, to happen.] To come to; to become. *Kelham. Adveigne;* happens, becomes. *Id.*

ADVENT. [Lat. *adventus.*] A period of time recognised by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. *Cowell. Termes de la Ley. Wharton.*

ADVENTITIUS, *Adventicius.* Lat. [from *advenire*, to come to, to happen.] In the civil law. Coming from without, from another person, or thing; from another than the usual source: adventitious; foreign. *Dos adventitia;* a dowry or portion given by another person than a parent. *Dig.* 23. 3. 5, 11. *Cod*, 5. 13. 1. *Nov.* 91, c. 2. *Bract.* fol. 92.

Accidental; incidental; accessory. *Dig.* 40. 9. 6.

ADVENTURA. L. Lat. An adventure. 2 *Mon. Angl.* 615. *Towns. Pl.* 50. Flotson, jetson and lagon are styled *adventuræ maris*, (adventures of the sea.) *Hale de Jur. Mar.* pars 1, c. 7.

ADVENTURE. Fr. and Eng. [from Lat. *advenire*, to happen.] A chance, or accident. *En* adventure *si ;* in case. *Kelham.* See *Misadventure.*

In mercantile law. A risk, or hazard; an enterprise, [L. Lat. *periclitatio, adventura ;*] a thing sent to sea, at the risk of the person sending it.* *Whishaw. Lex Mercatoria.* A thing sent to sea, under the care of a supercargo, at the risk, and for the benefit of the party sending it.

Something which a seaman is permitted to carry abroad with a view to sell for profit. *Webster.*

ADVERSA. Lat. [see *Adversus.*] In the civil law. Adverse; opposite; unfavorable; afflictive. *Adversa fortuna. Dig.* 45. 1. 83. 5. *Adversa valetudo ;* adverse health; ill health. *Adversa valetudo excusat ;* ill health is an excuse. *Dig.* 27. 1. 10. 8. See *Fleta*, lib. 6, c. 7, § 7.

ADVERSE POSSESSION. In the law of titles. The possession of lands for a certain length of time *adversely*, or in opposition to the title of another; the possession of a person claiming under a title, or under color of a title *adverse* to, or inconsistent with that of another claimant who is out of possession.* To make a possession adverse, so as to constitute a bar to the assertion of a legal title by the owner of it, or by one against whom the adverse occupant brings ejectment, it must be an actual, continued, visible, notorious, distinct and hostile possession. Duncan, J. 6 *Serg. & Rawle*, 21. 2 *Smith's Lead. Cas.* (Am. ed.) 416, note. A possession, to be adverse, must be inconsistent with the title of the claimant who is out of possession; it must be accompanied with a claim of title, exclusive of the rights of all others, and must be definite, notorious and continued for the period of twenty years. 24 *Wendell's R.* 587. See 1 *Burr.* 60. 2 *Smith's Lead. Cas.* 396. 2 *Jac. & Walk.* 1, 139, 140. 8 *Cranch's R.* 462. 7 *Wheaton's R.* 59. 5 *Peters' R.* 402. 19 *Penn. St. R.* 262. 5 *Maryland R.* 256. 15 *Illinois R.* 271. *Clerke's N. Y. Digest*, Adverse possession.

Adversary is used for *adverse*, by Marshall, C. J. 8 *Cranch*, 462, and Story, J. 7 *Wheaton*, 59.

ADVERSUS. Lat. In the civil law. Against, (*contra*). *Adversus bonos mores ;* against good morals. *Dig.* 47. 10. 15. See titles of the Code; *Cod.* 2. 27–38. Adverse; opposite; afflictive. *Calv. Lex.*

ADVICE. In mercantile usage. Information; direction or instruction given by a correspondent. *Chitty on Bills*, 162, 166. Information given by one merchant or banker to another, by letter, in regard to bills or drafts drawn by the former on the latter; with particulars of date or sight, the sum, to whom made payable, &c. *McCulloch's Dict.*

ADVISAMENTUM, *Avisamentum.* L. Lat. [from *advisare*, q. v.] In old practice. Advisement; advice. *Towns. Pl.* 51. *Prynne Rec.* 85, 230.

ADVISARE. L. Lat. [L. Fr. *aviser.*] In old practice. To advise; literally, to see to; to look to, or look into, to deliberate or consider. *Curia* advisare *vult;* the court will advise, i. e. examine, deliberate, or consult together, before giving their opinion, or judgment. "Here is an *advisare vult*, indefinitely." Holt, C. J. 12 *Mod.* 269. A more correct form is *advisari*, (q. v.)

ADVISARI. L. Lat. [L. Fr. *etre avise.*] In old practice. To be advised; to be prepared for decision, by examination and deliberation. *Curia* advisari *vult ;* the court will be advised, that is, will take time to examine and consider, before giving judgment. *Et quia dictus Justic'—se* advisari *vult ;* and because the said justice will be advised. *Keilw.* 57 b. *Et quia curia hic de judicio super præmissis in hac parte reddend' nondum* advisatur, *&c., dies inde datum est, &c. ;* and because the court here is not yet advised of [as to] the judgment to be given upon the premises in this behalf, &c., a day is thereupon given, &c. *Id.* 195. "The court took an *advisari.*" 2 *Jones' (N. C.) Eq. R.* 51.

ADVISE. [L. Lat. *advisare*, q. v.] To consider, examine, deliberate, consult; as a court does, after the argument, and before the decision of a cause.

To give advice, or counsel.

In mercantile usage. To give information, or notice of facts. See *Advice.*

Advised ; prepared to give judgment, after examination and deliberation. "The court took time to be advised." 1 *Leon.* 187. See *Advisari.*

ADVISEMENT. [L. Lat. *advisamentum ;* L. Fr. *avisement.*] The deliberation, or consultation of a court, after the argument of a cause by counsel, and before delivering their opinion.* Consideration. *Dyer*, 31 b.

ADVOCARE. L. Lat. [from *ad*, to,

and *vocare*, to call.] In old English law. To call to, or upon; to call in aid; to call upon one to warrant another's title; to vouch. *Spelman*, voc. *Advocatus*. See *Vocare*, *Vouch*.

To avow, (advow;) to acknowledge, or openly admit, adopt, justify and maintain a thing; (*rem factam agnoscere, rem in se suscipere.*) *Spelman, ub. sup. Advocare filium;* to acknowledge a child. *Bract.* fol. 63 b. *Dominus cum* [*factum*] advocaverit, *suam facit injuriam;* when the lord avows (adopts) the act, he makes the wrong his own. *Id.* fol. 171 b, 204 b.

To advocate, defend, or protect. *Spelman*, voc. *Advocatus. Si non dominum habuerit qui* advocet *eum;* if he have no lord who will defend him. *Bract.* fol. 152 a.

To assert the right of advocacy, or patronage, (*jus patronatûs;*) to exercise the right of presentation to a vacant benefice; to call a clerk to such benefice; to present him.* *Spelman, ub. sup. Glanv.* lib. 4, c. 1. *Skene de Verb. Signif.* voc. *Advocatio. Cowell.*

To claim. *Animalia vagantia quæ nullus*—advocat; wandering animals, which no one claims. *Bract.* fol. 120 a. To avow, in replevin. *Reg. Orig.* 83 a.

ADVOCASSIE. L. Fr. The office of an advocate; advocacy. *Kelham.*

ADVOCATA. L. Lat. [from *advocare*, q. v.] In old English law. A patroness; a woman who had the right of presenting to a church. *Liber Ramesiens.* sect. 140, cited in *Spelman*, voc. *Advocatus.*

ADVOCATE. [Lat. *advocatus*, from *advocare*, to call to, or upon, to defend.] One who is called upon to assist or defend another; a defender, patron, or protector; one called to give legal advice or assistance, particularly to plead (in the popular sense) another's cause in court. A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court.* *Holthouse.* An *advocate*, in the civil and ecclesiastical courts, is the same as a *counsellor*, or counsel in the courts of common law. 3 *Bl. Com.* 25, 26. The term is more commonly used in the Scotch than in the English law. *Bell's Dict.* See *Barrister, Counsel, Counsellor.*

ADVOCATI FISCI. Lat. [Gr. φισκοσυνηγόροι.] In the civil law. Advocates of the fisc, or revenue; fiscal advocates, (*qui causam fisci egissent.*) *Cod.* 2. 9. 1. *Id.* 2. 7. 13. Answering, in some measure, to the king's counsel in English law. 3 *Bl. Com.* 27. *Bl. Law Tr.* 53. See *Advocatus fisci.*

ADVOCATIA. L. Lat. [from *advocare*, q. v.] In old European law. The management of any public business entrusted to one by his superior. *Hotom. de Verb. Feud. Feud. Lib.* 2, tit. 27, § 15, [16.]

The defence or patronage of a religious house. *Hot. ub. sup.*

In old English law. The right of advowson or presentation. *Spelman*, voc. *Advocatus.*

ADVOCATIO. Lat. [from *advocare*, to call upon.] In the civil law. Advocacy; the office or business of an *advocatus* or advocate. *Dig.* 6. 1. 54. *Id.* 5. 2. 32. *Id.* 38. 2. 14. 9. *Cod.* 2. 7. 6. *Id.* 2. 8. 5.

ADVOCATIO. L. Lat. [from *advocare*, q. v.] In old English law. An advowson; the right of presentation or calling to a vacant church or benefice (*jus patronatûs, jus presentandi, jus advocationis;* anciently called *jus advocaticium.*) *Spelman*, voc. *Advocatus. Reg. Orig.* 30 a. *Glanv.* lib. 4, c. 1. *Bract.* fol. 53 a. A taking into protection or patronage, (*in clientelam receptio.*) 2 *Bl. Com.* 21. *Co. Litt.* 17 b. 119 b. See *Advowson.*

An avowry in replevin. *Reg. Orig.* 83 a. See *Avowry.*

ADVOCATION. In Scotch law. An appeal; process of appeal; the process of procuring a review of the judgment of an inferior court. *Bell's Dict.* 2 *Alison's Crim. Pract.* 26.

ADVOCATOR. L. Lat. [from *advocare*, q. v.] In old practice. One who called on, or vouched another to warrant a title; a voucher. *Advocatus;* the person called on, or vouched; a vouchee. *Spelman. Towns. Pl.* 45.

In Scotch practice. An appellant. 1 *Brown's R.* 67.

ADVOCATUS. Lat. [from *advocare*, to call upon.] In the civil law. An advocate; one who managed, or assisted in managing another's cause before a judicial tribunal. Called also *patronus. Cod.* 2. 7. 14. But distinguished from *causidicus. Id.* 2. 6. 6. Advocatos *accipere debemus omnes omnino qui causis agendis quoquo studio operantur. Dig.* 50. 13. 1. 11. See *Cod.* 2. 7. 14. *Id.* 2. 8. 1. The office of

advocatus was a different one from that of *consiliarius*, or assessor, who was the judge's adviser. *Cod.* 1. 51. 14.

ADVOCATUS. Lat. [from *advocare*, q. v.] In old English law. An advocate or pleader. *Bract.* fol. 372 b. In *narratione* advocati; in the pleader's count. *Fleta*, lib. 6, c. 50, § 1. See *Advocate.*

A patron, or defender; a person having the right to present to a church (*jus advocationis;*) an advowee, (q. v.) *Glanv.* lib. 5, c. 14. *Bract.* fol. 240 b. *Fleta*, lib. 5, c. 14, § 2. *Reg. Orig.* 30.

One who has called or vouched to warranty; a vouchee. *Spelman*, voc. *Advocatus.* See *Vouchee.*

ADVOCATUS FISCI. Lat. In the civil law. Advocate of the fisc, or treasury. *Dig.* 28. 4. 3. *Id.* 49. 14. 7. *Cod.* 2. 9.

ADVOUE, *Advoe.* L. Fr. An advocate; a person skilled in the law. *Kelham.*

ADVOW. See *Advocare*, *Avow.*

ADVOWEE. [L. Lat. *advocatus*, L. Fr. *advoue, avoue.*] In English ecclesiastical law. A patron; one who has a right to present to a benefice. *Stat.* 25 Edw. III. st. 5. *Cowell.*

ADVOWRY. See *Avowry.*

ADVOWSON, *Advowzen, Avowson, Avoweson.* L. Fr. and Eng. [perhaps a contraction of *advocation;* L. Lat. *advocatio*, q. v.] In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 *Bl. Com.* 21. *Co. Litt.* 119 b, 120 a. The person enjoying this right is called the patron (*patronus*) of the church, and was formerly termed *advocatus*, the advocate or defender, or in English, *advowee. Id. ibid.* 1 *Crabb's Real Prop.* 129, § 117. The right itself is termed an *advowson*, (*advocatio,*) because the patron is bound to advocate or protect (*advocare*) the rights of the church, and of the incumbent whom he has presented. *Spelman*, voc. *Advocatus.* See *Advocatus, Patron, Incumbent, Presentation.* Finch writes the word, *avowson. Law*, b. 1, c. 4.

ADVOWSON APPENDANT. An advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 *Bl. Com.* 22. *Co. Litt.* 120, 121. 1 *Crabb's Real Prop.* 130, § 118.

ADVOWSON IN GROSS. An advowson separated from the manor, and annexed to the person. 2 *Bl. Com.* 22. *Co. Litt.* 120. 1 *Crabb's Real Prop.* 130, § 118. 3 *Steph. Com.* 116.

ADVOWSON PRESENTATIVE. The usual kind of advowson, where the patron has the right of *presentation* to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 *Bl. Com.* 22. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWSON COLLATIVE is where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary,) he does by one act, which is termed *collation* or conferring the benefice, all that is usually done by the separate acts of presentation and institution. 2 *Bl. Com.* 22, 23. 1 *Crabb's Real Prop.* 131, § 119. See *Collation.*

ADVOWSON DONATIVE is where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him.* 2 *Bl. Com.* 23. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWTRY, *Avowtry.* Adultery, so called in old statutes. *Advowterer*, an adulterer; *advowtress*, an adulteress. *Cowell*, voc. *Adultery. Termes de la Ley*, voc. *Avowterer.*

ADYRE. L. Fr. To say. *Kelham.*

AE. L. Fr. Age; the age of a man. *Kelham.*

ÆDES. Lat. In the civil law. A house; a dwelling; a place of habitation whether in the city or country. *Dig.* 30. 41. 5. In practice, however, houses in the city were termed *ædes*, in the country, *villæ. Id.* 50. 16. 211. An *ædes* consisted of *solum* (the soil, or ground on which it stood, otherwise called *area,*) and *superficies*, or every thing on or above the ground. *Id.* 41. 3. 23. pr.

ÆDIFICARE. Lat. [from *ædes*, a house, and *facere*, to build.] In civil and old English law. To make, or build a house; to erect a building. *Dig.* 45. 1. 75. 7. Sometimes applied to other subjects, as a ship, (*navis.*) *Dig.* 49. 14. 46. 2.

Ædificare in tuo proprio solo non licet quod alteri noceat. It is not lawful to build

on your own land what may injure another. 3 *Inst.* 201. A person has no right to erect a building on his own land which interferes with the due enjoyment of adjoining premises, and occasions damage thereto, either by overhanging them, or by the flow of water from the roof and eaves upon them; unless a legal right so to build has been conceded by grant, or may be presumed by user, or by the operation of a statute. *Broom's Max.* 172, [276.]

Ædificatum solo solo cedit. What is built upon land belongs to or goes with the land. *Broom's Max.* 172, [289.] *Co. Litt.* 4 a. See *Cedere*, *Solum*, **Cujus est solum**, &c.

ÆDIFICATOR. Lat. [from *ædificare*, q. v.] In the civil law. A builder. *Cod.* 10. 64. 1.

ÆDIFICIUM. Lat. [see *ædificare.*] In the civil law. A building, (edifice.) *Ea quæ ex* ædificio *detracta sunt, ut reponantur*, ædificii *sunt, at quæ parata sunt ut imponantur, non sunt* ædificii; those things which are taken away from a building in order to be [with a view to their being] returned to their place, are a part of the building; but things which are made ready for putting into the building, are not a part of it. *Dig.* 19. 1. 17. 10. See *Cod.* 8. 10. **Ædificia solo cedunt.** Buildings belong to [go with] the soil. *Fleta*, lib. 3, c. 2, § 12.

ÆDILE. [Lat. *ædilis*, from *ædes*, a house or building.] In the Roman law. A magistrate who had the supervision of buildings, (*qui ædibus præessent*, *Dig.* 1. 2. 2. 21;) streets, markets, sewers, &c.

ÆDILITIUM EDICTUM. Lat. In the Roman law. The Ædilitian Edict; an edict providing remedies for frauds in sales, the execution of which belonged to the curule ædiles. *Dig.* 21. 1. See *Cod.* 4. 58.

ÆDITUS, *Editus.* Lat. In old English law. Born. *Bract.* fol. 70 a, 278 a.

Passed, as a statute; put forth, or promulgated. See *Editus.*

ÆGROTO. Lat. [abl. of *ægrotus*, sick.] Being sick or indisposed. A term used in some of the older reports. "Holt *ægroto*." 11 *Mod.* 179.

AEL, *Ail.* L. Fr. A grandfather. *Britt.* c. 89, fol. 221. See *Aieul*, *Ayle. Aele;* a grandmother. *Britt. ub. sup.*

ÆQUITAS, *Equitas.* Lat. [from *æquus*, equal, even; Gr. ἐπιείκεια.] In the civil law. Equity, as opposed to *strictum* or *summum jus*, (q. v.) Otherwise called *æquum*, *æquum bonum*, *æquum et bonum*, *æquum et justum. Calv. Lex. Æquitas* is not enumerated among the several species of law, either in the Digests or Institutes; but the term frequently occurs in the Roman law. *Tayl. Civ. Law*, 90. *Brissonius. Cod.* 1. 14. Grotius defines it *virtus voluntatis, correctrix ejus in quo lex propter universalitatem deficit;* a virtue of the will, the corrector of that wherein the law, by reason of its universality, is deficient. *De Æquitate*, § 3. See 1 *Bl. Com.* 61.

In old English law. Equity. *Bract.* fol. 3 a. *Dicitur* æquitas *quasi æqualitas;* it is called equity, being as it were *equality. Id. ibid.* See *Equity.*

Æquitas est rerum convenientia, quæ in paribus causis, paria desiderat jura, et omnia bene coæquiparat; equity is the fitting together, or adjustment of things, which, under equal [the same] circumstances, requires equal [the same] rules, and properly equalizes all things. *Id. ibid.* This definition is quoted by Lord Coke, though with considerable verbal alteration. *Co. Litt.* 24 b.

Æquitas est correctio legis generaliter lata, quâ parte deficit; equity is the correction of a law passed in general terms, in the part where it is defective.* *Plowd.* 375. *Branch's Princ. Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem;* equity is a certain correction applied to a law where something is wanting to it, on account of its general comprehensiveness making no exception. *Id. Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in verâ ratione consistens;* equity is a certain perfect reason, which interprets and amends the written law; comprehended in no writing, but consisting in right reason alone. *Co. Litt.* 24 b. *Æquitas est verborum legis sufficiens* [efficacius] *directio, qua una res solummodo cavetur verbis, ut omnis alia in æquali genere, iisdem caveatur verbis;* equity is the proper application of the words of the law, where one thing only is provided for in terms, in order that every other thing of the same kind may be provided for by those same words. *Branch's Princ.** *Plowd.* 467.

Æquitas sequitur legem. Equity follows law. *Gilb.* 136. Courts of equity must follow, not lead the law in all cases to which the rules of common law apply; they cannot, for instance, establish a different rule of property from that which the law has established; but where the law is ineffectual, equity steps in to give redress, following, however, the rules of law. 2 *Bl. Com.* 330. *Dougl.* 21. Lord Kenyon, C. J. 4 *T. R.* 650. *Broom's Max.* 38. "There is not a better rule than that of *equitas sequitur legem.*" Lord Northington, C. 2 *Eden*, 316. Lord Hardwicke, C. *Ambl.* 200. 15 *Howard's R.* 299.

ÆQUIVOCUM, *Equivocum.* Lat. In old English law. Of various significations, (*multiplex.*) *Hob.* 125. *Verbum* or *nomen æquivocum;* a word having several senses. *Litt.* sect. 234. *Co. Litt.* 154 b. 7 *Man. & Gr.* 504. Lord Coke distinguishes between *æquivocum æquivocans*, a word of divers several significations, and *æquivocum æquivocatum*, one reduced to a certain signification, (*univocum.*) *Co. Litt. ub. sup.*

Of doubtful signification, (*ambiguum.*) *Hob.* 125.

Depending for its meaning upon its connection with other words, (*relativum.*) *Id.*

ÆQUUS, *Æquum.* Lat. In old English law. Equal; even; equitable; just. **Æquum et bonum est lex legum.** What is equitable and good is the law of laws. *Hob.* 224.

Æquior est dispositio legis quam hominis. The disposition of the law is more equitable than that of man. 8 *Co.* 152.

Bracton makes a distinction between *æquus* and *justus.* *Bract.* fol. 3 a.

ÆRARIUM. Lat. [from *æs*, money.] In the Roman law. The treasury, (*fiscus.*) *Calv. Lex.*

AEREA. L. Lat. [from Sax. *eghe*, Anglo-Norm. *eye*, an egg.] In old English law. An eyry; a nest. Aereas *accipitrum, espervariorum, falconum, aquilarum et de heyrinis;* eyries of hawks, sparrow-hawks, falcons, eagles, and of herons. *Cart. de Forest.* c. 13. See *Fleta*, lib. 2, c. 41, § 7.

AERIN. L. F. Brass. *Kelham.*

AERNOVEL. L. Fr. August; the month of August. *Kelham.*

ÆS. Lat. In the Roman law. Money, (literally, brass;) metallic money in general, including gold. *Dig.* 9. 2. 2. pr. *Id.* 9. 2. 27. 5. *Id.* 50. 16. 159.

ÆS ALIENUM. Lat. [another's money.] In the Roman law. Debt; a debt; that which we owe to others, (*quod nos aliis debemus.*) *Dig.* 50. 16. 213. 1. *Ob* æs alienum *servire liberos creditoribus jura compelli non patiuntur;* the laws do not suffer freemen to be compelled to serve their creditors on account of debt. *Cod.* 4. 10. 12. See *Id.* 4. 2. 11. *Id.* 4. 29. 1.

ÆS SUUM. Lat. [one's own money.] In the Roman law. Debt; a debt; that which others owe to us, (*quod alii nobis debent.*) *Dig.* 50. 16. 213. 1.

ÆSNECIA, *Æsnetia.* L. Lat. [L. Fr. *aisneesse*, from *aisne*, eldest, or first born.] In old English law. Esnecy; the right or privilege of the eldest born. *Spelman. Glanv.* lib. 7, c. 3. *Fleta*, lib. 2, c. 66, §§ 5, 6.

The privilege allowed the eldest daughter of drawing first, in the partition of lands by lot, (*prima pars cernendæ hæreditatis, protocia;*) called also *pars enecia, enitia*, or *eneia*, (Fr. *l'eigne part.*) *Spelman. Bract.* fol. 75. See *Esnecy, Pars enitia.*

ÆSTIMARE. Lat. In the civil law. To estimate; to value; to value in money; to put a price upon; to appraise. *Calv. Lex.*

ÆSTIMATIO. Lat. [from *æstimare*, to value; L. Fr. *æstime.*] In civil and old English law. Valuation; rating; consideration. **Corpus humanum, [liberum corpus,] non recipit æstimationem.** The human body, [the body of a freeman,] does not admit of valuation. *Hob.* 59.

Æstimatio præteriti delicti ex postremo facto nunquam crescit. The estimation [rating of the degree, or nature] of a past offence never increases from [is never influenced in the way of aggravation by] a subsequent fact or act. *Bacon's Max.* 38, reg. 8. *Broom's Max.* 17, [34.] The law, in judging of the character of a past offence, never allows a subsequent act or matter to be taken into account, so as to aggravate it.* The law construeth neither penal laws nor penal facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as, if any circumstance or matter be subsequent, which, laid together with the beginning, should seem to draw it to a higher nature, yet the law doth not extend or amplify the offence. Therefore, if a

man be wounded, and the percussor [striker] is voluntarily let go by the jailor, and after death ensueth of the hurt, yet this is no felonious escape in the jailor. *Bacon's Max. ub. sup.*

Lord Bacon illustrates this maxim by several cases from the old books, but makes no reference to the civil law from whence it is derived: (**Nunquam crescit ex postfacto præteriti delicti æstimatio**;) the difference consisting only in the arrangement of the words. *Dig.* 50. 17. 139. 1.

The principle of this maxim forbids the passage of *ex post facto* laws. See *Ex post facto.*

ÆSTIMATIO CAPITIS. L. Lat. [Sax. *were.*] In Saxon law. The estimation or valuation of the head; the price or value of a man, (*pretium hominis.*) By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis. Crabb's Hist. Eng. Law*, ch. 4. *Blount.*

ÆTAS. Lat. [Gr. ἡλικία.] In the Roman law. Age; life; the life of a person; of which there were various divisions or stages. See *Tayl. Civ. Law*, 254—260. *Calv. Lex. Brissonius.*

In old English law. Age; full age. *Infra ætatem*, (q. v.); under age. *Remanebit assisa usque ad ætatem omnium;* the assise shall stay until they are all of age. *Bract.* fol. 276 a. See *Parol demurrer.*

ÆTAS INFANTIÆ PROXIMA. Lat. In the civil law. The age next to infancy; the first half of the period of childhood, (*pueritia,*) extending from seven years to ten and a half. *Inst.* 3. 20. 9. 4 *Bl. Com.* 22.

ÆTAS LEGITIMA. Lat. In the civil law. Lawful age; the age of twenty-five. *Dig.* 3. 5. 27. pr. *Id.* 26. 2. 32. 2. *Id.* 27. 7. 1. pr.

ÆTAS PERFECTA. Lat. In the civil law. Complete age; full age; the age of twenty-five. *Dig.* 4. 4. 32. *Id.* 22. 3. 25. 1.

ÆTAS PRIMA. Lat. In the civil law. The first age; infancy, (*infantia.*) *Cod.* 6. 61. 8. 3.

ÆTAS PUBERTATI PROXIMA. Lat. In the civil law. The age next to puberty; the last half of the period of childhood, (*pueritia,*) extending from ten years and a half to fourteen. *Inst.* 3. 20. 9. 4 *Bl. Com.* 25.

ÆTATE PROBANDA. See *De ætate probanda.*

ÆTHIOPS. Lat. In old English law. An Ethiopian; a negro. *De uno* Æthiopo, *vocat'* a negro; for one Ethiopian, called a negro. 2 *Salk.* 666.

AEUE, *Awe, Age.* L. Fr. Water. See *Ewe. Aeues, awes;* waters. *Kelham.*

ΑΦΗΑΙΞ, Ἀφήλιξ. Gr. [from ἀπὸ from, and ἡλικία, age.] In the civil law. A minor; one not of full age. *Dig.* 27. 1. 10. 7. Ἀφήλικες; minors. *Id.* 26. 6, 2. pr.

AFFAIRE, (*A faire,*) *Affoire.* L. Fr. To do, to make; to be had, made, done, or taken. *Kelham. L. Fr. Dict.*

AFFECTARE. Lat. In old English law. To desire. *Quicunque—firmam* affectaverit *securitatem obtinere;* whoever shall desire to obtain good security. *Fleta*, lib. 2, c. 64, § 2.

AFFECTIO. Lat. In old English law. Disposition; intention. **Affectio tua nomen imponit operi tuo.** Your disposition (or intention) gives name (or character) to your work or act. *Bract.* fol. 2 b, 101 b. See *Actus, Affectus.*

AFFECTUS. Lat. In civil and old English law. Disposition; intention. *Quum injuria ex* affectu *facientis consistat;* since wrong consists in the intention of the party doing it. *Dig.* 47. 10. 3. 1. *Ex* affectu *contrahentium;* from, or by the intent of the contracting parties. *Bract.* fol. 52 b. *Nec furtum committitur, nisi ex* affectu *furandi;* nor is theft committed, unless from the disposition of stealing. *Id.* fol. 101 b. *Est in seysina per* affectum *et per aspectum;* he is in possession by intention, and by view. *Id.* fol. 225. Affectus *possidendi;* the intention of possessing. *Fleta*, lib. 4, c. 20, § 7. *Oculis et affectu;* by the eyes and the intention. *Dig.* 41. 2. 1. 21. *Propter affectum*, (q. v.); on account of disposition, favorable inclination or bias. **Affectus tuus nomen imponit operi tuo.** Heath, J. 5 *Taunt.* 140. See **Affectio tua**, &c.

AFFEER, *Affere.* [L. Lat. *afferare*, from Fr. *afferer, affeurer*, or *afforer*, to tax, assess, or set a value upon a thing.] In old practice. To assess or tax; to fix, liquidate, or reduce to a precise sum; to moderate, mitigate or regulate.* A term applied to the regulation of amercements, which were always inflicted in general terms, and signifying to reduce the general amercement to a certainty, or tax, moderate or mitigate it according to the particular circumstances of the offence and the offender. *Cowell. Blount. Spelman*, voc.

Afferatores. 4 *Bl. Com.* 379, 380. *Hob.* 129 a. *F. N. B.* 75 I. K. *Id.* 76 A. D. 8 *Co.* 77, [39, 40.] 1 *Salk.* 56. 3 *Id.* 33. The officers by whom this was done were called *affeerors*, and the assessment an *affeerment*, or *afferance*, (qq. v.) 4 *Bl. Com.* 379, 380. 1 *Show.* 62. See *Amercement.*

AFFEEREMENT, *Afferement*, *Affearment.* In English law. The assessment, liquidation, moderation or mitigation of an amercement. 4 *Bl. Com.* 379. 1 *Crabb's Real Prop.* 505, § 653.

AFFEERORS. [L. Lat. *afferatores;* L. Fr. *affirours.*] In English law. Persons chosen at courts leet and baron, and sworn to *affeer*, that is, assess and moderate amercements imposed on offenders. 4 *Bl. Com.* 380. 1 *Crabb's Real Prop.* 505, 506, §§ 653—655. In the superior courts of England, the coroners affeered the amercements. *F. N. B.* 76.

AFFERARE, *Afforare*, *Affurare.* L. Lat. In old English practice. To affere, or affeer. *Et finis ejusdem J. E.* afferatur *per cur' occasione prædict' ad* 2000*l.;* and the fine of the said J. E. is affeered by the court, on the occasion aforesaid, at 2000 pounds. 3 *How. Stat. Trials*, 329.

AFFERATORES. L. Lat. [from *afferare*, to affeere.] In old English law. Affeerors. *Spelman.* See *Affeerors.*

AFFERATUS, *Afforatus.* L. Lat. [from *afferare*, to affeere.] Affeered, or assessed. *Cowell*, voc. *Afforatus.*

AFFERAUNT, *Afferont.* L. Fr. Proportion. *Kelham.*

AFFERE. See *Affaire.*

AFFERER, *Affeurer*, *Afforer.* L. Fr. To affeer; to tax, assess, regulate or proportion. *Spelman*, voc. *Afferatores. Kelham. Il fuit amercy et* affere *a iv d. Yearb.* 10 Edw. III. 11.

AFFERMER. L. Fr. To let to farm. *Kelham.*

To make sure; to establish or confirm. See *Affirmer.*

AFFIANCE. Fr. and Eng. [L. Lat. *affidatio*, from *affidare*, to plight or pledge.] The plighting of troth or faith between a man and a woman, upon an agreement of marriage to be had between them. *Litt.* sect. 39. *Co. Litt.* 34 a. See *Affidare.*

AFFIANT. In practice. A person making an affidavit. Todd, J. 9 *Wheaton's R.* 483. 25 *Alabama R.* 221. *Deponent*, (q. v.) is the more common word. See *Affidavit.*

AFFIDARE. L. Lat. [from *fides*, faith; *fidem dare*, to give or pledge faith.] In canon law. To plight one's faith, as on an engagement to marry; to betroth. *Postquam eam* affidaverat, *et cum qua postea publice contraxit;* after he had betrothed her, and with whom he afterwards publicly contracted [marriage.] *Bract.* fol. 29 a. *Co. Litt.* 34 a.

In feudal law. To give or swear fidelity, or fealty, as a tenant or vassal to his lord. *Spelman.* See *Affidatio, Affidatus.*

In old practice. To pledge by oath; to swear to do a thing; simply to swear, or make oath; *to make faith*, as the Scotch phrase literally renders it. *Quorum quilibet* affidabit *quod de quolibet hundredo eliget*, &c.; each of whom shall swear that out of every hundred he will choose, &c. *Bract.* fol. 116 a. *Jurare*, (q. v.) occurs in this passage in the same sense. *Jurare vel affidare. Fleta*, lib. 6, c. 10, § 15. *Et ad hoc fideliter faciendum* affidabunt *amerciatores quod*, &c.; and to do this faithfully, the amercers shall swear, &c. *Bract.* fol. 116 b. See *Id.* 337 b. 351 b. *Affidavit;* he swore, or pledged himself by oath. *Id.* 352 a. *Et si queratur de bateria, tunc* affidat *quod querimonia ejus sit vera;* and if he complain of battery, then he must make oath that his complaint is true. *Fleta*, lib. 2, c. 1, § 25. See *Affidavit.*

AFFIDATIO. L. Lat. [from *affidare*, q. v.] In canon and feudal law. A plighting or pledging of faith; an affiance. *Spelman*, voc. *Affidare. Mutua affidatio;* the mutual plighting of faith between husband and wife. *Skene de Verb. Signif. Reg. Maj.* lib. 1, c. unde, 49.

A giving, or swearing of faith, fealty or fidelity. *Spelman*, voc. *Affidare. Bract.* fol. 88 a. *Affidatio dominorum;* an oath taken by the lords in parliament. *Blount. Mutua affidatio;* the mutual bond of fidelity between lord and vassal. *Skene de Verb. Sign.*

AFFIDATUS. L. Lat. [from *affidare*, q. v.] In feudal and old European law. One who has given or sworn fealty or fidelity; a tenant by fealty. Spelman, (voc. *Affidare*,) distinguishes the *affidati* from vassals properly so called. Hotoman calls them *quasi* vassals. *Hot. de Verb. Feud. Affidata;* a woman affianced, or betrothed. *Cowell.*

AFFIDAVIT. L. Lat. [from *affidare*, q. v.] In practice. An oath in writing, sworn before some judge or officer of a court, or other person legally authorized to

administer it; a sworn statement in writing; a statement, in writing, of one or more matters of fact, signed by the party making it, and sworn to before some authorized officer.* *To make affidavit* of a thing is to testify to it upon oath, in writing. See 3 *Bl. Com.* 304.

The party making an affidavit is usually described as "the *deponent*," (sometimes, "the *affiant*," (q. v.) and in making his statements is said to *depose*—("being duly sworn, deposes and says,")—but an affidavit is distinguished from a *deposition*, properly so called, by the circumstance that it is always made *ex parte*, and without any cross-examination. See *Deposition*, *Depose*, *Deponent*. The term *affidavit* is also applied, (though not with strict propriety,) to statements made on affirmation. Affidavits are most commonly used for certifying or proving the service of process, or other matters relating to the proceedings in a cause, or in support of, or opposition to *motions*, in cases where a court determines matters in a summary way. 3 *Bl. Com.* 304. 3 *Steph. Com.* 679. 1 *Tidd's Pract.* 491. *United States Digest*, Affidavit.

In the late Texas cases of Shelton *v.* Berry, (19 *Texas R.* 154,) and Crist *v.* Parks, (*Id.* 234,) it was held that the signature of the party sworn is not an essential part of an affidavit, where there is no statute or rule of court requiring it; and the first edition of this Dictionary was cited by the court, among other authorities, to show that signature does not enter into the original meaning and definition of the word. There are two early decisions in the Supreme Court of New-York to the same point. See Haff *v.* Spicer, 3 *Caines' R.* 190. Jackson *v.* Virgil, 3 *Johnson's R.* 540. 1 *Burr. Pract.* 342, (2d ed.) It is matter of daily practice, however, to regard an affidavit as imperfect, unless it be signed by the deponent or affiant. In all the best collections of practical forms, a signature constitutes a part of the affidavit; and there are definitions in the books which expressly incorporate the same idea. See *Bac. Abr.* Affidavit.

*** The term *affidavit*, now in daily use, is the perfect tense of the old law Latin verb *affido*, *affidare*; and literally signifies "[he] has made oath," or "made faith;" "[he] has sworn." The original meaning of *affidare*, as applied to law proceedings, was to pledge by oath, to swear to do something, and is constantly used by Bracton in this sense. See *Affidare*. Thus, in the old law of essoins, the essoiner was required to *swear* that he would have his principal in court at a certain day, (affidabit *essoniator quod habebit dominum suum ad certum* (*alium*) *diem*). *Bract.* fol. 337 b, 351 b. And if neither principal nor essoiner appeared at the day, the latter was allowed to excuse both by a new essoin that he could not come, nor have his principal, as he *swore to do*, (*sicut* affidavit,) on account of misfortune, &c. *Id.* fol. 352 a. *Non autem omnes essoniatores* affidabunt, *sed illi tantum qui sunt baronibus inferiores; comites vero, barones et baronissæ non* affidabunt, *sed plegios invenient;* but all essoiners shall not swear, but only those who are inferior to barons; earls, barons and baronesses shall not swear, but shall find pledges. *Fleta*, lib. 6, c. 10, § 15. The word *affidaverunt* (they pledged themselves by oath) is used in an old concord made upon a writ of right, 33 Hen. II. cited by Lord Coke. 3 *Co.* pref. So, in a charter given at length by Blount, dated April 18, A. D. 1160, the words occur, "*juravi et affidavi*," I have sworn and pledged my oath (to keep the covenants contained in the instrument). *Blount*, voc. *Covenant*. By a gradual extension of meaning, the word *affidare* came to signify to swear generally, to swear to a thing already done, or to an existing fact, as well as to swear to do a thing in future. *Reg. Orig.* 29 b, regula. *Fleta*, lib. 2, c. 1, § 25. Hence the use of *affidavit*, in the third person of the past tense, as the emphatic word of the Latin forms in which oaths were recorded; from which the written oath of the present day has derived its name.

AFFIERT, *Afiert*, *Affert*. L. Fr. It belongs, or behooves. *Ceo que a luy affiert;* that which belongs to him. *Litt.* sect. 44, 289, 294. *Afferont;* they belong. *L. Fr. Dict.* See *Afiert*.

AFFILARE. L. Lat. To file or affile. *Affiletur;* let it be filed. 8 *Co.* 319, [160.] *De recordo affilatum;* affiled of record. 2 *Ld. Raym.* 1476.

AFFILE. [L. Lat. *affilare*.] In old practice. To put on file. "To *affile* of record." 2 *M. & S.* 202. Now shortened to *file*, (q. v.)

AFFILIATION. [from Lat. *ad*, to, and *filius*, a child.] The assignment of a child to a parent, by legal authority; the adjudging of a man to be the father of a bastard

child. *Brande.* More commonly termed *filiation*, (q. v.)

AFFINER. L. Fr. To put an end to. *Kelham.*

AFFINES, *Adfines.* Lat. [pl. of *affinis*, (q. v.); L. Fr. *affins.*] In the civil law. Relations or connexions by marriage. *Inst.* 1. 10. 6. 2 *Steph. Com.* 285. See *Adfines.* Related by marriage. *Qui neutri parti sunt* affines; who are related to neither party by marriage. *Fleta*, lib. 4, c. 5, § 4.

Neighbors, who own or occupy adjoining lands. *Dig.* 10. 1. 12.

AFFINIS. Lat. [from *ad*, at or near, and *finis*, a border; L. Fr. *affin.*] In the civil law. Bordering, or adjacent; near; related by marriage. See *Affines*, *Adfines.* There is no single English word corresponding to this. *Affined*, however, is sometimes used in translation. 1 *Kaufm. Mackeld. Civ. Law*, 141, § 134, note. *Id.* 142, § 135.

Affinis mei affinis non est mihi affinis. One who is related by marriage to a person related to me by marriage, has no affinity to me. *Shelford Marr. & Div.* 174.

AFFINITAS. Lat. [from *affinis*, q. v.] In the civil law. Affinity; relation by marriage. *Inst.* 1. 10. 6. See *Affinity*, *Adfines.*

AFFINITY. [Lat. *affinitas*, q. v.] Alliance, nearness or relation by marriage. *Co. Litt.* 157 a. 1 *Bl. Com.* 434. The relationship which marriage occasions between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. *Tomlins. Holthouse.* The connection which arises by marriage, between each person of the married pair, and the kindred of the other. 1 *Mackeld. Civ. Law*, 141, § 134. A husband is related by affinity to all the *consanguinei* of his wife, and, *vice versâ*, the wife to the husband's *consanguinei;* for the husband and wife being considered one flesh, those who are related to the one by blood are related to the other by affinity. *Gibs. Cod.* 412. 1 *Chitt. Bl. Com.* 435, note. Jewett, J. 1 *Denio*, 186, 187.

In a larger sense, consanguinity or kindred. *Co. Litt.* 157 a.

AFFINS. L. Fr. Kindred by marriage. *Kelham.*

AFFIRM. [Lat. *affirmare*, to make firm; L. Fr. *affirmer.*] In practice. To ratify, or confirm a former law or judgment. *Cowell. Blount.* Used in this sense by West, and Crompton. *West's Symbol.* part 2, tit. Fines, sect. 152. *Crompt. Jurisd.* fol. 166. Now particularly applied to the confirmation, by a court of appeal, of the judgment of an inferior court; the opposite of *reverse*, (q. v.)

To ratify or confirm a former act. See *Affirmance.*

To assert, or declare solemnly, instead of making oath. See *Affirmation.*

To aver, or state a thing in pleading; the opposite of *deny*, or *traverse*, (qq. v.) *Steph. Pl.* 84.

AFFIRMANCE. In practice. The confirming, or ratifying a former law, or judgment. *Cowell. Blount.* Used in this sense, in the statute 8 Hen. VI. c. 12. *Id.* The confirmation of the judgment of a court by a superior court on appeal, or writ of error. See *Affirm.*

The confirmation, acknowledgment, or adoption of a former act; as the affirmance by a person of full age, of an act done during minority. 2 *Kent's Com.* 234—238.

AFFIRMANT. A person who affirms, in place of making oath. See *Affirmation.* Used in affidavits and depositions which are *affirmed*, instead of sworn to, in place of the word *deponent.*

AFFIRMARE. Lat. and L. Lat. In old English law. To make firm; to confirm, or ratify. See *Affirm.*

To aver, or state a thing, in pleading. **Affirmanti, non neganti, incumbit probatio.** The proof lies upon him who affirms, not upon him who denies.* *Steph. Pl.* 84.

To farm out, (*ad firmam dare;* L. Fr. *affermer.*) *Affirmatus;* farmed out; let for a firm, farm or rent. *Cowell*, voc. *Firmaratio.* See *Firma*, *Farm.*

In Scotch practice. To open or "fence" a court. *Skene de Verb. Sign.* voc. *Iter*, n. 2. See *Curia legitime affirmata.*

AFFIRMATION. In practice. A solemn declaration made before a court, judge or other authorized officer, and having the force of an oath; an indulgence allowed by law to persons professing to have conscientious scruples against taking an oath, who, in cases where an oath is required from others, may make a solemn *affirmation* or declaration that what they say is true.* *Tomlins. Jacob.*

AFFIRMATIVE STATUTE. In legislation. A statute in affirmative language; a statute directing some act to be done, or declaring what shall be done; as a *nega-*

tive statute is one which prohibits a thing from being done, or declares what shall not be done. Blackstone describes affirmative acts of parliament as those "wherein justice is directed to be done according to the law of the land." 1 *Bl. Com.* 142.

AFFIRROUR. L. Fr. An affeeror. See *Affeeror.*

AFFIXUS, *Adfixus.* Lat. [from *ad*, to, and *fixus*, fixed.] In the civil law. Affixed; fixed or fastened to. *Ædium autem multa esse, quæ ædibus* affixa *non sunt, ignorari non oportet, utputa seras, claves, claustra;* but it ought to be known that many things belong to houses, which are not actually affixed to them; such as locks, keys, bars. *Dig.* 19. 1. 17. pr. *Castella plumbea, putea, opercula puteorum, epitonia fistulis adplumbata, aut quæ terra continentur, quamvis non sunt* affixa, *ædium esse constat;* it is clear that leaden reservoirs, wells, covers of wells, wheels for raising water, soldered to pipes, or which are under ground, though they are not affixed, belong to houses. *Id.* 19. 1. 17. 8. *Papinianus quoque, libro septimo Responsorum ait, sigilla et statuæ* affixæ *instrumento domus non continentur, sed domus portio sunt; quæ vero non sunt* affixa, *instrumento non continentur.* Papinian, also, in his seventh book of Responses, says that images and statues affixed, are not included in the furniture of a house, but are a part of the house, but that those which are not affixed, are not included in furniture. *Id.* 33. 7. 12. 23. See *Instrumentum. Statuæ* affixæ *basibus structilibus, aut tabulæ religatæ catenis, aut erga parietem adfixæ, aut si similiter cohærent lychni, non sunt ædium; ornatus enim ædium causâ parantur, non quo ædes perficiantur;* statues fastened upon pedestals of masonry, or pictures fastened with chains or fixed to the wall, or lamps suspended in a similar way, are no part of the house; for they are put up for the sake of ornament, and not for the completion of the building. *Dig.* 50. 16. 245. See *Fixtures.*

AFFORCE, *Aforce.* [L. Fr. *afforcer;* L. Lat. *afforciare.*] In old English law. To apply, or exercise force; to use compulsory measures; to add to, or increase. *Afforcing an assise* was the production of a verdict, in case of a difference of opinion among the jurors, by adding others till twelve were found who were unanimous.* *Bract.* fol. 185 b. 292. *Fleta*, lib. 4, c. 9, § 2. 2 *Reeves' Hist. Eng. Law*, 267. *Barringt. Obs. Stat.* 20, 21.

AFFORCER, *Aforcer.* L. Fr. To strengthen; to add to, or increase; to compel, or enforce. *Kelham.*

AFFORCIAMENTUM, *Aforciamentum.* L. Lat. [from *afforciare*, to make strong.] In old English law. A fortress or stronghold, or other fortification. *Cowell.*

The calling of a court upon a solemn, or extraordinary occasion. *Id.* See *Aforciamentum.* Increase. *Pro* afforciamento *districtionis;* for the afforcement of the distress. *Fleta*, lib. 2, c. 65, § 9.

AFFORCIARE, *Affortiare.* L. Lat. To make strong; to use or apply strength or force; to add to, or increase. *Assisam afforciare;* to afforce an assise. *Fleta*, lib. 4, c. 9, § 2. *Affortietur assisa;* the assise shall be afforced. *Bract.* fol. 185 b. See *Afforce.*

AFFORER. L. Fr. To estimate, assess, or tax. *Kelham.* See *Afferer.*

AFFOREST. [L. Lat. *afforestare.*] To turn into a forest, (*in forestam convertere.*) *Spelman*, voc. *Afforestare.*

AFFORESTARE, *Aforestare.* L. Lat. In old English law. To afforest; to convert into forest. *Omnes forestæ quas Henricus rex, avus noster,* afforestavit, *videantur per bonos et legales homines, et si boscum aliquem alium quam suum dominicum* afforestaverit, *ad dampnum illius cujus boscus ille fuerit, deafforestetur.* All the forests which King Henry, our grandfather, afforested, shall be viewed by good and lawful men; and if he shall have afforested any wood, other than his own demesne, to the damage of him whose wood it was, it shall be disafforested. *Cart. de Forest.* 9 Hen. III. c. 1. And see *Mag. Cart. Johan.* c. 53. *Spelman*, voc. *Afforestare. Omnes forestæ quæ* aforestatæ *sunt tempore nostro;* all forests which have been afforested during our reign. *Mag. Cart. Johan.* c. 47.

AFFRANCHIR. L. Fr. To set free. *Kelham.*

AFFRAY. [L. Lat. *affraia*, from Fr. *affraier, effrayer*, to affright.] In criminal law. The fighting of two or more persons in some public place, to the terror of others; and there must be a stroke given, or offered, or weapon drawn, otherwise it is not an affray. 3 *Inst.* 158. 4 *Bl. Com.* 145. The fighting must be in public, for if it be in private, it is no affray, but an assault. *Id. ibid. Hawk. P. C.* b. 1, c. 63, sect. 1. 4 *Steph. Com.* 276.

AFFRECTAMENTUM, *Affretamentum.*

L. Lat. [from Fr. *fret*, freight.] In old English law. An affreightment, or freightment. *Rast. Entr.* 24. *Pat.* 11 *Hen.* IV. cited in *Cowell.*

AFFRECTATUS. L. Lat. Freighted. *Rast. Entr.* 409. *Towns. Pl.* 50.

AFFREIGHTMENT. [Fr. *affretement, nolissement;* L. Lat. *affrectamentum*, q. v.] In maritime law. The freighting or affreighting of a ship; that is, the hiring and letting to hire of a vessel for the conveyance of goods on a certain voyage, at a stipulated price or freight.* A charter party is called a contract of affreightment. 3 *Kent's Com.* 201. *Smith's Merc. Law*, 172. See *Charter party, Freight.*

In French law, freighting and affreighting are distinguished. The owner of a ship freights it, (*le frete;*) he is called the freighter, (*freteur;*) he is the letter or lessor, (*locateur, locator.*) The merchant affreights (*affrete*) the ship, and is called the affreighter, (*affreteur;*) he is the hirer, (*locataire, conductor.*) *Emerigon, Tr. des Ass.* ch. 11, sect. 3.

AFFRETEMENT. Fr. In French law. The hiring of a vessel; affreightment. Called also *nolissement. Ord. Mar.* liv. 1, tit. 2, art. 2. *Id.* liv. 3, tit. 1, art. 1.

AFFRETER. Fr. In French law. To hire a vessel at a stipulated price; to affreight. *Emerig. des Ass.* ch. 11, sect. 3.

AFFRETEUR. Fr. In French law. The hirer of a vessel; the affreighter. *Emerig. des Ass.* ch. 11, sect. 3.

AFFRI, *Afri, Affra.* L. Lat. [probably the same with L. Lat. *averia*, Fr. *avers, affers.*] In old English law. Plough cattle, bullocks or plough horses. *Affri*, or *afri carucæ;* beasts of the plough. *Reg. Orig.* 150 a. *Stat. Westm.* 2, c. 18. *Fleta*, lib. 2, c. 62, § 8. *Id.* c. 76, §§ 8, 9. *Spelman.* See *Averia.*

Draught cattle. *Affri carectæ;* beasts of the cart. *Fleta*, lib. 2, c. 85. *Id.* c. 73, § 6.

AFFURARE. L. Lat. In old English law. To affeer. *Amerciatus fuit ibidem et* affuratus *ad xii. d. Yearb.* H. 4 Edw. III. 28.

AFIERT. L. Fr. Belongs; goes to. *LL. Gul. Conq.* c. 3. *Afierent;* belong. *Id.*

AFORCIAMENTUM. L. Lat. In old English law. An afforcement; a strengthening, adding to; increase. *Aforciamentum plegiorum;* aforcement of pledges. If a defendant did not appear after the first attachment, then upon the plaintiff offering himself, he was to be attached by better pledges, to answer on another day. This was called *aforciamentum plegiorum. Bract.* fol. 439 b. 1 *Reeves' Hist. Eng. Law*, 482. *Aforciamentum districtionis;* aforcement of a distress. *Bract.* fol. 330. *Aforciamentum curiæ. Id.* fol. 35.

AFORESAID. [L. Lat. *prædictus, præfatus, prærecitatus.*] Before, or already said, mentioned, or recited; premised. *Plowd.* 67. *Foresaid* is used in Scotch law. See *Prædictus, Præfatus.*

"AFORESAID," [L. Lat. *prædictus*] refers to the last antecedent. 1 *Chitt. Crim. Law*, 173. But this is not an invariable rule. *Id.* 1 *Ld. Raym.* 405. 2 *Id.* 1094.

AFORESTARE. L. Lat. In old English law. To afforest. *Mag. Cart. Joh.* c. 47. See *Afforestare.*

AFORETHOUGHT. [Lat. *præcogitata.*] In criminal law. Premeditated. See *Malice aforethought.*

"AFTER," in a will, does not always, or necessarily refer to time, but to order in point of right and enjoyment. Shaw, C. J. 11 *Pick. R.* 378. 2 *Cushing's R.* 387.

AFTERMATH, *Aftermoath.* The grass which grows after the hay has been made; the second mowing or crop of hay. 2 *Wooddes. Lect.* 61. "Tithes of aftermoath shall be paid, but not tithes of after-pasture." *Bunb.* 10, case 12. "The after or latter math" of a meadow. 13 *East*, 155.

The right to the last crop, or pasturage. 1 *Chitt. Gen. Pr.* 181.

AGAIT, *Agayte.* L. Fr. Waiting; await; wait. *Gist en agait;* he lies in wait. *L. Fr. Dict. Kelham.*

AGARD. L. Fr. [from *agarder*, q. v.; L. Lat. *awarda.*] An award. *Nul fait agard;* no award made. See *Award.*

AGARDER. L. Fr. In old practice. To award, adjudge, determine. *Si come la court agardre;* as the court shall award. *Stat. Westm.* 1, c. 44. *Le breve fuit* agard *bon;* the writ was held good, *Reg. Orig.* 97 b, nota. The formal word of giving judgment. *Agardomus;* we award. *Yearb.* II. 6 Edw. III. 4.

To condemn or sentence. *Il fuit agard al' Flete;* he was adjudged to the Fleet. *Yearb.* T. 10 Edw. III. 28.

AGE, *Awe, Aive.* L. Fr. Water. *Kelham.*

AGE. [L. Fr. *agé, aage;* L. Lat. *ætas.*] A period of life at which persons become legally competent to do certain acts, or enter into certain contracts, which before they were incompetent to do, or enter into.* The term is emphatically applied in the common law, to the period of twenty-one years in males and females, (called *full age;* Lat. *plena ætas*, Fr. *pleine agé;*) on arriving at which they are said to be *of age*, and previously to be *under age*, (Lat. *infra ætatem;* Fr. *deins agé,*) that is, infants or minors. *Stat. Westm.* 1, c. 22. *Litt.* sect. 103, 104. *Co. Litt.* 78 b. 1 *Bl. Com.* 463. 2 *Kent's Com.* 233. See *Ætas, Full age.*

Besides full age, there are other periods at which males and females become of age for different purposes, such as the *age of consent* to marriage, which is fourteen years in males and twelve in females; the *age of discretion*, which is fourteen in both sexes, at which they may choose their guardians; *age to make a will* of personal estate, which at common law was fourteen in males and twelve in females; *age to be an executor* or executrix, which was seventeen years. 1 *Bl. Com.* 463. *Co. Litt.* 78 b, 79 a. *Hargr. Co. Litt.* note 83, lib. 2. 2 *Steph. Com.* 332. 2 *Kent's Com.* 78, 222, 242. There is also, in English law, the age at which males may take the oath of allegiance, which is twelve years; the age at which females may be given in marriage, which is seven; and the age at which they become entitled to dower, which is nine years. 1 *Bl. Com.* 463. See 2 *Steph. Com.* 332. As to the age of responsibility for criminal acts, see 4 *Bl. Com.* 22, 23. 2 *Steph. Com.* 331. *Macpherson on Infants*, 450.

AGE PRAYER. [L. Fr. *age prier;* L. Lat. *ætatis precatio.*] In old English practice. A prayer for age; or for the allowance of a privilege or indulgence, on account of age.* At common law, in many real actions by or against an infant, and in actions of debt against him, as heir to any deceased ancestor, either party might suggest the non-age of the defendant, and *pray* that the proceedings might be deferred until his full age, or (in legal phrase) that the infant might *have his age*, and that the *parol* might *demur*, that is, that the pleadings might be stayed. 3 *Bl. Com.* 300. *Termes de la Ley. Finch, Law*, 360. This was called the plea of *parol demurrer*, which has been recently abolished. *Stat.* 11 *Geo.* IV. and 1 *Will.* IV. c. 37, s. 10. *See Parol, Parol demurrer.*

AGENCY. [Lat. *procuratio.*] The relation or office of an agent;* the relation between principal and agent. *Story on Agency*, § 3. The administration or management of the business of another person in his behalf, and by his appointment or authority. See *Procuration.*

Agency is founded upon a contract, either express or implied, by which one of the parties confides to the other the management of some business to be transacted in his name, or on his account, and by which the other assumes to do the business, and to render an account of it. 2 *Kent's Com.* 613. See *Agent.*

AGENFRIDA. L. Lat. [Sax. *agenfrige.*] In Saxon law. The true master or owner of a thing; the actual possessor. *LL. Inæ*, c. 50. *Spelman.*

AGENHINE, *Awenhine, Awnhine.* Sax. [from *agen*, own, and *hine*, a servant.] In Saxon law. A domestic or inmate; one belonging to the family or household. *Frum night uncuth, twanight gest, thrid night* agenhine; first night a stranger, second night a guest, third night an inmate. *LL. Edw. Conf.* c. 17. Sometimes written *hogenhine, hoghenehyne*, and *homehyne*, (qq. v.)

AGENS. Lat. [from *agere*, q. v.] One who acts or does an act; an actor or doer. Hence the English *agent. Agentes et consentientes pari pœna plectentur;* those who do an act, and those who consent to it, shall suffer the same punishment. 5 *Co.* 80.

In civil and old English law. A plaintiff; one who brings an action. *Inst.* 4. 6. 33. *Fleta*, lib. 4, c. 17, § 8. Agenti *ex contractu non potest opponi questio dominii;* one who sues on a contract cannot be met with a question of ownership. A rule of insurance law. *Santerna*, part 4, n. 48. *Rote de Génes*, dec. 5, n. 11. *Roccus*, Not. 46. It was, however, to be taken with the qualification—*nisi hoc fuisset in fraudem assecuratoris. Id. Emerigon, Tr. des Ass.* ch. 5, § 2.

AGENT. [from Lat. *agens*, acting, one who acts, from *agere*, to act or do: Lat. *procurator, vicarius.*] One who acts for another; one who is employed by another to do any act for his benefit, or on his account.* *Story on Agency*, § 3. A person who acts in the name and place of

another, (who is called his principal,) by his authority or appointment, as his substitute, deputy, proxy, attorney, factor, &c. Agent is a *nomen generalissimum*, and includes factors and brokers, who are only a special class of agents. 2 *Kent's Com.* 622, note. See *Paley on Agency. United States Digest*, Principal and Agent.

AGENT AND PATIENT. In old law. Agent and subject; doer and receiver.* Where the same person was the doer of a thing, and the party to whom it was done, he was termed *agent and patient;* as where an executor retained out of the goods of the deceased in his hands, the amount of a debt due to himself, he being both the party to whom the debt was due and the party paying it.* *Termes de la Ley.*

AGER. Lat. In the civil law. A field; a piece of land or place in the country, with no building upon it, (*locus qui sine villa est, Dig.* 50. 16. 27;) corresponding with *area*, in a city. *Locus sine ædificio in urbe area, rure autem* ager *appellatur. Id.* 50. 16. 211. If it had a building, it was called *fundus*, (*ager cum ædificio fundus dicitur.*) *Id. ibid.* See *Fundus, Prædium.*

Land generally. *Bract.* fol. 9. *Sic enim debere quem meliorem* agrum *suum facere, ne vicini deteriorem faciat;* every one ought so to improve his own land as not to injure his neighbor's. 3 *Kent's Com.* 441.

AGER. L. Lat. In old English law. An acre. *Lib. Rames.* sect. 245. *Matt. Paris*, in ann. 1083. *Spelman.* See *Acra, Acre.*

AGERE. Lat. In the civil law. To act; to do. *Dig.* 50. 16. 19. Distinguished from *facere* and *gerere. Calv. Lex.*

To act at law, or by, or through the law; (*agere lege;*) to deal with one at law; to bring an action; to sue. *Agere potest;* he can sue. *Inst.* 2. 20. 6. *Agere non potest;* he cannot sue. *Id. ibid. Id.* 4. 10. pr. *Si agat quis;* if a man bring an action. *Id.* 4. 6. 2. *Agitur;* a suit is brought, or may be brought. *Id.* 4. 6. 22, 25. *Agere injuriarum;* to sue for damages. *Id.* 4. 4. 2. *Ad hoc agere;* to bring an action for this object. *Bract.* fol. 18 a. *Si agat de conventione;* if he bring an action of covenant. *Id.* fol. 24 b. It was also applied to the defence of an action. *Dig.* 44. 1. 1.

AGGER. Lat. In the civil law. A dam, bank or mound. *Cod.* 9. 38. *Towns. Pl.* 48.

AGGRAVATION. [Lat. *aggravatio*, from *aggravare*, from *ad*, to, and *gravis*, heavy.] In criminal law and pleading. A making worse; a making more enormous or injurious; tending to increase the amount of damages claimed. *Steph. Pl.* 243.

AGGREGATE. [Lat. *aggregatus*, from *ad*, to, and *grex*, a company or multitude.] Composed of several; consisting of many persons united together. 1 *Bl. Com.* 469. See *Corporation.*

AGILD. Sax. [from *a*, without, and *gild*, a payment.] In Saxon law. Free from penalty, (*sine mulcta vel compensatione;*) not subject to the payment of *gild*, or *weregild*, that is, the customary fine or pecuniary compensation for an offence. *Spelman. Cowell.* See *Gild, Weregild.*

AGILLARIUS. L. Lat. In old English law. A hay-ward; a herd-ward, or keeper of the herd of cattle in a common field. *Cowell.*

AGISER. L. Fr. To lie. *Agisant;* lying. *L. Fr. Dict.*

AGIST. [L. Lat. *agistare;* from *ad*, to, and Norm. *gister*, or *giser*, to lie or lay.] To put, place, or lay to, or near, (*adjicere, apponere, rem juxta aliam collocare;*) to adjust, (Fr. *adjouster,*) or apportion. To assign, apportion or fix the number of cattle entitled to feed on certain ground; to adjust, apportion or assess a tax. This appears to have been the original sense of the word. *Spelman*, voc. *Agistare.*

In ancient law. To take in and feed the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. *Charta de Foresta*, c. 9. *Spelman, ub. sup. Fleta*, lib. 2, c. 41, §§ 15, 16, 31. *Cowell.*

In modern law. To take in cattle to feed, or pasture, at a certain rate or compensation. Lord Ellenborough, C. J. 13 *East*, 159. *Jacob*, voc. *Agistment.* See *Agistare, Agistatio.*

AGISTAMENTUM. L. Lat. [from *agistare*, q. v.] In old English law. An agistment, apportionment, or feeding of cattle, especially in the king's forests. *Fleta*, lib. 2, c. 41, § 15. *Spelman*, voc. *Agistare. Termes de la Ley.*

A duty or tax for repairing banks, dykes or sea walls, levied upon the owners of lands benefited by them. *Spelman. Cowell*, voc. *Agistator.*

AGISTARE. L. Lat. [from *ad*, to, and Norm. *gister*, to lie, lay or place.] In old

English law. To adjust, assign, apportion, assess; to assign or apportion cattle, or other animals, to a feeding ground. *Unusquisque liber homo* agistet *boscum suum in foresta pro voluntate sua;* every freeman shall *agist* his wood in the forest at his pleasure. *Chart. de Forest.* c. 9. *Spelman.* To adjust or assess a tax, or duty. *Id.*

To use for the purposes of feeding cattle. *Inquiratur de agistatoribus regis, si fideliter* agistaverint *dominicos boscos regis;* inquiry shall be made concerning the king's agisters, if they have faithfully agisted the king's demesne woods. *Fleta*, lib. 2, c. 41, § 31.

To feed or pasture cattle; to feed other animals; to agist. *Ducere possit porcos suos per dominicum boscum nostrum liberè, —ad* agistandum *eos in boscis suis propriis, vel alibi;* he may take his swine through our demesne wood freely,—to *agist* them in his own woods, or elsewhere. *Chart. de Forest.* c. 9. See *Agist.*

AGISTATIO. L. Lat. [from *agistare*, q. v.] In old English law. The laying or assessing a proportion of duty upon lands, for repairing sea banks and walls. *Cowell.*

AGISTATOR. L. Lat. [from *agistare*, q. v.] In old English law. An agister; an officer of the forest who took account of cattle there agisted. *Chart. de Forest.* c. 8. See *Fleta*, lib. 2, c. 41, § 31. Sometimes called *gyst-taker* or *guest-taker. Cowell. Crompt. Jur.* fol. 146. 4 *Inst.* 293. See *Agister.*

A collector and expender of taxes for keeping sea-walls in repair. *Kennett's Gloss.*

AGISTER, *Agistor.* [L. Lat. *agistator.*] One who agists or takes in cattle and horses to pasture at a certain rate. *Story on Bailment*, § 443. See *Agist, Agistment.*

AGISTMENT. [L. Lat. *agistamentum.*] The taking in of horses, or other cattle, to graze and depasture in one's grounds at a certain rate. 2 *Bl. Com.* 452. See *Agist.* Called anciently *gisement. Cowell.*

AGIUM. L. Lat. [from *agere*, q. v.] A termination in the composition of Latin words, answering to the termination *age*, in English, signifying service or duty; as *homagium*, (*servitium hominis*,) the service of a man; *escuagium*, (*servitium scuti*,) the service of the shield; *socagium*, (*servitium socæ*,) the service of the plough, and the like. *Co. Litt.* 86 a. *Spelman*, voc. *Appenagium.*

AGNASCI, *Adgnasci.* Lat. [from *ad*, to, and *nascor, nasci*, to be born.] In the civil law. To be born to one; to have issue after making a will. *Constat* agnascendo *rumpi testamentum;* it is clear that a will is revoked by the birth of a child. *Cic. de Orat.* i. 57. *Dig.* 28. 3. 3.

AGNATES, *Agnats.* [Lat. *agnati.*] In the law of descents. Relations by the father. These words are used in the Scotch law, and by some writers, as English words, corresponding with the Latin *agnati*, (q. v.) *Ersk. Inst.* b. 1, tit. 7, § 4. 3 *Gibbon's Rom. Emp.* 175, 177, (Am. ed.) *Agnates* include the following relations: father, son, brother, daughter, sister, father's brother, brother's son, &c. 1 *Kaufm. Mackeld. Civ. Law*, 137, note.

AGNATI, *Adgnati.* Lat. In the civil law. Relations by the father; relations through males; translated in Scotch law, and sometimes by English writers, *agnates* or *agnats*, (q. v.) 2 *Bl. Com.* 235. *Agnati* were a species of *cognati* (blood relations in general,) although the term *cognati* was also used in the sense of a species. *Sunt* agnati *cognati per virilis sexûs cognationem conjuncti, quasi a patre cognati; agnati* are relations connected by a relationship of the male sex, as it were related by the father. *Inst.* 1. 15. 1. *Id.* 3. 2. 1. *Inter* agnatos *et cognatos hoc interest, quod in agnatis et cognati continentur, in cognatis non utique et* agnati; *verbi gratia, patris frater, id est, patruus, et* agnatus *est et cognatus; matris autem frater, id est, avunculus, cognatus est,* agnatus *non est.* Between *agnati* and *cognati* there is this difference, that, under the name of agnati, *cognati* are included, but not *è converso;* for instance, a father's brother, that is, a paternal uncle, is both *agnatus* and *cognatus*, but a mother's brother, that is, a maternal uncle, is a *cognatus* but not *agnatus. Dig.* 38. 7. 5. pr. See *Feud. Lib.* 2, titt. 11, 15, 26. See *Cognati.*

AGNATIC. [from *agnati*, q. v.] Derived from, or through males. 2 *Bl. Com.* 236.

AGNATIO. Lat. [from *agnati*, q. v.] In the civil law. Relationship on the father's side; agnation. *Agnatio a patre est. Inst.* 3. 5. 4. *Id.* 3. 6. 6.

Birth, especially after a will; an additional birth. See *Agnascor.* [*Testamentum*] agnatione *posthumi sive posthumæ rumpitur;* a will is annulled by the birth of a posthumous son or daughter. *Inst.* 2. 13. 1.

AGNISER. L. Fr. To acknowledge. *Agnise, agnize;* acknowledge. *L. Fr. Dict.*

AGNOMEN. Lat. In the Roman law. An additional name, (*quasi ad nomen.*) The last of the four names used among the Romans; (the other three being the *prænomen*, the *nomen*, and the *cognomen*, qq. v.;) a name assumed or added from some particular circumstance, or to denote the branch of the family to which the individual belonged. *Adam's Rom. Ant.* 35, 36. *Butler's Hor. Jur.* 28. According to Dr. Taylor, *agnomina* were originally nothing more than nick-names, or marks of scurrillity and reproach. *Tayl. Civ. Law*, 70. The word is used by some writers on old English law. *Fleta*, lib. 4, c. 10, § 9. The old Scotch, "to-name," seems to be a literal translation of it.

ΑΓΡΑΦΟΣ, *Ἀγραφὸς.* Gr. [from *α*, priv. and *γράφειν*, to write.] In the civil law. Not written; unwritten; without writing. *Dig.* 1. 1. 6. 1.

AGRARIAN. [from *ager*, land.] Relating to land, or to a division or distribution of land; as an agrarian law. See *Lex agraria.*

AGRARIUM. L. Lat. [from *ager*, land.] In old European law. A tax upon land, a tribute payable out of land, (*tributum quod ex agris penditur.*) Corresponding with the Fr. *agrier, champart* or *terrage. Marculf.* lib. 2. *Spelman.*

AGREAMENTUM, *Aggreamentum.* L. Lat. In old English law. Agreement; an agreement. *Spelman.*

This Latin form of the word *agreement* has led to the fanciful etymology adopted by Plowden, Cowell, and other writers, which makes it to be compounded of *aggregatio* and *mentium*, and so to signify a *joining* together of two or more *minds* in any thing done or to be done. *Cowell*, voc. *Agreement. Plowd.* 17, arg. The error of this obviously consists in confounding *mentum*, a common termination, used (as the English and French *ment*,) in forming nouns from verbs, with *mentium*, the genitive plural of *mens*, mind, and is well exposed by Spelman. The phrase *aggregatio mentium*, however, though absurd in point of etymology, is expressive as a definition, and in that light has sometimes been adopted by high authority. *Com. Dig.* Agreement, A, 1. Hyde, J. 1 *Mod.* 126. 3 *Johns. R.* 535. See *Testamentum.*

AGREARE. L. Lat. In old English law. To agree. *Agreavit;* [he] agreed. *Convenit, promisit, et* agreavit *ad et cum*, &c.; [he] covenanted, promised and agreed to, and with, &c. *Hob.* 34 b. *Acceptavit et agreavit;* accepted and agreed. *Keilw.* 195. *Corrupte* agreatum *fuit;* it was corruptly agreed. 2 *Stra.* 871.

AGREE. [L. Lat. *agreare;* from Fr. *agreer, aggreer*, from Lat. *aggredi*, to go or come to.] To come together, unite or concur, (*congredi;*) to be of one mind as to a thing, (*ire in eandem sententiam;*) to assent mutually, or contract to do a thing. *To agree*, in this its proper sense, implies action by and between two or more; and the same idea of *united* or *mutual* action is the radical one of the corresponding Latin words *convenire, concordare*, and *contrahere.* The word *agreed* in a written contract is regarded as the word of both parties. Nelson, C. J. 5 *Hill's* (*N. Y.*) *Rep.* 256, 259. See *Agreement.*

To assent to a thing, or undertake to do it; to promise. Jewett, J. 1 *Denio's R.* 226, 228, 229. This is a loose and incorrect sense of the term. Lord Ellenborough, C. J. 5 *East*, 10, 17.

To concur or acquiesce in; to approve or adopt. *Agreed, agreed to*, are frequently used in the books, (like *accord*,) to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression.

To harmonize or reconcile. "You will *agree* your books." 8 *Co.* 67.

AGREEANCE. In Scotch law. Agreement; an agreement. "Quhilk contract and agreeance was ratified." *Skene de Verb. Signif.* voc. *Annuell.*

AGREEMENT. [L. Lat. *agreamentum, concordia;* Lat. *conventio, pactum.*] A coming together of parties in opinion or determination;* the union of two or more minds in a thing done, or to be done; a mutual assent to do a thing. *Com. Dig.* Agreement, A. 1. *Plowd.* 5 a. 6 a.—The consent of two or more persons concurring, the one in parting with, and the other in receiving some property, right or benefit. *Bac. Abr.* Agreement.—A mutual contract on consideration, between two or more parties. Lord Ellenborough, C. J. 5 *East*, 10.—A mutual consent of the minds of the parties concerned, respecting some property or right that is the object of the stipulation, or something that is to be done or forborne; a transaction between two or more persons, in which each party comes under an obligation to the other, and each

reciprocally acquires a right to whatever is promised or stipulated by the other. 4 *Gill & Johns.* 1. See *Plowd.* 17. 12 *Howard's R.* 126. See *Agree.*

A promise, or undertaking. This is a loose and incorrect sense of the word. Lord Ellenborough, C. J. 5 *East*, 10. See 3 *Br. & Bing.* 14. 3 *Comstock's R.* 335.

A thing or matter agreed to, or upon; an instrument showing what has been agreed upon.

Agreement is constantly used as the synonyme of *contract.* 2 *Steph. Com.* 108. 109. See *Contract.* There seems, however, to be a shade of difference between the terms; *agreement* being applicable to less formal acts or instruments. See *Bac. Abr.* Agreement, note.

AGREER, *Aggreer.* L. Fr. In old practice. To agree; to allow, or admit. *Agree;* agreed. *Agree per le court. Dyer*, 5 b. (Fr. ed.) *Agree;* allowed, admitted. *Le comon erudicion covient estre* agree; the common doctrine must be admitted. *Id.* 33.

AGREER. Fr. In French marine law. To rig or equip a vessel. *Ord. Mar.* liv. 1, tit. 2, art. 1.

AGREZ. Fr. In French marine law. The rigging or tackle of a vessel. *Ord. Mar.* liv. 1, tit. 2, art. 1. *Id.* tit. 11, art. 2. *Id.* liv. 3, tit. 1, art. 11.

AGRI. Lat. Lands. Plural of *ager*, (q. v.)

AHERDANT. L. Fr. Adhering. *Aherdant al franktenement. Yearb.* H. 9 Edw. III. 4.

AHTEID. In old European law. A kind of oath among the Bavarians. *Spelman.*

In Saxon law. One bound by oath, q. d. "oath-tied." From *ath*, oath, and *tied. Id.*

AID, *Ayde.* [from Fr. *aide;* Lat. *auxilium, adjutorium. subsidium.*] In feudal law. A kind of pecuniary tribute paid by a vassal to his lord, on occasions of peculiar emergency, and which was one of the incidents of tenure in chivalry, or by knight's service. Aids were principally of three kinds; to ransom the lord's person, if taken prisoner; to make his eldest son a knight, (*pur faire l'eigne fitz chivaler;*) and to marry his eldest daughter, (*pur l'eigne file marier.*) 2 *Bl. Com.* 63, 64. *Stat. Westm.* 1, c. 36. *Spelman*, voc. *Auxilium.* 2 *Reeves' Hist. Eng. Law.* 111. *Wright, Ten.* 105. 3 *Kent's Com.* 504. See *Auxilium.*

In English law. A subsidy granted to the king. *Stat.* 14 *Edw.* III. st. 2, c. 1. *Cowell.*

In old pleading. Help or assistance in defending an action. See *Aid-prayer.*

In criminal law. Assistance given to the commission of a crime. *Stat. Westm.* 1, c. 14. Aid in this sense, according to Lord Coke, comprehends all persons counselling, abetting, plotting, assenting, consenting, and encouraging to do an act, and who are not present when the act is done. 2 *Inst.* 182. See *Aider, Aiding, Auxilium.*

To AID. To help or assist. See *Aid, Abet.*

To remedy or cure. An error, defect or omission in pleading is sometimes *aided* by the adverse party taking no notice of it, or by verdict. 1 *Saund.* 228, note (1). See *To cure.*

AID-PRAYER. *Ayd-pryer.* [L. Fr. *aide-prier;* L. Lat. *auxilii petitio.*] In old practice and pleading. A prayer in aid, or for aid; a prayer or petition to the court, by a tenant in real actions, for the *aid* of another person interested in the property demanded, to help him defend the action.* Thus, a tenant for life might, at common law, *pray in aid* of him that had the inheritance in remainder or reversion; that is, that he might be joined in the action, and help to defend the title. 3 *Bl. Com.* 300. *Cowell*, voc. *Aid.* Aid-prayer was a dilatory plea, to which the demandant might counterplead, and thereupon issue would be joined as in ordinary cases. 1 *Roscoe's Real Act.* 275—281.

AIDE. L. Fr. In old English law. Aid; a feudal tribute to a lord. See *Aid.* Judicial relief. *Year Books, passim.*

In old French law. An excise duty payable to the crown. *Steph. Lect.* 359.

AIDER, *Aidre.* L. Fr. To aid; to help or assist. *Ci Dieu vous aide;* so help you God. *Reg. Orig.* 302 b. 303.

AIDER. In criminal law. One who aids or promotes the commission of a crime; an accessory before or at the fact; a principal in the second degree.* 1 *Russell on Crimes*, 26. Used generally in connection with the word *abettor*, and considered by some writers as synonymous with it. See *Abet, Abettor.*

AIDING AND ABETTING. In criminal law. A phrase applied in the common law to aiders and abettors, technically so called. 1 *Russell on Crimes*, 26. See *Abet.* Construed, in the act of Congress, 20th

April, 1818, ch. 373, to import, as in common parlance, assistance, co-operation and encouragement. 12 *Wheaton's R.* 460. The standing by, within a few feet of the assailants, when a murder is being committed, saying and doing nothing, is not sufficient, of itself, legally to satisfy a jury of such by-stander's aiding or abetting in the commission of the crime. 1 *Wisconsin R.* 159. See *Presence.*

AIE. L. Fr. Have. *Jeo aie;* I have. *L. Fr. Dict.*

AIEL, *Aieul, Aile, Ayle.* L. Fr. A grandfather. *F. N. B.* 221, in marg.

AIEL, *Ayel, Aile, Ayle.* In old practice. A writ which lay for an heir to recover the possession of lands on the seisin of his *grandfather,* (*aiel* or *aieul.*)* Called by Roscoe, a possessory ancestral writ. 1 *Rosc. Real Act.* 127. *Ayle* is the most common form of this word, and is used by Blackstone. 3 *Bl. Com.* 186. See *Ayle.*

AIELESSE. L. Fr. In old English law. A grandmother. *Yearb.* H. 4 Edw. III. 29.

AILOURS, *Aylours, Ailors.* L. Fr. Elsewhere; otherwise; besides. *Artic. sup. Chart.* c. 3. *L. Fr. Dict.*

AINESSE. Fr. [from *aîne,* eldest.] In French feudal law. The right or privilege of the eldest born; esnecy. *Guyot, Inst. Feodal.* c. 17.

AINNEESCHE. L. Fr. Eldership; birthright. *Kelham.*

AINSI. L. Fr. Thus; so; even so; after the same manner; so that; unless. *Ainsi come;* even as it were. *Ainsi soit il;* so be it. *L. Fr. Dict.*

AIO. Lat. I say. In Roman practice. The initial word of the formula in which the plaintiff stated his cause of action or "declared" in the action. *Aio te mihi dare oportere;* I say that you ought to give me, &c. *Adam's Rom. Ant.* 223.

AIRE. Scotch. [Lat. *iter.*] In old Scotch law. The court of the justices itinerant, corresponding with the English *eyre,* (q. v.) *Skene de Verb. Sign.* voc. *Iter. Pitcairn's Crim. Trials, passim.*

Heir. "His airis and assignais." 1 *Pitc. Cr. Trials,* part 2, p. 342.

AIREAU. L. Fr. A plough. *Kelham.*

AIRER, *Aerer.* L. Fr. To plough. See *Arer.*

AIRT AND PAIRT. O. Sc. In old Scotch criminal law. Accessory; contriver and partner. 1 *Pitc. Crim. Tr.* part 1, p. 133. 3 *How. St. Trials,* 601. Now written *art and part,* (q. v.)

AISEMENT. L. Fr. Easement; an easement. *Kelham.*

AISIAMENTUM, *Aysiamentum, Esamentum.* L. Lat. [L. Fr. *aisement,* from Fr. *aisé,* convenience.] In old English law. An easement or privilege. *Glanv.* lib. 12, c. 14. *Reg. Orig.* 165 b. *Spelman.*

AISNE, *Eigne.* L. Fr. [quasi *ainsné;* first born.] In old English law. Eldest, or first born. *Aisne fitz;* eldest son. *Aisne file;* eldest daughter. *L. Fr. Dict. Ainznez;* eldest. *Kelham. Aisne* is the opposite of *puisne* (q. v.). *Spelman,* voc. *Aesnecia.*

AISNEESSE, *Aisnesse.* L. Fr. [L. Lat. *aesnecia,* q. v. Fr. *ainesse.*] In old English law. The right or privilege of the eldest, or first born; esnecy, (q. v.) *Spelman,* voc. *Aesnecia.* Kelham gives *ainneesche* as another form.

AIT. L. Fr. He has. *Aiet;* he shall have. *L. Fr. Dict.*

AJANT, *Ayant.* L. Fr. Having. *Ajants, aienz;* having. *Kelham.*

AJOURNER. Fr. In old French law. To summon. *Ou* n'ajournoit *point par pairs, car les pairs ne pouvoient* ajourner *leur seigneur; mais ils pouvoient* ajourner *pour leur seigneur;* he could not summon by the peers, for the peers could not summon their lord; but they might summon for their lord. *Esprit des Lois,* liv. 28, c. 28.

To adjourn, in the modern sense. *Britt.* c. 2. See *Adjourn.*

AKIN, *A-kin.* In old English law. Of kin. "Next-a-kin." 7 *Mod.* 140.

AL. L. Fr. At. *Al huis d'esglise;* at the door of the church. *Litt.* sect. 38. *Al barre;* at bar; at the bar. *Dyer,* 31, (Fr. ed.)

To. *Cestui que doit inheriter* al *pere doit inheriter* al *fitz;* he who would have been heir to the father of the deceased shall also be heir to the son. 2 *Bl. Com.* 223, 229, 250. *Al contrary;* to the contrary; of a contrary opinion. *Dyer,* 5 b.

With. *Al armes. Kelham.*

ALA. L. Fr. [from *aler,* q. v.] Goes; gone. *L. Fr. Dict.*

Went. *Ala son voy;* went his way. *Dyer,* 5.

ALANT. L. Fr. [from *aler,* q. v.] Going. *Litt.* sect. 240.

ALAST. L. Fr. [from *aler,* q. v.] Goes; went; gone. *L. Fr. Dict.*

ALBA. L. Lat. [from *albus,* white.] In ecclesiastical law. An alb, or aub; a

white vestment worn by priests. *Spelman. Reg. Orig.* 59 b.

ALBA FIRMA. L. Lat. [L. Fr. *blanche fearme.*] In old English law. White farm, or rent; blanch farm; money-rent. Rent payable in silver, or white money, (*argento quasi censu albo,*) as distinguished from that which was anciently paid in corn or provisions, (*in annona,*) called black mail, or black rent, (*census vel firma nigra.*) *Spelman. Reg. Orig.* 319 b. To hold by white farm is to hold freely in socage. 2 *Inst.* 44. See *Firma, Farm, Blanch ferme.*

ALBANAGIUM. L. Lat. [from *albanus*, q. v.; Fr. *aubenage.*] In old French law. Albanage; the state or condition of an alien or foreigner; alienage. *Benedict. in cap. Raynutius*, num. 1042. See *Albinatus jus.*

ALBA SPINA. Lat. In old English law. White thorn. *Fleta*, lib. 2, c. 82, § 2.

ALBANUS, *Albinus.* L. Lat. [quasi *alibinus, alibi natus*, born elsewhere or in another country; Fr. *aubaine.*] In old French law. A stranger, alien or foreigner; (Lat. *advena, extraneus;* old English, a comeling.) *De liberis hominibus albanisque;* from freemen and strangers. *Spelman. Bona albana;* the goods of a foreigner, which escheated to the prince or lord. *Id.* See *Aubaine.*

ALBATORES. L. Lat. [from *albus*, white.] In old English law. Whiteners; bleachers. [?] *Albatores coriorum;* whiteners of skins or leather. *Fleta*, lib. 2, c. 52, § 35.

ALBINATUS. L. Lat. [from *albanus*, or *albinus*, q. v.] In old French law. The state or condition of an alien or foreigner. See *Albinatus jus.*

ALBINATUS JUS, *Albanagii jus.* L. Lat. [Fr. *droit d'aubaine* or *d'aubenage.*] The right of albanage. A right and privilege which formerly existed in France, entitling the king, on the death of an alien, to all he was worth, unless he had a peculiar exemption. *Spelman*, voc. *Albanus.* 1 *Bl. Com.* 372. 2 *Kent's Com.* 69. *Rex omnia eorum bona occupat*, jure albanagii: *exclusa omni parentelâ, conjuge, et quocunque alio legitimo successore;* the king takes possession of all their goods by right of albanage, excluding all right of kindred, the wife, and every other lawful successor. *Benedict. in cap. Raynutius*, num. 1042, cited in *Spelman*, voc. *Albanus.* See *Aubaine, Droit d'aubaine.*

ALBUM. Lat. [from *albus*, white.] In the Roman law. A whitened tablet (*tabula dealbata*, Gr. λεύκωμα,) on which the prætor's edicts were written, and in this way made public. *Dig.* 2. 1. 9. *Tayl. Civ. Law*, 214. *Calv. Lex. Brissonius.* A public register of the prætor's edicts, actions, interdicts, &c. *Id.*

A list or register of the names of senators, (*Dio.* lv. 3,) judges, (*Suet. Tib.* 51. *Claud.* 16,) and decurions. *Dig.* 50. 3.

ALBUM, *Albus.* Lat. In old English law. White; blank; not written upon. *Album breve;* a blank writ; a writ with a blank or omission in it, as where it is returned with the sheriff's surname omitted to the return. *Hob.* 113 b, 130. *Yelv.* 110.

Blank; plain or smooth; without mark. *Album argentum;* plain silver, without mark or stamp; uncoined. White money. See *Alba firma.*

ALCABALA. Span. In Spanish law. A duty of a certain per cent. paid to the treasury on the sale or exchange of property. Said to be a corruption of the words *al que vale*, (that which has value.) *Schmidt's Civ. Law*, 81, note (1), quoting *Escriche*, voc. *Alcabala.*

ALCALDE. Span. In Spanish law. A magistrate or judge. 12 *Peters' R.* 442, note. 1 *White's Recopilacion*, 419.

ALCONS, *Alcunz.* L. Fr. Any one. *Kelham.*

ALDERMAN. [Sax. *ealdorman*, L. Lat. *aldermannus.*] A member of the corporation or common council of a city or corporate town, elected by, and representing the inhabitants of a ward, and having authority to act as a civil magistrate, and sometimes as a judge.* See *Aldermannus civitatis.* The nature of the office of alderman imports that the person holding it must be both a citizen and an inhabitant. City of Exeter *v.* Glide, 4 *Mod.* 33.

*** The use of the term *alderman* as an official title may be traced back to the time of the Anglo-Saxons. *LL. Edw. Conf.* c. 35. The word itself is derived from the Saxon *ealderman* or *ealdorman*, compounded of Sax. *ealder*, (Gr. πρεσβυτερος, Lat. *senior,*) and *man;* literally, an elder man. The word *ealder* was also used as a substantive, like the modern *elder*, and was sometimes employed as synonymous with *ealderman*, but it was generally used as descriptive of age, rather than office. *Spelman. Ealderman*, (*aldermannus,*) on the

other hand, was employed to denote office or rank, and not age. *Vocabantur* aldermanni, *non propter ætatem, sed propter sapientiam et dignitatem, cum quidem adolescentes essent, juris periti tamen, et super hoc experti;* they were called aldermen, not on account of their age, but on account of their wisdom and dignity; for they might be young men, provided they were skilled in the law, and possessed of the requisite experience. *LL. Edw. Conf.* c. 35. *Co. Litt.* 168 a. See *Ealderman.* The title, however, was not used to designate any particular office, but was applied to officers of various grades, from the highest to the lowest. It was used in the first place in a general sense, to denote any superior officer or magistrate, (*pro seniore vel superiori in quavis præfectura,*) and in this sense was applied to a prince, archbishop, bishop, duke and earl. *Spelman.* It was also used in a stricter sense, to denote certain particular officers or magistrates of both general and limited jurisdiction, such as the alderman of all England, (*aldermannus totius Angliæ;*) the king's alderman, (*aldermannus regis;*) the alderman of a county, (*aldermannus comitatûs;*) of a city, (*civitatis;*) of a borough, (*burgi;*) of a castle, (*castelli;*) and of a hundred or wapentake, (*hundredi sive wapentachii.*) *Id.* See *infra.*

ALDERMANNUS. L. Lat. In old English law. An alderman. *Spelman. Chart. Civit. London,* 22 *Nov.* 50 *Edw.* III. *Consiliarii, alias aldermanni;* counsellors, otherwise aldermen. *T. Raym.* 435.

ALDERMANNUS TOTIUS ANGLIÆ. L. Lat. Alderman of all England. An officer among the Anglo-Saxons, supposed by Spelman to be the same with the chief justiciary of England in later times. *Spelman,* voc. *Aldermannus.* See *Capitalis justitiarius.*

ALDERMANNUS REGIS. L. Lat. [Sax. *cyninges ealdorman.*] The king's alderman. A high judicial officer among the Anglo-Saxons, supposed by Spelman not to have had a permanent authority, but to have acted under an occasional commission from the king, (*per occasionem delegatus,*) to administer justice in particular districts, like the *missus dominicus,* (q. v.) of the old continental law, or the modern justice of assise. *Spelman,* voc. *Aldermannus.*

ALDERMANNUS COMITATUS. L. Lat. Alderman of the county. An officer of high distinction among the Saxons, supposed by most writers to be the same with the earl, eorle, (*comes,*) or schireman, (qq. v.) 1 *Bl. Com.* 116. *Co. Litt.* 168 a. *Gilb. C. Pleas,* Introd. 1 *Reeves' Hist. Eng. Law,* 6, 7. 1 *Spence's Chancery,* 58, 59. Spelman inclines to the opinion that he occupied a middle rank between the earl and viscount. He presided in the county court, or schiremote, the bishop sitting with him as an associate. *Spelman,* voc. *Aldermannus.* See *Comes, Earl.*

ALDERMANNUS CIVITATIS VEL BURGI. L. Lat. Alderman of a city or borough, from which the modern office of alderman has been derived. *T. Raym.* 435, 437. London appears to have had aldermen from time immemorial. *Palgrave's Rise,* &c. ccl. 1 *Spence's Chancery,* 56, note. According to Spelman, there were no distinct officers of this rank before the reign of Richard I. *Spelman,* voc. *Aldermannus.*

ALDERMANNUS HUNDREDI SEU WAPENTACHII. L. Lat. Alderman of a hundred or wapentake. *Spelman,* voc. *Aldermannus.*

ALDERMANRIA. L. Lat. In old records. Aldermanry; aldermanship; the office of an alderman. *Chart. Civit. London,* 22 *Nov.* 50 *Edw.* III.

ALDIUS. L. Lat. In old European law. A freed-man, (*statu liber, libertus cum impositione operarum factus.*) *Gloss. Vet.* apud Lindenbrog. *Spelman.*

Aldia. A female born of a free mother. *LL. Longob.* lib. 1, tit. 30, l. 5.

Aldiones. Sons or children of a freedman, (*aldius.*) Words of frequent occurrence in the laws of the Lombards. *Spelman.*

ALE. L. Fr. Gone. *Clerement ale;* clearly gone. *Dyer,* 32, (Fr. ed.) See *Aler.*

ALE CONNER. [L. Lat. *gustator cervisiæ.*] In English law. An ale taster; an officer anciently appointed in every court leet, and sworn to examine and assay the beer and ale, and to take care that they were good and wholesome, and sold at proper prices, according to the assise.* *Termes de la Ley. Cowell.* Ale-tasters are still annually chosen and sworn in many parts of England, in compliance with charters or ancient customs, though the duties of the office are fallen into disuse. *P. Cyclopedia,* voc. *Ale.* 1 *Crabb's Real Prop.* 501, § 647. The ale conners in London are inspectors of measures in

public houses. *Wharton's Lex.* The same title was given to officers who examined and weighed loaves of bread, to see whether they were of due weight. 1 *Wils.* 248. See *Assize.*

ALEA. Lat. In the civil law. A game of chance or hazard. *Dig.* 11. 5. 1. See *Cod.* 3. 43.

ALEATOR. Lat. [from *alea*, q. v.] In the civil law. A gamester; one who plays at games of hazard. *Dig.* 11. 5. *Cod.* 3. 43.

ALEATORY CONTRACT. [Fr. *contrat alèatoire;* from Lat. *alea*, hazard.] In the civil law. A hazardous contract; a contract of hazard. A mutual agreement, the effects of which, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event. *Civil Code of Louisiana*, art. 2951. The contract of insurance is of this description. *Pothier, Oblig.* part 1, ch. 1, sect. 1, art. 2.

ALEGER. L. Fr. To relieve, ease, redress. *Alegge;* relieved, eased, redressed. *Kelham.*

ALEPIMAN. In old records. A slave, (*mancipium.*) *Spelman.*

ALER, *Aller.* L. Fr. To go. *Keilw.* 3. *T. Jon.* 139. *Alera;* he shall go. *Litt.* sect. 201. *Alant;* going. *Id.* sect. 240. *Ala;* went. *Dyer*, 5. *Ale;* gone. *Litt.* sect. 455.

ALER A DIEU. L. Fr. In old practice. To be dismissed from court; to go quit. Literally, "to go to God." Ales a dieu *sans jour;* go quit without day. *Yearb.* H. 2 Edw. III. 6. *Alez adeu.* T. 5 Edw. II. 173. *Alez a dieu tanques al quart jour;* go quit until the fourth day. M. 4 Edw. III. 12. *Adeu sanz jour;* quit without day. H. 3 Edw. II. 75.

ALER SANS JOUR. L. Fr. [L. Lat. *ire sine die.*] In old practice. To go without day; to be dismissed from court without further day assigned for appearance, or without any continuance to any certain day; to be finally dismissed or discharged. *Cowell. Litt.* sect. 201. *Co. Litt.* 134 b. See *Eat inde sine die.*

ALEU. Fr. In French feudal law. An allodial estate, as distinguished from a feudal estate or benefice; (*heritage; la propriété de l'héritage.*) *Guyot, Inst. Feodal.* c. 28, s. 2. See *Alleu.*

ALFET. [Sax. *alfæth*, from *ælan*, to heat, and *fæt*, a vessel.] In the ordeal by boiling water, was the cauldron containing the water, in which the accused dipped his arm up to the elbow. *Cowell. Spelman*, voc. *Ordalium.*

ALGO. Span. In Spanish law. Property. *White's Nov. Recop.* b. 1, tit. 5, c. 3, § 4.

ALIA ENORMIA. L. Lat. In pleading. Other wrongs. Words used in the old declarations, in actions of trespass, which, after stating the particular trespass complained of, concluded,—"*Et* alia enormia *ei intulit,*" &c. *Towns. Pl.* 420, 421. This has been literally retained in the modern forms, ("*and other wrongs* to the said plaintiff then and there did," &c.,) the emphatic words of the Latin being, as usual, employed to designate the clause. 1 *Chitt. Pl.* 397, 398. *Comb.* 357, 358. See *Enormia, Enormis.*

ALIANCE, *Aliaunce, Alience.* L. Fr. Confederacy; allegation; allegiance. *Kelham.* See *Alliance.*

ALIAS. Lat. In practice. Otherwise. See *Alias dictus.*

At another time; on another occasion; formerly; before. A word used in the Latin forms of English writs from a very early period, in cases where a writ of the same kind had been issued *before*, referring to such writ. *Præcipimus tibi, sicut* alias *tibi præcepimus*, &c. *Bract.* fol. 74 b. 441 a. *Reg. Orig.* 65, *et passim.* 1 *Reeves' Hist. Eng. Law*, 485. This clause has been literally translated in the English forms; ("We command you, as we have *before* commanded you,") and constitutes an essential part of the modern writs of *capias ad respondendum, fieri facias, capias ad satisfaciendum*, and other writs, where a writ of the same description has been previously issued without effect, and returned by the sheriff or other officer; the new or second writ being commonly termed an *alias* writ, (anciently, a *sicut alias* writ,) and the distinctive clause above given, the *alias* clause. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 128. 1 *Archb. Pr.* 292. See *Sicut alias.*

ALIAS DICTUS, or ALIAS. L. Lat. In practice. Otherwise called; otherwise. A term used in legal proceedings, to denote a second or further description of a person who has gone by two or more different names. Thus, if the same person is known by the name of John Brown as well as the name of John Smith, he is described in civil and criminal pleadings, and in legal language generally, as John Smith, other-

wise called (*alias dictus*, or *alias*,) John Brown; and such second name is called his *alias*. *Archb. Crim. Pl.* 28. *Dyer*, 50 b. *Wharton's Am. Crim. Law*, 67, 68. A similar expression is used in describing a defendant when sued on an instrument in which he is described by a name different from his ordinary or real name. *Jacob.*

ALIBI. Lat. In criminal law. Elsewhere; in another place. A term used to express that mode of defence to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was *in another place* at the time; which is termed setting up an *alibi*. *Tomlins. Foster's Crown Law*, 368. *Wills on Circumst. Evid.* 115. This term is of great antiquity in English law, and is used by Bracton in describing the proceedings on criminal appeals, in precisely its modern sense and application. *Si appellatus docere poterit—se eadem die fuisse* alibi, *ita quod nullo modo præsumi posset contra ipsum, quod interesse posset tali facto, tali die, propter locum ita remotum, quod hoc esset impossibile, tunc cadit intentio appellantis;* if the appellee (the accused) can show that on the same day he was *elsewhere*, so that it can in no manner be presumed against him that he could have been present at the commission of the act on the day stated, it being impossible, on account of the distance between the places, then the complaint of the appellant (the accuser) abates, or falls to the ground. *Bract.* fol. 140 a.

ALIEN. [Lat. *alienigena;* L. Fr. *alien nee;* from *alienus*, q. v.] A stranger born; a person born in another or foreign country, as distinguished from a native or natural-born subject or citizen. In English law, one born out of the ligiance or allegiance of the king. *Litt.* sect. 198. *Co. Litt.* 129 a. 7 *Co.* 31. 1 *Bl. Com.* 366, 373. 2 *Steph. Com.* 426—429. See *Stat.* 7 *&* 8 *Vict.* c. 66. Called "a legal term." *Anst.* 468.

In American law. One born out of the jurisdiction of the United States. 2 *Kent's Com.* 50. See *United States Digest*, Alien. *Alien* and *foreigner* are synonymous terms. 1 *Peters' R.* 343. See *Foreigner.*

ALIEN AMY. L. Fr. In international law. Alien friend. An alien who is the subject or citizen of some friendly power or state.* An alien "in league;" a subject to one that is in league with the king. *Co. Litt.* 129 b. Defined by Lord Bacon, "such a one as is born under the obeisance of such a king or state as is confederate with the king of England, or at least not in war with him." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 327. See *Dyer*, 2 b. *Bac. Abr.* Aliens, D.

ALIEN ENEMY. In international law. An alien who is the subject or citizen of some hostile state or power.* See *Dyer*, 2 b. *Co. Litt.* 129 b. A person who, by reason of owing a permanent or temporary allegiance to a hostile power, becomes, in time of war, impressed with the character of an enemy, and, as such, is disabled from suing in the courts of the adverse belligerent.* See 1 *Kent's Com.* 74. 2 *Id.* 63. 10 *Johns. R.* 183. See the Act of Congress respecting alien enemies, July 6, 1798.

*** Lord Bacon has defined an alien enemy, in the view of the law of England, to be such a one as is born under the obeisance of such a king or state as is in hostility with the king of England. Case of the Postnati of Scotland, *Bacon's Works*, iv. 327. The mere circumstance of *birth*, however, is not now held to be of itself sufficient to give the character of an alien enemy. *Domicil* or residence more frequently has this effect, and alien enemies resident in the country may sue and be sued as in time of peace. The lawful residence does, *pro hac vice*, relieve the alien from the character of an enemy, and entitles his person and property to protection. 2 *Kent's Com.* 63, citing 1 *Ld. Raym.* 282. 2 *Anst.* 462. 10 *Johns. R.* 69. 6 *Binn. R.* 241. On the other hand, a citizen may acquire a hostile character by his residence, for commercial purposes, in the enemy's country, or, without such residence, by simply connecting himself with a commercial house in the enemy's country, in time of war, or by continuing during the war such a connection formed in time of peace. 1 *Kent's Com.* 73—75. *Bac. Abr.* Aliens, D. Wheeler, J. 5 *Texas R.* 240. The rule indeed is now expressly settled, that, for all commercial purposes, the domicil of the party, without reference to the place of birth, becomes the test of national character. 1 *Kent's Com.* 75.

There is a distinction between a permanent and a temporary alien enemy. A man is said to be permanently an alien enemy, when he owes a permanent allegiance to

the adverse belligerent; and his hostility is commensurate in point of time with his country's quarrel. But he who does not owe a permanent allegiance to the enemy, is an enemy only during the existence and continuance of certain circumstances. *Id.* 73.

The plea of "alien enemy" is called in the books "an odious plea," and the rule is that it is not to be favored by intendment. Kent, C. J. 10 *Johns. R.* 71, 72. 25 *Eng. Law & Eq. R.* 334.

To ALIEN or ALIENE. [L. Fr. *aliener;* Lat. *alienare*, from *alienus*, another's.] To make a thing another man's, (*alienum facere;*) to convey or transfer the property of a thing to another; to alienate. Usually applied to the transfer of lands and tenements. *Co. Litt.* 118 b. *Termes de la Ley. Cowell.* See *Alienare, Alienus, Transfer.*

ALIENAGE. The condition or state of an alien. 11 *Johns. R.* 418. See *Alienism.*

ALIENARE. Lat. [from *alienus*, another's; Gr. ἐκποιεῖν.] In the civil and common law. To alien, or alienate; to make another's, (*alienum facere;*) to transfer to another, (*in alium transferre.*) *Inst.* 2. 1. 40. *Id.* 2. 8. pr. *et seq.* In the civil law it implied delivery of possession. *Corporalis res—a domino tradita, alienatur;* a corporeal thing—when delivered by the owner, is aliened. *Inst.* 2. 1. 40. *Alienatum non proprié dicitur quod adhuc in dominio venditoris manet, venditum tamen recte dicetur;* a thing which still remains in the ownership, or under the control of the seller, is not properly said to be aliened, though it may be said to be sold. *Dig.* 50. 16. 67. *Non* alienat *qui duntaxat omittit possessionem;* he does not alienate who omits to give possession. *Dig.* 50. 17. 119. The term occurs also in feudal law. *Feud. Lib.* 1, tit. 13. *Id.* lib. 2, titt. 3, 9, 55.

In the common law, this term is confined to real property. *Bract.* fol. 29 a. *In feodo alienavit;* he aliened in fee. *Reg. Orig.* 144 b. *Co. Litt.* 118 b. But see *Litt.* sect. 177. According to Lord Coke, *transferre* is a more general word than *alienare;* for *alienare* is regularly intended of the act of the party; but *transferre* comprehends also acts in law, as descents, escheats and the like. 2 *Inst.* 406. See *Transferre.* The civilians, however, treat them as convertible terms.

ALIENATE. [Lat. *alienare*, q. v.] To convey or transfer; the same as to *alien*, which is the more common word in English and American law. See *To alien.* "Sell, alienate and dispone" are the formal words of transfer in Scotch conveyances of heritable property. *Bell's Dict.* voc. *Alienation.* See 3 *Bell's Appeal Cases*, 100, 121, 125.

ALIENATIO. Lat. [from *alienare*, q. v. Gr. ἐκποίησις.] In the civil and feudal law. The transfer of the ownership of a thing to another; alienation. *Inst.* 2. 8. pr. *Dig.* 50. 16. 67. *Feud. Lib.* 1, tit. 13. *Lib.* 2, titt. 52, 55. An implied transfer by prescription, or usucapion, (*usucapio.*) *Dig.* 50. 16. 28. See *Alienare.* In the seventh novel of Justinian, the Gr. ἐκποίησις is declared to include sale, gift, exchange and perpetual lease or emphyteusis. *Nov.* 7, c. 1.

The transferring, or granting of a right. *Cod.* 4. 51. 7. 1 *Mackeld. Civ. Law*, 179, § 185. *Abalienatio* (q. v.) was sometimes used.

In the common law. Alienation or conveyance, especially of real property. *Stat. Marlbr.* c. 30. *Bract.* fol. 46. **Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem.** It is unjust that freemen should not have the free disposal of their own property. *Co. Litt.* 223 a. 4 *Kent's Com.* 131.

Alienatio licet prohibeatur, consensu tamen omnium in quorum favorem prohibita est, potest fieri. Though alienation be prohibited, yet, by the consent of all in whose favor the prohibition is, it can be made. *Co. Litt.* 98.

Alienatio rei præfertur juri accrescendi. Alienation of a thing [subject of property] is preferred to the right of survivorship. *Co. Litt.* 185 a. *Broom's Max.* [330.]

ALIENATION. [Lat. *alienatio*, q. v.] Transfer to another, (*in alium*); the act of making a thing another's, (*alienum*); conveyance, particularly of real estate, comprising any method wherein estates are voluntarily resigned by one man and accepted by another. 2 *Bl. Com.* 287. 1 *Steph. Com.* 433. 2 *Crabb's Real Prop.* 1050, § 2437. *Bell's Dict.* A conveyance by way of mortgage is not an alienation. 1 *Comstock's R.* 290, 294.

"Title by alienation" constitutes one of the most important and extensive heads of the common law. 2 *Bl. Com.* chaps. 19—23.

*** The act or process of alienation is, in strictness, compounded of the two acts of divesting one's self of the property intended to be conveyed, and of vesting such property in another. The former of these is very significantly expressed by the Gr. ἐκποιησις, which is used in the Novels of Justinian, and signifies literally, "a making from," "a passing out of" a person, without any reference to an alienee. The latter is as significantly and exclusively expressed by the Lat. *alienatio*, in which the idea of an alienee is the only one conveyed. But as these acts, (in the case of all direct and absolute conveyances,) are, in fact, simultaneous, and to all intents one, and as the latter includes the former, and cannot exist without it, the word *alienatio* and its derivatives have very properly been employed to express the act of transfer, with all the ideas which go to make up the meaning of the word.

ALIENCE, *Aliaunce.* L. Fr. Confederacy; combination. *L. Fr. Dict.*

ALIENE. To transfer, or convey. 2 *Bl. Com.* 290.

ALIENEE. L. Fr. and Eng. A purchaser. *Kelham.*

ALIENER. L. Fr. To alien; to convey or sell. *L. Fr. Dict.*

ALIENI GENERIS. Lat. Of another kind. 3 *P. Wms.* 247.

ALIENI JURIS. Lat. In the civil law. Subject to the power or authority of another, (*alieno juri subjectus*); as of a parent, master or guardian. *Inst.* 1. 8. *Dig.* 1. 6. 1. *Bract.* fol. 6 a. 1 *Mackeld. Civ. Law*, 130, § 120. The opposite of *sui juris*, (q. v.)

ALIENIGENA. Lat. [from *alienus*, of another place, and *gignere*, to bear; L. Fr. *alien ne:* the opposite of *indigena*, Fr. *deins ne.*] In old English law. One born abroad; an alien born; an alien. *Bract.* fol. 427 b. *Alienigena est alienæ gentis, seu alienæ ligeantiæ, qui etiam dicitur peregrinus, alienus, exoticus, extraneus;* an alien born is one of another nation or allegiance, who is also called a foreigner, an alien, one from without or abroad, a stranger. 7 *Co.* 31.

ALIENISM. The state, condition or character of an alien. 2 *Kent's Com.* 56, 64, 69.

ALIENNEE, *Alien-nee.* L. Fr. An alien born. *Kelham.*

In pleading. The plea of alienage, or that the plaintiff in an action is an alien born, (*alien nee.*) *Archb. Civ. Plead.* b. 1, part 4, ch. 7, sect. 1.

ALIENUS. Lat. [from *alius*, another.] In civil and old English law. Another's; belonging to another; the property of another. *Alienus homo;* another's man, or slave. *Inst.* 4. 3. pr. See *Brissonius. Aliena res;* another's property. *Bract.* fol. 13 b. **Sic utere tuo ut alienum non lædas.** Use your own property, or exercise your own right, so as not to injure another's. 1 *Bl. Com.* 306. 3 *Id.* 217.

Of another; done by another; the act of another. **Nemo punitur pro alieno delicto.** No one is (should be) punished for the crime of another. *Wingate's Max.* 336, max. 87.

Of another country; an alien. See *Alien, Alienigena.*

ALIMENT. [from Lat. *alimentum, alimenta*, qq. v.] In Scotch law. Support; maintenance; a fund of maintenance. *Bell's Dict.* Sometimes called *alimony.*

To ALIMENT. In Scotch law. To support or maintain. "Parents and children are reciprocally bound to *aliment* each other." *Bell's Dict.*

ALIMENTA. Lat. [sing. *alimentum*, from *alere*, to sustain or support.] In the civil law. Aliments; means of support, including food, (*cibaria,*) clothing, (*vestitus,*) and habitation, (*habitatio.*) *Dig.* 34. 1. 6.

ALIMONY. [Lat. *alimonia*, from *alere*, to nourish, or support.] Nourishment: support or maintenance. An allowance made to a wife out of the husband's estate, for her maintenance, either during a matrimonial suit, or at its termination, where she has proved herself entitled to a separate maintenance. That proportion of the husband's estate which the wife sues, in the ecclesiastical court, or court of equity, to have allowed her for her present subsistence and livelihood, according to law, upon any such separation from her husband as is not caused by her own elopement or adultery.* *Shelford, Marr. & Div.* 586. In causes between husband and wife, on the principle that the whole property is supposed by law to be vested in the husband, he is in most cases obliged by law to pay the expenses on both sides, and to allow the wife alimony during the suit. *Id. ibid.* 1 *Bl. Com.* 441. 3 *Id.* 94. 2 *Steph. Com.* 312. 2 *Kent's Com.* 99, 128. This allowance is sometimes called in the old law, the wife's *estover*, or *esto-*

vers. 1 *Bl. Com.* 441. *Cowell.* See *Estovers.*

ALIO INTUITU. Lat. In a different view; under a different aspect. 4 *Rob. Adm. R.* 151.

With another view or object. Lord Ellenborough, 7 *East*, 558. *Id.* 6 *M. & S.* 234.

ALIQUALITER. L. Lat. In any way. *Litt.* sect. 226.

ALIQUID. Lat. Something; somewhat. **Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur.** Something is [will be] conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. *Co. Litt.* 197 b.

ALIQUID POSSESSIONIS ET (or SED) NIHIL JURIS. L. Lat. Somewhat of possession, and nothing of right, [but no right.] A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. *Bract.* fol. 39 a, 160 a.

ALIQUIS. Lat. One; a person. **Aliquis non debet esse judex in propria causa (quia non potest esse judex et pars.)** One ought not to be a judge in his own cause, because he cannot be a judge and party both. *Co. Litt.* 141 a. *Broom's Max.* [85.]

ALITER. Lat. Otherwise. A term often used in the reports. *Latch*, 108. "It has been held *aliter* ever since." Holt, C. J. 12 *Mod.* 1.

Aliter puniuntur ex eisdem factionibus, [*facinoribus, Dig.* 48. 19. 16. 3.] *servi quam liberi; et aliter qui quidem aliquid* [*quid, Dig.*] *in dominum parentemve commiserit,* [*ausus est, Dig.*] *quam in extraneum; in magistratum quam in privatum;* slaves are punished differently, for the same actions, [crimes,] from freemen; and one who offends against a master or parent, differently from one who does the like against a stranger; and one who offends against a magistrate, differently from one who injures a private individual. *Bract.* fol. 105 a. 3 *Inst.* 220. This is a quotation from the Digests, with the variations noted.

ALIUD. Lat. Another; one thing—another thing. **Aliud est possidere, aliud esse in possessione.** To possess is one thing; to be in possession is another thing. *Hob.* 163. *Bract.* fol. 206.

Aliud est celare, aliud tacere. To conceal is one thing; to be silent is another thing. Lord Mansfield, 3 *Burr.* 1905, 1910. See *Concealment.*

Aliud est vendere, aliud vendenti consentire. To sell is one thing; to consent to a sale [seller] is another thing. *Dig.* 50. 17. 160.

Aliud est distinctio, aliud separatio. Distinction is one thing; separation is another. "It is one thing to make things distinct, another thing to make them separable." *Bacon's Arg.* Case of Postnati of Scotland, *Works*, iv. 351.

ALIUD EXAMEN. Lat. A different or foreign mode of trial. 1 *Hale's Hist. Com. Law*, 38, [30.]

ALIUNDE. Lat. From another source or quarter. Lord Ellenborough, 2 *East*, 563.

ALL. [Lat. *omnis, totus.*] A word of constant occurrence in deeds, wills and other instruments, and which, especially in wills, has been made the subject of repeated construction by the courts. 1 *Vernon*, 3, 340. 3 *P. Wms.* 56. 1 *Harr. & Mc-H.* 301. Often carelessly used in written instruments, and requiring to be qualified and limited to the subject matter. 15 *Georgia R.* 518. See the examples *infra.*

"All my estate," in a will, has been held to carry a fee. 6 *Mod.* 106, 110. 8 *Vesey, Jr.* 604. Shaw, C. J. 6 *Metcalf's R.* 325, citing 18 *Pick. R.* 537; 4 *Kent's Com.* 535. The words "all his estate," will pass everything a man has; but if the word "all" is coupled with the word "personal," or a local description, then the gift will pass only personalty, or the specific estate particularly described. Lord Mansfield, C. J. *Cowp.* 299, 306. The question whether the words "all my estate and effects" will include a real estate or not, depends, first, upon the immediate context of the will; secondly, upon the general form and scheme of the will, as demonstrating the intention. Lord Eldon, C. 9 *Vesey, Jr.* 137, 142.

"All my estate whatsoever," in a will, comprehends all that the devisor has, real or personal. *Com.* 337.

"All my estate, real and personal, whatsoever," carries a fee, although immediately followed by words descriptive of local situation; as, "that is to say, my land, houses, and all the other buildings situate

at S." 7 *Taunt.* 35, citing 8 *Term R.* 64.

"All the estate, both real and personal," to which the grantor is "entitled, in law or equity, in possession, remainder or reversion," passes the grantor's whole estate. 3 *Grattan's R.* 518.

"All my personal estate," in a will, was held to be confined to such part only as should not be otherwise disposed of. 9 *Mod.* 93.

"All my temporal estate," construed. 3 *P. Wms.* 295.

"All my property, both personal and real, forever," passes a fee. 11 *East*, 518.

"All and every my property," is as comprehensive as "all I am worth." Lord Ellenborough, 14 *East*, 370. See *infra.* A devise of "all my property," certain described portions excepted, is a general devise. 4 *Maryland Ch. Dec.* 484.

"All my property of every description," in a will, passes not only tangible property, but moneys, stocks, bonds and choses in action. 2 *Jones' Eq. R.* 75.

"All my real property," in a will, has been held to import the same as "all my estate." 18 *Vesey, Jr.* 193.

"All my lands" passes a fee. 1 *Wash. Va. R.* [96,] 126.

"All my personal property, of every name or nature," includes choses in action. 28 *Vermont R.* 26, 27, 31.

"All my notes," in a will, held to include bonds. 2 *Devereux' Eq. R.* 488, 496.

"All I am worth," without other words to control them, pass real as well as personal estate. 1 *Bro. C. C.* 437.

"All I am possessed of," in a will, construed. 5 *Vesey, Jr.* 811, 816.

"All debts due to me," and "whatever debts may be due to me," in a will, pass a bill of exchange, and a balance of cash at a banker's. 1 *Merivale*, 541, note. See 3 *Id.* 434.

"All demands," in a submission to arbitration, held to include questions concerning real as well as personal property. 2 *Caines' R.* 320. 15 *Johns. R.* 197.

"All claims and demands whatsoever," in a release, held to be restricted to the subject matter of the release. 1 *Edwards' Ch. R.* 34. A release of "all demands" will not release a rent before it is due. 2 *Show.* 90. Nor will it bar a future duty. 2 *Mod.* 281.

"All business," in a power or authority, construed with reference to the subject matter, e. g. confined to all business necessary for the receipt of money. 9 *Bing.* 608. 1 *Taunt.* 356. 8 *Wendell's R.* 498. The largest powers must be construed with reference to the subject matter. *Id. ibid.*

ALL FOURS. A case is said to *go upon all fours*, when it is exactly similar in its circumstances to the case in support of which it is quoted; or when it is exactly in point. See *Currit quatuor pedibus.*

ALLANERLIE, *Allenarly.* Sc. In Scotch law and conveyancing. Only; exclusively. *Skene de Verb. Sign.* voc. *Ligeantia.* 3 *How. St. Trials*, 699. An important word of limitation; commented on in Macintosh *v.* Gordon, 4 *Bell's Appeal Cases*, 119—124.

ALLEGARE. Lat. To allege or state; to bring forward, or set up, as a claim or defence. *Allegans;* alleging. *Allegatum, allegata;* alleged.

Allegans contraria non est audiendus. One alleging contrary or contradictory things [whose statements contradict each other,] is not to be heard. 4 *Inst.* 279. *Jenk. Cent.* 16. Applied to the statements of a witness. 4 *Inst. ub. sup.* And see *Broom's Max.* [127.]

Allegans suam turpitudinem non est audiendus. One who alleges his own infamy is not to be heard. 4 *Inst.* 279.

Allegari non debuit quod probatum non relevat. That ought not to be alleged, which if proved is not relevant. 1 *Chan. Cas.* 45.

ALLEGATA ET PROBATA. L. Lat. Things alleged, and things proved; allegations and proofs. It is a general rule of evidence that the *allegata* and *probata* must agree. A party is not allowed to state one case, and make out a different one by proof. Baldwin, J. 10 *Peters' R.* 177, 209. 1 *Greenl. Evid.* § 51. Story, J. 2 *Sumner's R.* 206, 209. "The cause must stand before the court to be heard *secundum allegata et probata.*" *Id. ibid.*

ALLEGATION. [Lat. *allegatio*, from *allegare*, q. v.] In the common law. Statement or pleading. *Steph. Plead.* 1, 123, 124.

The statement of fact, or pleading of a party to an action; such as a declaration, plea, &c. *Id.* 23, 59.

A statement in a particular pleading. *Id. passim.*

ALLEGATION. In English ecclesiastical law. The pleading or statement of a party in a cause; an additional or supple-

mentary pleading. 1 *Bro. Civ. Law*, 471, 473. 3 *Bl. Com.* 100.

A species of pleading, used generally in propounding or contesting a will, claiming an interest in an intestate's effects, &c. 4 *Chitt. Gen. Pr.* 166.

An *allegation of faculties* is an allegation given in by a wife claiming alimony, stating the property of the husband. *Shelford, Marr. & Div.* 587.

ALLEGATION OF DIMINUTION. See *Diminution.*

ALLEGIANCE, *Ligeance.* [L. Lat. *alligeantia*, from *alligare*, to bind to; *ligeantia*, from *ligius*, qq. v.] The tie or bond (*ligamen*,) of fidelity and obedience, by which native-born subjects or citizens are bound to their sovereign, government or country, in return for the protection afforded them.* 1 *Bl. Com.* 366. 4 *Id.* 74. *Hale's Anal.* sect. xiii. 2 *Steph. Com.* 420. 2 *Kent's Com.* 39, *et seq.* See *Natural allegiance, Local allegiance, Expatriation.*

In England, allegiance is of feudal origin, being formerly sworn to the sovereign as lord paramount or liege lord of the realm. It was an exalted species of fealty, and the oaths of fealty and allegiance were once couched in almost the same terms. 1 *Bl. Com.* 367. The oath of fealty is called by Blackstone the parent of the oath of allegiance. 2 *Id.* 53. In the United States, allegiance is not used in the feudal sense, arising out of the doctrine of tenure. 2 *Hill's* (S. Car.) *R.* 1. 2 *Kent's Com.* 44, note. And see 1 *Comstock's R.* 173.

ALLEGIANCE, *Alleggeance.* L. Fr. [from *alleger*, to lessen.] Alleviation; relief; redress. *Kelham.*

ALLEGIARE. L. Lat. [from *ad*, by, and *lex*, law.] In Saxon law. To clear one's self according to law, (*juxta normam legis se excusare;*) to exculpate one's self by taking an oath, (*sacramento interposito se culpâ eximere;*) to wage one's law, (*legem vadiare.*) *Spelman.* See *Lex, Ley gager, Wager of law.*

ALLER, *Aler.* L. Fr. To go. *Aller a large;* to go at large. *Yearb.* M. 7 Hen. VI. 9.

ALLER A DIEU. L. Fr. In old English practice. To be dismissed from court; to go quit. *Purq' le plaintif ne prist rien*, &c. *Et le defendant alla a Dieu.* Wherefore the plaintiff took nothing, &c. And the defendant went without day. *Yearb.* M. 8 Hen. VI. 36.

ALLEVIARE. L. Lat. In old records. To levy or pay an accustomed fine or composition. *Cowell.* To redeem by such payment.*

ALLEU, *Aleu, Allieu, Alieu.* Fr. [L. Lat. *alodum, allodium*, q. v.] In French law. An allodial estate, as distinguished from a fief. *Esprit des Lois*, liv. 31, c. 8. *Kelham.* See *Aleu.*

ALLIANCE, *Aliance, Alience.* L. Fr. Confederacy; allegation; allegiance. *Kelham. L. Fr. Dict.*

ALLIANCE. Fr. and Eng. [from Fr. *allier*, to tie or bind to.] A binding together; union between two or more.

In international law. An union between two nations, or among several, contracted by compact, treaty or league.* *Webster.*

ALLISION. [Lat. *allisio*, from *allidere*, to dash against.] In maritime law. A striking against; the running of one vessel against another; sometimes distinguished from *collision*, which is the running of *two* vessels against each other, or a striking together. *Jacobsen's Sea Laws*, 326, and note. See *Collision.*

ALLOCARE. L. Lat. In old practice. To allow. *Cum aliquis—petat quod justitiarii eam* [*exceptionem*] allocent, *quam si* allocare *noluerint*, &c.; where a party prays that the justices shall allow his exception, which if they refuse to allow, &c. *Stat. Westm.* 2, c. 31.

ALLOCATIO. L. Lat. [from *allocare*, q. v.] In old practice. An allocation, or allowance. *Mem. in Scacc.* H. 22 Edw. I. *Towns. Pl.* 27. See *Allocation.*

ALLOCATION. [L. Lat. *allocatio.*] An allowance made upon an account in the English exchequer. *Cowell.*

ALLOCATIONE FACIENDA. See *De allocatione facienda.*

ALLOCATUR. L. Lat. [from *allocare*, to allow.] In practice. It is allowed. A term used, (when the proceedings were in Latin,) to express the allowance of a thing or proceeding, by a court, judge or judicial officer.* Now applied, in England, to the certificate given by the master, on taxing a bill of costs, showing the amount taxed, or *allowed.* 1 *Tidd's Pract.* 337, 500.

Used also to denote the *allowance* of a writ or order by a judge, which is generally done by the judge's endorsing the word "allowed," and signing his name.

Used also in the earlier reports, to de-

note the *concession* of a point by a court on argument; though the term *concessum* (q. v.) is more frequently employed for this purpose. *Sed non allocatur*, (but it is not allowed,) is a common expression.

ALLOCATUR EXIGENT. In English practice. A species of the writ of *exigent*, in the nature of an *alias* writ; used in the process of outlawry. 1 *Tidd's Pr.* 132. *Archb. N. Pract.* 485. See *Exigent.*

ALLODIAL. [L. Lat. *allodialis*, from *allodium*, q. v.] In the law of estates. That which is not held of any superior; free or independent; the opposite of *feudal.** In the feudal law, *allodial* estates were distinguished from fiefs. *Esprit des Lois*, liv. 31, c. 8. *Allodial* lands are such as are free from any rent or service. 2 *Bl. Com.* 47, 60, 105. 3 *Kent's Com.* 488, 498, 513, 514. 1 *Robertson's Charles V.* Appendix, note viii.

ALLODIUM, *Alodium*, *Alodum*, *Alode.* L. Lat. [Fr. *alleu*, *aleu.*] In feudal law. Free, absolute or independent ownership; a free estate, (*prædium liberum ;*) property held in absolute dominion, without owing any rent, fealty or service to any superior, (*nulli servituti obnoxium ;*) every man's own land, held of no one, and of which he has the absolute property.* 2 *Bl. Com.* 105. *Spelman*, voc. *Aloarius.* The opposite of *feudum*, (feud or fief,) which always implies tenure or service. 1 *Steph. Com.* 161. 3 *Kent's Com.* 448. 1 *Robertson's Charles V.* Appendix, note viii. *Feud. Lib.* 2, titt. 26, 54. See *Feudum*, *Beneficium.*

The etymology of this word has been variously given. Spelman conjectures it to be derived either from Sax. *a*, to, and *leod*, people; belonging to the people (*popularis*,) because freely alienable from one to another; or from *a*, without, and *leod*, or *leud*, a vassal; without vassalage, service or burden. Blackstone considers it the same as *odh al*, in the Northern languages, (*odh*, property, and *al*, all,) with the syllables transposed, *allodh ;* and hence signifying entire or absolute property. 2 *Bl. Com.* 45, note (*f.*) Dr. Robertson adopts Wachter's derivation, from *an*, and *lot*, that is, land obtained by lot. *Hist. Charles V.* Appendix, note viii. A late writer on French history observes that the *sortes* or estates allotted among the Franks, on their invasion of Gaul, were called *al-ods*, because, in the case of each warrior, they constituted the *whole* of his gain or booty. *Stephen's Lect.* 51.

ALLOIGNER, *Alligner*, *Alloyner*, *Alyener.* L. Fr. To remove to a distance; to carry away; to put off or delay; to eloign. *Kelham. Avoit* alloign' *les av's ;* had eloigned the beasts. *Yearb.* M. 8 Edw. III. 45.

ALLONGE. Fr. In French law. A piece of paper annexed to a bill or note, for the purpose of making further endorsements, where no room is left for that purpose on the instrument itself.* *Story on Bills*, § 204. *Story on Prom. Notes*, § 151. See 18 *Pick. R.* 63.

ALLOWER. L. Fr. To let; to hire. *Kelham.*

ALLOYNOUR, *Alleynour.* L. Fr. One who conceals, steals or carries off a thing privately. *Britt.* c. 17.

ALLUER. L. Fr. In old English law. To allow. *Santz* alluer *les delais qe sont* allues *par commune ley ;* without allowing the delays which are allowed by the common law. *Artic. sup. Chart.*

ALLUVIO. Lat. [from *alluere*, to wash against, or upon.] In the civil law. A gradual deposit of soil made by a stream upon a piece of ground; in which case, upon the principle of accession, (q. v.) the proprietor of the land becomes also proprietor of the soil deposited. 1 *Mackeld. Civ. Law*, 280, § 267. *Inst.* 2. 1. 20. *Dig.* 41. 1. 7. 1. *Id.* 21. 2. 64. 1. *Cod.* 7. 41. *Est* alluvio *incrementum latens ;* alluvion is an imperceptible increase. *Inst.* 2. 1. 20. *Dig.* 41. 1. 7. 1. *Bract.* fol. 9 a. *Fleta*, lib. 3, c. 2, § 6. *Grot. de. Jur. Belli*, lib. 2, c. 8, § 11. It is in this respect distinguished from *avulsio*, or *vis fluminis. Inst.* 2. 1. 21. See *Avulsio.* This term has been adopted in the common law under the name of *alluvion*, (q. v.) See *Per alluvionem.*

ALLUVIO MARIS. Lat. In the civil and old English law. The washing up of the sea; formation of soil or land from the sea; maritime increase. *Hale's Anal.* sect. viii. "*Alluvio maris* is an increase of the land adjoining, by the projection of the sea, casting up and adding sand and slubb to the adjoining land, whereby it is increased, and for the most part by insensible degrees." *Hale de Jur. Mar.* pars 1, c. 6.

ALLUVION. [Lat. *alluvio*, q. v.] In the common law. The gradual washing up of sand and earth by a stream or the

sea, so as in time to form land (*terra firma*,) where none existed before; the imperceptible increase or gain of land from water by this process.* *Bract.* fol. 9 a. 2 *Bl. Com.* 261, 262. 3 *Kent's Com.* 428, and notes. *Schultes' Aquatic Rights*, 116. *Broom's Max.* 71. 1 *Crabb's Real Prop.* 109, § 105. 26 *Vermont R.* 64, 72. See *Angell on Tide Waters*, chap. viii. and *on Water Courses*, ch. ii. where the subject is considered at large.

ALM, *Alme.* L. Fr. Soul. *L. Fr. Dict. Kelham. Curee des almes;* having cure of souls. *Yearb.* T. 9 Edw. III. 14.

ALMESFEOH. Sax. In Saxon law. Alms-fee; alms-money. Otherwise called *Peter-pence*, (q. v.) *Cowell.*

ALMOIGN, *Almoigne, Almoin.* L. Fr. [from Lat. *eleemosyna*, Gr. ἐλεημοσύνη.] Alms. See *Frank almoign.*

ALMOXARIFAZGO. Span. In Spanish law. A general term, signifying both export and import duties, as well as excise. Derived from the Arabic, and said to signify the same as *portorium* in Latin. *Schmidt's Civ. Law*, 81, note (2.) *Id.* voc. *Almoxarifazgo.*

ALNAGE, *Aulnage.* [Fr. *aulnage*, from *aulné*, Lat. *ulna*, an ell.] In old English law. Ell measure; the measuring with an ell. *Stat.* 17 *Edw.* IV. c. 5. *Blount.* See *Hale de Jur. Mar.* pars 3, c. 27. See *Ulna.*

A duty for measuring cloth. *Brownl.* part 2, 301.

ALNAGER, *Aulnager, Alneger.* [L. Lat. *ulniger, ulnator.*] In English law. A measurer by the ell. A sworn public officer of the king, whose duty it was to look to the assise of woollen cloths made in the country, (that is, to examine and measure them,) and to put seals, ordained for that purpose, upon them, and also to collect the duty or *alnage* for every cloth so sealed. *Stat.* 25 *Edw.* III. st. 4. c. 1. *Stat.* 3 *Ric.* II. c. 2. *Cowell. Blount. Termes de la Ley. Brownl.* part 2, 301. The offices of *searcher* and *measurer* were afterwards separated from that of *alnager*, who continued to be merely the collector of the alnage duty. *Cowell.* The duty and office were both abolished by the statute 11 & 12 Will. III. c. 20. 1 *Bl. Com.* 275.

ALNETUM. L. Lat. [from *alnus*, an alder tree.] In old English law. A place where alders grow. *Co. Litt.* 4 b. *Shep. Touch.* 95. *Blount. Theloall's Dig.* lib. 1, c. 8, § 24.

ALOARIUS. L. Lat. In old European law. The holder of an *alodium*, or free estate. *Domesday Book*, titt. Sudsex, Comes de Ow. Laneswice. *Spelman.* See *Alodiarius.*

ALODE, *Alodes, Alodis.* L. Lat. In feudal law. Old forms of *alodium*, or *allodium*, (q. v.) *Spelman*, voc. *Aloarius.* 1 *Robertson's Charles V.* Appendix, note viii.

ALODIARIUS, *Alodarius, Aloarius.* L. Lat. [from *alodium*, q. v.] In old English law. The holder of an *alodium*, or free estate; a kind of tenant in free socage. *Spelman*, voc. *Aloarius.* The lord of a free manor. *Blount.*

ALODUM. L. Lat. In feudal law. One's own; one's property, (*proprium.*) *Ducange*, voc. *Alodis.* 1 *Rob. Charles V.* Appendix, note viii.

ALORS. L. Fr. There; at that time; in that place. *L. Fr. Dict. Kelham.*

ALQUONS. L. Fr. Any one. *LL. Gul. Conq.* l. 1.

ALS. In practice. A contraction of *Alias* and *Alios*, (others.) 1 *Inst. Cl.* 8.

"ALSO," in a will, at the beginning of a distinct clause, has the sense of *item*, keeping the clauses distinct. Lord Ellenborough, 4 *M. & S.* 60. Trevor, C. J. 1 *Salk.* 239. But as between two members or parts of the same clause, it may have a conjunctive effect, so as to bring the first part within the application of words used in the last. 4 *M. & S.* 58. See 5 *East*, 87. See *Item.*

ALT. L. Fr. [from Lat. *altus*, q. v.] High. *Kelham.*

ALT. In Scotch practice. An abbreviation of *Alter*, the other; the opposite party; the defender. 1 *Brown's R.* 336, note.

ALT AL EWE. L. Fr. Let him go to the water [ordeal.] *LL. Gul. Conq.* 17.

ALTA PRODITIO. L. Lat. In old English law. High treason. 4 *Bl. Com.* 75. See *High treason.*

ALTA VIA. L. Lat. In old English law. A highway; the highway. 1 *Salk.* 222. *Alta via regia;* the king's highway; "the king's high street." *Finch, Law*, b. 2, ch. 9.

ALTER. Lat. Another; a different person or party; a third person; an opposite party. *Brissonius. Calv. Lex.*

ALTERATION. [from Lat. *alter*, other, another.] A making different; variation or change. An act done upon a written instrument, (by addition or erasure,) by which its meaning or language is changed.

If what is written upon or erased from the instrument has no tendency to produce this result, or to mislead any person, it is not an alteration. The term is, at this day, usually applied to the act of the party entitled under the instrument; and imports some fraud or improper design on his part to change its effect. 1 *Greenl. Evid.* § 566.

ALTERFOITS. L. Fr. At another time; formerly. *Yearb.* M. 8 Edw. III. 20.

ALTERNATIM. L. Lat. Interchangeably. *Litt.* sect. 371. *Towns. Pl.* 37.

ALTERNATIVE. [L. Lat. *alternativus.*] In practice. The choice of one or the other of two things; that which requires the one or the other of two things to be done. An *alternative* writ, such as a *mandamus*, is one which requires certain acts to be done, *or* cause to be shown why they are not done.* 3 *Steph. Com.* 683. See *Mandamus.* A rule *nisi* (q. v.) and a rule or order to show cause, are alternative proceedings.

Alternativa petitio non est audienda. An alternative petition or demand is not to be heard. 5 *Co.* 40. A party is not allowed to make his demand in the alternative or disjunctive, but must ask for a thing certain, that is, one specific thing. A maxim applied to writs in the old real actions.

ALTERNIS VICIBUS. L. Lat. By alternate turns; at alternate times; alternately. *Co. Litt.* 4 a. *Shep. Touch.* 206.

ALTERUTER. L. Lat. One of the two. 1 *Ld. Raym.* 124.

Each. *Alteruter et quilibet;* each and every. *Towns. Pl.* 23.

ALTHOUGH. See *Licet.*

ALTO ET BASSO. L. Lat. High and low. See *De alto et basso.*

ALTRE. L. Fr. Another; other. *Yearb.* M. 9 Edw. III. 53. *Altrei;* another, another's. *LL. Gul. Conq.* 14.

Altres; others. *Et sil eit returne* altres, *vostre challenge est a les testes;* and if he have returned others, your challenge is to the polls. *Yearb.* T. 5 Edw. III. 21.

ALTRESI. L. Fr. Also; in like manner. *LL. Gul. Conq.* 15.

ALTUM, *Altus.* Lat. High; deep. See *Altum mare.*

ALTUM MARE. L. Lat. In old English law. The high sea, or seas. *Co. Litt.* 260 b. The deep sea. *Brownl.* part 2, 17. *Super altum mare;* on the high seas. *Hob.* 212 b. See *High seas.* The expression *alta maris* occurs in the old books. See *Galea.*

ALVETUM. A misprint in the Register for *alnetum*, noticed by Theloall in his Digest. *Reg. Orig.* 2 a. *Thel. Dig.* lib. 8, c. 1, § 24. *Alvey*, however, is used in French. *Kelham. L. Fr. Dict.*

ALVEUS. Lat. In the civil law. The channel or bed of a river or stream. *Inst.* 2. 1. 23. *Dig.* 43. 12. 7. *Alveus derelictus;* a deserted channel; the dry bed of a stream. 1 *Mackeld. Civ. Law*, 280, § 267. *Per* alvei *constitutionem;* by the formation of a channel. *Fleta*, lib. 3, c. 2, § 10.

ALZ, *Az.* L. Fr. They; them. *Kelham.*

AMALPHITAN, or AMALFITAN TABLE. The earliest code of modern sea laws, compiled for the free and trading republic of Amalphi in Italy, about the time of the first crusade, toward the end of the eleventh century. 1 *Azuni's Marit. Law*, 376. 3 *Kent's Com.* 9.

AMARER. Fr. In French maritime law. To moor; to fasten a vessel to a wharf or landing place. (?) *Ord. Mar.* liv. 4, tit. 1, sect. 3.

AMBACTUS. Lat. or old Gallic. A hired servant or messenger; one sent about from place to place; (Gr. περιφόρητος.) *Spelman*, voc. *Ambascia. Ambacti* was the name given to the clients or vassals of the free warriors and proprietors among the Gauls. *Stephen's Lect.* 20. See *Cæsar de Bell. Gall.* lib. 6.

AMBASCIA, *Ambaxia.* L. Lat. [from Germ. ambacht, service, or Gallic *ambactus;* Lat. *legatio.*] In old European law. An embassy; or service. *Si in dominica* ambascia *fuerit occupatus;* if he were engaged in the king's service. *LL. Salic.* tit. 1, § 3. *Spelman.*

AMBASCIATOR, *Ambassiator, Ambaxiator.* L. Lat. [from *ambascia*, q. v.] A person sent about in the service of another; a person sent on a service. A word of frequent occurrence in the writers of the middle ages. *Spelman.* See *Ambassador.*

AMBASSADOR. [Lat. *legatus;* L. Lat. *ambasciator, ambassiator*, q. v.] In international law. A diplomatic minister or agent; a person sent by one sovereign power to another, with authority to treat on affairs of state. 4 *Inst.* 153. 1 *Kent's Com.* 39. *Tomlins.* Ambassadors belong to the first class of public ministers.

Wheaton's Elem. Intern. Law, 264, (277, 6th ed.) See *Cas. temp. Talbot*, 282.

AMBAXEUR. L. Fr. An ambassador. *Kelham.*

AMBIDEUX, *Amedeus, Amdeus, Ambedoi.* L. Fr. Both. *Britt.* c. 24. *Kelham.*

AMBIDEXTER, *Ambodexter.* Lat. [from *ambo*, both, and *dexter*, the right hand.] One that can use his left hand as well as his right, or that plays or acts on both sides. Applied by Bracton to sheriffs and other bailiffs who took from both sides, (*qui capiunt ex utraque parte.*) *Bract.* fol. 117 a. Applied, in more modern law, to jurors who took money from both sides for giving their verdict. *Termes de la Ley. Cowell. Blount.* See *Embracer.*

An attorney who acts for both parties, viz. who, after being retained by one side, allows himself to be retained by the other. In Simon Mason's case, an attorney was committed and removed from the roll, for being *ambidexter. Freem.* 74. To call an attorney "*ambodexter*" was slander. *Finch, Law*, b. 3, c. 2.

AMBIGUITAS. Lat. [from *ambiguus*, doubtful, uncertain, obscure.] Ambiguity; uncertainty of meaning.

Quoties in verbis nulla ambiguitas, ibi nulla expositio contra verba fienda est. As long as there is no ambiguity in the words [of an instrument] there must be no exposition made of it against its words. 2 *Bl. Com.* 379. *Broom's Max.* [477.] When the intent of the parties is clearly expressed, the intent must govern the construction. *Shep. Touch.* (by Preston) 101. See **Quoties in verbis, &c.** *post.*

Ambiguitas patens; patent, open or apparent ambiguity; that which appears to be ambiguous upon the deed or instrument itself. *Ambiguitas latens;* latent or hidden ambiguity; that which seems certain and without ambiguity, for any thing that appears upon the deed or instrument, but where there is some collateral matter out of the deed that breeds the ambiguity. *Bacon's Max.* 90, regula 23. See *Ambiguity.*

Ambiguitas verborum latens verificatione suppletur, nam quod ex facto oritur ambiguum verificatione facti tollitur. A latent ambiguity of words is [may be] supplied, or helped by averment; for that ambiguity which arises out of a fact, [an extrinsic fact,] is [may be] removed by an averment of fact, [that is, by an averment of the fact as it really is.] *Bacon's Max.* 90, regula 23. Thus, if I grant my manor of S. to J. F. and his heirs, here appeareth no ambiguity at all; but if the truth be that I have the manors both of South S. and North S., this ambiguity is matter in fact, and therefore it shall be holpen by averment, whether of them was that the party intended should pass. *Id.* 92. See 1 *Powell on Devises*, 477. 2 *Kent's Com.* 556. In other words, where the ambiguity itself is produced by extraneous circumstances, its explanation must of necessity be sought for through the same medium. 1 *Steph. Com.* 463. Latent ambiguity may be supplied by evidence; for an ambiguity which arises by proof of an extrinsic fact may, in the same manner, be removed. *Broom's Max.* 260, [468.]

The word *verificatio*, in this maxim, is generally translated "evidence," or "proof;" but Bacon's own translation is "averment." See *Ambiguity, Averment.*

Ambiguitas verborum patens nulla verificatione suppletur. *Ambiguitas patens* is never holpen by averment, and the reason is, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account in law; for that were to make all deeds hollow and subject to averments, and so in effect, that to pass without deed which the law appointeth shall not pass but by deed. *Bacon's Max.* 91. This rule applies not only to deeds, but to written contracts in general, and especially to wills. *Broom's Max.* [468, 469.] It is not, however, of universal application. See *Id.* [472.] Cowen, J. 21 *Wendell's R.* 651, 659. 23 *Id.* 71, 78. Story, J. 1 *Mason's R.* 11. Lipscomb, J. 1 *Texas R.* 377–383.

AMBIGUITY. [Lat. *ambiguitas*, q. v.] Doubtfulness, uncertainty or obscurity of meaning. Ambiguity in written instruments is either *patent*, (*patens*,) that is, open or apparent; or *latent*, (*latens*,) hidden or concealed.

A *patent ambiguity* is one which appears on the face of the instrument itself, and renders it ambiguous and unintelligible; as if in a will, there were a blank left for the devisee's name. *Broom's Max.* 261, [468.] *Smith on Contracts*, 28. *Bacon's Max.* 90 regula 23. See *Ambiguitas.*

A *latent ambiguity* is where the instrument itself is, on the face of it, intelligible enough, but a difficulty arises in ascertaining the identity of the subject matter to

which it applies; the ambiguity appearing only in the application of it, and being introduced by evidence of something extrinsic, or by some collateral matter out of the instrument. Thus, if a devise were *to J. S.*, without further description, the ambiguity would *lie hid* until evidence had been produced showing that there was a great number of persons corresponding in name with the devisee, and then it would arise; it becoming a matter of doubt *which J. S.* was meant.* *Broom's Max.* 260, [474]. *Smith on Contracts*, 29. 7 *Man. & Gr.* 17, 18, notes. 2 *Kent's Com.* 556. Marshall, C. J. 4 *Cranch's R.* 224.

A *latent* ambiguity may be explained by extrinsic or parol evidence, but a *patent* ambiguity, in general, cannot. *Broom's Max. ub. sup.* 2 *Kent's Com. ub. sup.* 1 *Steph. Com.* 463. Story, J. 1 *Mason's R.* 11. See *Ambiguitas.*

AMBIGUOUS. See *Ambiguus.*

AMBIGUUS. Lat. [from *ambigere*, to doubt, to be in suspense.] Ambiguous; uncertain; doubtful; obscure; of uncertain meaning: that can be taken in more ways, or understood in more senses than one.

Ambigua responsio contra proferentem est accipienda. An ambiguous answer is to be taken against [is not to be construed in favor of] him who offers it. 10 *Co.* 59.

Ambiguum placitum interpretari debet contra proferentem. An ambiguous plea ought to be interpreted against the party pleading it. *Co. Litt.* 303 b. It is a general rule of pleading, that pleadings must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavorable to the party pleading. *Steph. Pl.* ch. 2, sect. 5, rule 2. *Broom's Max.* 257, 258, [461]. The reverse of this rule applies after an ambiguity has been cured by pleading over, or by verdict. *Id.* 258, [462.]

Verba ambigua fortius accipiuntur contra proferentem. Ambiguous words are [to be] taken most strongly against the party making use of them. 2 *Kent's Com.* 556. *Bacon's Max.* 11, 12, reg. 3.

In ambigua voce legis, ea potius accipienda est significatio quæ vitio caret, præsertim quum etiam voluntas legis ex hoc colligi possit. Where the language of a law is ambiguous, that sense is rather to be taken, which is free from vice or wrong, [will have no wrongful operation,] especially where the design of the law can be gathered from the same matter. *Dig.* 1. 3. 19. Where obscurities, ambiguities or faults of expression, render the meaning of an enactment doubtful, that interpretation shall be preferred which is most consonant to equity, especially where it is in conformity with the general design of the legislature. *Broom's Max.* [442.]

Ambiguis casibus semper præsumitur pro rege. In doubtful cases, the presumption always is in behalf of the crown. *Lofft's R.* Appendix, 248.

In ambiguis orationibus maxime sententia spectanda est ejus qui eas protulisset. In the case of ambiguous statements, the intention of him who used them is chiefly to be regarded. *Dig.* 50. 17. 96. *Broom's Max.* [436.]

Quum in testamento ambigue aut etiam perperam scriptum est, benigne interpretari et secundum id quod credibile est cogitatum, credendum est. Where an ambiguous or even an erroneous expression occurs in a will, it should be construed liberally and in accordance with the testator's probable meaning. *Dig.* 34. 5. 24. *Broom's Max.* [437.]

AMBIT. [Lat. *ambitus*, q. v.] A boundary line, as going around a place; an exterior or enclosing line or limit. 9 *East*, 418. Story, J. 10 *Peters' R.* 442.

AMBITUS. Lat. [from *ambire*, to go around.] In the Roman law. A going around; a path worn by going around. *Varro de Ling. Lat.* lib. 4. A space of at least two and a half feet in width, between neighboring houses, left for the convenience of going around them. *Festus. Calv. Lex. Brissonius.*

The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. *Inst.* 4. 18. 11. *Dig.* 48. 14. Literally, a going about, or canvassing for votes.

AMBRA. L. Lat. [Sax. *amber*, Lat. *amphora.*] In Saxon law. A vessel or kind of measure, the capacity of which is now unknown. *LL. Inæ, MS.* c. 67. *Spelman.*

AMBULATORIUS. L. Lat. [from *ambulare*, to walk, or move about.] In the civil and old English law. Ambulatory or moveable; admitting of alteration; not fixed.

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. The will of a deceased person is ambulatory until the last moment [end] of life. *Dig.* 34. 4. 4.

Voluntas testatoris ambulatoria est usque ad mortem. The will of a testator is ambulatory, or not fixed, until death. 2 *Bl. Com.*

502. 4 *Co.* 61. *Shep. Touch.* 401. 1 *Powell on Devises*, 545. No testament is of any effect till after the death of the testator. 2 *Bl. Com. ub. sup.* A man may alter his will at his pleasure. *Shep. Touch. ub. sup.* See *Voluntas.*

AMBULATORY. [L. Lat. *ambulatorius*, q. v.] Moveable; that which moves, or may be moved about; not fixed or stationary. The court of King's Bench in England was formerly called an *ambulatory court*, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally *ambulatory*. 3 *Bl. Com.* 38, 39, 41. 1 *Robertson's Charles V.* Appendix, note xxiii.

That which may be changed or altered; not fixed in its legal character. The will of a testator is said to be *ambulatory* until death. 2 *Vern.* 77. See *Ambulatorius.* The return of a sheriff has been said to be *ambulatory* until it is filed. Wilmot J. 3 *Burr.* 1644.

AMEIVIS. Gr. In the civil law. Exchange, (*permutatio.*) *Nov.* 55.

AMENABLE. [from Fr. *amener*, *amesner*, to lead; or *amainable*, from *main*, a hand.] Tractable or manageable; that may be led or governed. Applied in the old books to a woman that is governable by her husband. *Cowell.* See *Amesnable.*

In modern usage, responsible; subject to answer in a court of justice. *Jacob.*

AMEND. [Fr. *amender;* L. Lat. *emendare;* from *e*, from, and *menda*, a fault, or error.] In practice. To free from error or deficiency; to correct an error; to supply a deficiency. See *Amendment.*

AMENDMENT. [L. Fr. *amendement;* L. Lat. *emendatio.*] In practice. The correction of an error committed in any process, pleading or proceeding at law, or in equity; and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 *Bl. Com.* 407, 448. 1 *Tidd's Pr.* 696. 8 *Co.* 156, [319.] *Mansel on Demurrer*, 104, 149. *Mitford's Chanc. Pl.* 18. 1 *Daniell's Chanc. Pr.* 454. 2 *Id.* 911. 1 *Barbour's Chanc. Pr.* 206. *Com. Dig.* Amendment. *United States Digest*, Amendment.

AMENDER. L. Fr. To amend; to make good; to make up for; to compensate. *Defautes amender;* to make good defaults. *Britt.* c. 21. *Les damages amender;* to compensate for damages. *Id.* c. 27.

AMENDES. L. Fr. Amends. *Dues amendes;* due amends. *Britt.* c. 27. *Amendes de damages. Ib. ibid.*

AMENDS. [L. Fr. *amendes;* L. Lat. *emenda*, *emendæ.*] In practice. Compensation or satisfaction for an injury, or loss. See *Emenda*, *Emendatio*, *Tender of amends.*

AMENER. L. Fr. In old English law. To lead, as by or in a string. *Et* amena *ove luy un brace de levraults en son lees;* and led with him a brace of grey-hounds in his leash. *Yearb.* M. 18 Hen. VI. 6.

To lead; to lead away, as an animal that is stolen. *Britt.* c. 24.

To take away or remove. P. 18 Hen. VI. 5.

AMENSURARE. L. Lat. In old English law. To admeasure. *Bract.* fol. 314 a. See *Admensurare.*

AMENSURATIO. L. Lat. [from *amensurare*, q. v.] In old English law. Admeasurement. *Bract.* fol. 314 a. See *Admensuratio.*

AMENUSER. L. Fr. To abridge; to abate; to decrease; to diminish; to annihilate; to fall. *Kelham.*

AMERALIUS. L. Lat. [Gr. αμηραλιος.] A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral, (q. v.) *Spelman*, voc. *Admiralius.*

AMERCE. [L. Fr. *amercer*, from *merci*, mercy; L. Lat. *amerciare.*] In practice. To impose a pecuniary punishment, penalty or amercement, (q. v.); to fine. See *Fine.*

According to Sir William Blackstone, to be *amerced*, in the old English law, was to be *à mercie*, at the king's mercy (*in misericordia*,) with regard to the fine to be imposed. 3 *Bl. Com.* 376. The French *amercie*, or *amercy*, may be taken in this double sense. *Si soit le gardein amercy;* the keeper shall be amerced. *Britt.* c. 11. But, in Latin, to be "in mercy" (*esse in misericordia*,) and to be "amerced," (*amerciari*) seem to have been originally phrases of different import; the former signifying merely "to be liable to an amercement, "to be condemned to an amercement." *De illis qui sunt* in misericordia *domini regis, et* non *sunt* amerciati; concerning those who are *in* the king's *mercy*, and are *not amerced. Bract.* fol. 116 b. So in Magna Charta,—*amercietur—si inciderit in* misericordiam *nostram.* 9 Hen. III. c. 14. The Statute Roll, 25 Edw. I. m. 39, 40, and Charter

Roll, 28 Edw. I. m. 6, 7, both have *manum* for *misericordiam*, in this passage. *Blackst. Mag. Cart.* p. 66, note. *In misericordia* came to be used in records as expressive of judgment of amercement against either party to a suit, and is literally translated in the phrase "in mercy, &c.," with which judgment records still conclude, although no amercement is ever in fact imposed. 3 *Bl. Com.* 275, 376.

To amerce is now used as synonymous with *to fine*, and so it was anciently, in the popular sense of the term. *Richardson's Dict.* But, in law, there was a well established distinction between a fine and an amercement. See *Amercement.*

AMERCEMENT, *Amerciament.* [L. Lat. *amerciamentum, misericordia;* from Fr. *merci*, mercy.] In practice. A pecuniary punishment imposed by a court upon an offender; and supposed to be so called either because the offender thereby anciently put himself *in the mercy* (*in misericordia*) of the king or lord, or because the amount of the punishment was to be *mercifully* assessed, that is, at a less sum than was actually deserved. *Termes de la Ley. F. N. B.* 76, K. *Co. Litt.* 126 b. 1 *Crabb's Real Prop.* 505, § 653. See *Amerciare.*

***Anciently there was an important distinction between an amercement and a fine. A *fine* was a certain punishment, growing expressly out of some statute, and was always imposed and assessed by the court; an *amercement* was imposed by the court in general terms, (*quod sit in misericordia*, that the party be *in mercy*,) and was afterwards assessed or *affeered* (that is, moderated, and reduced to a certain sum) by the peers or equals of the party, who were hence called *affeerors. Cowell. Termes de la Ley. F. N. B.* 76, H. K. 8 *Co.* 38, [77,] 59, [118.] 11 *Id.* 43. 1 *Salk.* 57. 3 *Id.* 33. 4 *Bl. Com.* 379. See *Affeer, Affeerment.* This was pursuant to Magna Charta, (c. 14,) and the Statute of Westminster 1, (c. 6.) *Bract.* fol. 116 b. See *Amerciare, Misericordia.* Again, a fine was a more severe punishment, imposed for offences of magnitude; an amercement was a lighter or more merciful penalty, adapted to offences of a lighter character; (*mulcta levis levioribus erratis per misericordiam imposita.*) *Spelman*, voc. *Amerciamentum.* 1 *Manwood's Forest Law*, 166, cited in *Cowell.* See *Fine.* Lastly, the term *amercement* was applied more particularly to pecuniary punishments imposed upon the officers of courts, as sheriffs and coroners, and the word is still used in this sense. *Cowell. Bouvier. United States Digest*, Amercement. See *Amerciare.* In other respects, however, no essential distinction remains between an amercement and a fine. Amercements, in their ancient technical sense, are entirely disused in modern practice.

AMERCIAMENTUM. L. Lat. [from *amerciare*, q. v.] In old English law. An amerciament, or amercement. *Spelman.* See *Amercement.*

AMERCIARE. L. Lat. In old English law. To amerce. See *Amerce. Liber homo non* amercietur *pro parvo delicto, nisi secundum modum illius* [*ipsius*] *delicti*, &c.; a freeman shall not be amerced for a small offence, unless according to the quality of such offence, &c. *Magna Charta*, 9 Hen. III. c. 14. *Et villanus—eodem modo amercietur,—si inciderit in misericordiam nostram;* and a villein shall be amerced in the same manner—if he fall into our mercy. *Id. ibid.* See *Bract.* fol. 116 b. *Scias quod* amerciatus *es ad unam marcam*, &c. *Et gravius* amerciaberis, *nisi*, &c.; know that you are amerced at one mark, &c. And you will be more severely amerced, unless, &c. *Reg. Jud.* 18, 41.

AMESNA. L. Fr. [from *amesner.* q. v.] Brought; led or carried away. See *Amesner.*

AMESNABLE. L. Fr. [from *amesner*, q. v.] That may be brought, led or carried. *Fitzh. Justice*, 12 b. *L. Fr. Dict.*

AMESNER, *Amener.* L. Fr. In old English law. To lead. *Amesner son hoste;* to lead his army. *Litt.* sect. 153.

To bring, lead, carry or drive away. *Luy* amesneront *et carieront. Keilw.* 81 b. See *Amener.*

To cite, or summon. *Pur* amesner *ou summoner. Thel. Dig.* lib. 1, c. 2.

To bring up the body of a party. *Keilw.* 3.

AMESUREMENT. L. Fr. In old English law. Admeasurement. *Britt.* c. 58. *Reg. Orig.* 155, regula.

AMI, *Amy.* L. Fr. A friend. See *Amy.*

AMICABLE ACTION. In practice. An action between friendly parties; an action commenced and carried on according to a mutual understanding and arrangement, for the purpose of obtaining the judgment of a court in some matter requiring it.

AMICUS CURIÆ. L. Lat. In practice. A friend of the court; one who sug-

gests something for the information of a court.*

This term is frequently applied in the reports to a counsellor of the court, who, being present on an occasion when a judge is doubtful, or uninformed or mistaken in a matter of law, suggests something for the information of the court, such as a case which the judge may not have seen, or does not at the moment remember. 2 *Keb.* 548. It is more rarely applied to counsel arguing in a cause. 11 *Grattan's R.* 656. 2 *Brock. R.* 461.

It is also applied to the parties to actions, suggesting or showing something for their own benefit. Thus, in the Prince's case, (8 *Co.* 15, 29,) the defendants, in addition to their pleadings, *ut amici curiæ*, and to inform the court of the truth, &c., repeated to the court part of an act, &c.

It is also applied to persons who have no right to appear in a suit, but are allowed to introduce evidence to protect their own interests. 11 *Texas R.* 698, 699, 701, 702.

It is finally applied to strangers informing the court of errors in its proceedings, or moving for the correction of such errors. Thus, in the Yearbooks, it is said that any stranger, as *amicus curiæ*, may move the court, &c. II. 4 Hen. VI. 16. *Thel. Dig.* lib. 13, c. 14. *Hardr.* 85, 86. 11 *Mod.* 137.

AMIRAL. Fr. In French maritime law. Admiral. *Ord. Mar.* liv. 1, tit. 1, sect. 1.

AMIRAUTE. Fr. In French maritime law. Admiralty. *Ord. Mar.* liv. 1, tit. 2, art. 1.

AMITA. Lat. (Gr. πάτραδελφὴ.) In the civil law. A paternal aunt; a father's sister. *Inst.* 3. 6. 1. *Bract.* fol. 68 b.

AMITA MAGNA. Lat. In the civil law. A great aunt; a grandfather's sister, (*avi soror.*) *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Bract.* fol. 68 b.

AMITA MAJOR. Lat. In the civil law. A greater aunt; a great-grandfather's sister, (*proavi soror ;*) a father's or mother's great aunt, (*patris vel matris amita magna.*) *Dig.* 38. 10. 10. 16. Called *proamita. Id.* 38. 10. 1. 7.

AMITA MAXIMA. Lat. In the civil law. A greatest aunt; a great great-grandfather's sister, (*abavi soror*) a father's or mother's greater aunt, (*patris vel matris amita major.*) *Dig.* 38. 10. 10. 17. Called *abamita. Id.* 38. 10. 3.

AMITINUS. Lat. In the civil law. The son of an *amita*, or paternal aunt. *Amitina ;* the daughter of an *amita. Bract.* fol. 68 b. The children of a brother and the children of a sister were properly the *amitini* of each other. *Inst.* 3. 6. 2. The sons of your paternal aunt (*amitæ tuæ filii*) call you *consobrinus ;* you call them *amitini. Id. ibid.* In Bracton this word is printed *amitiuus.*

AMITTERE. Lat. In the civil law. To lose. Hence the old Scotch "amitt." He is considered as having lost a thing (*rem amisisse videtur*) who has an action against no one to recover it. *Dig.* 50. 16. 14. **Non videntur rem amittere, quibus propria non fuit.** They to whom a thing never belonged cannot be considered to lose [to have lost] it. *Dig.* 50. 17. 83.

AMITTERE CURIAM. L. Lat. In old English law. To lose the court; to be deprived of the privilege of attending the court. *Amittant curiam regis ;* they shall be excluded from the king's court. *Stat. Westm.* 2, c. 44.

AMITTERE LIBERAM LEGEM, or AMITTERE LEGEM TERRÆ. L. Lat. In old English law. To lose one's frank-law; to lose the law of the land. To lose the liberty or privilege of swearing in any court; to lose the capacity of being put upon a jury, or being sworn as a witness in any cause; to be no longer *othesworthe*, as it was called in the rude English of Bracton's time. This was a part of the punishment of those who had become infamous by having perjured themselves, or by having pronounced the word *craven* in the trial by battel. *Glanv.* lib. 2, c. 3. *Bract.* fol. 292 b. *Fleta*, lib. 4, c. 8, § 2. *Id.* lib. 5, c. 22, § 25. *Co. Litt.* 6 b. 294 b. 3 *Bl. Com.* 340. See *Franklaw*, *Libera lex*, *Lex terræ*, *Othesworth.*

AMMIRALITAS. L. Lat. In foreign law. Admiralty. *Loccenius de Jur. Mar.* lib. 2, c. 2, sect. 1, 3, 4. See *Admiralitas.*

AMNESTY. [Gr. ἀμνηστία, from ἀ, not, and μνάομαι, μνᾶσθαι, to remember.] In political law. An act of pardon, or oblivion. *Cowell.*—A public declaration or proclamation that all acts against the established authority shall be forgotten and pardoned. *Hume's Essays*, part ii. essay 11.—A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported or obeyed the govern-

ment which has been overthrown. *P. Cyclopedia.*

AMOND, *Amont, Amunt.* Sax. [from *a*, priv. and *munde*, protection.] In old European law. Free from wardship or guardianship; one's own master. *LL. Longob.* lib. 2, tit. 12, l. 6. *Spelman.*

"AMONG." Intermingled with. "A thing which is among others is intermingled with them. Commerce *among* the states cannot stop at the external boundary line of each state, but may be introduced into the interior." Marshall, C. J. 9 *Wheaton's R.* 194.

AMONT, *Amount, A mount.* L. Fr. Upwards; above. *Kelham.* See *Paramount.*

AMORTIR. L. Fr. [from *mort*, dead.] To alien in mortmain; to amortise. *L. Fr. Dict.*

AMORTISE, *Amortize.* [L. Fr. *amorter*, L. Lat. *amortizare.*] In English law. To alien or convey lands in mortmain; to convey to a corporation. *Stat.* 37 *Edw.* I. st. 2. *Stat.* 15 *Ric.* II. c. 5. 2 *Bl. Com.* 272. *Shelford on Mortmain*, 36. *Cowell.* See *Mortmain.*

AMORTISEMENT. [L. Fr. *amortissement;* L. Lat. *amortizatio.*] The alienation of lands or tenements in mortmain; sometimes called *amortization*, (q. v.) See *Mortmain.*

AMORTIZATIO. L. Lat. [from *amortizare.*] In old English law. Alienation in mortmain; (*translatio in manum mortuam;*) amortization, or amortisement. *Spelman.*

AMORTIZATION. The same as amortisement, (q. v.)

AMOTIBILIS. L. Lat. [from *amovere*, q. v.] Amoveable; that may be amoved, or removed. *Amotibiles et non perpetui. Bract.* fol. 12 a.

AMOTIO. Lat. [from *amovere*, to move or take away.] In the civil law. A moving or taking away. See *Amovere.* "The slightest *amotio* is sufficient to constitute theft, if the *animus furandi* be clearly established." 1 *Swinton's R.* 205.

AMOTION. [Lat. *amotio*, from *amovere*, to amove, move from, remove or displace.] A putting or turning out; dispossession of lands. Ouster is an *amotion* of possession. 3 *Bl. Com.* 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. *Archb. Civ. Pl.* Introd. ch. 2, sect. 3. See *Amotio.*

The removal of an officer or member of a corporation. 2 *Salk.* 436. 1 *Stra.* 640. 2 *Burr.* 723, 732. 2 *Kent's Com.* 297, 298. Properly, the removal of an officer; disfranchisement being the term applied to members. *Angell & Ames on Corp.* § 408, ch. 12. *Wilcock on Mun. Corp.* 270. See *Amovere.*

AMOUNTAUNT. L. Fr. Ascending. *Kelham.*

AMOUR. L. Fr. Grace or favor. *Jour d'amour;* a day of grace. *Kelham.* See *Dies amoris.*

AMOVE. [Lat. *amovere*, q. v.] To move from, remove; to take off or away; to withdraw. See *Amovere.*

AMOVEAS MANUS. L. Lat. [L. Fr. *ouster le main.*] In old English practice. (You remove the hands.) The judgment against the crown on a *monstrans de droit*, or petition *de droit*, that the possession of the lands claimed be restored to the demandant; so called from the emphatic words, *quod* manus *domini regis* amoveantur; (that the hands of the king be amoved or taken off.) 3 *Bl. Com.* 257. 4 *Steph. Com.* 38.

The name of the writ issued upon such judgment. *F. N. B.* 256, C. *Cowell*, voc. *Ousterlemayn.*

The title of the statute 29 Edward I. 2 *Reeves' Hist. Eng. Law*, 241.

AMOVERE. Lat. [from *a*, from, off, or away, and *movere*, to move.] In the civil law. To move away; to remove; to remove without force. *Dig.* 34. 9. 6. *Id.* 47. 9. 3. 5. *Cod.* 7. 19. 6. To remove with a felonious intent; to steal, (*contrectare et furto subtrahere.*) *Brissonius.*

In old English law. To remove; to put out of office. *Si male* [*tutor*] *gesserit*, amoveri *poterit;* if the guardian have misconducted, he may be removed. *Bract.* fol. 14 b. *Amotus, amoti;* removed. *Debite amoti;* duly removed. 1 *Salk.* 436.

To remove a judicial proceeding, as a plaint. *Fleta*, lib. 2, c. 47, § 21.

AMPARO. Span. In Spanish-American law. A document issued to a claimant of land as a protection to him, until a survey can be ordered, and the title of possession issued by an authorized commissioner. 1 *Texas R.* 790.

AMPLIARE. Lat. [from *amplius*, more, or *amplus*, large.] In the Roman law. To enlarge or extend time; to grant more or further time, as in cases of obscurity or doubt; to postpone or put off a

cause or trial; to defer the giving of judgment. *Adam's Rom. Ant.* 287, 288.

AMPLIARE. Lat. [L. Fr. *amplier;* from *amplus*, large.] In old English law. To enlarge or extend. **Boni est judicis ampliare jurisdictionem.** It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. *Broom's Max.* 36, [56.] Bracton and Fleta use *ampliare* as the opposite of *coarctare*. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9.

AMPLIATIO. Lat. [from *ampliare*, q. v.] In the Roman law. The granting of more or further time for the trial of a cause; postponement of a cause or trial; a deferring of judgment. It was distinguished from *comperendinatio*, (q. v.) *Calv. Lex.*

AMPLIATION. [Lat. *ampliatio*, from *ampliare*, q. v.] In the civil law. A deferring of judgment until a cause be further examined. *Calv. Lex. Cowell.* An order for the re-hearing of a cause on a day appointed, for the sake of more ample information. *Halifax Anal.* b. 3, c. 13, n. 32. Resembling the *ulterius concilium* (q. v.) of the English practice.

AMPLIUS. Lat. In the Roman law More; further; more time. A word which the prætor pronounced in cases where there was any obscurity in a cause, and the *judices* were uncertain whether to condemn or acquit; by which the case was deferred to a day named. *Adam's Rom. Ant.* 287.

AMPLIUS. Lat. In the civil law. More, (*magis, plus.*) *Brissonius.*

In English law. More; more completely; more absolutely. **Quod semel meum est amplius meum esse non potest.** That which is once mine cannot be more completely mine. *Co. Litt.* 49 b. *Shep. Touch.* 212. 2 *Bl. Com.* 314. This maxim is employed by Blackstone to illustrate the old doctrine that livery of seisin, where a freehold remainder was created after a particular estate for years already in being, must not be made to the lessee for years, he being already in possession, but to the remainderman.

AMPRES. L. Fr. After. *Kelham.*

AMTRUSTIO. See *Antrustio.*

AMY, *Ami.* L. Fr. [Lat. *amicus.*] A friend. See *Alien amy, Prochien amy.*

One who is next of blood, or kin. *Litt.* sect. 123. *Co. Litt.* 88 a. See *Cousin.*

AN, *Ane, Aenne.* Sax. A, one; single or sole. *Spelman.*

AN, *Ann, Anne.* L. Fr. [from Lat. *annus.*] A year. *De* an *en* an; from year to year. *Britt.* c. 41. *Ann* is a title in Comyn's Digest.

AN ET JOUR. Fr. and L. Fr. Year and day; a year and a day. *Le an et le jour. Britt.* c. 5. *Un an et un jour. Id. L'an et jour. Ord. Mar.* liv. 3, tit. 11, arts. 10, 11. *Id.* liv. 4. tit. 9, art. 24. See *Year and day.*

AN, JOUR ET WAST. L. Fr. Year, day and waste. *Termes de la Ley.* See *Year, day and waste.*

ANATOCISM. [Græco-Lat. *anatocismus*, q. v.] Interest upon interest. See *infra.*

ANATOCISMUS. Græco-Lat. [Gr. ἀνατόκισμος, from ἀνα, again, and τόκος, interest.] In the civil law. Repeated, or doubled interest; compound interest. *Cod.* 4. 33. 28, 30. *Loccenius, de Jur. Mar.* lib. 2, c. 6, sect. 5.

ANCESSEUR. Norm. In old French law. Ancestor; an ancestor. *Grand Coust. de Norm.* c. 30.

ANCESTOR. [L. Fr. *auncestre;* Norm. *ancesseur;* L. Lat. *antecessor*, from *antecedere*, to go before.] In the law of descents. One who has *gone before*, or preceded in the seisin or possession of real estate; a deceased person from whom an estate has passed to another by operation of law, in consequence of his decease.* The person last seised of an estate of inheritance, and from whom such estate is transmitted by descent to the heir.* 2 *Bl. Com.* 200, 208. 1 *Steph. Com.* 218. Ruggles, C. J. 1 *Selden's R.* 275, 276. One from whom an estate is inheritable. 3 *Ohio R.* (N. S.) 394. See *Antecessor, Predecessor, Ascendant.*

*** It is said in the old books, that the word *ancestor*, in the forensic sense, was not properly applied to the ancestor of a family, but either to the pre-possessor of an estate, or the predecessor in an office. *Termes de la Ley.* It seems to have originally been, like its correlative *heir*, strictly a *nomen juris*, though it acquired the popular sense in which it is now used, at a very early period. *Richardson's Dict.* Its technical meaning was very significantly expressed by its Latin form, (*antecessor*, q. v.); but it appears from Bracton that even the latter word had begun to be used in his time, in senses not strictly appropriate, as where it was employed to denote a *living* person. *Bract.* fol. 67. A similar misapplication of the word *ancestor* sometimes

occurs in modern law; an instance of which is furnished by the recent English statute for the improvement of the law of inheritance, in which "descent" is defined to be "the title to inherit land by reason of consanguinity, as well *where the heir shall be an ancestor*, or collateral relation, as where he shall be a child or other issue." *Stat.* 3 & 4 *Will.* IV. c. 106. 1 *Steph. Com.* 257, note (*b*). *Ancestor* is here used in the sense of a living person in the ascending line of kindred, and in such connexion with the word *heir* as to confound the established relation between the terms. *Ancestor* and *heir* are, in law, strictly the correlatives of each other, having a fixed meaning, and not admitting of being interchangeably or indifferently applied, as between two given persons. An ancestor is a *deceased* person *from* whom an estate has passed, just as an heir is the *living* person *to* whom it has passed; nor can the same person properly be said to stand in the relations both of ancestor and heir to another. That *ancestor* imports, *ex vi termini*, a deceased person, seems to be settled by the maxim which fixes the meaning of *heir:* **Nemo est hæres viventis,** (q. v.) See *Heir, Descent.*

ANCESTOR. [See *supra.*] In the law of descents (of persons.) One who has gone before in a family. *Wharton's Lex.* One who has preceded another in a line of descent; one from whom a person is descended.* This is the popular, and not the legal meaning of the term, (Ruggles, C. J. 1 *Selden's R.* 275;) and the use of the word, in this sense, in immediate connexion with the word "heir," has sometimes led to confusion. See *supra. Ascendant* (q. v.) is the word which should be substituted in such cases.

ANCESTRAL, *Ancestrel.* [L. Fr. *auncestrel.*] Relating to ancestors, or to what has been done by them; as *homage ancestrel*, (q. v.)

Derived from ancestors. Ancestral estates are such as are transmitted by descent, and not by purchase. 4 *Kent's Com.* 404. 2 *Hilliard's Real Prop.* 160, 197, 204.

ANCHORAGE. In English law. A prestation or toll for every anchor cast in a port; and sometimes, though there be no anchor. *Hale de Jur. Mar.* pars. 2, c. 6. See 1 *W. Bl.* 413, *et seq.* 4 *Term R.* 260.

ANCIENT DEMESNE. [L. Fr. *auncien demeyne;* L. Lat. *antiquum dominicum, vetus patrimonium domini.*] In English law. A species of copyhold tenure existing in certain manors which, though now perhaps granted out to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror, and so appear to have been by Domesday Book, in which they were entered.* 1 *Steph. Com.* 211. 2 *Bl. Com.* 99. 1 *Crabb's Real Prop.* 713, § 924. *Hob.* 188. 4 *Inst.* 269. Hence the fact of the existence of this tenure is always tried by Domesday Book. 1 *Show.* 271. *Yearb.* T. 8 Edw. II. It seems to have been originally a species of villein socage; the tenants being the same with those who are described by Bracton as *glebæ ascripticii*, (q. v.) *Bract.* fol. 209. See *Id.* fol. 7. It is called *ancient demesne*, as having been peculiar to the demesnes or manors of the crown, from a very early period, that is, at or before the conquest; (*ante conquestum, in conquestu. Id. ibid.* See *Antiquum dominicum, Demesne.*

ANCIENT HOUSE. In the law of estates. A house which has stood so long as to acquire the privilege of support from the land of another adjoining it; so that the owner of the latter cannot excavate his ground to its injury. This right of *support* is a species of easement or privilege in the lands of another. See *Easement, Support.* 1 *Crabb's Real Prop.* 416, § 500. 3 *Kent's Com.* 437, note. *Gale & Whatley on Easements*, 216—267. In England, if a house has stood twenty years, it is now considered to have acquired the rights of an ancient house. 1 *Crabb's Real Prop.* 417, § 501. 1 *Ad. & Ell.* 493.

ANCIENT LIGHTS, or WINDOWS. In the law of estates. Lights or windows in a house, which have been exclusively enjoyed, without interruption, for twenty years and upwards. To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook.* *Calthrop's R.* 41. 1 *Crabb's Real Prop.* 387, § 452. 3 *Kent's Com.* 448. 2 *Bl. Com.* 402. *Stat.* 2 & 3 *Will.* IV. c. 73, s. 3. This doctrine of ancient lights, or "servitude of light or prospect," as it is called in the civil law, is recognised in several of the United States, though in some of the states it has been questioned. 12 *Mass. R.* 157, 220. 1 *Dudley's* (S. C.) *Rep.* 131. 1 *Green's* (N. J.) *Ch. Rep.* 57. 19 *Wendell's R.* 309. 2 *Watts' R.* 331. 5 *Harr. &*

Johns. 477. 10 *Alabama R.* 63. 2 *Kent's Com.* 448. 2 *Hilliard's Real Prop.* 81.

ANCIENT READINGS. Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. *Litt.* sect. 481. *Co. Litt.* 280. Lord Coke has very graphically contrasted these with the later, or new readings. *Id. ibid.*

ANCIENT RENT. "That shall be deemed the ancient rent which was the rent at the time the power was reserved, or when the last lease before was made, if the estate was not then under lease." 2 *Vern.* 542, cited by Lord Denman, C. J. 2 *Ad. & Ell.* 724.

ANCIENT WRITINGS. In evidence. Deeds, wills, leases and other instruments more than thirty years old. 1 *Phillipps' Evid.* 477. *Cowen & Hill's note, in loc.*

ANCIENTRY. Seniority of rank. 1 *How. St. Trials*, 959.

ANCIENTS. In English law. A title given to certain members of the Inns of Court and Chancery. *Cowell. Holthouse. Wharton.* Serjeants were distinguished as *ancient* and *puisne*. *Cro. Jac.* 2, 671.

ANCIENTY. [L. Fr. *anciennete.*] In old English law. Seniority, or esnecy, (q. v.) *Stat. Hibern.* 14 *Hen.* III. *Cowell.*

ANCILLARY. [L. Lat. *ancillaris*, from *ancilla*, a hand-maid.] Attendant upon; subservient to; auxiliary; subordinate; dependent; not original. An appointment is said to be *ancillary* to the former deed containing the power of appointment. 1 *Steph. Com.* 507. An administration is said to be *ancillary*, where it is taken out in the country where the assets are locally situate, and is subordinate to the original administration. 1 *Story's Eq. Jur.* § 583. "It is beneath the dignity of the king's courts to be merely *ancillary* to other inferior jurisdictions." 3 *Bl. Com.* 98. "The process, although criminal in its form, was merely *ancillary* to civil purposes." Lord Ellenborough, 16 *East*, 293. See 21 *Alabama R.* 704. Lord Hobart says of a clause beginning with a *videlicet* or *scilicet*, that it "is a *clausula ancillaris*, a kind of hand-maid to another clause, and to deliver her mind, not her own. And therefore it is a kind of interpreter; her natural and proper use is to particularize that that is before general, or distribute that that is in gross, or explain that that is doubtful or obscure." *Hob.* 172.

ANCIPITIS USUS. Lat. In international law. Of doubtful use; the use of which is doubtful; that may be used for a civil or peaceful, as well as military or warlike purpose. *Grotius de Jur. Bell.* lib. 3, cap. 1, § 5, subd. 3. 1 *Kent's Com.* 140.

"AND," in written instruments, is frequently construed to mean "*or*," where reason and the intent of the parties require it. Thus, where A. covenanted with B. to renew a lease for years of land to him *and* to his assigns at such a time, it was held that this should be construed "to him *or* to his assigns;" so that if B. died before the time, the lease should be made to his assigns, that is, his executors, alone. *Plowd.* 284, 289. See 1 *Wendell's R.* 388. So, in wills, a like construction is frequently adopted to give effect to all the words, and to the intention of the testator. 3 *Vesey, Jr.* 450. 7 *Id.* 453. In a case where a will contained the words, "with the consent *and* approbation," followed by the words "without such consent *or* approbation," the court construed the "and" in the first clause, in the disjunctive. *Ambl.* 256. In another case, where a will contained the words "if he die before twenty-one, *and* without issue," the court construed "and" to mean "or." 2 *Vesey*, 240. But in another case, where a will contained the same words, the court construed the word "and" in its natural conjunctive sense, there not existing the same reason for a different construction, as in the preceding case. 12 *East*, 288. Sometimes the word "and" has merely a disjunctive effect, without meaning "or." See 8 *Co.* 85 b. A similar rule of construing the conjunctive particle in a disjunctive sense, prevailed in the civil law. *Sæpe ita comparatum est, ut* conjuncta *pro* disjunctis *accipiantur. Dig.* 50. 16. 53. See *Conjuncta.*

"AND, IN ADDITION TO THAT," at the commencement of a clause in a will, was held to import the introduction of new and distinct matter, more clearly than the old word "*item.*" 26 *Vermont* (3 *Deane's*) *R.* 260, 268.

ANDIGAVIA. L. Lat. Anjou in France. *Magna Charta*, in pr.

ANDROCHIA. L. Lat. In old English law. A dairy-woman. *Fleta*, lib. 2, c. 87.

ANDROLEPSIA. Græco-Lat. [Gr. ἀνδρολῆψία, from ἀνηρ, a man, and λῆψις, a taking.] A taking of men; a species of reprisals. A term anciently applied to the *taking* by one nation of the *citizens* or subjects of another, for the purpose of enforcing some claim of right; as to compel the surrender or punishment of a murder-

er who had fled from one country to another. *Molloy de Jur. Marit.* 26. 28. It was derived from the ἀνδροληψία of the Athenian law, which signified the right given to relatives of a citizen who had died a violent death, of seizing a number (not more than three) of the citizens of the place where he was slain, or to which the slayer had fled, until either the crime was punished, or the offender given up. *Demosth. Or. adv. Arist.* p. 440, quoted by *Grotius, De Jur. Bell.* lib. 3, c. 2, § 3.

ANECIUS, *Enecius, Enetius.* L. Lat. [L. Fr. *aisne.*] In old English law. The eldest or first born. *Spelman*, voc. *Aesnecia.* See *Aesnecy, Esnecy, Enitius.*

ANEL. L. Fr. A ring. *Aneals;* rings. *Yearb.* P. 8 Edw. II. 275.

ANFRACTUS. Lat. [from *ambire*, to go round, and *frangere*, to break.] In the Roman law. The turn or bend of a way (*via*) or road. *Dig.* 8. 3. 8.

ANGARIA. Græco-Lat. [Gr. ἀγγαρεία, from Persian.] In the Roman law. A forced or compulsory service, (*servitus coacta;*) an impressment. A service exacted by government, for some public purpose. A forced contribution of labor, horses, vehicles, &c., for the public service. *Dig.* 50. 4. 18. 4. *Cod.* 12. 51.

In feudal law. An excessive service or duty; one that was exacted by a superior, beyond what was due, (*id quod præter debitum exigitur per superiores à subditis.*) *Spelman.* An extraordinary service exacted by the sovereign, and appertaining to his prerogative, (*regalia,*) such as services of labor and carriage, especially the latter. *Feud. Lib.* 2, tit. 56. *Hotom. de Verb. Feud.*

In maritime law. A forced service, (*onus,*) imposed on a vessel for public purposes; an impressment of a vessel, (Swed. *ziena;* Germ. and Belg. pressen.) *Loccen. de Jur. Mar.* lib. 1, c. 5, §§ 1—6.

This is said to have been a Persian word, transmitted to the Greeks through a Hebrew channel. *Herodotus*, lib. 8. *Hesychius. Suidas. Loccen. de J. M.* lib. 1, c. 5. *Angariation* is used as an English word by old writers. *Richardson's Dict.*

ANGARIARE. L. Lat. [Gr. ἀγγαρίαζειν.] In old records. To compel; to burden with exactions. *Spelman.* The Gr. ἀγγαρεύσει (shall compel,) occurs in Matt. v. 41.

ANGARUS. [Gr. ἄγγαρος.] A Persian word signifying a messenger, (*nuntius.*) In Greek, a porter, (*bajulus,*) or bearer of burdens. *Angari* were posts, and *angaræ* the places where they stopped or rested. *Spelman.*

ANGILD, *Angeld.* Sax. [from *an*, one, and *gild*, a payment or satisfaction; L. Lat. *angildum, angildus.*] In Saxon law. The single value of a man, or other thing, (*simplex valor hominis aut rei alicujus*); a single weregild, (*weregildum simplex*); the compensation of a thing according to its single value or estimation. *Spelman.* The double gild or compensation was called *twigild*, the triple, *trigild*, &c. *Id. LL. Inæ*, c. 20, cited *ibid.* See *Gild, Geld.*

ANGLESCHERIA. L. Lat. In old English law. Englishery; the fact of being an Englishman. *Nisi de eo fuerit* Anglescheria *præsentata, ubi sciri possit quod Anglicus erat. Fleta*, lib. 1, c. 30. Bracton uses *Englescheria*, (q. v.)

ANGLETERRE. L. Fr. England. See *Engleterre.*

ANGLIA. Lat. In old English law. England. *Exire de* Anglia, *et venire in* Angliam, *et morari et ire per* Angliam; to go out of England, and to come into England, and to stay and go through England. *Mag. Cart.* 9 Hen. III. c. 30.

ANGLICE. Lat. In English. A term anciently used in pleading, where a thing was described both in Latin and English; the Latin word being first given, and then the English, preceded by the word *Anglicé*, thus: *Quare cepit decem velamina*, Anglicé coifs; *pileum*, Anglicé, a cap; *quatuordecem colores*, Anglicé, neck-bands; *cruralia*, Anglicé, garters, &c. *Sti.* 125. *Towns. Pl.* 16, 101. *De quadam ripa*, Anglicé, a dam. *Hob.* 193.

*** The pleadings in actions were formerly in Latin, that the records might be kept forever without changing; and therefore it was necessary that there should be proper Latin words to express the cause of action, or a proper periphrasis, or a proper Latin description containing sufficient certainties; but if there were no proper Latin words to express the thing, it was sufficient to form the word under a Latin termination, (or, in other words, to coin a Latin word,) and explain it by an *Anglicé.* So, where the Latin word was equivocal, and signified more things than one, it might be fixed down by an *Anglicé. Gilb. Com. Pleas*, 126. And it was a rule that an *Anglicé*, (which was but a *videlicet*, or "that is to say,") should never exceed the Latin. *Hob.* 172 a.

ANGLICUS. Lat. In old English law. English; an Englishman. *Fleta*, lib. 1, c. 30.

ANHLOTE, *Anlote*, *Anlot*. Sax. [from *an*, one, or own, and *hlote*, a portion, or share.] In Saxon law. One's own portion; an individual tax; a share in a general tax. *Anlote and Anscote* is mentioned in a law of William the Conqueror, as a customary tax or payment of the Anglo-Saxons, to which every one contributed. *Spelman*. Lambard supposes this to be the same with what was commonly called *scot and lot*. *Id.* See *Lot*, *Scot*, *Scot and lot*.

ANICHILEE. L. Fr. [from Lat. *nichil*, or *nihil*, nothing.] Made void or nought; annulled; anichiled or adnichiled. *Kelham*. See *Adnihilare*.

ANIENT, *Aniente*, *Anyent*, *Anyenty*. L. Fr. Void; of no force or effect; made void or taken away; defeated; barred; annulled. *Litt.* sect. 741. *L. Fr. Dict.* *Fet Assaver*, § 45.

ANIENTER, *Anientir*, *Anyentir*, *Aneantir*. L. Fr. To make void, or annul; to take away, or destroy; to defeat; to bar. *Kelham*.

ANIENTISEMENT. L. Fr. Destruction; waste; diminution; annulling. *Kelham*.

ANIMAL. Lat. and Eng. [from *anima*, breath, life.] A living thing or creature, other than human, having the power of voluntary or self motion.* *Quod se movet*. *Calv. Lex.* *Dig.* 50. 16. 93. Distinguished from movable things *quæ anima carent*. *Dig.* 6. 1. 1. 1. Distinguished from man. *Id.* 1. 1. 1. 3. *Id.* 50. 16. 135.

ANIMO. Lat. [abl. of *animus*, q. v.] With the intention or design. *Quo animo;* with what intent. *Considerandum est* quo animo, *quave voluntate quid fiat;* it is to be considered with what intent, or with what will a thing is done. *Bract.* fol. 101 b. This is a very common expression in the books. 8 *Co.* 290. 1 *Kent's Com.* 77.

Animo cancellandi; with the intention of cancelling. 1 *Eq. Cas. Abr.* 409, pl. 3. 3 *Rep. in Ch.* 159. 1 *Powell on Devises*, 603. 14 *East*, 423.

Animo felonico; with felonious intent. *Hob.* 134.

Animo furandi; with the intention of stealing. *Bract.* fol. 150 b. 1 *Kent's Com.* 183.

Animo lucrandi; with the intention of gaining with the view to gain or profit. *Inst.* 2. 1. 16. *Bract.* fol. 9 a. 2 *Kent's Com.* 357.

Animo manendi; with the intention of remaining. 1 *Kent's Com.* 76.

Animo morandi; with the intention of staying. Lord Ellenborough, 10 *East*, 25.

Animo republicandi; with the intention of re-publishing. 1 *Powell on Dev.* 609.

Animo revertendi; with the intention of returning. 1 *Kent's Com.* 78.

Animo revocandi; with the intention of revoking. Lord Mansfield, C. J. *Cowp.* 52. 1 *Powell on Dev.* 595.

Animo testandi; with the intention of making a will. *Freem.* 265.

Animo et corpore; by the mind, and by the body; by the intention, and by the physical act. *Dig.* 50. 17. 153. *Id.* 41. 2. 3. 1. *Fleta*, lib. 5, c. 5, §§ 9, 10.

ANIMUS. Lat. Mind; will; disposition; intention or design. *Animo*, (q. v.); with the intention or design. These terms are derived from the civil law.

Animus hominis est anima scripti. The intention of the party is the soul of the instrument. 3 *Bulstr.* 67. *Pitman, Princ. & Surety*, 26. In order to give *life* or effect to an instrument, it is essential to look to the *intention* of the individual who executed it.

Few maxims have been expressed in briefer and more comprehensive language than this; but its point and force, consisting in the use of *animus* and *anima*, in their appropriate senses, are lost in most of the translations which have been given of it.

ANIMUS CANCELLANDI. The intention of cancelling. Lord Ellenborough, C. J. 14 *East*, 423. See *Animo cancellandi*.

ANIMUS CAPIENDI. The intention of taking. 4 *Rob. Adm.* 155. 4 *Id.* 126.

ANIMUS DERELINQUENDI. The intention of abandoning, 4 *Rob. Adm.* 216.

ANIMUS DONANDI. The intention of giving. *Non valet donatio nisi tam dantis quàm accipientis concurrat mutuus consensus et voluntas; sc. quod donator habeat* animum donandi, *et donatorius* animum *recipiendi;* a gift is not valid unless there be a concurrence of the mutual consent and will both of the giver and receiver; that is, the donor must have the intention of giving, and the donee the intention of receiving. *Bract.* fol. 15 b.

ANIMUS FURANDI. The intention of stealing. The felonious intent or design, which is necessary to make the taking of

the property of another, theft or larceny. *Bract.* fol. 150 b. 4 *Bl. Com.* 232. 4 *Steph. Com.* 157.

ANIMUS LUCRANDI. The intention of gaining. See *Animo lucrandi.*

ANIMUS MANENDI. The intention of remaining; intention to establish a permanent residence. 1 *Kent's Com.* 76. This is the point to be settled in determining the domicil or residence of a party. *Id. ibid.* 77. See *Animus revertendi.*

ANIMUS RECIPIENDI. The intention of receiving. See *Animus donandi.*

ANIMUS RECUPERANDI. The intention of recovering. *Loccenius de Jur. Mar.* lib. 2, c. 4, s. 10.

ANIMUS REPUBLICANDI. The intention of re-publishing. 1 *Powell on Devises*, 609.

ANIMUS RESTITUENDI. The intention of restoring. *Fleta*, lib. 3, c. 2, § 3.

ANIMUS REVERTENDI. The intention, or disposition of returning. A term employed in the civil law, in expressing the rule of ownership in tamed animals. *In iis animalibus quæ ex consuetudine abire et redire solent, talis regula comprobata est; ut eousque tua esse intelligantur, donec* animum revertendi *habeant: nam si* revertendi animum *habere desierint, etiam tua esse desinunt, et fiunt occupantium.* Revertendi *autem* animum *videntur desinere habere tunc, cum* revertendi consuetudinem *deseruerint.* In respect to those animals which go away and return habitually, the rule is this; that they are considered as yours as long as they retain an inclination to return, but if they cease to have this inclination they cease to be yours, and become the property of any who may take them. And they may be supposed to cease to have the inclination of returning when they actually relinquish the habit of returning. *Inst.* 2. 1. 15. This rule is adopted by Bracton almost word for word, and has become a part of the modern common law. *Bract.* fol. 9 a. *Fleta*, lib. 3, c. 2, § 4. 7 *Co.* 16—18. *Finch, Law*, b. 2, ch. 17. 2 *Kent's Com.* 348.

This phrase is also applied to *persons* in modern law, in discussing questions of domicil. 1 *Kent's Com.* 78.

ANIMUS REVOCANDI. The intention of revoking. *Cas. temp. Hardw.* 213. See *Animo revocandi.*

ANIMUS TESTANDI. Intention of willing; intention or purpose to make a will. *Worthington on Wills*, prel. obs.

Mind or capacity to make a will. Madmen, idiots, and persons born deaf, blind and dumb, are incapable of having *animum testandi.* 2 *Bl. Com.* 497.

ANIONTES, Ανιόντες. Gr. [from ἀνίημι, to ascend.] In the civil law. Persons in the ascending line; ascendants. *Nov.* 118, c. 2. *Nov.* 22, c. 22.

ANN, *Annat.* In Scotch law. Half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin after his decease. *Whishaw. Bell's Dict. P. Cylopedia*, Annates. See *Ersk. Inst.* b. 2, tit. 10, §§ 65—67.

ANNALES. Lat. [from *annus*, a year.] Annuals; a title formerly given to the Year Books. 9 *Lond. Legal Obs.* 323.

In old records. Yearlings; cattle of the first year. *Cowell.*

ANNALY. In Scotch law. To alienate; to convey. *Skene de Verb. Signif.* vocc. *Annexation, Annuell, Recognition.*

ANNATES, *Annatæ.* L. Lat. [from *annus*, a year.] In English ecclesiastical law. The first year's whole profits of a spiritual preferment, anciently paid by the English clergy to the pope, but in the reign of Henry VIII. transferred to the crown; called in modern law *first fruits. Spelman. Termes de la Ley.* 1 *Bl. Com.* 284. See *First fruits.*

ANNEXATION. [L. Lat. *annexatio*, from *annectere*, to knit or join to.] The fastening of chattels to the freehold, or the letting them into it, which gives them the character of fixtures. *Grady on Fixtures*, 2, 52. 3 *East*, 38. 2 *Smith's Lead. Cas.* 99, 114. 1 *Hilliard's Real Prop.* 64, 70. See *Fixtures.*

In Scotch law. The act of uniting lands to the crown, and declaring them unalienable. *Bell's Dict.*

The appropriating of church lands to the crown. *Id.*

The union of lands lying at a distance from the kirk to which they belong, to the kirk to which they are more contiguous; called annexation *quoad sacra. Id.*

ANNEZ, *Anz.* L. Fr. Years. *Kelham.*

ANNI ET TEMPORA. Lat. Years and terms. An old title of the Year Books. 9 *Lond. Leg. Obs.* 323.

ANNI NUBILES. Lat. In the civil law. Marriageable years; the marriageable age of woman, viz. twelve years. 2 *Inst.* 434. See *Infra annos nubiles.* The age of twelve in the female, and fourteen in the male. *Tayl. Civ. Law*, 299.

ANNICULUS. Lat. In the civil law. Of one year's age; a child of a year old. *Bract.* fol. 63 b. Anniculus—*trecentesimo sexagesimo-quinto die dicitur, incipiente planè non exacto die, quia annum civiliter non ad momenta temporum, sed ad dies numeramus;* a person is said to be a year old, on the three hundred and sixty-fifth day [after birth], when it has clearly begun, and before it has passed, because we reckon a year civilly not by moments of time, but by days. *Dig.* 50. 16. 134. See *Id.* 132. *Calv. Lex.*

ANNIVERSARY. [Lat. *anniversarium*, from *annus*, a year, and *vertere*, to turn.] In old ecclesiastical law. An annual day established in commemoration of some deceased person. Called in English, a "year-day," a "mind-day." *Spelman.*

ANNOISANCE. See *Anoysance.*

ANNONA. Lat. [from *annus*, a year.] In the civil law. Corn or grain; provisions; annual means of subsistence; provision for a year's subsistence, not only of grain, but other things. *Calv. Lex. Dig.* 48. 12. *Annonæ* were contributions of various articles, by the owners or occupants of farms in the provinces, for the use of the army; such as bread, meat, oil, salt, grain, wine, hay, straw, &c. *Cod.* 10. 16. *Calv. Lex. Brissonius. Annonæ civiles;* ordinary contributions of a similar kind, by way of rent, paid to ecclesiastical persons and others. *Cod.* 1. 2. 14. *Id.* 5. 13. 7. *Id.* 6. 24. 12. Called *panes civiles. Id.* 5. 12. 31. 2.

In old English law. Corn or grain. *Spelman. LL. Edw. Conf.* c. 8. *Domesday. L. Salic.* tit. 24, § 1.

Whatever is laid up for a year's subsistence, (*quicquid in annuum alimonium reconditur.*) *Spelman.*

ANNOTARE, *Adnotare.* Lat. [from *ad*, to, and *notare*, to mark.] In the civil law. To mark upon; to designate. To designate a place of deportation. *Dig.* 32. 1. 3.

To give notice to a defendant, or accused person, to appear, in order to make his defence. *Cod.* 9. 40.

ANNOTATIO, *Adnotatio.* Lat. [from *annotare*, q. v.] In the civil law. The sign-manual of the emperor; a rescript of the emperor, signed with his own hand. See *Adnotatio.* It is distinguished both from a rescript and pragmatic sanction, in *Cod.* 4. 59. 1.

ANNOTATIONE PRINCIPIS. See *Adnotatione principis.*

Annua nec debitum judex non separat ipsum. A judge [or court] does not divide annuities nor debt. 8 *Co.* 52. 1 *Salk.* 36, 65. Debt and annuity cannot be divided or apportioned by a court. A maxim of the old law, expressed in a hexameter line. See 1 *Story's Eq. Jur.* § 480.

ANNUA PENSIONE. See *De annua pensione.*

ANNUAL RENT. In Scotch law. Interest of money. Before the reformation, it was not lawful to lend money at interest; and, to evade the law, moneyed persons purchased a yearly rent out of land. The profit of the money lent was thus denominated *annual rent*, and so the term *annual rent* came to be synonymous with interest. *Bell's Dict.*

ANNUATIM. L. Lat. Annually. *Reg. Jud.* Appendix, 9. *Ambl.* 131.

ANNUELL. In old Scotch law. A yearly rent, revenue or duty, paid at certain times. *Skene de Verb. Sign.*

ANNUELTE. L. Fr. Annuity; an annuity. *Yearb.* H. 7 Edw. II. 221.

ANNUITY. [L. Lat. *annuus redditus.*] A yearly payment of a certain sum of money, granted to another in fee, for life or years, charging the person of the grantor only. *Co. Litt.* 144 b. 2 *Bl. Com.* 40. 3 *Kent's Com.* 460. In this respect it differs from a rent charge, which is chargeable upon, and issues out of land. 2 *Bl. Com.* 41. See *Com. Dig.* Annuity. *United States Digest*, Annuity.

The name of an action, now disused, (L. Lat. *breve de annuo redditu,*) which lay for the recovery of an annuity. *Reg. Orig.* 158 b. *Bract.* fol. 203 b. 1 *Tidd's Pr.* 3. See *De annuo redditu.*

In a general sense, a yearly or stated payment of money. See *infra.*

*** An annuity, it is said, has been frequently confounded with a rent charge, from which it is a very distinct thing. 2 *Bl. Com.* 40. In point of fact, the term *rent*, (L. Fr. *rente*, L. Lat. *redditus,*) was originally employed to denote both; a rent proper, or rent charge, being called *rent* from a *tenement*, (*redditus proveniens ex tenemento,*) and an annuity, *rent* from the *coffer*, (*rente de chambre, redditus proveniens ex camera);* the term *rent* itself being used in the general sense of a payment or return of any kind, like the Lat. *pensio* and Fr. *pensione*, (qq. v.) *Britt.* c. 68, fol. 164 b. *Bract.* fol. 203 b. *Fleta*, lib. 2,

c. 62, § 15. *Reg. Orig.* 158 b. regula. 2 *Reeves' Hist. Eng. Law*, 258. See *Rent*, *Camera*. The adoption of the term *annuity* would have sufficiently expressed the distinction between these two kinds of *rents* or payments, had it not been for the phrase *annuus redditus*, by which it continued to be expressed in Latin. This is constantly translated in the old books, (as by Fitzherbert from the Register,) an *annual* or yearly *rent*, which probably led to the confusion spoken of by Blackstone. *F. N. B.* 152, A. B. See *Dyer*, 55 b. *Cro. Car.* 170. Lord Coke, in his definition of annuity, (*supra*,) very properly gives to *redditus* its general sense of *payment*. See *Annuus redditus*.

In modern law, the distinction between the terms *rent* and *annuity* appears to be well settled. The anomalous character of an annuity itself, however, has sometimes led to confusion. Though not belonging to the class of *things real*, a man may have an estate of inheritance in it, that is, it may be made descendible to his heirs. 2 *Steph. Com.* 26. An annuity in fee is personal estate *sub modo*, and is sometimes called a personal fee. 3 *Kent's Com.* 460, and note.

ANNULUS. Lat. In old English law. A ring; the ring of a door. *Per haspam vel* annulum *hostii exterioris;* by the hasp or ring of the outer door. *Fleta*, lib. 3, c. 15, § 5.

ANNULUS ET BACULUS. L. Lat. In feudal and ecclesiastical law. Ring and staff. Symbols anciently used in feudal investitures; the ring being the symbol or earnest of faith, the staff, of aid or support, by which the vassal was bound to his lord; (*annulus arra fidei, baculus subsidii, quibus domino suo tenetur beneficiarius, seu vassalus.*) *Spelman*, voc. *Investire*. Hence was derived the practice of granting ecclesiastical investitures in England, *per annulum et baculum*, by ring and crozier, or pastoral staff. *Id. ibid.* 1 *Bl. Com.* 378, 379. A spear was sometimes used in giving investiture. *Feud. Lib.* 2, tit. 2.

ANNUS. Lat. In civil and old English law. A year; the period of three hundred and sixty-five days. *Dig.* 40. 7. 4. 5. *Calv. Lex. Bract.* fol. 359 b. *Annus est mora motûs quo suum planeta pervolvat circulum;* a year is a period of motion in which a planet revolves through its circle or orbit. *Id. ibid.* The first edition of Bracton has *summum* instead of *suum*, which it gives as another reading. The same author divides the year into various kinds, as *major*, *minor*, *solaris*, *lunaris*, *artificialis*, *naturalis* and *usualis*, (qq. v.) See *Year*.

ANNUS DELIBERANDI. Lat. In Scotch law. A year of deliberating; a year to deliberate. The year allowed by law to the heir to deliberate whether he will enter and represent his ancestor. It commences on the death of the ancestor, unless in the case of a posthumous heir, when the year runs from his birth. *Bell's Dict.* See *Jus deliberandi*.

ANNUS ET DIES. L. Lat. [L. Fr *an et jour.*] A year and a day; a well known period of time in ancient and mod ern law. *Nos non tenebimus terras illorum qui convicti fuerunt de felonia nisi per* unum annum et unum diem, &c.; we will not hold the lands of those who have been convicted of felony longer than for a year and a day. *Magna Charta*, 9 Hen. III. c. 22. *Co. Litt.* 254 b. Applied to claims of property in wreck, in villeins, and in the law of essoins. *Fleta*, lib. 1, c. 44. *Id.* lib. 2, c. 51, § 8. *Id.* lib. 6, c. 8, § 2. See *Year and day*.

*** This peculiar limitation of time is supposed by Spelman to be of German origin, and is mentioned in the Books of Feuds, and in the laws of the Lombards. *Feud. Lib.* 2, tit. 40, 52, (3) 55, § 2. *LL. Longob.* lib. 2, tit. 43, l. 3 In an ancient formula given by Lindenbrog for the sale of a slave, the following clause occurs: *in omni corpore scimus eum sanum usque* anno et die; we know (warrant) him to be sound in his whole body for a year and a day. *Formul. Lindenbrog*, 142. *Spelman.* The custom of warranting for a year and a day is still observed. See more under *Year and day*

ANNUS, DIES ET VASTUM. L. Lat. In old English law. Year, day and waste. See *Year, day and waste*.

ANNUS LUCTUS. Lat. In the civil law. A, or the year of mourning. The year following a husband's death, during which his widow was required to remain unmarried. *Dig.* 3. 2. 1. *Cod.* 5. 9. 2. *Nov.* 22, c. 44, § 1. 1 *Bl. Com.* 457. See *Infra annum luctus*. Mr. Barrington refers to the Danish and Swedish laws, as containing a similar regulation. *Barr. Obs. Stat.* 8.

ANNUS UTILIS. Lat. In the civil law. An available year; a year composed

of *dies utiles*, (available days.) *Dig.* 4. 4. 19. *Id.* 15. 2. 2. *Id.* 47. 4. 11. *Id.* 4. 6. 6. *Brissonius.*

ANNUUS REDDITUS, or REDITUS. L. Lat. In old English law. An annuity; a yearly rent or payment. *Quæ ei a retro sunt de annuo reditu;* which are in arrear to him of an annuity. *Reg. Orig.* 158 b. *Fleta*, lib. 2, c. 62, §§ 14, 15. *De arreragiis cujusdam annui reditus;* of the arrears of a certain annuity. *Reg. Jud.* 43. See *De annuo reditu.*

ANON. ANONYMOUS. Without names; without the names of the parties. A term applied to reported cases in which the names of the parties are not given, or which are without the usual title.

ANOYER, *Anyer*, *Ennoyer.* L. Fr. To hurt; to trouble, offend or annoy. *L. Fr. Dict. Britt.* c. 61.

ANOYSANCE, *Noysance*, *Anisancz*, *Aynisans.* L. Fr. [from *anoyer*, or *anyer*, q. v.] Annoyance; nuisance. *Stat.* 22 *Hen.* VIII. c. 5. *Cowell. Kelham.* See *Nuisance.*

ANS, ANZ. L. Fr. Years. *Kelham. L. Fr. Dict.*

ANSEMENT. L. Fr. Likewise; in like manner; in the same manner. *Kelham.* See *Ensement.*

ANSWER. In pleading. In a general sense, any pleading, (except a demurrer, by which the party claims that he is not bound to answer,) framed to meet a previous pleading.

In equity pleading. The most usual form of defence made to a bill in equity; being the defendant's answer in detail, and usually under oath, to the charges which the complainant has made against him in his bill. 3 *Bl. Com.* 446. 4 *Steph. Com.* 22. *Mitford's Chanc. Pl.* 357, [306.] 2 *Daniell's Chanc. Pr.* 813. 1 *Barbour's Chanc. Pr.* 130.

ANTAPOCHA. Græco-Lat. [from ἀντὶ, against, and *apocha*, q. v.] In the Roman law. A transcript or counterpart of the instrument called *apocha*, signed by the debtor and delivered to the creditor. *Calv. Lex. Cod.* 4. 21. 19. See *Apocha.*

ANTE. Lat. Before. Usually employed in old pleadings, as expressive of time, as *præ* (before) was of place, and *coram* (before) of person. *Towns. Pl.* 22.

ANTE EXHIBITIONEM BILLÆ. L. Lat. Before the exhibition of the bill. A phrase formerly used in pleading. See *Exhibitio billæ.*

ANTE LITEM MOTAM. L. Lat. Before controversy or dispute moved, or commenced. *Mascardus de Prob.* 420, n. 4, 5. *Hubback's Evid. of Succession*, 244, 245, 664. See *Lis mota.*

ANTECEDENS. Lat. [from *antecedere*, to go before.] Going before; antecedent.

Ad proximum antecedens fiat relatio, (q. v.) Relation or reference should be made to the last antecedent.

Ex antecedentibus et consequentibus fit optima interpretatio. 2 *Inst.* 317. The best interpretation [of a clause in an instrument] is made from the antecedents and the consequents [of such clause]; from the parts which precede and those which follow it; that is, by taking all the parts of the instrument together. The proper mode of construing an instrument is by looking at the whole, and not merely to particular parts.* 2 *Bl. Com.* 379. *Hob.* 275. *Broom's Max.* 249, [442.]

ANTECESSOR. Lat. [from *antecedere*, to go before.] In old English law. An ancestor; one who *goes* or has *gone before* another, in the possession of an estate; one who goes before an heir. Antecessores—*qui mortui sunt et hæredes* antecedunt, *i. e.* cedunt ante, *et hæredes* cedunt *eis* sub, *quasi* succedunt; ancestors—who are dead, and precede the heirs, i. e. they go before, and the heirs go after, or succeed them. *Bract.* fol. 67. See *Id.* fol. 281. *Assisa mortis antecessoris;* assise of mort d'ancestor, (q. v.) *Id.* lib. 4, tract. 3. See *Fleta*, lib. 5, c. 1. The word occurs in this sense in the Book of Feuds. *Lib.* 2, tit. 21.

A predecessor in an office. *Mem. in Scacc.* M. 5 Edw. I.

In the Roman law. A teacher, (*doctor*,) master, (*magister*,) or professor of law. *Calv. Lex.* A title given, in the prefaces to the Institutes and Digests, to Theophilus and Dorotheus, two of the most eminent of the compilers of the Digests; the former having also the title of *magister*, the latter that of *doctor. Inst.* proœm. § 3. *Dig.* pr. § 11. *Id.* § 9. Dr. Taylor thinks the term was borrowed from the Roman militia. *Civ. Law*, 38.

A person learned in the law, though not a professor. *Hesychius. Brissonius. Calv. Lex.*

ANTE-FACTUM. Lat. [from *ante*, before, and *factum*, done.] In the Roman law. A thing done before; a previous act

or fact. *Aul. Gell. Noct. Att.* lib. xvii. c. 7. See *Ex post facto law.*

ANTEGESTUM. Lat. [from *ante*, before, and *gestum*, done.] In the Roman law. A thing done before; a previous act. *Dig.* 38. 1. 40. *Id.* 48. 23. 3.

ANTEJURAMENTUM. L. Lat. In Saxon law. A preliminary or preparatory oath, (called also *præjuramentum*, and *juramentum calumniæ*, q. v.) which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal, that he was innocent of the crime with which he was charged. *Whishaw. Leg. Athelstan, apud Lambard*, cited *ibid.*

ANTENATI. L. Lat. [plur. of *antenatus*, q. v.] Born before; persons born before; that is, before a particular period or event. This term, with its opposite or correlative, *postnati*, is used both in English and American law. See *Postnati.*

ANTENATUS. L. Lat. [from *ante*, before, and *natus*, born.] Born before; that is, before another person. In this sense, this term is of frequent occurrence in Bracton, being used with its correlative *postnatus*, (after-born,) to distinguish sons or brothers born at different periods. *Si frater* antenatus, [*donationem fecerit*] *fratri suo* postnato; if an elder brother make a gift to his after-born brother. *Bract.* fol. 33, lib. 2, c. 15. See *Id.* cc. 16, 30.

Born before a particular period or event. In this sense, the term (especially the plural *antenati*,) has acquired much celebrity in modern law, being employed to denote the subjects of Scotland *born before* the union of the crowns; and Americans and British subjects *born* in the United States *before* the declaration of independence. 7 *Co.* 1, Calvin's case. 2 *Kent's Com.* 40, 56, 58. 4 *Cranch's R.* 321. 3 *Peters' R.* 99.

ANTESTARI. Lat. In the Roman law. To summon a person to testify; to testify. *Calv. Lex. Brissonius.*

ANTICHRESIS. Græco-Lat. [Gr. ἀντιχρησις; from ἀντι, opposite, and χρησις, use.] In the civil law. A sort of mortgage, in which the right of reaping the fruits, or taking the profits of the thing pledged, was by special agreement transferred to the mortgagee, in lieu of drawing interest; [he having the *use* by way of *compensation.*] *Dig.* 20. 1. 11. 1. *Id.* 13. 7. 33. 1 *Mackeld. Civ. Law*, 383, § 348. 4 *Kent's Com.* 137, note. *Story on Bailments*, § 344. So called, as being an *exchange of uses*, or what Grotius terms *usus rei pro usu rei;* the use of one thing for the use of another; the use of the thing pledged, as a compensation for the use of the money borrowed. *Grot. de Jur. Bell.* lib. 2, c. 12, § 3, par. 4. *Id.* § 20, par. 2.

This kind of mortgage is still in use in some countries, where the civil law prevails; and it is expressly recognised by the laws of the State of Louisiana, but in general it has become obsolete. *Story, Bailm. ub. sup. Civil Code of Louisiana*, art. 3143. 11 *Peters' R.* 351. The modern Welsh mortgage closely resembles it. See *Welsh mortgage.*

ANTICIPATIO. Lat. [from *ante*, before, and *capere*, to take.] In the civil law. Anticipation; a taking or assuming beforehand; the taking of a thing to be true, before it is absolutely proved. *Huberus Præl. Jur. Civ.* lib. 22, tit. 3, n. 14. See *Præsumptio.*

ANTIGRAPHUS. Græco-Lat. [from Gr. ἀντι, against, and γράφειν, to write.] In the Roman law. An officer whose duty it was to keep an eye over the money which the tax-gatherers collected for the use of the state, (*cui id muneris injunctum erat, ut observet pecuniam quam in usum principis vel civitatis collegerunt exactores.*) *Budæus, in Annot. prio. in Pand.* tit. De Quæstoris officio. Literally, one who controlled or supervised the accounts of money collected; a controller. See *Controller.*

ANTINOMIA. Græco-Lat. [Gr. ἀντινομια, from ἀντι, opposite, and νομος, law.] In the Roman law. An opposition, contradiction or inconsistency of laws; inconsistency between one law and another in the same collection. *Cod.* 1. 17. 8. *Grotius de Jur. Bell.* lib. 2, c. 16, §§ 4, 28. Sometimes Englished "antinomy." "The *antinomies* or contradictions of the Code and Pandects still exercise the patience and subtlety of modern civilians." 3 *Gibbon's Rom. Emp.* 165, (Am. ed.)

Antinomiæ. Conflicting laws or provisions of law; conflicting or inconsistent cases, opinions or decisions. "Cases judged to the contrary; cases of contradiction." *Bacon's Works*, iv. 371.

ANTIQUA STATUTA. Lat. Ancient statutes. See *Vetera statuta.*

ANTIQUÆ CUSTUMÆ. L. Lat. In old English law. Ancient customs. Cus-

toms upon wools, woolfells and leather, granted to Edward I. by parliament in the third year of his reign. *Vaugh.* 161, 162. See *Custuma antiqua.*

ANTIQUARE. Lat. [from *antiquus*, ancient, old.] In the Roman law. To restore a former law or practice; to reject or vote against a new law; to prefer the old law. Those who voted against a proposed law wrote on their ballots the letter A, the initial of ANTIQUO, I am for the old law. *Calv. Lex.*

ANTIQUITAS. Lat. [from *antiquus*, ancient.] In the civil law. Ancient or former law, or practice. *Inst.* 1. 6. 7. *Modus alius* antiquitati *placuit, alium novitas per usum amplexa est;* the ancient law adopted one mode, modern practice has established another. *Id.* 4. 11. pr. *Antiquitas dubitabat*, &c. *Cod.* 3. 33. 14. Literally, *antiquity;* which is the term constantly used by Lord Coke and other writers, to denote the same thing.

ANTIQUUM DOMINICUM. L. Lat. In old English law. Ancient demesne, (q. v.) *Fleta*, lib. 2, c. 71, § 15. Contrasted with *novum perquisitum*, (new purchase or acquest.) *Id. ibid.*

ANTISTES. Lat. In the civil law. A chief or presiding priest; a bishop, (*episcopus.*) *Inst.* 1. 20. 5. *Cod.* 1. 3. 18, 22, 25.

ANTISTITIUM. L. Lat. In old English law. A monastery. *Blount. Whishaw.*

ANTITHETARIUS. L. Lat. [from Gr. ἀντίθεσις, opposition?] A term applied, in ancient law, to one who endeavored to discharge himself of a fact of which he was accused, by recriminating, or charging his accuser with the same fact. *Cowell. Whishaw.*

ANTOR. L. Fr. Around. *Kelham.* See *Entour.*

ANTRUSTIO, *Amtrustio.* L. Lat. [from Sax. *an*, one, or Germ. amt, office, and trusty.] In early feudal law. A confidential vassal. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. It occurs in the formularies of Marculfus, and imported the same with what was called in the Salic laws, *homo in truste dominica*, (a man in his lord's trust, or one who had sworn faith to his lord.) *Marculf. Form.* lib. 1, c. 18. *L. Salic.* tit. 43, § 4. *Spelman*, voc. *Amtrustio. Esprit des Lois*, liv. 30, c. 16. 1 *Robertson's Charles V.* Appendix, note viii.

ANUELS LIVRES. L. Fr. The year books. *Kelham. L. Fr. Dict.* See *Year Books.*

ANUYTE, *Anute.* L. Fr. Annuity. 2 *And.* 1, 2.

ANY. A common word in statutes and other writings, having sometimes the sense of "some," but more frequently that of "all" or "every." See *At any time.* Like the word "all," (q. v.) it has often been made the subject of judicial construction, and, like that word, its meaning has been restrained and limited, as in the following examples:

"Any court of record," has, in England, been confined to the four courts at Westminster. 6 *Co.* 19.

"Any person or persons," in the Act of Congress of April 30th, 1790, § 8, though admitted to be broad enough to comprehend every human being, was held to be limited to the objects to which the legislature intended to apply the words. Marshall, C. J. 3 *Wheaton's R.* 631.

"Any creditor," in a deed, has been held to be used in a limited sense. 5 *B. & Ald.* 869.

"Any other matter or thing, from the beginning of the world to the day of the date hereof," in a release, has been restrained to the subject-matter on which the parties acted. 4 *Mason's R.* 227.

AORE. L. Fr. Now. *L. Fr. Dict.* See *Ore.*

AOUR. L. Fr. Gold. *Kelham.* See *Oor.*

APANAGE, *Appanage, Apenage.* [L. Lat. *appanagium, appenagium*, q. v.] In old French law. A provision for the support of younger sons; an allowance made to younger branches of a sovereign house, out of the revenues of the country, generally together with a grant of public domains; the provision of lands or feudal superiorities formerly assigned by the kings of France for the maintenance of their younger sons. *Spelman*, voc. *Appenagium. Brande. P. Cyclopedia.*

APARELLE, *Aparaile, Appareillie.* L. Fr. Ready. *Kelham.*

APARES. L. Lat. Peers; equals. See *Appares.*

APARLUY, *Aperluy.* L. Fr. By itself; separately. *Yearb.* H. 9 Hen. VI. 21.

APARTE. L. Fr. Open; full. *Kelham.* See *Apert.*

APARTEMENT. L. Fr. Openly; plainly. *Kelham.* See *Apertment.*

APARTMENT. A room in a house or building; a part of a house. *Apartments* are one or more rooms in a house, occupied by one or more persons, distinct from other occupants of the same house. See 7 *Man. & Gr.* 95. A small building on the same lot with a dwelling-house, at the distance of forty-five rods from it, with a passage way between them, was held to be not an *apartment* or dependence of the dwelling-house. 10 *Pick. R.* 293.

ΑΠΑΤΟΡΕΣ, *Απάτορες.* Gr. [from *α*, without, and *πατήρ*, a father.] In the civil law. Persons without a father; spurious children; bastards, (*quasi sine patre filii.*) *Inst.* 1. 10. 12.

APENT. L. Fr. Belongs. *Kelham.* See *Appent.*

APERCEYVER. L. Fr. To perceive. *Britt.* c. 40.

APERLUY. L. Fr. By itself; separately. *Chescun aperluy.* P. 9 Edw. III. 1.

APERTE, *Aparte.* L. Fr. [from Lat. *apertus*, q. v.] Open; plain. *Kelham.*

APERTMENT, *Aperment, Apartement.* L. Fr. Openly; plainly. *Apertment escries;* openly defamed. *Stat. Westm.* 1, c. 15.

APERTUS, *Apertum.* Lat. [from *aperire*, to open.] In old English law. Open or patent. Applied by Bracton to writs, though *patens* was the more usual epithet. *Si fuerit* [*breve*] *patens sive* apertum; *quia originalium* [*brevium*] *quædam* aperta, *quædam clausa;* if the writ be patent or open; because of original writs some are open, some close. *Bract.* fol. 413 b. See *Fleta*, lib. 2, c. 13, § 6.

APEYNE. L. Fr. Scarce. *Kelham.*

APEX JURIS. L. Lat. An extreme point or subtlety of law; a curious or nice exception or merely technical objection in pleading; a rule or doctrine of law, carried to an extreme either of rigor or refinement; an unnecessarily rigid adherence to the letter; the *strictum* or *summum jus.* Lee, C. J. 1 *Burr.* 341, 349. Lord Ellenborough, C. J. 14 *East*, 522. Kent, C. J. 2 *Caines' R.* 117. Story, J. 2 *Story's R.* 143.

The figurative term *apex*, signifying literally, the summit or highest point of any peaked object, very aptly expresses the several ideas of extremity, sharpness and fineness, intended to be conveyed by these words. It is not well translated by the simple English word "point," which is constantly applied to positions and rules, not at all coming within the denomination of "subtleties."

APICES JURIS. Lat. [plur. of *apex juris*, q. v.] Subtleties or extreme points of law; nice or curious exceptions, or merely technical objections in pleading. A term taken from the Digests. *De bona fide enim agitur, cui non congruit de* apicibus juris *disputare;* for the controversy is respecting the good faith of the transaction, which is inconsistent with any discussion about *apices juris.* *Dig.* 17. 1. 29. 4. In 4 *Scott*, N. R. 667, and 5 *Id.* 896, an objection is described as being *inter extremos apices juris.* The *apices juris* are said to stand upon the outer verge of the law, and are only rarely resorted to.

Apices juris non sunt jura [jus.] Extremities, or mere niceties of law, are not rules of law, [are not law.] *Co. Litt.* 304 b. 10 *Co.* 126. *Wingate's Max.* 19, max. 14. *Broom's Max.* 88, [142.] Platt, J. 20 *Johns. R.* 261. This maxim, however, is not understood as prohibiting the allowance of all technical objections. *Broom's Max. ub. supra.*

The common translation of this maxim, —"points of law are not laws"—is very far from expressing its proper meaning.

APICES LITIGANDI. L. Lat. Subtleties of litigation; sharp technical points or captious objections in pleading or practice. "It is unconscionable in a defendant to take advantage of the *apices litigandi*, to turn a plaintiff round and make him pay costs when his demand is just." Lord Mansfield, C. J. 3 *Burr.* 1243.

APENNIS, *Appennis.* L. Lat. In old European law. A brief statement or narrative in writing of any event or transaction, (*chartula relationis.*) *Formul. Vett. Marculfo* adject. et cap. 46. *Formul. Lindenbrog.* 106. *Spelman.*

APERIRE. Lat. In the civil law. To open, as a will or codicil. *Dig.* 29. 5, 3. 19, *et seq.* To open, as a way or road, (*via.*) *Id.* 43. 11. 1.

In feudal law. To escheat, or revert to the lord. *Feud. Lib.* 1, tit. 18, lib. 2, titt. 34, 35.

ΑΦΗΛΙΞ, *Αφήλιξ.* Gr. [from *ἀπό*, from, and *ἡλικία*, age.] In the Roman law. A minor; one under age. *Dig.* 27. 1. 10. 7. *Id.* 26. 5. 21. *Id.* 26. 6. 2.

APOCÆ ONERATORIÆ. L. Lat. In old commercial law. Bills of lading. *Casaregis*, disc. 1, n. 111. *Id.* disc. 10, n. 25. *Id.* disc. 25, n. 5. See *Apocha.*

APOCHA. Græco-Lat. [Gr. ἀποχή.] In the civil law. An acknowledgment of the payment of money, (*pecuniæ solutæ professio,*) given by a creditor to his debtor. *Brissonius.* An acquittance or discharge; a receipt or voucher, (Gr. ἀπόδειξις.) *Calv. Lex. Cod.* 4. 21. 16. 2. *Id.* 4. 21. 19. *Id.* 10. 22.

APOCRISIARIUS. Lat. [from Gr. ἀπόκρισις, an answer.] In ecclesiastical law. One who answers for another, (*qui est à responsis, responsalis.*) Originally and properly, an officer who brought ecclesiastical matters before the emperor, and conveyed his answers to the petitioners; or an officer who, being consulted on ecclesiastical matters, gave answers or advice. *Spelman.*

A pope's legate; a bishop's legate or chancellor. *Id. Nov.* 6, c. 2. *Nov.* 123, c. 25.

APOGRAPHA. Græco-Lat. [Gr. ἀπογραφή.] In the civil law. A description or enumeration; an inventory, (*inventarium, repertorium.*) *Calv. Lex. Nov.* 48, c. 1.

APORIARE. Græco-Lat. [from Gr. ἀπορεῖν, to be in doubt or perplexity.] In old records. To be in difficulties; to be poor; to reduce to poverty. *Spelman.*

APOI, *Apoy.* L. Fr. Almost; scarcely. *Kelham.*

APOINCTER. L. Fr. To appoint or direct. *Kelham.*

APOSTACY. In English law. The total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offence can only take place in such as have once professed the Christian religion. 4 *Bl. Com.* 43. 4 *Steph. Com.* 231.

APOSTARE. L. Lat. In Saxon law. To violate or transgress. *Qui leges apostabit;* whoever shall violate the laws. *LL. Edw. Conf.* c. 35. *Spelman.* Sometimes confounded with *apostatare*, to apostatize. *Id.* See *Laghslit.*

APOSTATA. Lat. [Gr. ἀποστάτης.] In civil and old English law. An apostate; a deserter from the faith; one who has renounced the Christian faith. *Cod.* 1. 7. *Reg. Orig.* 71 b.

APOSTATA CAPIENDO. See *De apostata capiendo.*

APOSTILER. L. Fr. To write notes on. *Kelham.* See *Apostille.*

APOSTILLE, *Appostille.* L. Fr. An addition, note or observation. *Kelham.*

Apostill, appostill, and *apostyle* are used in old English writers in the sense of a marginal note, an answer to a petition or other writing, set down in the margin; and have been derived from the Lat. *apponere,* because *placed to* the text in the margin. *Richardson's Dict.* But *quære* if the word be not radically the same with *apostles.* See *infra.* See an example of a paper with *apostyles* in the margin. *Bacon's Works,* vi. 97.

Appostille, (q. v.) is still used in French law. *Postile* occurs in Bacon's Works, vi. 101.

APOSTLES. [Græco-Lat. *apostoli,* q. v.] In civil and admiralty law. Letters dismissory, addressed by a court from which an appeal is taken, to the superior court, for the purpose of certifying the appeal. *Spelman,* voc. *Apostoli.* Short letters dismissory, signed by the judge *à quo,* stating shortly the case and the sentence, and, in the room of further apostles, declaring he will transmit all the proceedings. 2 *Bro. Civ. Law.* 438, ch. 9. Letters missive, transmitted to the judge *ad quem,* to instruct him in the nature of the suit. *Halifax, Anal.* b. 3, c. 11, n. 34. See *Apostoli.*

This term is still sometimes applied in the admiralty courts of the United States, to the papers sent up or transmitted on appeals.

APOSTOLI. Græco-Lat. [Gr. ἀπόστολοι, from ἀποστέλλω, to send from.] In the civil law. Letters dismissory or missive. *Post appellationem interpositam litteræ dandæ sunt ab eo a quo appellatum est, ad eum qui de appellatione cogniturus est, quas literas dimissorias sive* apostolos *appellant;* after an appeal is interposed, letters are to be given by him from whom the appeal is taken, to him who is to judge of the appeal, which they call letters dismissory, or *apostles. Dig.* 49. 6. *Id.* 50. 16. 106. *Cod.* 7. 62. 6. See *Dimissoriæ litteræ.*

APOSTOLUS. Græco-Lat. [Gr. ἀπόστολος, one sent from another.] In old European law. A legate, ambassador or nuncio. *Spelman.*

At Athens, the commander or admiral of a fleet was called ἀπόστολος. *Id.*

APOTHECA. Græco-Lat. [Gr. ἀποθήκη.] In the civil law. A repository; a place of deposit, as of wine, oil, books, &c. *Calv. Lex. Brissonius.*

APOTHECARII. Lat. In old records. Stewards, (*ratiocinatores, procuratores.*) *Spelman.*

APPANAGIUM. L. Lat. [from *ad,* to,

and *panagium*, sustenance, from *panis*, bread.] In old French law. An appanage or apanage; a provision for the support of younger sons. See *Apanage*. Sometimes written *appenagium*, which Spelman approves.

APPARANCE. L. Fr. Appearance, *Yearb.* 8 Hen. VI. 16.

APPARATOR. L. Lat. [from *apparare*, to prepare, furnish or provide.] One who provides or furnishes. A sheriff was formerly styled in England *apparator comitatûs*, as having charge of certain county arrangements and expenditures; and considerable yearly sums were sometimes allowed him in that capacity. *Cowell.* In the United States, sheriffs often act in a similar capacity.

APPARENS. Lat. [from *apparere*, to appear.] Apparent; appearing; that which appears, or is regularly before a court. **De non apparentibus et non existentibus eadem est ratio.** Respecting things which do not appear, and things which do not exist, the rule, reasoning, or mode of treatment is the same. 6 *Co.* v. Caudrey's case. Things which do not appear are treated in law the same as if they did not exist. *Broom's Max.* 70, [121.] Where the court cannot take judicial notice of a fact, it is the same as if the fact had not existed. Buller, J. 1 *Term R.* 404. Thus, on a writ of error, for error in law, the court will not look out of the record. *Steph. Pl.* 121. So, on a special verdict, they will neither assume a fact not stated therein, nor draw inferences of facts necessary for the determination of the case from other statements contained therein. 5 *Co.* v. 8 *Cowen's R.* 600, 682. 1 *Caines' R.* 60. 5 *Hill's R.* 634. 1 *Archb. Pr.* 215. 12 *M. & W.* 316. *Broom's Max. ub. sup.* See *Apparere*, *Appear.*

APPARENT. [from Lat. *apparens*, q. v.] Manifest; evident; proved. See *Apparens.*

APPARENT HEIR. In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 *Bl. Com.* 208. See *Heir.*

In Scotch law. One who is entitled to enter heir to a deceased ancestor, before actual entry. *Ersk. Inst.* b. 3, tit. 8, § 54. 1 *Forbes' Inst.* part 3, b. 2, ch. 3.

APPARENTIA. L. Lat. [from *apparere*, q. v.] In old practice. Appearance; an appearance. *Rast. Entr.* 347. See *Comparentia.*

APPARERE. Lat. In old English law. To appear; to be regularly before a court; as a fact, an instrument, or other thing of which they are requested to take notice. See *Constare.* **Quod non apparet non est.** That which does not appear, is not, [does not exist.] 2 *Inst.* 479. *Jenk. Cent.* 207. *Vaugh.* 169. See *Apparens.*

To be regularly before or in a court, as a defendant in an action. *Comparere* was the term more usually employed in this case.

APPARES, *Apares.* Lat. [*quasi adpares*, from *ad*, to, and *pares*, equals.] In canon law. Peers, or compeers, (*compares;*) equals; associates. *Spelman.*

APPARITIO. L. Lat. [from *apparere*, q. v.] In old practice. Appearance; an appearance. *Apparitio in judicio;* an appearance in court. *Bract.* fol. 344. *Post apparitionem;* after appearance. *Fleta*, lib. 6, c. 10, § 25.

APPARITOR. Lat. [from *apparere*, to appear, to be present.] In the civil law. An officer who waited upon a magistrate or superior officer, and executed his commands. *Calv. Lex. Cod.* 12. 53—57.

In ecclesiastical law. One who cites or summons to *appear;* a summoner; a messenger who cites offenders to appear in the spiritual court, and serves the process of the court. *Cowell.*

APPARLEMENT. L. Fr. [from *pareillement*, likewise, in like manner.] In old English law. Resemblance; likelihood; as apparlement of war. *Stat.* 2 *Ric.* II. st. 1, c. 6. *Cowell.*

APPAROIR, *Apparoer*, *Apparoier.* L. Fr. To appear; to make known. *Kelham.*

APPARURA. L. Lat. [from *apparare*, to furnish.] In old English law. Furniture; tackle, or apparel. *Carucarum apparura;* plough tackle. *Cowell.*

APPATISSIEZ LIEUX. L. Fr. In old English law. Places which agreed to pay a sum of money to the enemy, in compensation of their towns being spared from the ravages of war. *Kelham.*

APPAYE, *Appay*, *Apay.* L. Fr. Satisfied; contented. *Kelham.*

APPEAL. [Lat. *appellatio*, from *appellare*, Fr. *appeller;* to call to, or upon.] In practice. The complaint to a superior court, of an injustice done, or error committed by an inferior one, whose judgment or decision the court above is *called upon* to correct, or reverse. The removal of a cause, or of some proceeding in a cause, from an inferior to a superior court, for the purpose

of re-examination or review.* 4 *Bl. Com.* 312. Story, J. 1 *Gallison's R.* 12, 13.

An appeal, in the most general sense, embraces the proceedings by *writ of error* and *certiorari*, but, strictly and practically, it is distinct from both. 3 *Bl. Com.* 55, 454. See *Certiorari*, *Writ of error*. In its technical sense, it is peculiar to courts of equity, and other courts which proceed according to the course of the civil law; the judgments of courts of common law being removed by writ of error. An appeal removes a cause entirely, subjecting the fact as well as the law to a review and re-trial; a writ of error removes nothing for re-examination but the law. Story, J. 1 *Gallison's R.* 12, 13. *Story on the Constitution*, § 1762. *Id.* (Abr.) § 917. See *Federalist*, No. 81. *United States Digest*, Appeal. The word itself comes from the civil law. See *Appellatio.*

APPEAL. [Fr. *appel.*] In old French law. A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers; which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the *appeal of false judgment*. *Esprit des Lois*, liv. 28, c. 27.

APPEAL. [L. Lat. *appellum;* L. Fr. *appel*, from *appeller*, to call upon, or challenge.] In old English criminal law. A proceeding in the nature of a criminal prosecution, being an accusation by a private subject against another, for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. 4 *Bl. Com.* 312. In other words, it was a private process for the punishment of a public crime. *Id. ibid.* Bracton (fol. 146) calls it a criminal action, (*actio criminalis,*) and Britton defines it to be "a complaint made by a man against another, with the purpose of attainting him of felony, by words ordained for that purpose;" (*pleynte de home faite sur autre, ovesque purpos de luy atteindre de felonie, par motz a ceo ordines.*) *Britt.* c. 22. *Co. Litt.* 123 b.

An appeal was a vindictive action at the suit of the party injured by some heinous offence, in which the appellant, instead of merely seeking pecuniary compensation, as in civil actions, demanded the punishment of the criminal. *P. Cyclopedia.* Appeals were of various kinds; as appeals of murder, robbery, rape, arson and maihem, and were in general triable by battel. *Bract.* lib. 3, tr. 2, cc. 19—30. *Britt.* c. 22. *Fleta*, lib. 3, c. 31. *Co. Litt.* 287 b. 4 *Bl. Com.* 314. 2 *Wooddes. Lect.* 337. *Barringt. Obs. Stat.* 27. They were abolished in England by statute 59 Geo. III. c. 46. Lord Holt once said he esteemed an appeal a noble remedy, and a badge of the rights and liberties of an Englishman. *Rex* v. *Toler*, 1 *Ld. Raym.* 555, 557. For the proceedings on an appeal of murder, see Bigby *v.* Kennedy, 2 *W. Bl.* 710. S. C. 5 *Burr.* 2463. The last appeal of this kind was Ashford *v.* Thornton, 1 *B. & Ald.* 405.

Appeal was also the name given to the proceeding in English law, where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed* or accused others, his accomplices in the same crime, in order to obtain his pardon. In this case, he was called an *approver* or prover, and the party appealed or accused, the *appellee.* 4 *Bl. Com.* 330.

To APPEAL. [Lat. *appellare;* L. Fr. *appeller.*] In practice. To call upon a superior court to correct or reverse the judgment or decision of an inferior one; to remove a cause from an inferior to a superior court, for the purpose of re-examination or review. See *Appeal*, (in practice.)

In old criminal law. To accuse. To appeal a man is as much as to accuse him, —from *appeller*, to call, because *appellans vocat reum in judicium;* the appellant calls the defendant to judgment. *Co. Litt.* 287 b.

APPEAR. In practice. To be properly before a court; as a fact or matter of which it can take notice. (L. Lat. *apparere, constare.*) To be in evidence; to be proved. "Making it *appear* and proving are the same thing." *Freem.* 53. See *Apparens, Apparere.*

To be regularly in court; as a defendant in an action. (Lat. *comparere.*) See *Appearance.*

APPEARANCE. [L. Lat. *comparentia, comparitio, apparentia, apparitio.*] In practice. The coming into court of either of the parties to an action. "Appearance is the parties coming into the court." *Finch, Law*, b. 4, c. 41.

The coming into court, of a defendant, or party proceeded against. The act or proceeding in an action, by which the defendant is brought, or places himself, before the court in which it is commenced, in order to

answer to the action. It is, in other words, the prescribed mode of complying with the exigency of the plaintiff's process; the defendant admitting, by his appearance, that he has had a general intimation of the suit, and is ready to receive a more particular statement of its ground and object. 3 *Steph. Com.* 564. Appearance is the first act of the defendant in court, and, until it is properly effected, no judgment can be awarded against him in any personal action. *Id. ibid.* 1 *Tidd's Pr.* 238.

In actions at law, an appearance is effected either by putting in sufficient bail, where the action requires bail; or, in nonbailable actions, by endorsing on the process served a memorandum authorizing the clerk to enter an appearance; or, in some cases, by filing common bail, or entering a common appearance. 1 *Tidd's Pr.* 238—240. *Archb. New Pr.* 71. A simple notice of appearance or retainer is also sometimes made equivalent to an appearance. 1 *Burr. Pr.* 112. A distinction, however, is made between an appearance and putting in bail, which is properly the act of the court itself. 1 *Tidd's Pr.* 238. In equity, an appearance is usually effected by the solicitor of the defendant filing with the clerk a memorandum requesting the entry of his appearance in the action. 1 *Daniell's Chanc. Pr.* 590. 1 *Barbour's Chanc. Pr.* 79. See *Bail, Common bail, Common appearance.*

APPEARAND HEIR. In Scotch law. An apparent heir. See *Apparent heir.*

APPEAUX, *Apeaus.* L. Fr. Appeals. *Kelham.* See *Appel.*

APPEL. L. Fr. [L. Lat. *appellum.*] In old English law. An appeal. *Britt.* c. 22. See *Appeal.*

In old French law. A challenge. *Esprit des Lois*, liv. 28, c. 27.

APPEL, *Appele, Appelle.* L. Fr. [from *appeller*, q. v.] Called. *Britt.* c. 71.

Appealed; accused. *Stat. Westm.* 1, c. 14. *Appelles de la force. Britt.* c. 23.

APPELLANS. L. Lat. [from *appellare*, q. v.] An appellant; one who appeals or prosecutes an appeal; an accuser or challenger. *Bract.* fol. 137, 138.

APPELLANT. In practice. One who appeals; the party to an action by whom an appeal is made or taken; the opposite party being usually termed the *respondent*, and sometimes the *appellee. Cowell. Tomlins.*

APPELLARE. Lat. In the civil law. To appeal from the sentence or decision of an inferior judge or court, to a superior, (*ab inferioris judicis sententia ad superiorem provocare.*) *Calv. Lex.* Literally, to call out, to call to, to call upon, [i. e. for relief;] which is the sense of the Latin equivalent *provocare*, and the Gr. ἐκκαλεῖσθαι. Appellare *adversus sententiam;* to appeal against a sentence. *Dig.* 48. 3. 18. *De sententia judicis* appellare. *Cod.* 7. 16. 4. Story, J. 1 *Gallison's R.* 13. See *Appello, Appellatio.*

APPELLARE. L. Lat. In old practice. To appeal or accuse. *A.* appellat *B. de morte C. fratris sui;* A. appeals B. of the death of C. his brother. *Bract.* fol. 138. *Appellare de facto;* to appeal one of fact, that is, as principal. *Id. ibid. Appellare de fortia;* to appeal of force, that is, as an accessory. *Id. ibid.*

APPELLATE. In practice. Pertaining to appeals; having cognizance of appeals. See *Appellate court, Appellate jurisdiction.*

APPELLATE COURT. A court of appeal; a court having cognizance of appeals, or to which appeals are taken.

APPELLATE JURISDICTION. Jurisdiction by way of appeal; cognizance of appeals. *Const. U. S.* Art. 3, sec. 2. 1 *Kent's Com.* 316. The power of one tribunal to review the proceedings of another, either as to the law or fact, or both. *Federalist*, No. 81. An appellate jurisdiction necessarily implies that the subject-matter has been already instituted in, and acted upon by some other court, whose judgment or proceedings are to be revised. *Story on the Constitution*, § 1761. *Id.* (Abr.) § 916.

APPELLATIO. Lat. [from *appellare*, q. v.] In the civil law. An appeal from an inferior to a superior court or tribunal. *Dig.* 49. 1. *de appellationibus. Cod.* 7. 62. *Nov.* 23. The removal of a cause from the sentence of an inferior to a superior judge. Story, J. 1 *Gallison's R.* 13.

APPELLATIO. Lat. [from *appellare*, to call, to name.] An appellation; that by which a thing is called; a name or term. *Appellatione fundi, omne ædificium et omnis ager contineter;* under the appellation "*fundus*" are included every building and every kind of land. 4 *Co.* 87. A quotation from *Dig.* 50. 16. 211.

APPELLATOR. Lat. [from *appellare*, to appeal.] In the civil law. An appealor or appellant; a party appealing. *Dig.* 49. 13.

APPELLATOR. L. Lat. [from *appellare*, (q. v.); L. Fr. *appellour*.] In old practice. An appealer, or accuser. *Bract.* fol. 141 b. *Stat. Westm.* 2, c. 12.

APPELLATUS. L. Lat. [from *appellare*, (q. v.); L. Fr. *appelle*.] In old practice. An appellee; one who is appealed, or against whom an appeal is made; the party accused by an appeal. *Glanv.* lib. 7, c. 9. *Bract.* fol. 138, 139. *Stat. Westm.* 2, c. 12. *Spelman*, voc. *Appellum*.

In the civil law, the term was applied to the judge *ad quem*, or to whom an appeal was taken. *Calv. Lex.*

APPELLE. L. Fr. In old practice. The party accused by the process of appeal. *Britt.* c. 23. See *Appeal*.

APPELLEE. [L. Fr. *appelle*, q. v.] In practice. The party against whom an appeal is made. More commonly termed the *respondent*; the party answering to, or opposing an appeal. See *Respondent*.

APPELLER, *Appeler*. L. Fr. In old practice. To call; to call or summon before a judge; to appeal or accuse. *L. Fr. Dict. John, que cy est*, appele *Peres qui illonques est, de ceo, que, &c.*; John, who is here, appeals Peter who is there, of this, that, &c. *Britt.* c. 22.

APPELLO. Lat. In the civil law. I appeal. The form of making an appeal *apud acta*. *Dig.* 49. 1. 2.

APPELLOR. In old English law. A criminal who accuses his accomplices. *Blount.* See *Approver*.

APPELLOUR. L. Fr. In old practice. The party who brought an appeal; the plaintiff in an appeal. *Britt.* c. 22.

APPELLUM. L. Lat. [from L. Fr. *appel*, q. v.] In old practice. An appeal. *Magna Charta*, 9 Hen. III. c. 34. *Spelman. Fiat* appellum *per verba* appellum *facientia*; the appeal must be made by words of appeal. *Bract.* fol. 140. See *Appeal*.

APPENDANT. L. Fr. and Eng. [from Fr. *appender*, to hang to; to belong or be annexed to; Lat. *appendens, adjunctum, accessorium*.] In the law of estates. Annexed or appended to, as a right of common to a freehold, or one inheritance to another that is superior or more worthy. *Co. Litt.* 121 b. 2 *Bl. Com.* 33. 3 *Kent's Com.* 404. This word is sometimes confounded with *appurtenant*, (*pertinens*, q. v.) 2 *Steph. Com.* 5. *Termes de la Ley.* The distinction between them is, that a thing *appendant* must always be by prescription, but a thing *appurtenant* may be created at this day. *Co. Litt.* 121 b. (But see *Id.* 122 a.) 1 *Crabb's Real Prop.* 126, § 116. 3 *Kent's Com.* 404.

APPENDER. L. Fr. To hang to; to be annexed to; to belong to. *Append*; hanging; pending. *Kelham. Appenses*; hung, affixed. *Id.*

APPENDITIA. L. Lat. [from *appendere*, to hang to.] In old conveyancing. Appendages; appurtenances; the appendages or appurtenances to an estate, &c. *Kennett's Par. Ant.* 110. *Cowell.*

APPENNAGIUM. L. Lat. [from *appendere*, to belong to.] In French law. An appenage or appendage; the portion of a younger son, (*quasi* appendagium *junioris filii*.) *Spelman.* See *Apanage*.

APPENSER. L. Fr. To think; to consider. *Kelham.*

APPENSURA. L. Lat. [from *appendere*, to weigh out.] In old law. Payment of money at the scale, or by weight. *Cowell.*

APPENT, *Apent, Appente, Appient*. L. Fr. [from *appender*, to belong to.] Belongs; it belongs. *Appent al visconte receyver plegges*; it belongs to the sheriff to take pledges. *Britt.* c. 45. *Que* appent *a son office*; which belongs to his office. *Stat. Westm.* 1, c. 24.

APPERANCE. L. Fr. Appearance. *Yearb.* M. 8 Hen. VI. 16.

APPERAND. O. Sc. Appearing; apparent. 1 *Pitc. Crim. Trials*, part 1, p. 94.

APPERT. L. Fr. Openly; in public. *Kelham.*

APPERTAINING. [Lat. *pertinens*.] Belonging to; appurtenant. *Vaugh.* 109. See *Appurtenant*.

Usually occupied with, or lying to; as land with, or to a messuage. *Plowd.* 170, 171.

APPERTINANCES. An old form of *appurtenances*, (q. v.) *Cowell.*

APPESER. L. Fr. To agree. *Kelham.*

APPLICARE. Lat. [from *ad*, to, and *plicare*, to fold.] In old English law. To fasten to; to moor (a vessel). Anciently rendered, "to apply." *Hale de Jure Maris*, pars 2, (de port. maris,) c. 3. *Applicare et exonerare*; to moor and unload. M. 3 & 4 *Edw.* I. cor. Rege, rot 16, Devon. cited *ibid. Portus maris in quibus* applicant *se naves vel batelli*; sea-ports, where vessels moor. *Fleta*, lib. 2, c. 41, § 9.

This sense of the word seems to be de-

rived from the civil law. In the passage, *navem ad eas* [*ripas*] *appellere*, some copies have *applicare*. *Dig.* 1. 8. 5.

APPLICATIO. Lat. [from *applicare*, q. v.] In old English law. A fastening to; a mooring. *Applicatio navium. Hale de Jur. Mar.* pars 2, c. 4.

APPLICATIO. Lat. Application. **Applicatio est vita regulæ.** Application is the life of a rule. 2 *Bulstr.* 79.

APPLICATION. [from Lat. *applicatio*, from *applicare*, q. v.] A putting to; a placing near or before; the putting of a request to or before the person of whom it is made; the act of making a request; a request in writing.

A putting to; a bringing together, in order to ascertain some relation or establish some connexion; as the *application* of a rule or principle to a case or fact.

A putting to some use; as the *application* of money to a particular purpose; disposition; appropriation. 7 *Johns. Ch.* 150.

APPLUMBATURA, *Aplumbatura*. Lat. In old English law. A soldering to, or together. *Bract.* fol. 9 b. *Fleta*, lib. 3, c. 2, § 12. In the Digests, the word used is *plumbatura*. *Dig.* 6. 1. 23. 5.

APPODIARE. L. Lat. In old records. To lean upon; (*incumbere, inclinare, inniti in rem aliquam.*) *Spelman.*

APPOINT. [L. Fr. *appoincter;* L. Lat. *appunctuare.*] In equity, and conveyancing. To direct, designate, or limit; to make or direct a new disposition of an estate already conveyed, by virtue of a power contained in such conveyance.* A term particularly applied to conveyances to uses, and signifying to create, raise or direct a use; to limit a new use; to substitute a new use in place of a former one; to declare the use upon an estate already legally created to serve it. 1 *Steph. Com.* 505, *et seq.* 4 *Kent's Com.* 330. 2 *Crabb's Real Prop.* 725, § 2027. See *Appointment, Use.*

APPOINTMENT. In equity, and conveyancing. A deed or instrument executed in pursuance of a power contained in some preceding deed, (called a power of appointment;) and which operates as a conveyance, by limiting a use, or by substituting a new use in place of a former one.* 1 *Steph. Com.* 506. 2 *Crabb's Real Prop.* 725, §§ 2027, 2028. 4 *Kent's Com.* 316. See *Power of appointment.*

An appointment may be made by deed or will, or simply by writing, where the mode of executing the power is not defined. 3 *Kent's Com.* 330. 1 *Powell on Devises*, 65—71. It is not considered as an independent conveyance, but merely ancillary to the former deed; and the party in whose favor it is made, called the *appointee*, is considered, for most purposes, as deriving his title under the original conveyance, and to be in the same position as if that instrument had actually contained a limitation in his favor, to the extent of the estate appointed. 1 *Steph. Com.* 506, 507. See *Power.*

APPOINTOR. The person who appoints, or executes a power of appointment; as *appointee* is the person to whom, or in whose favor an appointment is made. 1 *Steph. Com.* 506, 507. 4 *Kent's Com.* 316. 2 *Crabb's Real Prop.* 725, § 2028, *et seq.*

APPO'IT'. A contraction of *appositus*. 1 *Instr. Cler.* 9.

APPONERE. L. Lat. [from *ad*, to, and *ponere*, to put.] In old practice. To put, or set to. *Justitiarii* apponant *sigilla sua;* the justices shall affix their seals. *Stat. Westm.* 2, c. 31.

To put in, or set up. *Appono clameum meum;* I set up my claim. The form of words anciently used in making a claim on a fine of lands. *Bract.* fol. 436. *Fleta*, lib. 6, c. 53. 1 *Reeves' Hist. Eng. Law*, 477, 478.

To appoint. *Bract.* fol. 316.

To put, simply. *Apponas loco eorum;* you put in their place. *Reg. Jud.* 75. *Cro. Jac.* 162.

To lay out, or expend. *Reg. Jud.* Appendix, 27.

APPORT. L. Fr. In old English law Tax; tallage; tribute; imposition; payment; charge; expenses. *Kelham.*

APPORTIONAMENTUM. L. Lat. In old English law. Apportionment; an apportionment. *Blount.*

APPORTIONARE, *Apporconare*. L. Lat. In old English law. To apportion. *Towns. Pl.* 27. *Apportionatæ;* apportioned, assessed. *Reg. Orig.* 268.

APPORTIONMENT. [L. Lat. *apportionamentum.*] In the law of contracts. A dividing, or making into parts. *Co. Litt.* 147 b. A distribution according to a certain proportion.* The distribution of a claim or charge among persons having different interests or shares, in proportion to their interests or shares in the subject-matter to which it attaches. 1 *Story's Equity*

Jur. § 475 a, note. A term applied to rents, common, and other incorporeal hereditaments. See *infra.*

APPORTIONMENT OF RENT. The dividing of a rent into parts, consequent upon the division of the land out of which it issues, either by grant, devise, descent or recovery; the apportionment being made according to the number and proportion of the parties among whom the land is divided, and according to the value of the land.* *Termes de la Ley. Cowell. Brande.* Thus, where the owner of the reversion sells part of the demised premises, the rent shall be apportioned; the tenant paying part to the original owner, and the residue to the grantee, according to the proportion of their interests in the premises. 3 *Kent's Com.* 469, 470. 1 *Crabb's Real Prop.* 214, § 210. So, in the case of the division of lands by devise or descent. *Id. ibid.* 3 *Kent's Com.* 469, 471. So, where part of the land is recovered by a person having a title paramount to that of the lessor, the rent must be apportioned, and so much of it only shall be payable to the lessor, as corresponds with the value of what is still held by the tenant under him. 2 *Steph. Com.* 29. 1 *Crabb's Real Prop.* 215, § 210. Rent may also be directly apportioned, by granting part of it to one person, and part to another. 3 *Kent's Com.* 469. And it may be apportioned in respect to time. *Id.* 470. 1 *Hilliard's Real Prop.* 244. See 1 *Story's Equity Jur.* § 475, *et seq.* *Stat.* 4 & 5 *Will.* IV. c. 22.

APPORTIONMENT OF COMMON. The division of the right of common, consequent upon the division of the land to which it is incident.* Thus, if a man seised of forty acres of land, to which common of pasture is appurtenant, alienes five acres of it to another, the alience will be entitled to common *pro tanto*, that is, for all his commonable cattle, *levant and couchant* on the five acres. 8 *Co.* 78 b. 4 *Id.* 37. 2 *Steph. Com.* 30. 3 *Kent's Com.* 405. 1 *Crabb's Real Prop.* 300, §§ 333, 334.

APPORTUM. L. Lat. [from Fr. *apport*, (q. v.) or Lat. *apportare*, to carry or bring to.] In old English law. Any thing brought or carried to another, as a profit or emolument; particularly for the support of a religious person, (*quicquid* apportatur *ad sustentationem illius qui ecclesiæ curam habet.*) *Ducange.* A corody or pension. *Cowell. Blount.*

Any thing carried out of a country. *Reg. Orig.* 193 b. The statute *De apportis religiosorum*, 35 Edw. I., prohibited religious houses from transmitting any thing whatever to their superiors beyond sea. *Barringt. Obs. Stat.* 190.

APPOSAL OF SHERIFFS. [from Fr. *apposer*, q. v.] In old practice. The charging of sheriffs with money received upon their account in the exchequer. *Stat.* 22 *& 23 Car.* II. *Cowell.*

APPOSE. In old English law. To interrogate or question. *Bacon's Works*, iii. 115.

APPOSER. L. Fr. To question; to adjust or settle. *Kelham. Britt.* c. 46, fol. 119 b.

APPOSER. In old practice. An officer in the English exchequer, whose business it was to examine the sheriff's estreats with the record, and to *ask* [appose] the sheriff what he could say to every particular sum therein: usually termed the *foreign apposer*, (q. v.) *Termes de la Ley.*

APPOSTILLE. In French law. An addition or annotation made in the margin of any writing. *Merlin, Repert.* See *Apostille.*

APPRAISE. [L. Lat. *appreciare*, from *ad*, to, and *pretium*, price or value.] In practice. To put, fix or set a price or value upon; to fix and state the true value of a thing, and, usually, in writing.

APPRAISEMENT. [L. Lat. *appreciatio*, q. v.] In practice. The putting a value upon; the act or process of fixing and stating the true value of a thing, or of property, by one or more persons appointed for the purpose. A process constantly in use for ascertaining the true value of the property of intestates and insolvent debtors. It is accompanied by an inventory, in which the articles examined are set down in detail, with their respective values affixed. 2 *N. Y. Rev. Stat.* [82].

APPRAISER. A person appointed by competent authority to ascertain and state the true value of property, submitted to his inspection, and who is usually sworn to perform such duty. 2 *N. Y. Rev. Stat.* [82].

APPRECIARE, *Appretiare.* L. Lat. In old English law. To appraise, or estimate. *Reg. Orig.* 152. *Bract.* fol. 73, 74.

APPRECIATIO, *Apprecio.* L. Lat. In old English law. Appraisement; an appraisement. *Bract.* fol. 72, 73. *Reg. Orig.* 150.

APPREHEND. [from Lat. *apprehen-*

dere, to take hold of.] In practice. To take or take hold of; to take a person on criminal process.

APPREHENDERE. Lat. In the civil law. To take hold of; to take or seize a person. *Calv. Lex.*

APPREHENSIO. Lat. [from *apprehendere*, to take hold of.] In the civil and old English law. A taking hold of a person or thing; apprehension; the seizure or capture of a person. *Calv. Lex.*

One of the varieties or subordinate forms of *occupatio*, or the mode of acquiring title to things not belonging to any one, (*nullius in bonis.*) Fleta applies it to the finding of things on the sea-shore. *Fleta*, lib. 3, c. 2, § 5.

APPREHENSION. [Lat. *apprehensio*, from *apprehendere*, to take hold of.] In the civil law. A physical or corporal act, (*corpus*,) on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing, that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, (*animus*,) possession is acquired. 1 *Kaufm. Mackeld. Civ. Law*, 247, 248, §§ 239, 240.

In practice. The taking of a person on criminal process. See *Apprehend.*

APPRENTICE. [L. Lat. *apprenticius*; L. Fr. *apprentise*; Fr. *apprenti*, from *apprendre*, Lat. *apprehendere*, to take, to learn.] One who learns; a learner. A species of servant, usually an infant, bound by indenture to serve another for a term of years, receiving in return for his services, *instruction* in his master's trade, art or occupation.* 1 *Bl. Com.* 426. 2 *Kent's Com.* 261. *United States Digest*, Apprentice. The word *apprentice* is said to have been first used in this sense in a charter of 12 Edward III. *Cowell.* But see *id. ibid.* 3 *Reeves' Hist. Eng. Law*, 223, 170.

By a provision of the statute 5 Eliz. c. 4, which remained in force until a recent period, it was, in general, required that every person exercising a trade in England should have previously served as apprentice to it for seven years; but by statute 54 Geo. III. c. 96, that provision was abolished, with a saving of the customs and by-laws of London, and other corporations; and by the municipal act, 5 & 6 Will. IV. c. 76, s. 14, all such restrictions established by custom or by law, in any of the boroughs to which that statute extends, are also done away. 2 *Steph. Com.* 271, 272.

APPRENTICESHIP. [L. Fr. *apprentissage.*] The state or condition of an apprentice.

The relation of one person to another, as an apprentice.

A contract by which a person is bound to serve another in his trade, art or occupation, on condition of being instructed in it; and which is evidenced by an instrument called an *indenture* or indentures. See *Indenture.*

The term for which an apprentice is bound to serve.

APPRENTICE OF (or IN) LAW. [L. Fr. *apprentise en la ley*; L. Lat. *apprenticius legis*, or *ad legem.*] A title formerly given, in England, to counsellors at law of a certain degree, corresponding with the modern *barrister. Un* apprentice *de la ley. Bendl.* pl. 9. "An apprentice of the Inner Temple." 3 *Leon.* 237. See *Apprenticius ad legem.*

APPRENTICIUS, *Apprentitius.* L. Lat. [from Fr. *apprendre*, to learn.] In old records. An apprentice. *Kennett's Par. Ant.* 449. *Cowell.* See *Apprentice.*

An apprentice at law. *In curia regis sunt servientes, narratores, attornati et* apprenticii; in the king's court, there are serjeants, countors, attorneys and apprentices. *Fleta*, lib. 2, c. 37.

APPRENTICIUS AD LEGEM. L. Lat. [L. Fr. *apprentise en la ley.*] In old English practice. An apprentice or student at law; a learner in the law; sometimes called *apprenticius legis*, (an apprentice or learner of the law), and *apprenticius ad barras*, (an apprentice at the *bars* or bar of the court); from which has been derived the modern term *barrister.* A title formerly given, in England, to counsellors below the degree of serjeant. *Spelman*, voc. *Apprenticii.* 3 *Bl. Com.* 27. *Fortescue de L. L. Ang.* c. 50. *Selden's notes, ibid.* 3. *Plowd.* 102 a, *et passim.* In the Year Book, P. 3 Hen. VI. 5, it is said of a cause in the King's Bench, *il fuit b'n debat' p' les serj'ats & les* apprentic' al' barr', (it was well argued by the serjeants and the apprentices at the bar.) So, Plowden says of a cause reported by him: "It was argued this term by many *apprentices*, and by all the serjeants at the bar."

Plowd. 102 a. Barristers are styled in the old books *apprenticii ad legem*, (apprentices at law,) from their being considered as merely *learners*, and not qualified to execute the full office of an advocate till they were of sixteen years' standing, at which time they might be called to the degree of serjeant. 3 *Bl. Com.* 27.

*** The term *apprentice* appears to have been first used in the *law;* at least, the word does not occur in application to mechanic arts before the reign of Henry IV. (but see *Yearb.* T. 8 Edw. III. 26,) while *apprentices in law* are mentioned in an ordinance in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 284, 285. *Crabb's Hist. Eng. Law*, 191, 432, (Am. ed.) *Spelman*, voc. *Apprenticii.* The name of *apprentice in law* was given indiscriminately to all students, but those of the inns of court were distinguished by the epithet *nobiliores*, or *apprenticii ad barras*, because they were admitted to plead at the bars of all the courts, except the court of Common Pleas. *Crabb's Hist. Eng. Law*, 431. *Spelman. Fortescue, ubi sup.* Plowden and Finch both style themselves in their works, *apprentices of law.* After the word came to be applied to learners of the mechanic arts, it fell into disuse in law, and the term *barrister* took its place. *Crabb's Hist. ub. sup.* It is used, however, in the reports, as late as the eleventh year of Charles I. Wilkinson *v.* Merryland, *Cro. Car.* 449. Mr. Barrington is inclined to think that *apprentice* was a corruption of *appris*, or *appris en ley*, (learned in the law, an epithet by which a counsellor is still described in records.) *Barringt. Obs. Stat.* 311, 345, note [*i*]. Probably both terms were employed as designating the degrees of knowledge which the student successively attained, from *apprenti*, (a learner,) becoming *appris*, (learned); but *apprentice* was certainly the established professional title. Formerly the suitor, who was the *client* of the *serjeant*, was called the *master* of the *apprentice* of the court whom he employed, whether that apprentice was acting as his attorney, or as his counsel in courts in which serjeants did not usually attend. 6 *Man. & Gr.* 835, note, citing *Serviens ad legem*, 11, 45, 188. 3 *Reeves' Hist. Eng. Law*, 233. See *Attorney, Dominus, Master.*

APPRENTISE. L. Fr. Apprentice. *Kelham.*

APPRENTISSAGE. L. Fr. Apprenticeship or novitiate, (*tirocinium.*) *Spelman. Cowell.* The state of an apprentice, or the term for which he is bound.* *Apprentisage* is used by old English writers. *Richardson's Dict.*

APPRENTIZ. L. Fr. Apprentice. *Un* apprentiz *de la court le roy, et attourne;* an apprentice of the king's court and an attorney. *Kelham.*

APPRESTER. L. Fr. To prepare. *Apprest;* prepared, ready. *L. Fr. Dict.*

APPRESTES. L. Fr. Payments; loans. *Kelham.*

APPRIMES. L. Fr. First. *Kelham.*

APPRIS, *Apprise.* (pl. *Apprises.*) L. Fr. [from *apprendre*, to learn.] In old English law. Learned or skilled. *Apprises en la ley;* learned in the law. *Litt. epilogus. Les lays gents que ne sont* apprises *en la ley;* the common people who are not learned in the law. *Litt.* sect. 331. See *Apris.*

APPRISING. In old Scotch law. A diligence or process for attaching a debtor's land and conveying it to the creditor, in payment of his debt. In lieu of this, the process of *adjudication* was introduced. *Bell's Dict.*

APPROACH, *Right of.* In international law. A term applied to the *right of visit* or visitation of vessels at sea, for the purpose of ascertaining their national character. 11 *Wheaton's R.* 1, 43. 1 *Kent's Com.* 153, note. See *Visit, Visitation.*

APPROBARE. L. Lat. In old English law. To approve. *Towns. Pl.* 52. See *Approve.*

APPROBATE AND REPROBATE. In Scotch law. To approve and reject; to take advantage of one part, and reject the rest. *Bell's Dict.* Equity suffers no person to *approbate and reprobate* the same deed. 1 *Kames' Equity*, 317.

APPROBATOR. L. Lat. [from *approbare*, q. v.] In old English law. An approver. *Towns. Pl.* 52. See *Approver, Probator.*

APPROCHER, *Aprocher.* L. Fr. To come to; to come at; to approach. *Kelham.*

APPROPER. L. Fr. To appropriate. *Kelham.*

APPROPERMENT. L. Fr. Properly. *Kelham.*

Appropriation. *Id.*

APPROPRIARE. L. Lat. [from *ad*, to, and *proprius*, one's own.] In old English

law. To take to one's own separate use; to appropriate; to approve. *Appropriare et includere* [*communiam*]; to approve, or separate and enclose a common; to discommon it. *Bract.* fol. 228. *Kennett's Par. Ant.* 336.

APPROPRIATION. In English ecclesiastical law. The perpetual annexing of a benefice to some spiritual corporation, either sole or aggregate, being the patron of the living. 1 *Bl. Com.* 384. 3 *Steph. Com.* 70—75. 1 *Crabb's Real Prop.* 144, § 129. *Termes de la Ley. Cowell.* Where the annexation is to the use of a lay person, it is usually called an *impropriation.* 1 *Crabb's Real Prop.* 145, § 130.

APPROPRIATION. In contracts. The application of a sum of money paid by a debtor to his creditor, to one or more of several debts due from the former to the latter. This may be made by the debtor himself; or, in case of his neglect, by the creditor; or, where neither has made it, by the law. See Stone *v.* Seymour, 15 *Wendell's R.* 19, for a full view of the doctrine. And see 4 *Mason's R.* 333. 5 *Id.* 11, 82. 20 *Pick. R.* 446.

APPROVE. [L. Lat. *appropriare, appruare;* L. Fr. *approver, apprower, appruer.*] In old English law. To take to one's own separate use, (*ad proprium*); as by enclosing land that was before common or waste. To enclose for the purpose of cultivation.* See *infra.*

To cultivate land after enclosing it.* To make the best benefit or profit of it, by increasing the rent. *Cowell.* In modern phrase, to *improve* land.

To *approve common* or waste land, is to enclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. *Stat. Merton,* c. 4. *Stat. Westm.* 2, c. 46. 2 *Bl. Com.* 34. 3 *Id.* 240. 2 *Steph. Com.* 7. 3 *Kent's Com.* 406. See *Appropriare, Approvement.*

APPROVE. [L. Lat. *approbare.*] In old criminal law. To accuse or prove; to accuse an accomplice by giving evidence against him. See *Approvement.*

"APPROVED AND ENDORSED NOTE." See 20 *Wendell's R.* 431.

APPROVEMENT. [L. Lat. *approveamentum, appruamentum.*] In English law. Enclosure; the enclosing part of a common or waste ground, leaving sufficient common with egress and regress for the commoners. 2 *Bl. Com.* 34. 3 *Id.* 240. 1 *Crabb's Real Prop.* 291, § 319. *Id.* 306, § 342. *Cowell.*

Enclosure for the purpose of cultivation; cultivation or improvement. *Id.*

In old law. The profits of land. *Crompt. Jur.* 152.

APPROVEMENT. In English criminal law. A species of confession, which was when a person indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed* or accused others his accomplices in the same crime, in order to obtain his pardon. In such case he was called an *approver*, or *prover*, (*probator*,) and the party appealed or accused, the *appellee.* 4 *Bl. Com.* 330. It was a species of appeal, and triable in some cases by battel. *Id. ibid. Cowell*, voc. *Approver.* See a description of the practice by Lord Mansfield, *Cowp.* 335. And see *Barringt. Obs. Stat.* 180.

With the discontinuance of appeals in England, this practice has become obsolete; the present practice being to permit the criminal who confesses his guilt to give evidence against his associates, thus making him what is called *queen's evidence*, and in the United States, *state's evidence.** 4 *Bl. Com.* 331. 4 *Steph. Com.* 398, 399. See *Approver.*

APPROVEAMENTUM. L. Lat. In old English law. An approvement, or improvement. *Cowell*, voc. *Approvement.*

APPROVER. [L. Lat. *approbator, probator.*] In English criminal law. A person, who being indicted of treason or felony, upon his arraignment, before plea pleaded, and with a view of obtaining a pardon, confessed the crime charged in the indictment, and was thereupon admitted by the court to reveal on oath the accomplices of his guilt.* 4 *Bl. Com.* 330. The accusation made in such cases, together with the particulars of the disclosure, was called an *appeal*, and the parties accused, the *appellees. Id. ibid. Bract.* fol. 152. Lord Mansfield, *Cowp.* 335. *Barringt. Obs. Stat.* 180. See *Approvement, Appeal, Probator.*

APPROVER. [L. Lat. *appruator.*] In old English law. The bailiff of a lord in his franchise. *Stat.* 9 *Hen.* VI. c. 10. *Cowell.* The *king's approvers* were those that had the letting of the king's demesnes in small manors, to his best advantage. *Stat.* 51 *Hen.* III. st. 5. Sheriffs were sometimes called the king's approvers. *Stat.* 1 *Edw.* III. c. 8. *Cowell. Blount.*

The word was sometimes written *emprover*. *Blount.*

APPROVER. [L. Lat. *appruamentum.*] In English law. Approvement; improvement. "There can be no *approver* in derogation of a right of common of turbary." 1 *Taunt.* 435.

APPROVER. L. Fr. To approve or prove; to vouch. *Kelham.*

To appropriate. *Id.*

To improve. *Id.*

APPRUAMENTUM. L. Lat. [from *appruare*, q. v.] In old English law. Approvement; an approvement, or improvement. *Cowell. Salvis eidem R.* appruamentis *suis;* saving to the said R. his approvements. *Reg. Jud.* 8.

APPRUARE. L. Lat. [L. Fr. *approuer, apprower.*] In old English law. To approve or improve [land.] *Stat. Westm.* 2, c. 46. *Commodum suum facere et* appruare; to make his own profit and to approve. *Fleta*, lib. 4, c. 20, § 5. *Id.* lib. 2, c. 72, § 13. *Appruari;* to be approved. *Compastari, de ovili faldari,* appruari, *et emendari. Id.* lib. 2, c. 73, § 5.

To benefit, or obtain a benefit, by approvement. *Quantum dominus se* appruare *possit in eisdem boscis. Id.* c. 71, § 6.

APPRUATOR. L. Lat. [from *appruare*, q. v.] In old English law. An approver [of lands.] *Tanquam* appruator *et cultor optimus;* as the best approver and cultivator. *Fleta*, lib. 2, c. 76. *Pro discreto* appruatore *cognitus. Id.* c. 73.

APPULSUS. Lat. [from *appellere*, to drive to.] In the civil law. A driving to, as of cattle to water. *Dig.* 8. 3. 1. 1.

APPUNCTUARE. L. Lat. In old English law. To appoint. *Nominandi et* appunctuandi; of nominating and appointing. *Bunb.* 215.

APPURTENANCES, [anciently written *appertinances;* from L. Fr. *apurtenaunces*, (q. v.) L. Lat. *appertinentia, pertinentiæ.*] Things belonging, appertaining or appurtenant to another thing as principal, (as a right of way, or other easement, to land; a right of common to a pasture; outhouses, barns and orchards to a house or messuage); and which pass as incident to the principal thing; in Scotch law, *pertinents.** The singular *appurtenance* is sometimes used. "An appurtenance is something annexed to another thing more worthy." Story, J. 1 *Sumner's R.* 492, 495.

Where a conveyance is made of a house "with the *appurtenances,*" the garden, curtilage and close adjoining to the house, and on which the house is built, will pass with it, as being included in the word *appurtenances;* but no other land will pass, although usually occupied with the house.* 2 *Saund.* 401, note (2). 1 *Steph. Com.* 449. 2 *Chitty's Bl. Com.* 17, note (3). *Hargr. Co. Litt.* note 21, lib. 1. As to a right of way passing by this word, see 4 *Ad. & Ell.* 749. 5 *B. & Ad.* 791. So, in the lease of a house, nothing will pass under the name of *appurtenances*, which has not been reputed or accepted as a parcel thereof. 2 *Crabb's Real Prop.* 246, 247, § 1299. As to water-rights and secondary easements, see *Angell on Water-Courses*, chap. 5, § 158 *et seq.* In a devise, the word *appurtenances* is construed to mean whatever is necessary to the commodious enjoyment of a thing; and by a devise of a messuage, without the words "with the *appurtenances,*" the garden and curtilage will pass, and, where the intent is apparent, even other adjacent property. 2 *Powell on Devises*, 190. 2 *Saund.* 401, note (2). 1 *B. & C.* 350. 2 *Chitty's Bl. Com.* 17, note (3). *Id.* 19, note (7). See *Appurtenant.*

A ship's boat (Lat. *scapha,*) is not considered as an appurtenance of the ship, and will not pass with the ship under the word *appurtenances. Dig.* 21. 2. 44. *Id.* 33. 7. 29. *Roccus de Navibus et Naulo*, not. 20. *Abbott on Shipping*, 5. 17 *Mass.* 405.

APPURTENANT. [L. Lat. *pertinens.*] Belonging to; accessory or incident to. This word answers to the *accessorium* of the civil law. 2 *Steph. Com.* 30, note. Land is not properly appurtenant to a house, but it may pass by such words in a deed by reputation, in common parlance, and by the intent of the parties. 2 *Crabb's Real Prop.* 247, § 1299. *Cro. El.* 918. 3 *Salk.* 40. 2 *Saund.* 401 a. 2 *Chitty's Bl. Com.* 19, note (7). Nor can land, strictly speaking, be appurtenant to land. But a thing, to be *appurtenant* to another, must be of a different and congruous nature, such as an easement or servitude, or some collateral incident belonging to, and for the benefit of the land. Story, J. 1 *Sumner's R.* 21, 37. *Plowd.* 170. *Co. Litt.* 121 b. Thompson, J. 10 *Peters' R.* 25, 54. 1 *Hilliard's Real Prop.* 340.

APRES, *Apree.* L. Fr. After; afterwards. *L. Fr. Dict. En apres;* hereaf-

ter, moreover. *Id. Cy apres;* thereafter. *Id.*

Next; nearest to. *Kelham.*

APRIS. L. Fr. Learned. *J'ay* apris *pur ley et pur un principle et maxime en nostre ley, que,* &c.: I have learned for [as] law, and for [as] a principle and maxim in our law, that, &c. *Yearb.* M. 2 Hen. VI. 1. Apris *de la leie;* learned or versed in the law. *Kelham.*

APUD. Lat. In the civil law. With. *Dig.* 50. 16. 63. See *Penes.*

Before. *Dig.* 45. 1. 122. 5.

In. *Dig.* 16. 3. 5. 2.

To. *Dig.* 35. 2. 10. *Id.* 10. 2. 43.

Among. *Apud acta;* among the acts. See *Apud acta.*

In old English law. At. *Apud turrim;* at the Tower. *Bract.* fol. 360 b. *Apud London, videlicet, in parochia beatæ Mariæ de arcubus, in warda de Cheap;* at London, to wit, in the parish of St. Mary-le-bow, in the ward of Cheap. *Towns. Pl.* 166. 2 *Ld. Raym.* 1043. The old form of laying a venue in London.

APUD ACTA. Lat. In the civil law. Among the acts or recorded proceedings; in the course of a judicial procedure; in the presence of a judge. *Dig.* 2. 4. 17. *Id.* 50. 2. 7. 3. *Cod.* 2. 14. 28. *Id.* 7. 57. 4–7. *Id.* 7. 61. 1. *Id.* 9. 4. 2. If a party desired to appeal *apud acta,* that is, in the presence of the judge, at the time of the sentence, or in the course of recording it, he might do so by simply saying, *Appello;* (I appeal.) *Dig.* 49. 1. 2. 2 *Brown's Civ. Law,* 436.

This term has been retained in the modern civil law, and in Scotch and admiralty law. It is sometimes Englished, "in the book of acts," "among the acts of the court." *Clerke's Prax. Cur. Adm.* titt. 7, 8.

APUD PARES. L. Lat. By or before the peers. *Feud. Lib.* 2, tit. 16.

APURIL. L. Fr. April. *Kelham.*

APURTENAUNCES. L. Fr. Appurtenances. Used by Britton as another name for incorporeal things, (*choses nent corporeles,*) or rights in land. *Britt.* c. 54.

AQUA. Lat. [L. Fr *ewe, awe, aeue.*] In civil and old English law. Water. *Dig.* 39. 3. *Id.* 43. 20. *Cod.* 3. 34. *Fleta,* lib. 4, c. 28, §§ 4, 5.

A stream of water; a water-course. *Fleta,* lib. 4, c. 28, § 5.

Aqua pluvia; rain water, (*quæ de cælo cadit.*) *Dig.* 39. 3. 1. pr.

Aqua profluens; flowing or running water. *Dig.* 1. 8. 2.

Aqua quotidiana; daily water; water that might be drawn at all times of the year; (*quâ quis quotidie possit uti, si vellet.*) *Dig.* 43. 20. 1. 2, 3, 4.

Aqua æstiva; summer water; water that was used in summer only. *Dig.* 43. 20. 1. 3, 4.

Aqua fontanea; spring water. *Fleta,* lib. 4, c. 27, § 8.

Aqua currens; running water. *Id.* lib. 4, c. 6, § 3.

Aqua dulcis or *frisca;* fresh water. *Reg. Orig.* 97. *Bract.* fol. 117, 135.

Aqua salsa; salt water. *Id. ibid.*

Aqua trestornata; (*ewe tresturne;*) a stream turned out of its course. *Bract.* fol. 115.

Aqua cedit solo. Water belongs to, or goes with the land [which it covers.] *Co. Litt.* 4 a, b. 2 *Bl. Com.* 18. *Hale de Jure Mar.* pars 1, c. 1.

Aqua currit et debet currere, ut currere solebat. Water runs, and ought to run as it has used to run. 3 *Bulstr.* 339. Story, J. 3 *Sumner's R.* 189, 199. 3 *Kent's Com.* 439. *Angell on Water-Courses,* ch. 4, § 93. A running stream should be left to flow in its natural channel, without alteration or diversion. A fundamental maxim in the law of water-courses. Woodward, J. 26 *Penn. St. R.* 413.

AQUA COOPERTA. L. Lat. Covered with water. 2 *P. Wms.* 128.

AQUÆ. Lat. In old English law. Waters. *Reg. Orig.* 97. Streams. *Stat. Westm.* 2, c. 47. *Aquarum cursus;* water-courses. *Towns. Pl.* 20.

AQUÆDUCTUS, Lat. [from *aqua,* water, and *ductus,* a leading; a duct or pipe.] In the civil law. The right of leading water through another's land, (*jus* aquæ ducendæ *per fundum alienum.*) *Inst.* 2. 3. pr. *Dig.* 8. 3. pr. *Cod.* 11. 42. Or, as Bracton more fully defines it, the right of leading water from another's land, and through another's land to one's own, for the purpose of irrigation, or other convenience; (*jus* aquæ ducendæ *ex fundo alieno et per fundum alienum usque ad fundum proprium, ad irrigandum agrum suum, vel ad aliud commodum faciendum.*) *Bract.* fol. 231 b. A species of rural servitude, the opposite of the *servitus aquæ educendæ,* which was the right of leading off the water from one's own on to another's ground. *Dig.* 8. 3. 29.

AQUÆ HAUSTUS. Lat. [from *aqua*, water, and *haustus*, a drawing.] In the civil law. The right of drawing water from another's spring or well. *Inst.* 2. 3. 2. *Dig.* 8. 3. 1. 1. *Bract.* fol. 231 b. 232.

AQUAGIUM. Lat. [quasi *aquæ agium*, i. e. *aquæ ductus.*] In old records. A duct or passage for water; a canal, ditch or trench for leading off water, especially from marshy grounds. *Spelman. Cowell.*

Aquagangium. The passage or flow of water, (Sax. *watergang*); a trench or drain to carry off water. The same nearly as *aquagium*. *Cowell*, voc. *Watergang.*

Aquagaugium. A water-gage. A mark placed on the banks of streams to show when the water rose to a certain point. *Spelman.*

AQUATIC RIGHTS. Rights to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers. *Schultes' Aquatic Rights*, per tot. 3 *Kent's Com.* 419, 427. See *Fishery*, *Alluvion*, *Avulsion*, *Dereliction*, *Filum aquæ*, *Riparian rights.*

AR'. A contraction or abbreviation of *Armiger*, (esquire.) 1 *Instr. Cler.* 9.

ARA ETÉ. L. Fr. Shall have been. *Kelham.*

ARABANT. Lat. In old English law. They ploughed. *Arabant et herciabant ad curiam domini*; they ploughed and harrowed at the lord's court. A phrase of frequent occurrence in Domesday Book, signifying that the vassals to whom it was applied, were bound to plough and harrow the lands of the lord within his court, that is, within his manor. *Spelman.* See *Court.*

ARACE. L. Fr. To erase; to deface. *L. Fr. Dict. Kelham.*

ARACHER, *Aracer.* L. Fr. To root up; to grub or pull up by the roots. *Kelham.*

ARACINE. L. Fr. Rooted; taken root. *Arbres aracines. Britt.* c. 33.

ARAER, *Arair.* L. Fr. To prepare; to array; to settle. *Kelham.*

ARAGE. In old Scotch law. An old form of the word *average*, (q. v.) *Skene de Verb. Signif.*

ARAGE. L. Fr. Mad; insane. *Arages*; madmen. *Kelham.* See *Arrage.*

ARAHUM. L. Lat. [from Sax. *ar*, *are*, honor, reverence.] In old European law. A consecrated place. *L. Ripuar.* tit. 32, § 3. *Spelman.*

ARALIA. L. Lat. [from *arare*, to plough.] In old English law. Arable grounds; lands devoted to tillage, (*agri culturæ dati*, *arva.*) *Spelman. Domesday Book*, cited *ibid.* In some dictionaries, this word is incorrectly written *arnalia*, and *aratia.*

ARARE. Lat. [L. Fr. *arer*, *erer.*] To plough; in old English, to *ear* or *are.*

ARATOR. Lat. [from *arare*, q. v.] In old English law. A ploughman; an arable farmer. *Brande.*

ARATRIFABER. L. Lat. [from *aratrum*, a plough, and *faber*, a smith.] A plough-wright. *Towns. Pl.* 237.

ARATRUM TERRÆ. L. Lat. In old English law. A plough of land; a plough land; as much land as could be tilled with one plough. *Whishaw. Bell's Dict.* See *Carucate.*

ARATURA TERRÆ. L. Lat. In old English law. The ploughing of land; the service which the tenant was to do for his lord in ploughing his land. *Whishaw.*

ARATURIA. L. Lat. [from *arare*, q. v.] In old English law. Land used for ploughing; arable land, (*campus arabilis.*) *Spelman.*

ARAYER, *Araer*, *Arair.* L. Fr. To array; to prepare; to settle. *Kelham.*

ARBITER. Lat. In the Roman law. A judge invested with a discretionary power. A person appointed by the prætor, to examine and decide that class of causes or actions termed *bonæ fidei*, and who had the power of judging according to the principle of equity, (*ex æquo et bono*); distinguished from the *judex*, (q. v.) who was bound to decide according to strict law. *Inst.* 4. 6. 1. *Cooper's Notes*, *in loc. Brissonius. Cowell.*

A person to whom contending parties submitted the decision of their dispute, without the interference of a magistrate; answering to the modern term *arbitrator.* The *arbitri* were appointed by an agreement called *compromissum*, and were hence termed *arbitri compromissarii*, or *arbitri ex compromisso. Dig.* 4. 8. *Cod.* 2. 56. *Cooper's Inst. ub. sup. Brissonius.*

In Scotch law. An arbitrator. *Bell's Dict.*

ARBITRAMENT, *Arbitrement.* [L. Lat. *arbitramentum*, *arbitrium.*] The award, determination or decision of arbitrators upon the matter of dispute which has been submitted to them.* *Cowell. Termes de la Ley.* See *Award.*

ARBITRATION. [Lat. *arbitratio*, *arbi-*

tratus.] The investigation, before an unofficial person, of the matter in difference between contending parties, pursuant to an agreement, (usually in writing,) termed a *submission.** *Brande.* The adjudication upon a matter in controversy, by private individuals, selected and appointed by the parties. *P. Cyclopedia.* 3 *Bl. Com.* 16. 3 *Steph. Com.* 374. *Billings on Awards*, 3.

ARBITRATOR. Lat. and Eng. [Lat. *arbiter compromissarius.*] A disinterested person, to whose judgment or decision matters in dispute are submitted by consent of parties. 3 *Bl. Com.* 16. *Reg. Orig.* 111.

An arbitrator is a judge of all matters of law and fact included in the case submitted to him; and being a judge chosen by the parties themselves, his decision generally is absolutely final. *Billings on Awards*, 55—65. *Russell's Arbitrator*, 112. It is the usual practice for each party to appoint an arbitrator, with a stipulation that if the arbitrators do not agree, another person shall be called in as *umpire*, to whose sole judgment it is then referred. 3 *Bl. Com.* 16. See *Umpire.*

ARBITRATUS. L. Lat. In old English law. Awarded. *Idem arbitratores* arbitrati *fuissent et adjudicassent;* the said arbitrators awarded and adjudged. *Reg. Orig.* 111.

ARBITRIUM. L. Lat. [from *arbiter*, q. v.] An award; the decision of an arbitrator. *Reg. Orig.* 111. **Arbitrium est judicium.** An award is a judgment. *Jenk. Cent.* 137. Arbitrium *est judicium boni viri, secundum æquum et bonum.* An award is the judgment of a good man, according to equity and virtue. 3 *Bulstr.* 64.

Discretion or judgment used in making a decision. *Lex non exacte definit, sed* arbitrio *boni viri permittit;* the law does not exactly define, but leaves to the discretion of a conscientious man or judge. *Grotius de Æquit.* s. 3. 1 *Bl. Com.* 61.

ARBOR. Lat. In the Roman law. A tree. *Dig.* 43. 27. *Id.* 47. 7. Under this name were included vines, (*vites,*) ivy, (*hederæ,*) reeds, (*arundines.*) *Dig.* 47. 7. 3. *Id.* 43. 27. 1. 3. But not plants that were so tender as to be classed among herbs. *Id.* 47. 17. 4. Nothing could be properly called *arbor*, (a tree) which had not taken root, unless where it had been transplanted. *Id.* 47. 7. 3. 3, 4.

The mast of a ship. *Dig.* 14. 2. 3. 6.

In old English law. A tree; a tree growing, as distinguished from *lignum*, wood, (i. e. dead wood, or wood cut.)

Arbor dum crescit, lignum cum crescere nescit.

[That which is] a tree while it grows [is] wood when it ceases to grow. *Cro. Jac.* 166. *Hob.* 77, in marg. See *Lignum.* But see *Dig.* 47. 7. 3. 5.

ARBOR CIVILIS. Lat. In old English law. A civil tree; a tree of parentage. A figure or table, in the shape of a tree, showing the degrees of relationship between persons, and the course of descents from one to another. *Hale's Hist. Com. Law*, 335. Bracton made use of a "tree" of this kind, as an illustration, and refers to it, (fol. 68 b.) as *ante principium libri picta*, but it is not found in the printed copies of his work. An *arbor civilis* may be found in Lord Coke's first Institute, and in Hale's History of the Common Law.

ARBOR FINALIS. Lat. In old English law. A boundary tree; a tree used for making a boundary line. *Bract.* fol. 167, 207 b. See *Bound tree.*

ARCA. Lat. In the civil law. A chest or coffer; a place for keeping money. *Dig.* 30. 30. 6. *Id.* 32. 64. *Brissonius.*

ARCA CHIROGRAPHICA (or CHIROGRAPHORUM) JUDÆORUM. L. Lat. The charter chest of the Jews. A common chest, with three locks and keys, kept anciently, in England, by certain Christians and Jews specially designated for that purpose, in which all the contracts, mortgages and obligations belonging to the Jews were kept; and this by order of King Richard I. *Blount. Molloy de Jur. Marit.* 465, 466.

ARCANA IMPERII. Lat. Mysteries of government; secrets of state. 1 *Bl. Com.* 337.

ARCARIUS. Lat. [from *arca*, a chest.] In civil and old English law. A treasurer; a keeper of public money. *Cod.* 10. 70. 15. *Spelman.*

ARCEO. L. Lat. In old records. A saddle-bow. *Cowell.*

ARCEWESCHE, *Arceevesque.* L. Fr. Archbishop; an archbishop. *Conf. Chart.* 25 Edw. I. *Kelham.* Corruptions of *archievesque.*

ARCHAIONOMIA, (Gr. ἀρχαιονόμια,) *sive de priscis Anglorum legibus.* The title of a collection of Saxon laws, made by Mr. Lambard in the time of Queen Elizabeth, and to which additions were made

by Dr. Wilkins. 1 *Reeves' Hist. Eng. Law*, 27. Some of these Saxon laws are now considered as spurious. 2 *Hallam's Middle Ages*, 444. 1 *Spence's Chancery*, 18, 19, and note. See *Leges Edwardi Confessoris.*

ARCHBISHOP. [Lat. *archiepiscopus*, Fr. *archievesque.*] In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes.* 1 *Bl. Com.* 380. 3 *Steph. Com.* 62. *Wharton's Lex.* The archbishops in England are also termed *primates* and *metropolitans*, (qq. v.) 1 *Wooddes. Lect.* 181.

ARCHIDEACON. [L. Lat. *archidiaconus, archilevita.*] In English ecclesiastical law. An ecclesiastical officer having jurisdiction immediately subordinate to the bishop, through the whole of his diocese, or in some particular part of it. He is usually appointed by the bishop himself, and has a kind of episcopal authority, originally derived from the bishop, but now independent and distinct from his. 1 *Burn's Eccl. Law*, 68, 69. 1 *Bl. Com.* 383. 3 *Steph. Com.* 69. 4 *Reeves' Hist. Eng. Law*, 5. *Cowell.*

ARCHDEACON'S COURT. In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. 3 *Steph. Com.* 430. Its jurisdiction has, until recently, comprised the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. *Id. ibid.* It is the most inferior court in the whole ecclesiastical polity of England. 3 *Bl. Com.* 64. See *Ecclesiastical courts.*

ARCHES COURT, or COURT OF ARCHES. [L. Lat. *curia de arcubus.*] In English ecclesiastical law. A court of appeal, and also of original jurisdiction, belonging to the archbishop of Canterbury; so called from its having been anciently held in the church of St. Mary-le-bow, (*Beata Maria de arcubus,*) or *Bow* church, (literally the "church of *arches*," so termed from the fashion of its steeple.)* *Reg. Orig.* 54 b. 3 *Bl. Com.* 65. 3 *Steph. Com.* 431. 4 *Reeves' Hist. Eng. Law*, 104. *Cowell.* The judge of this court is called the *Dean of the arches*, and his office is to receive and determine appeals from the sentences of all inferior ecclesiastical courts within the province. 3 *Bl. Com.* 65. Many suits also are brought before him as original judge, the cognizance of which properly belongs to inferior jurisdictions within the province, but in respect of which the inferior judge has waived his jurisdiction under a certain form of proceeding known in the canon law by the denomination of *letters of request.* 3 *Steph. Com.* 431. 2 *Chitt. Gen. Pr.* 496. From the Court of Arches an appeal formerly lay to the Court of Delegates, but it now lies, by statute 2 & 3 Will. IV. c. 92, to the privy council. 3 *Steph. Com. ub. sup.* This court is now held at Doctors' Commons. 2 *Chitt. Gen. Pr.* 499.

ARCHICAPELLANUS. L. Lat. In old European law. A chief or high chancellor, (*summus cancellarius.*) *Spelman.*

ARCHIDIACONUS. L. Lat. In old ecclesiastical law. Archdeacon. *Spelman*, voc. *Archiepiscopus.* Called also *archilevita. Id.*

ARCHIDUX. L. Lat. In old European law. Archduke. *Spelman*, voc. *Archiepiscopus.*

ARCHIEPISCOPUS. Lat. In ecclesiastical law. Archbishop; an archbishop. *Spelman. Archiepiscopus Cantuar.;* archbishop of Canterbury. *Archiepiscopus Ebor.;* archbishop of York. *Towns. Pl.* 148.

ARCHIE'PUS. A contraction of *archiepiscopus.* 1 *Instr. Cler.* 8.

ARCHIOMUM, *Arcomum.* L. Lat. In old records. A stack or mow. *Spelman.*

ARCHIVES. [L. Lat. *archiva, archia,* (Gr. ἀρχεῖα, Nov. 74,) *grammatophylacia, chartophylacia, tabularia, tablina.*] A place or apartment where the public papers or records of a state or community are deposited; a repository of ancient records, charters and evidences, such as the Rolls' office and the Chancery and Exchequer offices in England. *P. Cyclopedia. Cowell.* A repository of records established by public authority. *Poth. Obl.* part 4, ch. 1, art. 2, § 2.

The records or writings so deposited.

A private repository in libraries. *Cowell.* See *Archivum.*

ARCHIVUM, *Archium.* [Gr. ἀρχεῖον.] In the civil law. A place for the public deposit of writings, instruments or records, (*quo in publico instrumenta deponuntur, archio forte, vel grammatophylacio.*) *Dig.* 48. 19. 9. 6. The Gr. singular ἀρχεῖον is used by Justinian, in his 15th Novel, (chap. 5, § 2,) to denote the building in which records are kept, and which is described as some public building in a city,

set apart for the reception of records, under the care of a keeper, where they could be preserved from injury, and yet be accessible to those who would consult them. The plural ἀρχεῖα is used in other places. *Nov.* 74, c. 4, § 2.

ΑΡΧΩΝ, Αρχων. Gr. In the Roman law A ruler; a magistrate. *Dig.* 26. 5. 21. *Nov.* 95.

ARCIBUM, *Arceps.* L. Lat. In old European law. An archive; a repository of writings or records, (*archivum, scrinium.*) *Formul. Vet.* c. 8. *Marculf.* lib. 2, c. 38. *Spelman.*

ARCIFINIUS. Lat. In the civil law. A term applied to land which was comprised within no measurement, (*qui nullâ mensurâ continetur.*) *Jul. Frontin. de agror. qualit.* p. 38. So called, according to Varro, because it had boundaries suited to repel enemies, (*fines arcendis hostibus idoneos.*) *Grotius de Jur. Bell.* lib. 2, c. 3, § 16, subd. 1, 2.

ARCT. L. Fr. [from *arcter*, q. v.] Bound; compelled; forced. *L. Fr. Dict.*

Straightened; confined. *Yearb.* M. 20 Hen. VI. 16.

ARCTA. Lat. In the civil law. Close; confined; contracted; narrow. A term applied to a woman having certain physical defects. *Dig.* 21. 1. 14. 7.

ARCTA ET SALVA CUSTODIA. L. Lat. Close and safe custody. See *In arcta*, &c.

ARCTABLE. L. Fr. Forcible. *L. Fr. Dict.*

ARCTARE. Lat. In old English law. To narrow. *Arctata;* narrowed. *Fleta*, lib. 4, c. 1, § 19.

ARCTER. L. Fr. To bind; to compel or force. *Id.*

ARCUATUS. L. Lat. [from *arcus*, an arch.] Fashioned like an arch; arched. *Towns. Pl.* 188.

ARDER. L. Fr. [from Lat. *ardere.*] To burn. *Mirr.* c. 1, § 8. See *Ardour.*

ARDOUR. L. Fr. [from *arder*, q. v.] In old English law. A burner; an incendiary. *Ardours de mesons;* burners of houses. *Britt.* c. 29. Ardours *sont qui* ardent *cite, ville, maison, beast, ou autres chateux;* burners are those who burn a city, town, house, animal or other chattels. *Mirr.* c. 1, § 8.

AREA. Lat. In the civil law. A vacant space in a city; a place not built upon. *Locus sine ædificio in urbe* area *appellatur.* *Dig.* 50. 16. 211.

The site of a house; a site for building; the space where a house has stood. The ground on which a house is built, and which remains after the house is removed. *Brissonius. Calv. Lex.*

A threshing-floor. *Dig.* 34. 1. 14. 3.

In old English law. A floor. *Area lignea;* a wooden or plank floor. *Dyer*, 108.

A piece or plot of ground. *Spelman.*

AREISTER. L. Fr. To stop or stay. *Et sur ceo la court* areistuit *un piece, pur adviser sur ceo point;* and upon this, the court stayed a while, to advise upon this point. *Yearb.* M. 3 Edw. III. 40.

AREMENAUNT, *Arenaunt.* L. Fr. Forever after. *Britt.* c. 24. *Kelham.*

ARENALES. Span. In Spanish law. Sandy beaches; or grounds on the banks of rivers. *White's Recop.* b. 2, tit. 1, c. 6.

ARENES, *Aresnes, Aresenez.* L. Fr. Arraigned; brought to the bar of the court; put to answer; called in question. *Britt.* c. 4. *Kelham.*

ARENIFODINA. Lat. [hom. *arena*, sand, and *fodire*, to dig.] In the civil law. A sand-pit. *Dig.* 7. 1. 13. 5.

ARENTARE. L. Lat. In old English law. To rent out, or let at a certain rent. *Cowell. Si quis* arentaverit *in curiâ suâ finem pro pulchre placitando;* if any one shall have rented out [the right of taking] in his court a fine for beau pleader. *Fleta*, lib. 4, c. 5, § 17. See *Arrentare.*

ARENTATIO, *Arrentatio.* L. Lat. [from *arentare*, q. v.] In old English law. A renting or rent. *Reg. Orig.* 257 b. See *Arrentatio.*

ARER, *Arrer.* L. Fr. [from Lat. *arare.*] In old English law. To plough. *Arer et semer;* to plough and sow. *Litt.* sect. 119. *Arrer et seymer. Kelham. Arrer les prees;* to plough the meadows. *Britt.* c. 5.

ARERE. L. Fr. [L. Lat. *a retro.*] In old English law. Behind, in arrear. *Riens en arrere*, (q. v.;) nothing in arrear.

Back; again. [L. Lat. *re-, iterum.*] *Les bestes viendrent a luy arere;* the beasts shall come back to him. *Reg. Orig.* 97 b. *Achate arere;* bought back. *Dyer*, 35 b. (Fr. ed.) *Fuit argue arere;* it was argued again. *Freem.* 27.

AREREMAIN. L. Fr. Back again. *Keilw.* 30, pl. 2.

ARERISSEMENT. L. Fr. Hindrance; delay; prejudice. *Kelham.*

ARESTER, *Areiter.* L. Fr. To stop or stay; to arrest. *L. Fr. Dict.* See *Areister.*

ARET. L. Fr. An account. *L. Fr. Dict. Arete;* taken or charged with some crime. *Id.* See *Arret.*

ARETRO. L. Lat. In old English law. Behind; in arrear. *Quod ei* aretro *fuit;* which was in arrear to him. 2 *Inst.* 533. *In aretro;* in arrear. 2 *Salk.* 583. 12 *Mod.* 5.

ARG. An abbreviation of *arguendo,* (q. v.) much used in the reports. Prefixed to a quotation from the civil law, it implies that the text or law produced is not a direct, but a consequential proof. *Tayl. Civ. Law,* 25.

ARGENTARIA. Lat. [from *argentum,* silver, or money.] In the civil law. The trade or business of a dealer in money; the trade of a banker or money-changer. *Dig.* 2. 13. 4. *Calv. Lex.* See *Argentarius.*

ARGENTARIUS. Lat. [from *argentum,* silver or money.] In the civil law. A dealer in money, (*nummularius,*) a money-changer, (L. Lat. *campsor;*) one who received money on deposit, and loaned money on interest; a banker. *Calv. Lex. Brissonius. Dig.* 2. 13. 4, 6, 8, 9, 10. *Id.* 46. 3. 88. *Cod.* 10. 64. 1. *Nov.* 136.

*** The *argentarii* were an important class of dealers at Rome and in the provinces, who transacted their business in the forum, where they had their shops or stalls, (*tabernæ,*) and tables, (*mensæ.*) Besides the ordinary business of receiving, exchanging and loaning money, they performed many of the duties of brokers, notaries and auctioneers; and they also acted sometimes as inspectors of money. They were known by a variety of names; such as *nummularii,* from the money, (*nummus,*) in which they dealt; *mensarii* and *mensularii,* (or *trapezitæ*) from the tables (*mensæ,*) at which they stood or sat; *argenti distractores* or *venditores,* sellers of money; *coactores* and *collectarii,* collectors; besides the Greek appellations, ἀργυρόπρατατ and ἀργυροπρατικοι, sellers of money; ἀργυρόμοιβοι or κολλυβιστάι, money-changers; ἀργυρογνώμονες, examiners of money, and the like. *Calv. Lex.* In the ninth edict of the Emperor Justinian, (in proœm.) mention is made of the corporation of *argentarii.*

ARGENTARIUS. Lat. [from *argentum,* silver or money.] In old English law. A dealer in silver or money; a banker; a silversmith. *Towns. Pl.* 259, 260.

ARGENTARIUS MILES. L. Lat. In old practice. A kind of money-porter in the English exchequer. An attendant who carried the silver from the lower to the upper exchequer to be examined. *Spelman,* voc. *Argenteus.*

ARGENTEUS. L. Lat. An old French coin, answering nearly to the English shilling. *Spelman.*

ARGENTIFODINA. Lat. In civil and old English law. A silver mine. *Dig.* 3. 4. 1. *Bract.* fol. 222 b.

ARGENTUM. Lat. In the civil law. Silver. *Dig.* 34. 2. 19. 27. *Argentum factum;* silver made, i. e. wrought into articles of various kinds. *Dig.* 34. 2. 19. 9. *Argentum infectum;* silver unwrought, or in the mass. *Infecti* argenti *appellatio rudem materiam continet, id est, non factum. Id.* 34. 2. 19. 11.

ARGENTUM. Lat. In old English law. Silver. See *infra.*

Silver plate. 1 *Ld. Raym.* 20. *Comb.* 306.

Silver bullion, or uncoined silver; money paid by weight. *Domesday. Spelman.*

Money generally; money paid by tale, or counted; (*pecunia numerata.*) *Id.*

Goods generally. *Id.*

ARGENTUM ALBUM. L. Lat. In old English law. Plain or blank silver, not marked or stamped, (*non signatum;*) uncoined silver; bullion; silver coin worn smooth by use; common silver coin, as distinguished from the metal of full weight and purity. See *Album, Blancus.* By Domesday tenure, some rents to the king were paid *in argento albo,* (common silver pieces of money,) other rents *in libris arsis et pensatis,* (money burnt, or melted and weighed.) *Kennett's Par. Ant. Cowell.*

White rent, or blanch farm. See *Alba firma.*

ARGENTUM DEI. Lat. In old English law. God's money. Earnest money; money given by way of earnest upon the making of a bargain; sometimes called God's penny, (*denarius Dei.*) *Cowell. Petyt MSS.* cited in *Barringt. Obs. Stat.* 204, note [*g*]. See *Denarius Dei.*

ARGUENDO, (abbrev. ARG.) Lat. In arguing; in the course of argument. A term often used in the books. *Arguendo et redarguendo;* arguing and confuting. *Fleta,* lib. 2, c. 66, § 18.

ARGUMENTATIVE. In pleading. Indirect; inferential. *Steph. Pl.* 179. Pleadings must not be argumentative. *Id.* ch. 2, sect. 5, rule 3. In other words, they must advance their positions of fact in an absolute form, and not leave them to be collect-

ed by inference and argument only. *Id. ibid.*

ARGUMENTUM. Lat. Argument or reasoning; especially that of the presumptive kind. *Struvius, Jurispr. Rom. Germ.* lib. 4, tit. 11, n. 3.

Inference or deduction; presumption. *Matthæus de Crim.* in lib. 48, *Dig.* tit. 15, c. 6.

Evidence; presumptive evidence. *Calv. Lex. Dig.* 48. 18. 1. 1, 4. *Id.* 49. 16. 5. 6.

Argumentum ab authoritate est fortissimum in lege. An argument from authority is the strongest in the law. *Co. Litt.* 254 a. "The book cases are the best proof of what the law is." *Id. ibid.*

Argumentum ab impossibili valet in lege. An argument drawn from an impossibility is forcible in law. *Co. Litt.* 92 a.

Argumentum ab inconvenienti plurimum valet [est validum] in lege. An argument drawn from inconvenience is of the greatest weight [is forcible] in law. *Co. Litt.* 66 a, 97 a, 152 b, 258 b. *Broom's Max.* 84, [139.] If there be in any deed or instrument equivocal expressions, and great inconvenience must necessarily follow from one construction, it is strong to show that such construction is not according to the true intention of the grantor; but where there is no equivocal expression in the instrument, and the words used admit only of one meaning, arguments of inconvenience prove only want of foresight in the grantor. 3 *Madd.* 540. 7 *Taunt.* 496. 3 *Bing.* 590. So, where the law is doubtful and not clear, the judges ought to interpret the law to be as is most consonant to equity and least inconvenient. But where the law is known and clear, though it be inequitable and inconvenient, the judges must determine as the law is. *Vaugh.* 37, 38. And see per Bayley, J. 4 *M. & S.* 531. Sir W. Scott, 1 *Dods.* 402. Lord Brougham, 6 *Cl. & Fin.* 671.

Argumentum a divisione est fortissimum in jure. An argument from division is of the greatest force in law. *Co. Litt.* 213 b. 6 *Co.* 60. *Wingate's Max.* 260, max. 71. Thus, to show that a certain annual payment of money is not properly a rent, Littleton argues from a *division* of the subject, thus: "For if it should be a rent, it must be rent service, rent charge, or a rent secke, and it is not any of these." *Litt.* sect. 345. Lord Coke applies the same kind of argument to commons. 6 *Co.* 60.

Argumentum a majori ad minus negative non valet; valet e converso. An argument from the greater to the less is of no force negatively; conversely, it is of force. *Jenk. Cent.* 281.

Argumentum a simili valet in lege. An argument from a like case, (from analogy) is good in law. *Co. Litt.* 191.

ARIBANNUM, *Arribannum.* L. Lat. In old European law. A fine for not joining the army, when called out by public summons. *Spelman.*

The summons or proclamation itself. *Id.* Spelman thinks the proper form of this word was *heribannum*, unless it be considered a contraction of *arrieribannum*, (q. v.) See *Herebannum.*

ARIERBAN. See *Arrierban.*

ARIMANDIÆ. L. Lat. In feudal law. *Feud. Lib.* 2, tit. 56. The same, perhaps, with *armandiæ*, (q. v.)

ARIMANNI. L. Lat. [from Sax. *here*, lord, and *man*, vassal.] In mediæval law A class of freemen employed in agriculture, otherwise called *conditionales*, *originarii*, *tributales*, &c. They seem to have been persons who possessed some small allodial property of their own, and, besides that, cultivated some farm belonging to their more wealthy neighbors, for which they paid a fixed rent, and bound themselves likewise to perform several small services, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, &c. 1 *Robertson's Charles V.* Appendix, note ix. *LL. Longob.* lib. 3, tit. 12, l. 5. *Id.* tit. 13, l. 3. Spelman defines them to be military tenants, possessing benefices and grants of land from the emperor, (*milites et beneficia et prædia ab imperatore concessa possidentes;*) younger vassals, (*vassalli juniores.*) *Gloss.* voc. *Arimannus.*

ARIPENNA, *Aripennum.* See *Arpennis.*

ARLES. In Scotch law. Earnest; money, or other thing given by a buyer to a seller, as a symbol of the bargain. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 7, sec. 1.

ARM OF THE SEA. [L. Lat. *brachium maris;* L. Fr. *brace de la mer.*] A portion of the sea where the tide flows and re-flows.* 5 *Co.* 107. 7 *Peters' R.* 331, arg. 1 *Kent's Com.* 26—30. "That is called an *arm of the sea*, where the sea flows and re-flows, and so far only as the sea flows and re-flows." *Hale de Jure Maris*, pars 1, c. 4. 22 *Ass.* 93. An arm of the sea is considered as extending as far into the

interior of a country as the water of fresh rivers is propelled backward by the ingress and pressure of the tide. *Angell on Tide Waters*, 73, ch. 3.

ARMA. Lat. In the civil and old English law. Arms; weapons offensive and defensive;* any thing that a man strikes or hurts with. *Co. Litt.* 161 b, 162 a. In the civil law, this word included not only shields, swords and helmets, but also clubs and stones, and all things coming under the denomination of *tela*, (weapons.) Armorum *appellatione non solùm scuta et gladios et galeas, significari intelligimus sed et fustes et lapides.* *Inst.* 4. 15. 6. *Dig.* 50. 16. 41. Arma *sunt omnia tela*, &c. *Dig.* 43. 16. 3. 2. See *Nov.* 85. This definition, however, is not adopted by Bracton. *Ligna et lapides sub* armorum *appellatione* non *continentur.* *Bract.* fol. 144 b. The same author makes several divisions of arms; as arms of peace and of justice, (*arma pacis et justitiæ*,) and arms of breach of the peace and of wrong, (*arma perturbationis pacis et injuriæ.*) *Id.* fol. 162 b. See *Fleta*, lib. 4, c. 4, § 6. He also uses the barbarous singular *armum*, (q. v.)

ARMA MOLUTA. L. Lat. In old English law. Sharp weapons, as swords and battle-axes, that cut or inflict a wound; distinguished from sticks and stones, which only break or bruise. *Bract.* fol. 144 b. Called *arma emolita.* *Fleta*, lib. 1, c. 33, § 6.

ARMA. L. Lat. In old English law. Armor; arms or cognizances of families; (*insignia gentilitia.*) *Spelman.* *Arma dare;* to dub, or make a knight. *Kennet's Par. Ant.* 101, 289. *Cowell.* *Arma capere*, or *suscipere;* to take upon one the order of knighthood; to be made a knight. 2 *Reeves' Hist. Eng. Law*, 288.

ARMAMENTA NAVIS. Lat. In the civil law. The tacklings or equipments, (Gr. ὅπλα) of a ship. *Loccenius de Jur. Mar.* lib. 1, c. 2, sect. 5.

ARMANDIÆ, *Armanniæ.* L. Lat. In feudal law. Workshops, (*fabricæ*,) public armories. *Cujac.* lib. 5, feud. p. 292. *Hotom. de Verb. Feud.*

ARMATA VIS. Lat. In the civil law. Armed force. *Dig.* 43. 16. 3. *Fleta*, lib. 4, c. 4. See *Vis armata.*

ARMATURA. L. Lat. In old English law. Armor. *Mem. in Scacc.* T. 20 Edw. I. The use of weapons. *Towns. Pl.* 217, 228.

ARME. L. Fr. A weapon. *De quel arme il fuist occise;* with what weapon he was slain. *Stat. Glocest.* c. 9.

ARMIG'. An abbreviation of *armiger.* (q. v.)

ARMIGER. Lat. [from *arma*, arms, and *gerere*, to bear.] In feudal and old English law. One who bears arms; an armor-bearer, or shield-bearer, (Lomb. *scilpor;* Sax. *scildcnave.*) *Spelman.*

An esquire; a knight's attendant. *Id.*

An esquire; one who bears arms, or coat armor, (*qui arma gerit.*) See *Esquire.*

A species of feudal tenant; a tenant by scutage, or the service of the shield; (*per servitium scuti.*) *Spelman.*

A servant, domestic or valet. *Id. LL. Edw. Conf.* c. 21, *ibid.*

ARMILUSTRUM. L. Lat. In old records. A showing of armor; military training. *Towns. Pl.* 215.

ARMISCARA. L. Lat. In old European law. A kind of fine. *Spelman.* See *Harmiscara.*

ARMS. [Lat. *arma.*] Weapons offensive and defensive;* any thing that a man strikes or hurts with. *Co. Litt.* 161 b, 162 a. See *Arma, Force and arms.*

ARMUM. L. Lat. [L. Fr. *arme.*] In old English law. A weapon. *Armum molutum;* a sharp weapon. *Bract.* fol. 138, 145.

ARMURE. L. Fr. Arms; armor; armed men. *Kelham.*

ARNALIA. A misprint for *arvalia* or *aralia;* copied in many of the books. See *Aralia.*

AROMATARIUS. L. Lat. In old pleading. A grocer. But see 1 *Ventr.* 142.

ARPENNIS, *Arpennus, Arpendus, Arpentum.* L. Lat. An arpent; a measure of land frequently mentioned in Domesday Book. *Spelman.* Various other forms of the word occur in old laws and writers; as *arpennum, arpendium, arapennis, arepennis, aripennis, aripennum, arvipennium,* and *arvipendium.* *Id.*

ARPEN, *Arpent.* Fr. [L. Lat. *arpennis, arpennus;* by some derived from *arare*, to plough.] A measure of land of uncertain quantity, mentioned in Domesday and other old books; by some called an acre, by others half an acre, and by others a furlong. *Spelman*, voc. *Arpennis.* *Cowell.* *Blount.*

A measure of land in Louisiana. 6 *Peters' R.* 763.

A French measure of land, containing

one hundred square perches, of eighteen feet each, or about an acre. *Spelman*, voc. *Arpennis*. But the quantity varied in different provinces. *Id.*

ARPENTATOR. L. Lat. [from *arpen*, or *arpent*, q. v.] In old French law. A measurer or surveyor of land. *Spelman*, voc. *Arpennis*. *Cowell*. *Blount*.

ARRA. Lat. In the civil law. Earnest: evidence of a completed bargain. See *Arrha*. Calvin and Brissonius give the word in this form, but in the modern editions of the Corpus Juris Civilis, it is written, *arrha*.

ARRÆ. In old English law. Earnest. *Dum tamen à venditore* arrarum *nomine aliquid receptum fuerit;* provided something have been received as earnest, by the seller. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 2. See *Arra*.

ARRAGE. L. Fr. Mad or insane. *Home arrage;* a madman or lunatic. *Britt.* c. 26.

ARRAIAMENTUM. L. Lat. [from *arraiare*, q. v.] In old English law. An arraying or array; the array. *Co. Litt.* 256 a. *Calumpniavit arraiamentum;* challenged the array. *Dyer*, 37 b. (Fr. ed.) See *Array*.

ARRAIARE. L. Lat. In old English Law. To array; to set in order. *Arraiatus;* arrayed. *Towns. Pl.* 215. *Modo guerrino arraiata;* arrayed in warlike manner. *Keilw.* 82.

Arraiatio peditum; an arraying of foot-soldiers. *Pat. I Edw.* II. cited in *Cowell*. See *Array*.

ARRAIATORES. L. Lat. In old English law. Arrayers; commissioners of array. Officers who had care of the soldiers' armor, and to see them duly accoutred in their kinds. *Stat.* 12 *Ric.* II. c. 6. *Cowell*. *Blount*.

ARRAIGN. [L. Fr. *arener*, *arraigner*, *arrainer*, *arraisoner*, *aresner*, from *a resn*, or *reson*, Lat. *ad rationem ponere*, to put or call to an account, (but see *infra*); L. Lat. *arrainare*, *arraniare*, *arramare*, *arreniare*, *arrenare*, qq. v.] In criminal law. To call a man to answer in form of law. *To arraign a prisoner* is to call him to the bar of the court, to answer the matter charged against him in an indictment. 4 *Bl. Com.* 322. 2 *Hale's P. C.* 216. 4 *Steph. Com.* 392. Or, according to Lord Coke, it is to *take order* that he appear, and for the certainty of the person, to hold up his hand, and to plead a sufficient plea to the indictment, &c. *Co. Litt.* 263 a. See *Arraigner*, *Ad rationem ponere*.

In old English law. To order, or set in order; to conduct in an orderly manner; to prepare for trial. *To arraign an assise* was to cause the tenant to be called to make the plaint, and *to set* the cause *in such order* as the tenant might be enforced to answer thereunto. *Litt.* sect. 442. *Co. Litt.* 262 b. Thus, in the case of Savier *v.* Lenthal, after stating that the crier made proclamation and called the recognitors, &c., the reporter goes on to say that "Mr. Goodwin, of Gray's Inn, *arraigned* the assise in French," &c. 3 *Mod.* 273.

To bring or prosecute. The terms *arrainare* and *arramare* (qq. v.) had this sense.

The term *arraign* is applied also to the old criminal proceeding by *appeal*. Thus, in the case of Armstrong *v.* Lyle, it is said "the appeal was *arraigned* in French by the appellant's counsel, who read the count," &c., and the reporter then proceeds to apply the term to the accused himself:—"the clerk of the crown, going to *arraign* him, it was objected," &c. 1 *Salk.* 60. So, in the later case of Bigby *v.* Kennedy, it is said, "the defendants were then brought to the bar, and Leigh, Serjeant, *arraigned* the bill [of appeal] in English, leaving out the memorandum, and it was then *arraigned* by Mr. Benton, the secondary, in like manner, and the defendants severally asked whether guilty or not guilty." 1 *W. Bl.* 713. 5 *Burr.* 2643. S. C. The word, in its application to proceedings, is now obsolete.

*** The true etymology of *arraign* is a matter of considerable uncertainty. That given by Sir Matthew Hale, and adopted by Blackstone, (*a reson*, or *ad rationem ponere*,) presents a very expressive analysis of its meaning as applied to *persons*, and is literally sustained by the language of an old Parliament roll quoted by Cowell, and by Selden, arg. 3 *How. St. Trials*, 121. *Stephanus Rabaz*, *vic. Leicest.* arrenatus, et ad rationem positus, *de hoc quod*, &c.; Stephen Rabaz, sheriff of Leicestershire, being *arraigned*, and *put* or called *to answer* (or *to account*) of this, that he, &c. *Rot. Parl.* 21 Edw. I. (Selden quotes it as *Rot.* 21 Edw. III. rot. 2, in dorso.) But, in the application of the word *arraign* to *proceedings*, such as assises, &c., (which is very common in the old books, though now disused,) this derivation becomes wholly inappropriate, and various others have ac-

cordingly been adopted. Cowell supposes *arraign* to be formed from the Fr. *arranger*, to set or put a thing in order, or in its place, answering somewhat to the modern word *arrange*. The same derivation is adopted by the author of the Termes de la Ley. Lord Coke says it is from the Fr. *arraigner*, to order, or set in the right place. See *supra*. And see *Astitution*. Spelman, who is very copious in his illustration of the subject, is confident of the derivation of *arraign* from the old Latin word *arramare*, corrupted into *arraniare* (the usual Latin form,) by the very slight and easy change of *m* into *ni*. This opinion is remarkably confirmed by the authority of Bracton, who uses *arramare* frequently and without variation, applying it to assises and other judicial proceedings, but in no instance to persons. *Si*—arramaverit *super eum assisam*. *Bract.* fol. 18. *Ad assisam quam A.* arramavit *versus B.* *Id.* fol. 110 b. See more under *Arramare*. There seems to be no doubt that this was the original form of the word, as applied to *proceedings*, at least as used in English law, although in the Register it is invariably written *arrainare*. *In assisa quam* arrainavit *versus N.* *Reg. Orig.* 198. See more under *Arrainare*. The French *arrainer*, or *arrayner*, occurs in Britton with the same application to assises. *Si le fitz doit* arrainer *cest assise vers ascun*. *Britt.* c. 70. *Si ambideux eyent* arrainy *assise*. *Id. ibid.* See *Arrainer*. In one passage the same author uses *arener*, in its modern sense, as applied to persons. *La soient* arenes *par le visconte ;* they shall be arraigned there (in court) by the sheriff. *Id.* c. 4. But the word seems not to have been generally used in this sense until a later period. For further illustration of the original meaning of *arraign*, see *Arramare*.

ARRAIGNER. L. Fr. In old English practice. To arraign; to put to the bar and call to answer. *Cest enditement n'est pas assez sufficient de vous* arraigner; this indictment is not sufficient to arraign you. *Yearb.* II. 2 Edw. III. 3. *Car home ne poiet pas etre arrein à la suit le roy, sans apprise en due maner per enditement ou per appel.* II. 2 Edw. III. 4.

ARRAIGNMENT. In criminal law. The form or ceremony of calling a prisoner to the bar, and (in treason or felony) making him hold up his hand, or otherwise own himself to be the party charged; reading the indictment to him, and demanding of him his plea, (guilty or not guilty,) and entering it accordingly. 4 *Steph. Com.* 392. *Brande.* According to Lord Coke, this was otherwise called *astitution*, (q. v.) *Co. Litt.* 262 b.

It is the office of arraignment to inform the accused of the nature of the offence with which he is charged, and to obtain his answer, defence or plea. 3 *Wisconsin R.* 820. In trials for minor offences, a formal arraignment, in practice, is generally dispensed with. In such cases, where the defendant has pleaded to the indictment, an arraignment will be presumed. 24 *Mississippi R.* 611.

ARRAINARE, *Arranare*, *Arannare*. L. Lat. In old English law. To arraign; to conduct in an orderly manner; to prosecute, institute or bring. *Assisam arrainare ;* to bring an assise, (an action so called.) *In assisa quam idem A.*,—arrainavit *versus N. ;* in an assise which the said A. arraigned and brought against N. *Reg. Orig.* 198. *In quadam jurata quam idem A.* arrainavit—*versus S. ;* in a certain jury (proceeding so called) which the said A. arraigned or brought against S. *Id.* 33. See *Id.* 186, 205. *In omnibus juratis* arannatis. *Fleta*, lib. 3, c. 5, § 7. *Si assisa* arrannetur. *Id.* lib. 4, c. 9, § 1.

ARRAMARE. L. Lat. An old Latin word of frequent occurrence in Bracton, and constantly applied to the ancient proceeding by assise; usually translated by the modern word *arraign ; arramare* having been corrupted into *arrainare* by a very slight change in a single letter. See *Arraign*. *Ad assisam—capiendam quam A.* arramavit *versus B. ;* to take an assise which A. arraigned [i. e. brought] against B. *Bract.* fol. 110 b, 111. *Ad audiendum assisam quam B.*—arramavit *versus eundem A. ;* to hear an assise which B. arraigned [brought] against the said A. *Id.* fol. 111 b. See *Id.* fol. 177 b, 196 b, 219.

*** Spelman considers this word as another form of the barbarous Latin *adrhamire*, *arhamire*, *arramire*, and derives it from the old French *arramir*, to swear, to solemnly undertake, promise or pledge. *Assisam arramare*, according to the same author, was an expression applied to both parties in that proceeding, and signified to make a solemn choice of the assise as a mode of trial, in preference to the *duellum* or battel, and to declare such choice openly. *Spelman*, voc. *Adrhamire*. So, when

a criminal originally was *arraigned*, (to use the modern word,) he was allowed to choose in what way he would be tried, and when he had made his choice, and openly proclaimed it at the bar, in answer to the question, "How wilt thou be tried?" he was said *arramare*, and to be thereupon *arramatus*, (afterwards *arrainatus*, or arraigned.) This opinion has much to sustain it in the ancient practice of the courts as illustrated by Spelman, but is not easily reconcilable with the fact that the term *arraign*, in its application to criminal proceedings, has always been exclusively used to denote the act of the *court*, and not that of the *party*.

As to the meaning of the expression *assisam arramare*, so frequent in Bracton, there is less room for doubt, as that author constantly uses the expression, *portare assisam*, (to bring an assise) to denote the same thing. *Bract.* fols. 26, 33, 177, 196 b, 197. It occurs in the same sense in the Year Books. See M. 3 Edw. II. 58, 59. *Arramare* probably had a technical sense, expressive of some peculiarity of proceeding, which was figuratively used to denote prosecution generally, just as the modern expression, "to file a bill," is daily used to denote the *commencement of a suit* in equity.

ARRAMER. L. Fr. To commence. *Kelham.*

ARRAMEUR. Norm. In old French law. A stower or stevedore; an officer anciently employed to load vessels. The business of the *arrameurs* was to dispose right, and stow closely all goods in casks, bales, boxes, bundles or otherwise; to balance both sides, to fill up the vacant spaces, and manage every thing to the best advantage. *Laws of Oleron*, art. xi. obs. 1 *Peters' Adm. Dec.* Appendix, xxv.

ARRAMIR. L. Fr. To assemble. *Kelham.*

ARRAS, *Arra.* Span. In Spanish law. Jointure; donation *propter nuptias*. *White's New Recop.* b. 1, tit. 6. c. 1. The donation which the husband made to the wife, by reason of the marriage. *Id.* b. 1, tit. 7, c. 3.

ARRAY. [L. Lat. *arraia, arraiamentum.*] In practice. A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. *Co. Litt.* 157 a. 3 *Bl. Com.* 359.

The whole panel itself; the whole body of jurors summoned to attend the court. To *challenge the array* is to except to the whole panel of jurors. *Id. ibid.* See *Challenge, Panel.*

To ARRAY. [L. Fr. *arayer, araer, arair;* L. Lat. *arraiare.*] In practice. To rank, or set in order. To *array a panel* is to rank or set the jurors' names in order in the panel, the names being placed one under another. *Old N. Brev.* 157. *Termes de la Ley.* 3 *Bl. Com.* 359. *Boote's Suit at Law*, 163, note.

ARRAYER. L. Fr. To array. See *Arayer.*

ARREARS. *Arrearages, Arrerages.* [L. Lat. *arreragia*, from Fr. *arriere, arere*, behind.] Money remaining unpaid after it has become due; as rent behind; interest due and unpaid; the unpaid balance of an account. *Spelman*, voc. *Arreragium. Cowell.* Scotticè, "by-run." This word generally implies that a part has been paid. *Webster.*

A devise of "all my *arrears* of rent and interest due at my death," has been held to carry the arrears of an annuity. 2 *Vesey, Sen.* 430. But a bequest of *arrears* of rent will not pass a bond given to secure the arrears. 4 *Vesey, Jr.* 166. Nor will the *arrears* of a mortgage carry the mortgage itself. 2 *Id.* 416.

ARRECT, *Arect, Arret, Aret.* [from L. Lat. *arrectare*, or *arretare*, q. v.] In old English law. To accuse or charge before a court. *Arrected, arretted;* accused or charged. *Cowell.* See *Arrectare, Rectare.*

To account, reckon or consider. *Arrected;* (Fr. *rette*); accounted, reckoned, considered. "It should be *arrected* great folly in her to be ignorant of her own title." *Co. Litt.* 173 b. Lord Coke appears to have borrowed this expression from Littleton's "*il serra* rette *la folly*," &c. *Litt.* sect. 261.

To impute, or lay to; to lay to the charge. The French *arette* used by Littleton, (sect. 665,) and elsewhere translated by Coke *arrect*, is not retained in the later editions, the word *adjudge* being substituted. *Arrect* is used in this last sense by old English writers, as Burnet and More, and in the old translations of the Bible. *Richardson's Dict.* vocc. *Arette, Arrect.*

ARRECT, *Arrette, Arete.* L. Fr. Accused, or charged with a crime. *Kelham.*

ARRECTARE, *Arretare.* L. Lat. [from *ad*, to, and *rectare*, to charge; or *rectum*, Norm. *rette*, an accusation.] In old criminal law. To accuse or charge; to accuse before a court; to summon to court, for the purpose of accusation, (*ad rectum vocare.*) See *Ad rectum, Rectum, Rectare.*

Si aliquis arrectatus *fuerit de morte alicujus;* if one be charged with the death of any person. *Offic. Coronatoris*, cited in *Spelman*, voc. *Arrectatus*. See record in *Hale's Hist. Com. Law*, 43.

To reckon, esteem or judge. Skene writes it *erectare*, and cites *Quon. Attach.* c. de brevibus, 31.

ARREIST. An old Scotch form of *arrest*. *Skene de Verb. Sign.* voc. *Iter*.

ARRENARE. L. Lat. In old records. To arraign. *Arrenatus;* arraigned, accused. *Cowell.* See *Arraign*.

ARRENDAMIENTO. Span. In Spanish law. The contract of letting and hiring an estate or land, (*heredad.*) *White's Recop.* b. 2, tit. 14, c. 1.

ARRENDARE, *Arrendar*. In old Scotch law. To let at a certain rent, (*ad certum rentum seu redditum dimittere.*) Called by Skene a Spanish word. *De Verb. Sign.*

'ΑΡ'ΡΕΝΟΓΟΝΙΑ, 'Αρρενογόνια. Gr. [from ἄρρην, male, and γόνος, generation.] In the civil law. The male line. *Nov.* 118, c. 1.

ARRENT. In old English law. To let at a rent. "The victor might at his pleasure, give, sell or *arrent*." *Hale's Hist. Com. Law*, 98.

ARRENTARE. L. Lat. [from L. Fr. *arenter*, from *a*, at, and *rente*, a payment or rent.] In old English law. To rate or assess. *Stat. Marlbr.* c. 11.

To let at a certain sum, or rent; to rent; to arrent, (q. v.)

ARRENTATIO. L. Lat. In old English law. A renting or rent. *Per certam arrentationem;* by, for, or at a certain rent. *Reg. Orig.* 252, 258.

In the forest law. An arrentation; the licensing an owner of lands in a forest to enclose them with a low hedge and small ditch, under a yearly rent. *Ordin. Forest.* 34 *Edw.* I. c. 5. *Reg. Orig.* 257 b. The English "arrentation" is used by Lord Bacon. *Works*, iv. 255, 256.

ARRER. L. Fr. To plough. *Britt.* c. 5. See *Arer*.

ARRERAGIUM, *Arrieragium*. L. Lat. [from Fr. *arriere*, behind.] In old English and Scotch law. An arrearage; the balance due on account; a residue or remainder, (*residuum, reliquum.*) *Spelman.* Rent due and unpaid. *Fleta*, lib. 2, c. 55, § 2. *Skene de Verb. Signif.* See *Arrears*.

ARRERE. L. Fr. Behind. *En arrere;* lately. *Kelham.* See *Arere, Arriere*.

ARRERISSEMENT, *Arerisment*. L. Fr. [from *arrere*, back, behind.] In old records. Hindrance; a hindrance; delay; putting back. *L. Fr. Dict. Kelham. Rot. Parl.* 4 Hen. IV. See *Arerissment*.

To ARREST. [L. Lat. *arrestare, arestare*, from Fr. *arrester, arester*, to stop, or stay; or according to Spelman, from Sax. *a*, to or until, and *rest.*] In practice. To stop or stay by authority of law. To stop or detain a person, and restrain his liberty until he complies with some exigency of law, (*remorari, vel aliquem sistere, usque dum legi respondeat.*) *Spelman*, voc. *Arrestare*.

To stop or stay a legal proceeding; particularly the judgment of a court, by some rule or order of the same court. See *Arrest of judgment*.

To take, seize or apprehend a person by virtue of legal process issued for that purpose, with the view either of holding him in custody, or of compelling him otherwise to comply with the exigency of the process. To subject a person to the operation of legal process, by bringing his body within the power of the officer executing such process.. See *Arrest*.

To take or seize property. *Arrest*, in this sense, occurs constantly in old English practice, (see *arrestare;*) and is common in Scotch law. *Ersk. Inst.* b. 3, tit. 6. It was also formerly used in the same sense in the state of New-York, being applied particularly to ships and vessels; but has now given place, as in England, to the word *attach*, (q. v.) 1 *N. Y. Rev. Laws*, (1813,) 130. 2 *N. Y. Rev. Stat.* [493,] 405.

ARREST. [L. Lat. *arrestum, arestum, arrestatio.*] In practice. The act of stopping or staying, (*sistendi actus,*) a person or proceeding by authority of law.

The restraint of a person's liberty by the actual seizure or apprehension of his body, or otherwise, in execution of some legal process.* Arrest is well described in the old books as "the beginning of imprisonment, when a man is first taken and restrained of his liberty, by power of a lawful warrant." 2 *Shep. Abr.* 299. *Wood's Inst.* 575. *Whishaw.*

*** Spelman considers this word as signifying radically a *stopping* rather than a *seizure*, and refers to the distinction made by the civilians between an arrest and a taking or apprehension, (*differre volunt* arestum *a captione seu prœhensione*); the latter being effected by a manual seizure, (*injectis manibus,*) the former by the mere

influence of legal authority, (*authoritatis reverentia.*) See *Calv. Lex.* voc. *Arrestum.* The Register, however, is an old authority for the application of the word to the seizure of chattels, (see *arrestare*); and in modern practice an arrest always contemplates either an actual *seizure*, or what is equivalent, a restraint of the person, with a *power* of actual seizure, if necessary. It has been said, indeed, that in making an arrest, the officer must actually touch or seize the party's body. 3 *Bl. Com.* 288. But in modern practice, this is not held to be absolutely necessary, for if a bailiff come into a room, and tell a defendant he arrests him, and lock the door, it is held to be an arrest, for he is in custody of the officer. 1 *Tidd's Pract.* 219, and cases there cited. And if the defendant be in any way within the power of the officer, (as within his reach, without any actual confinement,) and submits to the arrest, it has been held sufficient. 1 *Wendell's R.* 210, 215. 21 *Alabama R.* 240. But see 2 *N. Hamp. R.* 317, Woodbury, J. *United States Digest*, Arrest.

ARREST OF JUDGMENT. In practice. The act of staying a judgment, or refusing to render judgment in an action at law, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment, if given, erroneous or reversible; as where the verdict differs materially from the pleadings and issue; or where the case laid in the declaration is not sufficient, in point of law, to found an action upon. 3 *Bl. Com.* 393. 3 *Steph. Com.* 628. 2 *Tidd's Pr.* 918. *Mansel on Demurrer*, 162.

ARRESTARE, *Arestare.* L. Lat. In old English law. To arrest; to take or seize a person. *Arrestentur corpora eorum;* their bodies shall be arrested. *Stat. Westm.* 2, c. 11. *Quod ipsum Willielmum ubicunque inventus fuerit*, arrestari *faciatis;* that you cause the said William, wherever he may be found, to be arrested. *Reg. Orig.* 24 b. *Arrestari et imprisonari;* to be arrested and imprisoned. *Id.* 184 b. *Capi et arrestari;* to be taken and arrested. *Id.* 278 b. *Si clericus aliquis*—arestatus *fuerit. Stat. Marlbr.* c. 27. *Barringt. Obs. Stat.* 73.

To take or seize a chattel, as a vessel. *Navem* arrestavit *et sub* arresto *detinuit;* he arrested a vessel and detained it under arrest. *Reg. Orig.* 105. *T. Raym.* 490. To seize a horse, ox or cow. *Reg. Orig.* 94, 102. See *Id.* 127. *Arrestare bona. Clerke's Prax. Cur. Adm.* tit. 24.

ARRESTATIO. L. Lat. [from *arrestare*, q. v.] In old English law. Arrestment; an arrestment or arrest. *Towns. Pl.* 53. *Arrestatio navium;* arrestment of ships. *Loccen. de Jur. Mar.* lib. 3, c. 5.

ARRESTEE. In Scotch law. The person in whose hands the movables of another, or a debt due to another, are arrested by the creditor of the latter by the process of *arrestment.* 2 *Kames' Equity*, 173, 175. See *Arrestment.*

ARRESTER. In Scotch law. The person or creditor in whose behalf process of *arrestment* is issued. 1 *Forbes' Inst.* part 3, b. 1, ch. 2, tit. 3. 2 *Kames' Equity*, 177. See *Arrestment.*

ARRESTMENT. In Scotch law. The seizure and securing of a criminal's person, till he undergo trial, or give bail. *Ersk. Inst.* b. 3, tit. 6, sect. 2.

A process for securing movable effects in the hands of the possessor, till the property be determined. This arrestment, termed *rei servandæ causa*, is a species of sequestration. 2 *Kames' Equity*, 173.

A process issued by a creditor for the purpose of securing the movable effects belonging to his debtor in the hands of a third person, (called the *arrestee*,) or a debt due his debtor by such person, and of preventing a transfer or payment until another process, called process of *forthcoming*, can be raised or obtained.* 2 *Kames' Equity*, 173. *Bell's Dict.* See *Forthcoming.*

ARRESTUM. L. Lat. In old English law. Arrest. *Spelman. Sub* arresto *detinuit;* (he) detained under arrest. *Reg. Orig.* 94.

ARRESTUM, *Arestum.* L. Lat. [from Gr. ἄρρατον, incorrupt, inviolate, according to Calvin; or from Gr. ἄρεστον, pleasure, according to Budæus.] In old European law. The sentence or decree of a superior tribunal. *Calv. Lex.*

ARRET. Fr. [from L. Lat. *arrestum*, *arestum*, q. v.] In French law. The judgment, decision or decree of a court, or parliament. A royal ordinance or decree.* So called, according to Spelman, because it puts the matter *at rest* after the agitation of debate or argument. *Spelman*, voc. *Arrestare.* But see under *Arrestum.*

ARRET. See *Arrect.*

ARRETARE, *Arrettare, Arrectare.* L. Lat. In old English law. To accuse or

charge; to summon for the purpose of accusing; to summon to answer a charge.* *Arrettati;* accused or charged. *Reg. Jud.* 30. *Arrette* is used by old English writers. *Richardson's Dict.*

ARRHA, *Arra.* Lat. In the civil law. Earnest; evidence of a completed bargain; proof of the contract of purchase and sale, (*argumentum emptionis et venditionis contractæ.*) *Inst.* 3. 24. pr. *Dig.* 18. 1. 35. 1 *Mackeldey's Civ. Law*, 170, § 178. See *Earnest.* Calvin and Brissonius write the word *arra.* Bracton and Fleta use the plural, *arræ.* *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, §§ 2, 3. *Arrhæ* is used in Scotch law. *Ersk. Inst.* b. 3, tit. 3, § 5.

Evidence of the contract of espousals, (*arrhæ sponsalitiæ.*) *Cod.* 5. 1.

ARRHABO, *Arrabo.* Lat. [Gr. ἀρραβων.] In the civil law. Earnest; money given to bind a bargain. *Calv. Lex. Brissonius*, voc. *Arra. Grotius de Jur. Bell.* lib. 2, c. 12, § 15.

ARRIAGE AND CARRIAGE. In English and Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute 20 Geo. II. c. 50, s. 21, 22. *Bell's Dict. Ersk. Inst.* b. 2, tit. 6, § 42.

ARRIERBAN, *Arriereban.* Fr. [L. Lat. *arrieribannum, arribannum;* from *arriere*, behind, and *ban*, a proclamation.] In feudal and European law. The proclamation by which the arriere vassals, or inferior feudatories of a sovereign, were summoned to military service. See *Arriere vassal.*

The assembling or mustering of the vassals, in obedience to such summons.

According to Spelman, this word may import, (from *arriere*, in the sense of *iterum*, again,) a repeated summons, or second proclamation, (*iterata evocatio, vel citatio posterior*); the first being simply termed the *ban;* or, (from *arriere*, in the sense *retro*, behind,) a proclamation intended for those who remained behind after the first summons, (*qui* retro *manserint post bannum.*) *Spelman*, voc. *Aribannum.* It should not be confounded with *herebannum*, (q. v.)

ARRIERE FIEF, or FEE. In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. *Esprit des Lois*, liv. 31, cc. 26, 32. See *Subinfeudation.*

ARRIERE VASSAL. In feudal law. The vassal of a vassal; one who held of a vassal of the crown. *Esprit des Lois*, liv. 31, cc. 26, 32.

ARRIERIBANNUM. L. Lat. In old European law. Arrierban, (q. v.)

ARRIVAGIUM. L. Lat. In old English law. Arrivage; arrival; the coming to a place or port. Arrivagium *navium et batellorum;* a place of common resort of merchants and shipping. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 3.

"ARRIVE." To come to, or reach one place from another; to come to, or reach a place by travelling or moving towards it. Marshall, C. J. 1 *Brock. R.* 411.

In insurance law. To reach that particular place or point in a harbor which is the ultimate destination of a vessel.* 2 *Cushing's R.* 439. Fletcher, J. *Id.* 453. Until that point is reached, the voyage is not ended, and the ship has not *arrived. Id. ibid.* Merely reaching the harbor is not *arriving.** *Id.* See 8 *B. & C.* 119.

ARROGATIO, *Adrogatio.* Lat. [from *arrogare*, to take upon one's self.] In the civil law. The adoption of a person *sui juris*, which was done by imperial rescript. *Inst.* 1. 11. 1. *Id.* 3. 11. 2. *Dig.* 1. 7. 1. *Cod.* 8. 48. See *Adoption.*

ARROGATOR. Lat. [from *arrogare.*] In the civil law. One who adopted by arrogation, that is, by imperial rescript. *Inst.* 3. 11. 1, 2, 3.

ARRURE. L. Fr. A ploughing; a day's work at ploughing. *Yearb.* II. 2 Edw. II. 27.

ARS. L. Fr. [from *arder*, to burn.] Burnt. *De ceux que felonisement—eient autre blees, ou autre mesons* ars; of those who have feloniously burnt another's crops, or another's houses. *Britt.* c. 9.

ARSÆ ET PENSATÆ. L. Lat. Burnt and weighed. A term anciently applied to money melted, and then weighed to test its purity. See *Arsura.*

ARSION. L. Fr. Burning. *Artic. super Chart.* c. 17. An old form of arson, (q. v.) So, *arsine* and *arseun. Kelham.*

ARSON. [from L. Fr. *arsion, arsoun, arson*, L. Lat. *arsio*, from *ardere*, to burn: Sax. *bernet:* L. Lat. *incendium* or *combustio domorum.*] In criminal law. The malicious and wilful burning the house or outhouse of another man. 4 *Bl. Com.* 220. 4 *Steph. Com.* 141. The burning and consuming of any part is sufficient to constitute arson, but a mere attempt to burn by setting fire to a house, unless it absolutely burns, is not sufficient. *Hawk. P. C.* b. 1,

c. 39. 4 *Bl. Com.* 222. 4 *Steph. Com.* 143. See 2 *Russell on Crimes*, 548—568, and notes.

The English law of arson has been considerably modified in the United States; the definition of the crime being in some of the states materially enlarged, while in others, various degrees of arson have been established, with corresponding punishments. See *Wharton's Am. Crim. Law*, 369, 374, *et seq.* In New-York, arson in the first degree consists in burning the dwelling-house of another in the night time, and while there is in the house some human being. 1 *Parker's Cr. R.* 560. Malice is of the essence of the crime of arson at common law, and the same ingredient must enter into offences of house-burning created by statute. 28 *Mississippi R.* 100.

ARSURA. L. Lat. [from *ardere*, to burn.] In old English law. Burning, or melting; the trial or assay of money by fire after it was coined, in order to test its purity. A term frequently used in Domesday Book. *Spelman. Reddit tot libras ad arsuram;* pays so many pounds according to the test by fire; that is, so many pounds of lawful, approved or tried money. *Cowell.* The process is described at large in the Black Book of the Exchequer.

The loss of weight occasioned by this process. A pound was said to *burn* so many pence (*tot ardere denarios*) as it lost by the fire. *Spelman.*

ARSURE EN LE MAIN. L. Fr. Burning in the hand. See *Burning in the hand.*

ART AND PART. [O. Scotch, *airt and pairt, arte and parte.*] In Scotch criminal law. Contriver and partner. 3 *How. St. Trials*, 601. A technical term used to denote an accessory before and after the fact, and also an aider and abettor in the commission of a crime; generally considered equivalent to the *ope et consilio* (q. v.) of the Roman law. * *Ersk. Inst.* b. 4, tit. 4, § 10. 2 *Forbes' Inst.* part 1, b. 1, c. 1. By *art* is understood the mandate, instigation or advice that may have been given towards committing the crime; *part* expresses the share that one takes to himself in it, by the aid or assistance which he gives the criminal in the commission of it. *Ersk. Inst. ub. sup.* Though expressed in a conjunctive form, it does not however necessarily import *both* descriptions of guilt; since one may become *art and part*, either, 1. by giving a warrant or mandate to commit the crime; *or*, 2. by giving counsel or advice to the criminal how to conduct himself in it; *or*, 3. by his assistance in the execution of it. *Ersk. Inst. ub. sup.* See *De arte et parte.* "In order to make out a party guilty of theft, *art and part*, it is not necessary to prove that there was any previous concert between him and the actual thief, or that he knew, some time before, that a theft was to be committed. It is sufficient if the party was conscious of what was going on at the time,—if he knew that some article, no matter what, was about to be stolen. If there was privity, even by so slight a communication with the actual thief as a nod or a wink, that would make the party so privy guilty of theft *art and part.* On the other hand, if the theft was really completed and over, however short the interval, if there was one, between the act and the guilty knowledge,—say that the communication was made behind a screen, or outside the door of the room, after the article was actually taken,—that would change the nature of the offence, and make it *reset.*" Lord Justice Clerk, *Arkley's R.* 136.

The derivation of this phrase is uncertain. Sir George Mackenzie, in his "Discourse upon the laws and customs of Scotland in matters criminal," says that by *art* is meant that the crime was contrived by the *art* or skill of the accused, (*eorum arte;*) and that by *part* is meant that they were *sharers* in the crime committed, (*et quorum pars magna fui.*) By other writers it has been considered as an abbreviation of the Latin phrase *artifex et particeps.* See *P. Cyclopedia.* The following expressions occur in Pitcairn's Criminal Trials: "Delatit [accused,] off *arte and parte.*" Vol. 1, part 1, p. 1. "Dilaitit of *airt and pairt.*" *Id.* p. 133. "Under the pain of being held as *arte and pairt-takeris.*" *Id.* p. 307.

ARTE. L. Fr. Bound; compelled; narrowed. *Kelham.* See *Arct.*

ARTEMO, *Artemon.* Lat. [Gr. ἀρτέμον.] In the civil law. A kind of sail, used on a vessel. Brissonius calls it a small sail attached to a large one. According to Calvin, it served to steer the ship. It seems to have been used only on special occasions, and was not considered a part of the vessel. *Dig.* 50. 16. 242. *Loccenius de Jur. Mar.* lib. 1, c. 2, sect. 5. It occurs in the New Testament, (*Acts* xxvii. 40,) where it is translated "mainsail."

ARTHEL. [properly *Arddelw* or *Arddel.*] Brit. or Welsh. In Welsh and old

English law. To avouch, (*astipulari, asserere.*) *Davies' Dict.* cited in *Cowell.*

Used also as a substantive. Thus, by the laws of Hoel Dha, it was provided that if a man were taken with stolen goods, he must be allowed a lawful *arddelw* (vouchee) to clear him of the felony. This was abolished by statute 26 *Hen.* VIII. c. 6. *Cowell. Blount.*

ARTICLE. [Lat. *articulus.*] A distinct part of a writing or instrument, consisting of two or more particulars. Hence systems of rules and instruments, composed of various particulars, or arranged in separate divisions, are called *articles;* and the term was also anciently applied to statutes drawn up in this form. See *Articles.*

A point. See *Articulus.* The French *article* and *point* (or *poynt*) are synonymous. *En chescun* article *et chescun* poynt. *Artic. sup. Chart.* c. 1.

A species of pleading in the English ecclesiastical courts, which is put in in the form of objection or charge, as for annulling a marriage, for depriving a clergyman of his benefice, &c. 4 *Chitty's Gen. Pr.* 166, 167, 200, 209. The word *article* is used in the formal parts of this pleading, as a verb. "We *article* and object to you the said —, that," &c. *Id.* 200, *et seq.* The expression "*articulately* propound" constantly occurs in pleadings in the ecclesiastical courts. *Id.* 168, *et seq.*

In Scotch practice. A subject or matter; competent matter. "Article of dittay." 1 *Brown's R.* 62. A "point of dittay." 1 *Swinton's R.* 128, 129.

ARTICLED CLERK. In English practice. A pupil of an attorney or solicitor who undertakes, by articles of clerkship containing covenants mutually binding, to instruct him in the principles and practice of the profession. *Wharton's Lex.* See *Stat.* 6 & 7 *Vict.* c. 73.

ARTICLES. [L. Lat. *articuli.*] A term applied to various writings drawn up in an *articulate* form; that is, under distinct heads or divisions; as

A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith, (qq. v.)

A writing or instrument executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership, the *articles* of confederation of the United States.

A statute; as having its provisions articulately expressed under distinct heads. Several of the ancient English statutes were called articles, (*articuli.*) See *Articuli.*

A complaint at law drawn up in articulate form; as *articles* of the peace, (q. v.)

Heads or items of judicial inquiry. The *capitula,* chapitres or chapters given in charge to juries at the ancient eyres, were sometimes called *articles.* See *Capitula.* So, the various items of inquiry at views of frank-pledge were called *articles* of view of frank-pledge,(*articuli visûs franci plegii.*) *Fleta,* lib. 2, c. 52, § 4 *et seqq.,* where the items are given at length.

ARTICLES OF CONFEDERATION. In American law. The compact between the original thirteen states of the Union, which went into operation on the 1st of March, 1781, and remained in force until the 4th of March, 1789, when the present Constitution of the United States was adopted. See 1 *Kent's Com.* 210—219. *Story on the Const.,* b. 2, ch. 3.

ARTICLES OF FAITH. In English law. The system of faith of the Church of England, more commonly known as the *Thirty-nine Articles;* framed by Archbishop Cranmer, with the assistance of other persons of distinguished learning and piety in the reign of Edward VI.; and reduced to their present form in the Convocation of the archbishops and bishops of both provinces, held at London in the reign of Queen Elizabeth, A. D. 1562. 3 *Steph. Com.* 94, 95.

ARTICLES OF WAR. In English law. A system of rules for the government of the army, framed under the authority of the annual statutes called the Mutiny Acts. 2 *Steph. Com.* 600, 601.

In American law. A system of regulations for the government of the army and navy of the United States. *Acts of Congress,* April 23, 1800; April 10, 1806.

ARTICLES OF THE NAVY. In English law. A system of regulations for the fleet, established under the statutes 22 Geo. II. c. 33, and 19 Geo. III. c. 17. 2 *Steph. Com.* 605, 606.

ARTICLES OF THE PEACE. In English law. A complaint exhibited under oath to a court of competent jurisdiction, or to a justice of the peace, in order to compel a party who is meditating an injury to another, to find sureties of the peace. 4 *Chitty's Bl. Com.* 251, 255, note (6.) 4 *Steph. Com.* 313. 1 *Chitty's Gen. Pr.* 674, 679, note (*p*).

ARTICLES OF ROUP. In Scotch law.

The conditions under which property is exposed to sale by auction. *Bell's Dict.*

ARTICLES OF UNION. In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. 1 *Bl. Com.* 96. They were twenty-five in number. *Id. ibid.*

ARTICULI. Lat. Articles; items or heads. A term applied to some old English statutes, and occasionally to treatises. See *Articles.*

ARTICULI AD NOVAS NARRATIONES. L. Lat. Articles on the New Tales. The title of a small treatise on the method of pleading, subjoined to the collection called *Novæ Narrationes.* 3 *Reeves' Hist. Eng. Law*, 152.

ARTICULI CLERI. L. Lat. Articles of the clergy. The title of a statute passed in the ninth year of Edward II. for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 *Reeves' Hist. Eng. Law*, 291—296. The archbishop of Canterbury preferred in the name of himself and the clergy, (*clerus*) sixteen *articles*, and received by the authority of parliament answers *seriatim* to each of them, constituting the statute which hence derived its name. *Id.* 291. Lord Coke has inserted this statute in his Institutes, accompanying it with a commentary. 2 *Inst.* 599. And see 2 *How. State Trials*, 131. According to Sir Matthew Hale, although not published till the reign of Edward II., it was compiled in the beginning of Edward I. *Hale's Hist. Com. Law*, 191, c. 7.

ARTICULI DE MONETA. L. Lat. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 228. *Crabb's Hist. Eng. Law*, 167, (Am. ed.)

ARTICULI MAGNÆ CARTÆ. Lat. Articles of Magna Carta. The original articles or heads of agreement at the Congress in Runingmede, upon which King John's charter was founded. This document consisted of forty-nine heads, and was entitled, *Articuli Magne Carte Libertatum sub sigillo Regis Johannis.* It is given at length by Sir William Blackstone, in his valuable edition of Magna Charta. It was printed from an original formerly in the possession of Bishop Burnet. See *Blackstone's Law Tracts.*

ARTICULI SUPER CHARTAS. L. Lat. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I. st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charta de Foresta;* and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 *Reeves' Hist. Eng. Law*, 103, 233—241. Lord Coke has included this statute in the number of those commented on in his Institutes. 2 *Inst.* 537. And see *Barringt. Obs. Stat.* 182.

ARTICULUS. Lat. In old English law. An article or point. *Reg. Orig.* 200. *In articulo mortis;* at the point of death.

A point or moment of time. *In ipso articulo temporis;* at the same moment or instant of time. 3 *Co.* 28. See *In articulo.*

ARTIFICIAL. [from Lat. *ars*, art, and *facere*, to make.] Made by art; created by law; the opposite of natural. See *infra.*

ARTIFICIAL PERSONS. Persons created and devised by human laws, for the purposes of society and government, as distinguished from natural persons. 1 *Bl. Com.* 123. Corporations are examples of artificial persons. *Id. ibid.*

ARTIFICIAL PRESUMPTIONS. In the law of evidence. Presumptions, (otherwise termed *legal*,) which derive from the law a technical or artificial operation and effect, beyond their mere natural tendency to produce belief; and operate uniformly, without applying the process of reasoning on which they are founded to the circumstances of the particular case. 3 *Stark. Evid.* 1235.

ARUNDINETUM. L. Lat. [from *arundo*, a reed.] In the civil and old English law. A place where reeds grow. *Dig.* 7. 1. 9. 7. *Id.* 33. 7. 12. 11. *Co. Litt.* 4 b. *Shep. Touch.* 95.

ARURA, *Arrura.* L. Lat. [from *arare*, to plough.] In old English law. A or the ploughing; the labor of ploughing. *Valet* arura *xviii den';* the ploughing is worth eighteen pence. *Fleta*, lib. 2, c. 82, § 2. *Arruris;* in ploughings. *Bract.* fol. 230.

A day's work at the plough. *Donec* aruras *suas legitime compleverint, quantum videl' ad unum diem pertinebit;* until they shall have lawfully completed their ploughings, namely, as much as shall belong to one day. *Fleta*, lib. 2, c. 73, § 2. *Faciendo inde tot* aruras *et tot messuras. Bract.* fol. 35 b.

AS. Lat. In the Roman and civil law. A pound weight; and a coin originally weighing a pound, (called also *libra*); divided into twelve parts, called *unciæ*, (ounces,) the several multiples of which were known by different names, according to their number. Thus, two *unciæ*, making one-sixth of the *as*, constituted what was called *sextans*; three, making a quarter, were denominated *quadrans*; four, or a third, *triens*; five, *quincunx*; six, or one-half, *semis*; seven, *septunx*; eight, or two-thirds, *bes*; nine, or three-fourths, *dodrans*; ten, *dextans*; and eleven, *deunx*. *P. Cyclopedia. Adam's Rom. Ant.* 534, (Am. ed.)

Any integral sum, quantity or thing, subject to division in certain proportions. Frequently applied in the civil law to inheritances; the whole inheritance being termed *as*, and its several proportionate parts, *sextans*, *quadrans*, &c., as above explained; though it was not necessary that it should always be divided into twelve parts. *Dig.* 28. 5. 50. § 2. *Heinecc. El. Jur. Civ.* lib. 2, tit. 14, § 541. *Inst.* 2. 14. 5. *Tayl. Civ. Law*, 491–495. *Hæres ex semisse*; an heir to six parts, or half of the inheritance. *Inst. ub. sup. Hæres ex asse*; an heir to the whole estate. *Dig.* 23. 3. 85. *Pitisci Lex.* voc. *As.*

The term *as*, and the multiples of its *unciæ* above enumerated, were also used to denote the rates of interest. 2 *Bl. Com.* 462, note (*m*). *Gravina, Orig. Jur. Civ.* lib. 2, § 47. It was also applied to various other things, such as land, (*Dig.* 21. 2. 39. 2;) the price of land, (*Dig.* 17. 1. 12. 8;) and shares in a partnership, (*societas.*) *Dig.* 17. 2. 76. And see *Tayl. Civ. Law*, 495, 496.

AS. L. Fr. To, into; amongst; at, on. *Kelham.*

With. *Yearb.* T. 1 Edw. II. 8.

"AS AFORESAID." Words of relation to a preceding clause in wills and other instruments. "The words *as aforesaid*, in the latter clause, necessarily draw down and incorporate the words in the former clause." Lord Ellenborough, C. J. 10 *East*, 510.

"AS FOLLOWS." The words "as follows, that is to say," held equivalent to, "in the words and figures following, that is to say," &c. 2 *W. Bl.* 787, 788. See 1 *Chitt. Crim. Law*, 233, 234.

"AS IF." [Lat. *ac si.*] As to the meaning of these words in statutes, see Bacon's "Reading on the Statute of Uses," *Works*, iv. 195. And see *Ac si.*

Lord Bacon says of "so that," and "as if," that they both suspend the sentence. Arg. Case of Revocation of Uses, *Works*, iv. 254.

"AS OF." [L. Lat. *ut de.*] In practice and pleading. A term applied to proceedings, and to rights or estates, expressive of *sameness* of legal character, effect or operation; given in the way of *relation*, (in the case of proceedings,) by mere force of law, or absolutely existing (in the case of rights,) in point of fact.

Thus, in practice, proceedings are frequently allowed to take place, or acts to be done, (judgments to be signed, or rules entered,) *as of* some previous day or term, or, as it is otherwise expressed, *nunc pro tunc*, (now for then); that is, the judgment is, in point of fact, signed *now*, but signed in the *same form as* it would have been *then*, being dated *then*, and has the *same effect* given to it, as if it had been actually signed then. See *Nunc pro tunc.*

In pleading, the term "*as of*" is applied to rights and estates, to denote actual and absolute verity, or sameness of legal character. Thus, a party is said to be possessed of a thing, "*as of* his own proper goods," (*ut de bonis propriis*); by which is meant that he was possessed of them in the *same way as* one would be possessed of one's own goods; or, in other words, that the goods were, in point of fact, his own individual and absolute property. See *Holthouse.* The same words, "*as of*" (L. Lat. *ut de*; L. Fr. *sicome de*,) form a part of the celebrated phrase, "in his demesne *as of* fee," which is explained in another place. See *Demesne.*

ASAVER. L. Fr. To wit; to say. *Cest asaver*; that is to say. *Britt.* c. 126.

ASCAVENTER. L. Fr. To certify or make known. *Kelham.*

ASCAVOIR. L. Fr. To be understood; to wit. *Est ascavoir*, (q. v.); it is to be understood. *Litt.* sect. 9, 45. Sometimes written *assaver*, *asaver* and *a saver*. *Stat. Westm.* 1, c. 1. *Britt.* c. 89. *Id.* c. 126. See *Assaver*, *Cest ascavoir.*

ASCEND. [from Lat. *ascendere.*] To go up; to pass up or upwards; to go or pass in the ascending line. 4 *Kent's Com.* 393, 397.

ASCENDANT. [Lat. *adscendens*, *ascendens.*] In the law of descents. A person related to another in the *ascending* line

of kindred, as a father, grandfather, &c.: a person so related, to whom an estate *ascends* (to use the strictly proper term), as the next heir; an heir in the ascending line. * *Nov.* 118, c. 1, 2. *Dig.* 23. 2. 68. *Tayl. Civ. Law*, 539, *et seq.* "Failing descendants,—the succession goes to *ascendants*." *Bell's Dict.* 4 *Kent's Com.* 397.

*** This term is of frequent occurrence in the civil law, particularly in the 118th Novel of Justinian, the second chapter of which expressly treats of the succession of *ascendants*, (περὶ τῶν ἀνιόντων διαδοχῆς.) From this source it was introduced into the Spanish and Scotch law. See *Ascendientes.* It occurs, also, in early feudal law. *Feud. Lib.* 2, tit. 50. It has not, however, been adopted to much extent in the common law, *ascent* itself, in the direct line, having been prohibited in England from a remote period, by a leading canon of inheritance, which has only recently been abolished. See *Descent.* The modern law of succession would seem to authorize its more frequent use, especially as expressive of the relation of *persons*, in preference to the word *ancestor;* leaving the latter to be employed more exclusively in its original and proper legal signification,—the former possessor (or, in the phrase of the old books, the pre-possessor) of an *estate.* See *Ancestor.*

ASCENDENTES. Lat. In feudal law. Ascendants. See *Ascendant. Ascendentes non succedunt;* ascendants do not succeed. *Feud. Lib.* 2, tit. 50. In the civil law, the word is written *adscendentes. Dig.* 23. 2. 68.

ASCENDERE. Lat. In feudal and old English law. To ascend; to go up or upwards; to pass in the ascending line of kindred. *Glanv.* lib. 7, c. 1. See *Descent.* In the civil law, the form is *adscendere.*

ASCENDIENTES. Span. In Spanish law. Ascendants; ascending heirs; heirs in the ascending line. *White's New Recop.* b. 1, tit. 7, c. 3, note. *Schmidt's Civ. Law*, 259.

ASCENT. Passage upwards; the transmission of an estate from the ancestor to the heir in the ascending line. See 4 *Kent's Com.* 393, 397.

ASCENT. L. Fr. Assent; knowledge. *Kelham.*

ASCERTE. L. Fr. Certified. *Kelham.*

ASCEVERER. L. Fr. To affirm. *Kelham.*

ASCIENT. L. Fr. Knowing; knowingly. *Kelham.*

ASCRIPTICII. Lat. In old English law. A species of soke-men, or tenants in ancient demesne, described by Bracton. *Bract.* fol. 7, 209. See *Lib. Nig. Scacc.* c. de Danegeldo, quoted by Spelman. The term is derived from the civil law, in which it was written *ascriptitii*, and *adscriptitii*, and applied to *coloni*, or tenants, whose names were registered (*ascripti*) in the archives of the colony or district where they resided. *Cod.* 11. 47, 49. 1 *Spence's Chancery*, 51, note (*u*). See *Adscriptitii.*

ASCRIPTUS. Lat. [from *ascribere*, to enroll.] Enrolled; registered. See *Adscriptus.*

ASCUN, *Ascuns.* L. Fr. Any one; any. *Britt.* c. 4.

Some. *Dount* ascuns *sount villeines, et* ascuns *fraunkes;* of whom some are villeins, and some freemen. *Id.* c. 83.

ASCUNEMENT. L. Fr. In any wise. *Kelham.*

ASCUS. L. Lat. [Sax. *aesc.*] In old European law. A skiff or boat. *L. Salic.* tit. 23, § 3. *Spelman.*

ASEET, *Assiete.* L. Fr. Assignment. *Kelham.*

ASEIR. L. Fr. To sit. *Kelham.*

ASELEES. L. Fr. Sealed. *Kelham.*

ASES. L. Fr. Assessed. *Kelham.*

ASOÛDRE. L. Fr. To absolve. *Kelham.*

ASOYNE, *Asone.* L. Fr. Essoin. *Kelham.* See *Essoin.*

'ΑΣΦΑΛΕΙΑ, Ασφάλεια. Gr. [from ασφαλὴς, secure.] In the civil law. Security. *Cod.* 6. 38. 3.

ASPORTARE. L. Lat. In old English practice. To carry away. *Asportavit;* [he] carried away. Applied in the old writs of trespass, to the taking of inanimate things, as distinguished from *abducere*, (q. v.) *F. N. B.* 86 A. note. *Id.* 88 B. *Bract.* fol. 167. See *Cepit et asportavit.*

Asportatus; carried away. *Nisi affidat quod bona* asportata *valeant quadraginta solidos ad minus;* unless he make oath that the goods carried away are worth at least forty shillings. *Fleta*, lib. 2, c. 1. § 25.

ASPORTATION. [L. Lat. *asportatio*, from *asportare*, to carry away.] The carrying away of goods; one of the circumstances requisite to constitute the offence of larceny. 4 *Bl. Com.* 231. A bare re-

moval by the thief from the place in which he found the goods, though he does not quite make off with them, is a sufficient *asportation*, or carrying away. *Id. ibid. T. Jon.* 109.

A carrying quite away. 1 *Stra.* 634.

ASPORTATOR. L. Lat. [from *asportare*, q. v.] In old English law. One who carries away stolen goods. *Fleta*, lib. 1, c. 39, § 3.

ASPORTAVIT. L. Lat. [from *asportare*, q. v.] He carried away. Sometimes used as a noun to denote a carrying away. An "*asportavit* of personal chattels." Lord Loughborough, 2 *H. Bl.* 4.

ASS. An abbreviation of the L. Lat. *assisa* and L. Fr. *assise*.

Ass. mor. ant. An abbreviation of *assisa mortis antecessoris*. *Fleta*, lib. 4, c. 5.

Ass. no. diss. An abbreviation of *assisa novæ disseisinæ*. *Id. ibid.*

ASSACH. Brit. In old Welsh law. An oath; an oath made by compurgators. A term applied, in the statute 1 Hen. V. c. 6, to a Welsh custom of clearing a person accused of killing another, by the oaths of three hundred men. The object of the statute was to abolish this custom, so far as it applied to Englishmen who might be imprisoned in Wales. *Barringt. Obs. Stat.* 382.

The exact meaning of this word appears to have been a matter of some doubt. Mr. Barrington observes that he could not find it either in Dr. Davis' Dictionary, or the Glossary to the Laws of Hoel Dda. He collects its meaning from the statute itself. It is otherwise written *assath*, (q. v.)

ASSAIA, *Assaya*. L. Lat. In old English law. An assay or examination. *Assisa et assaia panis;* the assise and assay of bread. *Cowell. Blount. Assaia mensurarum et ponderum;* the assay of measures and weights. *Reg. Orig.* 280.

ASSAIER, *Assayer*. L. Fr. To try or essay; to endeavor or attempt. *Assaiant;* trying, essaying. *Assay, assaye;* endeavored. *En assaie;* on trial. *Kelham.*

ASSALLIRE. L. Lat. In feudal law. To assault. *Feud. Lib.* 2, tit. 24, § 5. *Spelman.* See *Adsallire.*

ASSALTUS. L. Lat. In old English law. An assault. *LL. Edw. Conf.* c. 12. *Spelman. Fleta*, lib. 1, c. 31, § 6. *Assultus* is the Latin of the feudists. *Zasius de Feudis*, p. 10, nu. 38. *Cowell. Assaltus*, however, occurs in the Books of Feuds. *Lib.* 2, tit. 24, § 3. *Insultus* is the Latin of the old common law writs. See *Insultus.*

ASSART, *Essart*. [L. Lat. *assartum, assertum, essartum, exartum.*] In English forest and ecclesiastical law. An offence committed in the forest, by pulling up by the roots the woods that are thickets and coverts for the deer, and making them plain, (that is, clear) as arable land. *Manwood*, p. 2, c. 9, n. 1. *Termes de la Ley. Cowell.* 1 *Crabb's Real Prop.* 486, 487, § 627.

The land itself so *assarted*, that is, cleared and prepared for, or reduced to cultivation. *Cowell.* Land grubbed up and made fit for tillage. *Bunb.* 129, case 201. *Id.* 312, case 396.

The L. Lat. form of this word is written *assartum* and *essartum*, (qq. v.) the former occurring in Bracton and Fleta, the latter in the Charta de Foresta and the Black Book of the Exchequer. Spelman, who adopts the latter, derives it from the Fr. *essarter*, corresponding with the Lat. *interlucare*, to thin woods by cutting trees at intervals, so as to admit the sun, (*ita ut sol interluceat*); to cut down woods; to clear of thickets; to bring rough and uncultivated grounds into a proper state for cultivation. *Essartum* he further derives from the Lat. *exertum*, pulled up by the roots; eradicated. *Spelman*, voc. *Essartum.* Mr. Somner thinks *exartum* to be a contraction of *exaratum*, ploughed up, from *exarare*, to plough up, to which opinion Dufresne also inclines. *Cowell.*

To ASSART. [L. Lat. *assartare, assertare, exartare, sartare.*] In forest law. To pull up by the roots; to cut down and eradicate woods; to clear land of trees, thickets, &c., and prepare it for, or reduce it to tillage. *Cowell. Spelman*, voc. *Essartum.* 1 *Crabb's Real Prop.* 486, 487, § 627. See *Assartare.*

ASSARTARE, *Assertare, Exartare*. L. Lat. In old English law. To assart, or remove by the roots; to clear land. See *To assart. Assertare et in culturam redigere;* to assart and reduce to cultivation. *Reg. Orig.* 257. *Assertatum;* assarted or cleared. *Id. ibid.*

ASSARTUM, *Essartum, Exartum*. L. Lat. In old English law. Assart; land cleared of its wood and converted to tillage. Sometimes termed *disbocatio. Cowell. Quia illud fuit aliquando foresta, boscus et locus vastæ solitudinis, et communia, et jam inde efficitur* assartum, *vel*

redactum est in culturam ; because that was once a forest and a wood, and a place of vast solitude, and a common; and is now made thereof assart, or is reduced to tillage. *Bract.* fol. 226. *Fleta*, lib. 4, c. 22, § 6.

Essartum is used in the Carta de Foresta, (9 Hen. III. c. 4,) although some copies have *assartum. Blackst. Law Tracts.*

ASSASSINATION. In criminal law. Murder committed for hire. *Bell's Dict.*

Murder by surprise or secret assault; murder by sudden violence. *Webster.*

ASSATH, *Assaith.* A custom of purgation formerly used in Wales, by which an accused party cleared or purged himself by the oaths of three hundred men. It prevailed to the reign of Henry V. when a statute was passed forbidding its continuance. *Stat.* 1 *Hen.* V. c. 6. *Spelman. Cowell.* The true form of the word seems to be *assach*, (q. v.)

ASSAULT. [from Fr. *assayler*, or *assailir*, to assail or attack; L. Lat. *assaltus*, *assultus*, from *assilire*, to leap at, or against; or *insultus*, from *insilire*, to leap upon; L. Fr. *assaut.*] An unlawful setting upon one's person. *Finch, Law*, b. 3, ch. 9.—An intentional attempt, by violence, to do a corporal injury to another. *Wharton's Amer. Crim. Law*, 311. 1 *Hill's* (N. Y.) *R.* 351. —An attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him, with or without a weapon, or presenting a gun, &c. *Hawk. P. C.* b. 1, ch. 62, s. 1, 2. *Bac. Abr.* Assault, A.—An attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist in a threatening manner at another; or strikes at him, but misses him. 3 *Bl. Com.* 120. 3 *Steph. Com.* 469. 13 *East*, 1. If the person be actually touched, it is a *battery.* See *Battery.*

ASSAVER. L. Fr. To be known. An old form of *ascavoir*, (q. v.) *Si est* assaver; this is to be known. *Fet Assaver*, § 22. An old form of *c'est ascavoir*, (q. v.)

To make known; to give notice. *Kelham.*

ASSAVOIR. L. Fr. To make known; to certify. *Kelham.*

ASSAY. [L. Lat. *assaia*, *assaya ;* from Fr. *assaye*, *assaie*, *essay*, a proof or trial.] In old English law. An examination, proof or trial.

A trial of weights and measures by a standard; as by the constituted authorities, clerks of markets, &c. *Reg. Orig.* 280. See *Assaia.*

A trial or examination of certain commodities, as bread, cloths, &c. *Cowell. Blount.* See *Assaia.*

A trial or test of the purity of metals and of coined money. This is the only sense in which the word is now used.

ASSAYATOR. L. Lat. In old English law. An assayer. *Assayator regis ;* the king's assayer. *Cowell.*

ASSAYSIARE. L. Lat. In old records. To associate; to take or select as fellow-judges, or consessors. *Cowell.*

ASSECURARE, *Adsecurare.* L. Lat. In old European law. To make secure, (*securum facere.*) *Spelman.*

To assure or secure by pledges, or any solemn interposition of faith. *Cowell.*

To confirm or establish. *Reg. Orig.* 107 b. See *Adsecurare.*

ASSECURATIO, *Adsecuratio.* L. Lat. [from *assecurare*, q. v.] Assurance; a making secure. See *Assurance. Assecuration* is used by old English writers. *Richardson's Dict.*

In old maritime law. Assurance or insurance of a vessel or cargo; (*aversio periculi.*) *Loccenius de Jur. Mar.* lib. 2, c. 5. —A contract for the safe transportation of things for a certain premium, (*conventio de rebus tutò aliundè transferendis pro certo premio.*) *Stypmannus*, pars 4, c. 7, n. 262, p. 453. *Emerig. Tr. des Assur.* ch. 1, pr.

A voyage insured. *Independenter se habet* assecuratio *a viaggio navis;* the voyage insured is a distinct thing from the voyage of the ship. *Casaregis, Disc.* 67, n. 5, 31. 3 *Kent's Com.* 318, note.

The old European writers take notice that this is not a Latin word, that is, not purely so. *Stypman.* par. 4, c. 7, n. 267, p. 454. *Kuricke, Diatrib. de Assec.* p. 829.

ASSECURATOR. L. Lat. [from *assecurare*, q. v.] In maritime law. An insurer, (*aversor periculi.*) *Loccen. de Jur. Mar.* lib. 2, c. 5, s. 10.

ASSEDATION. In Scotch law. A setting or letting for hire; another name for a *tack* or lease. 1 *Forbes' Inst.* part 2, b. 2, c. 4, tit. 4, § 6. *Ersk. Inst.* b. 2, tit. 6, § 20.

ASSEMBLY, UNLAWFUL. [L. Lat. *illicita congregatio.*] In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any

motion towards it. 3 *Inst.* 176. 4 *Bl. Com.* 146. *Cowell.*

Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and excite alarm and consternation in the neighborhood.* 4 *Steph. Com.* 278. *Wharton's Am. Crim. Law*, 523. See *Id.* book 5, ch. 4.

ASSENER. L. Fr. To assign. *Kelham.* See *Assigner.*

ASSENT. [Lat. *assensus*, from *assentior*, from *ad*, to, and *sentire*, to think.] Agreement to, or approval of an act or thing done; as *consent* is agreement to a thing to be done, or about to be done. See *Consent.* The royal assent, in England, is the approval, by the sovereign, of an act which has passed both houses of parliament. 1 *Bl. Com.* 184. The assent of the president of the United States is expressed, in similar cases, by the word "*approved.*"

The distinction between *assent* and *consent*, has been noticed by so early a writer as Britton, and seems to be well established in modern lexicography, but is not uniformly observed. Webster makes *assent* to be the agreement to an abstract proposition; and *consent*, an agreement to some proposal or measure which affects the rights or interests of the consenter. But this distinction does not appear to be recognized in law.

ASSENTER. L. Fr. To assent. Distinguished by Britton from *consenter*, to consent. *Britt.* c. 92.

ASSEOUR. L. Fr. An assessor. *Kelham.*

ASSER, *Asseer, Asseoir.* L. Fr. To settle or fix; to ascertain or assess. *Kelham.*

ASSERTA. L. Lat. In old English law. Assart; an assart. *Quandam* assertam *simul cum communia turbariæ;* a certain assart, together with a common of turbary. *Yearb.* M. 7 Edw. III. 1.

ASSERTARE. L. Lat. In old English law. To assart. *Assertatum;* assarted. *Reg. Orig.* 257. See *Assart.*

ASSERTE. L. Fr. Assart; cleared land. *Le comen passa ove* l'asserte. *Yearb.* M. 7 Edw. III. 3.

ASSES, *Assez.* L. Fr. Enough; an equivalent; satisfaction or compensation. *Il est tenu de faire* asses *a la feme, de ses damages;* he is bound to make satisfaction to the woman, for her damages. *Britt.* c. 103.

ASSESS. [L. Lat. *assidere*, (q. v.) L. Fr. *asser, asseer, asseoir.*] To adjust or proportion.

To fix or settle a sum to be levied or paid. See *infra.*

To rate or fix the proportions of a tax which each person, of several liable to it, has to pay; to apportion a tax among several subject to it; to apportion a tax according to a supposed relation between burden and benefit. See *Assessment.*

To impose a pecuniary payment upon persons or property; to tax.

To value, in order to tax.

*** The terms to *assess*, (*assidere*) and to *tax*, (*taxare*,) were anciently used in close connection, as expressive of nearly the same idea. *Assidere, taxare et levare;* to assess, to tax and to levy. *Reg. Orig.* 188. 1 *Ld. Raym.* 147. The damages in a cause were said to be *assessed* and *taxed*, (*damna assessa et taxata.*) *Keilw.* 83. The jury in a cause were frequently said to *tax* the *damages. Yearb.* H. 9 Hen. VI. 21. M. 19 Hen. VI. 86. Afterwards, a distinction was made; the jury being said to *assess* the *damages*, and the court, to *tax* the *costs.* And this distinction has been preserved to the present time. The radical idea of both words, however, continued to be the same, viz. an *authoritative imposition*, involving the further idea of *adjustment* or *proportion;* the damages being proportioned to the injury sustained, and the costs to the services rendered.

A similar connection between the terms has been preserved in their application to financial subjects. The "taxes" of a city or town are constantly said to be "assessed;" land is said to be "assessed for taxes;" a person is said to be "assessed," (taxed) a certain amount. See 1 *N. Y. Rev. Stat.* [387,] *et seq.* Part 1, chap. xiii. tit. 1, 2. Strictly, however, "to assess" signifies "to value, for the purpose of taxation," and as preliminary to it. Property is "assessed" (that is, described and valued) by the town assessors, and "taxed" by the county supervisors. *Id.* [395,] § 33. Ruggles, J. 2 *Comstock's R.* 69.

ASSESSE, *Asses.* L. Fr. Assessed; affeered. *Stat. Westm.* 1, c. 18.

ASSESSMENT. [from *assess*, q. v.] An adjustment or proportioning of one thing to another.

The fixing or settling of a sum to be levied or paid, according to a certain proportion.

The adjustment of the proportions of a

tax to be levied; the apportionment of a tax among several subject to it. See *infra.*

Taxation in general; authoritative imposition of a sum or sums to be paid. See *Assess.*

Valuation of property for the purpose of taxation, and as preliminary to it. See *Assess.*

Taxation for a special purpose or local object; local taxation, as distinguished from general taxation. Taxation on the principle of apportionment according to the relation between burden and benefit; or according to the benefit which each tax-payer is supposed to derive from the object on which the tax is expended.* 4 *Comstock's R.* 419.

A pecuniary imposition upon persons or property; a tax.

A special tax or imposition for a local object or purpose, as the opening, grading and regulating of a street in a city or town; a local tax apportioned according to a supposed relation between burden and benefit.* 4 *Comstock's R.* 419.

*** The term "assessment" is constantly used in two distinct senses; first, as descriptive of the *mode* or *process* of ascertaining the amount and proportions of certain pecuniary impositions upon persons and property; secondly, as descriptive of the *results* of such processes, viz. the *sums* of money so ascertained and required to be paid. In the former sense it may be compared with the term "taxation;" in the latter, with "tax."

The connection, in point of meaning, between the terms "assessment" and "taxation," is very close; and originally they seem to have imported the same thing. The term "taxation of damages," in the old books, had precisely the same signification with "assessment of damages," which was substituted in its place. See *Assess, Taxation.* In their modern application to financial subjects, there is a similar connection, and the terms are often used indifferently, to express the same idea, as in the expression "assessment of taxes," and others. A distinction, however, is sometimes made between them,—"assessment" being used as descriptive of the preliminary process of valuation, and "taxation," of actual, specific imposition. See *Assess.* Another distinction made between the terms is one of subdivision; "assessment" being defined as a particular species of taxation, or taxation for a special purpose and upon a peculiar principle.

Between "assessment" and "tax," in the sense of a *result*, i. e. a *sum* or sums of money specifically ascertained, imposed and required to be paid, there is also a distinction; the term "assessment" being used to denote a special and temporary imposition on the owners of property in certain localities, to defray the expense of improvements made in those localities, such as the opening of a street or road, the construction of a sewer, &c. In some states, it has, indeed, been held that the meaning of the words "tax" and "assessment" is the same, whether applied to the opening or to the paving of a street, and that, in either case, they are regarded as synonymous. 7 *Maryland R.* 517. In New-York, however, the distinction has always been judicially recognized. In the matter of the Mayor, &c., of New-York, (11 *Johns. R.* 77,) it was expressly held by the Supreme Court, that an "assessment" on the property of certain churches, for enlarging a part of a street in the city, was not a "tax," within the meaning of an act exempting churches, &c. from being *taxed;* and the court took pains to distinguish between *taxes*, which it defined to be "burdens, charges or impositions, put or set upon persons or property, for public uses," and an *assessment* to pay for opening a street, in a ratio to the benefit or advantage derived from it; which they held to be "no burden." In Bleecker *v.* Ballou, (3 *Wendell's R.* 263, 266,) in which a tenant was sued, under a covenant to pay "all taxes, charges and impositions," &c. for the amount of an assessment for pitching and paving a street, Savage, C. J. observed, —"There is no doubt that the assessment in question was not a *tax;* that being a a sum imposed, as is supposed, for some public object." It was held, however, to be included under the other words of the covenant. Both these cases were cited, and the distinction taken in them approved, in the subsequent case of Sharp *v.* Spier, (4 *Hill's R.* 76,) in which it was held that a power to sell for *taxes* did not authorize a sale for a mere *assessment* for benefit. Still, although not strictly taxes, street assessments have been held, in this state, to be lawful and constitutional impositions within the general power of taxation admitted to belong to the state. In the case of The People *v.* Mayor, &c. of Brooklyn, (4 *Comstock's R.* 419,) in which the cases were reviewed, the meaning of

the term "assessment," and the constitutionality of impositions under that name were considered at large in the Court of Appeals. In this case, *assessment*, (in the sense of a *process*,) was considered as the apportionment of a tax according to the benefit which each tax-payer is supposed to receive from the object on which the tax is expended; and the same word, in the sense of a *sum* imposed and required to be paid, was regarded as a local tax, apportioned according to the relation between burden and benefit. It was remarked by Ruggles, J., who delivered the opinion of the court, that the difference between general taxation and special assessments for local objects, requires that they should be distinguished by different names, although both derive their authority from the taxing power. They have always been so distinguished, and it is therefore evident that the word "tax" may be used, in a contract or in a statute, in a sense which would not include a "street assessment," or any other local or special taxation, within its meaning. Several cases are found in which it has been adjudged to have been so used. 4 *Comstock's R.* 432, 433.

ASSESSMENT OF DAMAGES. In practice. The fixing or settling by a court or jury, of the amount of damages to be paid by the defendant or defeated party in an action.

Assessment by the *court* is either made directly by the court itself, or more commonly through its clerk, master or prothonotary, to whom a cause is referred for that purpose. This proceeding takes place after judgments by default, in cases where the amount claimed by the plaintiff is a mere matter of calculation, not calling for the intervention of a jury, as in actions on bills of exchange and promissory notes. 1 *Tidd's Pr.* 570. 1 *Burr. Pr.* 372.

Assessment by a *jury* takes place either on the trial of a contested cause, at the time of giving the verdict; or on inquests, where a verdict is taken by default; or before the sheriff or under-sheriff, upon a writ of inquiry issued after judgment by default. 1 *Tidd's Pr.* 570, 573. 1 *Burr. Pr.* 375. See *Writ of inquiry.*

ASSESSOR. Lat. [from *assidere*, to sit by or with.] In the civil law. A person who sat with a judge or magistrate, for the purpose of assisting him with advice. *Dig.* 1. 22. 1, 2.

ASSESSOR. An officer chosen or appointed to assess property. See *Assess.*

ASSESSORES, *Adsessores.* Lat. [plur. of *assessor*, q. v.] In the civil law. Persons who sat with the Roman prætor, or other magistrate, for the purpose of assisting him with their advice in the decision of causes. *Dig.* 1. 22. *Cod.* 1. 51. *Cic. de Orat.* i. 37.

ASSESSORS. In Scotch and English law. Persons skilled in the law, appointed to advise and direct the decisions of the judges of inferior courts. *Bell's Dict. Brande.* The term and practice are both derived from the civil law. See *Assessores.*

ASSETS. [from Fr. *assez*, *asses*, enough.] Goods or lands in the hands of an executor, administrator or heir, *sufficient* (*assez*) to discharge the debts and legacies of the testator, intestate or ancestor, or some part thereof; or *sufficient* to charge the executor, administrator or heir, (that is, to make him liable,) to the extent of the property. *Cowell. Blount. Shep. Touch.* 496. *Lovelass on Wills*, 38. 2 *Bl. Com.* 244, 510. 1 *Story's Eq. Jurispr.* § 531.—The real and personal property of a party deceased, which, either in the hands of his heir or devisee, or of his executor or administrator, is *chargeable* with the payment of his debts and legacies. 2 *Steph. Com.* 244, note (*z*). *P. Cyclopedia.*—In an accurate and legal sense, all the personal property of the deceased which is of a saleable nature, and may be converted into ready money, is deemed *assets.* But the word is not confined to such property; for all other property of the deceased which is chargeable with his debts or legacies, and is applicable to that purpose, is, in a large sense, *assets.* 1 *Story's Eq. Jur.* § 531.

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

In a large sense, the property or effects of any individual, company or corporation, available for the payment of his or its liabilities.* These last are rather the popular than the legal significations of the term.

Assets are either *personal*, *real*, *legal* or *equitable* assets, (qq. v.)

*** This word presents a striking instance of entire loss of original and strictly appropriate meaning, and the acquisition of a new and opposite sense. *Assets*, according to the oldest definitions, once literally signified what its etymology indicates,—property of a deceased person *sufficient* (*assez*) to pay his debts and legacies. *Termes de la Ley.* So, where land descend-

ed to an heir was *as much in value* as other land sold by the ancestor, it was for that reason called *assets per descent*, that is, equivalent, (*quod tantundem valet.*) *Bract.* fol. 376 b, 377. *Co. Litt.* 374 b. 2 *Bl. Com.* 244. The word having become fixed in its application to the property of deceased persons, the idea of *sufficiency* was gradually made subordinate to the more important one of *applicability*, until finally, the word came to be descriptive of the legal character or quality of the property, rather than its amount. See Germy's Case, 1 *Leon.* 87, case cvii. This very strikingly appears in the expression in 10 *Mod.* 324, —"let the assets be never so small." The later and modern definitions have qualified the meaning of the word to suit this change. Thus, Sheppard defines it to be "goods or chattels sufficient to pay the debts, *or some part thereof.*" *Shep. Touch.* 496. So, Stephen,—"sufficient (*to some extent at least*) to satisfy the debt." 1 *Steph. Com.* 396. Blackstone retains the idea of *sufficiency*, but gives it a new application, viz. to the liability of the executor, &c. 2 *Bl. Com.* 510. See the definition *supra*. Other modern definitions have dropped the idea of *sufficiency* entirely; and *assets* is now constantly used to signify *any* property, estate or fund *applicable* to the payment of debts, though quite *insufficient* in amount or value for the purpose. The entire departure from original meaning appears very palpably in the common expression, "an insolvent's or bankrupt's assets."

ASSETS ENTRE MAINS. L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. *Termes de la Ley.* 2 *Bl. Com.* 510. 1 *Crabb's Real Prop.* 23, § 31. "Executors must answer all certain duties of the testator, having sufficient of his chattels, which we call *assets entre mains*, to do it." *Finch, Law*, b. 2, c. 15. Called in modern law, *personal assets*, (q. v.)

ASSETS PER DESCENT. L. Fr. Assets by descent. Lands in the hands of an heir chargeable with the payment of the debts of the ancestor; otherwise called *real assets*, (q. v.) Thus, where a man has bound himself and his heirs in any obligation in writing, for the payment of a certain sum, and he dies seised of lands in fee simple which descend to his heirs, these lands, when in the hands of the heir, will be liable to the payment of that sum. 2 *Bl. Com.* 243, 244, 340. 1 *Steph. Com.* 396, 397. *Co. Litt.* 374 b. In other words, assets by descent are liable to those debts only which are secured by specialty, as bond or covenant binding the party's heirs; but assets in the hands of executors and administrators are liable to all debts. *Brande.*

ASSECURANTIE. Assurance or insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, § 1.

ASSEWIARE. L. Lat. In old records. To draw or drain out water from marshy grounds. *Cowell. Blount.*

ASSEZ, *Aseez, Assetz, Assietz, Asses.* L. Fr. Enough; sufficient. *Kelham. Assez affer;* enough to do. *Id.* See *Asses.*

ASSI'A. A contraction of *Assisa*, (q. v.) 1 *Instr. Cler.* 9.

ASSID'. An abbreviation of *Assidunt.* 1 *Instr. Cler.* 9. See *Assidere.*

ASSIDERE. Lat. [from *ad*, by, and *sedere*, to sit.] In the Roman law. To act as an *assessor;* to perform the office of an assessor. *Liberti* assidere *possunt;* freed-men may act as assessors. *Dig.* 1. 22. 2. See *Assessor.*

ASSIDERE. L. Lat. In old practice. To assess; to fix, settle, define, determine, or reduce to a certainty, either in point of time, number, amount, quantity, quality, &c. *Assidere, taxare et levare;* to assess, tax and levy. *Reg. Orig.* 188. 1 *Ld. Raym.* 147. *Assiderunt et taxarunt;* they assessed and taxed. *Keilw.* 83. *Assessus;* assessed. Properly *assisus*, (q. v.) *Assidenda;* to be assessed. 1 *Stra.* 201. *De auxilio assidendo;* for assessing an aid. *Mag. Chart. Joh.* c. 14. In the old Latin records of verdicts in civil actions, the literal translations of which are still used, the entry was, after stating that the jury found for the plaintiff, "*et* assidunt *damna*," (and they assess the damages) at so much; and then the judgment of the court was given for the damages "*per juratores prædictos in forma prædicta* assessa;" (by the jurors aforesaid in form aforesaid assessed.) *Towns. Pl.* 494.

To assign or appoint a time. *Et quod tenenti* assidat *diem certum;* and that he assign to the tenant a certain day. *Fleta*, lib. 6, c. 6, § 16.

To ASSIGN. [Lat. *assignare;* L. Fr. *assigner*, qq. v.] In conveyancing. To make or set over to another; to transfer; as to *assign* property, or some interest therein. *Cowell.* 2 *Bl. Com.* 326. To transfer by writing. 26 *Mississippi R.*

577. To transfer by delivery. 11 *Barbour's R.* 637—639. To transfer persons, as a sheriff is said to assign prisoners in his custody. See *Assignee, Assignment.*

In practice. To appoint, allot, select or designate for a particular purpose, or duty. Thus, in England, justices are said to be "*assigned* to take the assizes," "*assigned* to hold pleas," "*assigned* to make gaol delivery," "*assigned* to keep the peace," &c. *Stat. Westm.* 2, c. 30. *Reg. Orig.* 68 b, 69. 3 *Bl. Com.* 58, 59, 352. 1 *Id.* 351. *Cowell.* So, a court is said to "*assign* a prisoner counsel."—To appoint a time; as, to *assign* a day.

To point at, or point out; to set forth, or specify; to mark out or designate; as to *assign errors* on a writ of error; to *assign breaches* of a covenant. 2 *Tidd's Pr.* 1168. 1 *Id.* 686. To *assign false judgment*, in old practice, was to declare how and where the judgment was unjust. *Old N. Br.* 17. To *assign waste* was to show wherein especially the waste was committed. *Reg. Orig.* 71 b, nota. To *assign a perjury* is a phrase still used. *Stat.* 9 *Ric.* II. c. 3.

In the phrase "to *assign* dower," the word is used in the two last senses; the widow's portion being set or marked out, that is, designated by metes and bounds, or other description, and so allotted or appointed for her use. But it has not the sense of *transfer*, as the estate does not pass by the assignment. 4 *Kent's Com.* 69. See *Assignment of Dower.*

ASSIGN. [L. Fr. *assigne;* L. Lat. *assignatus.*] An assignee; a person to whom property or a right or interest is transferred by another. 1 *Stra.* 460. 13 *East*, 565. 1 *Curtis' R.* 199. Now rarely used. The plural *assigns* is still retained in deeds, bonds and other instruments. See *Assignee, Assigns.*

ASSIGNABLE. That may be assigned or transferred; transferable; negotiable, as a bill of exchange. *Comb.* 176. *Story on Bills*, § 17.

ASSIGNARE. Lat. [from *ad*, to, and *signare*, to mark.] In the civil law. To assign, allot, or appoint. *Assignare libertum;* to assign a freedman to a particular child. *Inst.* 3. 9. pr. *Dig.* 38. 4. *Id.* 50. 16. 107.

ASSIGNARE. L. Lat. In old practice and conveyancing. To assign; to transfer or make over. *Cui terram illam dare vel* assignare *voluerit;* to whom he will give or assign that land. *Bract.* fol. 17 b. *Id.* fol. 18 b. *Fleta*, lib. 3, c. 14, § 6. *Dyer*, 54, (Fr. ed.)

To assign; to allot, appoint, or designate. Assignavimus *vos justitiarios nostros, ad inquirendum;* we have assigned you our justices to make inquiry. *Reg. Orig.* 123. Assignavimus—*ad itinerandum;* we have assigned to itinerate. *Bract.* fol. 109. See *Clerke's Prax. Cur. Adm.* tit. 15.

To assign; to mark out, set off, allot or set over, as a widow's dower. *Vir dotem dat et constituit, hæres autem tantum dotem* assignat; the husband gives and establishes dower; the heir only assigns it. *Bract.* fol. 300 b. *Infra quos* assignetur *ei dos;* within which her dower shall be assigned her. *Mag. Chart.* c. 7.

ASSIGNATI. L. Lat. [plur. of *assignatus*, q. v.] In old English law. Assigns; assignees. *Bract.* fols. 20, 21, 37 b. See *Assigns.*

ASSIGNATIO. Lat. and L. Lat. [from *assignare*, q. v.] In civil and old English law. An assigning or assignment. *Inst.* 3. 9. *Dig.* 38. 4. 1. 6. *Assignatio dotis;* assignment of dower. *Bract.* fol. 314. *Ex assignatione;* from, or on the assignment. *Reg. Orig.* 73, 75 b. *Dyer*, 206 b. *Per assignationem;* by the assignment. 1 *Ld. Raym.* 367.

ASSIGNATION. In Scotch law. An alienation, transfer or conveyance, particularly of a debt or movable subject; an assignment.* *Ersk. Inst.* b. 2, tit. 7. *Id.* b. 3, tit. 5. By assignation, in proper speech, is understood a written deed of conveyance by the proprietor to another, of any subject not properly feudal. *Id. ibid.* § 1. It is distinguished from a *disposition* which is a conveyance of heritage. *Bell's Dict.*

ASSIGNATOR. Lat. [from *assignare*, q. v.] In the civil law. An assigner or assignor; one who assigns. *Dig.* 38. 4. 3. 1.

ASSIGNATUS. Lat. and L. Lat. [from *assignare*, q. v.] In old English law. An assignee, or assign. *Towns. Pl.* 28. *Eidem B. vel ejus* assignato; to the said B. or his assign. *Fleta*, lib. 2, c. 64, § 21. *Id.* lib. 10, c. 3, § 1. **Assignatus utitur jure auctoris.** An assignee uses the right of his principal; an assignee is clothed with the rights of his principal. *Halk. Max.* p. 14. *Broom's Max.* [350—362.]

A person assigned or appointed to a particular duty. *Ad placita tenenda assignatis;* assigned to hold pleas. *Reg. Orig.* 68 b.

In the civil law. A person assigned or set over to another, as a freedman to a particular child. *Inst.* 3. 9. *Dig.* 38. 4.

ASSIGNAY, *Assigney.* O. Sc. In Scotch law. An assignee. "His airis and assignais." 1 *Pitcairn's Crim. Trials*, part 2, p. 342. "Aires or assigneys." 5 *Bell's Appeal Cases*, 83. *Assignay* (L. Fr.) occurs in *Yearb.* M. 7 Edw. III. 5.

ASSIGNEE, (and formerly,) ASSIGN. [L. Fr. *assigne;* L. Lat. *assignatus;* Scotch, *assigny.*] A person to whom some right or property is assigned, transferred or made over by another; or, according to the old definition, "he to whom a thing is appointed or assigned to be used, paid or done." *Termes de la Ley. Cowell.* Assignees are either by *deed*, or in *law.* See *infra.* When a statute speaks of an *assignee*, it is to be intended of such complete assignee, who has all the ceremonies and incidents requisite by the law to such character, not taking away any form or circumstance which the law requires. *Dwarris on Stat.* 773, (9 Phil. Law. Lib.)

In old law. A person deputed or appointed by another to do any act, or perform any business. *Blount.* An *assignee*, however, was distinguished from a *deputy*, being said to occupy a thing in his own right, while a deputy acted in right of another. *Perkins*, tit. *Grants. Cowell.* Deputy is but as a shadow of the officer, but assignee is in his own right, and he shall answer for himself. *Brownl.* part 2, 337.

Assignee by deed, (*in deed* or in fact,) is the person to whom some right, title or property is made over, or assigned by another by some *deed* or instrument in writing, which is hence called an *assignment*, and the party assigning the *assignor.** *Termes de la Ley. Cowell.*

Assignee in law is the person to whom some right or property is transferred, or upon whom it devolves by the mere operation of *law*, and without any express conveyance. In this sense, an executor is the assignee of the testator; an administrator, of the intestate. *Dyer*, 6. *Hob.* 9 b. *Termes de la Ley. Cowell.* See *Assigns.*

ASSIGNEMENT, *Assignment.* L. Fr. Assignment; an assignment. *Britt.* c. 103. *Yearb.* M. 2 Edw. III. 5.

ASSIGNER, *Assiner, Assener.* L. Fr. To assign. *Kelham. Yearb.* M. 2 Edw. II. 20. *Assigner faux serement;* to assign perjury. *Id.* M. 8 Edw. III. 43. *Id.* M. 7 Edw. III. 5. *Dyer*, 45 b, 54.

ASSIGNMENT. [L. Fr. *assignement*, L. Lat. *assignatio.*] In conveyancing. A transfer or making over by one person to another, of any property real or personal, in possession or action, or of any estate or right therein.*

A transfer or making over to another of the right one has in *any* estate [in *lands* or tenements;] but it is usually applied to an estate for *life* or *years.* 2 *Bl. Com.* 326. —A transfer of one's whole interest in any estate. *Watkins on Conv.* b. 2, ch. ix.— A transfer of some particular estate or interest in lands; the transfer of a term for years. *Cruise's Dig.* tit. xxxii. (Deed,) ch. vii. s. 15. Dr. Wooddeson restricts the proper meaning of *assignment*, to "the transfer of the interest which any one has in the unexpired residue of a term or estate for *years.*" 2 *Wooddes. Lect.* 170, 171. Mr. Stephen has otherwise modified the definition of Blackstone, making an assignment to be "properly a transfer or making over to another, of one's *whole interest* [in lands or tenements,] *whatever* that interest may be; but it is usually applied to express the transfer of an estate for *life or years.*" 1 *Steph. Com.* 485.

A transfer or making over by one person to another, of a chattel personal, equitable interest or chose in action; as of an article of merchandise, or household furniture, a ship, a copy-right or patent right, a bond, a note, and the like. 2 *Steph. Com.* 104. *Watk. Conv.* b. 2, ch. ix.

A transfer of a bill of exchange, promissory note, or check, by mere delivery or by writing. A transfer by indorsement, general or special.* *Chitty on Bills*, (Perkins' ed. 1854,) 8, 11, 12, 225, 259, note 3, and cases cited *ibid.* 11 *Barbour's R.* 637 —639. 26 *Mississippi R.* 577. *Burrill on Assignments*, (2d ed.) p. 3, notes, 1, 2.

A transfer of a bill, note or check, not negotiable. *Id. ib.* note 1.

A transfer or making over by a debtor, of all or a part of his property and effects, to one or more *assignees*, in trust for the benefit of his creditors. 2 *Story's Eq. Jur.* ch. 28. *Burrill on Assignments.* See *Voluntary assignment.*

The instrument or writing by which a transfer of property is made. In real estate conveyancing, an assignment is a species of *deed*, and is classed by Blackstone and other writers, among common law conveyances of a *secondary* or derivative character. 2 *Bl. Com.* 310, 326. In the

transfer of personal property, the instrument of assignment is frequently of an equally formal character, though it is more commonly termed a *bill of sale*, (q. v.) 2 *Steph. Com.* 104. In some cases, however, it is made in the form of a mere note or memorandum, and, in the case of a negotiable bill or note, the assignment is effected by the mere endorsement of the assignor's name. *Id. ibid.* 105. *U. S. Digest*, Assignment.

In an assignment of real estate, the operative words are "assign, transfer and set over;" though usually the word "grant" is inserted; but any words which show an intention to pass the property, will amount to an assignment. *Watkins on Conv.* (by Preston,) b. 2, ch. ix. In assignments of chattels, the ordinary words are, "grant, bargain and sell, assign, transfer and set over." *Id. ibid.*

ASSIGNMENT OF DOWER. [L. Lat. *assignatio dotis.*] The marking out and laying off of one third part of a man's lands as the dower of his widow; designating it by metes and bounds, or other sufficient description, and allotting it to her as her portion.* This assignment may be made *in pais*, by parol, by the heir or devisee, or other persons seised of the lands subject to dower; or it may be made by a course of judicial proceeding, where a voluntary assignment is refused. But the estate does not pass by the assignment, the dowress being *in* in intendment of law, of the seisin of her husband; and this is the reason that neither livery nor writing is essential to the validity of an assignment *in pais*. 4 *Kent's Com.* 63, 69.

ASSIGNMENT OF ERRORS. In practice. The statement of the plaintiff's case on a writ of error, setting forth the errors complained of; corresponding with the declaration in an ordinary action. 2 *Tidd's Pr.* 1168. 3 *Steph. Com.* 644.

ASSIGNOR. [Lat. *assignator;* Scotch, *cedent.*] One who makes an assignment; one who assigns or transfers to another.

ASSIGNS. [L. Fr. *assignes;* L. Lat. *assignati.*] In conveyancing. A word nearly or quite synonymous with *assignees*, and formerly sometimes so written; both words probably being only different pronunciations of the Fr. *assignes*. *Termes de la Ley.* Its use is now confined to conveyancing, (as in the common expressions "heirs and assigns," "executors, administrators and assigns,") in which branch of the law it has been employed from a very remote period. See *infra.*

Where a party in a deed covenants for himself, his executors, administrators and *assigns*, the word *assigns* means any person to whom the property or interest described in the deed, may happen at any future time to be *assigned*, either by deed or by operation of law. *Holthouse.* Under the word *assigns*, are included not only assignees, properly so called, but executors, and administrators, the assignee of an assignee *in perpetuum*, the heir of an assignee, the assignee of an heir, the assignee of an assignee's executor, and a devisee. *Hob.* 9 b. *Co. Litt.* 384 b. *Plowd.* 287, 288. 5 *Co.* 16, 17 b. 2 *Show.* 39, 57. *Godbolt*, 161. 3 *Leon.* 212. 1 *P. Wms.* 73. But not involuntary assignees, as assignees in bankruptcy. 3 *M. & S.* 353. "*Assigns*," in a policy of insurance, means one who becomes the assignee of the policy, with the assent of the office, not any one who takes an interest in the property from the insured. 1 *Curtis' R.* 193, 198.

*** The word *assigns* occurs in most of the forms of charters or deeds in Bracton and Britton, with various modifications no longer used. Thus,—"*tali, et hæredibus suis, et* assignatis, *et hæredibus* assignatorum;" to such a one, and his heirs and assigns, and the heirs of his assigns. *Bract.* fol. 37 b. "*Tali, et hæredibus suis et* assignatis, *et eorum hæredibus, et* assignatis assignatorum *et hæredibus eorum;*" to such a one, and his heirs and assigns, and their heirs, and the assigns of his assigns, and their heirs. *Id. ibid.* So,—*à ses heires, et à ses* assignes, *et as* assignes *des* assignes; to his heirs and to his assigns, and to the assigns of his assigns. *Britt.* c. 37, fol. 96. *Id.* c. 39, fol. 100 b. The introduction of this word into deeds, as a necessary word of form, probably grew out of the ancient doctrine that if a man's *assigns* were not specified in the purchase deed, he was not empowered to aliene. *Mirr.* c. 1, § 3. *Bract.* fol. 17 b. 2 *Bl. Com.* 289. 1 *W. Bl.* 134. This appears from Bracton to have been particularly the case with bastards, who could not *assign* land given to them, unless this were allowed by the terms of the gift, (*nisi hoc permissum esset per conditionem, et per modum donationis*); that is, by express words denoting liberty of assignment; and the same author remarks, as worthy of notice, that this kind of gift was first invented in favor of that

description of persons. *Bract.* fol. 20 b. (*Et notandum quod in favorem* bastardorum *primò inventa fuerit donatio.*) Fleta more explicitly says, *et ideo in favorem* bastardorum *inventa fuit* assignatio *et constituta. Fleta*, lib. 3, c. 10, § 1.

ASSIGNY. In Scotch law. An assignee. 1 *Forbes' Inst.* part 3, b. 1, c. 1, tit. 2, sect. 1.

ASSILIRE. Lat. In feudal law. To assault; to attack; to offer violence to. *Feud. Lib.* 1, tit. 5, § 1. *Hotom. de Verb. Feud.*

ASSIS, *Assise, Assys.* L. Fr. Fixed, set, appointed; affeered, assigned; situated. *L. Fr. Dict. Kelham.*

ASSISA. See *Assisus.*

ASSISA. L. Lat. [L. Fr. *assise, assis.*] In old English and Scotch law and practice. An assise; a species of jury or inquest. Called by Fleta, *recognitio xii hominum juratorum;* a recognition of twelve sworn men. *Fleta*, lib. 4, c. 1, § 7. *Skene de Verb. Signif.* 1 *Pitc. Crim. Trials*, part 2, p. 55. *Assisa venit recognitura*, or *ad recognoscendum;* the assise comes, or came to recognise. *Litt.* sect. 234. 7 *Co.* 1. 9 *Id.* 1. Distinguished from the common *jurata*, or jury; though it was often turned into it. *Vertitur* assisa *in juratam;* the assise is turned into a jury. *Bract.* fol. 210 b. *Fleta*, lib. 4, c. 16. 3 *Bl. Com.* 402. *Cadit* assisa, *nec est capienda ut* assisa, *sed vertitur in juratam;* the assise falls, nor is it to be taken as an assise, but is turned into a jury. *Bract.* fol. 192 b. *Videndum erit utrum* assisa *capiatur in modum* assisæ *vel in modum juratæ;* it must be considered whether the assise be taken in the manner of an assise, or in the manner of a jury. *Id.* fol. 215 b. See *Assise.* Britton has a chapter entitled "*De assises tournes en jures.*" *Britt.* c. 51. *Magna assisa;* the grand assise, (q. v.) Distinguished by Bracton from the *inquisitio patriæ. Bract.* fol. 15 b.

A species of writ or real action. *Assisa novæ disseysinæ;* an assise of novel disseisin. *Bract.* lib. 4, tract. 1. *Assisa ultimæ præsentationis;* an assise of darreign presentment. *Id.* lib. 4, tract. 2. *Fleta*, lib. 4, c. 1, §§ 4, 5. *Assisa cadere;* to fail in an assise. See *Cadere.* This kind of assise is frequently termed by Glanville, *recognitio.* 1 *Reeves' Hist. Eng. Law*, 186.

A court, or the sittings of a court. *Usque ad primam assisam;* until the first assise. *Reg. Orig.* 196 b. *Bract.* fol. 179. *Assisa generalis* is mentioned by Sir William Blackstone as an old name of parliament, on the authority of Glanville, whom he cites. *Glanv.* lib. 9, c. 10. 1 *Bl. Com.* 148, note (*g*). The same passage, however, is cited by Spelman as an illustration of the use of the word *assisa* in the sense of a statute or ordinance; which is confirmed by the authority of Bracton. See *infra.*

A statute, ordinance or law. *Per nullam* assisam *generalem;* by no general law. *Glanv.* lib. 9, c. 10. Assisæ, *statutæ et juratæ;* assises, ordained, and sworn [to be kept.] *Bract.* fol. 120 b. *Leges et constitutiones, et* assisas *in regno provisas, et approbatas, et juratas. Id.* fol. 55 b. See 1 *Reeves' Hist. Eng. Law*, 86, 215. *Skene de Verb. Signif. Spelman*, voc. *Assisa.*

A fixed or specified time, (*tempus definitum*). *Glanv.* lib. 13, c. 32. *Spelman.*

A fixed or certain number. *Spelman.*

A specified or determinate quantity, quality, weight, measure, price, &c., required by law in certain commodities. *Spelman. Skene de Verb. Signif.* See *Assisa venalium.*

A tax or tribute, as fixed by law. *Spelman.*

A fine or mulct. *Id.*

ASSISA ARMORUM. L. Lat. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defence. *Hale's Hist. Com. Law*, c. 11.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were accused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. *Bract.* fol. 136. *Co. Litt.* 159 a. *Cowell.* This must not be confounded with the *Assises of Clarendon*, as the famous constitutions of that name were sometimes called. See *Clarendon.*

ASSISA DE MENSURIS. L. Lat. Assise of measures. A common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. *Hale's Hist. Com. Law*, c. 7.

ASSISA FORESTÆ, or DE FORESTA. L. Lat. Assise of the forest. A statute or ordinance concerning the royal forests, passed in the thirty-fourth year of Edward I. *Co. Litt.* 159 b. Otherwise called *Ordinatio Forestæ.* 2 *Reeves' Hist. Eng. Law*, 106, 107. See *Ordinatio Forestæ.*

ASSISA FRISCÆ FORTIÆ. L. Lat. Assise of fresh force. *Reg. Orig.* 16 b. See *Assise of fresh force.*

ASSISA MORTIS ANTECESSORIS. L. Lat. Assise of mort d'ancestor. *Bract.* lib. 4, tract. 3. *Fleta*, lib. 4, c. 1; lib. 5, c. 1. Called also *assisa de morte antecessoris.* See *Assise of mort d'ancestor.*

ASSISA NOVÆ DISSEYSINÆ. L. Lat. Assise of novel disseisin. *Bract.* lib. 4, tract. 1. *Fleta*, lib. 4, c. 1. Called also *assisa de nova disseisina.* See *Assise of novel disseisin.*

ASSISA PANIS ET CEREVISIÆ. L. Lat. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III. containing regulations for the sale of bread and ale; sometimes called the statute of bread and ale. *Co. Litt.* 159 b. 2 *Reeves' Hist. Eng. Law*, 56. *Cowell. Bract.* fol. 155. *Barringt. Obs. Stat.* 52. The particular provisions of this statute, which are very minute, may be found in Britton and Fleta. *Britt.* c. 30. *Fleta*, lib. 2, cc. 9, 11. Spelman considers the statutes passing under the names of *assisa panis, assisa vini et cervisiæ*, &c., to belong to an earlier period.

The power or privilege of assising or adjusting the weights and measures of bread and beer. *Cowell.*

ASSISA ULTIMÆ PRÆSENTATIONIS. L. Lat. Assise of darrein presentment. *Bract.* lib. 4, tract. 2. *Fleta*, lib. 4, c. 1; lib. 5, c. 11. Called also *assisa de ultima præsentatione.* See *Assise of darrein presentment.*

ASSISA UTRUM. L. Lat. Assise of *utrum. Bract.* lib. 4, tract. 4. *Fleta*, lib. 5, c. 20. See *Assise of utrum.*

ASSISA VENALIUM. L. Lat. The assise of saleable commodities, or of things exposed for sale. The regulation of the sale of certain articles, (usually the common necessaries of life,) by public authority; defining or fixing the quantity, weight, quality, &c., to be sold for a certain price. A phrase formerly in frequent use in old English, Scotch and continental law. *Spelman*, voc. *Assisa.*

ASSISATUM. L. Lat. In old English law. Fixed or established. *Spelman.*

Ordained, (*statutum.*) *Skene de Verb. Sig.* voc. *Assisa.*

ASSISE. L. Fr. Situated. *De la ville ou son castle est* assise; of the town where his castle is situated. *Stat. Westm.* 1, c. 7. See *Assisus.*

ASSISE, *Assize.* [L. Fr. *assise, assis;* L. Lat. *assisa*, from *assidere*, to sit together, according to Coke; or from Fr. *assis*, placed, put, settled, fixed, established, according to Spelman.] In English law and practice. A species of jury, or inquest. *Litt.* sect. 234.

A species of writ, or real action. *Id.*

The proceedings in court upon a writ of assise. *Co. Litt.* 159 b.

The verdict or finding of the jury in a writ of assise. 3 *Bl. Com.* 57.

A court, or the sittings of a court. *Spelman.*

An ordinance, or statute. *Id.*

Any thing fixed, or reduced to a certainty, in point of time, number, quantity, quality, weight, measure, &c. *Id.*

A tax, or tribute. *Id.*

A fine. *Id.* See *Assisa.*

These various significations of the word *assise*, which is called by Littleton (sect. 234) *nomen æquivocum*, will be considered more at large under the following heads:

ASSISE. A species of jury; a *certain* number of men, usually twelve, summoned to try a cause, and who *sat together* for that purpose.* *Fleta*, lib. 4, c. 1, § 7. *Co. Litt.* 153. 3 *Bl. Com.* 185. Lord Coke derives the word, in this sense, from *assidere*, to sit together. *Co. Litt. ub. sup.* Spelman derives it from *assisus*, fixed or settled, because the number of jurors, which anciently was uncertain and indefinite, was, by the law establishing the assise, *fixed* and defined (*assisus et definitus*); and in this he is supported by Skene, (voc. *Assisa.*) See *Ersk. Inst.* b. 4, tit. 4, § 92. The idea of *certainty* is also prominently presented by the definition of the Grand Coustumier of Normandy, though it is a certainty of time and place, rather than of persons. "*Assise* is an assembly of knights and other substantial men, with the bailiff or justice, in a certain place, and at a certain time appointed." *Grand Coust.* c. 24, cited in *Cowell.* Mr. Reeves, on the authority of Glanville, says a jury was called an *assise* from the *assisa*, or law by which the application of this trial was ordained. 1 *Reeves' Hist. Eng. Law*, 84.

*** The *assise*, properly so called, was introduced by Henry II. as a substitute for the *duellum* or battel, and was established particularly for the trial of questions of seisin of land. *Glanv.* lib. 2, c. 7. It was otherwise termed *recognitio*, and the persons composing it *recognitores.* 1 *Reeves' Hist. Eng. Law*, 86. The common jury, (*jurata patriæ*, or *inquisitio patriæ*,) had been previously in use, and was commonly resorted to as a mode of trial, in other in-

stances than those provided for by the law of Henry II. *Id. ibid.* The distinction between an *assise* and a *jury* is clearly drawn in the old books, and was a very common point of learning in the reign of Henry III. It was substantially this:—an *assise* was the regular mode of trying the main issue in questions of seisin; a *jury* was used to determine any *incidental* question arising in the cause, upon which issue might be taken, as where an exception was taken by the tenant *out of the assise*, as it was called. Thus, if the tenant at once denied that he had committed any disseisin, he simply put himself upon the assise, and the assise proceeded, as they called it, *in modum assisæ*, (in the ordinary manner of an assise), that is, upon the simple question of disseisin. *Bract.* fol. 184 b, 215. But if the tenant took an exception upon some collateral matter, as if he offered the common exception or plea that the demandant or plaintiff was a villein, this question was not triable by the assise, but by a common jury. *Id.* fol. 192 b, 215. It became, however, the practice to allow the assise itself to discharge the office of a jury in such cases, and it was then said, *assisa cadit*, or *vertitur in juratam*, the assise falls or is turned into a jury, or *assisa capta est in modum juratæ, et non in modum assisæ;* the assise is taken like a jury, and not like an assise. *Id.* fol. 192 b, 210 b, 215, 283. *Fleta*, lib. 4, c. 11, § 12; cc. 15, 16.

Assises were of two kinds, *grand* and *petite.* See *Grand assise*, *Petite assise.* In Scotch law, the jury in criminal cases is still technically called the *assise*, or *assize*, (O. Sc. *assyse*, *assyis*, *assyise.*) *Ersk. Inst.* b. 4, tit. 4, § 92. *P. Cyclopædia.* But in England, *assise*, in the sense of a jury of any kind, has become obsolete.

ASSISE. A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 *Bl. Com.* 184, 185. According to Lord Coke, assises were used in England, time out of mind. 3 *Co.* pref. v. vi. This remedy, however, was only applicable to two species of injury by ouster, viz., abatement, and a recent, or novel disseisin. 3 *Bl. Com.* 185. The principal assises were those of *novel disseisin*, *mort d'uncestor*, *darrein presentment*, and *utrum.* See *infra.*

These writs, according to Littleton, were called *assises*, because by them the sheriff was ordered to summon a jury or *assise*, which was not expressed in any other original writ. *Litt.* sect. 234. *Co. Litt.* 154 b, 159. Cowell suggests three other reasons: first, because they *settled* the possession; secondly, because they were originally executed at a *certain* time and place, formerly appointed; and lastly, because they were tried most commonly by special courts *set* and appointed for that purpose. Assises have been abolished in England with other real actions.

ASSISE. The whole proceedings in court upon a writ of assise. *Co. Litt.* 159 b. The verdict or finding of the jury upon such a writ. 3 *Bl. Com.* 57. These significations serve to explain the expression "to *take* the assises," (*ad assisas capiendas*), which is so common in the old books and statutes. Blackstone construes the expression "to take recognitions or assises," used in Magna Charta, (c. 12,) to mean, "to take (or receive the *verdict* of the jurors or recognitors in certain actions then called) recognitions or assises." 3 *Bl. Com.* 57. See *Id.* 59, 352.

ASSISE, *Assize.* A court; the sittings of a court. This is an ancient sense of the word. *Grand Coustum. Norm.* c. 55, cited in *Cowell. Bract.* fol. 179. *Reg. Orig.* 197 b. *Spelman.* The plural *assizes* is still used in England to denote the sessions of the judges of the superior courts, holden periodically in each county, for the purpose of administering civil and criminal justice. See *Assises.* In some of the United States, also, while colonies of Great Britain, courts were denominated *assizes.*

ASSISE, *Assize.* An ordinance, statute or regulation. Spelman gives this meaning of the word the first place among his definitions, observing that *statutes* were in England called *assises* down to the reign of Henry III. The *Assises of Jerusalem*, (q. v.) and the *Assises of Clarendon*, are prominent and early instances of the use of the word in this sense. It is used in the same sense by the earliest English writers. *Glanv.* lib. 9, c. 10. *Bract.* fol. 120 b. *Fleta*, lib. 1, c. 17. *Britt.* cc. 30, 31. The rules and regulations respecting the royal forests were called *assises* of the forest. The ordinance of 27 Henry II., obliging every man, according to his estate, to provide a determinate quantity of such arms as were then in use, in order to keep the peace, was called the *assise of arms.*

1 *Bl. Com.* 410, 411. 2 *Id.* 66. So, on the continent of Europe, statutes or royal ordinances were anciently called *assisiæ*. *Spelman*, voc. *Assisa*. Coke's derivation from *assidere*, (to sit together, as a legislative assembly) seems to be recognised by Spelman as the origin of this signification of assise.

To this head also belong those ancient ordinances or statutes by which the price and sale of bread, ale and other necessaries of life were regulated, called *assisæ venalium*. The most important of these was the assise of bread and ale, (*assisa panis et cerevisiæ*,) the particulars of which are minutely given by Britton. *Britt.* c. 30. The assize of bread was retained in England until a late period, the power of regulating it in cities and towns being frequently given to the local authorities; but all statutes relating to the assize have been repealed by statutes 6 & 7 Will. IV. c. 37, and 3 Geo. IV. c. 106. 4 *Steph. Com.* 289, note (*g*). The custom of regulating the weight and price of bread by public ordinance, together with the term *assize of bread*, was adopted in some parts of the United States, and continued to be observed in the city of New-York down to a comparatively recent period, but is now disused.

ASSISE. Any thing reduced to a certainty in respect to time, number, quantity, quality, weight, measure, &c. *Spelman.*

A fixed time. *Glanv.* lib. 13, c. 32.

A fixed or certain number, as of a jury. See *supra.*

A fixed sum, as a tax, a fine. *Spelman. Lib. Nig. Scacc.* cited *ibid. Rent of assise* is a fixed or established rent of the freeholders and ancient copyholders of a manor, which cannot be departed from, or varied. 2 *Bl. Com.* 42.

ASSISE OF NOVEL DISSEISIN. [L. Lat. *assisa* (seu *breve*) *novæ disseisinæ.*] In old English practice. A writ or action which lay where a tenant in fee simple, fee tail, or for life, was disseised of his lands, tenements or hereditaments.* *F. N. B.* 177 A. *Roscoe's Real Act.* 63. *Bract.* lib. 4, tract. 1. *Fleta*, lib. 4, c. 5. It was so called, because the justices in eyre, before whom these assises were taken in their proper counties, rode their circuits from seven years to seven years, (i. e. every seven years,) and no disseisin before the eyre, if it were not complained of in the eyre, could be questioned after the eyre; and, therefore, a disseisin committed before the last eyre, was called an *ancient* disseisin, and a disseisin after the last eyre was called a *new* or *novel disseisin. Co. Litt.* 153 b. It was much less formal and more summary in its proceedings than any similar remedy previously in use, and is called by Bracton *summaria cognitio, absque magnâ juris solemnitate*, and by the statute of Westminster the second, *festinum remedium. Bract.* fol. 164 b. *Fleta*, lib. 4, c. 1, § 16. It hence became one of the most frequent and important actions in the ancient law, but in modern times had long been superseded by the action of ejectment, before its express abolition by the statute 3 & 4 Will. IV. c. 27.

ASSISE OF MORT D'ANCESTOR. [L. Lat. *assisa*, (seu *breve*) *mortis antecessoris.*] In old English practice. A possessory writ, founded upon the possession of the *ancestor*, which lay for the heir, where his father, mother, brother, sister, uncle, aunt, nephew or niece was seised in fee of any lands, tenements or rents; and *died*, being so seised on the day of his or her death, and a stranger, after such death, abated. *F. N. B.* 195, C. *Roscoe's Real Act.* 75. 3 *Bl. Com.* 185. *Bract.* lib. 4, tract. 3. *Fleta*, lib. 5, c. 1. Like the assise of novel disseisin, this writ had become obsolete long before its express abolition by the statute 3 & 4 Will. IV. c. 27.

ASSISE OF DARREIN PRESENTMENT. [L. Lat. *assisa*, (seu *breve*) *ultimæ præsentationis.*] In old English practice. An assise which lay for a tenant in fee or in tail, where he or his ancestors had presented (or had the *last presentation*, darrein presentment,) to a church, and the clerk had been instituted, and the plaintiff was afterwards hindered in presenting to the same church. It lay also for tenant for life or years, if he had himself presented. *Roscoe's Real Act.* 74. *F. N. B.* 31 F. 3 *Bl. Com.* 245. *Bract.* lib. 4, tract. 2. *Fleta*, lib. 5, c. 11. This action is now entirely disused, being superseded by the action of *quare impedit*, (q. v.)

ASSISE OF UTRUM. In old English practice. An assise (otherwise called a writ of *juris utrum*,) which lay for a parson or prebendary at common law, and for a vicar, by statute 14 Edw. III. c. 17, to recover lands and tenements, belonging to the church, which were alienated by the predecessor; or of which he was disseised; or which were recovered against him by verdict, confession or default, without praying in

aid of the patron and ordinary; or on which any person had intruded since the predecessor's death. 3 *Bl. Com.* 253. *F. N. B.* 49. *Roscoe's Real Act.* 74. *Bract.* lib. 4, tract. 5. *Fleta*, lib. 5, c. 20. It derived its name from the emphatic word of the writ by which the jury were required to recognise *whether* (*utrum*) the tenements in question were frankalmoign belonging to the church of the demandant, or the lay fee of the tenant. *Bract.* fol. 286. *Reg. Orig.* 32 b. This writ has long been obsolete, principally by reason of the restraining statute of 13 Eliz. c. 10. 3 *Bl. Com.* 253.

ASSISE (or BILL) OF FRESH FORCE. [L. Lat. *assisa* (seu *billa*) *friscæ fortiæ.*] In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called *fresh force*, because it was to be sued within forty days after the party's title accrued to him. *F. N. B.* 7 C. 3 *Reeves' Hist. Eng. Law*, 28. *Plowd.* 89. *Fleta*, lib. 2, c. 55, §§ 6, 7. 3 *Leon.* 169. *Calthrop's R.* 149.

ASSISE OF NUISANCE. [L. Lat. *assisa de nocumento.*] In old English practice. An assise or writ which lay to remove a nuisance, and to recover damages. This writ, after stating the complaint of the injured party of some particular fact done to the nuisance of his freehold, (*ad nocumentum liberi tenementi sui,*) commanded the sheriff to summon an *assise*, that is, a jury, and view the premises, and have them at the next commission of assises, that justice might be done therein. *F. N. B.* 183 I. 3 *Bl. Com.* 221. *Reg. Orig.* 197 b. It has long been superseded by the action on the case; and was expressly abolished in England with other real actions. 3 *Bl. Com.* 222. 3 *Steph. Com.* 503, note (*q*). See 17 *Serg. & Rawle's R.* 175. *Angell on Water-Courses*, § 394, and note.

ASSISES, (or ASSIZES), otherwise called COURTS OF ASSISE (ASSIZE) AND NISI PRIUS. In English practice. Sessions or courts held by two or more commissioners called judges of assise, (or of assise and *nisi prius,*) who are twice in every year sent by the queen's special commission, on *circuits* all round the kingdom, to try by a jury of the respective counties the truth of such matters of fact as are then in dispute in Westminster Hall. 3 *Steph. Com.* 421, 422. These commissioners consist principally of the judges of the superior courts of common law, and they usually make their circuits in the respective vacations after Hilary and Trinity terms. *Id.* 423. *Smith's Action at Law*, 129. They are so called from the commission of *assise* anciently issued to the judges, appointing or assigning them *to take assises* (*ad assisas capiendas*), that is, to take and receive the verdicts of jurors in certain actions then called assises. 3 *Bl. Com.* 57, 59, 352. See *Assise.* This commission of assise was actually issued down to a recent period, but the abolition of assises and other real actions has now thrown it out of force. 3 *Steph. Com.* 424, note (*x*).

ASSISES (or ASSIZES) DE JERUSALEM. A code of feudal jurisprudence, compiled A. D. 1099, after the conquest of Jerusalem, by an assembly of Latin barons or feudal lords, and of the clergy and laity under Godfrey of Bouillon, and intended for the kingdom of Jerusalem, then newly established. *Butler's Co. Litt.* note 77, lib. 3. 4 *Gibbon's Rom. Emp.* 139, (Am. ed.) 1 *Robertson's Charles V.* Appendix, note xxv. Dr. Robertson calls it "the earliest collection of those customs which served as the rules of decision in the courts of justice" of Europe. Mr. Stephen considers it "one of the most curious and important relics of the jurisprudence of the middle ages," and gives several extracts from it in illustration of the subject of pleading. *Steph. Plead.* Appendix, note (8). Gibbon (*ub. sup.*) has given a sketch of its history. And see *Butler's Horæ Juridicæ*, 92, 93.

ASSISORES. L. Lat. [from *assidere*, to assess.] In old law. Persons who settled assises, or imposed taxes. *Spelman.* Hence probably the modern *assessors.*

ASSISORS, *Assysers.* In Scotch law. Jurors. *Skene de Verb. Signif.* voc. *Assisa. Spelman. Cowell.*

ASSISUS, *Assisa.* L. Lat. [from *assidere*, to fix or settle.] In old English law. Fixed or certain. *Assisus reditus;* a fixed, certain, set or standing rent. *Kennett's Par. Ant.* 314, 355. Called rent of assise. 2 *Bl. Com.* 42. *Terra assisa;* land let or farmed out for a certain assessed rent. *Cowell.*

Situated. *Villa de Jermuth* assisa *est super arenam maris;* the town of Yarmouth is situated on the sea-shore. *Vet. MS. apud Spelman*, voc. *Assisa.*

ASSITH. Sc. In old Scotch law. To indemnify. "Sovertie to *assith* the partie;"

(surety to indemnify the party.) *Skene de Verb. Sign.* voc. *Iter*, 14.

ASSIZE. See *Assise.*

ASSIZE. In Scotch law. A jury. 2 *Alison's Crim. Pract.* 376, 390. "The jury, or persons of assize." 3 *How. St. Trials*, 439.

To ASSIZE. [L. Lat. *assidere.*] In old English law. To fix; to regulate; to assess. "The assizing of men for arms." *Hale's Hist. Com. Law*, 126.

ASSOCIATION. [L. Lat. *associatio.*] In English practice. A patent sent by the king to the justices appointed to take the assizes, or of oyer and terminer, to have other persons *associated* to them to take the assise, upon which patent the king sends his writ to the justices, by it commanding them to admit them that are so sent. *Termes de la Ley. Reg. Orig.* 201, 203, 205 b, 206. According to Blackstone, writs of association are issued in pursuance of the statutes of 27 Edw. I. c. 4, and 12 Edw. II. c. 3; whereby certain persons (usually the clerk of assize and his subordinate officers,) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society, in order to take the assizes. 3 *Bl. Com.* 59. 3 *Steph. Com.* 425. Writs of association, however, appear to have been in use before the reign of Edward I. See *Bract.* fol. 111.

ASSOCIATION. [from Lat. *associare*, from *ad*, to, and *socius*, a companion.] The union of a number of persons for the transaction of some business, or the attainment of some common object; a society or company. See *Company*, *Socius.*

A corporation. In New-York, associations under the general banking law of the state, are corporations. 7 *Hill's R.* 504, 518. They are "moneyed corporations," and "banking corporations," within the meaning of the statutes of this state. 3 *Comstock's R.* 479. 3 *Selden's R.* 328. See *Cleaveland on the Banking System of New-York*, 96, 97, notes. *Id.* Introd. lxi. lxii.

ASSOIGNE. L. Fr. Essoin; excuse. *Kelham.*

ASSOILE. *Assoyle.* L. Fr. and Eng. [from Lat. *absolvere.*] In old English law. To deliver or set free from excommunication. *Staundf. Pl. Cor.* 72. 12 *Mod.* 311.

To free or clear from guilt, or its consequences; to pardon, forgive or absolve. *Richardson's Dict. Stat.* 1 *Hen.* IV. c. 10. *Chart.* 30 *Edw.* III. cited in *Blount.* See *Absoile.*

ASSOILZIE. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty. *Bell's Dict. Tomlins.*

To declare the finding of not guilty; to declare or pronounce innocent. A pannel [prisoner] found not guilty is "*assoilzied simpliciter*, and dismissed from the bar." 1 *Brown's R.* 21. This term is also extensively used in civil cases.

ASSOINZIE. Sc. Excuse. 2 *Pitcairn's Crim. Trials*, 65.

ASSONEOR. L. Fr. An essoiner. *Fet Assaver*, § 16.

ASSONER. L. Fr. To essoin. *Assonee;* essoined. *Fet Assaver*, § 16.

ASSOULDRE, *Assoudre.* L. Fr. To absolve, to acquit. *Kelham.*

ASSOUTH, *Assous.* L. Fr. Quit; free; discharged. *Litt.* sect. 338.

ASSOYL. L. Fr. To forgive; to pardon; to absolve. *Qe Dieu* assoyl; whom God assoil; on whom God have mercy. *Kelham.*

ASSULTUS. Lat. [from *assilire*, to assail.] An assault. *Spelman*, voc. *Assallire.*

ASSUME. To undertake. 1 *Ld. Raym.* 122. 4 *Co.* 92. See *Assumpsit.*

ASSUMPSIT. L. Lat. [from *assumere*, to undertake.] In practice and pleading. (He undertook.) The name of a civil action given by law to the party injured by the breach or non-performance of a *parol* contract (that is, a contract not under seal) legally entered into. It lies upon contracts either express, or implied by law, and gives the party *damages* in proportion to the loss he has sustained by the violation of the contract. 4 *Co.* 92. *Bac. Abr.* Assumpsit. 1 *Chitt. Pl.* 98, 99. 1 *Archb. N. Prius*, 1. *Brown on Actions*, 318—333. It is technically an action on the case, and derives its name from the emphatic word of the clause in the writ and declaration, (when in Latin,) expressive of the defendant's undertaking,—"*super se* assumpsit, *et adtunc, et ibidem fideliter promisit*,"—(*undertook*, and then and there faithfully promised). 1 *Chitt. Pl.* 111, 112. *Towns. Pl.* 410, 411. See *Indebitatus assumpsit.* This characteristic and once indispensable word is, however, now omitted in the English forms. *Reg. Gen. Trin. T.* 1 *Will.* IV. 1 *Chitt. Pl.* 98, note (*y*).

The undertaking or promise itself, upon which an action of assumpsit may be

brought. 2 *Mod.* 44. 3 *Bl. Com.* 157. *Termes de la Ley. Cowell.* See *Express assumpsit, Implied assumpsit.*

ASSURANCE. [L. Lat. *assurantia.*] In conveyancing. A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the *common assurances* of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts and difficulties are either prevented, or removed. 2 *Bl. Com.* 294. See *Common assurance.* The word has now become obselete, and occurs only in the formal parts of conveyances.

ASSURANCE. Eng. and Fr. [L. Lat. *assecuratio.*] In the law of contracts. A making sure or secure. A term formerly used in English maritime law, in the sense of the modern term *insurance*, and still retained in policies, but otherwise obsolete. *Molloy de Jur. Marit.* 287. Latterly, however, its use has been revived in its application to contracts of indemnity against *life* contingencies, which are now frequently termed *assurances upon lives*, by way of distinction from indemnity against losses by fire or at sea, &c., to which the term *insurance* is particularly appropriated. *P. Cyclopædia.* 3 *Kent's Com.* 365. The word *assured* has always been retained in its ancient sense. See *Assure. Assurance* is the term used in French law. *Ord. Mar.* liv. 3, tit. 6. *Emerig. Tr. des Ass.*

ASSURANTIA. L. Lat. In old pleading. An assurance. *Bridgm.* 16. *Towns. Pl.* 28, 54.

ASSURARE. L. Lat. In old pleading. To assure. *Towns. Pl.* 23, 54.

ASSURE. [Fr. *assurer*, L. Lat. *assecurare, assurare.*] To make sure, or secure; to confirm or establish; to insure. The party in whose favor a contract or policy of insurance has been executed, is still called the *assured;* the other party being termed the *insurer.* 2 *Steph. Com.* 172.

To convey. "If one be obliged to *assure* twenty acres of land," &c. *Cro. Eliz.* 665. See *Assurance.*

ASSURE. Fr. In insurance law. Assured; the assured or insured. *Emerig. Tr. des Assur.* c. 2, sect. 7, §§ 1, 2; c. 5, sect. 1.

"ASSURED," in a loose and improper sense, may import a contract to indemnify without regard to interest. 2 *East*, 385.

ASSYS. L. Fr. Assessed or affeered. *Amerciaments soient* assys; the amerciaments shall be affeered. *Britt.* c. 26.

ASSYTHMENT. In Scotch law. Indemnification for killing, maiming or laming a person. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 10. *Ersk. Inst.* b. 4, tit. 4, § 105.—An indemnification due to the heirs of a person murdered, from the person guilty of the crime. *Bell's Dict.*

ASTATE, *Atat.* L. Fr. Estate. *Kelham.*

ASTITUTION. [Lat. *astitutio*, from *ad*, to, and *statuere*, to place; to place or set in order, one by another.] An arraignment was formerly sometimes so called. *Co. Litt.* 262 b. See *Arraignment.*

ASTONBZ. L. Fr. Tin. *Kelham.*

ASTRARIUS. L. Lat. [L. Fr. *astrer*, q. v.] In old English law. The occupant of a hearth or house; a person in actual possession. *Astrarius hæres;* an heir placed by the ancestor in the house (*astrum*) which he was to inherit. *Bract.* fol. 85. An heir in actual possession of the property, as occupying the house he was to inherit, (*eo quod reperitur in* atrio *sive in* astro.) *Id.* fol. 267 b. *Si ambo fuerint* extra, *et sic neuter* astrarius; if both were out [of possession], and so neither *astrarius. Id. ibid.* See *Id.* fol. 268. *Co. Litt.* 8 b.

A son who lived in his father's family. *Spelman.*

ASTRE. L. Fr. [L. Lat. *astrum.*] In old English law. A hearth or fireplace, (*caminus;*) a house. *Chescun home commuuer que ad* astre *en mesme la ville;* every commoner who has a hearth in the same town or vill. *Britt.* c. 59. *Spelman. Yearb.* T. 5 Edw. III. 16.

ASTRER. L. Fr. [from *astre*, (q. v.); L. Lat. *astrarius.*] In old English law. A householder, or occupant of a house or hearth. *Chescun home* astrer *de mesme la ville;* every householder or resident of the same town or vill. *Britt.* c. 59.

Belonging to, or born in one's house. *Que il fuit son* astrer, *reseaunt en son villeynage;* that he was his house slave, residing in his villeinage. *Id.* c. 98.

ASTRICT. [from Lat. *astrictus*, bound.] In Scotch law. To bind. Lands are said to be *astricted* to a mill, when the possessor is bound to carry the grain of the growth of the land to be ground at such mill. *Ersk. Inst.* b. 2, tit. 9, § 18. *Bell's Dict.* voc. *Multures.*

ASTRICTION. [from Lat. *astrictio*, a binding.] In Scotch law. A servitude by which the grain growing on certain lands is required to be carried to a certain mill to be ground. *Bell's Dict.* See *Astrict.*

ASTRIHILTHET. Sax. In Saxon law.

A kind of penalty or compensation imposed upon offenders having the king's peace. *LL. Edw. Conf.* c. 30. *Spelman.*

ASTRUM. L. Lat. [from Fr. *astre*, q. v.] A house, or place of habitation. *Bract.* fol. 267 b. *Fleta*, lib. 4, c. 2, § 8. *Cowell.*

ASTUTI. Lat. [plur. of *astutus.*] Astute; acute; of nice discrimination. It was said by Lord Hobart, that judges ought to be *astuti*, to find out reasonable distinctions to unreasonable rules. *Ambl.* 11. See 2 *Eden*, 258. On the other hand, it has been said that "*astutia* does not belong to a court of justice." Sir Wm. Scott, 2 *Rob. Adm. R.* 347.

AT, *Ad.* L. Fr. Hath. *Kelham.*

AT, *Et.* L. Fr. And. *Kelham.*

AT, *Atte*, *Ate.* A word used in the composition of early English surnames, usually distinctive of the place from which the name was taken. Thus Johan' *Atte* Graschirch, (*Yearb.* M. 6 Edw. II. 183;) Will' *Atte* More, (*Id. ib.*) Roger *Ate* Mulle, (M. 7 Edw. II. 215;) Martin *at* Wood, (M. 2 Edw. III. 2;) Brian *at* Yard. P. 4 Edw. III. 22. It gradually became changed into *a* or *of*, and finally disappeared. Thus, John *at* Stile, (*Perkins*, ch. 1, s. 52;) John *a* Style, (*Bacon's Arg.* Case of Revoc. of Uses;) John *a* Styles, (11 *Mod.* 90;) John *of* Styles. *Id.* 61.

"AT." As to the effect of inserting this word in a bill of exchange, see 4 *Campb.* 115, 117.

"AT AND FROM." Words frequently used in marine policies of insurance, the meaning of which depends upon the actual situation of the vessel at the time the insurance is effected. See 3 *Kent's Com.* 307, 308, and notes. Story, J. 1 *Mason's R.* 127, 140. 1 *Duer on Ins.* 167, § 14.

"AT ANY TIME." Ever; some time. *Freem.* 25. *Vaugh.* 34.

At all times. *Id. ibid.*

AT BAR. Before the court. "The case at bar," &c. *Dyer*, 31.

AT LARGE. [L. Fr. *a large;* L. Lat. *ad largum.*] In old practice. Not limited to any particular matter, point, or question. A special verdict was called a *verdict at large*, because it found the matter at large, [that is, it found all the facts proved without drawing any conclusions, instead of finding summarily for the one or the other party,] and left it to the judgment of the court. *Litt.* 366, 367. *Co. Litt.* 228 a. See *Dyer*, 41.

AT LARGE. Not under physical restraint. A ferocious animal is to be regarded as *at large* when he is so far free from restraint as to be liable to do mischief to man or beast. His being in the presence of his keeper affords no safe assurance that his known propensities will not prevail over the restraints of authority. Redfield, C. J. 26 *Vermont R.* 638, 641.

AT LAW. [L. Fr. *a ley, al ley;* L. Lat. *ad legem.*] According to law; by, for, or in law. This common expression has been applied from a very early period exclusively to the English common law, and seems peculiar to it. "At common law," (answering to the Fr. *al comen ley*, and Lat. *ad communem legem*,) is a phrase of constant occurrence in the books; *in* being the corresponding preposition applied to *equity*. "*At* law and *in* equity" is a phrase in daily use.

"*At law*" forms a part of the well-known professional titles, *serjeant at law*, and *barrister at law*, in England, and *attorney at law*, and *counsellor at law*, in the United States. These have not undergone any change, but the old and long obsolete English title, *apprentice at law*, had also the forms of "apprentice *in* law," and "apprentice *of* law." See *Apprenticius ad legem.* An *attorney at law* is still occasionally called an "attorney *in* law," by way of clearer distinction from *attorney in fact.* *Story on Agency*, § 24. The prepositions *at* and *in* both seem, in these connections, to have the sense of *for.*

AT SEA. Out of the limits of any port or harbor on the sea-coast. 1 *Story's R.* 251. See 3 *Hill's* (N. Y.) *R.* 118. 7 *Id.* 321.

"AT THAT TIME," in a will, construed. 12 *East*, 589.

ATAMITA. Lat. In the civil law. A great grandfather's grandfather's sister, (*atavi soror.*) *Hale's Com. Law*, c. xi. Called in Fleta, *atamita magna.* *Fleta*, lib. 6, c. 2, § 18.

ATAVIA. Lat. In the civil law. A great grandfather's grandmother. *Inst.* 3. 6. 3.

ATAVUNCULUS. Lat. A great grandfather's grandmother's brother; (*ataviæ frater*); called by Bracton *atavunculus magnus.* *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ATAVUS. Lat. In the civil law. A great grandfather's grandfather. *Inst.* 3. 6. 3. *Bract.* fol. 67. *Fleta*, lib. 6, c. 2, § 1. *Plowd.* 449.

ATEGAR. Sax. [from *ateon*, to throw, and *gar*, a weapon.] A lance or javelin,

(*hasta missilis ;*) a Saxon weapon. *Florent. Wigorn.* sub an. 1040. *Spelman.*

ATEIGNER. L. Fr. To come to or at; to attain; to amount to. *Kelham.*

ATHA, *Athe.* L. Lat. [from Sax. *ath*, an oath.] In Saxon law. An oath; the power or privilege of exacting and administering an oath. *Spelman.*

ATHARGRATI. [Germ. ader, a vein, and *grate.*] In old European law. A wound in a blood vessel, causing a flow of blood which could not be staunched without the cautery. *LL. Baiwar.* tit. 3, c. 1, § 4. *Spelman.*

ATHEIST. [from Gr. *a*, without, and θεος, God.] One who does not believe in a God; one who denies the existence of God. An atheist is not a competent witness. 1 *Stark. Evid.* 81.

ATIA, *Atya, Acia, Acya, Hatia, Hatya.* L. Lat. [from the English *hate*, according to Spelman.] In old English law. Malice, hate or hatred. *Reg. Orig.* 133 b. *Bract.* fol. 123. See *De odio et atia.*

ATILIUM, *Attilium.* L. Lat. In old English law. Tackle; the rigging or tackle of a vessel. *Atilio decenti ;* with suitable tackle. *Mem. in Scacc.* T. 24 Edw. I. *Atilia*, (pl.) the tackle or harness of a horse, cart or plough. *Cowell*, voc. *Attile.*

ATMATERTERA. Lat. In the civil law. A great grandfather's grandmother's sister, (*ataviæ soror*); called by Bracton *atmatertera magna. Bract.* fol. 68 b.

ATNEPOS. See *Adnepos.*

ATNEPTIS. See *Adneptis.*

ATPATRUUS. Lat. A great grandfather's grandfather's brother, (*atavi frater*); called by Bracton *atpatruus magnus. Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

ATRAMENTUM. Lat. [from *ater*, black.] In old English law. Black fluid used in writing; ink. *Fleta*, lib. 4, c. 10, § 4.

ATRENCHE, *Attrenche.* See *Tout atrenche.*

ATRET. L. Fr. Drawn aside. *Kelham.*

ATREYS. L. Fr. Other. *Kelham.*

ATRIAMENTUM. L. Lat. [from *atrium*, a court.] In old European law. A court-yard. *Formul. Vett. Rom.* num. 43. *Spelman.*

ATTACH. [L. Lat. *attachiare ;* from Fr. *attacher*, to tie or bind to.] In practice. To take or apprehend by commandment of a writ or precept, commonly called an attachment. *Cowell. Termes de la Ley. Spelman.* Applied both to persons and property. See *Attachment.*

Various distinctions are made in the old books, between the significations of the words *attach* and *arrest*, which have ceased, however, to be of any practical value. *Arrest* (q. v.) is now entirely confined to the taking of the person.

ATTACHÉ. Fr. Attached to; connected with. A person attached to a foreign legation. 1 *Baldwin's R.* 234, 240. *Bouvier.*

ATTACHIAMENTUM. L. Lat. In old English law. An attachment. *Bract.* fol. 439 b, 440. *Reg. Orig.* 18, *et passim. Spelman.* In old Scotch law, *attachiament. Skene de Verb. Sign. Solennitas attachiamentorum*, (q. v.); the formality of attachments; the old practice of issuing one attachment after another, in a regular order or series. *Bract.* fol. 437. 1 *Reeves' Hist. Eng. Law*, 480—487.

ATTACHIARE. L. Lat. In old English law. To attach; to attach a person. *Præcipimus tibi quod* attachies, &c.; we command you that you attach, &c. *Reg. Orig.* 64 b. *Tunc* attachiari *facias ;* then you cause to be attached. *Bract.* fol. 149. *Attachiabitur;* he shall be attached. *Glanv.* lib. 3, c. 6.

To attach ; to attach property ; to seize. *Mag. Cart. Johan.* c. 26. *Id.* 9 Hen. III. cc. 18, 30.

ATTACHMENT. [L. Lat. *attachiamentum.*] In practice. A taking or seizure of a person or property, by virtue of a legal process. See *infra.*

A writ or process for the taking or seizure of persons or property. See *Attach.*

An *attachment against the person* is a writ or process in the nature of a criminal proceeding, issuing out of a court of record, against a person who has committed some *contempt* of court, either by openly insulting the court itself, or by insulting, resisting, disregarding or abusing its process, or by doing or omitting to do any thing which shows his disregard of the authority of the court. Attachments of this kind may be issued against attorneys, solicitors, sheriffs, gaolers and other officers of court, parties to suits, jurors, witnesses, inferior judges and officers, for misconduct or neglect of duty; and against all persons who may be guilty of a contempt of court, either direct or consequential. 4 *Bl. Com.* 283, 284. 4 *Steph. Com.* 348. 1 *Tidd's Pr.* 479, 480. See *Contempt.* The object and effect of the attachment, in these cases, is to bring the party personally into court, where, unless

he clears himself of the contempt, he is punished by fine or imprisonment, or both, at the discretion of the court. 4 *Bl. Com.* 287. See *U. S. Digest*, Attachment, V.

An *attachment against property* is of several kinds, as

1. The old process of *attachment* in English practice, by which a defendant's goods were seized as a distress or means of compelling his appearance in an action. 3 *Bl. Com.* 280. *Roscoe's Real Act.* 151.

2. An ancient mode of procedure under the custom of London, by which a debt due a debtor by a third person, (termed a *garnishee*,) might be seized and appropriated to the payment of a creditor's demand. See *Drake on Attachment*, chap. 1, § 1, *et seq.*

3. A species of *mesne process* peculiar to the practice of some of the Eastern States, by which the goods and chattels, or lands of a defendant are seized at the commencement of a suit, and held as security to satisfy such judgment as the plaintiff may recover. *Rev. Stat. Mass.* 1836, part iii. tit. 2, c. 90, §§ 23, 24. *Story on Bailm.* § 124. Story, J. 2 *Story's R.* 131, 141. This was originally the same with the English process, (*supra.*) Parsons, C. J. 7 *Mass. R.* 123, 128. See *U. S. Digest*, Attachment, I. *Minot's Digest*, Attachment.

4. A process against the property of absent, absconding, concealed and non-resident debtors, otherwise called *foreign attachment*, and in some cases, *domestic attachment.* A species of this process is termed *garnishment*, and in some states, *trustee process* and *factorizing process.* See *Foreign attachment*, *Domestic attachment*, *Garnishment*, *Trustee process*, *Factorizing.* This is a proceeding unknown to the common law, and the provisions authorizing it are strictly construed by the courts, and required to be closely pursued by those who resort to it. See 14 *Georgia R.* 232. *Drake on Attachments*, § 4.

ATTACHMENT OF PRIVILEGE. In English practice. An attachment founded upon, or having reference to privilege. Attorneys and other officers of court were formerly *privileged* to sue in the courts to which they belonged, and the process by which actions in these cases were commenced was termed an *attachment of privilege.* 1 *Tidd's Pr.* 37, 38. *Steph. Pl.* 58, (Am. ed. 1824.)

An attachment of privilege was also anciently so called, when it issued to apprehend a person in a *place privileged.* *Termes de la Ley.*

ATTACHMENTS, *Court of.* In forest law. The lowest of the forest courts, held before the verderors of the forest once in every forty days, to receive from the foresters or keepers their attachments or presentments against vert and venison, and to enrol or certify them to the court of *justice-seat* or *swein mote.* *Cart. de Forest.* c. 8. 3 *Bl. Com.* 71, 72. *Termes de la Ley.* 3 *Steph. Com.* 439. Like the forest courts generally, it is now disused. *Id. ibid.*

ATTAINDER. [L. Lat. *attinctura;* from Fr. *atteindre*, to reach to, or overtake, or *teindre*, to taint, or stain.] In English criminal law. That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony, receives sentence of death for his crime. 1 *Steph. Com.* 408. The person so sentenced is called *attaint*, or *attainted*, (*attinctus*, stained or blackened.) He is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of a man, for, by an anticipation of his punishment, he is already dead in law. 4 *Bl. Com.* 380. 4 *Steph. Com.* 446. The consequences of attainder are forfeiture and corruption of blood. 4 *Bl. Com.* 381. 3 *Id.* 251. See *Forfeiture*, *Corruption of blood.*

Acts of attainder were passed by several of the United States during and shortly after the revolution, but the doctrine of attainder is now scarcely known in American law, and the passage of bills of attainder by the states is expressly prohibited by the constitution of the United States. *Const. U. S.* Art. I. Sect. XI. *Story on the Const.* §§ 1343, 1344. *Id.* (Abr.) §§ 677, 678. *U. S. Digest*, Attainder.

ATTAINT. [L. Fr. *atteynte;* L. Lat. *attincta.*] In old English practice. A writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 *Bl. Com.* 402. *Bract.* fol. 288 b,—292. *Britt.* c. 98. *Reg. Orig.* 203 b,—205, *et passim.* *F. N. B.* 105 G. This inquiry was made by a grand assise or jury of twenty-four persons, and if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extir-

pated, and their meadows ploughed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 *Bl. Com.* 404. *Co. Litt.* 294 b. *Bract.* fol. 292 b. See *Keilw.* 83. This punishment was afterwards modified by statute, but the writ of attaint remained in force, (though quite fallen out of use,) till abolished by the statute 6 Geo. IV. c. 50, s. 60. 3 *Steph. Com.* 627, note (*z*).

ATTAINT, *Atteint*, *Attaynt*, *Taynt.* L. Fr. [L. Lat. *attinctus*, *attaintus.*] In old English law. Attainted; convicted or found guilty of some offence. *Attaint de disseisin;* convicted of disseisin. *Stat. Westm.* 1, c. 24. *Spelman*, voc. *Attaintus.*

Defeated in an action. *Estre* attaint *et vaincu en aucun cas;* to be attaint and overcome, or cast in any case. *Cowell. Blount. Spelman, ub sup. Attaintes pur serfs;* found by verdict to be villeins. *Kelham.* A distinction, however, was generally made by the old writers between *attainder* and *conviction.* See *Cowell. Blount.* 4 *Bl. Com.* 380.

ATTEIGNALMENT, *Ateisament*, *Atteynement*, *Atteynaument.* L. Fr. Effectually; strenuously; remain for ever. *Kelham.*

ATTEINDRE. L. Fr. To attaint, to convict; attainder, conviction. *Kelham. Atteint, atteynt;* convicted, found guilty; proved; adjudged. *Id.*

To attain, to obtain; to meet; to abide by. *Kelham.*

ATTEMPT. In criminal law. An endeavor to commit an offence, carried beyond mere preparation, but falling short of actual commission. *Burrill on Circ. Evid.* 365. An attempt to commit a felony is in many cases a misdemeanor; and an attempt to commit even a misdemeanor has been decided in many cases to be itself a misdemeanor. 1 *Russell on Crimes*, 46.

ATTENDANT. [L. Lat. *attendens.*] In old English law. Owing a duty or service to another; waiting or depending upon another. Where a widow was in certain cases endowed by a guardian, she was said to be *attendant* to the guardian, and to the heir at his full age. *Termes de la Ley. Cowell.*

ATTENDANT TERMS. In English law. Terms, (usually mortgages,) for a long period of years, as one thousand or two thousand years, which are created or kept outstanding for the purpose of *attending*, or waiting upon and protecting the inheritance.* 1 *Steph. Com.* 351.—Thus, where land held in fee is mortgaged for a long term of years, (as a thousand years,) and upon the estate being sold, the mortgage is paid off out of the purchase money, it is usual for the purchaser, (instead of taking a surrender of the term to himself, and so merging it in the inheritance,) to keep it on foot, and have it assigned to a trustee of his own nomination, in trust for himself, (the purchaser,) "and to attend and protect the inheritance." The reason of this practice is, that the beneficial or equitable interest in a term assigned upon such a trust, follows (though a mere chattel,) all the limitations of the inheritance,—belongs to the heir or devisee of the new owner, and not to his executor or administrator, and is subject to the other incidents of a fee simple; so that, for all purposes of convenience, the case is the same as if it had merged into the inheritance; while, on the other hand, it affords him a security which he could not have had if a merger had actually taken place. For if it should afterwards turn out that prior to the purchase, but posterior to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favor of another person, to which the then trustee of the outstanding term had been no party, and of which the subsequent purchaser had had no notice when he took his conveyance, and paid his purchase money, he will be protected against it through the medium of the *term*, which being the elder title, will also take the priority in point of legal effect. 1 *Steph. Com.* 351, 352. Terms may also become attendant by the mere construction of a court of equity. *Id.* 352. See 2 *Crabb's Real Prop.* 529, § 1738, *et seq. Burton's Real Prop.* 276, pl. 860. *Id.* 439, pl. 1428. 4 *Kent's Com.* 86—93.

In the United States, the doctrine of *attendant terms* is of little practical value, terms for years being treated altogether as personal estate; which go in a course of administration, as chattel interests, without any suggestion of their being of the character of attendant terms. 4 *Kent's Com.* 93, 94. See 1 *Hilliard's Real Prop.* 345. And in England these terms have been, in a great degree, abolished by the statute 8 & 9 Vict. c. 112.

ATTENTARE, *Attemptare.* L. Lat. In old English law. To attempt. *Vobis prohibemus ne quicquam in præmissis* attentare

præsumatis ; we prohibit you that you do not presume to attempt any thing in the premises. *Reg. Orig.* 36 b. *Nec quicquam in hac parte* attentetis, *seu* attentari *faciatis. Id.* 37. *Attemptarent ;* should attempt. *Mem. in Scacc.* M. 22 Edw. I.

ATTENTAT. Lat. [from *attentare*, q. v.] He attempts. In the civil and canon law. Any thing wrongfully innovated or *attempted* in a suit by an inferior judge, (or judge *à quo*,) pending an appeal. 1 *Addams' R.* 22, note. *Ayliffe, Parerg.* 100. *Shelford, Marr. & Div.* 562.

ATTERMINARE. L. Lat. [from *ad*, to, and *terminus*, a term.] In old English practice. To adjourn; to put off to another term, (*ad terminum ponere.*) See *infra. Coram justitiariis nostris apud Westmonasterium* atterminatas; adjourned before our justices at Westminster. *Bract.* fol. 110. Atterminata,—*posita ad talem terminum ;* adjourned,—put to such a term. *Id.* fol. 426. Atterminent *querentes ;* the plaintiffs may adjourn. *Stat. Westm.* 2, c. 24.

To determine. *Stat. Westm.* 2, c. 30. See *Atterminatio.* But this was not the proper sense of the word. See *Bract.* fol. 355 b.

ATTERMINATIO. L. Lat. In old English law. Determination. *Reg. Orig.* 30.

ATTERMINEMENT. L. Fr. Respite; adjournment; attermination. *Kelham.*

ATTERMINER. L. Fr. To put off, or adjourn; to respite; to delay. *Kelham.* To grant further time for the payment of a debt.

ATTERMINEZ. L. Fr. Determinable; respited. *Kelham. Dettez atterminez ;* debts for the payment of which certain times were assigned. *Kelham.*

ATTERMINING. In old English law. A putting off; the granting of a time or term, as for the payment of a debt. *Cowell.*

ATTEST. [Lat. *attestari*, from *ad*, to, and *testari*, to witness.] In practice and conveyancing. To witness or testify. To bear witness to; to witness by observation and signature. To witness the execution of an instrument, and to subscribe the name in testimony of such fact..* See 4 *Taunt.* 213. Where it is provided that an instrument shall be *attested*, the term *attest* implies that a witness shall be present to testify that the party who is to execute the deed has done the act required. 9 *M. & W.* 404.

To witness the execution of an instrument on the request of the parties executing it.* 3 *Campb.* 232.

ATTESTATION. [from Lat. *attestari*, to witness.] The act of witnessing the signature or execution of a deed or other instrument, and subscribing the name of the witness in testimony of such fact. Blackstone considers it the same as "execution in the presence of witnesses." 2 *Bl. Com.* 307. But *execution* and *attestation* are clearly distinct formalities; the former being the act of the *party*, the latter of the *witnesses* only.

ATTESTATION CLAUSE. In conveyancing. The memorandum or form of words, at the end of an instrument, immediately preceding and over the names of the attesting witnesses; importing that they have attested its execution in due form. It usually consists of the words "Sealed and delivered in the presence of," but in wills is of greater length and expressed in more specific terms. It is not conclusive as to the ceremony of execution, but may be explained by the testimony of the witnesses themselves, or by reference to the *testimonium* clause of the instrument. 6 *Man. & Gr.* 386. 8 *Howard's R.* 33.

ATTESTOR OF A CAUTIONER. In Scotch practice. A person who attests the sufficiency of a cautioner, and agrees to become *subsidiarie* liable for the debt. *Bell's Dict.*

ATTEYNTE. L. Fr. Attaint; an attaint. *Britt.* c. 98.

ATTILAMENTUM. L. Lat. In old English law. Tackling or tackle; rigging; furniture, equipment. *Batellus cum onere et omni attilamento ;* a boat with her lading and all her tackle. *Fleta*, lib. 1, c. 25, § 9. *Phalera*, attilamenta *et harnesia minuta carectis appendentia ;* tackle, equipments and small harness belonging to carts. *Id.* lib. 2, c. 85.

ATTILATUS. L. Lat. In old English law. Harnessed; tackled. Attilatus *equus;* a horse with his gears or harness on, for the work of the cart or plough. *Cowell.*

ATTILE. L. Lat. In old English law. Rigging; tackle. *Cowell.*

ATTILES. L. Fr. Stores. *Kelham.*

ATTILIUM, (pl. ATTILIA, *Atilia.*) L. Lat. In old English law. The rigging or tackle of a ship. *Navem cum* attilio *decenti ;* a ship with proper rigging. *Mem. in Scacc.* T. 24 Edw. I. *Naves et attilia. Id.* M. 4 Edw. I. See *Atilium, Actilia.*

ATTILMENT. L. Fr. Equipment; fitting out. *Kelham.*

ATTINCTA. L. Lat. [from *attingere*,

to touch or reach, or from *tingere*, to stain.] In old English law. An attaint. *Reg. Orig.* 121 b, 122, 203 b, 204. *Spelman.*

ATTING'. A contraction of *Attingunt.* See *Attingere.*

ATTINGERE. Lat. [from *ad*, to, and *tangere*, to touch.] In the civil law. To touch; to reach to; to be allied to; to be united or connected with. *Cognatione affinitateve attinget;* shall be connected by relationship or affinity. *Dig.* 47. 10. 5. pr. *Qui aliqua affinitate non* attingunt; who are not related by any affinity. *Bract.* fols. 72, 150. The simple *tetigit*, from *tangere*, is used in *Inst.* 3. 1. 8.

In old practice. To touch or reach to; to amount to. *Quæ summam quadraginta solidorum* attingunt, *vel eam excedunt;* which amount to, or exceed the sum of forty shillings. *Reg. Orig.* 145. *Attingunt se;* they amount to. *Yelv.* 80. *Quæ in toto se* attingunt; which in the whole amount to. See *In toto se attingunt. Attingentia;* amounting to. *Hob.* 133.

ATTITLES. L. Fr. Assigned. *Kelham.*

ATTORN, *Atturn.* [L. Lat. *attornare, atturnare;* from Fr. *attorner*, to turn over, or transfer; or *tourner*, to turn or exchange, to give one thing in place of another.] In feudal law. To transfer or turn over to another. Where a lord aliened his seigniory, he might, with the consent of the tenant, and in some cases without, (*velit nolit*) *attorn* or transfer the homage and service of the latter to the alienee or new lord. *Bract.* fol. 81 b, 82. In such case, he was sometimes said to *attorn* or transfer the tenant himself, (*attornare tenentem*), and the tenant was said to be attorned, (*attornari, attornabitur.*) *Id. ibid. Id.* fol. 169.

To consent to a transfer; to transfer one's self, or one's services.—Where a tenant consented to the grant or transfer of the seigniory, he was said to *attorn* (properly, to *attorn himself*) to the grantee; that is, to transfer his services to him, and agree to become his tenant. 2 *Bl. Com.* 288. "Sir, I *attorn* to you by force of the said grant," was the form of words by which this consent was usually expressed. *Litt.* sect. 551, 553, 554. This is the origin of the modern practice of *attornment*, (q. v.) See *infra.*

In modern law. To consent to the transfer of a rent or reversion. A tenant is said to *attorn*, when he agrees to become the tenant of the person to whom the reversion has been granted. See *Attornment.*

In old practice. To put in one's place; to substitute; to appoint an attorney. See *Attornare.*

ATTORN'. An abbreviation of *Attornatus.* 1 *Instr. Cler.* 9.

ATTORNAMENTUM, *Atturnamentum.* L. Lat. [from *attornare*, q. v.] In old English law. Attornment. *Co. Litt.* 309 a. See *Attornment.*

ATTORNARE, *Atturnare.* L. Lat. [L. Fr. *attorner;* according to Spelman, from *tourner*, to turn, to exchange; to give one thing in place of another.] In feudal law. To attorn; to transfer or turn over. Attornare *servitium tenentis;* to attorn the service of a tenant. *Bract.* fol. 81 b, 82. *Et* attornat *servitium firmarii;* and attorns the service of the fermor or lessee. *Id.* fol. 178. *Possum* attornare *tenentem meum;* I may attorn my tenant. *Id* fol. 169. *Cum ipse, de voluntate sua, se* attornaverit *ei, et ei fecerit servitium;* where he, of his own will, attorned himself to him, and did service to him. *Id.* fol. 41. *In quibus casibus* attornabitur, *velit nolit;* in which cases he shall be attorned, whether he will or not. *Id.* fol. 82. *Homagium contra voluntatem hominis* attornari *non poterit;* homage cannot be attorned against the will of the vassal. *Fleta*, lib. 3, c. 16, § 36. *Attornare rem;* to attorn or turn over a thing, as money and goods; i. e. to assign or appropriate them to some particular use and service. *Kenn. Par. Ant.* 283. *Cowell.*

In old practice. To attorn; to put in one's place; to appoint a substitute or attorney. *Pateat universis per presentes, quod ego, A. de B.*, attornavi, *et in loco meo constitui C. de D.;* Know all men by these presents, that I, A. of B., have *attorned*, and put in my place C. of D. *Reg. Orig.* 172. *Vobis præcipimus quod attornatum quem W. per literas suas patentes loco suo* attonare *voluerit—recipiatis;* we command you that you receive the attorney whom W. by his letters patent may choose to *attorn* in his place. *Id.* 172 b. The words *attornare, attornavi, attornavit, attornaverat*, &c., are of constant occurrence in the forms of letters of attorney, and writs *de attornato recipiendo*, in the Register. *Reg. Orig.* 26—29.

ATTORNATIO. L. Lat. In old English law. An attornment. *Bract.* fol. 79 b.

ATTORNATUS, *Atturnatus.* L. Lat. [from *attornare*, q. v.] In old English law. One who is attorned, (L. Fr. *attourné*), or put in the place of another, (*ad* turnum *alterius*); a substitute, (*vicarius*); an attor-

ney. *Spelman.* Attornatus *vel procurator;* an attorney or procurator, (proctor.) *Reg. Orig.* 25 b, 281. These were nearly or quite synonymous terms. *Provisum est quod quilibet liber homo—libere possit facere* attornatum *suum*, &c.; it is provided that every freeman—may freely make his attorney, &c. *Stat. Merton*, (20 Hen. III.) c. 10. *Fleta*, lib. 2, c. 66, § 12. *Reg. Orig.* 26 b. *Attornati et apprenticii;* attorneys and apprentices. *Fleta*, lib. 2, c. 37. Called, in old Scotch law, *actornatus*, (q. v.) See *Attorney*, *Attorney at law*, *Atturnatus.*

ATTORNE. L. Fr. In old English law. An attorney. *Britt.* c. 126.

ATTORNER. L. Fr. In old English law. To attorn or transfer. *Que le seigniour pusse* attorner *le homage et le service son tenaunt:* that the lord may *attorn* the homage and service of his tenant. *Britt.* c. 68. *Si ascun tenaunt de son gree ne se voille* attorner *a tener de autre seigniour;* if any tenant of his own will, will not *attorn* himself to hold of another lord. *Id. ibid.* See *Attorn.*

ATTORNEY, *Atturney*, *Attourney.* [L. Lat. *attornatus*, *atturnatus;* L. Fr. *attorné*, *atturné*, *attourné;* from *tourner*, or *attourner*, to turn, put in the place of, substitute; or *tourn*, a turn or change.] One who is substituted for another, (*vicarius*), or put in his place or turn, (*ad turnum*, i. e. *ad vicem*), to act for him, or manage his concerns.* One who manages the affairs of another by the direction or appointment of his principal, (*ad mandatum domini.*) *Spelman.* One who is appointed by another to do something in his place or stead. *Termes de la Ley. Com. Dig.* Attorney, A. One who is employed by another to do any act for his benefit, or on his account.* *Story on Agency*, § 3. Called in old Scotch law, *actornay. Skene de Verb. Sign.* voc. *Actornatus.* The Spanish law uses the very expressive term *personero*, (q. v.) Cowell writes the word *atturney*, after the *atturnatus* of Spelman.

Attorneys are either public or private; or, as they are more commonly distinguished, *attorneys at law*, and *attorneys in fact.* See *infra.*

ATTORNEY AT LAW. [L. Lat. *attornatus* or *atturnatus*, *procurator*, *responsalis*, qq. v.] In practice. One who is put in the place, stead, or *turn* of another, to manage his matters of law. 3 *Bl. Com.* 25. A public attorney, (answering to the *proctor* of the ecclesiastical and admiralty courts, the *solicitor* of courts of equity, and, in many respects, to the *procurator ad litem* of the civil law), whose office is to appear for the parties to actions and other judicial proceedings, and to prosecute and defend them in their behalf, and whose authority is derived either from a formal warrant of attorney, or, which is the usual practice, a mere oral retainer. Attorneys are regarded as *officers* of the respective courts in which they are admitted to practice, and their business, as distinguished from that of *counsellors*, is to carry on the practical and more mechanical parts of suits, or such proceedings as do not require to be conducted in open court. See *Counsellor.* This distinction has been adopted from the English practice, and where it is observed, *attorney* is regarded as a name or title of *degree* as well as of office, to which persons are usually admitted before taking that of counsellor. In many of the United States, however, no such distinction is observed, although both titles are retained in common use. 1 *Tidd's Pr.* 60—90. *U. S. Digest*, Attorney and counsel.

Attorneys, on being admitted, take an oath of office in open court. Hence it has been said, "an *attorney* means a *sworn* attorney." Pratt, C. J. 11 *Mod.* 383.

*** The term *attorney* (*atturnatus*) does not appear in English law until the time of Bracton, although it occurs in the Coustumier of Normandy, (c. 65), a compilation of earlier date; whence Cowell reasonably infers it to be of Norman origin. Glanville uses in its place sometimes the word *nuntius*, sometimes *procurator*, but most commonly *responsalis*, (one who answers for another.) *Glanv.* lib. 11. See *Responsalis.* Mr. Stephen supposes the office of a *responsalis* to have been in substance the same with that of an attorney. *Steph. Pl.* Appendix, note (5). Bracton, however, (whom Fleta copies,) expressly says that there was a *great difference* between them, (*est differentia magna inter responsalem et attornatum*), and enumerates various acts which an attorney could do, and which a responsal could not. *Bract.* fol. 212 b. And see *Id.* fol. 349 b. *Fleta*, lib. 4, c. 6, § 7. *Id.* lib. 6, c. 11, § 6. In the Regiam Majestatem, the word is written *actornatus.* Lib. 4, c. si quis defendens, 46.

The person by whom an attorney was appointed, and for whom he acted, was called his *master* or lord, (Lat. *dominus*,

Fr. *seigniour.*) *Perkins*, ch. 3, s. 188, 189. *Attornatus fere in omnibus personam* domini *representat;* an attorney represents the person of his master in almost all respects. *Bract.* fol. 342. *General attorne puit tant que son* seigniour *puit;* a general attorney may do as much as his lord may. *Britt.* c. 46. *Un* attorney *dit que son* master *avoit recover;* an attorney said that his master had recovered. *Yearb.* T. 1 Edw. III. 10. H. 3 Edw. III. 9. *Le defendant fuit* attorney *de son* master *per son commandement. Keilw.* 50 b. See *Dominus, Apprenticius ad legem.*

ATTORNEY AT LARGE. In old practice. An attorney who practiced in all the courts.* *Cowell.*

ATTORNEY IN FACT. [L. Lat. *procurator, vicarius.*] A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, (*in factum,*) or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a *letter of attorney*, or more commonly a *power of attorney*, (qq. v.) *Bac. Abr.* Attorney. *Story on Agency*, § 25. The word, in its most general sense, includes all agents employed in any business, or to do any act or acts *in pais* for another. *Id. ibid.*

ATTORNEY GENERAL. A law officer of state in England and the United States; the attorney of the King or Queen, (*attornatus regis*, or *reginæ;*) the attorney of the government or state.

In England, the attorney general is appointed by letters patent, and selected from the queen's counsel. He is the only legal representative of the crown in the courts, and his duties are to exhibit informations, to prosecute for the crown in criminal matters, to conduct proceedings in the exchequer in revenue causes, and generally to appear and act in all legal proceedings, and in all courts where the interests of the crown are in question. *Wharton's Lex. P. Cyclopædia.* 3 *Bl. Com.* 27. 4 *Burr.* 2570. *Tomlins.* The title of attorney general is first mentioned in England in the eleventh year of Edward IV. 4 *Reeves' Hist. Eng. Law*, 122.

The Attorney General of the United States is appointed by the President, and his office is, (besides special and incidental duties,) to prosecute and conduct all suits in the Supreme Court in which the United States are concerned, and to give his advice and opinion upon questions of law, when required by the President, or the heads of the departments. *Act of Congress*, September 24, 1789, § 35. 1 *Kent's Com.* 308. Each of the states has also its attorney general, whose duties are defined by its own laws. See *U. S. Digest*, Attorney and Counsel.

ATTORNEY GENERAL. [L. Fr. *attorne general;* L. Lat. *attornatus generalis.*] In old practice. A general attorney; one who was authorized to appear in all suits and causes, and in all courts; or in all suits at a particular circuit, or for a specified period of time.* *Reg. Orig.* 20—22. These were made either by the king's letters patent, or by appointment of the people, (*par constitucions de gents*) before the justices in eyre. *Britt.* c. 126. See *Id.* c. 46. An *attorney special*, on the other hand, was one who was employed in one or more causes particularly specified, or one who belonged to a particular court. *Cowell.*

ATTORNMENT. [L. Lat. *attornamentum, attornatio;* L. Fr. *attournance.*] In feudal and old English law. A turning over, or transfer by a lord, of the services of his tenant to the grantee of his seigniory. A transfer by the tenant, of his services to the grantee, or new lord; a tenant's consent to a transfer of lands by his lord; or his acknowledgment or acceptance of the grantee as his lord, in place of the former lord.* See *Attorn, Attornare.*

In English law. An agreement of a tenant to the grant of a seigniory, [i. e. to become tenant to a new lord of the seigniory,] or of a rent; or the agreement of a donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder, made to another, [i. e. to become connected with him in the relation of landlord and tenant of the tenement.] *Shep. Touch.* (by Preston), 253. *Co. Litt.* 309. Attornment might be by words alone, as by saying to the grantee, "I agree to the grant made to you," or "I am well content with the grant made to you;" but the most common attornment was to say, "Sir, I *attorn* to you by force of the said grant," or, "I become your tenant;" or it might be in writing to the same effect; or it might be by delivering to the grantee a penny, or a half penny, or a farthing, by way of attornment. *Litt.* sects. 551, 553, 554. *Co. Litt.* 309 b. Attornment continued to be a necessary ceremony in the transfer of estates, until dispensed with by the statutes of 4 and 5

Anne, c. 16, and 11 Geo. II. c. 19. 2 *Bl. Com.* 290. 1 *Steph. Com.* 434—436, 475.

In the United States, attornment may be considered as abolished. 4 *Kent's Com.* 490, 491. The term, however, continues to be applied to the acts of tenants, in somewhat of its ancient signification. See *Attorn.*

ATTOURNANCE. L. Fr. Attornment. *Kelham.*

ATTRAIRE, *Attrer.* L. Fr. To draw to. *Kelham.*

ATTURNATUS. L. Lat. In old English law. An attorney. One who manages the affairs of another, by the direction of his principal. One who, being put in the place of another, conducts his master's causes in court, and answers in his name. Otherwise called *procurator, responsalis, nuntius, missus.* Properly, a substitute, (*vicarius,*) from Fr. *tourner*, to turn, to exchange, to give one thing in place of another. *Spelman.* See *Attornatus.*

ATTURNATUS GENERALIS. L. Lat. Attorney general. *Vaugh.* 53.

ATTURNE. L. Fr. An attorney. *Britt.* c. 126. See *Attorne.*

ATTURNER. L. Fr. To attorn. *Litt.* sects. 553, 554.

ATTURNEY. An old form of *attorney*, (q. v.) used by Cowell.

ATYA. L. Lat. In old English law. Hatred. *Bract.* fol. 123. See *Atia.*

AU. L. Fr. At. *Au pluis ;* at most. *L. Fr. Dict. Au temps ;* at the time. *Id.*

To. *Au quel ;* to whom, or which. *Id.*

For. *Au aumone ;* for alms. *Id.*

Until. *Au ceo temps ;* until this time. *Id.*

AUBAINE, *Aubaigne.* Fr. See *Droit d'aubaine.*

AU BESOIN. Fr. [In case of need; "*au besoin, chez Messrs.—à— ;*" "in case of need, apply to Messrs.—at—."] In French law. Words used in the direction of bills of exchange, pointing out certain persons who, in case of a refusal or failure of the drawee, are to be applied to, that they may honor and pay the bill, in the nature of an acceptance *supra protest. Story on Bills,* § 65. The same words are also used in endorsements. *Id.* § 216.

AUCEPS SYLLABARUM. Lat. A catcher of syllables. One who takes (or offers to take) advantage of trifling verbal inaccuracies, watching or lying at catch for the mistakes of others, like a fowler or bird-catcher, (*auceps*) ; a catching, captious, tricky pleader, or practitioner. *Cic. de Orat.* i. 55.

AUCTIO. Lat. [from *augere*, to increase.] In the civil law. An auction; a public sale. *Dig.* 41. 4. 2. 8, 9. *Brissonius.*

AUCTION. [from Lat. *auctio*, from *augere*, to increase.] A public sale, where the parties desiring to purchase bid upon each other, that is, successively offer an *increasing* price; the sale being to the highest bidder.* From the circumstance of the bids being repeated *aloud* by the salesman or auctioneer, it has been sometimes termed a sale "by *outcry.*" *Babington on Auctions,* 3. Both the term *auction*, and the mode of sale itself, are of Roman origin. *Id.* 1—3. See *Auctio, Subhastatio.*

AUCTIONARIUS, *Auxionarius.* L. Lat. In old English law. A seller, regrater or retailer. *Auxionarii et auxionatrices panis, cervisiæ, et aliarum rerum ;* retailers (male and female) of bread, ale and other things. *Cowell. Placit. Parl.* 18 *Edw.* I. cited *ibid.*

A broker; one who bought as well as sold. *Spelman*, voc. *Auctionarii. Auctionarius qui emit ;* an auctioneer who buys. *Gloss. Isodori*, cited *ibid.*

A broker, or person who loaned money. *Gregor. Mag. Registr.* lib. 1, epist. 42, cited *ibid.*

An auctioneer, in the modern sense. *Spelman, ubi sup.* See *Auctioneer.*

AUCTIONEER. [from L. Lat. *auctionarius*, (q. v.); Lat. *propola.*] One who conducts an auction or public sale.* *Spelman*, voc. *Auctionarii.* A person who is authorized to sell goods or merchandise at public auction or sale, for a recompense, or (as it is commonly called,) a commission. *Story on Agency*, § 27. An auctioneer differs from a broker in being authorized only to *sell*, and that at public auction. *Id. ibid.* 2 *H. Bl.* 555. Formerly, however, auctioneers had power to buy as well as sell, and were indeed called brokers. Auctionarii, *quos Angli* brokers *dicimus ;* auctioneers, whom we English call *brokers. Spelman*, voc. *Auctionarii.* 2 *H. Bl. ub. sup.* See *Auctionarius.*

AUCTOR, *Auctour.* L. Fr. [from Lat. *actor*, q. v.] A plaintiff. *Kelham.*

AUCTOR. Lat. In the civil law. One from whom some right passes to another; an author or source of right or title; as a vendor, grantor, assignor, &c.* *Brissonius.*

One by whose authority any thing is done; a principal. *Id.*

AUCTORITAS. Lat. [from *auctor*, q. v.] In the civil law. Authority. See *Brissonius.*

In old European law. A diploma, or royal charter. A word frequently used by Gregory of Tours and later writers. *Spelman.*

AUCTORIZARE. L. Lat. In old English law. To authorize. *Auctorizati;* authorized. *Fleta*, lib. 6, c. 10, § 29.

AUCUN, *Aucon, Augune, Acone, Akune.* L. Fr. Some; some one. *L. Fr. Dict. Kelham. Aucune foits;* sometimes. *L. Fr. Dict. Aucunement;* somewhat. *Id.*

AUCUPIUM. Lat. [from *auceps*, a fowler.] In old English law. A catching at; the taking advantage of, or laying stress upon trivial mistakes, or oversights. **Aucupia verborum sunt judice indigna.** Catchings at words are unworthy of a judge. *Hob.* 343. See *Auceps syllabarum. Aucupatio* is used in the civil law. *Cod.* 2. 58. 1.

AUDIENCE COURT. [L. Lat. *curia audientiæ Cantuariensis.*] In English ecclesiastical law. A court belonging to the Archbishop of Canterbury, of equal authority with the Arches court, though inferior both in dignity and antiquity. *Termes de la Ley. Wharton's Lex.*

AUDITA QUERELA. L. Lat. (Having heard the complaint.) In practice. A writ which lies for a defendant against whom judgment is recovered, and who is therefore in danger of execution, or perhaps in execution, whereby he may be relieved, upon showing good matter of discharge, which has happened since the judgment; as if the plaintiff has given him a general release, or if the defendant has paid the debt to the plaintiff, without procuring satisfaction to be entered on the record. In these and the like cases, an *audita querela* lies in the nature of a bill in equity. It is a writ, directed to the court in which the judgment is recovered, stating that the complaint of the defendant has been heard, (*audita querela defendentis,*) and after setting out the matter of the complaint, it enjoins the court to call the parties before them, and having heard their allegations and proofs, to cause justice to be done between them. 3 *Bl. Com.* 405. *Reg. Orig.* 114, 149. *Reg. Jud.* Appendix, 14, 15. *F. N. B.* 102, H. *Bac. Abr.* Audita querela. *Com. Dig.* h. t. *U. S. Digest*, h. t.

This writ is now rarely used, the object of it being, in most cases, attainable by *motion* to the court, founded on affidavit of the facts. 3 *Bl. Com.* 406. 3 *Steph. Com.* 641, note (*m*). Eyre, C. J. 1 *Bos. & Pul.* 428.

AUDITOR. Lat. and Eng. [from *audire*, to hear.] An officer, or person whose business is to examine and verify the accounts of persons entrusted with money. A person appointed to examine a particular account, and state or certify the result; in doing which, he is said to *audit* the account. Literally, *a hearer*, (from Lat. *audire*, to hear);* so called, probably, from the ancient practice of delivering accounts *vivâ voce. Brande.*

In English law. An officer or agent of the crown, or of a private individual, or corporation, who examines periodically the accounts of under officers, tenants, stewards or bailiffs, and reports the state of their accounts to his principal. *P. Cyclopædia.* The auditors of the exchequer were officers appointed to take the accounts of receivers of the public revenues. Their duties are now performed by a board of commissioners. *Brande.*

In American law. An officer of the treasury of the United States, whose duty is to examine the accounts of officers who have received and disbursed public moneys by lawful authority. *Acts of Congress*, March 3, 1817, sess. 2, c. 45; February 24, 1819, sess. 2, c. 43.

In practice. A person (usually several persons) appointed by the court in actions of account, to take the accounts of the parties. 3 *Bl. Com.* 163. 1 *Story's Eq. Jur.* §§ 447, 448. See *Account.*

AUDITORES COMPOTI. L. Lat. In old English law. Auditors of account. *Stat. Westm.* 2, c. 11. *Fleta*, lib. 2, c. 70, § 13. *Auditores compotorum. Id.* lib. 2, c. 88.

AUDITUS. L. Lat. [from *audire*, to hear.] In old pleading and practice. Hearing. *In* auditu *quamplurimorum;* in the hearing of very many. *T. Raym.* 196.

Oyer, (which was anciently an actual *hearing.*) *Et petunt* auditum *scripti prædicti, et eis legitur in hæc verba;* and they pray oyer of the said writing, and it is read to them in these words. *Hob.* 19 a. 2 *Ld. Raym.* 1540. *Si querens petat* auditum; if the plaintiff pray oyer. *Stat. Westm.* 2, c. 39. See *Oyer.*

AUGMENTATION. In old English law. The name of a court erected in the twenty-seventh year of King Henry VIII. for the purpose of protecting the king's interests, in relation to the profits of sup-

pressed religious houses and their lands, given him by act of parliament of the same year. So called from the *augmentation* of the revenues of the crown, derived from the suppression of such houses.* *Termes de la Ley.* The court was dissolved in the reign of Queen Mary, but the office of augmentation remained long after. *Id. Cowell.*

AUGUSTA. Lat. In the Roman law. The title of the wife of the emperor, (*Augustus ;*) corresponding with queen consort in English law. 1 *Bl. Com.* 218. *Dig.* 1. 3. 31. *Id.* 31. 57. *Id.* 49. 14. 6. 1. *Cod.* 6. 22. 7. It was first given to Livia, the wife of Augustus, but finally became a common title of the mother, wife, sister or daughter of an emperor. *Tacit. Annal.* i. 8. *P. Cyclopædia. Augusta legibus soluta non est ;* the empress or queen is not privileged or exempted from subjection to the laws. 1 *Bl. Com.* 219. *Dig.* 1. 3. 31.

AULA, *Haula, Halla.* L. Lat. In old English law. A hall, or court ; the court of a baron, or manor ; a court baron. *Spelman.*

A hall, or chief mansion house ; the usual appendage of a manor. *Domesday. Whishaw.*

The hall of a house, in the modern sense. *Reg. Jud.* 13 b. *Facio tibi* aulam, *ut tu facias mihi cameram ;* I make you a hall, in consideration of your making me a chamber. *Bract.* fol. 19. *Dividitur* aula *à camera. Fleta*, lib. 5, c. 9, § 18.

AULA REGIS, or REGIA. Lat. The king's hall, or palace ; sometimes called *curia regis*, the king's court. A court established by William the Conqueror in his own *hall* or palace. It was the supreme court of the kingdom, and was composed of the king's great officers of state, resident in his palace, and usually attendant on his person ; such as the lord high constable, and lord mareschal, the lord high steward, and lord great chamberlain, the steward of the household, the lord chancellor, and the lord high treasurer. These high officers were assisted by certain persons learned in the laws, who were called the king's *justiciars*, or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice in matters of great moment and difficulty. The presiding officer of this court was called the *chief justiciar* or justiciary of all England, (*capitalis* or *summus justitiarius totius Angliæ.*) *Bract.* lib. 3, tract. 1, c. 7, ¶ 2, fol. 105 b. *Fleta*, lib. 2, cc. 2, 3. *Gilb. Hist. C. Pleas*, Introd. 18. 3 *Bl. Com.* 37, 38. 1 *Reeves' Hist. Eng. Law*, 48. The *Aula Regis* was afterwards broken up into several courts, as the King's Bench, the Common Bench, Chancery, and Exchequer, (qq. v.) 3 *Bl. Com.* 39.

AULM, *Aume.* L. Fr. Soul. *Kelham.* See *Alm.*

AULNAGE. See *Alnage.*

AULNAGER. See *Alnager.*

AUMONE. L. Fr. Alms ; another form of *almoin* or *almoign. Tener* [*tenur*] *en* aumone ; tenure in alms. *Britt.* c. 66. *Fraunche aumone ;* frank almoin ; free alms. *Id. ibid.*

AUNCEL WEIGHT. [*quasi* hand-sale weight.] In English law. An ancient mode of weighing, described by Cowell as "a kind of weight with scales hanging, or hooks fastened to each end of a staff, which a man, lifting up upon his forefinger or hand, discerneth the quality or difference between the weight and the thing weighed." Being liable to great deceit, it was prohibited by several statutes, and the even balance commanded. *Stat.* 25 *Edw.* III. st. 5, c. 9. *Stat.* 34 *Edw.* III. c. 5. *Stat.* 8 *Hen.* VI. c. 4. It continued in use, however, in various parts of England, until finally abolished by statute 22 *Car.* II. c, ult. *Cowell.* It has been thought to have resembled the modern *stilliards. Wharton's Lex.*

AUNCESTRE. L. Fr. Ancestor ; an ancestor. *Britt.* c. 70.

AUNCIEN, *Aunciennes.* L. Fr. Ancient. *Aunciennes demeynes ;* ancient demesnes. *Britt.* c. 66.

AUNCIATUS. L. Lat. Ancient. *Charta* aunciata, *et libertas anterior ;* an ancient charter, and privilege of older date. *Bract.* fol. 57 b.

AUNZ, *Auntz.* L. Fr. Years. *Kelham.*

AUREL, *Auril, Avril, Aurilleux.* L. Fr. April. *Kelham.*

AURICULARUM SCISSIO. L. Lat. In old English law. Cutting or cropping of the ears. *Fleta*, lib. 1, c. 38, § 10.

AURIFODINA. Lat. In civil and old English law. A gold mine. *Dig.* 3. 4. 1. pr. *Bract.* fol. 222 b.

AURUM. Lat. In the civil law. Gold. *Dig.* 34. 2. *Id.* 34. 2. 19, 27, 32.

AURUM REGINÆ. Lat. In old English law. Queen's gold. *Mem. in Scacc.* M. 5 Edw. I. *Id.* 6 Edw. I. 1 *Bl. Com.* 219, 220. See *Queen-gold.*

AUSINT, *Ausinc, Awssin, Ausoys, Ausieu.* L. Fr. Also ; in this manner. *Kelham.*

AUSSI, *Auxi, Avissi.* L. Fr. Also. *L. Fr. Dict. Litt.* sect. 95.

AUSTREGÆ. L. Lat. In old German law. Arbiters appointed to determine controversies, for the purpose of restraining the practice of private war so prevalent during the middle ages. 1 *Rob. Charles V.* Appendix, note xlii.

AUSTURCUS. L. Lat. In old English law. A gos-hawk. *Cowell. Aeriæ austurcorum;* eyries of gos-hawks. *Fleta*, lib. 2, c. 41, § 7.

AUT. Lat. In the civil law. Or. Held, in certain cases, to have the sense of *et*, (and.) *Quum dicimus* quod dedi AUT donavi, *utraque continemus;* when we say "*quod dedi* aut *donavi*," we include both. *Dig.* 50. 16. 53. This was under the rule *disjuncta pro conjunctis accipiantur. Id. ibid.* By the Code, the word *aut*, in wills, was expressly required to be construed *et*, in the cases mentioned. *Cod.* 6. 38. 4.

In old pleading. Or. Aut *eo circiter;* or thereabouts. *Towns. Pl.* 18. For the use of *aut* in connection with *vel, seu* and *sive*, see *Id.* 25.

AUTANT. L. Fr. As much; so much; like as. *L. Fr. Dict.*

AUTER, *Autre.* L. Fr. Another; other. *Litt.* sect. 39. *Auters;* others. *Id.* sect. 38. See *infra.*

AUTER ACTION PENDANT. L. Fr. In pleading. Another action pending. A species of plea in abatement. 1 *Chitt. Pl.* 454. See *Fleta*, lib. 2, c. 61, § 12.

AUTER DROIT. L. Fr. Another right; another's right. See *En auter droit.*

AUTERMENT. L. Fr. Otherwise.

ΑΥΤΕΞΟΥΣΙΟΣ, Αὐτεξούσιος. Gr. [from αὐτὸς, himself, and ἐξουσία, power.] In the civil law. One who has the control of his own actions, (Lat. *sui juris, suæ potestatis;*) independent; not under the power of another. *Nov.* 118, c. 1. See *Sui juris.*

AUTHENTIC. Genuine; of authority; emanating from the proper source; vested with all due formalities, and legally attested; entitled to faith or credit; that may be received and relied on as evidence. See *Authenticum.*

AUTHENTIC ACT. In the civil law. An act received by a public officer, with the requisite solemnities. *Poth. Obl.* part 4, ch. 1, sect. 1, § 1. An act (or deed) executed before a public notary or other authorized officer; or which is attested by a public seal; or certified as being a copy of a public register. *Cod.* 4. 21. 17. *Nov.* 73, c. 2. *Civ. Code of Louisiana*, art. 2231.

AUTHENTICATE. In the law of evidence. To give legal authority to an act, record, or other written instrument, so as to render it admissible in evidence, by certain prescribed formalities of attestation and certification, usually under seal. The acts of the legislatures of the several states of the Union are *authenticated* by having the seals of their respective states affixed thereto. *Act of Congress*, May 26, 1790, sess. 2, ch. 11. See *Act of March* 27, 1804, sess. 1, ch. 26.

AUTHENTICATION. In the law of evidence. The act or mode of giving legal authority to a statute, record, or other written instrument, or a certified copy thereof, so as to render it legally admissible in evidence. See *Authenticate.*

AUTHENTICS. [Lat. *Authenticæ.*] In the civil law. A Latin translation of the novels of Justinian by an anonymous author; so called because the Novels were translated *entire*, in order to distinguish it from the epitome made by Julian; (*Epitome Novellarum*, or *Juliani.*) 1 *Mackeld. Civil Law* 60, § 72, note (*c*). It is now termed the *versio vulgata* (common version), and was called by the glossators, *Corpus authenticum. Id. ibid.* note (*b*).

Extracts from the Novels, inserted by the glossators in the Code and Institutes. *Id.* 67, § 81.

AUTHENTICUM. Lat. In the civil law. An original instrument or writing; the original of a will or other instrument, as distinguished from a copy. *Dig.* 22. 4. 2. *Id.* 29. 3. 12.

AUTHENTICUS. Lat. In the civil law. Original. *Dig.* 10. 2. 4. 3.

AUTHORITIES. In practice. Citations of, or references to statutes, adjudged cases, and the opinions of text-writers, made on the argument of causes or questions before a court, as grounds of the points or propositions contended for.

AUTHORITY. [Lat. *auctoritas.*] Delegated power, as that of an agent or attorney.* Power delegated by a principal to his agent or attorney. *Story on Agency*, § 3.

AUTO ACORDADO. Span. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign. *Schmidt's Civ. Law*, 93.

ΑΥΤΟΚΡΑΤΩΡ, Αὐτοκράτωρ. Gr. In the civil law. Emperor. A title given to Justinian

in several of his Novels; as the first, fifth, seventh, tenth, twelfth, thirteenth, fourteenth, and others.

AUTRE, *Autry, Autri, Altre, Auter.* L. Fr. Other; another. *Britt.* c. 54. *Kelham.* See *Auter.*

AUTREFOIS, *Autrefoits, Auterfoitz, Autrefez.* L. Fr. At another time; formerly; before; heretofore. See *infra.*

AUTREFOIS ACQUIT. L. Fr. (Formerly acquitted.) In criminal law. A plea by a criminal to an indictment, that he has been *formerly acquitted* on an indictment for the same offence. It being a maxim of the common law, that no man is to be brought into jeopardy more than once for the same offence, it is allowed as a consequence, that when a man is once fairly found not guilty upon any indictment or other prosecution, before any court having competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime. 4 *Chitt. Bl. Com.* 335, and notes. 4 *Steph. Com.* 404, and note (*r*). 1 *Chitt. Crim. Law*, 452—460. 1 *Russell on Crimes*, 831. *Wharton's Am. Crim. Law*, 136—146. *U. S. Digest*, Autrefois acquit, and Autrefois convict.

AUTREFOIS CONVICT. L. Fr. (Formerly convicted.) In criminal law. A plea by a criminal in bar to an indictment, that he has been formerly convicted of the same identical crime. 4 *Chitt. Bl. Com.* 336. 4 *Steph. Com.* 404. 1 *Chitt. Crim. Law*, 462. See *Autrefois acquit.*

AUTREFOIS ATTAINT. L. Fr. (Formerly attainted.) In English criminal law. A plea of former attainder, in bar to an indictment. 4 *Bl. Com.* 336. 4 *Steph. Com.* 405, 6.

AUTRE, or AUTER VIE. L. Fr. Another's life. A person holding an estate for or during the life of another is called a tenant *pur autre vie*, or *pur terme d'auter vie.* *Litt.* sect. 56. 2 *Bl. Com.* 120.

AUTRESI BIEN. L. Fr. As well as; likewise. *Kelham.*

AUTRESI COME. L. Fr. As if. *Kelham.*

AUTRESINT. L. Fr. Likewise. *Kelham.*

AUVER, *Auvere.* L. Fr. To have. *Kelham.*

AUXI, *Auxy, Aussi, Avissi.* L. Fr. Also; so. *Litt.* sects. 5, 95. *Kelham.* See *Auxy, Aussi.*

AUXIBIEN, *Auxybien.* L. Fr. As well. *Litt.* sect. 200.

AUXILIUM. Lat. In feudal and old English law. Aid; a kind of tribute paid by the vassal to his lord, being one of the incidents of the tenure by knight's service. *Spelman.* See *Aid. Auxilia ad filium primogenitum militem faciendum, vel ad filiam primogenitam maritandam;* aids to make the eldest son a knight, or to marry the eldest daughter. *Bract.* fol. 36 b.

A subsidy or tallage paid to the king. *Spelman. Cowell.*

In old practice. Aid or help to defend a suit. *Auxilium petere;* to pray aid. *Cowell.* See *Aid.*

Aid or help to commit a crime. *Fleta*, lib. 1, c. 31, § 8. See *Aid.*

AUXIONARIUS. See *Auctionarius.*

AUXY. L. Fr. As; so. *Auxy pleinment;* as fully. *Artic. sup. Chart.* c. 1. *Auxy sovent que;* as often as. *Litt.* sect. 430. *Auxy icy;* so here. *Yearb.* P. 7 Hen. VI. 22.

AVAIL, *Aval.* L. Fr. Downwards; down; below. The opposite of *amount*, (q. v.) See *Avaler.*

AVAIL OF MARRIAGE. In Scotch law. Value of marriage. *Bell's Dict. Skene de Verb. Sign.* voc. *Maritagium hæredis.* See *Valor maritagii.*

AVAILE. L. Fr. Advantage; benefit or profit. *Kelham.*

AVAILS. Profits; proceeds; the proceeds of property sold.* Cash or securities, the representative of money. Gardiner, J. 3 *Comstock's R.* 278. Sometimes applied to a residue of property not already disposed of. Pratt, J. *Id.* 282.

AVAL. L. Fr. Down; below; at the bottom. *Va* aval *la rue;* goes down the street. *Kelham.*

AVAL. Fr. [L. Lat. *avallum.*] In French law. The guaranty of a bill of exchange; so called because usually placed *at the foot* or *bottom* (*a val*) of the bill. *Story on Bills*, §§ 454, 394.

AVALER, *Avaller.* L. Fr. To descend or go down. *Avalaunt;* descending. *Kelham. Amountaunt et nient* avalaunt; ascending and not descending. *Britt.* c. 70.

To lower, or bring down. *Avale;* lowered. *Id.* c. 63.

AVANT, *Avaunt.* L. Fr. Before. *Avant ces heures;* heretofore. *Artic. sup Chart.* pr. *De cy en avant;* from now henceforth. *Id.* c. 1. *De avant;* before. *En avant;* henceforward. *Issint avant;* so on. *L. Fr. Dict. Kelham. Avant dit, avaunt dit, avantdit, avandit, avandits;* before said,

aforesaid. *Litt.* sects. 19, 21, *et passim.* *Avaunt dites.* *Conf. Chartar.* 25 Edw. I.

AVANTAGIUM. L. Lat. In old records. Advantage; profit. *Cum omnibus suis utilitatibus ac* avantagiis *inde provenientibus;* with all its profits and advantages thereof issuing. *Regist. Eccl. Christi. Cantuar.* cited in *Cowell.*

AVANTURE. L. Fr. Chance; hazard; mischance. *D'aventure;* perchance; perhaps. *Kelham.* *En avanture;* for fear; lest there should be occasion for. *Id.* See *Aventure, Grosse avanture.*

AVARIA. L. Lat. In maritime law. Average, or contribution. *Loccen. de Jur. Mar.* lib. 2, c. 8.

AVARIE. Fr. In maritime law. Average. *Ord. Mar.* liv. 3, tit. 7.

AVAUNT. L. Fr. Before; forthcoming. *Kelham.* *Avaunt meyn;* beforehand. *Id.* *Plus avaunt;* more fully. *Id.* *Quil soint avaunt;* that they are proceeding on the business. *Id.* See *Avant.*

AVEER. L. Fr. To avow; to acknowledge. *Kelham.*

AVEIGNER, *Avener.* L. Fr. To come, or become; to happen. *Si cas aveigne;* if the case happen. *Britt.* c. 75. *Ou l'aventure serra avenue;* where the accident shall have happened. *Id.* c. 1.

AVEIR. L. Fr. [L. Lat. *averium*, q. v.] A beast; cattle. *LL. Gul. Conq.* 6, 29.

Goods. *Id.* 31.

AVENA. Lat. Oats. *Fleta*, lib. 2, c. 20.

AVENAGE. [L. Lat. *avenagium;* from Lat. *avena*, oats.] In old English law. A certain quantity of oats paid to a landlord in lieu of some other duties; or as a rent from the tenant. *Cowell.* A rent paid in oats.

AVENAGIUM. L. Lat. A tribute of oats paid by tenants to their lords in certain parts of France. *Spelman.*

AVENANT, *Aveignaunt.* L. Fr. [from *avener*, q. v.] Value; price. *Kelham.* That which a thing *comes to.*

Material. *Id.*

AVENANTEMENT, *Avenaument.* L. Fr. Answerably; properly. *Kelham.*

AVENER. L. Fr. To come, or become; to happen. *L. Fr. Dict. Kelham.*

To come to; to amount to. *Id.*

To come at; to get possession of. *Id.*

AVENTURE, *Aventera.* L. Fr. [from *avener*, to happen.] A mischance or accident by which the death of a man is occasioned without felony; as by some sudden illness, by falling into the water, or into the fire. *Britt.* c. 7. Britton makes a distinction between *aventure* and *mesaventure*, (q. v.)

AVENTUROUS. L. Fr. Casual; contingent. *Kelham.*

AVER. [L. Fr. *averrer;* L. Lat. *verificare.*] In pleading. To make a positive statement of fact, in opposition to argument or inference. See *Averment.*

In old pleading. To avouch or verify. *Litt.* sect. 691. *Co. Litt.* 362 b. To make or prove true; to make good or justify a plea. See *Averer, Verify.*

To offer to verify, or make good. *Cowell.*

AVER, *Avere, Averre, Aveir, Avoer, Auver, Auvere.* L. Fr. To have. *Kelham.* *Avomus;* we have. *Dyer*, 11 b. *Avomps. Kelham.* *Avums. Conf. Chart.* 25 Edw. I. *Avium;* we had. *Avietz;* you have. *Avans;* having. *Kelham. L. Fr. Dict.* *Averioms;* shall have. *Kelham.* *Averroit;* would have. *Id.*

AVER. O. Eng. and Fr. [L. Fr. *aveir, avor;* L. Lat. *averium, averum.*] A working beast; a horse or bullock. *Cowell*, voc. *Averia.* *Spelman* voc. *Avera.* *LL. Gul. Conq.* l. 7. See *Avers.*

AVER ET TENER. L. Fr. In old conveyancing. To have and to hold. Formal words, corresponding with the L. Lat. *habendum et tenendum*, (q. v.) The clause containing these words was called "the *aver et tener*," sometimes, "*le avir et tenir.*" *Yearb.* M. 8 Edw. III. 16, arg.

AVERA. L. Lat. [from Fr. *ouvre, ouvrage*, labor, work.] In old English law. A day's work of a ploughman; a kind of customary service rendered by the king's tenants within the demesne lands of the crown. *Domesday. Spelman. Cowell.*

AVERAGE. [L. Lat. *averagium;* Fr. *avarie;* Germ. haberie; Dutch, aberie; Lat. *contributio.*] In maritime law. Loss or damage accidentally happening to merchandise on board a vessel, or to the vessel itself, (*dommage fortuit qui arrive a la marchandise ou au navire.*) *Casaregis*, disc. 45, n. 15. *Scacca de Commercio*, § 2, gl. 5, n. 58, p. 340. *Emerig. Tr. des Ass.* ch. 12, sect. 39. *Ord. Mar.* liv. 3, tit. 7, art. 1.—Damage happening to merchandise in the course of transportation, (*detrimentum quod vehendis mercibus accidit.*) *Spelman*, voc. *Averagium.* This is an ancient sense of the term.

Contribution made by all the parties concerned in a sea-adventure, to make good a specific loss or expense voluntarily sustained or incurred by some or one of

them, for the benefit of all. *Abbott on Ship.* 473. *Stevens on Av.* 58. *Loccenius de Jur. Mar.* lib. 2, c. 8. 1 *Story's Eq. Jur.* § 490. *Story on Bailm.* § 583. Sometimes called *general average*, to distinguish it from special or *particular average*, and sometimes by the name of *gross average*, to distinguish it from customary average mentioned in bills of lading, which last species is sometimes called also *petty average*. *Abbott on Ship.* 473, 474. Sir William Scott, (The Copenhagen,) 1 *Rob. Adm. R.* 293. Lord Mansfield, C. J. 3 *Burr.* 1555. See *General average*, *Particular average*, *Gross average*.

Contribution seems to be the prevailing modern sense of this word. In a late Pennsylvania case, however, (Nimick *v.* Holmes, 25 *Penn. St. R.* 366, 371,) Lowrie, J. reverted to the more ancient signification, and defined average to mean "*ship-damage*, and not contribution, as is plain when we speak of particular average." But the term *particular average* has been condemned by Lord Tenterden, as "a very incorrect expression." *Abbott on Ship.* 473. In the French Ordonnance of the Marine, the subject of average is separated from that of jettison and contribution. See *supra*. Emerigon mentions three senses in which the word was used; damage sustained, (*le dommage souffert ;*) the payment of a right, tax or duty, (*le payment d'un droit ;*) and contribution to a common loss, (*la contribution d'une dépense commune.*) *Tr. des Ass.* ch. 12, sect. 39, § 4.

*** Of the origin of this word, little seems to be known with certainty. Spelman thinks it to be from the Fr. *avaris*, (forte *a-varach.*) Loccenius, following Boxhorn, derives the word either from the Fr. *havre*, or Teut. haben, a harbor. *De Jur. Mar.* lib. 2, c. 8, sect. 1. Other writers, as Weitsius, derive it from the Gr. βαρις, a ship. *Id. ibid.* Cowell inclines to derive it from the same root with the word *average* in old English law, which signified a service of *carriage*, or a service performed by carrying with horses or carts, (or *cum averiis.*) "This contribution seemeth to be so called," he observes, "because it is proportioned after the rate of every man's *average*, or goods *carried*." But the idea of *carriage*, though an important one, is quite subordinate to that of *proportion*, which is the principal idea involved in the meaning of average in its modern sense. It is said, however, that average has not the sense of a medium or mean proportion in any European language except the English. *Stevens on Av.* 96, note (1). Webster considers this sense as derived from the practice of maritime contribution. Emerigon thinks that the true etymology has not yet been discovered, and probably never will be. *Tr. des Assurances*, ch. 12, sect. 39, § 4; quoting *Marquardus*, lib. 3, c. 4, n. 4.

AVERAGE LOSS. In maritime law. A partial loss of goods or vessels insured, for which the insurers are bound to compensate the insured in the proportion which the loss bears to the whole insurance. 2 *Steph. Com.* 178.

AVERAGE, PETTY. See *Petty Average*.

AVERAGE. [L. Lat. *averagium*, from *avera*, or *averia*, qq. v. O. Sc. *arage.*] In old English law. A service by horse or carriage, anciently due by a tenant to his lord. *Cowell.* A labor or service performed for the king or lord, with working cattle, (*opus quod* averiis *perficitur*,) horses or oxen, or with wagons and carriages. *Spelman*, voc. *Avera.*

AVERARE, *Averrare.* L. Lat. [from Lat. *operare*, to labor, according to Spelman.] In old English law. To carry goods upon loaded horses, or other beasts, or in a wagon, (*cum averiis vel curru res vehere*); a duty formerly required of some customary tenants. *Spelman.*

To drive cattle (*averia*) to some fair or market. *Cowell.*

AVERCORN. [from Fr. *ouvre*, or *ouvrage*, work, according to Somner; or from *avoir*, to have or receive, according to Cowell.] In old English law. A reserved rent in corn, [grain,] paid to religious houses by their farmers or tenants. *Cowell.*

Corn drawn to the lord's granary by the working cattle (*averiis*) of the tenant. *Somner's Lex.* cited *ibid.*

AVERER. L. Fr. [from Lat. *verus*, true.] To aver, to prove, to make out to be true. *Si Jon pusse* averer *que Peres*, &c.; if John can prove that Peter, &c. *Britt.* c. 75. *Si ceo soit* avere, *si cheyt laccion ;* if this be proved, the action abates. *Id.* c. 85. This appears to have been a term peculiar to *civil* pleading and practice. *Id.* c. 22.

AVERIA. L. Lat. [L. Fr. *avers*, from *ouvre*, or *ouvrage*, work, labor.] In old English law. Working cattle (*operaria animalia*,) as horses, oxen, mules. *Spelman.*

Reg. Orig. 81 b—83. *Fleta*, lib. 2, cc. 44, 48.

Chattels (*catalla*) might sometimes be demanded under the name of *averia*. *Bract.* fol. 159 b. *Fleta*, lib. 2, c. 48, § 3. The singular of this word (*averium*), is used by Bracton and Fleta, but rarely by other writers. See *Averium*. Skene quotes the Regiam Majestatem as using *averia* in the singular.

AVERIA CARUCÆ. L. Lat. [L. Fr. *bestes des charues.*] In old English law. Beasts of the plough; which, at common law, were privileged over other cattle. *Fleta*, lib. 2, c. 48. *Co. Litt.* 85 b. 3 *Bl. Com.* 9. *Reg. Orig.* 97 b. Called by Fleta, *bestiæ carucæ*, as distinguished from *averia otiosa*, (idle beasts.) *Fleta*, lib. 4, c. 17, § 15.

AVERILL. L. Fr. April. *Kelham.*

AVERIUM. L. Lat. [from Fr. *ouvre*, work, or *aver*, to have.] In old English law. A live beast; a work-beast, or working animal. *Melius averium;* the best beast. *Bract.* fol. 60. *De meliori* averio *suo, vel de secundo meliori;* of his best beast, or second best. *Id.* fol. 86. 2 *Bl. Com.* 424. See *Heriot. Per unicum* averium *vel per duo;* by one beast or by two. *Bract.* fol. 223. *Fleta*, lib. 2, c. 49, § 4. *Id.* lib. 4, c. 20, § 7. See *Averia.*

AVERIUM PONDERIS. L. Lat. In old English law. Full weight, or *aver de pois. De qualibet libra de* averio ponderis, *tres denarios;* of every pound of avoirdupois, three pence. *Cart.* 3 *Edw.* II. cited in *Cowell.*

AVERLAND. In old English law. Land ploughed and manured by tenants with their cattle (*cum averiis suis*), for the proper use of a monastery, or the lord of the soil. *Blount.*

AVERMENT. In pleading. A positive statement of facts, in opposition to argument or inference. 1 *Chitt. Pl.* 320. Usually expressed or introduced by the words,—"And the said —— *avers*, and in fact says." See *Id.* 324.

AVERMENT. [L. Lat. *verificatio.*] In old pleading. An offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself "ready to *verify*," that is, to prove it to be true. *Termes de la Ley. Co. Litt.* 462 b. 3 *Bl. Com.* 313. *Finch, Law*, 359. In modern pleading, it is termed a *verification*, (q. v.)

The act of justifying or proving a plea, as well as the offer to do so. *Cowell. Blount.*

Proof, in general. A latent ambiguity of words is supplied or helped by *averment. Bacon's Max.* 90, *regula* 23.

AVERPENNY, *Averpeny.* [*quasi* average penny.] In old English charters. Money contributed towards the king's averages, (carriages *cum averiis*); or money given to be freed thereof. *Rastal, Expos. Verb.* cited in *Cowell. Blount. Spelman*, voc. *Avera.* 2 *Inst.* 35.

AVERS. L. Fr. Beasts or cattle. *Britt.* c. 27. *Litt.* sect. 212.

AVERSIO. Lat. [from *avertere*, to turn away or avert, from *a*, from, and *vertere*, to turn.] In the civil law. An averting or turning away. A term applied to a species of sale in gross or bulk. See *Per aversionem.* And see the dictionaries of Brissonius and Calvin, where the etymology and meaning of the word are considered at large.

AVERSIO PERICULI. Lat. In old maritime law. An averting or turning away of peril. A name given to the contract of insurance, (*assecuratio,*) because one of the parties undertakes to *avert the peril* of the other on the seas, or takes it upon himself. *Loccenius de Jur. Mar.* lib. 2, c. 5, § 1. *Stypmannus*, part 4, c. 7, n. 262, p. 453. According to Emerigon the words signify that the insurer charges himself with, and takes upon him the peril which the things insured run upon the sea. *Tr. des Ass.* ch. 1, pr. See 3 *Kent's Com.* 263.

AVERUM. L. Lat. [from Fr. *avoir*, to have.] In old law. Goods, property, substance, royal treasure. *Spelman.*

A beast of burden. *Id.* See *Aver.*

AVESQE. L. Fr. Bishop; a bishop. *Kelham.*

AVET. In Scotch law. To abet or assist. *Avetting;* abetting, helping or assisting. *Scotch Dict. Tomlins.*

AVEZ. L. Fr. Have [it.] *Yearb.* M. 4 Hen. VI. 26.

AVIA. Lat. In the civil law. A grandmother. *Inst.* 3. 6. 1.

AVIATICUS. L. Lat. [from *avus*, or *avius*, qq. v.] In feudal law. A grandson, (*nepos.*) *Hotom. de Verb. Feud. Spelman*, voc. *Abiaticus.*

AVIRANCES. L. Fr. Protestations; adjurations. *Kelham.*

AVIS. Lat. In the civil law. Bird; a bird or fowl. What passed under this word, see *Dig.* 32. 66.

AVIS. L. Fr. Advised. *Estre bien avis;* to be well advised. *Yearb.* P. 4 Hen. VI. 7. See *Aviser.*

AVISAMENTUM. L. Lat. In old English law. Advice; counsel. *De* avisamento *et consensu consilii nostri concessimus,* (by the advice and consent of our council we have granted,) was the common form of the king's grants. *Cowell.*

AVISARE. L. Lat. In old English law. To advise. *Et quia justiciarii hic nondum avisantur;* and because the justices here are not yet advised. *Yearb.* P. 18 Hen. VI. 9. See *Advisare.*

AVISEMENT. L. Fr. Advisement; consideration. *Kelham.*

AVISER. L. Fr. In old English law. To advise; to consider; to deliberate; to consult. *Nous volomus aviser;* we will advise. *Yearb.* M. 5 Edw. III. 113. *La court se voet* aviser *de cest issue;* the court will advise, (inform itself) about this issue. P. 6 Edw. III. 68. Avises *vous bien sur v're r'ns;* advise (consider) you well upon your answer. M. 4 Edw. III. 38. *Il voile aviser;* he wished to consider it. *Dyer,* 32 b, (Fr. ed.)

AVIUS. L. Lat. A corruption of the Lat. *avus,* grandfather, used in the barbarian laws. *Hotom. de Verb. Feud.* voc. *Aviaticus.*

AVIZ. L. Fr. Advice; opinion. *Kelham.*

AVIZANDUM. L. Lat. [from L. Lat. *avisare,* q. v.] In Scotch practice. Advisement; deliberation. "The Lord Justice Clerk, after hearing parties, and taking the case to *avizandum,* pronounced," &c. 2 *Brown's R.* 306. "The Lord Ordinary makes *avizandum.*" 7 *Wils. & Shaw's R.* 42. "The sheriff may either forthwith decide thereon, or make *avizandum.*" 6 *Bell's Appeal Cases,* 262. It seems to be synonymous with the *advisari, or cur. adv. vult* of the English practice.

AVOCAT. Fr. Advocate; an advocate. *Ord. Mar.* liv. 1, tit. 3.

AVOEC, *Avoeckes, Auveqs.* L. Fr. With. *Kelham.*

AVOESON, *Avoueson.* L. Fr. An advowson; patronage; foundation. *Kelham.*

AVOID. To render void. "How a deed may be *avoided,* or rendered of no effect." 2 *Bl. Com.* 308.

In pleading. To evade, or escape. A party may confess and *avoid* the allegations in his adversary's pleading. *Steph. Pl.* 58. See *Avoidance.*

AVOIDANCE. A making void, or of no effect. See *Avoid.*

In English ecclesiastical law. A state of being void or vacant. The condition of a benefice, when void of an incumbent; the opposite of *plenarty. Jacob.*

In pleading. The evading or escaping from the legal effect of a pleading, by alleging new matter in answer to it. *Steph. Pl.* 190. See *Confession and avoidance.*

AVOIR, *Avoyer.* L. Fr. Property; estate; substance; goods; effects; "having." *Gentz de petit* avoir; persons of small property. *Kelham.*

Ability; means; wealth; money. *Id.*

AVOIRDUPOIS, *Averdupois.* Fr. [from *avoir du poids, or aver de peys,* to have the proper weight; or from *averer,* to verify, to be of the true weight; L. Lat. *averium ponderis.*] The name of the common system of weights in England and the United States, by which goods in general, except precious stones and metals, and medicines, are weighed. *Brande.* The pound avoirdupois consists of sixteen ounces, and is supposed to be so called because it is of *greater weight* than the troy pound. *Cowell. Blount.* The term was also anciently applied to merchandises weighed by this weight. *Id. Termes de la Ley.* Kelham translates *avoir de pois,* "any bulky commodities," which sense Mr. Barrington approves. *Obs. Stat.* 232, (5th ed.) *Avers de peys,* seems to have had the same meaning. *Britt.* c. 21, fol. 38 b.

This kind of weight has been expressly adopted in some of the United States by statute. 1 *N. Y. Rev. St.* [608] 617, §§ 9, 10.

AVORTARE. L. Lat. In old European law. To miscarry; to bring forth an abortion. *LL. Wisegothor.* lib. 6, tit. 3, c. 6. *Spelman.*

AVOUCHER. L. Fr. and Eng. [L. Lat. *advocatio,* from *vocare,* to call or summon.] In old English practice. The calling or summoning into court by a tenant, of a person bound to him to warranty; that is, either to defend the right against the demandant, or to yield him other lands, &c., in value. *Co. Litt.* 101 b. Called by Lord Coke "a word of art," and employed by him as an example of the necessity of using "significant words, framed by art, which are called *vocabula artis,* though they be not proper to any language." *Id. ibid.* See *Voucher.*

AVOUE. In old French law. A feudal chief, who acted as protector of a church or monastery; the suzerain of the fief. *Steph. Lect.* 236.

AVOUTERIE. L. Fr. Adultery. *Britt.* c. 42.

AVOW, *Advow.* [L. Lat. *advocare.*] In pleading. To acknowledge and justify an act done. See *Avowry.*

AVOWE, *Avoue.* L. Fr. An avowee, advowee, or patron of a church; he to whom the right of advowson belongs. *Britt.* c. 95. *Stat. Westm.* 1, c. 1.

AVOWER. L. Fr. To avow, or acknowledge; to justify; to maintain. *L. Fr. Dict.*

To challenge. *Kelham.*

AVOWESON, *Avowson, Avowesoun.* L. Fr. An advowson. *Britt.* c. 72. *Yearb.* H. 1 Edw. II. p. 3.

AVOWRY. [L. Lat. *advocatio*, q. v.] In pleading. A pleading in the action of replevin, by which the defendant *avows* (*advocat*), that is, acknowledges the taking of the distress or property complained of, where he took it in his own right, and sets forth the reason of it; as for rent in arrear, damage done, &c. 3 *Bl. Com.* 149. 1 *Tidd's Pr.* 645.

AVOWTERER. In old English law. An adulterer. *Termes de la Ley.* See *Advowtry.*

AVOWTRY. In old English law. Adultery. *Termes de la Ley.* See *Advowtry.*

AVULSION. [Lat. *avulsio*, from *avellere*, to pluck or tear away.] In the civil and common law. A tearing off, severing, or forcible disruption; the sudden removal of soil from one man's estate to another's, by the immediate and manifest power of a stream, (*vi fluminis.*) *Dig.* 41. 1. 7. 2. *Inst.* 2. 1. 21. A species of adjunction (*adjunctio,*) produced by a stream of water carrying away a large piece of a person's land at once, and depositing it on that of another, [his neighbor, *vicinus.*] In this case, however, the property in the land so torn away is not changed until it has adhered so long to the other's land as to become part of it. Or, in the language of the Institutes, after it has adhered so long that the trees which it brought with it have taken root in the neighbor's land, such trees become his property. *Inst.* 2. 1. 21. This doctrine has been admitted into the common law ever since the time of Bracton. *Bract.* fol. 9. *Schultes' Aquatic Rights*, 116. 1 *Crabb's Real Prop.* 110. *Angell on Water-Courses*, § 60. *Ang. on Tide-Waters*, 269.

AVUNCULUS. Lat. [Gr. μητράδελφος, θεῖος.] In the civil law. A maternal uncle; a mother's brother. *Inst.* 3. 6. 1. 2 *Bl. Com.* 230.

Avunculus magnus; a great uncle, a grandmother's brother, (*aviæ frater.*) *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Bract.* fol. 68 b. *Fleta*, lib. 6, c. 2, § 19.

Avunculus major; a greater uncle; a great grandmother's brother, (*proaviæ frater;*) a father's or mother's great uncle. *Dig.* 38. 10. 10. 16. Called *proavunculus. Id.* 38. 10. 1. 7.

Avunculus maximus; a greatest uncle; a great great grandmother's brother, (*abaviæ frater;*) a father's or mother's *avunculus major. Dig.* 38. 10. 10. 17. Called *abavunculus. Id.* 38. 10. 3.

AVUS. Lat. In the civil law. A grandfather. *Inst.* 3. 6. 1.

AWAIT, *Awayte.* In old statutes. A waylaying, or lying in wait to do mischief. *Stat.* 13 *Ric.* II. c. 1. *Cowell. Blount.*

AWEIT. L. Fr. Await. *LL. Gul. Conq.* l. 1.

AWARD. [L. Lat. *awarda, awardum;* L. Fr. *agard*, from Fr. *agarder*, to be guarded, observed or kept; so called because it is imposed on the parties to be observed or kept by them; (*quod ad observandum seu custodiendum, partibus imponitur.*) *Spelman.*] The judgment or decision made and given by an arbitrator or arbitrators, or an umpire, respecting any matter in dispute submitted to them. 3 *Bl. Com.* 16. *Billings on Awards*, 119. *Watson on Arb.* 174. *Russell's Arbitrator*, 234.

In old English law. The verdict of a jury. *Spelman*, voc. *Awardum.*

AWARDA, *Awardum.* L. Lat. In old English law. An award. *Spelman.*

AWAY-GOING CROP. In the law of leases. A crop sown during the last year of tenancy, but not ripe until after its expiration. *Broom's Max.* [306.]—Corn growing upon lands held for a term, which, before the expiration of such term, has been sown by the tenant and farmer upon any part of such lands, being arable land, &c.; and which has been left standing and growing upon such lands, at the expiration of such term. Beavan *v.* Delahay, 1 *H. Bl.* 5.

AWEROUST, *Awroust, Awerust, Awrust, Aworust, Averust.* L. Fr. In old English law. Doubt; uncertainty; ambiguity. *Et issint les justices fur' en awrust;* and so the justices were in doubt. *Yearb.* P. 3 Hen. VI. 16. P. 2 Hen. VI.

3. *La court fuit en* aworust. M. 9 Edw. III. 5. *Keilw.* 22.

AWES. L. Fr. Waters. *Kelham.*

AWM, *Awme, Awame.* In old English statutes. A measure of Rhenish wine, or vessel containing forty gallons. *Stat.* 1 *Jac.* c. 33. 12 *Car.* II. c. 4. *Cowell. Blount. Termes de la Ley.* But Cowell refers to "an old printed book," as showing that the *awame* of Dordreyght was fifty gallons, and that of Antwerp, thirty-five. The *aam, aum*, or *ahm*, is still employed as a measure for liquids at Amsterdam, Frankfort, and other places on the Continent. At Amsterdam, it is nearly equal to forty-one English wine gallons; at Frankfort, to thirty-nine. *McCulloch's Dict.*

AWNHINE, *Awenhine.* Sax. A domestic. See *Agenhine.*

AWOOST. L. Fr. August. *Kelham.*

AWYSE. O. Sc. Advice. 1 *Pitcairn's Crim. Trials*, part 1, p. 107.

ΑΞΙΩΣΙΣ, *Αξιωσις.* Gr. In the civil law. A petition to the emperor, the answer to which was called a rescript. *Tayl. Civ. Law*, 230. *Dig.* 14. 2. 9.

AY. L. Fr. With; over. *Kelham.*

AYANT CAUSE. In French law. An assignee. *Bouvier.*—A successor to property; a representative, (not an heir.) *Poth. Obl.* part 1, ch. 1, sect. 1, art. 1, § 2.

AYD, *Ayde.* See *Aid.*

AYDONC, *Aydonk, Aydonqes.* L. Fr. Then. *Kelham. Fet Assaver*, § 24. See *Adonques.*

AYL. L. Fr. Yea; yes. *Kelham.* See *Oyl.*

AYLE, *Ael, Aieul.* L. Fr. In old English law. Grandfather; a grandfather. *Ayle, pere et fitz;* grandfather, father and son. *Dyer*, 101 b, (Fr. ed.)

AYLE, *Ayel, Aiel, Aile.* L. Fr. In old English practice. The name of a writ (Lat. *breve de avo,*) which lay when a man's grandfather or grandmother was seised of lands in fee simple on the day of his or her death; and a stranger entered on that day, and abated, or dispossessed the heir of his inheritance. *F. N. B.* 221 D. 3 *Bl. Com.* 186. Abolished by statute 3 & 4 Will. IV. c. 27, s. 36.

AYLOURS. L. Fr. Besides; elsewhere; otherwise. *Kelham.* See *Ailors.*

AYRE, *Aire.* O. Sc. In old Scotch law. Eyre; a circuit, eyre or iter. *Bell's Dict.* voc. *Justice ayres. Skene de Verb. Sign.* voc. *Iter.* See *Aire.*

AYRER. L. Fr. To plough. *Kelham.*

AYUNTAMIENTO. Span. In old Spanish law. An association. *Las Partidas*, part 6, tit. 3, l. 4.

In Spanish American law. A municipal council; the common council of a town. 1 *White's Recop.* 416. 12 *Peters' R.* 442, note.—The governing body of a town or municipality, having charge of its police and financial affairs. Hemphill, C. J. 1 *Texas R.* 696.

B

BACBEREND, *Bacberende, Backberend, Backberynde.* Sax. Bearing or carrying upon the back, (*tergoferus;*) an open or manifest robber or thief, (*latro manifestus.*) *Spelman.* A term applied, in early English law, to a thief caught with the thing stolen upon his *back*, (*latrocinium deferens a tergo*); as *handhabend* or *hondhabend* signified one who had it in his *hand*, (*qui in manu rem furatam habuerit*). *Id.* Both these terms are used by Bracton as instances or proofs of what was termed *furtum manifestum*, apparent or open theft, where the thief was caught with the thing stolen in his possession. *Bract.* fol. 150 b, 154 b, 122 b. *Fleta*, lib. 1, c. 38, § 1. 2 *Reeves' Hist. Eng. Law*, 40. See *Furtum manifestum, Handhabend, Open-theft.*

BACKBEAR. In forest law. Carrying on the back. One of the cases in which an offender against vert and venison might be arrested, as being taken with the mainour or manner, or found carrying a deer off on his *back. Manwood. Cowell.* See *Mainour.*

BACK-BOND. In Scotch law and conveyancing. An instrument equivalent to a declaration of trust in English conveyancing. A deed which, in conjunction with an absolute disposition, constitutes a trust. 1 *Kames' Equity*, 108.

BACKING. In practice. Endorsement. In England, where a warrant of a justice of the peace in one county is to be executed in another, it must first be endorsed by the justice in such other county, which is termed *backing the warrant.* 4 *Bl. Com.* 291. A similar practice exists in Scotland. *Bell's Dict.* It prevails also in some of the United States, though the term *backing* is rarely used. 2 *N. Y. Rev. Stat.* [707,] 590, § 5.

BACULUS. Lat. In old English practice. A staff, rod or wand, anciently used in the ceremony of making livery of seisin, where there was no building on the land.

Fiat seysina per fustim et per baculum; seisin should be made by rod and staff. *Bract.* fol. 40. *Fleta*, lib. 3, c. 15, § 5. *Baculus nuntiatorius;* a warning or summoning stick. A white stick or wand, by erecting which on the grounds of a defendant in real actions, he was anciently warned or summoned to appear in court at the return of the original writ. 8 *Bl. Com.* 379.

A baton, such as combatants fought with in the *duellum*. *Frangitur eorum* baculus; their baton is broken. A term anciently applied to persons convicted of a felony on their own confession, signifying that they could not bring an appeal against any one. *Bract.* fol. 152. See *Fleta*, lib. 1, c. 38, § 16. 2 *Reeves' Hist. Eng. Law*, 43. See *Baston.*

BAD ENGLISH, either in spelling or grammar, will not vitiate a deed, bond or bill. See **Mala grammatica**, &c. "I *promose* to pay 100*l.* if the plaintiff *mare* such a widow," was held a good bill. *Freem.* 541.

BAD LATIN, in old pleading, might be cured by an Anglicè. *Freem.* 446.

BADGE. [Lat. *indicium.*] A mark, sign or token; an indication; a distinctive mark. A "badge of fraud" is a circumstance attending a transaction, or a clause or provision in an instrument, which raises or tends to raise a presumption of fraud against it. See 2 *Kent's Com.* 520, 527. *Burrill on Assignments*, 433, (2d ed.) "Badges of equity." 1 *Rep. in Ch.* 128.

BAGA. L. Lat. [L. Fr. *bague.*] In old English law. Bag; a bag. *Et d'd envers eux unam* bagam, *ove C. l. in ead'* baga *content'*. *Yearb.* M. 18 Hen. VI. 5.

"BAGGAGE," under a contract of a carrier of passengers, does not embrace samples of merchandise carried by the passenger in a trunk, with a view of enabling him to make bargains for the sale of goods. 6 *Hill's* (N. Y.) *R.* 586. Nor does it embrace money in the trunk, and articles usually carried about the person, and not as baggage. Bronson, J. *Id.* 589. Otherwise, however, as to articles for the personal use, convenience, instruction or amusement of the passenger on the way, and usually carried as baggage. *Id.* 590. See 2 *Kent's Com.* 601, and notes.

BAIL, *Baile, Baille.* Fr. and L. Fr. [from *bailer*, to deliver.] Delivery of land; livery. Bail *de la seisine;* livery of seisin. *Britt.* c. 33. *Nul* bail *ne nul seisine;* no livery and no seisin. *Id.* c. 40. Delivery to a lessee or termor. *Guyot, Inst. Feod.* c. 6, s. 16.

Delivery, in general. *Le* bail *des escripts;* the delivery of the writings. *Britt.* c. 34.

Keeping or custody; guardianship. *En sa* baille; in his keeping. *Id.* c. 66.

Bail, in the modern sense; as embracing the ideas both of delivery and of keeping. *Ceux que sount lesses par* bail *à ascuns, à respondre pur eux, cors pur cors;* those who are let by [to] bail to any, to answer for them, body for body. *Id.* c. 125.

To BAIL, *Bayl.* [L. Fr. *bailler;* L. Lat. *balliare;* from Gr. βάλλειν, to send, or deliver.] In old English law. To deliver, commit or entrust a thing to another, (*rem alteri tradere, vel committere.*) *Spelman*, voc. *Balliare.* The word is constantly used in this sense in the old books. "If a feme sole *bail* goods to one, and marry with the *bayle*," [bailee.] *Finch, Law*, b. 1, ch. 3, num. 55. "Where I *bail* my goods to J. S. to *bail* over to T. K." *Perkins*, ch. 11, s. 815. "If I *bayl* to you an obligation, to *re-bail* the same to me before such a day." 3 *Leon.* 150, case 200.

The modern terms *bailment, bailor* and *bailee* are derivatives of this now obsolete word.

In practice. To deliver a person from arrest, or out of custody, to the keeping of other persons, on their undertaking to be responsible for his appearance at a day and place certain. *Bract.* fol. 123. To discharge a person from arrest, on his finding sureties for his appearance at a certain time and place. A person bailed on civil process is very commonly said to be *at large*, but in contemplation of law this is not strictly correct; he being always accounted to be *in* the *custody* of his *sureties*, until surrendered by them, or finally discharged. See *Bail.*

To become bail for another. 1 *Leon.* 94.

BAIL. [L. Fr. *bail, baile, baille;* L. Lat. *ballium, bailium, baila.*] In old law. Safe keeping, or protection; (*custodia, protectio, tutela.*) *Spelman*, voc. *Ballium. Co. Litt.* 61 b. See *Bail*, L. Fr.

In practice. A delivery into safe keeping or protection, (*traditio in ballium*). *Spelman, ub. sup.* A delivery of a person arrested, out of the custody of the law, into the safe keeping or friendly custody of persons who become sureties for his return or appearance. *Id. ibid.*

The sureties themselves, into whose *custody* the party discharged from actual arrest

is supposed to be *delivered*. 3 *Bl. Com.* 290. *Finch, Law*, b. 4, ch. 44, p. 446. This is the only sense in which the word *bail*, as a noun, is now used; the act of bailing being still expressed in the bail-piece, by these words:—"C. D. is *delivered to bail*, [in the old forms, *traditur in ballium*] on the taking of his body, *to* J. N. and J. S." &c. See *Bail-piece*, *Bail to the sheriff*, *Special bail*, *Common bail*.

*** The radical meaning of *bail* is undoubtedly, a *delivery*, (from Fr. *bailler*, to deliver;) or, in its present use, a person to whom another is *delivered*, under certain stipulations; just as a *bailee*, (which is essentially the same word) in another branch of law, is a person to whom goods are *delivered* for a certain purpose. See *Bailee*. The sense of *safe keeping*, which also enters into its meaning, is derived from the old French and Italian law, in which *baillie*, and *balio* (*baila*, *bailium* and *ballium*,) signified guardianship, wardship, or protection. See *Baila*, *Balium*. Bail are regarded in law as the *keepers* of their principal, and are said to have him always "in a string," which they may pull whenever they please; and render him in their discharge. 6 *Mod.* 131. 1 *Tidd's Pr.* 285.

BAIL TO THE SHERIFF, or BAIL BELOW. In practice. Persons who undertake that a defendant, arrested upon mesne process in a civil action, shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a *bail bond*, (q. v.) 3 *Bl. Com.* 290. 1 *Tidd's Pr.* 221. This kind of bail is called bail *to the sheriff*, because given to that officer, and for his security; and bail *below*, because subordinate or preliminary to bail to the action or special bail, which is termed bail *above*. *Id. ibid.* See *infra*.

BAIL TO THE ACTION, BAIL ABOVE, or SPECIAL BAIL. In practice. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action, that if he be condemned in the action, he shall pay the costs and condemnation, (that is, the amount which may be recovered against him,) or render himself a prisoner, or that they will pay it for him. 3 *Bl. Com.* 291. 1 *Tidd's Pr.* 245. This undertaking of the bail is termed their *recognizance*, and is effected by executing and acknowledging what is called a *bail-piece*. *Id. ibid.* See *Bail-piece*.

BAIL, COMMON. In practice. A fictitious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as John Doe and Richard Roe. 3 *Bl. Com.* 287.

BAILA. L. Lat. In old law. Protection; guardianship; safe keeping; bail. *In testamento relictus sub* baila, *seu tutela*, &c.; being left by the will under the bail or protection, &c. *Anon.* cited in *Spelman*, voc. *Bailus*. See *Balia*.

BAILABLE. In practice. Requiring, authorizing or admitting of bail; entitled to be discharged on bail. A *bailable action* is one in which a defendant may be obliged either to find bail on his arrest, or go to prison. *A non-bailable action* is one in which bail cannot be required. *Bailable process* is that upon which a defendant may be held to bail. 1 *Arch. Pr.* 328, 337. A *bailable offence* is one for which the offender may be admitted to bail. 4 *Bl. Com.* 298. A *non-bailable* offence is one where bail will not be allowed, but the offender must go to prison. A *bailable person* is one who when accused of an offence, is entitled to be admitted to bail. *Id.* 297.

BAIL BOND. In practice. A bond given to the sheriff, on the arrest of a defendant upon mesne process in a civil action, in a penalty of double the sum endorsed on the writ, and with a condition that the defendant shall appear, and put in special bail within a certain time specified. 1 *Tidd's Pr.* 223, 224. It is usually executed by the defendant himself, with two sureties, although one is sometimes accepted as sufficient. *Id. ibid.* *Petersdorff on Bail*, 203, *et seq.*

BAIL COURT. In English law and practice. An auxiliary court of the court of Queen's Bench at Westminster, wherein points connected more particularly with pleading and practice are argued and determined. *Holthouse*.

BAIL-PIECE. In practice. A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 *Bl. Com.* 291, 1 *Tidd's Pr.* 250.

BAILEE, *Baylee*. [from Fr. *bailler*, *bailer*, to deliver.] A person to whom goods are delivered or bailed for a certain pur-

pose. See *Bailment. Finch, Law*, b. 2, ch. 18.

BAILER, *Bayler, Bailler.* L. Fr. In old English law. To bail; to deliver. *Il* baila *un escript al def' à rebailer ;* he bailed a writing to the defendant, to rebail. *Yearb.* T. 3 Edw. III. 38. Baila *la cist à rebailer.* M. 5 Edw. III. 24. *Sicome jeo* baile *à vous xxl. à* bailer *ouster. Dyer*, 21 b, (Fr. ed.) See *Bailler.*

BAILIE, *Baillie.* In Scotch law. A municipal magistrate, corresponding with the English alderman. *Brande. Encycl. Amer.*

A bailiff; a ministerial officer to whom writs are directed for service. *Home's Brit. Ant.* 61. *Bell's Dict.*

BAILIFE, *Baillif.* L. Fr. A bailiff; a ministerial officer, with duties similar to those of a sheriff. *Per viscont ou per autre* bailife *le roy ;* by a sheriff, or by another bailiff of the king. *Stat. Westm.* 1, c. 17. See *Id.* c. 15. *Britt.* c. 21.

The judge of a court. *Stat. Westm.* 1, c. 35. 2 *Inst.* 229.

A municipal magistrate. *Maire et bailifes ;* mayor and bailiffs. *Stat. Gloc.* cc. 12, 15.

BAILIFF. [L. Fr. *bailife, baillif, bailli, baily, bayly, baylie ;* L. Lat. *balivus, ballivus, baillius ;* from Fr. *bailler*, to deliver, commit or entrust; Gr. *βάλειν, βάλλειν. Spelman.*] A person to whom some authority, care, guardianship or jurisdiction is delivered, committed or entrusted, (*commissarius*) ; one who is deputed or appointed to take charge of another's affairs, (*qui rebus alienis curandis deputatur*) ; an overseer or superintendent, (*præpositus*) ; a keeper, protector or guardian, (*custos, tutor*) ; a steward, (*villicus.*) *Spelman*, voc. *Balivus.*

A sheriff; a sheriff's officer or deputy. 1 *Bl. Com.* 344, 345.

The chief magistrate of a town. *Cowell*, vocc. *Mayor, Portgreve.*

A person to whom the charge, superintendence, or management of some estate or property is entrusted; and who is liable to account to the owner for the rents, profits, &c., which he may have received. *Tomlins. Whishaw.* See *Ballivus.*

*** The word *bailiff* is of Norman origin, and was applied in England at an early period, (after the example, it is said, of the French,) to the chief magistrates of counties or shires, such as the alderman, the reeve or sheriff, and also of inferior jurisdictions, such as hundreds and wapentakes. *Spelman*, voc. *Balivus.* 1 *Bl. Com.* 344. See *Bailli, Ballivus.* The Lat. *ballivus* occurs indeed in the laws of Edward the Confessor, but Spelman thinks it was introduced by a later hand. *Balliva*, (bailiwick,) was the word formed from *ballivus*, to denote the extent of territory comprised within a bailiff's jurisdiction; and *bailiwick* is still retained in writs and other proceedings, as the name of a sheriff's county. 1 *Bl. Com.* 344. See *Balliva.* The office of bailiff was at first strictly, though not exclusively, a judicial one. In France, the word had the sense of what Spelman calls *justitia tutelaris. Ballivus* occurs frequently in the Regiam Majestatem, in the sense of a *judge. Spelman.* In its sense of *deputy*, it was formerly applied in England to those officers who, by virtue of deputation, either from the sheriff or the lords of private jurisdictions, exercised within the hundred, or whatever might be the limits of their bailiwick, certain judicial and ministerial functions. With the disuse of private and local jurisdictions, the meaning of the term became commonly restricted to such persons as were deputed by the sheriff to assist him in the merely ministerial portion of his duty; such as the summoning of juries and the execution of writs. *Brande.* In modern practice, these are either *bailiffs of hundreds*, or *bound bailiffs.* The word bailiff is also applied, in England, to the chief magistrates of certain towns and jurisdictions; to the keepers of castles, forests and other places; and to the stewards or agents of lords of manors. *Cowell. Blount.* In the United States, it is rarely used, except sometimes to signify a sheriff's officer or constable, and a party liable to account to another for the rents or profits of some property entrusted to him.

BAILIFFS ERRANT. [L. Lat. *ballivi errantes, seu itinerantes.*] In English law. Bailiffs are so called in the old books, from their *going about* the county, in the execution of their office. *Spelman*, voc. *Balivus. Cowell.*

BAILIFFS OF FRANCHISES. [L. Lat. *ballivi franchesiarum.*] In English law. Officers who perform the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. *Spelman*, voc. *Balivus. P. Cyclopædia.* See *Liberty, Non omittas.*

BAILIFFS OF HUNDREDS. [L. Lat. *ballivi hundredorum.*] In English law. Officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assizes and quarter sessions; and also to execute writs and process in the several hundreds. 1 *Bl. Com.* 345. 3 *Steph. Com.* 29. *Bract.* fol. 116. See *Bound bailiffs.*

BAILIFFS OF MANORS. In English law. Stewards or agents, appointed by the lord (generally by an authority under seal,) to superintend the manor, collect fines and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. *P. Cyclopædia. Cowell.*

Anciently, the bailiff (*ballivus,*) was a distinct officer from the steward, (*senescallus,*) and immediately subordinate to him. A very minute and curious description of the duties appertaining to these old offices, may be found in *Fleta*, lib. 2, cc. 72, 73.

BAILIUM, *Baillium.* L. Lat. [O. Fr. *baillie.*] In old law. Protection; custody; bail. *Spelman.* See *Ballium.*

The office, authority or jurisdiction, (Fr. *baillage*) of a bailiff, (*bailus or balivus.*) *Id.*

BAILIVIA. L. Lat. [from *balivus*, q. v.] In old law. A bailiff's jurisdiction; a bailiwick; the same as *bailium. Spelman.* See *Bailiwick, Balliva.*

BAILIWICK, *Bailywike.* [L. Lat. *balliva, baliva, bailivia, balia, ballia, balivatus;* L. Fr. *baillie, bailly.* Derived by some from Fr. *bailli*, a bailiff; and Lat. *vicus*, a village.] The district or jurisdiction of a bailiff or sheriff; a county, of which the sheriff is, or formerly was, the bailiff. The word is still retained in civil process, in this sense. According to Blackstone, it was introduced into the English law by the princes of the Norman line. 1 *Bl. Com.* 344. The word *sheriffwick* is sometimes used in the old books. *Doct. & Stud.* Dial. 2, ch. 42, p. 232.

In old English law. A liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which the lord of the liberty appointed a bailiff with such powers within his precinct as an under-sheriff exercised under the sheriff of the county. *Whishaw.*

BAILLER, *Bailer, Bayler.* L. Fr. To deliver, commit or entrust. *Celles chartres soient* bailles *a chescun viscont Dengleterre;* these charters shall be delivered to every sheriff of England. *Artic. sup. Chart.* c. 1. See *To Bail. Soit* baille *aux seigneurs;* let it be delivered to the lords. The endorsement made upon a bill by the clerk of the house of commons, when it has passed the house, and is to be sent up to the lords. *P. Cyclopædia. Hob.* 111 a.

To lease. *Si home* bailla *son tenement à terme des ans;* if a man lease his tenement for a term of years. *Stat. Gloc.* c. 11.

To lend. *Sicome jeo* bayle *a un home mes barbits;* as if I lend to a man my sheep. *Litt.* sect. 71.

BAILLI. Fr. [from *bailler*, to deliver.] In old French law. A person to whom a judicial authority and jurisdiction were assigned or delivered by a superior.* The term was applied both to those high officers who were appointed to act as judges in different districts of the kingdom, and to the inferior officers who presided in the lords' courts. 1 *Rob. Charles V.* Appendix, note xxiii. *Esprit des Lois*, liv. 38, c. 42. See *Bailiff, Missus dominicus.*

BAILLIE, *Bailly.* L. Lat. A bailiwick. *Britt.* c. 75. *Yearb.* 8 Edw. III. 7.

Jurisdiction; province. *LL. Gul. Conq.* l. 2.

BAILLIUM. L. Lat. In old English law. Bail; delivery. *Tenebunt civitatem London de* baillio *domini regis;* they shall hold the city of London of the bail of the lord the king. *Conv. inter Reg. Johan. et barones; Blackst. Mag. Carta*, p. 31.

BAILMENT. [from Fr. *bailler*, to deliver.] A delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 *Bl. Com.* 451.—A delivery of goods for some particular purpose, or on mere deposit, upon a contract express or implied, that after the purpose has been performed, they shall be re-delivered to the bailor, or otherwise dealt with according to his directions, or, (as the case may be) kept till he reclaims them. 2 *Steph. Com.* 129.—A delivery of goods in trust upon a contract expressed or implied, that the trust shall be duly executed, and the goods restored by the bailee, as soon as the purpose of the bailment shall be answered. 2 *Kent's Com.* 558.—A delivery of a thing

in trust for some special object or purpose, and upon a contract, express or implied, to conform to the object or purpose of the trust. *Story on Bailm.* § 2.

*** All these definitions, except the last, are based, with some variation, upon the two definitions of Sir William Jones:—"A delivery of goods on a condition, expressed or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they were bailed shall be answered." *Jones on Bailm.* 1. "A delivery of goods in trust, on a contract expressed or implied, that the trust shall be duly executed, and the goods re-delivered as soon as the time or use for which they were bailed shall have elapsed or be performed." *Id.* 117. A very prominent feature of these definitions is the *restoration* or *re-delivery* of the article bailed to the bailor, which they declare to be one of the objects of the contract on the part of the bailee. This idea of *restoration* is entirely dropped by Sir William Blackstone in his definition, but is taken up again by Mr. Stephen, though with considerable modification, and is expressly adopted by Chancellor Kent, while, on the other hand, no reference is made to it in the definition of Judge Story. It is clear that the restoration of the thing bailed to the bailor, either *in specie*, or in a new form agreed upon, does in fact constitute a part of the contract in nearly all the varieties of bailment; but it is no less clear that one species of bailment, and that perhaps the most important of all, (the *locatio operis mercium vehendarum*, or bailment of goods to be carried for hire,) is quite free from any such contract on the part of the bailee. The difficulty in defining *bailment* is to explain, with sufficient clearness, what the contract is, and to avoid at the same time going into particulars not common to every one of its varieties.

Among the older definitions, that of Finch is the most simple and comprehensive. "Bailment is a delivery of goods in possession, and is either to keep or employ." *Finch's Law*, b. 2, ch. 18.

BAILMENT. In old practice. The becoming bail for another. Howell & Trevannion's case, 1 *Leon.* 94. Now obsolete.

BAILOR. The party who *bails* or delivers goods to another, in the contract of bailment. *Finch, Law*, b. 2, ch. 18. "Baylor and bailee." 3 *Leon.* 38. See *Bailment.*

BAILOUR. L. Fr. A surety. *L. Fr. Dict.*

BAILY, *Bayly, Baylie.* In old English law. A bailiff. *Co. Litt.* 61 b. *Cro. Jac.* 410. Used both as a French and an English word.

A species of attorney. Parties sometimes appeared in court by their bailies or bailiffs. *Yearb.* P. 8 Edw. III. 1. *Toutz forsprise Henry et Alice sont cy per* baylee; all but Henry and Alice are here by baily. H. 10 Edw. III. 7. But though a baily might appear for another, he could not conduct the pleadings. See H. 3 Edw. III. 1.

A bailee; one to whom a thing is bailed. *Dyer*, 22, (Fr. ed.) *Baily de un chival. Id.* 121 b.

This is supposed by Lord Coke (*ub sup.*) to be a Saxon word, signifying a safe keeper or protector. But it seems obviously formed from the Fr. *bailie* or *bailli*, (q. v.) *Spelman*, voc. *Balivus.*

BAIR-MAN. In old Scotch law. A bankrupt; otherwise called *dyvour*, (q. v.) *Skene de Verb. Sign.* voc. *Dyvour.*

BAIRNS. Sc. In Scotch law. A known term, used to denote one's whole issue. *Ersk. Inst.* b. 3, tit. 8, § 48. But it is sometimes used in a more limited sense. *Bell's Dict.*

BAIRNS' PART OF GEAR. In Scotch law. The share of the father's property to which, by law, the child is entitled. *Bell's Dict.* A third part of a defunct's free movables, debts deducted, if his wife survive, and a half if there be no relict, due to his children. *Wharton's Lex.*

BAIULUS, *Bajulus.* L. Lat. [Gr. βαΐουλος.] A protector, keeper, guardian, tutor or instructor. An officer at Constantinople, who had the education and care of the Greek emperor's sons. *Spelman.* Supposed by some to be the origin of the Lat. *ballivus*, or *balivus*, and English *bailiff. Ducange.*

BALÆNA, *Balena, Ballena.* L. Lat. In old English law. One of the "royal fish," the head of which belonged to the king, and the tail to the queen. *Bract.* fol. 120 b. *Fleta*, lib. 1, c. 46. A large fish, (*grossus piscis*,) sometimes considered to be a kind of whale. 1 *Bl. Com.* 222. But in the Black Book of the Admiralty, "whales and balens" are both mentioned. *Hale de Jur. Mar.* pars 1, c. 7. In Bracton, the word is written *ballena.* In an exchequer record of 24 Edw. I. where a

writ was issued to the sheriff to take possession of a whale which had come ashore in the county of Essex, the proper Latin word *cete* is made use of. *Mem. in Scacc.* H. 24 Edw. I.

BALANCE. A remainder, or sum remaining due on an account; a sum expressing the difference between the debtor and creditor sides of an account.

BALDIO. Span. In Spanish law. Waste land; land that is neither arable nor pasture. *White's New Recop.* b. 2, tit. 1, c. 6, § 4, and note.

BALEUCA, *Baleuga*, *Banleuca*. See *Banleuca*.

BALIA, *Ballia*. L. Lat. In old law. A bailiwick; the district, territory or jurisdiction of a bailiff. *Spelman*, voc. *Balius*. See *Ballia*.

BALISE. Fr. In French marine law. A buoy. *Ord. Mar.* liv. 1, tit. 1, art. 4.

BALIUM, *Ballium*. L. Lat. [Ital. *balio*, from Gr. βαλειν, or βαλλειν, to commit.] In old Italian law. Protection; guardianship; education; ward. *Pupilli qui protectione* balii *indigere noscantur, ipsorum* balium *cum administratione bonorum eis contingentium curia nostra suscipiat;* whatever minors shall be known to need the protection of guardianship, our court shall undertake their guardianship, with the management of the property belonging to them. *Constitut. Neapolit.* lib. 2, tit. 7, *apud Spelman*, voc. *Balius*. See *Ballium*.

BALIUS. L. Lat. In old law. A tutor, protector or guardian. *Spelman*.

BALIVA, *Balliva*. L. Lat. In old English law. A bailiwick, or jurisdiction. *Ubi* balivam *habeat vel jurisdictionem;* where he has a bailiwick or jurisdiction. *Stat. Marlbr.* c. 2. 2 *Inst.* 105. See *Balliva*.

BALIVATUS. L. Lat. In old English law. A bailiwick; a district, province or county. *Spelman. Cowell.*

BALIVIA, *Ballivia*. L. Lat. In old English law. A bailiwick. *Non est inventus in* ballivia *suâ;* is not found in his bailiwick. *Fleta*, lib. 2, c. 64, § 12. See *Balliva*.

BALIVUS, *Ballivus*. L. Lat. In old English law. A bailiff. *Nullus* balivus *de cætero ponat aliquem ad legem manifestam;* no bailiff shall henceforth put any man to his open law. *Magna Charta*, c. 28. See *Id.* c. 35. Blackstone's edition has *ballivus*, (q. v.)

Balivi; bailiffs; sheriff's officers. *Stat. Westm.* 2, c. 37.

BALLENA. L. Lat. A large fish mentioned in Bracton. *Bract.* fol. 120, 120 b. See *Balæna*.

BALLIA. L. Lat. In old English law. A bailiwick. *Artic. Mag. Cart. Johan.* c. 40. *Mag. Cart. Johan.* c. 50.

BALLIARE. L. Lat. In old law. To bail. *Spelman*.

BALLIUM, *Balium*. L. Lat. In old law and practice. Protection; custody; guardianship. *Spelman. Infantem dimissum sub* ballio *et tutela*, &c.; sent away when a child, under the *bail* and protection, &c. *Id.*

Bail or delivery; the delivery or bailing of a person out of prison, under sureties for his appearance, (*sub vadimonio.*) *Spelman.*

Bail or sureties for a defendant's appearance, and to whom he was delivered for safe keeping. *Tradere in* ballium; to deliver to bail. *Bract.* fol. 123. *Stat. Marlbr.* c. 28, [27.] *Dimittere per* ballium; to discharge by or on bail. *Bract.* fol. 123. *Imposuit commune* ballium; put in common bail. 1 *Salk.* 8.

Delivery of goods. *Catalla felonum per visum et* ballium *coronatoris tradantur;* the chattels of felons shall be delivered by the view and *bail* of the coroners. *Chart.* 3 *Edw.* I. cited in *Cowell.*

An outer bulwark of a fortified place; the area, or court-yard, contained within such enclosure. Hence the English word *bailey*, applied to places and buildings, as the Old Bailey. *P. Cyclopædia.*

BALLIVA, *Baliva*. L. Lat. In old law and practice. A bailiwick; the district or territory under the jurisdiction of a sheriff; a sheriff's county. *Co. Litt.* 61 b. *Infra-nominatus A. B. non est inventus in* balliva *mea;* the within named A. B. is not found in my bailiwick. *Kitch. Ret. Brev.* 287. This is still, in strictness, the proper form of a sheriff's return to process, where the party ordered to be arrested has *not* been *found;* though the emphatic words "not found" are all that are usually endorsed on the writ.

A district or place of jurisdiction, in general. *Art. Mag. Cart. Johan.* c. 40. Fleta uses *ballivia*. See *Balivia, Baliva*.

BALLIVUS, *Balivus, Baillius, Baillivus*. L. Lat. [L. Fr. *bailife, baillif, bailli.*] In old law. A bailiff, baily or bailie; a person to whom some authority or trust is

committed or deputed. *Spelman. Cowell. Co. Litt.* 61 b.

A ministerial officer of justice. In this general sense, the word includes sheriffs and constables. *Bract.* fol. 117. *Fleta*, lib. 2, c. 32. *Magna Charta*, cc. 8, 17, 28, 35. 2 *Inst.* 44.

A sheriff's officer or deputy. *Bract.* fol. 116.

A steward. *Glanv.* lib. 11, c. 1. 2 *Inst.* 44. An officer under a steward. *Fleta*, lib. 2, c. 73.

One who acted for, or represented another, with an authority, however, less than that of an attorney. *Bract.* fol. 212 b.

A judge. *Reg. Majest.* lib. 2, c. 4. *Skene de Verb. Sign.* voc. *Ballivus. Magna Charta*, c. 28.

BALNEARII. Lat. [from *balneum*, a bath.] In the Roman law. Thieves, who stole the clothes of bathers in the public baths. *Dig.* 47. 17. 4 *Bl. Com.* 239.

BAN. Sax. Eng. and Fr. [L. Lat. *bannum, bannus*, from Sax. *pan* or *fan*, a thing spread out, (*extensum, expansum.*) *Spelman.*] In old European law. A military standard, (*vexillum;*) a thing unfurled, a banner, (L. Lat. *banneriurn, bandum.*) *Spelman.*

A summoning to a standard; a calling out of a military force. *Id.* The force itself so summoned; a national army levied by proclamation. See *Arrierban, Heribannum, Band.*

A public proclamation or notice of any kind. (Ital. and Span. *bando.*) See *Banns.*

A proclamation, edict or sentence of interdiction or proscription. A declaration of outlawry; a sentence of excommunication; a denunciation or curse. *Cowell. Blount. Tomlins.*

An expanse; an extent of space or territory; a space enclosed within certain limits; the limits or bounds themselves. *Spelman.*

A privileged space or territory around a town, (Fr. *banlieu,*) monastery or other place.

In feudal law. A space within which certain privileges might be exclusively exercised, and certain dues exacted. Mills and ovens had their *bans* (*banna,*) within which the lords might exact what, in England, was called suit at mill, (*secta ad molendinum,*) and suit at oven, (*secta ad furnum.*) These were called, in old French law, *banal* mills and ovens. *Guyot, Inst. Feod.* ch. 3. *Id.* ch. 20. This term has been retained in Canadian law. See *Dunkin's Address*, (1853,) pp. 89—91.

BANAL, *Bannal.* Fr. [from *ban*, a privileged space or district.] In old French and Canadian law. Having qualities derived from a *ban* or privileged space; privileged. A *banal* mill is one to which the seignior or lord may require his tenant to carry his grain to be ground. *Dunkin's Address*, 89.

BANALITY. [Fr. *bannalité*, from *banal* or *ban*, qq. v.] In old French and Canadian law. A seigniorial right to exact certain dues or services within certain limits. The right of compelling a tenant to perform certain acts or render certain services, for the exclusive benefit of the seignior, within certain privileged limits; as to send his grain to the lord's mill to be ground, &c. The right of having a mill, &c. at which such an exclusive service may be exacted. *Guyot, Inst. Feod.* ch. 20. *Dunkin's Address*, 89—91.

The territorial limits within which such right may be exercised. *Id. ibid.*

BANC. [L. Lat. *bancus;* L. Fr. *banke, bancke, banque.*] Bench; the place where a court permanently or regularly sits. This word is probably an abbreviation of *bancus*, and is still used, as in the phrase *in banc*, (q. v.) though it is written also *bank.* See *Bancus, Bank, Bench.*

BANCKE. L. Fr. Bench; a name formerly given to both the English courts now termed the Queen's Bench, and the Common Pleas. *De lun* bancke *et de lautre;* of the one bench and of the other. *Britt.* c. 21. See *Bank.*

BANCUS. L. Lat. In old English law and practice. A bench or seat in the king's hall or palace. *Fleta*, lib. 2, c. 16, § 1.

A high seat, or seat of distinction; a seat of judgment, or tribunal for the administration of justice. See *Bench.*

The original name of the English Court of Common Pleas; afterwards distinguished as *Bancus apud Westmonasterium*, the Bench at Westminster, and *Communis Bancus*, the Common Bench. See *infra. Justitiarii de* Banco; justices of the Bench. *Bract.* fol. 149, 353 b. *Fleta*, lib. 2, c. 34. *Justitiarii residentes in banco;* justices sitting in the bench. *Bract. ub. sup. Id.* fol. 105 b, 108. *Coram justitiariis in* banco *residentibus. Glanv.* lib. 11, c. 1. *Id.* lib. 2, c. 6. *Dies in* banco; a day in the

bench. *Bract.* fol. 353 b, 360, 361. See *Dies in banco.* *Ad* bancum; at, or to the bench. *Id.* fol. 351, 353 b, 360 b.

The seat or sittings of a court with its full judicial authority, or in full form, as distinguished from sittings at Nisi Prius. *Dies in banco;* a day in bench or banc. See *Bench, Nisi Prius.*

A stall, bench, table or counter, on which goods were exposed for sale. *Domesday,* cited in *Cowell.*

A seat, or place of residence. See *Francus bancus.*

*** *Bancus* appears as the distinctive name of the court afterwards known as the *Common Bench,* (and, in modern times, as the *Common Pleas,*) soon after the Conquest, the appellation being probably derived from the stationary character of the court, which was permanently held at Westminster. *Maddox Hist. Exchcq.* 539. 1 *Reeves' Hist. Eng. Law,* 57—59. But see *Yearb.* M. 7 Edw. III. 47. II. 8 Edw. III. 47. The *Bancus* is named as a distinct court in the Magna Charta of 9 Hen. III. cc. 12, 13, and in the Charter of Hen. III. A. D. 1217. But the word is not used in the Charter of King John, nor in the Articles of King John's Charter. The court is constantly mentioned under this name by Bracton, as will appear from the references given in the definition (*supra*), being a very few of the passages in which the word occurs. The same author describes very clearly its organization and jurisdiction, distinguishing it from the king's own court, (or *aula regia,*) properly so called. *Habet enim plures curias,* &c.; the king has several courts in which divers actions are determined, and of these courts he has one of his own, (*habet unam propriam,*) to wit, the *aula regia,* and chief [or supreme] justices who determine the king's own causes, and those of all other persons by plaint or by privilege, &c. He has also *a court, and justices sitting in bench,* (*habet etiam curiam, et justiciarios in* banco *residentes,*) who have cognizance or jurisdiction of all pleas, which they are authorized to take cognizance of, and without warrant they have no jurisdiction or power. *Bract.* fol. 105 b. So again, he describes the justices of the latter court as *certo loco residentes, sicut in* banco, (sitting in a *certain place,* as in *the bench.*) *Id.* fol. 108. See *Fleta,* lib. 2, c. 2, § 7. Hence the justices of this court were always described as *justitiarii de* Banco, justices of the Bench, or more fully, as *justitiarii regis de* Banco *apud Westmonasterium,* the king's justices of the Bench at Westminster, which is the proper technical title of the justices of the Common Pleas at the present day. *Bract.* fol. 149, 353 b. *Fleta,* lib. 2, c. 34. *Reg. Orig.* 19, *et passim. Gilb. Hist. C. Pleas,* 1. *Towns. Pl.* 211. After the dissolution of the *aula regia,* the court which took its place as the highest tribunal in the kingdom, assumed also the name of *Bancus,* being further designated as *Bancus Regis,* (q. v.) the King's Bench, to distinguish it from the original *Bancus,* which was now frequently called *Communis Bancus,* (q. v.) the Common Bench; the two courts being spoken of as *the Benches,* (*banci.*) *Stat. Westm.* 2, c. 30. From this time the judges of these courts are described as *justitiarii de utroque* Banco, (*Fleta,* lib. 2, c. 35, § 4,) or *utriusque* Banci, justices of either Bench; and, in the Register, certain writs are said to be returnable *coram justitiariis domini regis de uno* banco *vel altero;* before the king's justices of one or the other Bench. *Reg. Orig.* 199. *Les justices del both* benches. *Mem. in Scacc.* 19 Edw. I. *Les justices de l'un* banke *et l'auter. Dyer,* 57 b, (Fr. ed.) So the clerks were said to be of the one Bench and of the other, (*clers de l'un* bancke *et de lautre.*) *Britt.* c. 21. In modern times, the *Common Bench* has dropped the word by which it was at first exclusively designated, and is now generally known as the Court of Common Pleas; although the title "*Common Bench*" is still retained in the reports. 1 *Reeves' Hist. Eng. Law,* 245. See *Common Pleas, Bench.*

BANCUS APUD WESTMONASTERIUM. L. Lat. The Bench at Westminster. *Fleta,* lib. 2, c. 2, § 7. *Id.* lib. 4, c. 5, § 10. *Bract.* fol. 353 b. *Mem. in Scacc.* II. 20 Edw. I. An ancient title of the English Court of Common Pleas. See *Bancus.*

BANCUS REGIS. L. Lat. The King's Bench, as supposed to be always held *coram ipso rege,* before the king himself. *In banco regis;* in the King's Bench. *Fleta,* lib. 2, c. 51, § 21. See *Bancus, King's Bench.*

BANCUS REGINÆ. L. Lat. The Queen's Bench. See *Queen's Bench.*

BANCI NARRATORES. L. Lat. In old English practice. Countors of the Bench, sometimes called serjeant countors; advocates or pleaders. *Placitantium ad-*

vocatorum, (*quos* banci narratores *vulgariter appellamus*); of the pleading advocates, whom we commonly call countors of the bench. *Matt. Par. Hist.* 1077, cited 1 *Bl. Com.* 24, note (*t*). *Steph. Pl.* Appendix, note (8). A class of advocates peculiar to *the Bench*, (*bancus*), as the English Court of Common Pleas was anciently called; answering to serjeants at law, who, until very recently, enjoyed a monopoly of the practice of that court. See *Bancus*, *Countor*, *Serjeant*.

BAND. Sc. [see *Ban*.] In old Scotch law. A proclamation calling out a military force. "Dilatit of the contravention of the General *Band*, and of the Actes of Parliament in nocht presenting of thair menne before the Justice or his deputes." 1 *Pitcairn's Crim. Trials*, part 1, p. 205.

BANDE. Fr. [from Ital. *bando*, a public cry, publication made by drum or trumpet. *Emerig.*] In French law. A proclamation or edict. *Emerig. Tr. des Ass.* ch. 12, sect. 51. Hence *contrebande*, contraband. *Id.*

BANE. In old English law. A public denunciation of a malefactor; the same with what was called *hutesium*, hue and cry. *Spelman.* See *Hutesium*. *Bract.* fol. 116.

According to Cowell, who cites the same passage from Bracton, it signified the destruction or overthrow of any thing, as he who was the cause of another's death was said to be *le bane*; a malefactor. A *felo de se* was called by the Saxons *self bana*. *Blount.*

BANERETTUS, *Miles Banerettus*, *Benerettus*. L. Lat. In old English law. A banneret or knight banneret. *Spelman.* See *Banneret*.

BANK, *Banke*, *Bancke*, *Banque*, *Banky*, *Baunc*. L. Fr. In old English law. Bench; the Bench. The name formerly given in French to the two superior common law courts in England. *Bank*, (*banke*, or *banque*) *le Roy*; the King's Bench. *Stat. Westm.* 1, c. 45. *Le Commune Bank*; the Common Bench. *Reg. Orig.* 198 b, *nota*. The latter court was also called *Bank a Westmynstre*; the Bench at Westminster. *Britt.* c. 90. *Stat. Westm.* 1, c. 45. *Justices du Banke*; justices of the Bench (that is, the Common Bench.) *Stat. Gloc.* c. 12. 1 *And.* 31. *Les justices de son Banke*; the justices of his Bench, (that is, the King's Bench.) *Artic. sup Chart.* c. 5. *En ce' Bank*; in this Bench. *Yearb.* M. 3 Hen. VI. 2. The name was originally peculiar to the Common Bench. See *Bancus*.

This word, judging from the corrupted form *banky*, seems to have been sometimes pronounced in two syllables.

BANK, *Banc*. [L. Lat. *bancus*.] In practice. The regular term of a court of law, as distinguished from a sittings at *nisi prius*. The ancient phrase *in banco*, sometimes translated *in bank* or *banc*, once exclusively used to denote the sittings of the English Court of Common *Bench*, is now constantly applied to any superior court of law, to denote the full court sitting at its regular law terms for the hearing of arguments, and is thus distinguished from a sittings at *nisi prius*, or a circuit court held by one of the judges for the trial of causes before a jury. Days in bank (*dies in banco*,) are certain days in term appointed by the court or by statute, for the return of process, and the appearance of parties. See *Days in bank*. The day in bank was always distinguished from the day at *nisi prius*, or in the country, (*in patria*) as it was termed; that is, the day of trial. *Ita quod certus dies detur* in banco, *et certi dies et locus dentur in patria*; so that a certain day be given in *bank*, and a certain day and place be given in the *country*. *Reg. Orig.* 186.

BANK. [from Lat. *bancus*, a bench or counter used by dealers in money.] A place for the deposit of money. A company or association of persons, authorized to receive deposits of money, to lend money, and to issue promissory notes intended for circulation as money.

The house or place where such business is carried on.

BANK. [Lat. *ripa*.] Land, usually of some elevation, along the side of a river or stream, confining the water in its channel or bed. See 13 *Howard's R.* 417, Wayne, J. That space of rising ground above low-water mark, which is usually covered by high water. 17 *Alabama R.* 780. Defined in the Digests, as that which contains or encloses a stream at its fullest height, (*quæ plenissimum flumen continet.*) *Dig.* 43. 12. 3. 1. The banks of a river are those elevations of land which confine the waters when they rise out of the bed. Curtis, J. 13 *Howard's R.* 426. As to the banks of rivers, as boundaries of land, see *Angell on Water-Courses*, § 24, *et seq.* 3 *Kernan's R.* 296.

BANK-BILL. A bill issued by a bank,

for the payment of money on demand, and intended to circulate as money. The more strictly accurate designation of such paper is *bank-note;* although it has been decided that "bank-bill" and "bank-note" mean the same thing. 4 *Gray's R.* 416. See *Bank-note.*

BANK-NOTE. A promissory note issued by a bank, payable to the bearer on demand, and intended for circulation as money. Popularly termed a "bank-bill." Bank-notes, strictly speaking, are not money; but in conformity with common usage and by general consent, they are received and treated as money. 1 *Burr.* 457. 13 *East*, 20. 12 *Johns. R.* 220. 5 *Mason's R.* 537. "Good bank-notes" or "current bank-notes" are held to import such only as are redeemable in gold or silver, or such as are equivalent thereto. 1 *Texas R.* 246.

BANKER. One who keeps a bank; one who is engaged in the business of *banking*, (q. v.)

BANKEROUT. O. Eng. Bankrupt; insolvent; indebted beyond the means of payment. This word occurs in the old colony laws of New Plymouth, A. D. 1633, in the sense of *insolvent*, as appears from the following extracts:—"That in case it fall out that any die more indebted than their estate of goods and chattels amount unto," &c. "That in case a man die *bankerout*, as afore," &c. *Plymouth Col. Laws*, (ed. 1836,) p. 33. See *Bankrupt.*

BANKING. The business of receiving money on deposit, loaning money, discounting notes, issuing notes for circulation, collecting money on notes deposited, negotiating bills, &c. See *Cleaveland on the Banking System of the State of New-York*, 1857.

BANKRUPT. [O. Eng. and Fr. *bankerout;* from L. Fr. *banke*, Lat. *bancus*, a bench, table or counter; and *roupt* or *rout*, Lat. *ruptus*, broken.] Literally, one whose bench or counter, (place of business,) is broken or broken up.

In English law. A trader who secretes himself, or does certain other acts tending to defraud his creditors. 2 *Bl. Com.* 285, 471. See *Bankruptcy, Act of Bankruptcy, Trader.* A person becomes a bankrupt by the mere commission of certain acts defined by law, without reference to any legal proceedings that may be taken afterwards. See 8 *Taunt.* 791, Dallas, C. J.

*** The term *bankrupt* had its origin in the incidents of trade and commerce, and has come down to us in that connection, and through the medium of the laws. Bronson, J. 5 *Hill's* (N. Y.) *Rep.* 343. Its origin indeed is sufficiently indicated by its etymology,—the French or Norman *banke* and *banque*, and the Latin *bancus* having been used from a very early period to signify a *bench*, table or counter, on which goods were exposed for sale, or money for exchange, thus denoting the occupation of a *trader*, a *dealer* in wares or merchandise, a *merchant*, a money-changer, or banker in the strict sense of the word. See *Bancus.* In the Roman law, the word *mensa* (a table) was used in a similar manner, to denote the business of an *argentarius*, or dealer in money. *Dig.* 2. 13. 4. *Nov.* 136, c. 1. The word *bankrupt* occurs for the first time in the title of the statute 34 and 35 Hen. VIII. c. 4, ("against such persons *as do make bank rupt*,"—a literal translation of the French idiom *qui font banque route*) which is the first of the English bankrupt laws. 2 *Bl. Com.* 472, note (*e.*) The persons against whom this statute was directed are more particularly described as those "who obtain other men's goods on credit, and then suddenly flee to parts unknown, or keep house, and there consume their substance without paying their debts." 2 *Steph. Com.* 190. *Cowell.* Subsequent statutes have more clearly defined their objects in this particular, and under their operation, and by long and settled usage the term *bankrupt* has, in English law, acquired a specific and determinate meaning, being applied exclusively to *merchants* and *traders*, or those who get their livelihood by *buying and selling* for gain. 2 *Steph. Com.* 193—195. 2 *Kent's Com.* 389. See *Trader.* It is, however, not merely confined to *traders* in the legal sense of the word, but is still further narrowed, by being restricted to those traders *who do certain acts* defined by law, tending to the injury of their creditors; such, and such only, being the proper objects of the bankrupt laws. In this view, a bankrupt still retains the character of an *offender* which originally belonged to the term, though in a greatly modified sense, being no longer regarded as an actual criminal. He becomes a bankrupt, as any person becomes an offender, by committing an *act* defined by law, and by such commission makes himself liable, as an offender, to be proceeded against in the way of punishment. Hence the distinction between *bankrupt* and *insolvent*, which has

always been so carefully maintained in English law. 2 *Bl. Com.* 484. See *Insolvent.* "A man," said Lord Mansfield, in Hassells *v.* Simpson, "may be insolvent, without being a bankrupt; and a man may become a bankrupt and yet be able to pay 25s. in the pound." 1 *Dougl.* 91, note. 2 *W. Bl.* 997, note.

BANKRUPT. In American law. The meaning of this term remains perhaps to be settled, although the tendency hitherto has been to give it the looser sense of *insolvent*, or, in other words, to use the terms *bankrupt* and *insolvent* indifferently, as expressive of the same description of persons. See *Insolvent.*

At the time of the passage of the first bankrupt law of the United States, (Act of Congress, April 4, 1800, repealed by act of December 19, 1803,) the terms *bankrupt* and *bankruptcy* seem to have been understood in nearly or quite the technical sense they bore in the English statutes. Afterwards, however, the distinction between *bankrupt* and *insolvent* became gradually obscured, the courts finding it difficult to discriminate with accuracy between bankrupt and insolvent laws. Marshall, C. J. 4 *Wheaton's R.* 122. 2 *Kent's Com.* 390. See 2 *Story on the Const.* §§ 1111—1115. This distinction was finally and effectually broken down by the late act of Congress, August 19, 1841, which expressly united the provisions of *both* descriptions of laws, and included (§ 1,) under the denomination of *bankrupts*, not only "merchants, retailers, bankers, factors, brokers, underwriters and marine insurers," who should commit certain acts of bankruptcy specified; but also, and indeed primarily, "*all persons whatsoever*, residing in any state, district or territory of the United States, owing debts which should not have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity," and which they were unable to pay. A very able opposition was made to this extension of the meaning of the term *bankrupt*, in several judicial opinions delivered soon after the passage of the act, to which its early and total repeal (in 1843) has given additional weight and value. Opinion of Bronson, J. (dissenting), 5 *Hill's* (N. Y.) *Rep.* 329—371. Opinion of Wells, J. U. S. District Court, Missouri, 2 *N. Y. Legal Observer*, 185. See 4 *Comstock's R.* 283.

Bouvier, in his Law Dictionary, has restored, in some degree, the old distinction between bankrupt and insolvent; defining the former to be "a person who has done, or suffered *some act* to be done, which is by law declared an *act of bankruptcy.*" The word *trader*, it will be seen, is here omitted, while, on the other hand, it is prominently employed by Webster, in giving even the *less technical sense of bankrupt*:—"A *trader* who fails, or becomes unable to pay his just debts; an insolvent *trader.* In strictness, no person but a *trader* can be a bankrupt." So, a bankrupt is called by Mr. Justice Story, "a broken up and ruined *trader.*" 3 *Story's R.* 453. These definitions, taken together, bring us very nearly to that of the English law. See *supra.*

BANKRUPT LAW. A law for the benefit of the creditors of a *bankrupt*, (q. v.) and for the relief of the bankrupt himself.* A law which, upon a *bankrupt's* surrendering all his property to commissioners for the benefit of his creditors, discharges him from the payment of his debts, and all liability to arrest or suit for the same, and secures his future acquired property from a liability to the payment of his past debts. *Webster.* Mr. Justice Story describes a bankrupt law as "a law for the benefit and relief of creditors, and their debtors, in cases in which the latter are unable or unwilling to pay their debts." 2 *Story on Const.* § 1113, note 2, (ed. 1858.) Mr. Stephen speaks of it as a system of law of a peculiar and anomalous character, intended to afford to the creditors of persons engaged in trade a greater security for the collection of their debts than they enjoyed at common law, under the ordinary remedy by action. 2 *Steph. Com.* 189, 190. The present bankrupt law of England is contained in the "Bankrupt Law Consolidation Act," 12 & 13 Vict. c. 106, embracing the provisions of the statutes 6 Geo. IV. c. 16, 1 & 2 Will. IV. c. 56, 2 & 3 Will. IV. c. 114, 3 & 4 Will. IV. c. 47, and 5 & 6 Vict. c. 122, with amendments. *Archbold's Law and Pr. of Bankruptcy*, (11th ed.) b. 2, pp. 235—337.

The leading features of a bankrupt law, or a system established by such a law, as distinguished from the ordinary law between debtor and creditor, are (1) the summary and immediate seizure of all the debtor's property; (2) the distribution of it among the creditors in general; and (3) the discharge of the debtor from future liability for the debts then existing. *Id.* 191. 2 *Burr.* 829.

The leading distinction between a *bankrupt* law and an *insolvent* law, in the proper technical sense of the words, consists in the character of the persons upon whom it is designed to operate; the former contemplating as its objects *bankrupts* only, that is, *traders* of a certain description; the latter, *insolvents* in general, or persons unable to pay their debts. This has led to a marked separation between the two systems, in principle and in practice, which in England has always been carefully maintained, although in the United States it has of late been effectually disregarded. In further illustration of this distinction, it may be observed that a *bankrupt law*, in its proper sense, is a remedy intended primarily for the benefit of *creditors;* it is set in motion at their instance, and operates upon the debtor against his will, (*in invitum,*) although, in its result, it effectually discharges him from his debts. An *insolvent law*, on the other hand, is chiefly intended for the benefit of the *debtor*, and is set in motion at his instance, though less effective as a discharge in its final result. Bronson, J. 5 *Hill's R.* 331, 348. 1 *Dane's Abr.* 317.

BANKRUPTCY. The act of becoming a bankrupt; the state or condition of a bankrupt.* A *status*, or condition fixed by legislative provision. 2 *Bell's Com.* 214. A condition following upon the commission of certain acts defined by law.* 2 *Steph. Com.* 191, 192. Curtis, J. 13 *Howard's R.* 168. "A breaking up of the bank." Lord Ellenborough, 3 *Campb.* 312. See *Bankrupt.*

In a looser sense, (as used in American law)—inability to pay one's debts; insolvency. The stopping and breaking up of business, because a man is insolvent, and utterly incapable of carrying it on.* Story, J. 2 *Story's R.* 354, 359. Bankruptcy does not consist in the proceedings in court. It takes place in the course of a man's business, and the proceedings in court are to ascertain whether the party was or was not a bankrupt at the time the original petition was filed. Bankruptcy is well defined to be "the state of a man unable to pursue his business, and meet his engagements in consequence of the derangement of his affairs." Randall, J. *Crabbe's R.* 456, 465.

BANLEUCA, *Banleuga, Baleuca.* L. Lat. [Fr. *banlieue;* from *ban*, a territory, and *leuca*, a league.] In old law. A space around certain cities, towns, monasteries, &c., distinguished from other ground, and protected by peculiar privileges. *Spelman.* In France, the word *banlieue* is used to signify a district around a city, usually, but not always a *league* on all sides, through which the proclamation of the principal judge of the place has authority. *Id. P. Cyclopædia*, voc. *Ban.* It is also used in Lower Canada.

BANNERET, *Baneret.* [L. Lat. *banerettus, miles banerettus.*] In old English law. A name of dignity now nearly, if not entirely, extinct, denoting a degree next after a baron, and before a knight. 1 *Bl. Com.* 403.

BANNI, *Banny.* L. Fr. A banished man; an outlaw. *Britt.* c. 12, 13.

BANNI NUPTIARUM. L. Lat. In old English law. The bans of matrimony. *Spelman. Cowell.* Bracton uses the singular *bannum. Bract.* fol. 307 b. Fleta uses *bannus. Fleta*, lib. 5, c. 30, § 3. See *Bannum, Bannus.*

BANNIMUS. L. Lat. [from *bannire*, q. v.] We ban or expel. The form of expulsion of a member from the University of Oxford; by affixing the sentence in some public places, as a promulgation of it. *Cowell.*

BANNIRE, *Banniare.* L. Lat. [from *bannum*, q. v.] In old European law. To proclaim; to decree or declare publicly; to publish an edict, decree or proclamation, (*bannum.*) Bannivimus, *ut unusquisque judex*, &c.; we have decreed that every judge, &c. *Decret. Childeb. ad L. Salic.* c. 8. *Spelman.*

To summon; to call out by edict, either to court or to military service; to summon to a standard, *bannum*, or banner. *Nullus ad placitum* banniatur *nisi*, &c.; no person shall be summoned to court unless, &c. *Capitt. ad L. Salic.* par. 1, c. 17. *Spelman. Omnes leudes in exercitu gradiendum* banniti *sunt;* all liege men, or vassals, are summoned to go into the army. *Spelman.*

To proscribe; to put to the ban, (*in bannum mittere*); to confiscate. *Multos* bannivit, *occupans res eorum;* he proscribed many persons, seizing their property. *Albert. Argentin.* A. D. 1348. *Spelman. Rebus omnibus in bannum missis;* all things being put to the ban. *LL. Longob.* lib. 2, tit. 43, l. 4. *Spelman.*

To expel by a public proclamation or *ban;* to banish; or according to Spelman, to expel from a *bannum* or certain territory, (*ejicere e* banno *vel territorio.*) *Spelman*, voc. *Ban. Reg. Orig.* 312 b. See *Bannimus.*

BANNITIO. L. Lat. [from *bannire*, q. v.] In old European law. Banishment; expulsion by a ban, or public proclamation. *Reg. Orig.* 312 b. See *Bannum.*

A banning, or putting to the ban. See *Bannire.*

BANNITUS. *Banniatus.* L. Lat. [from *bannire*, q. v.] In old European law. Banished; outlawed. *Reg. Orig.* 312 b. *Feud. Lib.* 2, tit. 28. 1 *Pitc. Cr. Trials*, part 2. p. 103. Skene observes that *bannum* signifies a trumpet; and refers to the Scotch custom by which, when any person was banished or "put to the horn," the same was done with three blasts of a horn or trumpet. See *Horning.*

An outlaw. *Pat.* 15 *Edw.* III. *Cowell. Blount.*

BANNUM. L. Lat. [Sax. *ban.*] In old European law. An edict, statute or public ordinance; a ban. *Pontes qui per* bannum *fieri solebant;* the bridges which used to be established by ban. *LL. Longob.* lib. 3, tit. 1, l. 11. *Spelman.*

A fine or penalty. Bannum *solvat;* he shall pay a ban. *L. Sax.* tit. 2, § 9. *Spelman.*

A tribute. *Capitt. Carol.* lib. 3, c. 68. *Spelman. Esprit des Lois*, liv. 30, c. 20, note.

Banishment or exile; proscription; confiscation. See *Bannire.*

An anathema or curse. *Synod. Confl.* A. D. 860. *Spelman.*

A proclamation or publication; the publication of marriage in a church. *Cum* bannum *et tertia denuntiatio fiat ante desponsationem;* when the ban and third or threefold publication is made before espousals. *Bract.* fol. 307 b. See *Bannus.*

A field or territory; the limit or precinct of a town. *Spelman. Villam cum omnibus* bannis *et attinentiis;* the town with all its bans (or bounds) and appurtenances. *Albert. Argentin.* cited *ibid.*

The following passage shows the use of the word *bannum*, and other Latin derivatives from the same root. Bannire *mandamus et divulgari publice* bannitos. Bannum *etiam, et causam* banni, *pro qua* bannitus *aliquis fuerit, et diem* bannitionis, &c., *in actis volumus contineri. LL. Neapolit.* lib. 2, tit. 1. *Spelman.*

BANNUS. L. Lat. In old English law. A proclamation. *Bannus regis;* the king's proclamation, made by the voice of a herald, forbidding all present at the trial by combat, to interfere either by motion or word, whatever they might see or hear. *Bract.* fol. 142. *Fleta*, lib. 1, c. 34, § 1.

The banns of marriage. *Cum* bannus *et trina denunciatio facta fuerit ante desponsationem. Fleta*, lib. 5, c. 30, § 3. See *Bannum.*

BANNS, *Bans.* [L. Lat. *banni, banna*, from Sax. *ban*, a public notice.] The public proclamation which the law of England and of Scotland requires of the intention of parties to enter into the marriage covenant. *Stat.* 4 *Geo.* IV. c. 76. 2 *Steph. Com.* 286, *et seq. Bract.* fol. 307 b. *Bell's Dict.* The proclamation must be made in church, on three successive Sundays, during the time of the celebration of public worship, when it is presumed that the whole parish is present. The banns, however, may be dispensed with, by special license. *P. Cyclopædia.* 2 *Steph. Com. ub. sup.* A similar publication is required by law in several of the United States.

BANQUE. L. Fr. A bench; the table or counter of a trader, merchant or banker. *Banque route;* a broken bench or counter; bankrupt; or in old English, *bankerout.* See *Bankrupt.*

BAR, *Barr.* [Fr. *barre;* L. Lat. *barra, exceptio peremptoria.*] In pleading. A special plea, constituting a sufficient answer to an action at law; and so called because it *barred*, i. e. prevented the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Now called a special *plea in bar.* See *Plea in bar.*

The use of the term *bar* is common in the old books. *Plowd.* 26, 28. *Co. Litt.* 303 b, 372 a. Pleas are divided into dilatories and *bars. Hob.* 245. Bars again are divided into various kinds. *Plowd. ub. sup. Hale's Anal.* sect. xlix. *Cowell. Boote's Suit at Law*, 108, note. A plea of this kind was still more anciently termed by Bracton, after the civilians, *exceptio peremptoria*, a peremptory exception. *Bract.* fol. 399 b. *Fleta*, lib. 6, c. 37. See *Exceptio.* The terms *barrer* and *barre* were in common use in the law language of France in the year 1270, which is about the same period when they first made their appearance in English pleading. *Ducange*, voc. *Barra. Steph. Pl.* Appendix, Note (25).

BAR. [L. Lat. *barra.*] In practice. The place in court which counsellors or advocates occupy while addressing the court or jury, and where prisoners are brought for the purpose of being arraigned or sentenced; usually designated by a material enclosure of some kind, to which the name of a *bar* may with more or less propriety

be given. Webster defines it to be "the railing which *encloses* the place which counsel occupy in courts of justice." According to this definition, all the counsel in court properly sit or plead *within the bar*. In the English courts, on the other hand, many of the counsel, including the great body of *barristers* (who hence derive their name,) sit *without* the bar, and are for this reason called utter or *outer* barristers (q. v.); the space *within* being a privileged place allotted to king's or queen's counsel, serjeants, and others having privilege or preaudience. 3 *Bl. Com.* 28. 3 *Steph. Com.* 387. *Wharton's Lex.* voc. *Barrister*. The term *bar*, as expressive of a material enclosure, is used with much more distinctness in English than in American practice.

The presence of the court, either actual or constructive. A trial *at bar* (q. v.) is a trial had before the full court in term, in contradistinction to the ordinary trial at *nisi prius*, (q. v.) A case *at bar* is a case presently before the court; a case under argument.

The members of the legal profession, collectively, are figuratively called *the bar*, from the place which they usually occupy in court. This was as early as *Keilw.* 40. See *Barre*. The same figurative use of the term has led, in England, to the distinction between practitioners *at the bar*, including *barristers* in the proper sense, and practitioners *under the bar*, comprising special pleaders and conveyancers. *Warren's Law Studies*, 1, note, (Am. ed.) Attorneys are considered as being always present in court. 1 *Tidd's Pr.* 80.

BARAGARIA. Span. A concubine, whom a man keeps alone in his house, unconnected with any other woman. *Las Partidas*, part 4, tit. 14.

BARATERIUS. L. Lat. In old English law. A barretor, (q. v.) *Spelman.*

BARATOR, *Barector*. L. Lat. A barretor, (q. v.) *Spelman.*

BARATRY. [L. Lat. *baratria*.] In Scotch law. The crime committed by a judge who is induced by a bribe to pronounce a judgment. Baratriam *committit qui propter pecuniam justitiam baractat;* he commits baratry who barters justice for money. *Bell's Dict.*

BARATTERIE. Fr. In French law. Barratry. *Emerig. Tr. des Ass.* ch. 12, sect. 3, § 1.

BARBANUS. L. Lat. In old Lombardic law. An uncle, (*patruus.*) *LL. Longob.* lib. 1, tit. 10, l. 1. *Spelman.*

BARBITONSOR. Lat. In old English law. A barber. *Fleta*, lib. 1, c. 31, § 4.

BARBITS. L. Fr. Sheep. *Dyer*, 29, (Fr. ed.) *Litt.* sect. 71.

BARCA. Ital. and L. Lat. In old law. A bark or barque; a kind of merchant vessel. *Spelman.*

BARCARIA. L. Lat. In old English law. A barkary, or tan house; a place to keep bark for the use of tanners. *Cowell. Towns. Pl.* 55.

BARCARIUM, *Bercarium, Berquarium.* L. Lat. [Fr. *bergerie*, from *berger*, a shepherd.] In old English law. A sheepcote or sheepwalk; a berghery. *Spelman. Cowell.* See *Bercaria.*

Barcarius, Barquarius, Berquarius. A shepherd; a keeper of sheep. *Spelman.*

BARECTATOR, *Barector.* L. Lat. In old English law. A barretor, or barrator. *Spelman.* See *Barretor.*

BARET. L. Fr. A wrangling suit. *Britt.* c. 92. *Co. Litt.* 368 b.

BARGA, *Bargia.* L. Lat. In old law. A barge. *Spelman. Towns. Pl.* 226.

BARGAIN AND SALE. In conveyancing. The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. *Shep. Touch.* (by Preston), 221.

The instrument, conveyance or assurance by which such transfer is made. *Id. ibid.* —A kind of real contract, whereby the bargainor, for some pecuniary consideration, *bargains and sells*, that is, contracts to convey the land to the bargainee, and becomes by such a bargain a trustee for, or seised to the use of the bargainee; and then the statute of uses completes the purchase. 2 *Bl. Com.* 388.—A contract, in consideration of money, or other valuable consideration, passing an estate in lands and tenements, by deed indented and enrolled. *Bac. Abr.* Bargain and sale.

Bargain and sale is, in England, one of the ordinary modes of conveying estates, or, in the language of Sheppard, one of the "common assurances of the kingdom." *Shep. Touch.* 221. In the United States, it is the most prevalent mode of conveyance; and gives a seisin to the grantee without any entry or pernancy of the profits. Parker, C. J. 15 *Mass. R.* 214. 4 *Kent's Com.* 495, and notes. The appropriate and operative words of such a conveyance are "*bargain and sell*," "*bargained and sold*," (L. Lat. *barganizavit et vendidit*,) although these are not absolutely necessary to a good

bargain and sale, for words equivalent, such as "*alien*," or "*grant*," or "*demise* and *grant*," will suffice to make land pass. 2 *Inst.* 672. *Shep. Touch.* 222. 1 *Steph. Com.* 494.

*** A bargain and sale was originally a contract for the conveyance of land for a valuable consideration; and though the land itself would not pass without livery, the contract was sufficient to raise a *use*, which the bargainor was bound in equity to perform. 1 *Co.* 121 b. After the Statute of Uses was passed, the use which was raised and vested in the bargainee by means of the bargain, was annexed to the *possession*, and by that operation the bargain became at once a sale, and complete transfer of the title. 2 *Bl. Com.* 338. 4 *Kent's Com.* 496. See *Id.* 301, note. In other words, a bargain and sale was originally nothing more than the sale of a use, the possession or seisin of the land itself still remaining in the bargainor. Since the Statute of Uses, the bargain and sale vests the *use*, as it did before, and then the statute vests, transfers, or annexes the possession; thus completing the purchase. *Shep. Touch.* (by Preston), 221. 2 *Bl. Com.* 338. See 1 *Steph. Com.* 492—495. See *Use*, *Statute of Uses.*

BARGAIN AND SALE (of goods). An agreement to sell, followed and completed by an actual sale.* *Com. Dig.* Bargain and Sale, (A.)—This term is frequently applied to the transfer of property in goods; the word *bargain* denoting the arrangement of the terms upon which the one party sells, and the other buys; and the word *sale* expressing the completion of the contract, so as to pass the property from the seller to the buyer.* *Shep. Touch.* 221. *P. Cyclopædia.* In such cases, the seller is called the *bargainor*, and the buyer the *bargainee*, and the two parts of the transaction taken together, [including the offer and acceptance of a consideration,] constitute the whole contract of buying and selling personal goods, so as effectually to change the property. *Id. ibid.*

A bargain and sale of chattels personal is sometimes termed an *assignment*, (q. v.) and may, in general, be made by parol, that is, either by mere writing, or by mere word of mouth, and does not require the solemnity of a *deed.* But instruments in writing are frequent, and in some cases essential, and are either in the form of a mere note or memorandum, or of a regular assignment, which last is ordinarily denominated a *bill of sale.* 2 *Steph. Com.* 104.

BARGANIZARE. L. Lat. In old conveyancing. To bargain; to agree. *Towns. Pl.* 55. *Barganizavit et vendidit;* (he) hath bargained and sold. *Barganizasset;* (he) had bargained. *Reg. Orig.* 108. *Dedi, concessi,* barganizavi *et feoffavi;* I have given, granted, bargained and enfeoffed. 1 *Leon.* 58.

BARGEMEN are liable as common carriers. *Angell on Carriers,* § 79.

BARGUS. L. Lat. In old European law. The branch or trunk of a tree; (*ramus, truncus.*) *L. Salic.* tit. 69, § 1. *Spelman.*

BARICELLUS. L. Lat. In old European law. An officer who apprehended malefactors, (*circitor, lictor.*) *Const. Mediolanens. Car.* V. Spelman makes it equivalent to the Fr. and Eng. *sergeant.*

BARILLATUM. L. Lat. In old English law. A vessel for containing liquids. *Militi quotidiè liberetur à celar' regis,* barillatum *vini, continens ad minus unum jalonem;* there shall be delivered to the knight, every day, by the king's cellarer (steward) a barrel (?) of wine, containing at least one gallon. *Fleta,* lib. 2, c. 5, § 6. See *Barillus.*

BARILLUS, *Barillum.* L. Lat. In old English law. A barrel. *Cartular. Hen. de Oilli,* temp. Hen. II. *Cowell.*

BARK, [Lat. *cortex,*] is sometimes figuratively used to denote the mere words or letter of an instrument, or outer covering of the ideas sought to be expressed, as distinguished from its inner substance or essential meaning. "If the *bark* makes for them, the pith makes for us." *Lord Bacon's Arg.* Case of the Postnati of Scotland, *Works,* iv. 333. See *Cortex,* **Qui hæret in litera, &c.**

BARO, *Barus, Viro.* L. Lat. [Lat. *vir;* Sax. *wer, war, var;* O. Fr. *ber;* Alam. *bar;* Græco-barb. βαρος.] In old European law. A man. *Si quis* baroni *viam suam obstaverit;* if any one shall stop a man's way. *L. Salic.* tit. 33, § 1. *Spelman. Si* barus *fuerit qui fœminam percusserit;* if it be a man who has struck a woman. *L. Alam.* tit. 95.

A freeman, or freedman, (*homo liber et libertinus.*) *Si ancilla fuerit, solvat solidum unum; si* barus *fuerit, similiter; si servus fuerit, medium solidum;* if it be a maid servant, he shall pay one shilling; if a freeman, the same; if a slave, half a shilling. *L. Alam.* tit. 95. *Spelman.*

A strong, able-bodied man, (*vir fortis in laboribus,*) who serves for hire, (*mercenarius*). *Gloss. Arabico-Lat. Isidor. Orig.* lib. 9, c. 4. *Spelman.*

A warrior or chief, as distinguished by strength; a baron. *Sunt et alii potentes sub rege, qui dicuntur* barones, *id est, robur belli;* there are also other powerful men under the king who are called *barones* (barons), that is, the strength of war. *Bract.* fol. 5 b.

A life, or body guardsman, (*satelles; βαρος, βαραγγος, barangus, varangus.*) *Spelman.*

A vassal or feudal tenant; a freeholder; (*liber tenens*); a proprietary owner of land, (*dominus proprietarius rei immobilis.*) *LL. Malcolm.* II. *Reg. Scot.* c. 1, § 3. *Spelman.*

A head or chief vassal (*vassallus capitalis*), or tenant in *capite;* one who held his lands immediately of the king, by military service. *LL. Malc. ub. sup.*

A feudal lord. *Mag. Chart.* 9 Hen. III. c. 31. *Id. Johan.* c. 43. *Majores barones;* greater barons. *Id.* c. 14.

A baron, lord or nobleman. *Bract.* fol. 351 b. *Spelman.*

A baron, or judge of the exchequer. *Bract.* fol. 116 b. *Fleta,* lib. 2, c. 27. *Spelman.*

A freeman. *Tanquam baro vel alius liber homo. Fleta,* lib. 2, c. 2, § 12.

A citizen of a city or town, having certain privileges; a chief citizen. *Fleta,* lib. 2, c. 2, § 13. *Id.* c. 55, § 1. Barones *de quinque portubus;* barons of the Cinque Ports. *Mag. Cart.* 9 Hen. III. c. 9. *Fleta,* lib. 2, c. 55, § 1.

A husband, (Fr. *baron*). *Spelman.* See *Baron.*

BARON. L. Fr. and Eng. [L. Lat. *baro,* L. Fr. *baroun,* qq. v.] A lord or nobleman; the most general title of nobility in England. 1 *Bl. Com.* 398, 399. *Finch's Law,* b. 2, ch 2.

A particular degree or title of nobility, next to a viscount. 1 *Bl. Com.* 398, 399, 405.

A judge of the court of exchequer. 3 *Bl. Com.* 44. *Cowell.* See *Barons of the Exchequer.*

A husband. 1 *Bl. Com.* 432, 442. See *Baron and Feme.*

A freeman. *Co. Litt.* 58 a. See *Baro.* The chief citizens of London, York, and of some other places in which the citizens possess peculiar franchises, are called in early charters, *barons;* and the same name was given to the freemen of the Cinque Ports. *Spelman. Bract.* fol. 117 b. *P. Cyclopædia.*

*** The word *baron* is of Norman origin, and is supposed by Spelman to have been introduced into England about the time of the Conquest. *Baro,* its Latin form, occurs indeed in the laws of Edward the Confessor and other ancient collections, but Spelman supposes it to have been introduced in these cases by a later hand. As to its etymology, some have traced it to the *baro, varo, varro* and *vero* of the ancient Latin writers, others to the *βαρυς* of the Greeks. Spelman, however, has shown satisfactory reasons for deriving it from the language of the barbarian nations who overran the Roman empire. Its radical and primitive meaning seems to have been the same with that of the Latin *vir,* a man, and runs through the *wer, war,* and *var* of the Anglo-Saxons, the *ber* of the Franks, the *bar* of the Alamanni, (in their laws and charters *barus* and *paro,*) and the *baro* of the Lombards and Salians; thus denoting a common origin of the word at this period. *Spelman.* Hence the lower Greek *βαρος, βαρευς,* and *βαραγγος.* This primitive meaning of *man* became gradually modified into that of *freeman, strong* or able-bodied *man,* (see *Baro,*) until the word came to be appropriated by the feudal law, to signify one who held lands of a superior by military and other services; a *vassal,* or feudal tenant; (see *Baro,*) one who acknowledged himself to be his lord's *man,* (*homo,* see *Homage;*) and whose *bodily ability* to bear arms was of course an essential qualification. It was after it had acquired this feudal sense of *tenant,* that it was introduced into the English law, the earliest use of the term being to denote that class of persons who held lands of a superior by military and other honorable services, and who were bound to attendance in the courts of that superior, to do homage, and to assist in the various business transacted there. *P. Cyclopædia.* The court itself in which these tenants had to perform their services, is called to this day the *court baron;* more correctly, (as some suppose) the court of the barons, (*curia baronum.*) 3 *Bl. Com.* 33. The term *baron,* however, soon came to be almost exclusively applied to those who held lands immediately of the king, the tenants *in capite,* or tenants in chief of the crown; and continued to be used in this sense for two centuries and a half after the

conquest. For the origin and application of the term as a title of nobility in England, see *Spelman*, *Selden's Titles of Honor*, *Home's British Antiquities*, *P. Cyclopædia.*

BARON AND FEME. L. Fr. Husband and wife. A phrase of constant occurrence in the older law books, and not yet obsolete. *Baron*, in this connection, is supposed by Blackstone and other writers, to have the sense of *lord*, implying superiority and protection. 1 *Bl. Com.* 442. *Co. Litt.* 112 a. But, according to Spelman, it is to be taken in its simple primitive sense of *man.* See *Baro.* *Baron and feme* therefore strictly means nothing more than *man and woman*, or *man and wife;* (Gr. ἀνὴρ και γυνὴ; Lat. *vir et mulier;*) *mulier* being always used in the old law in the sense of wife, (*uxor.*) *Spelman*, voc. *Baro.* Of these terms, *feme*, *fem*, or *femme*, is still separately and frequently used to signify a woman, or wife, See *Feme*, *Feme covert*, *Mulier.* "A *feme* took *baron;*" that is, a woman took husband. *Cro. Eliz.* 825.

BARONAGE. [L. Lat. *baronagium.*] In English law. The collective body of the barons, or of the nobility at large. *Spelman*, voc. *Baronagium.* *P. Cyclopædia.*

BARONAGIUM, *Barnagium.* L. Lat. In English law. The whole body of the barons (*integra classis baronum;*) the *baronage* of the king's court answering to the *homage* in the court of the manor or inferior lord. *Spelman*, voc. *Baro.*

The retinue, attendants or following (Lat. *clientela seu comitatus*, Fr. *le train*) of a baron. *Id.*

BARONATUS. See *Baronia.*

BARONET. [L. Lat. *baronettus*, q. v.] An English name of dignity, which in its etymology imports a *little baron.* It is an hereditary dignity created by letters patent, and usually descendible to the issue male, but is not a title of nobility. 1 *Bl. Com.* 403. It was instituted by King James I. A. D. 1611, in order to raise a competent sum for the reduction of the province of Ulster in Ireland. *Id. ibid.* The title, however, occurs in records and statutes at a much earlier period. *Spelman*, voc. *Baronettus.*

BARONETTUS, *Baroncellus*, *Baronulus*, *Baronculus*, *Bariculus*, *Baroniculus.* L. Lat. [dimin. of *baro*, q. v.] In old English law. A baronet; a little or lesser baron. The term occurs in authors of the time of Edward II. See *Spelman*, by whom it is explained at length.

BARONIA, *Baronatus.* L. Lat. [from *baro*, q. v.] In old English law. A barony. The dignity, territory, patrimony or fee of a baron. *Spelman*, voc. *Baro.* *Mag. Cart.* 9 Hen. III. c. 31. *Co. Litt.* 83 b.

A manor, or the territory of a manor. *Spelman*, *ub. sup.*

A house of a certain kind in London. *Id.*

A part of a county corresponding with a hundred. *Id.*

Caput baroniæ; the head of a barony; the castle or chief house of the baron. *Id.* See *Barony.*

BARONISSA. L. Lat. In old English law. A baroness, the wife of a baron. *Bract.* fol. 351 b. *Fleta*, lib. 6, c. 10, § 15.

BARONS OF THE CINQUE PORTS. [Lat. *barones quinque portuum.*] Members returned to parliament from the Cinque Ports of England. See *Cinque Ports.* Spelman applies the term *barons* to the inhabitants of those ports generally.

BARONS OF THE EXCHEQUER. [L. Lat. *barones scaccarii*, or *de scaccario.*] The six judges of the Court of Exchequer in England, of whom one is styled the chief baron; answering to the justices and chief justice of other courts. *Holthouse.* *P. Cyclopædia.*

*** The Court of Exchequer was instituted immediately after the conquest, and it is probable that the judges were so denominated from the beginning. They are called *barons* in the earliest exchequer record, namely, the Pipe Roll of 31 Henry I. In accounting for this term, Mr. Reeves observes that the administration of justice in those days was so commonly attendant on the rank and character of a baron, that *baro* and *justitiarius* were often used synonymously. 1 *Reeves' Hist. Eng. Law*, 51. See 1 *Rob. Charles* V. Appendix, note xxiii. Spelman thinks it may have been derived from the Norman custom of giving the title of *baron* to judges and magistrates generally. And see the explanation in *Fleta*, lib. 2, cc. 26, 27. *Barones*, however, it is thought may mean nothing more than the *men*, that is, the chief men of the exchequer. *P. Cyclopædia.* See *Baro.*

BARONY. [L. Lat. *baronia*, *baronatus.*] In English law. The dignity of a baron. *Spelman*, voc. *Baronia.*

A species of tenure. To hold *by barony* anciently meant to hold lands by the service of attending the king in his courts, as barons; or, according to Spelman, to be a baron of the realm, (*esse baro regni.*) *Id.* *P. Cyclopædia.*

The territory of a baron, or the lands which form his tenancy. *Spelman. Bell's Dict.* A barony sometimes consisted of several manors, the chief of which was called *caput baroniæ. Crabb's Hist. Eng. Law*, 72. See *Baronia, Caput baroniæ.*

BAROUN, *Barroun, Barun.* L. Fr. Baron. *Conf. Cartar.* 25 Edw. I.

Husband. *Yearb.* II. 1 Edw. II. 4. T. 4 Edw. II. 107.

BARRA. L. Lat. [L. Fr. *barre.*] In old pleading and practice. A bar to an action; a plea containing a sufficient answer to the action; a plea in bar. *Dyer*, 56, (Fr. ed.) See *Bar.*

The bar of a court. *Apprenticius ad barras;* an apprentice at the bars; a barrister. *Co. Litt.* 372 a. See *Apprenticius ad legem. Ad* barram *vocatus;* called to the bar. 1 *Ld. Raym.* 595. See *Barrister.*

BARRASTERIUS. L. Lat. In old records. A barrister; a pleader at the bar, (*repagularius causidicus.*) *Blount.*

BARRATARE. L. Lat. In old English law. To embezzle. *Clerke's Prax. Cur. Adm.* tit. 39.

BARRATOR. See *Barretor.*

BARRATROUS. Fraudulent; having the character of barratry. Story, J. 8 *Cranch's R.* 39.

BARRATRY. [Fr. *baraterie, baratterie;* L. Lat. *barataria;* from Ital. *barratria*, or Fr. *barat*, deceit, fraud.] In marine insurance. Fraudulent conduct on the part of the master of a vessel, in his character of master, or of the mariners, to the injury of the owner of the ship or cargo, and without his consent; including every breach of trust committed with dishonest views.* 3 *Kent's Com.* 305. An act committed by the master or mariners of a ship, for some unlawful or fraudulent purpose, contrary to their duty to their owners, whereby the latter sustain an injury. Story, J. 8 *Cranch's R.* 39. Casaregis confines it to this sense. *Disc.* 1, n. 77.

In a larger sense, barratry comprehends *negligence* as well as wilful misconduct, and in this sense it is used by the French writers. *Pardessus, Cours de Droit Com.* tome iii. n. 772. 3 *Kent's Com.* 305. In some recent American cases, the courts seem to be approximating to this meaning. *Id.* 300, note. "Every wilful act, on the part of the master, of known illegality, every gross malversation in his office or criminal negligence, by whatever motive induced, whereby the owner is damnified, comes within the legal definition of barratry." Shaw, C. J. 2 *Cushing's R.* 512.

*** The term *barratry* is supposed by some to be derived from the Italian law, in which *barratria* has the sense of *fraud* committed in contracts and sales. *Dufresne.* Lord Ellenborough, 8 *East*, 126. Others have derived it from the Spanish *barateria*, which has a similar meaning. Johnson, J. 3 *Peters' R.* 222—230. Emerigon, who writes the word, *baratterie*, says it is a barbarous word unknown to antiquity. *Tr. des Ass.* ch. 12, sect. 3, § 1, citing *De Luca de Credito*, disc. 106, n. 28. *Straccha, Gl.* 31, n. 1. Pasquier, (liv. 8, ch. 3, p. 682,) makes it to be derived from *barat*, signifying fraud, trickery, falsehood. From whatever source it may have been introduced, there is little doubt that radically it imports *fraud*, and hence it is generally agreed in English and American law that *fraud* must be a constituent of the act of barratry. 12 *Johns. R.* 128. 14 *Mass. R.* 1. Johnson, J. *ub. sup. Abbott on Ship.* 183. But the word *fraud*, as used in defining this act, is itself not always understood in its stricter sense, as implying a dishonest or injurious intention. Hence acts done by the master of a vessel, even with the view of promoting the owner's interest, may nevertheless, in certain cases, amount to barratry. Accordingly, under the denomination of *barratry* are properly included not only the grosser acts or crimes of destroying or running away with a vessel or cargo, and stealing the cargo by the mariners, but also acts inconsistent with the owner's instructions, or not consonant to the laws of the land: such as sailing out of port without paying port duties, disregard of an embargo, breach of blockade, smuggling, cruising under a letter of marque against the owner's instructions and intentions, and deviation from the voyage in some cases. See *Abbott on Ship.* (Perkins' ed. 1846), 183, and note, *ibid.* The English and American cases are not altogether in harmony on this subject, the cause of which has been well explained by Johnson, J. in the opinion already referred to.

BARRATRY, *Barratrie, Baratry.* In Scotch law. The crime of a judge who receives a bribe for a judgment. *Skene de Verb. Sign. Brande.* See *Baratry, Barretor.*

BARRE. L. Fr. In old English law. Bar; the bar of a court. *Ore jeo ne re-*

spondera pas; mes si jeo fuisse à la barre, *jeo vous respondisse bien toste;* I will make no answer now, but if I were at the bar, I would answer you very soon. *Yearb.* P. 6 Edw. III. 44.

Bar; a plea in bar. *Dyer*, 118, (Fr. ed.) *Le* barre *nest bone;* the bar (plea) is not good. *Keilw.* 11.

Bar; the bar. The members of the legal profession, serjeants or barristers, practising in a particular court. *Fuit clerement dit & agree per tout le* barre *& tout le banke;* it was clearly said and agreed by all the bar and all the bench. *Keilw.* 40.

BARRETOR, *Barrettor, Barrator, Barator, Barratoure.* [L. Lat. *barector, barectator, baraterius.* According to Coke, from Fr. *barat*, a wrangling suit, a brawl or quarrel; according to others, from Fr. *barat*, deceit, fraud.] In criminal law. A common mover, exciter or maintainer of suits and quarrels either in courts, or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. *Co. Litt.* 368. *Stat. Westm.* 1, c. 18. 8 *Co.* 36. *Latch*, 194. *Cro. Car.* 192. *Termes de la Ley. Cowell.* Shaw, C. J. 11 *Pick. R.* 432, 434. See *Barretry.*

In old law. A litigious, contentious person, (*litigator, contentiosus*); one who haunts the courts, (*qui prætorium nimis frequentat*). *Spelman. Hortensius Cavalcanus*, cited *ibid.*

In Scotch law. A simonist; a judge who takes a bribe for giving judgment. *Skene de Verb. Sign.* voc. *Barratrie.*

BARRETRY, *Barratry.* [L. Lat. *barratria, barateria.*] In criminal law. The act or offence of a barretor, (q. v.); usually called *common barretry.* The offence of frequently exciting and stirring up suits and quarrels, either at law or otherwise. 4 *Bl. Com.* 134. 4 *Steph. Com.* 262. No one can be convicted of a single act of barretry; for every indictment for that offence must charge the defendant with being a *common barretor.* 4 *Chitt. Bl. Com.* 134, note. *Steph. Crim. Law*, 67. 4 *Steph. Com.* 262. See 11 *Pick. R.* 432. 1 *Bailey's R.* 379. *U. S. Digest*, Barratry.

This word is sometimes written *barratry*, thus confounding it with quite a different offence. See *Barratry.*

BARRISTER, (and formerly) BARRASTER. [L. Lat. *barrasterius*, from *barra*, a bar, q. v.] In English practice. One who appears at the *bar* of a court, in discharge of his duty as an advocate; one called to the *bar* (*ad barram*); a pleader at the *bar*, counsellor, or advocate; the lower of the two degrees of counsel in the English courts.*

Barristers were at first styled apprentices at law (*apprenticii ad legem*), or apprentices at the bars, (*apprenticii ad barras*), answering to the degree of bachelor in the universities. They seem to have been first appointed by an ordinance of King Edward I. in parliament, in the 20th year of his reign. *Spelman*, voc. *Apprenticii. Dugdale, Orig. Jur.* 55. 1 *Bl. Com.* 23, note. 3 *Id.* 27. 3 *Steph. Com.* 385. See *Apprenticius ad legem.* The great body of barristers are called, especially in the older books, *utter* or *outer barristers*, because they sit and plead *without* (*ouster*) *the bar;* as distinguished from those who have privilege to sit *within* the bar. See *Bar.*

BARTER. The exchange of one commodity, or article of property, for another. Distinguished from a sale, which is an exchange of goods or property for money.

BARTON, *Berton*, [from *bar*, a lord, and *tun*, a land or farm. *Spelman*, voc. *Baro.*] A word used in Devonshire, and other parts of England, for the demesne lands (*prædium dominicum*) of a manor; sometimes for the manor house itself; and in some places for outhouses and fold yards. *Spelman. Cowell. Blount.* 2 *Co.* 66, Tooker's case. See *Berton.*

BARUN. L. Fr. Baron; a baron. *LL. Gul. Conq.* l. 23.

Husband. *Mem. in Scacc.* H. 18 Edw. I.

BAS. Fr. [L. Lat. *bassus.*] Low; base; or inferior.

BAS CHEVALIERS. In old English law. Low, or inferior knights, by tenure of a base military fee, as distinguished from *barons* and *bannerets*, who were the chief or superior knights. *Cowell. Kennett's Gloss.*

BASCHE. L. Fr. Inquest; an inquest or inquisition. *LL. Gul. Conq.* l. 4. Howard renders it "the hundred."

BASE. [L. Fr. *bas.*] Low; inferior. See *infra.*

BASE COURT. In English law. Any inferior court that is not of record, as a court baron, &c. *Kitchin*, 95, 96. *Cowell.*

BASE ESTATE. [Fr. *bas estat.*] In

English law. That estate which base tenants have in their land. *Cowell.*

BASE FEE. In English law. An estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. As in the case of a grant to A. and his heirs, *tenants of the manor of Dale;* in this instance, whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. This kind of estate is a fee simple, because it is limited to the heirs general, and may by possibility endure forever, yet, as that duration depends upon the concurrence of collateral circumstances, which qualify and *debase* the purity of the donation, it is therefore not an absolute but a qualified, or *base* fee. 2 *Bl. Com.* 109, 110. 1 *Steph. Com.* 225.

A tenure in fee at the will of the lord. See *Base estate, Base tenant.* To hold in *fee base*, is to hold at the will of the lord. *Termes de la Ley. Cowell.*

BASE RIGHT. In Scotch law. A subordinate right; the right of a subvassal in the lands held by him. *Bell's Dict.*

BASE SERVICES. In old English law. Such services as were only fit for peasants, or persons of a servile rank; as to plough the lord's land, to make his hedges, to carry out his dung, or other mean employments: villein services. 2 *Bl. Com.* 61.

BASE TENANTS. In English law. Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank* tenants, or freeholders. *Cowell*, voc. *Base estate.*

BASE TENURE. [L. Lat. *bassa tenura.*] In English law. A holding by villenage, or other customary service, as distinguished from the higher tenure *in capite*, or by military service; or from free service generally. *Cowell.* 2 *Steph. Com.* 51.

BASILS. [L. Lat. *baselli.*] A kind of money or coin abolished by Henry II. *Hollinsh. Chron.* p. 67. *Spelman. Cowell.*

ΒΑΣΙΛΕΥΣ, Βασιλεὺς. Gr. King; emperor. The title given to the emperor Justinian, in some of his Novels. See *Nov.* 2, 3, 4, 6, *et seq.*

BASILEUS. Græco-Lat. [Gr. βασιλεὺς.] King. A title frequently given to the king in England, in charters before the conquest, in imitation of that assumed by the emperors of the east and west. 1 *Bl. Com.* 242. *Selden's Tit. of Hon.* I. 2. 7 *Co.* 44, [22.] 1 *Spence's Chancery*, 11.

BASILICA. Græco-Lat. [from Gr. βασιλικα, royal, or βασιλιος, Basil.] A compilation of Roman and Greek law, in the Greek language, made during the latter part of the ninth and the beginning of the tenth centuries, under the superintendence of the Greek emperors of Constantinople. It was first undertaken by *Basilius Macedo*, (from whom it is supposed by some to derive its name,) and completed by his son *Leo Philosophus*, who published it as a code, A. D. 887. It consisted of sixty books, embracing the whole of Justinian's law collections, as well as the single constitutions issued by him and his successors. About the year 945, the emperor *Constantine Porphyrogenitus* undertook a new edition of the Basilica, (Ἀνακάθαρσις τῶν βασιλικῶν,) through which the work has been preserved to the present time, although only thirty-six books have reached us complete. 1 *Mackeld. Civ. Law*, 61, § 75. This Romano-Greek code continued to be of authority until after the conquest of Constantinople, and the destruction of the Greek empire by the Turks, A. D. 1453; and even forms at the present day the principal foundation of the private law of Greece. *Id.* 64, § 77.

BASSE JUSTICE. Fr. In feudal law. Low justice; the right of a feudal lord to try persons accused of petty offences or trespasses. *Esprit des Lois*, liv. 28, c. 42. See *Justice.*

BASSUS, *Bassa, Basso.* L. Lat. In old English law. Low. *Bassa haia;* a low hedge. *Reg. Orig.* 257 b. *Brownl.* part 2, 326. *De alto et basso;* of high and low. A term applied to the absolute submission of all differences. *Cowell*, voc. *Alto et basso.*

BASTARD. [L. Lat. *bastardus*, from Brit. *bastaerd*, illegitimate; or, according to Spelman, from Germ. bastart, which he derives from *bas*, low, and metaphorically, spurious, impure, base; and *start*, Sax. *steort*, sprung, risen.] Of spurious origin, (*impure editus;*) base or low born. An illegitimate child; one who is born of an illicit union. One that is not only begotten, but born out of lawful matrimony. Though the law is not so strict as to require that a child shall be begotten, it makes it an indispensable condition to

render it legitimate that it shall be *born* after lawful wedlock. 1 *Bl. Com.* 454. 2 *Id.* 247. See 2 *Kent's Com.* 208. 4 *Id.* 413. 1 *Reeves' Hist. Eng. Law*, 117, note.

A child born after marriage, but under circumstances which render it impossible that the husband of his mother can be his father. 6 *Binn.* 283. *Bac. Abr.* Bastardy, A. *Bouvier.*

A child born beyond a competent time after the coverture has determined by divorce, or the death of the husband. *Id.* 2 *Stark. Evid.* (part 4,) 218, *et seq.*

BASTARD EIGNE. Fr. Bastard elder, or eldest. The child of two unmarried persons who afterwards intermarry. *Perk.* ch. 1, sect. 49, note, citing *Litt.* sect. 400. *Co. Litt.* 243 b. By the old common law, where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the first or elder child, was termed *bastard eigné*, and the second or younger, *mulier puisné*, or simply *mulier*, (*filius mulieratus*, the son of a *mulier* or wife.) *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 247. See *Eigné*, *Mulier.*

BASTARDA. L. Lat. In old English law. A female bastard. *Fleta*, lib. 5, c. 5, § 40.

BASTARDIA. L. Lat. [from *bastardus*, q. v.] In old English law. The plea or objection of illegitimacy. *Bract.* fol. 405, 416, c. 19. *Fleta*, lib. 6, c. 39.

BASTARDUS. L. Lat. In old English law. Bastard; a bastard. *Fleta*, lib. 3, c. 10. *Id.* lib. 6, c. 39.

BASTARDY. [L. Lat. *bastardia.*] A defect of birth, objected to one begotten out of wedlock. *Bract.* fol. 405, 416. This term is applied in the old books to pleas of illegitimacy, to suits for calling one a bastard, and generally to any examination or trial whether a man's birth be legitimate or not. *Cowell.*

The state or condition of a bastard. 1 *Bl. Com.* 454. See *Bastard.*

BASTON. Fr. In old English law. A staff or club; a baton. *Son* baston *est depesne;* his baton is broken. *Fet Assaver*, § 45. The officers of the wardens of the Fleet were called *bastons* from the painted staves by which they were distinguished. *Spelman. Termes de la Ley. Cowell. Officiarii de la* baston; officers of the staff. 10 *Co.* 65. 4 *M. Gr. & Scott*, 452, note.

In Scotch law, a baton is the proper symbol of resignation; though a pen has, by immemorial custom, been made use of. *Bell's Dict.*

BASTONICUM. L. Lat. [from Fr. *baston*, q. v.] In old law. Close custody, (*arctissima custodia.*) *Spelman.*

BASUS, *Bassus.* L. Lat. In old English law. Struck measure. *Per* basum *tolnetum capere, et nihil in cumulo;* to take toll by strike, and not by heap. *Cowell.*

BATAILLE, *Bataile.* L. Fr. In old English law. Battel; the trial by combat or *duellum. La perilouse aventure de* batailles; the perilous chance of the combat. *Britt.* c. 25. *Venku par* bataille. *Id. ibid. La* bataile *fuit gagee en le eyre;* the battel was waged in the eyre. *Yearb.* M. 4 Edw. III. 12.

BATALARE. L. Lat. In old law. To handle or brandish weapons; to strike, (*percutere*); to fight, (*prœliari*). *L. Baiwar.* tit. 2, cap. 10. *Spelman.*

BATALIUM, *Batalia.* L. Lat. [from *batalare*, q. v.] A battle or combat, (*prælium.*) *Spelman.*

BATARDISE. Fr. Bastardy. *Guyot, Inst. Feod.* ch. 27, sect. 10.

BATEL. L. Fr. Battel. *Correie de batel;* arrayed for battel. *Yearb.* M. 4 Edw. III. 12.

BATELLUS. L. Lat. [dimin. of *batus*, a boat, q. v.] In old law. A little boat; a boat or skiff. *Spelman. Bract.* fol. 122. *Fleta*, lib. 1, c. 25, § 9.

BATERIA. L. Lat. In old English law. Battery; a battery. *Fleta*, lib. 2, c. 1, § 25.

ΒΑΘΜΟΣ, *Βαθμός.* Gr. [Lat. *gradus.*] In the civil law. A degree of kindred. *Nov.* 118, cc. 1, 2, 3.

BATIMENT. Fr. In French marine law. A vessel. *Ord. Mar.* liv. 1, tit. 14, art. 2.

BATSUEINS. [from Sax. *bat*, boat, and *swang*, a laborer.] In old English law. A boatman or seaman. *Domesday. Spelman.*

BATTAIL. An old form of *battel*, (q. v.) *Finch, Law*, b. 4, ch. 37.

BATTEL, *Battail.* [L. Fr. *bataille, bataile, batel;* L. Lat. *duellum, batalium.*] In old English law. Duel, or single combat. A species of trial or judicial combat, introduced into England, among other Norman customs, by William the Conqueror, in which a person accused of felony was allowed to fight with his accuser, under the apprehension that heaven would give

the victory to the innocent or injured party. 3 *Bl. Com.* 337. *Id.* 346. It was also used as a mode of trial of issues joined on writs of right, in which the parties fought by champions. 3 *Id.* 337. It was abolished by statute 59 *Geo.* III. c. 46. 3 *Steph. Com.* 582, note. 4 *Id.* 413. See further on this head, 3 *Bl. Com.* 337. *Glanv.* lib. 2, cc. 3, 4, 5. *Bract.* lib. 3, tr. 2, c. 21, fol. 140, 141 b. *Britt.* c. 22. *Yearb.* M. 1 Hen. VI. 29. *Dyer*, 301. *Termes de la Ley.*

BATTEL, *Batel.* L. Fr. [from L. Lat. *batellus*, q. v.] A boat; a ferry-boat. *Yearb.* (Addit.) T. 2 Edw. III. 13.

BATTERE. L. Lat. [from Sax. *batte*, a club.] In old European law. To beat or strike, (*verberare*, *percutere*); properly to beat with a club or stick, (*fustigare*). *Linum battere;* to beat flax. *Capitul.* 1, c. 81. *Spelman. Si servum aut ancillam battiderit;* if he beat a slave or maid-servant. *LL. Longob.* lib. 1, tit. 8, l. 30. *Battutus;* beaten. *L. Alam.* c. 93, § 2. *Spelman.*

BATTERY. [L. Lat. *batteria*, *bateria*, from *battere*, (q. v.) Lat. *verberatio*, *pulsatio.*] The unlawful beating of another. 3 *Bl. Com.* 120.

Any unlawful touching of the person of another, either by the aggressor himself, or any other substance put in motion by him, provided it be wilfully committed, or proceed from the want of due care. 3 *Chit. Bl. Com.* 120, note. *Com. Dig.* Battery, (A). *Skin.* 387. 1 *Saund.* 14, note (c), Am. ed. 1846. *Hob.* 134. 1 *Russell on Crimes*, 751. *U. S. Digest*, Assault and Battery. Every battery includes an assault. *Hawk. P. C.* b. 2, c. 62, § 1.

BATTURE. Fr. In American law. A bottom of sand, &c., rising towards, or above the surface of a river; a species of alluvion. 18 *Louisiana R.* 122. This term is peculiar to the civil law of Louisiana. 3 *Kent's Com.* 428, note.

BATUS. L. Lat. [from Sax. *bat*, a boat.] In old English law. A boat. *Cowell. Towns. Pl.* 56.

BAUNC, *Baunk.* L. Fr. Bench; the Bench; the court so called. *Dune dette qe fust conu en Baunc;* of a debt which was acknowledged in the Bench. *Yearb.* P. 1 Edw. II. 5. *Mandee au baunk.* T. 1 Edw. II. 8. P. 7 Edw. II. 231.

BAYL. An old form of *bail. Finch, Law*, b. 4, c. 44.

BAYLE. An old form of *bailee*, (q. v.)

BAYLER. Fr. In old English law. To deliver; to lend. *Litt.* sect. 71. See *Bailler.*

BAYLEY. In old English law. Bailiff. This term is used in the laws of the colony of New Plymouth, Mass. A. D. 1670, 1671.

BAYLMENT. An old form of *bailment. Finch, Law*, b. 2, ch. 18.

BAYLY, *Baylie.* L. Fr. A bailiff. 1 *Leon.* 50. *Litt. R.* 70.

BAYOU. A species of creek or stream common in Louisiana and Texas. An outlet from a swamp, pond or lagoon, to a river, or the sea. See 8 *Howard's R.* 48, 70.

BEACONAGE. [L. Lat. *beconagium*, from Sax. *beacon*, a signal.] In old English law. Money paid towards the maintenance of a beacon, or watch-fire. *Spelman*, voc. *Beconagium. Cowell.*

BEADLE, *Bedel.* [from Sax. *beodan*, to bid.] In English ecclesiastical law. An officer attached to a church, [or parish,] who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings to the parishioners, and execute its orders, to assist the constable in apprehending vagrants, &c. *Shaw's P. L.* c. 19, cited 3 *Steph. Com.* 93, note (*s*). See *Bedel.*

BEARER. One who bears or carries a thing from one person to another; as a letter, a check on a bank, a bank-note. The insertion of this word in a bill or check entitles the holder of it to payment on presentation, without any endorsement. See 3 *Kent's Com.* 75—78.

BEARERS. In old English law. Persons who *bore* down, or oppressed others. *Cowell.* Classed by stat. 4 *Edw.* III. c. 11, with *maintainers.*

BEARING DATE. [L. Lat. *gerens datum.*] Dated; having a date on the face. See 2 *Greenl. Ev.* § 160.

BEASTGATE, in Suffolk, England, imports land and common for one beast. 2 *Stra.* 1084. *Roscoe's Real Act.* 485.

BEASTS OF THE CHASE. [Lat. *feræ campestres.*] In English law. The buck, doe, fox, martin and roe. *Manwood*, part 2, c. 4, n. 2. *Co. Litt.* 233 a. In a common and legal sense, the term extends to all beasts of the forest. *Id. ibid.*

BEASTS OF THE FOREST. [Lat. *feræ sylvestres.*] In English law. The hart, hind, hare, boar and wolf. *Manwood*, part 2, c. 4, n. 1. *Co. Litt.* 233 a.

Legally, the term includes all wild beasts of venery. *Id. ibid.*

BEASTS OF THE WARREN. [Lat. *ferœ warrenæ.*] In English law. The hare, coney [and roe.] *Manwood*, part 2, c. 4, n. 3. *Co. Litt.* 233 a.

BEAUMANOIR. A celebrated French law writer, nearly or quite contemporary with the English Bracton, whose work, entitled *Coustumes de Beauvoisis*, contains an account of the law and practice of the French courts as it existed in his time. Dr. Robertson makes him a contemporary of Defontaines, who wrote in the reign of St. Louis, but Montesquieu places him after that writer, (whom he calls the oldest law writer in France,) and says he wrote a little after St. Louis' death, which happened A. D. 1270. 1 *Rob. Charles V.* Appendix, note xxv. *Esprit des Lois*, liv. 28, c. 38. According to Mr. Barrington, he kept the courts of the Comte de Clermont, and his treatise gives an account of the customary laws of Beauvoisis (a district about forty miles to the northward of Paris) as they prevailed in the year 1283. The same writer observes that this treatise is so complete, and throws so much light upon the ancient common law of England, that it cannot be too much recommended to the perusal of the English antiquary, historian or lawyer. *Obs. Stat.* 494, note [c]. It is, however, rarely referred to by English writers. *Marvin's Leg. Bibliog.*

BEAUPLEADER, *Beaupleder*, *Bewpleader.* [Fr. *beauplaider*, *beu pleder;* L. Lat. *de pulchre placitando;* from *beau*, *pulcher*, fair, and *plaider*, *placitare*, to plead.] In old practice. Fair pleading; apt or correct pleading; or, according to Mr. Reeves, the fair or favorable hearing of a plea, or suit. See *infra.*

*** Fines were anciently imposed by courts in England, for *beaupleader*, (*pro pulchre placitando,*) or fair pleading. *Fleta*, lib. 2, c. 66, § 18. The statute of Marlebridge, 52 Hen. III. c. 11, (affirmed by statute Westm. 1, c. 8,) ordained that such fines should no longer be taken, and gave a writ directed to the sheriff, bailiff, or whoever would demand the fine, prohibiting him from demanding it. *Id. ibid.* §§ 19, 20. *Cowell.* 2 *Reeves' Hist. Eng. Law*, 70. See *Britt.* c. 20. The common explanation of these terms in the old books is not very satisfactory. It is said by Fitzherbert that the fine for beaupleader meant a fine for *not* pleading fairly, or aptly to the purpose. *F. N. B.* 270 a. This is also the view of Sir Matthew Hale. *Hist. Com. Law*, c. 7. Lord Coke considers it as a fine imposed for the privilege of pleading *fairly*, by way of *amendment*, after a former vicious plea; which seems a more natural explanation. 2 *Inst.* 122, 123. The author of the *Termes de la Ley* speaks of it as a fine taken of a party by a sheriff, or other bailiff, in his court, to the end that he shall not plead fairly, &c. Mr. Reeves thinks it did not signify a fine for amending a wrong plea, but a fine taken of suitors by bailiffs or judges of inferior courts, for a *fair* or perhaps *favorable* hearing of their cause, which *fair hearing* was called *pulchre placitare*, or *beaupleader.* 2 *Reeves' Hist. Eng. Law*, 70.

BEC. Sax. A book. See *Boc.*

BED', BEDF'. Abbreviations of *Bedfordshire*, in old pleadings. 1 *Instr. Cler.* 28. *Towns. Pl.* 147.

BED. The channel of a stream, as distinguished from its banks.* "The *bed* is that soil so usually covered by water, as to be distinguishable from the banks by the character of the soil, or vegetation, or both, produced by the common presence and action of flowing water." Curtis, J. 13 *Howard's R.* 426.

BEDEL, *Bedell*, *Beadle.* [L. Lat. *bedellus*, Sax. *bydel*, from *bydde*, [or *beodan*,] to bid, publish or declare; or, according to Spelman, to ask, beg, pray.] In English law. A crier, (*præco,*) messenger, summoner, apparitor, bailiff, underbailiff. *Spelman. Blount. Co. Litt.* 234 b. A crier or messenger of a court, who cites parties to appear, and answer therein. *Cowell. Termes de la Ley.*

An officer of the forest, similar to a sheriff's special bailiff. *Manwood. Cowell. Blount.*

A collector of rents for the king. *Plowd.* 199, 200.

A well known parish officer. See *Beadle.*

BEDELARY. [Fr. *bedelarie;* L. Lat. *bedelaria.*] In old English law. The district of a bedel; the same as *bailiwick* is the district of a *bailiff. Cowell. Litt.* sect. 379.

BEDELLUS. L. Lat. In old English law. A beadle. *Spelman. Cart. de Forest.* c. 7. Sometimes called in old Scotch law, *pedellus*, (q. v.)

A hayward. *Towns. Pl.* 35.

BEDEREPE. [L. Lat. *bedrepium*, *bidripa*, *precaria;* from Sax. *bydde*, to entreat, or pray, and *repe*, to reap corn.] In old

English law. A service which some tenants were bound to perform; as to reap their landlord's corn in harvest. *Cowell. Blount. Spelman*, voc. *Bidripa.*

BEFORE. [Lat. *coram.*] In practice. In the presence of. A court is said to be held *before* the judges who compose it; an affidavit to be sworn to *before* the officer administering the oath, and the like. See *Coram.* The term expresses the idea of authority or judicial power, as united with personal presence.

"BEFORE ME." In practice. Ordinary words in the jurats of affidavits. Held to be essential. 6 *Ad. & El.* (N. S.) 528. See *Jurat.*

BEHAVIOUR AS HEIR. See *Gestio pro hærede.*

BEHETRIA. Span. An ancient kind of seigniory in Spain. *White's New Recop.* b. 2, tit. 2, ch. 2, note.

BEHOOF. Profit; advantage. A formal word in conveyancing, used in connection with the words "use and benefit."

"BEING" may sometimes be taken in the future tense. See 3 *Leon.* 54, 55, case 79.

BELIEF. [Lat. *fides*, faith.] In the law of evidence. A persuasion of the truth, or an assent of the mind to the truth of a statement, or fact, formed, in the way of inference from some other fact, or from information, as distinct from personal knowledge. See 1 *Greenl. Evid.* § 7, *et seq.*

BELLAGINES, *Bilagines.* L. Lat. [from Goth. *by*, a town, and *lagen*, law.] Municipal laws of the Goths. *Jornandes de Reb. Get.* c. 11. *Spelman.* See *Bilagines, By-laws.*

BELLARE. L. Lat. [from *bellum*, q. v.] In the law of nations. To war; to make war. *An* bellare *unquam justum sit;* whether it is ever right to make war. *Grotius de Jur. Bell.* lib. 1, cap. 2.

BELLIGERENT. [from Lat. *bellum*, war, and *gerens*, carrying on.] In the law of nations. A nation engaged in war, as distinguished from a neutral. See 1 *Kent's Com.* Lect. V.

BELLUM. Lat. In public law. War. An armed contest between nations.* Defined by Grotius as *status per vim certantium;* the state of those who forcibly contend with each other. *De Jur. Bell.* lib. 1, c. 1, § 2. *Jus belli;* the law of war. *Id.* lib. 1, c. 1.

Bello parta cedunt reipublicæ. Things acquired in war belong, or go to the state. 1 *Kent's Com.* 101. Sir W. Scott, (The Elsebe,) 5 *Rob. Adm. R.* 155, 163. 1 *Gallison*, 558. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law.

The trial by single combat, or battel; the *duellum. Cowell.*

"BELONGING," in a deed and lease, construed. 1 *Chitt. Gen. Pr.* 157, 475, and note. 2 *Bing.* 76.

BELOW. [Lat. *infra.*] In practice. Inferior; of inferior jurisdiction. The court from which a cause is removed by appeal or writ of error, is called "the court *below.*"

Preliminary; auxiliary or instrumental. Bail to the sheriff is called "bail *below,*" as being preliminary to, and intended to secure the putting in of bail above, or special bail. 3 *Bl. Com.* 291. See *Above.*

BENCH. [L. Lat. *bancus;* L. Fr. *banke, banque.*] A seat of judgment, or tribunal for the administration of justice; the seat occupied by judges in courts.

The judges themselves, as occupying the judgment seat in courts. The term is figuratively used in this sense as a professional title, just as *the bar* is employed to denote the legal profession.

The ancient and original name of the English Court of Common Pleas, or Common Bench, as it is sometimes called. "Attaint was brought *in the Bench.*" *Dyer*, 53 b. By the words, "the said court of the Bench," in a plea, the Court of Common Pleas shall be intended. 7 *Taunt.* 271. See *Bancus.*

*** The practice of appropriating an elevated and separate seat for the use of judges, seems to have been a common one from the earliest times. When the Roman prætor heard causes, he sat in the *forum* or *comitium* on a *tribunal,* (*in,* or *pro tribunali,*) which was a kind of stage or scaffold (*suggestum,*) made of wood, and moveable. *Cic. in Vat.* 14. *Suet. Cæs.* 84. In matters of less importance, he judged and passed sentence without form, at any time, and in any place, whether sitting or walking; and then he was said *cognoscere e, vel de plano;* to hear causes from, or on a level with his suitors, (*ex æquo loco, et non e tribunali, aut ex superiori loco.*) *Cic. Fam.* iii. 8. *Cæsin.* 17. *Suet. Tib.* 33. The inferior magistrates or judges, (*judices,*) when they sat in judgment, did not use a tribunal, but occupied *subsellia,* or lower seats. *Ascon in Cic. Suet. Claud.*

23. Hence they were sometimes called *judices pedanei*, either *a pedibus*, from the feet, (as the prætor sometimes heard causes while standing, or on foot; *supra*,) or because they administered justice *pede plano*, with their feet on a level with those of the suitors. *Calvin's Lex. Jurid.* voc. *Pedanei.*

Among the ancient Britons, justice was administered from seats or tribunals constructed of mounds or banks of turf, (*e tribunalibus aggesto cespite constructis.*) *Spelman.* The right of occupying a bench or tribunal (termed the *jus banci*, or right of bench,) was from an early period considered to be a peculiar privilege of the king's courts in England; the judges of inferior courts, such as hundred courts, and courts baron, being supposed to administer justice without such a formality. See *High justice.* These last are compared by Spelman to the *judices pedanei* of the Roman law, (*supra*,) from which source the idea of the distinctive privilege of a *bench* was most probably borrowed. Such inferior judges were called in France *juges dessous l'orme*, (judges under the elm,) because they used to sit under an elm or other tree, near the lord's house. *Spelman*, voc. *Bancus.* And in much later times, in England, the hundred court at Freibridge, in Norfolk, was held under an oak at Geywood; and the court for the hundred of Woolsey, in Herefordshire, was held under an oak near Ashton, which was called "the hundred oak." *Id. ibid. Blount*, voc. *Bank.*

BENCHERS. The principal officers of the English Inns of court. 1 *Steph. Com.* 20. 3 *Co.* pref. xviii. 4 *Reeves' Hist. Eng. Law*, 433. *Holthouse.* See *Inns of Court.*

BENCH WARRANT. In criminal law. A warrant issued by or from a *bench*, or court. A process for the arrest of a party against whom an indictment has been found. 1 *Chitt. Crim. Law.* 339. 4 *Steph. Com.* 387. 2 *N. Y. Rev. Stat.* [728], 609, § 55.

BENE. Lat. [L. Fr. *bien.*] In old English law. Well; sufficiently; in due form; safely. *Bene et in pace;* well and in peace. *Mag. Cart. Johan.* c. 63. See *Bien.*

Benedicta est expositio quando res redimitur a destructione. That is a blessed exposition, (or interpretation) when a thing (or subject) is saved [by it] from destruction. 4 *Co.* 26. See **Ut res magis valeat quam pereat.**

BENEFICE. [L. Lat. *beneficium.*] In English ecclesiastical law. An ecclesiastical living or church preferment, called in Magna Charta, (c. 14), *beneficium ecclesiasticum.*

In its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries and the like; but, in popular acceptation, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches and endowed chapelries. 3 *Steph. Com.* 77. By act of Parliament, 1 and 2 *Vict.* c. 106, s. 124, a distinction is expressly made between benefices, and such preferments as have either rank or public office connected with them. *Id. ibid.* note (*k*).

Benefice is a term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure. 3 *Steph. Com.* 77, note (*i*). 4 *Bl. Com.* 107. See *Beneficium.* When the principle of tenure of a superior came to be applied to church preferments, the name of the estate thus holden was also adopted, and hence the care of souls or parishes in England obtained the appellation of *benefices.* 4 *Bl. Com.* 107. 4 *Steph. Com.* 206. *Tomlins.*

BENEFICIAL. [from Lat. *beneficium*, benefit.] Of benefit or advantage; producing or attended with profit or advantage; having or enjoying a benefit or profit. A term applied both to estates and persons; as *beneficial interest, beneficial owner.*

BENEFICIARE. L. Lat. [from *beneficium*, q. v.] In civil and feudal law. To grant or confer a benefice, fief or fee; to enfeoff, (*infeodare.*) *Spelman.*

BENEFICIARIUS. L. Lat. [from *beneficium*, q. v.] In civil and feudal law. A beneficiary; one who held a benefice; a feudatory. *Spelman.*

BENEFICIARY. A word suggested by Mr. Justice Story, as proper to be substituted in place of the old established phrase *cestuy que trust*, which he terms "an awkward, barbarous, foreign idiom." 1 *Story's Eq. Jur.* § 321, and note. See *Cestuy que trust.* It has been, to some extent, adopted.

BENEFICIUM. Lat. In early feudal law. A benefice; a permanent stipendiary estate; the same with what was afterwards called a *fief, feud, or fee*, (qq. v.) 3 *Steph. Com.* 77, note (*i*). *Spelman.* A grant of lands to a retainer or follower, as a return for services to be rendered. 1 *Steph. Com.* 161. So called, according to some,

because it was a gratuitous donation, given out of the mere *good will* (*ex mero beneficio*) and liberality of the grantor. *Ducange.* 1 *Robertson's Charles V.* Appendix, note viii. In the second Book of Feuds, a *beneficium* is defined to be that which is given to one, out of *good will*, (*ex benevolentia*,) in such a manner that the property (*proprietas*) of the immoveable thing bestowed remains with the giver, but the usufruct passes to the receiver, so as to belong to him and his heirs forever. *Feud. Lib.* 2, tit. 23, § 1. The better opinion, however, appears to be that the name was adopted from the *beneficia* of the Roman emperors, which appear to have signified any kind of favors, privileges or emoluments, granted to a subject by the sovereign. *Sueton. Tiber.* 12. *Id. Tit.* 8. *P. Cyclopædia.* The term *beneficium* gave place to that of *feudum* about the close of the tenth century. It occurs very frequently in the Books of Feuds. See *Feud. Lib.* 2, titt. 1, 3, 9, 11, 12, 27, 34, 38, 39, 51, 55. See *Feudum.*

BENEFICIUM. Lat. In the civil law. A benefit or favor; any particular privilege. *Dig.* 1. 4. 3. *Cod.* 7. 71. 1, 4. 1 *Mackeld. Civ. Law*, 182, § 189. Used in the same sense in English law, as in the old phrase *beneficium clericale*, (the clerical privilege,) commonly translated *benefit of clergy.*

BENEFICIUM COMPETENTLÆ. Lat. In civil and Scotch law. The privilege of competency. A privilege which the grantor of a gratuitous obligation was entitled to, by which he might retain sufficient for his subsistence, if, before fulfilling the obligation, he was reduced to indigence. *Bell's Dict.*

BENEFICIUM DIVISIONIS. Lat. In the civil law. The privilege of division. A privilege given to a cautioner, (surety,) by which, in place of being liable for the whole debt, he was entitled to insist that the debt should be demanded from the whole solvent cautioners *pro ratâ. Bell's Dict.*

BENEFICIUM ORDINIS. Lat. In the civil and Scotch law. The privilege of order. The privilege of a surety to require that the creditor should first proceed against the principal and exhaust his remedy against him, before resorting to the surety. *Bell's Dict.* See *Discussion.*

BENEFIT OF CLERGY, otherwise called CLERGY. [L. Lat. *beneficium*, or *privilegium clericale.*] In English criminal law. The clerical privilege; the privilege of the clergy; a clerk's privilege.* An exemption from capital punishment in cases of capital felony, anciently allowed to criminals in holy orders, or (what was once equivalent,) *able to read*, and originally allowed to these only, though afterwards extended both to clergy and laity, and confined on the other hand to capital felonies of the lighter kind. 4 *Steph. Com.* 121. See *Clergy, Clergyable, Clerk.* The privilege was this:—if a person convicted of a capital felony was a clerk in orders, he was absolutely discharged, and handed over to the court christian; if a layman, under the degree of a peer, who could read, he was discharged upon being *burnt in the hand*, that is, marked with a hot iron upon the brawn of the left thumb. See *Burning in the hand.* Whipping, fine and imprisonment were afterwards substituted for burning. *Barringt. Obs. Stat.* 442—444, and notes. 4 *Bl. Com.* 364—374. 4 *Steph. Com.* 436, note (*b*). Benefit of clergy was abolished in England by statute 7 & 8 Geo. IV. c. 28. 3 *Steph. Com.* 9, note (*n*). 4 *Id.* 121, 436, note (*b*).

*** The following extract from the case of *Armstrong* v. *Lisle*, which was a criminal appeal, (1 *Salk.* 61,) will serve to illustrate the manner in which this privilege was claimed, tried, and allowed by the court. The prisoner (or appellee,) being found guilty of manslaughter, and being asked what he had to say why judgment should not pass against him, *prayed his clergy;* (that is, claimed the benefit of clergy.) "Hereupon," says the reporter, "his clergy was allowed him, and he was tried by the ordinary of ——, who gave him a psalm to read, whereof he read the first verse; and then Sir Samuel Astry asked the ordinary, '*legit vel non?*' (does he read or not,) who answered '*legit*,' (he reads,) whereupon the executioner burnt him without the bar, on the brawn of the left hand," &c. It is said that the ordinary usually gave the criminal who prayed his clergy, the fifty-first psalm to read, (which is called in the vulgate, from its initial word, the *Miserere;*) hence termed the psalm of mercy. *Cowell*, voc. *Miserere.*

BENEPLACITUM. L. Lat. In old English law. Good pleasure. *Ipsius patris* beneplacito; by the pleasure or good will of his father himself. 1 *Bl. Com.* 351. See *Durante beneplacito.*

BENERTII, *Benereth.* In old English

law. A service which a tenant rendered to his lord, with his plough and cart. *Lamb. Itin.* 212. *Co. Litt.* 86. *Cowell. Spelman.*

BENEVOLENCE. In old European law. An extraordinary aid granted by freemen to their sovereign, as a voluntary gratuity. *Stow's Annals*, 701. 1 *Robertson's Charles* V. Appendix, note xxxviii. The same name was retained after such contributions had become compulsory. *Id. ibid.* Benevolences were introduced into England by Edward IV. as modes of raising money, and were finally abolished by the Petition of Right, 3 Car. I., and by statute 1 W. & M. st. 2, c. 2. 1 *Bl. Com.* 140. 4 *Reeves' Hist. Eng. Law*, 127, 128.

BENIGNE. Lat. [from *benignus*, q. v.] Liberally; favorably; benignly.

Benigne faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat. Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity, [or common people,] in order that the thing [or subject matter] may rather have effect than perish, [or become void.] *Co. Litt.* 36 a. *Broom's Max.* 237, [413.] A liberal construction shall be put upon written instruments, so as to uphold them, if possible, and carry into effect the intentions of the parties. *Id. ibid.*

This celebrated maxim, one of the oldest in the law, and still frequently quoted, is taken by Lord Coke from Bracton, or rather, made up of portions of the text of that author. Bracton's own words are, (fol. 95 b, closing a sentence,) *Benignæ enim faciendæ sunt interpretationes, ut res magis valeat quam pereat.* The words "*propter simplicitatem laicorum*" are taken from the preceding sentence, and the preceding clause of the same sentence, in which he observes that grants of advowsons by laymen would not be invalidated on account of the incorrect language of the instrument, (*propter incongruam dictionem donationis,*) but would be established by a benign interpretation, *propter simplicitatem laicorum.* The antiquity of the rule appears from his remark in the same sentence,—*et sic fit interpretatio ab antiquis. Id.* fol. 95 a, b. In Piers and Hoe's case, (1 *Leon.* 125,) Lord Coke (arg.) quotes the maxim nearly in the words of Bracton, (*supra,*) and calls it "Bracton's rule."

BENIGNUS. Lat. In civil and old English law. Kind; favorable; indulgent; liberal; benign; as opposed to strict, harsh or narrow. *Ex* benigna *interpretatione;* by a liberal interpretation. *Bract.* fol. 95. *Benignâ interpretatione. Dig.* 39. 5. 16. *Cod.* 6. 27. 1. *Benignior;* more favorable. See *infra.*

Benignior sententia in verbis generalibus seu dubiis est præferenda. In [construing] general or doubtful words, the more favorable sense is to be preferred. 4 *Co.* 15. This maxim seems to be derived from those of the civil law: **Semper in dubiis benigniora præferenda sunt.** *Dig.* 50. 17. 56. 2 *Kent's Com.* 557. **In re dubia, benigniorem interpretationem sequi non minus justius est quam tutius.** In a doubtful matter, it is not less just than safe to adopt the more liberal interpretation. *Dig.* 50. 17. 192. 1.

In contractibus, benigna; in testamentis, benignior; in restitutionibus benignissima interpretatio facienda est. In contracts, the construction is to be liberal; in wills, more liberal; in restitutions, most liberal. *Co. Litt.* 112 a.

Benignius leges interpretandæ sunt quo voluntas earum conservetur. Laws are to be more liberally interpreted, in order that their intent may be preserved. *Dig.* 1. 3. 18.

BEQUEATH. To give personal property by will. Where personal property is intended to be given by will, the proper words to be employed are, "I give and bequeath," &c. Where real property is to be given, the words "I give and devise" should be used. See *Devise.* But the word "bequeath," though not, in its primary and legal acceptation, synonymous with "devise," may be so construed, if the context requires it. 36 *Maine R.* 211.

BEQUEST. A gift of personal property by will; a gift of a legacy. See *Legacy, Devise.*

BERCARIA, *Berceria, Berqueria.* L. Lat. [from Fr. *berger*, a shepherd.] In old English law. A berchery; a sheep-fold, sheep-cote or pen. *Fleta*, lib. 2, c. 76, § 2. *Id.* lib. 4, c. 20, § 6. *Cowell. Blount. Co. Litt.* 5 b.

BERCARIUS. L. Lat. [from Fr. *berger.*] In old English law. A shepherd. *Fleta*, lib. 2, c. 79, § 8.

BERCATOR. L. Lat. In old English law. A shepherd. *Stat. Consuet. et Ass. Forestæ*, cited *Barringt. Obs. Stat.* 217. Mr. Barrington considers this a contraction of the Lat. *vervicator*, (from *vervex*, an ewe,) converted into *berbicator.*

BEREWICA, *Berewicha, Berewichus,*

Berewita, Berwita. L. Lat. [from Sax. *berie*, a manor, and *wic*, a village; or (*berewita*) from *ber*, low, and *wite*, fine, O. Eng. *berewike.*] In old English law. A manor, or rather a part of a manor, separated from the main body; a smaller manor, belonging to a larger one, (*manerium minus ad majus pertinens.*) *Spelman.*

A hamlet, or small village, appurtenant to some town or manor, (*villula, manerii vicus.*) *Id. Blount*, voc. *Berwica.* A word of frequent occurrence in Domesday Book. *Id.* According to Lord Coke, it signifies a town. *Co. Litt.* 116 a.

A corn-farm. *Spelman.*

BERGHMAYSTER, *Barmaster, Barmer.* [from Sax. *berg*, a mountain.] An officer having charge of a mine. A bailiff, or chief officer among the Derbyshire miners, who, in addition to his other duties, executes the office of coroner among them. *Blount. Cowell.*

BERGHMOTE, *Bergmoth.* [from Sax. *berg*, a hill, and *mote*, an assembly.] In old English law. A court for deciding controversies among the Derbyshire miners. *Blount. Cowell.*

BERGIUM. L. Lat. [Sax. *berg, berig, beorg, berg.*] In old law. A city, town, burg or borough. *Berg*, (Sax.) is properly a mountain. *Spelman.*

BERIA, *Buria.* L. Lat. [In English names, *Berie, Bery* and *Bury.*] In old English law. A city, burgh, habitation, or manor, (from Sax. *byr*, and *bur*, a dwelling.) *Spelman.*

A plain adjoining a town. *Dufresne. Cowell.*

BERK'. An abbreviation of *Berkshire*, in old records. *Towns. Pl.* 147.

BERNET. Sax. [from *byrnan*, to burn: Lat. *incendium.*] In Saxon law. Burning; the crime of house-burning, now called *arson. Cowell. Blount.*

BERQUARIUM. L. Lat. In old English law. A sheep-fold. *Domesday. Spelman*, voc. *Barcarium.*

A tan-house. *Co. Litt.* 5 b.

BERQUARIUS. L. Lat. [from Fr. *berger.*] In old English law. A shepherd. *Domesday. Spelman.*

BERRA. L. Lat. In old law. A plain; open heath. *Cowell. Berras assartare;* to grub up barren heaths. *Id. Spelman.* See *Beria.*

BERSÆ. L. Lat. In old European law. Barriers; enclosures; limits. *Spelman.*

BERTHINSEK, *Birdinsek, Byrthinsak.* O. Sc. [from Sax *byrthin*, burden, and *sac*, a sack.] In old Scotch law. A law which exempted from capital punishment, one who stole as much food or meat as he could carry on his back in a sack. *Reg. Maj.* lib. 4, c. 10, de yburpananseca. *Skene de Verb. Sign.* See Spelman's explanation of this word, voc. *Byrthinsak.*

BERTON. [L. Lat. *bertona.*] In English law. That part of a great country farm where the barns, stables, and other inferior offices stand, and wherein cattle are foddered, and other country business managed. *Cowell. Spelman*, voc. *Bertona.* In Devonshire, according to Cowell, they called a great farm a *berton;* a small farm a *living.* See *Barton.*

Bertonarii. Farmers or tenants of bertons, who seem to have been tenants at will. *Cowell. Blount.*

BERWICA. L. Lat. In old English law. A manor, or part of a manor; a village appurtenant to a manor. *Cowell. Spelman*, voc. *Berewica.*

BES, (pl. BESSES.) Lat. In the Roman law. A division of the *as*, or pound, consisting of eight *unciæ*, or duodecimal parts, and amounting to two-thirds of the *as.* 2 *Bl. Com.* 462, note (*m*). See *As.*

Two-thirds of an inheritance. *Inst.* 2. 14. 5.

Eight per cent. interest. 2 *Bl. Com. ubi supra.*

BESAEL. L. Fr. A great grandfather. *Besaele;* a great grandmother. *Britt.* c. 89. *Besael, ael, piere, fitz;* great grandfather, grandfather, father, son. *Id. ibid. Besaele, aele, mere, file;* great grandmother, grandmother, mother, daughter. *Id. ibid.*

BESAYEL, *Besaiel, Besayle.* L. Fr. [from *besael, besayeul*, a great grandfather.] In old English law. A writ (L. Lat. *breve de proavo,*) which lay where a great grandfather died seised of lands and tenements in fee simple, and on the day of his death a stranger abated, or entered and kept out the heir. *Reg. Orig.* 226. *F. N. B.* 221. D. 3 *Bl. Com.* 186. Now abolished with other real actions.

BESONGNES. L. Fr. Business. *Yearb.* M. 20 Hen. VI. 27.

BEST EVIDENCE, what is. 1 *Stark. Evid.* 102, 389. The best attainable evidence must be adduced to prove every disputed fact. *Id. ibid.*

BETAGHII, *Betagii* or *Betaghes.* A name anciently given to villeins in Ireland. *Barringt. Obs. Stat.* 302, note [*t*]. *Spelman*, voc. *Betagii.*

BETROTHMENT. [L. Lat. *desponsatio.*] A mutual promise, or compact between two parties, by which they bind themselves to marry. The word imports giving one's *troth*, i. e. true faith, or promise. It is the same with what is called by civilians and canonists, *sponsalia*, or espousals, and sometimes *desponsation*, and by the French *finançailles*. *Encyclop. Amer.* See *Sponsalia.*

BETTER EQUITY. A term applied, in English equity jurisprudence, to the equity of a second incumbrancer taking a security which a prior incumbrancer did not; where the security was of a nature to protect him against any subsequent dealing to his prejudice, by the party who had the legal estate; such better equity giving him a priority of claim.* 1 *Chitt. Gen. Pr.* 470, note. 3 *Russell's R.* 1—65. A party may sometimes gain a *better equity*, by giving notice of an incumbrance held by him. 1 *Chitt. Gen. Pr.* 470.

BETTERMENTS. In American law. Beneficial improvements made upon lands by the occupant or possessor, in building, fencing, draining, &c. *Encyclop. Amer.* 2 *Kent's Com.* 334, *et seq.* This word is a very literal translation of the *meliorationes* of the civil law. *Cod.* 4. 66. 3. 1 *Mackeld. Civ. Law*, 358, § 325.

"BETWEEN." This word, in the boundaries of lands in deeds, excludes the *termini* named. 2 *Hilliard's Real Prop.* 340. Wilde, J. 5 *Metcalf's R.* 441. So, where it is used in an instrument as descriptive of time. A policy of insurance on goods to be shipped *between* two certain days, does not cover goods shipped on either of those days. *Id.* 439. And see 13 *Howard's R.* 82, 77 arg. *Ambl.* 656, note (1), 2d ed.

BEUDUM, *Beodum.* L. Lat. [Sax. *beod.*] In old European law. A table. *L. Salic.* tit. 48. *Spelman.*

BEWPLEADER. See *Beaupleader.*

BEYOND SEA, (Lat. *extra*, or *trans mare ;*) BEYOND THE SEAS, (*extra maria ;*) BEYOND THE FOUR SEAS, (*extra quatuor maria.*) Words of frequent occurrence in English statutes, treatises and reports; originally suggested, no doubt, by the geographical position of England, and more peculiarly appropriate to the whole island of Great Britain. See *Four Seas.* The phrase "beyond the seas" occurs, in particular, in the statute of limitations, 21 Jac. I. c. 16, and is said to have been introduced on the union of the crowns, in place of the phrase "out of the realm," which previously had always been used. 1 *W. Bl.* 286. It does not seem, however, to have always been literally construed, and at the present time, no part of the United Kingdom of Great Britain and Ireland, nor the isles of Man, Guernsey, Jersey, Alderney or Sark, nor any islands adjacent to any of them, being part of the Queen's dominions, are deemed *beyond the seas. Holthouse. Wharton's Lex.* voc. *Limitation.* "Beyond the seas" is called "the old and true expression." Dennison, J. 1 *W. Bl.* 287. It has been recently held in England, that these words are, in legal import and effect, synonymous with the words "out of the territories," "out of the realm," "out of England," and are not to be interpreted literally. 32 *Eng. Law & Eq. R.* 84.

The same phrase occurs in the statutes of limitations of several of the United States, which have generally been framed after the English statute, and without much regard, in this particular, to strict geographical propriety. In most of these, it has been construed to mean, "out of the state," or "without the limits of the state." 3 *Wheaton's R.* 541. 11 *Id.* 361. 14 *Peters' R.* 145. 5 *McLean's R.* 487. In Pennsylvania, on the other hand, it has been construed to mean "without the limits of the United States," which approaches the literal signification. 2 *Dallas' R.* 217. 1 *Yates' R.* 329, S. C. McLean, J. 6 *Peters' R.* 291, 300. The same construction has been given to it in Missouri. 20 *Missouri R.* 530. See *Angell on Lim.* §§ 200, 201.

BIAS. A leaning or inclination of the mind in a particular direction, or in favor of a particular person or class of persons. See 12 *Georgia* R. 444.

BIBAION, Βιβλίον. Gr. In the civil law. A or the libel, (*libellus ;*) the libel of a plaintiff. *Nov.* 53, tit. *Id.* c. 3, §§ 1, 2. Otherwise called διτιάσεως βιβλίον, the libel of demand, (*libellus conventionis.*) *Id.* c. 3. The answer of the defendant was termed ἀντιβίβλον, (*libellus responsionis.*) *Id.* § 2.

BIBLIOTHECA. Græco-Lat. [Gr. βιβλιοθήκη from βιβλίον, a book, and θήκη, a repository.] In the civil law. A bookcase; a library. As to the construction of this word, and whether the books themselves would pass under it, see *Dig.* 32. 52. 7.

BIDALE. [from *bid*, and *ale*, a drinking.] In old English law. An invitation to drink, (*precaria potatoria.*) An invitation of friends to drink at some poor man's house, with a view to contribute in charity. *Spelman. Cowell.*

BIDDINGS. Offers of a price for goods or other property put up for sale at auction. See 4 *Kent's Com.* 191, 192. See *Opening biddings.*

BIELBRIEF. Germ. [Dutch bylbrief; Danish, *bilbrev.*] In European maritime law. A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth and dimensions of every part of the ship. It sometimes also contains the terms of agreement between the party for whose account the ship is built, and the ship builder. It has been termed in English, *the grand bill of sale;* in French, *contrat de construction ou de la vente d'un vaisseau*, and corresponds in a great degree with the English, French and American *register*, (q. v.) being an equally essential document to the lawful ownership of vessels. *Jacobsen's Sea Laws*, 12, 13, and note. In the Danish law, it is used to denote the contract of bottomry. *Id.* 11.

BIEN. Fr. and L. Fr. [Lat. *bene.*] Well; advisable. *Fait* bien *à prendre garde;* it is well [done] to take care. *Britt.* c. 80. *Paroles del* bien *estre;* words of well being; words of form; words not strictly necessary, but inserted in an instrument with reference to a possible contingency; words advisable to be used for greater security; words used *de bene esse.** *Britt.* c. 39. See *De bien estre, De bene esse.*

Lawfully; in lawful form. *Le action* bien *gist;* the action well lies. *Freem.* 1. *Le challenge ne fuit* bien *pris;* the challenge was not well taken. *Dyer*, 38, (Fr. ed.) *Come* bien *luy list;* as he lawfully might do, as was lawful for him to do. *Yearb.* M. 8 Edw. III. 2.

BIENNIUM. Lat. [from *bis*, twice, and *annus*, a year.] In old English law. The space of two years. See *Cesssavit per biennium.*

BIENS. Fr. . [Lat. *bona.*] Goods. At common law, this term includes all chattels, as well real as personal. *Co. Litt.* 118 b. The phrase *biens et chateux*, (goods and chattels,) however, occurs in the old books. *Yearb.* P. 7 Edw. III. 15. T. 11 Hen. VI. 10.

In the sense of the civilians and continental jurists, it comprehends not merely goods and chattels, but real estate. *Story's Confl. Laws*, § 13, note. *Id.* § 375. See *Bona.*

BIGAMIA. L. Lat. [from *bis*, twice, and Gr. γάμος, marriage.] Bigamy. See *Bigamy.*

BIGAMUS. L. Lat. [See *Bigamia.*] In old English law. One who has been *twice married*, or has married more than one wife; a bigamist. Applied originally, in the canon law, to *clerks* or ecclesiastical persons, who were forbidden to marry a second time. See *Bigamy. Bigamus* is he that either hath married two or more wives, or that hath married a widow. 2 *Inst.* 273. Bigamus, *seu trigamus, &c. est qui diversis temporibus, et successivè, duas seu tres, &c. uxores habuit;* polygamus *qui duas vel plures simul duxit uxores;* a bigamist, or trigamist, &c. is he who, at different times and successively, has had two or three, &c. wives; a polygamist is he who has had two or more wives at the same time. 3 *Inst.* 88.

*** The statute 4 Edw. I. st. 3, c. 5, ordained, in affirmance of the canon law, that if any person married a widow, or married a second time after the death of the first wife, he should be deprived of the benefit of clergy, if he was convicted of any clergyable felony whatever. From this provision it received the name of the statute *De Bigamis.* 2 *Reeves' Hist. Eng. Law*, 142. Under this statute, where a prisoner demanded the benefit of the clergy, (to wit, his book,) *bigamy* might be, and frequently was objected as a counterplea, and was in this form:—"that he who demands the privilege of the clergy, was married to such a woman, at such a place, within such a diocese, and that she was dead, and that he hath married another woman within the same diocese, or within some other diocese, and so is *bigamus.*" Or, if he had been but once married, then to say,—"that she whom he hath married is, or was a widow, that is the relict of such a one, &c.;" which pleas were tried by the bishop of the diocese where the marriages were alleged; and if so certified by the bishop, the prisoner lost the benefit of the clergy. *Termes de la Ley*, voc. *Bigamy.* By statute 1 Edw. VI. c. 12, § 16, bigamy was declared to be no longer an impediment to the claim of clergy. 4 *Bl. Com.* 163, note (*b*). See *Bigamy, Benefit of clergy.*

BIGAMY. [L. Lat. *bigamia*, from *bis*, twice, and Gr. γάμος, marriage.] In criminal law. The crime of marrying a second time during the life of the first wife or husband; or of having more wives or husbands than one at the same time. 4 *Bl. Com.* 163. 4 *Steph. Com.* 300. There are several excepted cases, however, in which a second marriage during the life of a former husband or wife, will not amount to bigamy. See 4 *Chitty's Bl. Com.* 164, 165, note. 4 *Steph. Com.* 301, 302. *Wharton's Am. Crim. Law*, 552—555.

In canon law. The offence of marrying two wives successively, one after the death of the other; or once marrying a widow. 4 *Bl. Com.* 163, note (*b*). 3 *Inst.* 88. See *Bigamus.*

*** The use of the word *bigamy* in its present sense, in criminal law, although well settled, is, as Blackstone observes, an obvious corruption of the meaning, *polygamy* being the proper name for the offence of having a plurality of wives [or husbands] at once. 4 *Bl. Com.* 163. 3 *Inst.* 88. *Co. Litt. Hargr. & B.* Note 48, lib. 2. 2 *Kent's Com.* 80, 81. See *Polygamy. Bigamy* was a term invented by the canonists to describe the offence, peculiar to their law, of being *twice* married. See *Bigamus.* Mr. Stephen, in his valuable Commentaries, questions the correctness of Blackstone's criticism, on the following ground: that "whatever the *number* of marriages that may have taken place, the substance of the charge always is, that having a lawful wife still living, the offender married a *second* time, any intervening marriage being wholly immaterial, and out of the case, so far as the prosecution is concerned." 4 *Steph. Com.* 300, note (*n*). But the learned commentator seems to have overlooked the point of Blackstone's objection, which is not that *bigamy* is incorrectly applied to cases where marriage has been contracted *more* than *twice*, but is addressed to the essential and well-understood meaning of the term, and may be more specifically stated in the following form: that *bigamy*, a term always employed in the canon law to denote the offence of marrying a second wife *after the death* of the first, or of marrying two or more wives *successively*, was not properly applied to an offence, the essence of which consists in marrying a second time *during the life* of the first wife or husband, or of having two or more wives or husbands *at the same time.* This criticism of Blackstone turns upon something more than a question of mere etymological propriety, (between *bis*, *twice*, and πολύ, *many times*, or *more than twice*, in the composition of the respective terms,) and is fully borne out by the authority of Lord Coke, who expressly defines polygamy, in the very terms of the modern definition of *bigamy*, to be the having of several husbands or wives at the same time; (*polygamia est plurium simul virorum uxorumve connubium;*) and goes on to show the difference between bigamy and polygamy, in the Latin passage given under *bigamus, supra.* 3 *Inst.* 88. The present improper use of the term *bigamy* seems to have grown up since the time of Coke, who makes no mention of bigamy in his very full enumeration of offences, recognised by the English criminal law. In Massachusetts, the term *polygamy* has been restored to its proper use and meaning, as contended for by Blackstone. *Rev. Stat.* (ed. 1836,) c. 130, § 2.

BIGLA. L. Lat. [Græco-barb βίγλα, from Lat. *vigilia.*] In old law. Watch; a watch. *Meursius. Spelman.*

BILAGÆ. L. Lat. In old law. By-laws. *Spelman*, voc. *Bellagines.* See *Bilagines, Laga.*

BILAGINES, *Bellagines, Bilagæ.* L. Lat. [from *by*, Sax. a dwelling, Goth. a town, and *lagen*, laws.] In old law. The laws of towns; laws made by the inhabitants of towns for their own government, (*leges quas villarum incolæ sibi constituerint observandas*); municipal laws; by-laws. *Spelman*, voc. *Bellagines.* See *By-Laws.*

This word is found in Gothic writers, by whom it is usually written *bellagines*, (q. v.) *Jornandes de Reb. Get.* c. 11, cited in *Spelman.*

BILANX, *Bilancia.* L. Lat. In old English law. A balance. *Pryn. Rec.* 196. *Towns. Pl.* 169. *Bilanciæ;* scales for weighing. *Reg. Orig.* 279 b.

De bilanciis deferendis (*breve*); a writ for carrying or removing public scales. The name of an old writ in the Register, directed to the collectors of customs in certain ports in England, commanding them to take their scales and weights to another port, for the purpose of weighing merchandise for exportation. *Id. ibid.*

BILINE. A word essentially English, used by Britton in the sense of collateral, (by-line, side line.) *En line biline;* in the collateral line. *Britt.* c. 119.

BILINGUIS. Lat. [from *bis*, twice, and *lingua*, a tongue.] Of a double language or tongue; that can speak two languages. A term applied in the old books, to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit is, in certain cases, entitled to; more commonly called a jury *de medietate linguæ*. 3 *Bl. Com.* 360. 4 *Steph. Com.* 422. *Triatio bilinguis*; a trial by such a jury. *Molloy de Jur. Marit.* 448. See *De medietate linguæ*, *Half tongue*.

BILL. [L. Lat. *billa*; L. Fr. and Sax. *bille*; Græco-barb. βιλλος; Lat. *schedula*, *libellus*, *syngraphum*.] A formal statement or declaration of a thing in writing. This seems to be the radical meaning of the term, as the following definitions may illustrate:

A formal written statement of complaint to a court of justice; as *a bill*, simply so called, in old English practice; a *bill of privilege*, a *bill in equity*, and a *bill of indictment*.

A declaration by a court to its officers, in the nature of process; as the old *bill of Middlesex*.

A record or written statement of proceedings in an action; as *a bill of exceptions*.

A written statement of the terms of a contract, or specification of the items of a demand, or counter-demand; as a *bill of exchange*, a *bill single* and *penal*, a *bill of lading*, a *bill of sale*, a *bill of credit*, and a *bill of particulars*.

A draft of an act of the legislature before it becomes a law; a proposed or projected law. A draft of an act presented to the legislature, but not enacted. An *act* is the appropriate term for it, after it has been acted on by, and passed the legislature. Lewis, C. J. 26 *Penn. St. R.* 450.

A solemn and formal written declaration of popular rights and liberties, promulgated on certain extraordinary occasions; as the famous *Bill of Rights* in English history. See these varieties of the word defined, *infra*.

BILL, or ORIGINAL BILL. In old English practice. The ancient and most usual mode of commencing actions in the English Court of King's Bench. It was otherwise called a *plaint*, and was a written statement of the plaintiff's cause of action, always alleging a *trespass* as the ground of it; in order to enable the court to entertain the action. *Boote's Suit at Law*, 13, 14. 1 *Arch. Pr.* 337. 1 *Crompt. Pr.* Introd. lxxx, (xxxv). It resembled the modern *declaration*, which was probably copied from it, and is frequently termed on the record, the plaintiff's bill. See *Billa*. Actions commenced in this way, not being founded upon an original writ, were said to be *by bill*, or *by bill without writ*. See *Breve*, *Original writ*. Both modes of proceeding, by bill and by writ, are now abolished by the effect of the statute 2 Will. IV. c. 39, and a new method substituted. 3 *Steph. Com.* 404, 405, note (*l*).

BILLS OF CREDIT. In constitutional law. Promissory notes or bills issued by a state government, exclusively on the credit of the state, and intended to circulate through the community for its ordinary purposes as money redeemable at a future day, and for the payment of which the faith of the state is pledged. 4 *Peters' R.* 410, 431. 1 *Kent's Com.* 408.—Paper issued by the authority of a state, on the faith of the state, and designed to circulate as money. 11 *Peters' R.* 257. 1 *Kent's Com.* 408, note. See 13 *Howard's R.* 16, 17. 2 *Story on Const.* § 1364. The emission of these bills is prohibited by the constitution of the United States, Art. I. Sect. X.

It was said by Mr. Justice McLean, in Briscoe *v.* The Bank of Kentucky, (11 *Peters' R.* 257,) that "the definition of the term '*bills of credit*,' as used in the constitution, if not impracticable, will be found a work of no small difficulty." But see the opinion of the same judge in Darrington *v.* State Bank of Alabama, 13 *Howard's R.* 12, 16, 17. In a case in the Supreme Court of New-York, it was said that "all attempts to give a full, accurate and satisfactory definition of *bills of credit*, within the meaning of the constitution, have, thus far, failed." Bronson, J. 6 *Hill's R.* 33, 37.

The bills of a banking corporation, which has corporate property, are not *bills of credit*, within the meaning of the constitution, although the state which created the bank is the only stockholder, and pledges its faith for the ultimate redemption of the bills. 13 *Howard's R.* 12.

BILL IN EQUITY, or CHANCERY. In equity pleading. A complaint in writing, under oath, in the nature and style of a petition, addressed to the Chancellor, or judge or judges of a court of equity, setting forth all the facts and circumstances upon which the complaint is founded, and pray-

ing for such equitable relief, or for such decree as the party may conceive himself entitled to, or the court may deem proper to grant. It is the usual mode of instituting a suit in chancery, and consists of certain parts which are fully explained in the books on equity pleading. After the bill has been drawn, signed by the complainant, and his or her solicitor and counsel, and sworn to, it is left with the clerk or other proper officer of the court, to be filed, and this is what is termed *filing a bill* in equity. 3 *Bl. Com.* 442. See *Mitford's Eq. Pl.* (by Moulton, ed. 1849,) 7, 35—121, [33—101]. *Story's Eq. Pl.* §§ 7—48. 1 *Daniell's Chanc. Pr.* (by Perkins), 351—454. 1 *Barbour's Chanc. Pr.* 33—47.

There are many varieties of bills, such as *original* bills, *supplemental* bills, bills of *revivor*, *cross* bills, bills of *discovery*, of *interpleader*, of *review*, and others, which are explained at length in the authorities above referred to.

BILL OF ADVOCATION. In Scotch practice. A bill by which the judgment of an inferior court is appealed from, or brought under review of a superior. *Bell's Dict.*

BILL OF ATTAINDER. An act of the legislature, declaring the attainder of certain persons named in it. See *Attainder.*

BILL OF COSTS. In practice. A statement in writing, of the items composing the amount of the costs awarded a plaintiff or defendant in an action or other judicial proceeding; including a statement of the terms or times when the particular services were rendered, the nature of the services, and the sums respectively due therefor. See *Costs.*

BILL OF EXCEPTIONS. In practice. A formal statement in writing, of exceptions taken to the opinion, decision or direction of a judge delivered during the trial of a cause; setting forth the proceedings on the trial, the opinion or decision given, and the exception taken thereto; and sealed by the judge in testimony of its correctness. This bill is in the nature of an appeal; its object being to put the points decided upon record, in order to bring them up before the court in banc, or a superior court, for review after trial. 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. Marshall, C. J. 5 *Peters' R.* 190. *Raymond on Bill of Exceptions*, (Law Library, New Series, vol. 46.) See 2 *Comstock's R.* 98.

In strictness, the bill of exceptions ought to be engrossed and tendered to the judge during the course of the trial, or other proceeding out of which the exception arises, and to be *then* sealed. The usual (and, indeed, the invariable) practice, however, is, to reduce to writing the *substance* of the exception at the time it is taken, and it is then signed by the counsel on each side, and the bill itself is *afterwards* drawn up in form, and tendered to the judge to affix his seal. *Raym. Bill of Excep.* 33, 34. 2 *Tidd's Pr.* 862, 864. 1 *Arch. Pr.* 196, 210. See 15 *Howard's R.* 160. 16 *Id.* 14. 24 *Mississippi R.* 96. 6 *Ohio St. R.* 522. Bills of exceptions were first introduced by the statute of Westminster 2, c. 31. 3 *Bl. Com.* 372. 2 *Reeves' Hist. Eng. Law*, 188. And they have been constantly in use ever since. *Fleta*, lib. 6, c, 55, §§ 8, 9. *Yearb.* M. 7 Edw. III. 3, 47. H. 4 Hen. VI. 14. See *Bille.* In Florida, the statute of Westminster on this point is recognised as in force. 6 *Florida R.* 516.

BILL OF EXCHANGE. [L. Lat. *billa escambii, litera cambii, litera cambitoria;* Fr. *billet de change, lettre de change.*] A written order or request by one person to another, for the payment of money absolutely, and at all events. 3 *Kent's Com.* 74. *Bayley on Bills*, 1.—An open letter of request from one man to another, desiring him to pay a sum named therein to a third person, on his account. 2 *Bl. Com.* 466. 2 *Steph. Com.* 162. *Chitty on Bills*, 1.—An open letter of request addressed by one person to a second, desiring him to pay a sum of money to a third, or to any other to whom that third person may order it to be paid; or it may be payable to bearer. *Kyd on Bills*, 3. This last definition has been approved by Mr. Justice Story, as presenting the important feature of negotiability, which the other definitions omit. *Story on Bills*, § 3. In common speech, a bill is frequently called a *draft.* 2 *Bl. Com.* 467. See *Draft, Foreign bill of exchange, Inland bill of exchange, Check, Drawer, Drawee, Acceptor, Payee, Indorser, Indorsee, Holder.*

BILL OF HEALTH. In mercantile law. A certificate from the proper authorities, as to the state of *health* of a ship's company at the time of her leaving port, and the health of such port itself.* A certificate, properly authenticated, that the ship comes from a place where no contagious distemper prevails, and that none of the crew, at the time of her departure, were infected

with any such distemper. 1 *Marsh. on Ins.* 319, b. 1, ch. 8, § 4.

BILL OF INDICTMENT. In criminal law. A written accusation of one or more persons, of some crime or misdemeanor, preferred to, and presented upon oath by a grand jury. If the jury, on examination, find this accusation to be supported by evidence, they write upon it the words "a true bill," (anciently *billa vera*), and this is called *finding an indictment.* 4 *Bl. Com.* 302, 305, 306. 4 *Steph. Com.* 369—374. See *Indictment.*

BILL OF LADING. [L. Lat. *billa exonerationis, apocæ oneratoriæ, literæ recognitionis;* Fr. *connoissement, police de chargement.*] In mercantile law. A written memorandum or instrument, signed (usually in triplicate) by the master of a vessel, acknowledging the receipt of goods on board, and undertaking (with certain exceptions,) to carry and deliver them to the person to whom they are addressed, (the consignee,) or his order, in as good condition as when received, for a certain remuneration or freightage.* It is, in other words, a contract for the conveyance of goods in a general ship, and though signed by the master only, binds the owners also. 3 *Kent's Com.* 206, 207. *Abbott on Ship.* 319, *et seq. Angell on Carriers*, § 223. *Smith's Merc. Law*, 175.

BILL OF MIDDLESEX. In old practice. A form of civil process, peculiar to the English Court of King's Bench, and by which personal actions in that court were formerly commenced. It was originally always founded on a plaint or bill of trespass, filed, or supposed to be filed in court, (see *Bill,*) and was a kind of *capias* directed to the sheriff of the county of Middlesex, and commanding him to take the defendant and have him before the king at Westminster, on a day prefixed, to answer to the plaintiff of a plea of trespass. *Boote's Suit at Law*, 36—42. It was termed a bill of *Middlesex*, because the court out of which it was issued usually sat in that county. 3 *Bl. Com.* 285. Once, when the court sat at Oxford, it was termed a bill of Oxfordshire. *Trye's Jus. Filiz.* 101. 3 *Steph. Com.* 404, note (*l*). It was abolished by the statute 2 Will. IV. c. 39.

BILL OF MORTALITY. A written statement or account of the number of deaths which have occurred in a certain district during a given time. Usually spoken of in the plural, as "bills of mortality." In some places, as in London, births as well as deaths are included.

BILL OF PARTICULARS. In practice. A written statement or specification of the particulars of the *demand* for which an action at law is brought, or of a defendant's *set-off* against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either voluntarily, or in compliance with a judge's order for that purpose. 1 *Tidd's Pr.* 596—600. 2 *Arch. Pr.* 221. 1 *Burr. Pr.* 432—434.

BILL OF PRIVILEGE. In old English practice. A kind of process which formerly was the established method of proceeding against attorneys and officers of courts. 3 *Bl. Com.* 289. 2 *Arch. Pr.* 118, 119. In form, it was the same as a declaration in actions by bill, except that instead of concluding, "and therefore he brings his suit," it concluded with the words, "and therefore he prays relief." *Id.* 119.

BILL OF RIGHTS. In constitutional law. A formal and public declaration or assertion, in writing, of popular rights and liberties, usually expressed in the form of a statute, or promulgated on occasions of revolution, or the establishment of new forms of government, or new constitutions. The English statute of 1 W. & M. st. 2, c. 2, is denominated κατ' ἐξοχήν, *the Bill of Rights.* 1 *Bl. Com.* 128. Several of the United States have incorporated formal bills of rights into their constitutions. See 2 *Kent's Com.* 1—11.

BILL OF SALE. In conveyancing. A deed or writing under seal, evidencing the sale of personal property, and conveying the title to it.* An assignment, in writing, of chattels personal. 2 *Steph. Com.* 104.

An instrument by which, in particular, the property in ships and vessels is conveyed. It is the true and proper muniment of title to a ship, and one which the maritime courts of all nations will look for, and in their ordinary practice require. Sir Wm. Scott, (The Sisters,) 5 *Rob. Adm. R.* 155, [142]. 3 *Kent's Com.* 130. See *Grand Bill of Sale.*

BILL SINGLE, and PENAL. A written engagement under seal, for the payment of money, either on demand, or at a future day, formerly in common use; the *penal* bill being framed with a penalty, and

the *single* bill, (which was the more usual form,) without. *Cro. Eliz.* 548. *Whishaw.* Single bills are still in use in some of the United States, as in Virginia, Mississippi and Florida. But they have been, for the most part, superseded by the modern bills and notes, as penal bills have been by bonds or obligations. See *Single bill.*

BILL OF STORE. In English law. A kind of license, granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, free of duty. *Cowell. McCulloch's Dict.* Act 3 & 4 Will. IV. c. 52.

BILL OF SUFFERANCE. In English law. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another, without paying custom. *Cowell.*

BILLA. L. Lat. In old practice and pleading. Bill; a bill. *Spelman. Dyer,* 51, (Fr. ed.) The same as *narratio,* (q. v.) 12 *Mod.* 399. See *Bill.*

BILLA CASSETUR, or QUOD BILLA CASSETUR. (That the bill be quashed.) In practice. The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill,* (that is, where the suit is commenced by *capias,* and not by original writ). 2 *Arch. Pr.* 4.

BILLA EXCAMBII, or ESCAMBII. L. Lat. A bill of exchange. See *Litera cambii.*

BILLA EXONERATIONIS. L. Lat. In old English law. A bill of lading. 5 *Mod.* 137.

BILLA VERA. L. Lat. (A true bill.) In old practice. The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. 4. *Bl. Com.* 306. *Doct. & Stud.* dial. 2, c. 54, p. 279. See *Indictment.*

BILLE. L. Fr. In old practice. Bill; a bill; a bill of exceptions. *Faitz* bille, *et nous l'ensealeromus;* make a bill, and we will seal it. *Yearb.* M. 7 Edw. III. 47. *Faits un bill' de vostre exception, et nous voulons enseeler.* H. 4 Hen. VI. 14.

BILLET DE CHANGE. Fr. In French law. A billet or bill of exchange. Pothier distinguishes this from a proper bill of exchange, (*lettre de change.*) The *billet de change,* he says, is when the party with whom the contract is made is not at present prepared to give the bill of exchange agreed on, and merely gives a *billet,* by which he engages hereafter to furnish one on the proper place. *Pothier de Change,* n. 4, cited in *Story on Bills,* § 2, note 1.

BILLETA, *Billetus.* L. Lat. In old English law. A bill or petition exhibited in parliament. *Cowell.*

BILLETTUM. L. Lat. In old English law and practice. A billet, bill or memorandum of the delivery of a writ, which the statute of Westminster 2, (c. 39,) allowed parties to require of the sheriff or under-sheriff to whom it was delivered. *Fleta,* lib. 2, c. 67, § 18. 2 *Inst.* 449, 451.

BILLO, *Billio.* L. Lat. In old English law. Bullion. *Mem. in Scacc.* M. 9 Edw. I. 2 *How. State Trials,* 118.

ΒΙΛΛΟΣ, Βίλλος. Græco-barb. A bill. *Spelman,* voc. *Billa.* Meursius doubts if this be not a corruption of the Gr. βίβλος, a book. But Spelman makes it to be a word framed from the Sax. *bille.* See Βιβλίον.

BIND. [Lat. *ligare, obligare, tenere.*] Anciently, *tie.* See *Tie.* "Bind," "bound." Formal words in bonds. "Held and bound." See *Hold.*

BIPARTITE. Fr. and Eng. [from Lat. *bipartitus,* from *bis,* twice or double, and *partitus,* divided.] In conveyancing. Of two parts; divided in two. *Litt.* sect. 370. An indenture was formerly called *bipartite,* when there were (as was most commonly the case,) two parties, and two parts of the deed. *Co. Litt.* 229 a. *Shep. Touch.* 50. The word is now nearly obselete, but *tripartite,* (of three parts,) and *quadripartite,* of four parts, qq. v.) are still used.

BIPENNIS. Lat. In old Scotch law. A halbert; a pole-ax; a Jeddart staff. 1 *Pitc. Crim. Trials,* part 2, p. 20.

BIRLAWS, *Burlaws, Byrlaws.* [from Germ. baur, a countryman, and *law.*] In Scotch law. Laws made by country people or husbandmen, respecting rural affairs. *Skene in Reg. Maj.* lib. 4, c. 39, § 8. *Spelman,* voc. *Bellagines.* Supposed by Spelman to be the same with *by-laws.* See *Burlaws.*

BIRRETUM, *Birretus.* L. Lat. In old English practice. The cap or coif of a judge or serjeant at law. *Spelman.* A cap of linen or silk fitting close to the head, (*forma ipsius cranii,*) mentioned by Fortescue as always worn by the justices while sitting in the king's court, being the first and principal badge of distinction

with which serjeants at law were decorated at their creation. It was never laid aside, either by the justices or serjeants, so as entirely to uncover the head, even in the presence of royalty itself. *Fortesc. de Laud. LL. Angl.* c. 50.

BIS. Lat. Twice.

Bis petitum; a thing twice demanded. *Cro. Jac.* 21.

Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est; good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once. 9 *Co.* 53. A party is not allowed to receive more than one satisfaction for the same debt or demand. See **Bona fides non**, &c.

Nemo debet bis vexari pro eadem causa. No man ought to be twice vexed [troubled or harassed, as by a bailable suit,] for the same cause. 5 *Co.* 61. 1 *Tidd's Pr.* 174.

BISACUTA. Lat. In old English law. An axe or bill. *Bract.* fol. 144 b. *Fleta*, lib. 1, c. 31, § 7.

BIS COCTUS. Lat. and L. Lat. In old English law. Twice baked. A term applied to that kind of bread called *simenel* or *symenel*. *Fleta*, lib. 2, c. 9, § 1. Hence the modern *biscuit*, or, as it is in Britton, *deux foits quit*. *Britt.* c. 30.

BISEXTUS. Lat. *Dig.* 50. 16. 98. See *Bissextus*.

BI-SCOT. In old English law. A fine imposed for not repairing banks, ditches and causeways. *Blount. Whishaw.*

BISHOP. [Lat. *episcopus.*] In English ecclesiastical law. The chief of the clergy within a diocese, subordinate to the archbishop of the province, to whom he is sworn to pay due obedience. 3 *Steph. Com.* 65, and notes. He is styled the archbishop's *suffragan*, or assistant. *Id.* 63, note (*i*). *Co. Litt.* 94 a. *Hargr. Note* 96. In the common law he is generally called the *ordinary*. 1 *Chitt. Bl. Com.* 383, note. His dignity is usually called a *see*, (*sedes*,) and his church a cathedral. 3 *Steph. Com.* 65.

BISHOPRIC. In ecclesiastical law. The diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 *Bl. Com.* 337—382.

BISSEXTILE. [Lat. *bissextilis*, from *bis*, twice, and *sextilis*, the sixth.] Leap year is so called because, in the Roman calendar, from which it is derived, the *sixth* day before the calends of March (called *sexto calendas Martii*,) was *twice* reckoned, viz. on the 24th and 25th of February, (or rather, the 24th was reckoned twice,) in every fourth year, making such year properly to consist of 366 days. *Cowell. Blount.* 2 *Bl. Com.* 141. The same object is now attained by adding a day at the end of the month of February. *Brande.*

By the statute *De anno bissextili*, 21 Hen. III. it was enacted that the increasing day (*dies excrescens*) in the leap year, and the day next before, shall be accounted but one day. *Fleta*, lib. 6, c. 11, §§ 2, 3. *Termes de la Ley.* This is still the law, and a similar provision has been expressly enacted in some of the United States. 1 *N. Y. Rev. St.* [606], 615, § 3. In others, the English statute is still in force. 5 *Indiana R.* 196. Bracton devotes a considerable space in his tract "On Essoins," to the explanation of the bissextile year, which he calls the greater (*annus major*,) as distinguished from the lesser or usual year. *Bract.* lib. 5, tr. 2, c. 13, fol. 359.

BISSEXTUS. Lat. [from *bis*, twice, and *sextus*, sixth.] In old English law. The added, repeated or increasing day (*dies excrescens*,) of a leap year; in the Roman calendar, the *sixth* day before the calends of March, *twice* computed. See *Brissonius.* It was made up of the odd hours and minutes over 365 days, which had been disregarded in the three preceding years, in addition to those of the fourth year, (*ex minutiis quatuor annorum.*) *Bract.* fol. 359 b.

BLACK ACRE and WHITE ACRE. Fictitious names applied to pieces of land, and used as examples in the old books. *Perk.* c. 2, s. 136. *Id.* c. 4, s. 297.

BLACK ACT. In English law. The statute of 9 Geo. I. c. 22; so called from the circumstance of its passage having been occasioned by some devastations committed near Waltham, in Hampshire, by persons in disguise, or with their faces *blacked.* 4 *Bl. Com.* 245. Repealed by statute 7 & 8 Geo. IV. c. 27. 4 *Steph. Com.* 174 note (*a*).

BLACK ACTS. In Scotch law. The acts of the five James's, with those of Mary's reign, and of James VI. down to 1586 or 1587. So called from the circumstance of their being printed in the old *black-letter*, or, as Bell terms it, "the Saxon character." *Barringt. Obs. Stat.* 186. *Bell's Dict.*

BLACK BOOK OF THE ADMIRALTY. In English law. An ancient repository of admiralty law, containing, besides the laws of Oleron at large, a view of the crimes and offences cognizable in the admiralty; and also occasional ordinances and commentaries on matters of prize and maritime torts, injuries and contracts. It is generally agreed to have been originally compiled in the reign of Edward III., though it contains considerable additions of later periods. It has always been deemed of the highest authority in matters concerning the admiralty. Story, J. 2 *Gallison's R.* 404. *Id.* 1 *Sumner's R.* 555. Kent, C. 16 *Johns. R.* 456. *Molloy de Jur. Mar.* 104.

BLACK BOOK OF THE EXCHEQUER. [L. Lat. *Liber Niger Scaccarii.*] In English law. An ancient book in the Exchequer, containing a miscellaneous collection of charters, treaties, conventions, the number of hides of land in several counties, escuages, and the like. It is commonly attributed to Gervase of Tilbury. 1 *Reeves' Hist. Eng. Law*, 220, note. The Red Book of the Exchequer (q. v.) is a record of similar character. *Id. ibid.*

BLACK BOOK OF HEREFORD. In English law. An old record, frequently referred to by Cowell and other early writers.

BLACK MAIL. A rent or tribute formerly paid by the poorer inhabitants of some of the northern counties of England to some powerful Scottish border chieftain (*potenti alicui Scoto limitaneo,*) in order to be protected from the depredations of the Scottish border thieves, rievers or moss troopers. *Spelman.* Protection-rent, or protection money. *Scott's Minstrelsy of Scott. Border*, Introd. Sometimes paid to the rievers themselves. *Ersk. Inst.* b. 4, tit. 4, § 64. *Bell's Dict.*

*** The word *mail*, in this compound, is derived by some from the Fr. *maille*, a link of mail, or small piece of money. There is better reason, however, for regarding it as a Scotch term, signifying a *rent*, or stated payment, which sense it has in the Scotch *burrow meals*, or *burrow-mealis*,(borough rents.) See *Burrow-mealis.* This makes the whole word synonymous with *black rent*, in which sense it is used in the old books. *Stat.* 9 *Edw.* III. c. 4. *Blount.* It was called *black* mail from its being generally paid in baser money or in provisions, (*ære vel opsoniis,*) instead of silver. *Spelman. Termes de la Ley.*

BLACK RENTS. [L. Lat. *redditus nigri.*] In old English law. Rents reserved in work, grain, provisions, or baser money, in contradistinction to those which were reserved in *white* money or silver; which were termed white rents, (*redditus albi*), or blanch farms. *Tomlins. Whishaw.* See *Blanch farms.*

BLADA, plur. of *Bladum.* L. Lat. [L. Fr. *bleds, blees, bleez.*] In old English law. Corn or grain growing, (*segetes in herba*); growing crops of grain. *Spelman.* 2 *Inst.* 81. *Glanv.* lib. 2, c. 3. *Bract.* fol. 96. 222 b, 223 b. Blada *nondum a solo separata;* crops not yet severed from the soil. *Id.* fol. 217 b. *Quare* blada, *et germina vinearum—conculcavit*, &c.; wherefore he trod down the crops and germins of vines, &c. *Reg. Orig.* 95. According to Lord Coke, *blada* is taken for all manner of corn or grain, or things annual, coming by the industry of man, as hemp, flax, &c. 2 *Inst.* 81. *Keilw.* 125.

Grain after it has been harvested, or severed from the soil, (*blada à solo separata.*) *Bract.* fol. 217 b. Blada *in garbis;* grain in swathes or straw. *Reg. Orig.* 94 b, 96. Blada *vel alia catalla;* grain or other chattels. *Mag. Cart.* 9 Hen. III. c. 19. See *Bladum.*

BLADARIUS. L. Lat. [from *blada* or *bladum*, qq. v.] In old English law. A corn-monger; a meal-man or corn-chandler; a bladier, or engrosser of corn or grain. *Blount.* 2 *Inst.* 81.

BLADIER. See *Bladarius.*

BLADUM, pl. *Blada.* L. Lat. [Sax. *blæd;* L. Fr. *bled, ble.*] In old English law. Corn or grain; especially a growing crop. *Spelman. Bract.* fol. 223 b, 300 b. *Quo* blado *inbladata fuerint;* with what grain they have been sown. *Fleta*, lib. 2. c. 41, § 1.

Grain cut, or harvested. *Una mensura* bladi; one measure of grain. *Magna Charta*, 9 Hen. III. c. 25. The plural *blada* (q. v.) is the more common form of this word.

BLAMED, *Blasmed.* L. Fr. Infamous. *LL. Gul. Conq.* ll. 16, 17.

BLANCH FERME, *Blanch fearme, Blanch firme, Blanch farm.* [L. Lat. *alba firma, firma blanca.*] In old English law. White farm, or white rent, (*reditus albus*); rent paid in silver and not in cattle. *Spelman*, voc. *Firma alba.* Rents reserved in silver, or white money, were anciently called *white rents, blanch farms, redditus*

albi; in contradistinction to rents reserved in work, grain, or baser money, which were called *redditus nigri*, or *black-mail.* 2 *Bl. Com.* 42. 2 *Inst.* 44. Lord Bacon calls them *blanch rents. Works*, iv. 132. See *Alba firma, Farm.*

BLANCH (or BLENCH) HOLDING. In Scotch law. A kind of tenure in which the vassal paid a small duty to the superior in full of all services, as an acknowledgment of his right, either in money, or in some other substance; as a penny money, a pair of gilt spurs, a pound of wax, or of pepper, &c., *nomine albæ firmæ* (in the name of white farm.) *Ersk. Inst.* b. 2, tit. 4, § 7. *Bell's Dict.* voc. *Holdings.* Considered by Blackstone the same with the *blanch farms* of the English law. 2 *Bl. Com.* 42, note (*d*). See *Blanch ferme.*

BLANC, *Blank.* [L. Lat. *blanca.*] In old English law. A silver coin, of the value of 8*d.* coined in France by Henry V. in the eighth year of his reign; called *blanc* (*white,*) to distinguish it from a gold coin called a *salut*, or *salus*, struck about the same time. *Spelman. Stow's Annals*, 586.

Money paid by weight, and not by tale. *Spelman.* See *Blancus.*

BLANCUS. L. Lat. [from Fr. *blanc*, white.] In old law and practice. White, as paper or parchment is, when there is no writing or other mark upon it; otherwise called *albus.* See *Album breve.* Hence the modern term *blank.*

Plain or smooth, as silver money that has no impression, or from which the impression has been worn.* *Solidi blanci;* blank or plain shillings. 3 *Mon. Ang.* 352. *Triginta lib. sterlingorum blancorum;* thirty pounds of blank sterlings. 2 *Id.* 31. This was undoubtedly a kind of silver money that was paid by weight, and not by tale, or count, (*quod vel ad ponderis valorem persolutum est, vel non in pecuniis numeratis.*) *Spelman*, voc. *Blanca.* Whether *blancus* denotes that this money was uncoined, or that it was coined money worn smooth, does not clearly appear. The words *blanc* and *blank* occur in English dictionaries, in the sense of a piece of metal in the mint *ready for coining. Bailey's Dict.*

BLANK. [L. Lat. *blancus.*] A void space in writing; a part of a deed, record, or other instrument not written upon, or filled up. See *Blancus.*

BLANK BAR. In pleading. The old name of a plea in bar, put in in an action of trespass, to oblige the plaintiff to assign the certain place where the trespass was committed; otherwise called *common bar. Cro. Jac.* 594. *Blount.* It was chiefly used by the practisers in the Common Bench. *Id.*

BLANK INDORSEMENT. The indorsement of a bill of exchange or promissory note, by merely writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called *blank*, because a *blank* or space is left *over* it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement *in blank.* 3 *Kent's Com.* 89. *Story on Prom. Notes*, § 138. Lord Mansfield, 1 *W. Bl.* 297. See *Indorsement.*

BLASPHEMY. [Lat. *blasphemia*, from Gr. βλασφημία, evil speaking or reviling.] In criminal law. An offence against religion, either by denying the being or providence of God; or by contumelious reproaches of our Saviour Christ; or by profane scoffing at the holy scripture, or exposing it to contempt and ridicule; Christianity being part of the laws of England.* 4 *Bl. Com.* 59. 4 *Steph. Com.* 233, 234. 2 *Hume on Crimes*, 558. Blasphemy was made a capital offence by the 77th novel of Justinian, c. 1, § 2.

In the United States, also, the Christian religion is received as part of the common law, and to revile it publicly and blasphemously, or to blaspheme its author is an indictable offence. 8 *Johns. R.* 290. *Thacher's Crim. Cas.* 346. 11 *Serg. & Rawle*, 394. Story, J. 2 *Howard's R.* 127, 198. *Wharton's Am. Crim. Law*, 4, 536. 20 *Pick. R.* 206. Shaw, C. J. *Id.* 213.

The use of this word is, in modern law, exclusively confined to sacred subjects; but *blasphemia* and *blasphemare* were anciently used to signify the reviling by one person of another. *Nov.* 77, c. 1, § 1. *Spelman.*

BLED, *Ble.* L. Fr. [Lat. *bladum.*] In old English law. Corn or grain. *Litt.* sect. 68. *Bleds*, (pl.) *Yearb.* M. 3 Hen. VI. 14. *Bleez.* T. 1 Edw. II. 8.

BLEMISSEMENT. L. Fr. In old English law. Blemishment; disparagement or degradation. *Yearb.* M. 5 Edw. III. 131.

Infringement; diminution. *Kelham.*

BLENCH, *Blench Holding.* See *Blanch holding.*

BLOCKADE. In international law. The investment of a seaport by a competent naval force, with the view of cutting off all communication of commerce.* 1 *Kent's*

Com. 144—146. A sort of circumvallation round a place, by which all foreign connexion and correspondence is, as far as human power can affect it, to be cut off. Sir Wm. Scott, (Vrow Judith,) 1 *Rob. Adm. R.* 126. It is not necessary, however, that the place should be invested by land as well as by sea, in order to constitute a legal blockade; and if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communications. 1 *Kent's Com.* 147.

BLODWITA. L. Lat. [Sax. *blodwyte.*] In Saxon and old English law. An amerciament for the shedding of blood. *Spelman.* Fleta uses the Sax. *blodwyte.* Lib. 1, c. 47, § 15. See *Bloodwit.*

BLOOD. [Lat. *sanguis;* L. Fr. *sanke.*] Kindred; relation by natural descent from a common ancestor; consanguinity. *Webster.* A person is said to be *of the blood* of another, when he is descended from, or collaterally related to him. See *infra.*

A person or persons so related; as *the whole blood, the half blood,* (qq. v.)

Blood, in American law, includes the *half* blood as well as the whole blood. 2 *Peters' R.* 58. A person is, with the most strict propriety of language, affirmed to be *of the blood* of another, who has any, however small a portion of the same blood, derived from a common ancestor. Story, J. *Id.* 87.

In the case last referred to, Mr. Justice Story observed, that the word *blood* was used in the same sense, in the English common law. There are passages, however, in which it seems to be used in the stricter sense, implying whole blood exclusively. See 2 *Chitt. Bl. Com.* 227. *Id.* 220, note. This was before the statute 3 & 4 Will. IV. c. 106. 1 *Steph. Com.* 385, 387. See *Half blood, Whole blood.*

BLOODWIT, *Blodwite, Blodwyte.* [L. Lat. *blodwita, blotwyta;* from Sax. *blod,* blood, and *wite,* an amercement.] In Saxon law. An amerciament for bloodshed. (*mulcta effusi sanguinis.*) *Spelman.* Called by Scotch writers *bluidveit,* or *bludueit.* *Skene de Verb. Signif.* A customary fine paid as a composition and atonement for the shedding or drawing blood. *Cowell.* *To have bloodwit,* in old charters, was to have the privilege of taking cognizance of the crime, and of receiving the fines resulting from it. *Spelman,* voc. *Blodwita.*

A privilege or immunity from amercement for bloodshed. *Fleta,* lib. 1, c. 47, § 15.

BLOODY HAND. In forest law. The having the *hands* or other parts *bloody,* which, in a person caught trespassing in the forest against venison was one of the four kinds of circumstantial evidence of his having killed deer; although he was not found in the act of chasing or hunting. *Manwood. Cowell.* See *Backbear.* This corresponds with the Scotch phrase, *red hand. Blount.*

BOARDER. One who has food and lodging in another's family or house, for a stipulated price. A *boarder* at an inn or hotel is distinguished from a *guest.* 26 *Vermont R.* 316. 26 *Alabama R.* 371. A boarder is an inhabitant of the place, or townsman, who resides permanently at the inn or hotel. Redfield, C. J. 26 *Vermont R.* 343. See *Guest.*

BOAT, held not to be a ship or vessel. 5 *Mason's R.* 120, 232. A canal boat not a ship or vessel. 5 *Hill's* (N. Y.) *R.* 34.

In the civil law, a ship's boat (*scapha navis,*) was held not to pass by the sale of a ship with her tackle, (*cum instrumento.*) *Dig.* 33. 7. 29. *Id.* 21. 2. 44. See *Id.* 6. 1. 31.

BOC. Sax. A book, or writing; a deed or charter. *Boc land,* (q. v.); deed or charter land. *Land boc;* a writing for conveying land; a deed or charter; a land-book. See *Land boc.*

BOCERAS. Sax. A scribe, notary or chancellor among the Saxons. *Crabb's Hist. Eng. Law,* 28. 2 *Hickes' Thes.* 46. *Barringt. Obs.* 404, note [*l*].

BOC HORDE. Sax. [*quasi bookhoard.*] A place where books, writings or evidences were kept. *Cowell.*

BOC LAND. Sax. [*quasi book-land;* L. Lat. *terra libraria* or *hæreditaria.*] In Saxon law. Land held and conveyed by writing, *boc,* deed or charter; deed land, or charter land; so called to distinguish it from *folc land,* which was held without writing. *Spelman. Cowell.* 1 *Reeves' Hist. Eng. Law,* 5. 4 *Kent's Com.* 441, 442. Land severed from the folc land, and converted into an estate of perpetual inheritance.

According to Sir W. Blackstone, it was land held by deed under certain rents and services, and in effect differed nothing from the free socage lands. 2 *Bl. Com.* 90. And Spelman, in explaining the epithet *hæreditaria,* observes that it could neither be given away nor sold, but was to be left strictly to the heirs, (*nec dari licuit nec*

vendi, sed hæredibus *relinquenda erat.*) Later researches, however, have established the fact that *boc land* was in its nature *allodial*, and that the owner of it, unless fettered by some restriction imposed by those under whom he claimed, had the absolute power of alienation and disposition by gift and sale, and by will. *Somner's Gavelk.* 88, 89. *Allen's Royal Prerog.* 139, *et passim.* 1 *Spence's Chancery*, 20, 21. See *Folc land.*

BODIN IN FEIR OF WEIR. O. Sc. In old Scotch Law. In warlike array. 1 *Pitc. Crim. Trials*, part 1, p. 8.

BODMERIE, *Bodemerie, Boddemerey.* Belg. and Germ. Bottomry, (q. v.) *Loccenius de Jur. Mar.* lib. 2, c. 6, § 1.

BODY. See *Corpus.*

BODY OF A COUNTY. See *Corpus comitatus.*

BODY CORPORATE, (or INCORPORATE.) [L. Lat. *corpus corporatum.*] A corporation; so called, because the persons composing it are made into a *body.* *Co. Litt.* 250 a. Said to be the most correct as well as the earliest name of a corporation in English law. *P. Cyclopædia*, voc. *Corporation.*

BODY POLITIC. A term applied to a corporation, which is usually designated as a *body corporate and politic.* A body to take in succession, framed by *policy.* *Co. Litt.* 250 a. Particularly applied, in the old books, to a corporation sole. *Litt.* sect. 413. *Termes de la Ley*, voc. *Corporation*, (*Bodies politic.*)

BOILLOURIE, *Boilary, Bullary.* L. Fr. and Eng. [L. Lat. *salina.*] In old English law. A salt-house or salt-pit, where salt is *boiled.* *Co. Litt.* 4 b. *Cro. Jac.* 150.

BOIS, *Boys, Boyes.* L. Fr. [L. Lat. *boscus*, q. v.] Wood. *Haut bois;* high wood. *Sub bois;* under-wood, or coppice. *Cowell*, voc. *Boscus.* *Perk.* c. 1, s. 116.

BOISTE. L. Fr. Box; a box. *Yearb.* M. 6 Edw. III. 28.

BOLTING. [from Sax. *bolt*, a house.] In English practice. A term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting*, which was a more formal and public mode of argument. *Cowell. Tomlins. Holthouse.*

BOMBARDA. L. Lat. [from *bombus*, Gr. βομβος, the sound of the discharge.] In old law. A gun or cannon. *Spelman. Bombardius;* a gunner. *Towns. Pl.* 214.

BON. Fr. and L. Fr. [from Lat. *bonus, bonum*, q. v.] In old English law. Good; sufficient in law. *Le brefe fuit tenu bon;* the writ was held good. *Yearb.* P. 3 Hen. VI. 20.

BON. Fr. In old French law. A royal order or check on the treasury, invented by Francis I. *Bon pour mille livres;* good for a thousand livres. *Steph. Lect.* 387.

In modern law. The name of a clause (*bon pour——;* good for so much,) added to a cedule or promise, where it was not in the handwriting of the signer, containing the amount of the sum which he obliged himself to pay. *Poth. Oblig.* part 4, ch. 1, art. 2, § 1.

BONA. Lat. [pl. of *bonum*, good; from *beare*, to make happy, (*beatum facere;*) to benefit, (*prodesse.*) *Dig.* 50. 16. 49.] In the civil law. Goods; property in general, including lands, (*prædia.*) *Dig.* 33. 2. 37. *Story's Confl. Laws*, § 375. See *Dig.* 50. 16. 21, 39, 49.

BONA. Lat. [plur. of *bonum*, not used; Fr. *biens.*] In old English law. Goods; personal chattels; moveable property. A term still used in modern law, as in the phrase *nulla bona*, (q. v.) and others. Like *biens*, it is said to be a more comprehensive term than *goods*, as it comprehends chattels *real*, as well as personal. *Co. Litt.* 118 b.

Bona et catalla; goods and chattels. *Fleta*, lib. 2, c. 64, § 1. This expression includes all personal things that belong to a man. Pollock, C. B. 16 *Mees. & W.* 68. *Blada, pannos, armaturam et alia* bona et catalla; grain, cloths, armour and other goods and chattels. *Mem. in Scacc.* T. 20 Edw. I. *Bona et merchandisæ;* goods and merchandizes. *Fleta, ubi supra.*

BONA CONFISCATA. Lat. In the civil law. Confiscated goods. Goods forfeited for offences were so called, because they belonged to the *fiscus*, or imperial treasury. 1 *Bl. Com.* 299. See *Fiscus.*

BONA FELONUM. Lat. In English law. Goods of felons; the goods of one convicted of felony. 5 *Co.* 110.

BONA FORISFACTA. Lat. In English law. Forfeited goods. *Hale's Anal.* sect. viii.

BONA FUGITIVORUM. Lat. In English law. Goods of fugitives; the proper goods of him who flies for felony. 5 *Co.* 109 b.

BONA MOBILIA. Lat. In the civil law. Moveable goods or personal chattels, as distinguished from *bona immobilia*. See 1 *P. Wms.* 249—284.

BONA NOTABILIA. L. Lat. In English ecclesiastical law. Notable goods; goods worthy of notice, or of sufficient value to be taken into account.* Goods of a party deceased, amounting in value, at least to five pounds.—If all the goods of the deceased lie, at the time of his death, within the same diocese or jurisdiction, a probate before the ordinary, or an administration granted by him are the only proper ones. But if the deceased had *bona notabilia*, or chattels to the value of a hundred shillings in two distinct dioceses or jurisdictions, then the will must be proved or administration taken out before the metropolitan of the province, by way of special prerogative. 2 *Bl. Com.* 509. *Shep. Touch.* 499, 500, and note. 2 *Steph. Com.* 237, 238. 1 *Chitt. Gen. Pr.* 523.

BONA PERITURA. Lat. Perishable goods.

BONA UTLAGATORUM. Lat. In English law. Goods of outlaws. *Hale's Anal.* sect. viii.

BONA VACANTIA. Lat. [*vacantia*, from *vacare*, to be empty, to want.] In the civil and common law. Goods wanting an owner; goods without an owner, or in which no one claims a property. *Inst.* 2. 6. 4. *Cod.* 10. 10. These, by the general rule of the common law, belong to the first finder, with the exception of royal fish, shipwrecks, treasure trove, waifs and estrays, which in England are the property of the sovereign. *Hale's Anal.* sect. viii. 1 *Bl. Com.* 298. 2 *Steph. Com.* 553, 554.

BONA WAVIATA. L. Lat. In English law. Waived goods; goods stolen, and *waived*, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 *Co.* 109 b. 1 *Bl. Com.* 296. See *Waviare*.

BONA FIDES. Lat. In the civil and common law. Good faith; honesty; sincerity. The opposite of *mala fides*, (q. v.) See *Bona fide*.

Equity, (*æquum et bonum.*) See *Brissonius*.

Bona fides non patitur ut bis idem exigatur. Good faith does not suffer the same thing to be demanded twice. *Dig.* 50. 17. 57. *Broom's Max.* [249,] note. **Bona fides exigit ut quod convenit fiat.** Good faith demands that what is agreed upon shall be done. *Dig.* 19. 2. 21. See *Id.* 19. 1. 50. *Id.* 50. 8. 2. 13.

BONA FIDE. Lat. [abl. of *bona fides*, (q. v.) L. Fr. *en bonne foy*; Span. *con buena fe.*] In good faith; honestly, without fraud, collusion, or deceit; really, actually, without pretence; innocently, ignorantly, without knowledge or notice.

This very common term, with the less frequent *bonæ fidei*, and *bona fides* from which both are formed, are derived from the civil law. *Inst.* 2. 6. pr. 1, 2. *Id.* 2. 8. 2. *Id.* 2. 9. pr. 5, 6. *Dig.* 6. 2. 7. 11. *Calv. Lex. Brissonius.* See *Bonæ fidei.* A very early and prominent instance of its use in England occurs in King John's Magna Charta. *Quod hæc omnia supradicta* bonâ fide *et sine malo ingenio observabantur;* that all these things aforesaid shall be observed in good faith and without evil design. *Mag. Cart. Johan.* ad fin. And see *Cart. Confirm.* 49 Hen. III.

BONA FIDE PURCHASER. A purchaser in good faith. See 2 *Kent's Com.* 512, *et seq.* 4 *Id.* 463, *et seq.* "A *bonâ fide* purchaser for a valuable consideration, without notice," is one who is the purchaser of the legal estate or title; and a purchaser of a mere equitable estate is not embraced in the definition. 24 *Mississippi R.* 208. Yerger, J. *Id.* 229.

BONÆ FIDEI. Lat. [gen. of *bona fides*, q. v.] In the civil law. Of good faith; in good faith. This is a more frequent form than *bonâ fide*, occurring in the phrases *bonæ fidei* actions, *bonæ fidei* contracts, *bonæ fidei emptor*, *bonæ fidei possessor*, (qq. v.)

BONÆ FIDEI ACTION. See *Actio bonæ fidei.*

BONÆ FIDEI CONTRACTS. Those contracts in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties. 1 *Kames' Equity*, 200.

BONÆ FIDEI EMPTOR. A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another, or supposed that the seller had a right to sell it. *Dig.* 50. 16. 109. See *Id.* 6. 2. 7. 11.

BONÆ FIDEI POSSESSOR. A possessor in good faith. One who believes that no other person has a better right to the possession than himself. 1 *Mackeld. Civ. Law*, 244, § 234. **Bonæ fidei possessor in id tantum quod ad se pervenerit tenetur.**

A *bona fide* possessor is bound for that only which has come to him. 2 *Inst.* 285. See *Grot. de Jur. Bell.* lib. 2, c. 10, § 3, *et seq.*

BONÆ MEMORIÆ. L. Lat. Of good memory. *Bract.* fol. 14 b. Generally associated with the phrase *sanæ mentis*, (of sound mind.) *Id. ibid.*

BONA GESTURA. L. Lat. [*gestura*, from *gerere*, to bear.] In old English law. Good abearing, or good behaviour. *Jacob. Whishaw.* See *Abearing.*

BONA GRATIA. Lat. In the Roman law. By mutual consent; voluntarily. A term applied to a species of divorce where the parties separated by mutual consent; or where the parties renounced their marital engagements without assigning any cause, or upon mere pretexts. *Dig.* 24. 1. 62. *Id.* 40. 9. 14. 4. *Cod.* 5. 13. 16. *Nov.* 22, c. 4. *Tayl. Civ. Law*, 361, 362. *Calv. Lex.*

BONA PATRIA. L. Lat. In Scotch law. The good country; good men of the country; good neighbors. A name given to an assise or jury. *Skene de Verb. Signif.* citing *Reg. Maj.* lib. 1, c. si vero, 29. *Cowell. Whishaw.* See *Boni homines, Patria.*

BOND. [Lat. *obligatio, scriptum obligatorium.*] A deed or instrument under seal, by which a person *binds* or obliges [*obligat*] himself, his heirs, executors and administrators, to pay a certain sum of money to another. The party thus binding himself is called the *obligor;* the party to whom he is bound, the *obligee;* and the instrument itself an *obligation* or writing obligatory. There is a *condition* usually, (and indeed in practice, invariably) added to the bond, that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force.* 2 *Bl. Com.* 340. 2 *Steph. Com.* 157. The sum mentioned in the obligatory part of the bond is termed the *penalty*, and is usually fixed at some high amount, much more than sufficient to cover any possible damage arising from non-observance of the condition. 2 *Steph. Com. ub. sup.* In money bonds, it is always fixed at double the amount intended to be secured.

All the definitions in the books describe a bond as a deed, or instrument *under seal*, and *sealing* has always been held to be a necessary requisite to its validity. *Com. Dig.* Obligation, (A.) Fait, (A. 2.) Kent, C. J. 5 *Johns. R.* 239, 244. The term *bond, ex vi termini*, imports a *sealed* instrument. *Harper*, 434. Cowen, J. 3 *Hill's* (N. Y.) *R.* 212. 2 *Serg. & R.* 502. 6 *Vermont R.* 90. 1 *Blackf. R.* 241. *U. S. Digest*, Bond, I. But a bond without a seal has been held good by the Supreme Court of the United States. 15 *Peters' R.* 290, 315.

BOND. [L. Lat. *bondus.*] In old Scotch law. A bond-man; a slave. *Skene de Verb. Sign.* voc. *Bondagium.*

To BOND. To give bond for, as for duties on goods; to secure payment of duties, by giving bond. *Bonded;* secured by bond. Bonded goods are those for the duties on which, bonds are given. See *Andrews on the Revenue Laws*, chap. 5.

BONDAGIUM. L. Lat. In old Scotch law. Bondage; villeinage; slavery or servitude. *Skene de Verb. Sign.* Skene quotes the Quoniam Attachiamentorum, (c. de brevibus, 31, 15,) for a curious species of bondage by the forelock, (*bondagium per ænteriores crines capitis,*) which is "quhen ony freeman renuncis his libertie, and makis himself ane bond or slave to ane great man in his courte, and makis tradition and delivering of himselfe be giving ane grip of the haire of his forehead."

BOND TENANTS. In English law. Copyholders and customary tenants are sometimes so called. 2 *Bl. Com.* 148.

BONDI. L. Lat. In old Scotch law. Bondmen or villeins. *Reg. Majest.* lib. 2, c. consequenter, 13.

BONE GREE, *Bon gree.* L. Fr. In old English law. Good will; accord; consent. *De son bone gree;* freely, of his own accord. *Rot. Parl.* 4 Hen. IV. See *Dyer*, 49, (Fr. ed.) *Bon gree ou mal gree;* with the consent, or against the consent. *Britt.* c. 41. See *Gree.*

BONES GENTS. L. Fr. In old English law. Good men (of the jury); persons qualified to act as jurors. *Mirr.* c. 1, § 3. 9 *Co.* pref. *Sil eit returne* bones gents, &c. *et sil est returne altres, vostre challenge est à les testes;* if he have returned good men, &c. and if he have returned others, your challenge is to the polls. *Yearb.* T. 5 Edw. III. 21.

BONI HOMINES. L. Lat. [L. Fr. *bones gents, notables.*] In old European law. Good men; a name given, in early European jurisprudence, to the tenants of the lord, who judged each other in the lord's courts. 3 *Bl. Com.* 349. Blackstone, speaking of the origin of juries, says that all the nations which adopted the feudal system, as Germany, France and

Italy, had a tribunal composed of twelve *good men* and true (*boni homines*,) usually the vassals or tenants of the lord, being the equals or peers of the parties litigant. *Id. ibid. Esprit des Lois*, liv. 30, c. 18. This term has survived in the courts, to the present day. See *Good men.*

Boni judicis est ampliare jurisdictionem. It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. Wright, J. 1 *Wils.* 284. Wilmot, C. J. 2 *Id.* 350. Nares, J. 2 *W. Bl.* 746. 2 *Florida R.* 593. It is the duty of a court to enlarge the legal remedy, if necessary, (without usurping jurisdiction,) in order to attain the justice of the case. *Broom's Max.* 36. It is the duty of a judge, when requisite, to extend the limits of his jurisdiction. *Id.* [56.] 9 *Mees. & W.* 818. According to Lord Mansfield, the true text of this maxim is *Boni judicis est ampliare justitiam.* 1 *Burr.* 304. See *Ampliare.*

Boni judicis est judicium sine dilatione mandare executioni. It is the duty of a good judge to cause judgment to be executed without delay. *Co. Litt.* 289.

Boni judicis est lites dirimere. It is the duty of a good judge to put an end or stop to lawsuits; [to discourage litigation]. 4 *Co.* 15. **Boni judicis est lites dirimere, ne lis ex lite oriatur.** It is the duty of a good judge to put an end to litigation, that suit may not grow out of suit. 5 *Co.* 31 a. **Boni judicis est causas litium dirimere.** It is the duty of a good judge to remove the causes of litigation. 2 *Inst.* 304. Legal remedies should be so applied as at once to put an end to the grievance complained of, without giving occasion to new suits for the same matter.

BONIS CEDERE. Lat. In the civil law. To make a transfer or surrender of property, as a debtor did to his creditors. *Cod.* 7. 71.

BONO ET MALO. See *De bono et malo.*

BONORUM CESSIO. See *Cessio bonorum.*

BONORUM POSSESSIO. Lat. In the civil law. Possession of goods; called in Greek (*πραιτωρία διαδοχή*), prætorian succession. The right of pursuing and retaining the property of a person deceased, (*jus persequendi retinendique patrimonii, sive rei, quæ cujusque, quum moritur, fuit,*) not strictly due by the civil law, but granted by the prætor from a principle of equity. *Dig.* 37. 1. 3. 2. *Inst.* 3. 9. [10.] *Cooper's Notes, in loc. Heinec. Elem. Jur. Civ.* lib. 3, tit. 10, §§ 714, 715. *Halifax Anal.* b. 2, c. 11, n. 1. A species of succession resembling the modern right of administration. *Id.* n. 8.

BONUM. Lat. Goodness; virtue. This word is constantly associated with *æquum*, as in the phrase *ex æquo et bono*, (q. v.); though it is not always distinguished from it in signification. For its meaning in the civil law, see *Brissonius.*

A good; an advantage or benefit. See *infra.*

Bonum defendentis ex integra causa; malum ex quolibet defectu. The success of a defendant depends on a perfect case; his loss arises from some defect. 11 *Co.* 68.

Bonum necessarium extra terminos necessitatis non est bonum. A good thing required by necessity is not good beyond the limits of such necessity. *Hob.* 144. A maxim applied to *commendams* in certain cases.

BONUS. Lat. In old English law. Good; good in law; unexceptionable. *Bonus homo;* a good man. The same with *probus homo*, (q. v.) But the word more commonly occurs in the plural. *Boni homines*, (q. v.) good men. *Boni summonitores;* good summoners. *Fleta*, lib. 4, c. 5, § 10.

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert. A good judge judges (or decides) according to equity and virtue, and prefers equity to strict law. *Co. Litt.* 24 b. Buller, J. 4 *Term R.* 344. *Broom's Max.* 37, [57.]

BONUS VIR. Lat. In the civil law. A good man; an honest, upright man; a man of integrity. *Brissonius.*

BONUS. A premium given for a loan. "A definite sum to be paid at one time, for a loan of money for a specified period, distinct from and independently of the interest." 24 *Connecticut R.* 147.

A premium paid for a charter or other privilege granted to a company. *Webster.*

BOOK. [from Sax. *boc*, (q. v.); Lat. *liber*, or more properly, *codex.*] Any printed literary composition, though contained in a single sheet of paper. See Clementi *v.* Golding, 2 *Campb.* 25. Lord Ellenborough, *Id.* 30. Hime *v.* Dale, *Id.* 27, note (*b*). 1 *W. Bl.* 121, note.

A printed composition bound, that is, consisting of several printed sheets of paper folded and bound together; a volume. A

collection of printed sheets put together so as to form leaves and pages of a uniform shape and size. Hence the expression "book form." This is the general and popular meaning of the word.

A collection of sheets bound together, in book form, containing manuscript entries. Of this description are the *account books* of merchants, minute books of courts, &c.

A collection of blank sheets bound together, in book form, and intended to contain manuscript entries. The *blank books* of stationers belong to this class.

In practice, the name of *book* is given to several of the more important papers prepared in the progress of a cause, though entirely written, and not at all in the book form; such as demurrer-books, error-books, paper-books, &c. See the argument of Erskine, for the plaintiff, in Hime *v.* Dale, 2 *Camp.* 27—29, note (*b*). These, however, are now frequently printed.

In the Roman law, the word *liber*, generally translated "book," signified a collection of manuscript sheets fastened together, and rolled up so as to form a *volume*, (*volumen*). Hence *liber* and *volumen* meant the same thing. *Dig.* 32. 52. A composition folded in the rectangular form of our "books," was called *codex*. See *Codex*, *Liber*, *Volumen*.

BOOK OF ACTS. A term applied to the records of a Surrogate's Court. 8 *East*, 187.

BOOKS OF ADJOURNAL. In Scotch practice. The original records of criminal trials. See *Adjournal*. 1 *Brown's R.* 4.

BOOK OF ASSISES. See *Liber Assisarum*.

BOOK OF FIEFS. [Lat. *Liber Feudorum*.] Properly BOOKS OF FIEFS, (*Feudorum Libri*, (q. v.) 3 *Kent's Com.* 496, note.

BOOK OF RATES. In English law. A table or tariff of duties or customs, sanctioned by the authority of parliament. 1 *Chitt. Bl. Com.* 316, and note.

BOOK CASES. Adjudged cases, reported and printed in the books, as distinguished from records and precedents. Jones, J. 2 *Show.* 278.

BOOK LAND. See *Boc land*.

BOON DAYS. In English law. A certain number of days in the year, in which the tenants of copy-hold lords performed base or corporal services for their lord; such as reaping or carrying his corn, tiling his houses, or thatching his barn, or ploughing his lands, &c. *Whishaw. Holthouse.*

BOOT. An old form of BOTE, (q. v.) "Fier-boot, cart-boot, and plow-boot." *Brownl. & Goldsb.* 170.

BOOTING or BOTING CORN. Certain rent corn, anciently so called. *Cowell. Blount.*

BORD. Sax. A house or cottage; a table. *Kennett's Par. Ant. Spelman*, voc. *Bordarii.*

BORDAGE. [L. Lat. *bordagium*, from Sax. *bord*, a house, cottage or table.] In old English law. A species of base tenure, by which certain lands, (termed *bord lands*,) were anciently held in England, the tenants being termed *bordarii*. *Cowell*, voc. *Bordagium. Blount.* See *Bordarii*, *Bord-lands.*

BORDARII, *Bordimanni*. L. Lat. [L. Fr. *bordier;* from Sax. *bord*, or Fr. *borde*, a house or cottage; a table.] In old English law. Bordmen; bordars, or cottagers. One of the classes of tenants or agricultural occupiers of land, mentioned in the Domesday Survey, and, with the exception of the *villani*, the largest. *Domesd.* Titt. *Norf. Middlesex*, *Gloucest. Huntedons.* The origin of their name, and the exact nature of their tenure have been variously interpreted.

Lord Coke, who makes the word of French origin, (Fr. *borde*, a cottage,) defines *bordarii* to be "boors or husbandmen, (*bores*,) holding a little house, with some land of husbandry, bigger than a cottage." *Co. Litt.* 5 b. According to others, they were cottagers merely. But Spelman remarks on this, that they are often found in Domesday, as cultivating more land than the proper allotment of a *tugurium*, or cottage; and hence Lord Coke has properly explained their houses to be bigger than a cottage. According to Spelman, the most probable derivation of the term *bordarii* is either from Sax. *bord*, a table, as denoting those who cultivated the lands which the lord kept for the particular maintenance of his *table*, (termed *bord lands*, q. v.) or who supplied the lord with small provisions for his table; or from Sax. *bord*, a house, as denoting those tenants who performed servile offices about the lord's house, (*domestica navantes servitia*,) such as grinding corn, bringing in wood, drawing water, &c.; villeins being, according to Spelman, occupied in agricultural labors in the fields, (*villæ et agris ad-*

dicti, rem colonicam exercebant.) According to Bishop Kennett, the *bordarii* were distinct from the *servi* and *villani*, and seem to be those of a less servile condition, who had a *bord* or cottage, with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his *board* and entertainment. *Kennett's Gloss. Paroch. Ant.* From various passages of Domesday, their condition appears to have been considerably above that of villenage, and Sir Henry Spelman seems inclined to the belief that they were actually freemen, though holding by base services.

BORDEARE. L. Lat. [from *borda*, a club.] In old English law. To just or joust; to take part in a tournament. *Barringt. Obs. Stat.* 220.

BORDHALFPENNY, *Bordhalpenny.* [from Sax. *bord*, a table.] In old English law. Money paid at fairs and markets, for the privilege of setting up tables, *boards* and stalls for the sale of wares. *Spelman. Cowell. Blount.*

BORDIMANNI. L. Lat. In old English law. Bordmen. *Spelman*, voc. *Bordarii.* Sometimes erroneously written *bordmanni. Co. Litt.* 5 b. *Blount.* See *Bordarii.*

BORDLANDS. [from Sax. *bord*, a table.] In old English law. The demesne lands which lords reserved for the maintenance of their board (*bord*,) or table; (*quod quis habet ad mensam suam.*) *Bract.* fol. 263. *Spelman*, voc. *Bordarii. Cowell.* See *Demesne lands.*

BORDLODE. [from Sax. *bord*, a house.] In old English law. The quantity of food or provisions (otherwise called *ferm*,) which the *bordarii* or bordmen paid for their *bordland. Cowell.*

BORDSERVICE. A tenure of bordlands. *Blount.* See *Bordage.*

BORG, *Borh, Borgh, Borhoe.* Sax. and O. Sc. In Saxon law. A pledge, pledge-giver, or surety, (Lat. *vas, fidejussor.*) The name given among the Saxons, to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. *LL. Edw. Conf.* c. 32. *Spelman*, vocc. *Borsholder, Burghbrech.* The word *bor* continues to be used at the present day, in some parts of England, as in Norfolk, where it is employed as a common term of address by one person to another, in the sense of friend, neighbour, or companion. *Knight's P. Magazine*, 1846, vol. 2, p. 103.

The word *borg*, or *borh*, also anciently denoted not only the pledge-giver, but the pledge itself so given, (*fiedejussio, plegium.*) *Spelman*, voc. *Burghbrech.* See *Friburg, Decennary, Tithing.*

In old Scotch law, to let lands to *borgh* (*dimittere terras ad plegium*,) was to give possession of them (where the right of possession was controverted,) to the last lawful possessor, under pledge to restore the same to him who should be found to have the right. *Skene de Verb. Sign.* voc. *Plegius.*

BORGH OF HAMHALD. In old Scotch law. A pledge or surety given by the seller of goods to the buyer, to make the goods forthcoming as his own proper goods, and to warrant the same to him. *Skene de Verb. Sign.*

BORGHBRECH, *Burghbrech.* [Sax. *borhbryce, borgbryce, borhbrece, borhibriche;* from *borh*, or *borg*, a pledge, and *bryce*, a breach.] In Saxon law. Breach or violation of pledge, (*fidejussionis violatio;*) pledge-breach, (*plegii fractio.*) *Spelman.* The offence of violating the *borh*, or pledge given by the inhabitants of a tithing. See *Borg.*

BORGESMON, (otherwise *Friborgesman.*) Sax. [from *borg*, (q. v.) and *man.*] In Saxon law. The name given to the head of each family composing a tithing. *Gilb. C. Pleas*, Introd. note. *Spelman*, voc. *Friborga.* See *Borg.*

BORGHHEALDER. See *Borhealder.* Bracton writes it *borghye aldere. Bract.* fol. 124 b.

BORHEALDER, *Borghealder, Borghiealder, Borgiealder, Borhoealder*, corrupted into *Borowholder;* BORHESEALDER, corrupted into *Borsholder*, and *Bursholder.* Sax. [from *borh*, a pledge, and *alder*, elder or chief; Lat. *senior, princeps, capitalis.*] In Saxon and old English law. The chief, head, or principal man of a *borg* or pledge, that is, a tithing, or decennary, (*fidejussionis princeps, decuriæ præfectus;*) a chief pledge, (*capitalis fidejussor, capitale plegium.*) *Spelman*, voc. *Borsholder. Termes de la Ley. Bract.* fol. 124 b. Called also *borough-head, borow-head*, or *head-borow*, (qq. v.) See *Borsholder, Decanus friborgi.*

BORHOE, (the same as *Borh*, or *Borg.*) Sax. A pledge. Corrupted into *borow, borough*, and *burrow. Spelman*, voc. *Borsholder.*

BOROUGH, *Borow, Burrough, Burgh.* [L. Lat. *burgus;* L. Fr. *burg, bourg, burgh.*] In English law. A word which has been variously defined; as

A town. *Co. Litt.* 108 b.

An ancient town. *Litt.* sect. 164. *Termes de la Ley.*

A town of note or importance; a walled or fortified town. *Cowell.* See *Burgus.*

A corporate town that is not a city. *Cowell.*

An ancient town, holden of the king or any other lord, which sends burgesses to parliament. *Co. Litt.* 109 a.

A town, whether corporate or not, that sends burgesses or members to parliament. 1 *Bl. Com.* 114, 115.

A city, or other town, that sends burgesses to parliament. 1 *Steph. Com.* 116.

A corporate town, or city, whether sending members to parliament, or not. *English Munic. Corp. Act,* 5 & 6 *Will.* IV. c. 76.

A town or place organized for local government. *P. Cyclopædia.* See *Burgh, Burgus, Bourg, Town.*

In American law. An incorporated town or village.

*** As to the etymology of this word, two opinions have been maintained by English writers. Some derive it from the Sax. *burg, burh, byrg, byryg,* Fr. *burg,* Lat. *burgus;* a place fortified or defended by a wall, mound or other enclosure. *Termes de la Ley. Spelman,* voc. *Burgus. Cowell.* See *Burgus.* The present meaning of the German burg (a castle, fort, citadel,) favors this etymology. Others derive it from the Sax. *borh, borhoe,* a pledge, tithing or decennary. *Termes de la Ley. Cowell.* This opinion is supported by the derivation of the word *town.* 1 *Bl. Com.* 114, 115. See *Town.*

The signification of the term *borough* has undergone considerable fluctuation, as will appear from the definitions above given. The quality of *not being a city* is prominently claimed for a borough by some of the best authors. *Cowell. Blount. Stat.* 2 *Edw.* III. c. 3, cited *ibid. Lyndwode Prov.* cited in *Cowell.* According to Lord Coke, "every city is a burgh, but every burgh is not a city." *Co. Litt.* 109 a. The latter branch of this proposition implies that some boroughs are cities, which goes to modify the older definitions. The former (every city is a burgh,) is censured by Mr. Hargrave, as not being quite accurate, and he instances Westminster, which is a borough not incorporate, and yet it is a city. *Co. Litt. Hargr.* Note 123, lib. 2. Again, it is said by Littleton that "every borough is a town, but not *è converso.*" *Litt.* sect. 171. The distinction between a borough (*burgus,*) and a city is not sustained by Spelman, who enumerates, among the meanings of the word, a town and city both, and observes that the Anglo-Saxons undoubtedly called those places *burghs,* which others called *cities.* (*Proculdubio Saxones nostri* burgos *nuncuparunt quas alii* urbes *et* civitates.) *Spelman,* voc. *Burgus.* He adds that when the sees of bishops were prohibited by canon from being located elsewhere than in cities, the title of *city* was retained by those boroughs only which were distinguished by these erections (*civitates titulus apud* cathedrarios *tantum* burgos *remanebat;*) and hence there came to be reckoned no more cities than there were bishoprics. *Spelman, ibid.* See *City.* In the Year Book, T. 9 Hen. VI. 19, the city of London itself is called an ancient *borough,* (*la cite de Londres est un anc' bourg.*) *Borough* may have been the generic name used in the old law, as including towns and cities. *Co. Litt.* 115 b. And yet boroughs are constantly mentioned in old statutes as distinct from both. *Et que nul city,* borough, *ne ville,* &c. *Stat. Westm.* 1, c. 6. The true explanation may be that the great boroughs in England were on a level with cities, but the smaller boroughs, constituting the majority, were clearly distinguished from them. See *Fleta,* lib. 1, c. 24, §§ 4, 6. As to the present use of the word, an eminent English writer, as we have seen, defines a borough to be "a *city,* or other town that sends burgesses to parliament." 1 *Steph. Com.* 116. And under the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, boroughs seem to be placed on the footing of cities in all respects, being divided into wards, and governed by a mayor, aldermen and council. 3 *Steph. Com.* 191, *et seq.* See 1 *Man. & Gr.* 1, note.

Another distinctive quality of a borough, in English law, is that of *sending burgesses* [or members] *to parliament. Co. Litt.* 109 a. This still continues to be the principal feature of a borough, and is accordingly retained in the best modern definitions. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 116. It has not been regarded, however, in the Municipal Corporation Act already cited. *Id. ibid.* note (*i*). The term *borough* is used

in this act to signify a corporate town, [i. e. a town organized for local government,] whether sending representatives to parliament or not; a sense which Mr. Stephen considers a novel one. 3 *Steph. Com.* 191, note (*e*).

In American law, the word *borough* is, for the most part, disused. In some states, however, as in Pennsylvania and Connecticut, it is still commonly applied to incorporated towns or villages. 23 *Connecticut R.* 128. 24 *Id.* 299. In New-York, the term is unknown to the statute law, although, before the revolution, boroughs were frequently chartered. By royal charter of 16th April, 8 Will. III. the town of Westchester was made "a free *borough*, and town corporate," to be called "the borough and town of Westchester," to be governed by a mayor, aldermen and common council. 2 *Bolton's Hist. of Westchester*, 189.

BOROUGH. In Scotch law. A corporate body erected by the charter of the sovereign, consisting of the inhabitants of the territory erected into the borough. *Bell's Dict.*

BOROUGH ENGLISH, *Borow English, Burgh English.* [Sax. *borhoe englise*, L. Fr. *burgh engloyse.*] A particular custom prevailing in certain ancient English boroughs and copyhold manors, by which land descended to the youngest son instead of the eldest, or, if the owner had no issue, to his youngest brother. *Glanv.* lib. 7, c. 3. *Litt.* sect. 165, 735. *Spelman*, voc. *Borow English. Termes de la Ley. Kitchin*, 102, cited *ibid. Cro. Jac.* 198. 1 *P. Wms.* 63. 2 *Bl. Com.* 83. 1 *Id.* 75. 1 *Crabb's Real Prop.* 593, § 749. It was so called because, as some hold, it was an *English* custom, as distinguished from those introduced by the *Normans.* 2 *Bl. Com.* 83. The reason given by Littleton for this custom is, because the youngest son, by reason of his tender age, is not so capable as the rest of his brethren to help himself. *Litt.* sect. 211. For other reasons, see 2 *Bl. Com. ub. supra.* Borough English and Borough French are both mentioned in some of the old books. *Yearb.* P. 1 Edw. III. 38.

*** The custom of borough English still prevails in several cities, and ancient boroughs, and districts of smaller or larger extent, adjoining to them in different parts of the kingdom. The land is held in socage, but, according to the custom, it descends to the youngest son, in exclusion of all the other children of the person dying seised. In some places, this peculiar rule of descent is confined to the case of children; in others, the custom extends to brothers and other male collaterals. *Third Real Property Report*, p. 8, cited in 1 *Steph. Com.* 199, note (*n*).

BOROUGH-HEAD, *Borow-head.* The chief man or head of a borough. *Cowell.* See *Head borough.*

BOROUGH-HOLDER, *Borow-holder.* See *Borhealder, Borsholder.*

BORROWE. Sc. In old Scotch law. A pledge. "Na burges dwelland in burgh sall harbourie onie strange man in his house, langer nor ane nicht, without *borrowes* and caution." *Skene de Verb. Sign.* voc. *Forensis.*

BORSHOLDER, *Bursholder*, [corrupted from the Sax. *borhesalder*, another form of *borhealder, borghiealder*, or *borhoealder. Spelman. Bract.* fol. 124 b. See *Borhealder.*] In English law. The head, chief or principal man of a *borh, borg*, borough, or tithing. 1 *Bl. Com.* 114, 355. *Finch's Law*, b. 4, c. 25. 3 *Steph. Com.* 47. *Wilcock on Constables*, Introd.

BOSCAGE. Eng. and Fr. [L. Lat. *boscagium*, from *boscus*, Ital. *bosco*, a wood.] In English law. The food which wood and trees yield to cattle; browse-wood, mast, &c. *Spelman*, voc. *Boscagium. Cowell.*

An ancient duty of wind-fallen wood in the forest. *Manwood.* See *Cablish.*

BOSCULUS. L. Lat. [dimin. of *boscus*, a wood, q. v.] In old records. A little wood. 2 *Mon. Angl.* 239, 242. *Towns. Pl.* 57.

BOSCUS. L. Lat. [Ital. *bosco*, Flem. *bosc*, from Gr. βόσκειν, to feed; Fr. *bois.*] In old English law. Wood generally; all manner of wood. *Co. Litt.* 4 b. *Reg. Orig.* 1 b, 2. *Magna Charta*, 9 Hen. III. c. 21. *Id. Johan.* c. 31. 2 *Inst.* 36.

Wood growing; a wood, (*sylva.*) *Towns. Pl.* 23, 51, 195. *Stat. Merton*, c. 4. *Cart. de Forest.* 9 Hen. III. cc. 1, 2. It was divided into high wood, (Fr. *hautbois,*) or timber, (L. Lat. *mæremium, saltus*); and underwood or coppice, (*sub-boscus;* Fr. *sub-bois.*) *Spelman*, voc. *Boscagium. Cowell. Blount.*

BOTE, *Bot, Boot.* Sax. [L. Lat. *bota.*] In Saxon law. A reparation, or making good of any damage done; (Lat. *emendatio, refectio, restauratio.*) *Spelman. Circ bota, burg bota, brug bota*, (qq. v.); the reparation of a church, town, or bridge. *Ibid.*

A compensation, amends, or recompense. *Lamb. Explic.* cited in *Cowell.* A satisfaction or composition paid under the Saxon laws, in expiation of an offence. *Spelman. Skene de Verb. Sign. Cowell. Co. Litt.* 127 a. *Man bote, mæg bot, kins bot, frithes bot,* (qq. v.); satisfaction for the death of a vassal or kinsman, or for breach of the peace. *Spelman.*

In English law. An allowance; otherwise called *estover* or *estovers,* (qq. v.)

*** The word *bote* (sometimes written *boot,*) is of frequent occurrence in ancient English law, but usually in combination with other words, as above. It is still retained in English and American jurisprudence, as a component of the words *housebote, ploughbote, cartbote, hedgebote* and *firebote,* partly in its ancient sense of *reparation* or replenishment, and partly in the secondary or general sense of a sufficient *allowance;* being synonymous with the word *estovers.* Co. Litt.* 41 b. Thus, *housebote* signifies an allowance of wood to a tenant for the purpose of repairing his house, (*in ædium refectionem*); *ploughbote* and *cartbote,* for making and repairing his instruments of husbandry; *haybote* or *hedgebote,* for repairing his hedges; and *firebote,* for maintaining or replenishing his fire. *Spelman.* 2 *Bl. Com.* 35. 1 *Steph. Com.* 241. See *Cartbote, Firebote, Haybote, Housebote, Ploughbote.*

BOTELESS. In old English law. Without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy, (*sine remedio.*) *Cowell. Blount.* This word (written *bootless,*) is still retained in ordinary language in the sense of vain, or fruitless. *Cowell.*

BOTHA. L. Lat. In old English law. A booth, stall, or tent to stand in, in fairs or markets. *Cowell. Blount.*

BOTHAGIUM. L. Lat. [from *botha,* q. v.] In old records. Boothage, or customary dues paid to the lord of the manor, for the pitching and standing of *booths* in a market or fair. *Kennett's Par. Ant.* 680, cited in *Cowell.*

BOTHNA, *Buthna, Bothena.* L. Lat. In old Scotch law. A park where cattle are fed and enclosed. *Skene de Verb. Sign.* citing *Reg. Majest.* lib. 4, c. si quis namos, 30.

BOTTILER. L. Fr. Butler. *A son chiefe bottiler. Yearb.* H. 6 Edw. III. 15.

BOTTOMAGE. L. Fr. Bottomry. *Ceo est* bottomage, *quant argent est borrow sur le* keil *del neif, et le neif oblige al payment de ceo,* &c.; bottomry is when money is borrowed upon the keel of a ship, and the ship is bound to the payment of it, &c. *Latch,* 252. See *Bottomry.*

BOTTOMRY, *Bottomary, Bottomree, Bottom-rhea.* [Dutch bomerie, bodemery; Germ. bodmerei; L. Fr. *bottomage;* Fr. *contrat a la grosse aventure;* Lat. *fœnus nauticum, pecunia trajectitia.*] In maritime law. An agreement entered into by the owner of a ship, or [the master as] his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest, if the ship terminate her voyage successfully, and binds or hypothecates the ship for the performance of his contract. *Smith's Merc. Law,* 261. The instrument by which this is effected is usually in the shape of a bond, called a *bottomry bond,* which is in the nature of a mortgage of the vessel, and is defined by Mr. Justice Story to be "a contract for a loan of money on the *bottom* of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender, for a voyage, or for a definite period." 2 *Sumner's R.* 157, 186. *Smith's Merc. Law, ub. sup.* 3 *Kent's Com.* 354. The money is loaned upon the ship, or ship and accruing freight, at an extraordinary interest, the risks of the voyage being borne by the lender, and the bond covers the freight of the voyage, or during the limited time. 3 *Kent's Com.* 354. *U. S. Digest,* Bottomry and Respondentia. 2 *Cond. Rep. U. S.* 129, note. Bottomry is a contract of a peculiar character, differing essentially from an ordinary loan. 1 *Curtis' R.* 340, 349.

*** The term *bottomry* is thought to be of Dutch origin, (being termed in that language *bomerie, bodmerie, boddemerie,*) and to be derived from *boden,* or *bodem,* which in the same language signifies the bottom or keel of a ship. *P. Cyclopædia.* So *bodo,* or *bodun* signified, it is said, in old French and British, a bottom or depth. *Camden's Brit.* 149. *Loccenius de Jur. Mar.* lib. 2, c. 6, § 1. *Molloy de Jur. Marit.* 359. It seems sufficient, however, to derive it, as an English word, from the *bottom* of a vessel, which is now used by a common figure, (*pars pro toto,*) as *keel,* (*carina,*) was anciently, for the vessel itself. See *Bottomage.* In some of the books, the word appears in the singular form of *bottom-rhea.* 2 *Vern.* 269. *Id.* 595.

BOUCHE, *Bouch.* Fr. and L. Fr. Mouth. *Ne gist en le* bouche; it does not lie in the mouth; i. e. it is not for one to say. *Litt.* sect. 58. A phrase still used. *En* bouch *del lay gents;* in the mouth of the common people. *Cro. Jac.* 700. *Il port meate en son bouche;* it supports itself. *Dyer*, 28, (Fr. ed.) Said of a deed.

An allowance of provision. *Avoir* bouche *à court;* to have an allowance at court; to be in ordinary at court; to have meat and drink scot-free there. *Blount. Cowell. Munitions de bouche. Ord. Mar.* liv. 3, tit. 8, art. 11.

BOUGHT AND SOLD NOTES. Notes or memoranda of the purchase and sale of goods, made by the broker effecting it.* When a broker is employed to buy and sell goods, he is accustomed to give to the buyer a note of the sale, commonly called a *sold note;* and to the seller a like note, commonly called a *bought note*, in his own name, as agent of each, and thereby they are respectively bound, if he has not exceeded his authority. *Story on Agency*, § 28. See a form of bought and sold note, 2 *Campb.* 326.

ΒΟΥΛΕΥΤΗΣ, Βουλευτης. Gr. [from βουλη, q. v.] In the Roman law. A councillor; a senator. *Dig.* 26. 5. 22. A decurio; a member of the *curia. Nov.* 38. *Id.* 70. *Id.* 101.

ΒΟΥΛΗ, Βουλη. Gr. In the Roman law. A senate; a council, (*consilium, curia.*) *Nov.* 70, *in tit. Nov.* 101, *per tot.*

ΒΟΥΛΗΣΙΣ, Βούλησις. Gr. [from βούλομαι, I will.] In the Roman law. A will, (*voluntas,*) a last will, or testament, (*ultima voluntas.*) *Dig.* 48. 22. 16. *Nov.* 107.

ΒΟΥΛΟΜΑΙ, Βούλομαι. Gr. I will. The emphatic word of wills, when written in Greek, under the Roman empire. *Dig.* 28. 1. 29. *Id.* 31. 88. 15.

BOUND. [L. Lat. *bunda*, q. v.] A limit, or enclosing line of lands. In the common phrase "metes and bounds," *metes* properly signify the angles, corners or turning points, and *bounds* the lines between; though practically little or no distinction is made between them. Webster distinguishes *bound* from *boundary;* defining the former to be a limit, and the latter a visible mark designating a limit; though he observes that they are also used synonymously. See *Metes and bounds.*

In American law, the word has been used in various senses. Sometimes to denote a limit, generally. *Act of Assembly of Province of Maryland*, April, 1718, c. 18. Sometimes, to denote the lines between certain designated points. *Act of* 1699. See 2 *Harr. & McH. R.* And sometimes to denote the points at the ends of the lines. See *Bound trees, Bounders.* In the Colony Laws of New Plymouth, A. D. 1682, the bounds between towns are required to be "a heap of stones, or a trench of six feet long and two feet wide." *Plymouth Col. Laws*, (ed. 1836,) p. 201.

BOUND BAILIFFS. In English law. Sheriff's officers are so called, from their being usually *bound* to the sheriff in an obligation with sureties, for the due execution of their office. 1 *Bl. Com.* 345, 346.

BOUND, or BOUNDED TREE. In American law. A tree used as a bound of lands, particularly as a point or mark from which the boundary lines are drawn. In some early cases, bound-trees are distinguished from line-trees; the latter extending from one bound-tree to another. 1 *Harr. & McH. R.* 16. And see *Id.* 81, 262. 2 *Id.* 80, 81, 416. "A bounded hickory;" "a bounded red oak." *Ibid.*

BOUNDARY. [Lat. *limes, terminus.*] A line or object indicating the limit or furthest extent of a tract of land or territory. A separating or dividing line between countries, states, districts of territory, or tracts of land; consisting sometimes wholly of one or more natural objects, as a river, a chain of lakes, &c.; sometimes of artificial erections, as a stone wall, fence, and the like; sometimes of an imaginary line drawn from one principal *terminus* to another, and indicated along its course by prominent natural or artificial objects standing or erected upon it at intervals; and sometimes of all these in combination. See 3 *Kent's Com.* 426—432, and notes. 4 *Id.* 466, and notes.

A line, or connected series of lines, going around a territory or tract of land, and enclosing it on all sides. A tract or country may be said to be bounded by a *single line* running in various directions from one point to another, so as to surround it; but it is more common to use the plural *boundaries* as descriptive of a *series of lines* of various lengths, traced out either by natural objects or by courses and distances, or both, running in various directions from one point to another; such *points* (sometimes called in surveys, *corners*, and anciently *butts*) being usually designated by some conspicuous object, as a rock, a tree, a

stake, a heap of stones, &c. See 1 *Jones' Law R.* 111. See a description of the boundaries of the State of New-York, as declared in the *Revised Statutes*, Part I. Chap. I. Tit. I.

BOUNDERS. In American law. Visible marks or objects at the ends of the lines drawn in surveys of land, showing the courses and distances. 1 *Harr. & McH.* 358, arg.

BOURG. Fr. In old French law. An assemblage of houses surrounded with walls; a fortified town or village. *Steph. Lect.* 118.

Originally, any aggregation of houses, from the greatest city to the smallest hamlet. *Id.*

A corporate town. *Id.*

BOURG. L. Fr. [L. Lat. *burgus.*] In old English law. A borough. *Yearb.* T. 9 Hen. VI. 19. See *Borough.*

BOURGEOIS. Fr. In old French law. The inhabitant of a *bourg*, (q. v.) *Steph. Lect.* 118.

A person entitled to the privileges of a municipal corporation; a burgess. *Id.*

BOURGEOISIE. Fr. In old French law. The citizens of a *bourg* (q. v.) spoken of collectively. *Steph. Lect.* 118.

In later law, the privilege or franchise of being a burgess; citizenship. *Id.*

BOURGESSOURS. See *Burgessoars.*

BOUSSOLE. Fr. In French marine law. A compass. *Ord. Mar.* liv. 1, tit. 8, art. 3.

BOUT. Fr. An end; a butt; the end of a piece of land; a line limiting it at the end. *Bouts et côtés;* ends and sides; butts and bounds. *Guyot, Inst. Feod.* ch. 3, s. 1.

BOUTER. L. Fr. To put. *Bouter avant;* to put before; to produce or exhibit. *Yearb.* P. 2 Edw. II. 36, 37.

BOUWERYE, *Bouwerie.* Dutch. [from *bouw*, a farm.] In old New-York law. A farm; a farm on which the farmer's family resided. *Old Lease*, Sept. 7, 1646; 1 *O'Callaghan's New Netherlands*, Appendix, Q. 2 *Id.* 291, note.

BOUWMEESTER. Dutch. [from *bouw*, a farm, and *meester*, master.] In old New-York law. A farmer. 1 *O'Callaghan's New Neth.* Appendix, I.

BOVARIUS. L. Lat. [from *bos*, an ox.] In old English law. An ox-driver; a driver of an ox-team. *Fleta*, lib. 2, c. 85.

BOVATA (or BOVATUS) TERRÆ. L. Lat. [from *bos*, an ox; L. Fr. *bove de terre.*] In old English and Scotch law. An oxgang, or oxgate (Sc. oxengate) of land; as much as an *ox* could till, or *go* over, (*bovis iter.*) *Co. Litt.* 5 a. *Reg. Orig.* 2. *Spelman. Thel. Dig.* lib. 8, c. 13. *Shep. Touch.* 93. *Skene de Verb. Sign.* An ancient measure of land, of uncertain quantity. See *Oxgang.* The Span. *huebras* is of similar import.

BOVET. L. Fr. In old English law. A bullock or steer. *Yearb.* M. 2 Edw. III. 19.

BOVILE. L. Lat. In old pleading. An ox-stall. *Freem.* 425.

BOYS, *Bois.* L. Fr. Wood. *Fet Assaver*, § 15.

BOZERO. Span. In Spanish law. An advocate; one who pleads the causes of others, or his own, before courts of justice, either as plaintiff or defendant. So called, because it is with his *voice* or *words* that he exercises his profession. *Las Partidas*, part 3, tit. 6, l. 1.

B. R. The initial letters of *Bancus Regis*, or *Bancus Reginæ*, the Latin name of the English Court of King's or Queen's Bench, frequently used in the old books and reports, to designate that court. The initials K. B. and Q. B. of the English words are now more commonly employed. See *Bancus Regis, Bancus Reginæ.*

BRACE DE LA MEER. L. Fr. In old English law. An arm of the sea. *Britt.* c. 33.

BRACEATORIUM. L. Lat. In old English law. A place for brewing ale. *Bract.* fol. 207 b. See *Brasitorium.*

BRACER. L. Fr. To brew. *Kelham. Braceresses;* brewers. *Britt.* c. 30.

BRACHIUM MARIS. L. Lat. An arm of the sea. See *Arm of the sea.*

BRACIARE. L. Lat. In old English law. To brew. *Braciandi;* of brewing. *Fleta*, lib. 2, c. 73, § 7. See *Brasiare.*

BRACIATRIX. L. Lat. [from *braciare*, q. v.] In old English law. A brewer; a female brewer. *Fleta*, lib. 2, c. 12, § 30. The business of brewing was ordinarily carried on by women. See *Barringt. Obs. Stat.* 54, and notes.

BRACINE. L. Fr. A brewing. *Yearb.* M. 8 Edw. III. 7.

BRACTEATOR. L. Lat. In old pleading. A gold-beater. *Towns. Pl.* 260.

BRACTON. A celebrated writer of the time of Henry III., whose treatise *De Legibus et Consuetudinibus Angliæ*, (of the laws and customs of England,) is the most complete and valuable of the productions of that age, on the subject of English juris-

prudence. This great work is divided into five books, and these into tracts (*tractatus*), and chapters; embracing the whole civil and criminal law and practice of the kingdom, as it existed at the time it was written. The author, Henry de Bracton, was one of the king's justices, and is said by some to have been chief justice, by others a justice in eyre. 1 *Spence's Chancery*, 119, and note (*a*). The work itself is supposed to have been written or completed about A. D. 1270. *Id. ibid.* note (*b*). 2 *Reeves' Hist. Eng. Law*, 90. It was first published in 1569, and a second edition in 1640; but neither of these is free from corruptions and imperfections of the text, which render the author's meaning occasionally obscure.

Bracton is called by Mr. Spence a doctor of the civil law, and is supposed to have been the same person with Henry de Bracton who delivered law lectures in the University of Oxford, towards the middle of the thirteenth century. 1 *Spence's Chancery*, *ub. sup.* His intimate acquaintance with the Roman law sufficiently appears from the frequent references to the Code, Institutes and Pandects, scattered through his work, (in addition to large extracts without reference,) and which have led some to suppose it to have been almost entirely compiled from these sources. It was this feature which, from an early period, detracted so much from Bracton's authority in the common law courts of England. Thus we find him cited in Plowden, "not as an author in the law, but as an ornament to discourse where he agrees with the law." Saunders, C. B. arg. *Plowd.* 357. Catlin, C. J. arg. *Id.* 358. This opinion included Glanville and Fleta, of whom it is said that they "were never taken for authors [authorities] in our law." 1 *Show.* 121, arg. In another case, Bracton and Glanville are called *actores non authores legis.* Periam, arg. 1 *Leon.* 82. But see *Vaugh.* 96, 141, 142, 201. In later times, the merits of Bracton were more adequately appreciated, and his authority acknowledged by eminent judges and writers, such as Staundford, Lord Bacon, Sir William Jones, Lord Holt and Selden. Lord Bacon quotes Bracton as "an author of great credit." Arg. case of the Postnati of Scotland, *Works*, iv. 358. Lord Coke himself made free use of Bracton in all his writings, and a large proportion of the Latin quotations with which the Institutes abound is taken from this source. Sir William Blackstone also frequently refers to Bracton, and always in terms of peculiar respect. Bracton continues to be cited by the best writers on English and American law, and is sometimes quoted in argument in the English courts. 15 *Mees. & W.* 60.

Although most of the treatise *De Legibus et Consuetudinibus Angliæ* has necessarily become obsolete, it will probably never lose its interest as the most complete repository of ancient English jurisprudence, and a principal source of the learning of later times. 1 *Kent's Com.* 499—501. Indeed, of late years, the attention of English jurists, especially the civilians, has been drawn to it in a very particular manner. Mr. Long, in a "Discourse" delivered in Middle Temple Hall (and published in the Law Library, new series, vol. 44,) goes into an examination of a considerable part of "this comprehensive Institutional Treatise," as he terms it, and observes of it, (p. 106,) "this book is certainly the foundation of our system." Mr. Spence, in his valuable treatise on *The Equitable Jurisdiction of the Court of Chancery*, has made very copious use of it, in illustration of what may be considered his theory of the almost entire derivation of the English from the Roman law. Not a few portions of Bracton continue to be law in the United States at this day.

The great interest with which this venerable work is invested, arises from the circumstance of its having been written at the time when the common law was in process of formation. Bracton himself expressly speaks of the law as then *unwritten*, and made up of customs which often differed in different places. *Sola Anglia usa est in suis finibus*, jure non scripto et consuetudine.* * *Sunt in Anglia* consuetudines plures et diversæ, *secundum diversitatem locorum. Bract.* fol. 1. These discordant materials were, however, beginning to be amalgamated and reduced to uniformity, principally from the effect of the decisions of the King's courts, which are here referred to systematically for the first time. Nearly five hundred references are made to adjudged cases of this description, some of them before the King, others in the Bench, but most of them before the justices in eyre, especially before Martin de Pateshull, whose opinions seem to be regarded as of paramount authority.

This work of Bracton, like the older treatise of Glanville, and the productions of the

contemporary French writers Defontaines and Beaumanoir, is not only a treatise on the doctrines or *principles* of the law, but also, and to a very considerable extent, an exposition of the *mode of conducting actions* and other proceedings in the courts; or what would be called in modern times, *a book of practice.* It abounds in forms, especially of writs, which are given at length, with all the rules of procedure, and with such minuteness as prove the author to have been fully acquainted with the details of the subject.

The extent to which Bracton drew his materials from the civil law, is a question upon which very different opinions have been entertained, and which, from the important bearing recently given to it, upon the origin and composition of the common law itself, has assumed a high degree of interest. It was said by Mr. Reeves, (a very competent judge, as has always been supposed,) in his *History of the English Law*, that what Bracton took from the Roman law, "if put together, would perhaps not fill three whole pages of his book." 2 *Reeves' Hist. Eng. Law*, 88. This opinion has been warmly controverted by the English civilians, and particularly, of late, by Mr. Long and Mr. Spence, in the works already referred to, from whose representations the very opposite conclusion might be drawn, that the treatise *De Legibus et Consuetudinibus Angliæ* was little more, in substance, than a compilation of Roman jurisprudence, adapted to, and incorporating the English law and practice of the time. The assertion of Mr. Reeves may be safely questioned, without by any means admitting such a conclusion as this. The free use made by Bracton of the civil law at the very commencement of his treatise, (whole passages, being given verbatim, and without any indication of the sources from which they are derived,) and the adoption, to some extent, of the arrangement of the Institutes, have undoubtedly imparted to the whole work very much of a Roman air and exterior; but a careful examination will show (it is believed) that it has been compiled essentially from other sources. Those portions in which the civil law has been either referred to, or used without reference, are principally confined to the first book, less than half of the second, and the first tract of the third, comprising together about one-eighth of the whole treatise; and much of the matter thus borrowed seems to have been introduced rather for the purpose of filling up the outline of a great work, than of giving what was considered to be the settled law of England. Bracton's view of the Roman law probably resembled that of the compilers of the Books of Feuds or Fiefs, as expressed in *Feud. Lib.* 2, tit. 1. More will be said on this subject, under the heads of the *Common* and *Civil Law.*

The style of Bracton, when not obscured by corruptions of the text, is remarkably clear and simple, affording a complete contrast to the harsh and involved manner of writers far more modern, and admitting generally of very literal translation. His Latin is considered by Lord Bacon as much purer than that which was in use in England, after the time of Edward I. *Bac. Read. Uses.*

BRANDING. In criminal law. The punishment of marking convicted felons with a hot iron (in the shape of a letter or otherwise) on the hand or face. Burning in the hand (q. v.) on the allowance of clergy, was a species of branding. 4 *Bl. Com.* 368, 370.

BRANGWYN. Brit. A name (signifying a white crow,) given to the statute 4 Hen. IV. ch. 4. 10 *Co.* 113, Arthur Legat's case. *Barringt. Obs. Stat.* 348. See the explanation *ibid.*

BRASIARE, *Braciare.* L. Lat. [L. Fr. *bracer;* from *brasium*, malt.] In old English law. To brew. *Domesday. Blount.*

Brasiator, braciator; a maltster; a brewer. *Reg. Orig.* 280. *Spelman*, voc. *Brasium.*

Brasiatrix; a female brewer. *Cowell. Blount.* See *Braciatrix.*

Brasina, bracina; a brew-house. *Cowell. Blount.*

Brasitorium, braceatorium; a malt-house. *Towns. Pl.* 184.

BRASIUM, *Braseum.* L. Lat. [from Gr. βράσσω, to boil.] In old English law. Malt. *Spelman. Reg. Orig.* 111, 127.

BRE'. An abbreviation of *Breve.* 1 *Instr. Cler.* 9.

BREACH. [Lat. *fractio, infractio, violatio.*] The breaking or violating of a law, right or duty, either by commission or omission. See *infra.*

The breaking, or forcible passing through, or over a material object. See *infra.*

BREACH OF CLOSE. The unlawful, or unwarrantable entry on another person's soil, land or close. 3 *Bl. Com.* 209,

210. See *Close*, *Quare clausum fregit*, *Trespass*.

BREACH OF COVENANT. The non-performance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holthouse*. 3 *Bl. Com.* 155, 156.

BREACH OF PEACE. The offence of breaking or disturbing the public peace by any riotous, forcible or unlawful proceeding. 4 *Bl. Com.* 142, *et seq.* 4 *Steph. Com.* 273, *et seq.*

BREACH OF POUND. The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 *Bl. Com.* 146. See *Pound breach.*

BREACH OF PRISON. The offence of actually and forcibly breaking a prison or gaol, with intent to escape. 4 *Chitt. Bl. Com.* 130, notes. 4 *Steph. Com.* 255.

BREACH. In pleading. That part of the declaration immediately preceding the *ad damnum* clause, in which the violation of the defendant's contract is stated. 1 *Chitt. Pl.* 332, 374.

BREAKING. In the law of burglary. A substantial and forcible irruption, as by breaking or taking out the glass of a window, or otherwise opening it; picking a lock, or opening it with a key; lifting up the latch of a door, or unloosening any other fastening which the owner has provided. 4 *Bl. Com.* 266. 4 *Steph. Com.* 149, 150, and note (*x*), *ibid.* *Coxe's R.* 439. And whatever would be a breaking of an outer door will also be a breaking open of an inner door, to constitute burglary. 2 *East's P. C.* 488.

There must, in general, be an actual breaking, and not a mere legal *clausum fregit*, (by leaping over invisible ideal boundaries, which may constitute a civil trespass;) and therefore an entry by an open door or window is, in itself, no burglary. 4 *Bl. Com.* 226. 7 *Dane's Abr.* 136. But there may be a breaking by implication, where there is a felonious entry; both breaking and entering being always essential to complete the offence of burglary. 4 *Bl. Com.* 226, 227. 1 *Russell on Crimes*, 786—794. *U. S. Digest*, Burglary. See *Entry.*

BREAKING A CASE. The expression by the judges of a court, to one another, of their views of a case, in order to ascertain how far they are agreed, and as preliminary to the formal delivery of their opinions. "We are breaking the case, that we may show what is in doubt with any of us." Holt, C. J. addressing Dolbin, J. 1 *Show.* 423.

BRECCA. L. Lat. In old English law. A breach, or decay, or any other want of repair. *Pat.* 16. *Ric.* II. cited in *Cowell.*

BRED. An old English word used by Bracton, as part of the phrase To lange and to bred, which is very oddly translated by Cowell and others, *too long and too broad.* *Bract.* fol. 135. The context of the passage obviously requires quite a different interpretation. See *To lange and to bred.*

BREDWITE. Sax. [from *bred*, and *wite*, a fine or penalty.] In Saxon and old English law. A fine, penalty or amercement imposed for defaults in the assise of bread. *Kennett's Par. Ant.* 114. *Cowell.*

BREF. O. Fr. and L. Fr. A writ. *Fet Assaver*, per tot. See *Breve*, *Brief.*

BREHON. In old Irish law. A judge. 1 *Bl. Com.* 100. Brehons, (*breitheamhuin*;) judges.

BREHON LAW. [Irish, *breitha-neimeadh.*] The native system of law which prevailed in Ireland, before the conquest by Henry II. 1 *Bl. Com.* 100. *Co. Litt.* 141 a. For a particular view of this system, see *P. Cyclopædia.*

BREPHOTROPHI. Græco-Lat. [Gr. βρεφοτρόφοι, from βρέφος, an infant, and τροφὸς, a nurse.] In the civil law. Persons appointed to take charge of foundlings. *Cod.* 1. 3. in tit. *Id.* 1. 3. 46, §§ 1, 3.

BRESMIA, *Bresmya.* L. Lat. In old English law. Bream; a species of fish. *Fleta*, lib. 2, c. 73, § 20.

BRETOYSE, *Bretois.* Fr. Britons or Welshmen. *Lex de Bretoyse*; the law of the Welsh marches. *Blount.* *Cowell.*

BRETTWALDA. Sax. In Saxon law. The ruler of the Saxon heptarchy. *Steph. Lect.* 696.

BREVE, (plur. *Brevia.*) L. Lat. [Fr. *brief*; O. Fr. *bref*, *briefve*, *brieffe*; Scotch *brieve*; from Lat. *brevis*, brief, short.] In old English law. A writ; properly an original writ, (*breve originale*,) by which all actions in the superior courts of England were once required to be commenced. *Non potest quis sine* brevi *agere*; no man can sue without a writ. *Bract.* fol. 413 b, 112. *Fleta*, lib. 2, c. 13, § 4. *Steph. Pl.* 5, 6. 3 *Bl. Com.* 272, 273.

In a larger sense, any writ or precept of the king in writing, under seal, issuing out of any court, whereby he commands any

thing to be done for the furtherance of justice and good order; comprising what were called judicial as well as original writs. *Termes de la Ley. Blount.*

A commission to a judge or justice of the superior courts of England had, from an early period, the form of a *breve*, or writ, and was so called. *Bract.* fol. 108 b, *et seq.* See *Close writs.*

*** Bracton observes that a *breve* is so termed because it *briefly*, and in few words, sets forth the subject-matter of the action and the claim of the demandant; (*dicitur ideo* breve, *quia rem de qua agitur, et intentionem petentis paucis verbis* breviter *enarrat.*) *Bract.* fols. 112, 413 b. Theloall describes a *breve* to be a formal *letter* or epistle of the king, written in Latin on parchment, sealed with his seal, directed to some judge, officer, minister or other subject, at the suit of the king himself, or at the complaint and suit of another subject, commanding or authorizing something contained in the said letter to be done, for the reason briefly expressed therein, which is to be the subject of judicial examination in some of the king's courts. *Thel. Dig.* lib. 1, c. 1, ¶ 4.

The term *breve* (Græco-barb. βρεβιον,) occurs in the imperial and pontifical constitutions as early as the third century, in the same sense which Bracton gives it, viz. a brief or summary statement in writing,(*scriptum quod summam rei continet.*) *Spelman.* The *breve* of the English courts has been called a *letter* or epistle, because it commenced in the same way as the letters of the ancient Romans did:—*Titius Aulo suo, Salutem;* Titius to his friend Aulus, Greeting:—*Rex, justitiariis suis, &c., salutem;* The king to his justices, Greeting. Our own writs at the present day commence with the same epistolary phrase;—"The People, &c., to the sheriff, &c., Greeting." See *Epistola, Litteræ.* So a letter of attorney (*literæ procuratoriæ*) was called in English, as old as Bracton's time, a "writ," (*breve*); and in law French, *breve d' atturney. Bract.* fol. 40. *Litt. R.* 143. The modern German brief has the same sense of *letter*, and this meaning seems to be of very high antiquity. *Hickes' Thes. Diss. Epist. in notis*, p. 3. *Steph. Pl.* Appendix, Note (2). See *Writ.*

The great repository of the old English *brevia* is that ancient compilation termed *Registrum Brevium*, the Register of Writs, and usually referred to in the books as "The Register." See *Registrum Brevium.* The *brevia* are here arranged under two general heads, *originalia* and *judicialia*, comprising in the whole upwards of a thousand forms. They are individually named either from the subject-matter of them, or from one or more emphatic words of the forms themselves. In the former case, the preposition *de* is usually employed in designating the particular *breve;* thus, *breve de recto*, a writ of right; *breve de ingressu*, a writ of entry; *breve de conventione*, a writ of covenant, &c. Most of these writs will be found in this dictionary, under the head of DE, with the proper addition in each case.

BREVE DE RECTO. L. Lat. [L. Fr. *brief de droit*, Sc. *brieve of richt.*] A writ of right. *Reg. Orig.* 1. *Bract.* fol. 328. So called because the words in the writ were, *quod sine dilatione plenum* rectum *teneas*, (that without delay you do full right); or because the subject-matter of the writ was the *right* (*rectum*) of property in lands. *Co. Litt.* 115 a, 158 b. 3 *Bl. Com.* 191, 193. See *Writ of right.*

BREVE ORIGINALE. L. Lat. An original writ; a writ which gave *origin* and commencement to a suit, (*quod actioni* originem *præstat*). *Bract.* fol. 413 b. 1 *Reeves' Hist. Eng. Law*, 319. *Stat. Marlebr.* c. 30. See *Breve, Original writ.*

BREVE JUDICIALE. L. Lat. A judicial writ; a writ issued *in judicio*, after a suit was commenced.* *Crabb's Hist. Eng. Law*, 114. *Bract.* fol. 413 b. Any other writ than an original writ.* See *Breve, Judicial writ.*

BREVE NOMINATUM. L. Lat. A writ in which the circumstances of the case (time, place and demand,) were particularly expressed, or *named;* as distinguished from the *breve innominatum*, which contained only a general complaint without particulars. *Gilb. C. Pleas*, 3, and note.

BREVE TESTATUM. Lat. In feudal law. A brief memorandum in writing, attested by witnesses, and used as evidence of feudal investiture. *Feud. Lib.* 1, tit. 4, pr. §§ 4, 6. The investiture might be proved either in this way, or by the *pares curtis*, peers of the court. *Id. ibid.*

In old English law. A conveyance of land reduced to writing and attested by witnesses, whose names were subjoined. *Spelman.* See *Brevia testata.*

In old Scotch law. An acknowledgment in writing, made out on the lands at

the time of giving possession to a vassal, and attested by the seals of the superior and *pares curiæ*. Afterwards, the *breve testatum* was signed by the superior, wherever he happened to be, and possession was given separately by the superior's bailie. *Bell's Dict. Ersk. Inst.* b. 2, tit. 3, § 17. See *Brevia testata.*

BREVET. Fr. In old French law. A patent; letters patent from the crown. *Dunkin's Address*, 29, 36.

BREVIA, (plur. of *Breve.*) L. Lat. In old English law. Writs. *Dicuntur* brevia *propter eorum brevitatem;* they are called writs on account of their brevity. 3 *Co.* 44. *Dicuntur brevia, cum sint formata ad similitudinem regulæ juris, quæ* breviter *et paucis verbis intentionem proferentis exponunt;* they are called *brevia* (writs) because they are framed after the likeness of a rule of law, which *briefly* and in few words set forth the claim of the complaining party. *Fleta*, lib. 2, c. 13, § 2. See *Breve. Brevia adversaria;* adversary writs; writs brought by an adversary to recover land. 6 *Co.* 67. *Brevia amicabilia;* amicable writs, or those brought by consent and agreement amongst friends. *Id. ibid.*

BREVIA FORMATA, or DE CURSU. L. Lat. Writs of form, or of course. Original writs, the form of which was fixed, and which issued of course without special cause shown. *Bract.* fol. 413 b, 202. *Fleta*, lib. 2, c. 13, § 2. *Thel. Dig.* lib. 1, c. 2. 4 *Reeves' Hist. Eng. Law*, 430. *Brownl.* part 2, 147.

BREVIA JUDICIALIA. L. Lat. Judicial writs; writs which followed after the writs *de cursu*, and which varied according to the varieties of actions and defences. *Bract.* fol. 413 b. *Fleta*, lib. 2, c. 13, § 3.

BREVIA MAGISTRALIA. L. Lat. Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the nature of the action and the circumstances of each case. *Bract.* fol. 413 b. *Fleta*, lib. 2, c. 13, § 4. *Thel. Dig.* lib. 1, c. 2. 3 *Wooddes. Lect.* 89.

BREVIA TESTATA. L. Lat. Short written memoranda, attested by witnesses, and used in feudal times to perpetuate the tenor of conveyances and investitures, after parol grants had given rise to disputes and uncertainties. *Feud. Lib.* 1, t. 4. 2 *Bl. Com.* 307. See *Breve testatum.* Their authority rested altogether on the testimony of the witnesses, (who were the neighbors and peers of court) there being no execution or sealing by the parties themselves; (*utpote nullius sigillo, sed testium authoritate valida.*) *Spelman.* Blackstone regards our modern deeds as merely improvements or amplifications of these *brevia.* 2 *Bl. Com. ub. sup.* Spelman refers to the Liber Ramesiensis, as containing many conveyances of this kind.

BREVIARIUM ALARICIANUM, or BREVIARIUM ANIANI. Lat. (The breviary, or abridgment of Alaric, or of Anian.) A code of law compiled by order of Alaric II. king of the Visigoths, for the use of the Romans living in his empire, published A. D. 506. It was collected by a committee of sixteen Roman lawyers, from the *Codex Gregorianus*, *Hermogenianus*, and *Theodosianus*, some of the later novels, and the writings of Gaius, Paulus and Papinianus. In the middle ages, it is commonly referred to, under the titles *Corpus Theodosianum*, *Lex Theodosiana*, *Liber Legum*, or *Lex Romana.* 1 *Mackeld. Civ. Law*, 49, § 59. It was first published in 1528, and has been critically examined by Savigny, whose conclusion is that Anianus was the referendary or chancellor of Alaric, and, as such, certified the authenticity of the copies sent to the courts for their government, but was no further concerned in its compilation. *Sav. Geschichte des Rom. Rechts*, vol. 2, pp. 41—45. See *Schmidt's Civ. Law*, Introd. 25, 26.

BREVIATE. In English law. An abstract, or epitome; a brief. *Holthouse.* 12 *Mod.* 560.

A short extract, or copy of a paper or writing. *Hob.* 114.

BRIBERY. [from Fr. *briber*, to devour, or eat greedily.] In criminal law. The offence of taking any undue reward by a judge, juror, or other person concerned in the administration of justice, or by a public officer, to influence his behaviour in his office. 4 *Chitt. Bl. Com.* 139, and note. 3 *Inst.* 145. 1 *East*, 183. 4 *Burr.* 2494. 1 *Russell on Crimes*, 154. 2 *N. Y. Rev. St.* [682,] 569, § 10.

The offence of offering a bribe to a judicial or public officer, whether it be accepted or not. 4 *Bl. Com. ub. sup.* 3 *Inst.* 147. 2 *East*, 5. *Russ. & R. Cr. C.* 107. 2 *Dallas' R.* 384. 2 *N. Y. Rev. St.* [682,] 568, § 9. The attempt to bribe is a crime; it is complete on his side who offers it. Lord Mansfield, 4 *Burr.* 2500.

The offence of giving, promising or receiving money to procure votes, or to influence voters at elections to public offices. *Stat.* 49 *Geo.* III. c. 118. *Stat.* 5 & 6 *Will.* IV. c. 76. 1 *N. Y. R. St.* [149,] 136, § 4.

BRIEF. In practice. An abridgment of a plaintiff's or defendant's case, prepared by his attorney, for the instruction of counsel on a trial at law. It generally consists of an abstract of the *pleadings*, a statement of the *facts* of the case as they will be proved, and a list of the names of the *witnesses*, with a statement of what each will prove. To these are sometimes added observations by the attorney, in the nature of suggestions to counsel. 1 *Arch. Pr.* 185. *Arch. Forms*, 116.

BRIEF, *Briefe*, *Brieffe*, *Briefve*, *Bref.* L. Fr. A writ. *Briefe de droit;* a writ of right. *Co. Litt.* 158 b.

BRIEF. Germ. and Dutch. A writing; a written instrument; a letter, or writing in the form of a letter. See *Biel brief*, *Grond brief*, *Mahl brief*, *Mess brief.*

BRIEVE. [from Lat. *breve*, q. v.] In Scotch law. A writ. 1 *Kames' Equity*, 146. 1 *Forbes' Inst.* part 4, b. 2, c. 1, tit. 2, § 1. See *Bell's Dict.*

BRIGA. L. Lat. [Fr. *brigue.*] In old European law. Strife; contention; litigation; controversy. *In* brigam *ponere terras;* to put or bring lands into controversy. *Spelman. Cowell. Blount.*

BRIGBOTE, *Briggebote.* Sax. [from *brig*, bridge, and *bote*, reparation.] In Saxon and old English law. A tribute or contribution towards the repairing of bridges. See *Brug bote.*

An acquittance, (*quietantia*) or exemption from such duty. *Fleta*, lib. 1, c. 47, § 22.

BRIS. Fr. In French maritime law. Literally, breaking; wreck. Distinguished from *naufrage* (q. v.) *Emerig. Tr. des Ass.* ch. 12, sect. 12, § 1. *Ord. Mar.* liv. 4, tit. 9.

BRITTON. The author of a treatise on the law of England, in Law French, supposed to have been written or published under the direction of Edward I. Lord Coke makes him to be the same person with John Breton, who was Bishop of Hereford and a judge, in the reigns of Henry III. and Edward I. 8 *Co.* pref. 10 *Co.* pref. This opinion has been disputed by others, (though it has the support of the old chronicler Florilegus, otherwise called Matthew of Westminster,) on the ground that the treatise itself makes mention of several statutes known to have been passed after this Bishop of Hereford's death, which took place A. D. 1275. *Hengham*, p. 129, note, cited in *Wingate's Britton*, pref. 2 *Reeves' Hist. Eng. Law*, 281. Another opinion is, that the work was written by a judge of the same name with the bishop, and who was a contemporary of Bracton. *Hengham, ub. sup.* Lord Coke's statement that the *bishop* published his work in the fifth year of Edward I. can hardly be correct, as the old accounts agree that he died in the third year of that reign. It is reasonably certain, however, that he wrote the work, and that it was published after his death, with additions comprising the statutes above referred to. *Wingate's Britton*, pref.

The author's name has been variously written, *Britton*, *Briton*, *Le Breton*, *Bretoun*, and *Beckton;* a circumstance not uncommon at that early age. The same name has also been given to the work itself; thus, Florilegus above mentioned says of the Bishop of Hereford, that "he wrote a book upon the laws of England, which is called *Le Bretoun.*" Pitseus observes that he compiled from various authors a great volume of laws, which he called *Lex Anglicana*, or *Breton.* According to Balæus, the title was *De Legibus Anglicanis;* according to F. Godwin, *De Juribus Anglicanis.* Wingate, in his edition, (1640,) gives it the name of the author, *Britton.* The later edition by Kelham (1762) is published under the title of *The Ancient Pleas of the Crown.*

From the similarity of the subject-matter, as well as some resemblance in the name, this treatise is generally considered as a mere abridgment of the great work of Bracton, interspersed with some new matter. See *Selden's Diss. ad Fletam*, c. 2, sec. 3. It is not, however, without claims to the character of an original production, and seems to have originally stood higher than Bracton as an authority. It is called good authority by Fitzherbert, J. *Dyer*, 13 b. It is composed of one hundred and twenty-six chapters, written in the true French of the time, embracing various heads of civil and criminal law and practice; and commences in the king's name: —*Edwarde, par la grace de Dieu, roy Dengleterre et seigniour de Irlaunde, a touts ses feals et ses leaus, et ses sujets de Engleterre, et de Irlaunde, pees et grace de*

sauvacyon; (Edward, by the grace of God, king of England and lord of Ireland, to all his faithful and liege people and his subjects of England and of Ireland, peace and grace of salvation.) A marked feature of the work, as distinguished from that of Bracton, is the absence of all reference to the civil law.

The text of Britton has been greatly corrupted and mutilated. Hence the remark of Montague, C. J., that the book contains many errors. *Plowd.* 58, arg. Wingate, in his edition of 573 pages, (or 287 folios) 12mo. has given a list of 650 corrections, or substituted readings.

BROCAGE, *Brokage.* [L. Lat. *brocagium, abrocagium.*] In old English law. The wages or hire, compensation or commission of a broker. *Cowell. Blount.* In the stat. of 1 Jac. I. c. 21, it is written *brokerage*, which is the modern term. The old form of the word is still retained in the expression *brokage of marriage*, which signifies a reward or compensation for bringing about a marriage. See *Marriage brokage.*

The business or occupation of a broker. *De Vyne's case*, cited 16 *Mees. & W.* 177, note.

BROCARIUS, *Broccarius.* L. Lat. In old Scotch law. A broker, (Sc. brocker,) negotiator, mediator, or middle-man, in any transaction or contract. *Skene de Verb. Signif. Cowell. Blount.*

BROCCATOR. L. Lat. In old English law. A broker. *Blount*, voc. *Broker.* See *Brocarius.*

BROCELLA, *Broccella.* L. Lat. [L. Fr. *broce, brocelle;* from O. Lat. *bruscia, brocia.*] In old English law. A wood; a thicket or covert of bushes and brushwood. *Cowell. Blount.*

BROCHE. L. Fr. A lance. *Britt.* c. 66.

BROCHIA. L. Lat. [from L. Fr. *broche*, q. v.] A word used by Bracton in describing the equipment of a horseman intended for military service, which Spelman supposes to have meant a large *vessel* for carrying *liquids. Bract.* fol. 36, 87 b. It seems, however, properly to signify a horseman's *lance*, from the Fr. *broche* of the same meaning, which is the word employed by Britton in what may be considered the parallel passage. *Britt.* c. 66. That it was an iron instrument is clearly shown by an extract given in Cowell, from a record 13 Edw. I. See *Saccus.*

BROCKER. O. Sc. In Scotch law. A broker. *Skene de Verb. Sign.* voc. *Broccarii.*

BROGGER. [L. Fr. *broggour.*] A broker; so called in old English statutes. *Stat.* 10 *Ric.* II. c. 1. Adjudged to be a good addition in law. *Yearb.* H. 9 Hen. VI. 65, cited *Thel. Dig.* lib. 6, c. 15.

BROKER, (anciently BROGGER.) [L. Lat. *broccator, abrocator, brocarius,* and sometimes *auctionarius*, and *correctarius;* Lat. *proxeneta.*] One who makes a bargain for another, and receives a commission for so doing. Tindal, C. J. 6 *Bing.* 702, 706. An agent employed among merchants and others, to make contracts between them in matters of trade, commerce or navigation, for a commission commonly called *brokerage. Russell on Factors*, 3, 4.—An agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation, for a compensation commonly called brokerage. *Story on Agency*, § 22.

A broker is not, in general, authorized to act or contract in his own name; nor is he entrusted with the possession of what he is employed to sell, or empowered to obtain possession of what he is employed to purchase; but he acts merely as a middleman or negotiator between the parties; and in these respects he is distinguished from a *factor.* 2 *B. & Ald.* 137, 143. *Russell on Factors*, 4. 2 *Kent's Com.* 622, note.

*** The earliest definitions of this term confine the employment of brokers to dealings *between merchant and merchant*, exclusively. Thus, by the statute 1 Jac. I. c. 21, brokers are described to be persons employed by "*merchants* English and *merchants* strangers, in contriving, making and concluding bargains and contracts between them, concerning their wares and merchandizes, and moneys to be taken up by exchange between such merchants and merchants, and tradesmen." *Russell on Factors*, 2. *Blount.* Chief Baron Comyn describes them as "persons employed among *merchants*, to make contracts between them, and to fix the exchange for payment of wares sold or bought." *Com. Dig.* Merchant, (C). These definitions, however appropriate at a period when merchandize and exchange brokers appear to have constituted the only classes of this description of agents, have been very properly regarded by modern writers as too limited to include the various classes of

brokers recognized at the present day; although in a late case in England, the Court of Exchequer seemed disposed to abide by the ancient interpretation of the term. 16 *Mees. & W.* 174.

The etymology of the term *broker* has been variously given. By some it has been derived from the Saxon *broc*, misfortune, as denoting a *broken* trader; the occupation being formerly confined, it is said, to unfortunate persons of that description. *Tomlins.* According to others, it is formed from the French *broieur*, a grinder or breaker into small pieces, a broker being one who *beats*, or draws a bargain into particulars. *Termes de la Ley. Cowell.* The Law Latin form *abrocator*, however, seems to point distinctly to the Sax. *abræcan*, (to break), as the true root, which, in the old word *abbrochment* (q. v.) or *abroachment*, had the sense of *breaking up goods*, or selling at retail. A broker, therefore, would seem to have originally signified a *retailer*, and hence we find the old word *auctionarius* (q. v.) used in both these senses.

BROKERAGE. The commission or per centage paid to a broker, on the sale or purchase of property, or the transaction of business.

BRUARIUM, *Bruyrium.* L. Lat. [from Fr. *bruyere*, a heath.] In old English law. A heath ground; ground where heath grows. *Spelman.*

Bruera; a heath, or heathy ground. *Bract.* fol. 231. *Fleta*, lib. 2, c. 71, § 7. *Reg. Orig.* 1 b, 2. *Co. Litt.* 4 b. 1 *Leon.* 169.

Brueria; a heath. *Fleta*, lib. 2, c. 41, § 2. *Id.* lib. 4, c. 27, § 16.

Bruerum; a heath. *Bract.* fol. 229 b.

BRUGBOTE, *Brigbote, Briggebote.* Sax. [from *brug*, or *brig*, a bridge, and *bote*, reparation.] In old English law. A tribute or contribution towards the repairing of bridges. *Quietum esse a* brugbote; to be quit of *brugbote;* to be free from this duty. *Spelman.*

BRUILLUS, *Brogillus.* L. Lat. [Fr. *breil, breuil.*] In old English law. A wood or grove; a thicket or clump of trees in a park or forest. *Cowell. Whishaw.*

Bruilletus, (dimin. of *bruillus*); a small coppice wood or thicket. *Cowell.*

BRUKBARN. Swed. In old Swedish law. The child of a woman conceiving after a rape, which was made legitimate. Literally, the child of a struggle, (*filius luctæ*). *Barringt. Obs. Stat.* citing *Stiernhook*, l. 2, c. 9.

BUCK', *Buck's.* Abbreviations of *Buckinghamshire*, in old records. 1 *Instr. Cler.* 28.

BRUSOUR. L. Fr. In old English law. A breaker. *De* brussours *de la prison le roy;* of breakers of the king's prison. *Britt.* c. 29.

Brusure; a breaking. Brusure *de pountz;* breaking of bridges. *Britt.* c. 122.

BRUSSURA. L. Lat. A bruise. *Bract.* fol. 122.

BULLA. Lat. [Græco-barb. βουλλη, βουλλιον.] A seal used by the Roman emperors, during the lower empire; and which was of four kinds, gold, silver, wax and lead. These are described by Spelman in detail.

A letter, brief or charter, sealed with such a seal, (*literæ bullatæ.*) *Spelman.*

A brief, mandate or *bull* of the pope, having usually a leaden, but sometimes a golden seal. *Id. Blount. Cowell.*

BULLARIA. L. Lat. [L. Fr. *boillourie.*] In old English law. A bullary, or boilary; a place for boiling. *Bullaria aquæ salsæ;* a boilary of salt water; a salt-house or salt-pit, where salt is boiled. *Towns. Pl.* 57. *Co. Litt.* 4 b.

Bullitio salis; a boiling of salt; as much brine or salt as was made from one boiling. *Cowell.*

BULTELLUM. L. Lat. [L. Fr. *bultel.*] In old English law. The boulting of grain, after it is ground; or the sieve with which it was boulted, indicating the degree of fineness. *De eodem blado et eodem bultello;* of the same grain and the same boulting. *Fleta*, lib. 2, c. 9, § 1.

BUNDA, *Bonda, Bonna.* L. Lat. [L. Fr. *bunde;* from Sax. *bunna*, an elevated object; Gr. βουνος, a hill, or hillock; or from Sax. *ban.*] In old English law. A bound, boundary, border or limit, (*terminus, limes.*) *Spelman*, vocc. *Bannum, Bonna.* 4 *Inst.* 318.

Bundæ, et metæ et rationabiles divisæ; bounds and metes and reasonable limits. *Bract.* fol. 166 b. *Per bundas et signa;* by bounds and marks. *Fleta*, lib. 5, c. 41, § 2. *Per metas et* bundas; by metes and bounds. 2 *Crabb's Real Prop.* 146, §§ 1149, 1150. *Secundum metas, mæras,* bundas *et marchias forestæ;* according to the metes, meres, bounds and marches of the forest. 18 Edw. III. *Itin. Pick.* fol.

6, cited in *Blount*, voc. *Bound*. And see *Reg. Orig.* 263 b. *Reg. Jud.* 84 b.

BURDEN OF PROOF. [Lat. *onus probandi.*] In the law of evidence. The necessity or duty of proving a fact or facts in dispute on an issue raised between the parties in a cause. See *Onus probandi.*

BURG, *Burgh.* Sax. [L. Lat. *burgus.*] A castle, or fortified place. *Spelman*, voc. *Burgus.* According to Sir F. Palgrave, the *burgh* among the Anglo-Saxons was an hundred, or assemblage of hundreds, surrounded by a wall or moat. *Palgr. Rise*, p. 102.

A borough. *Spelman.* See *Burgus.*

BURGAGE. A dwelling-house in a borough town, anciently so called. *Blount.* Burgag' *n'est rien sinon mese en ville de bourgh. Yearb.* M. 6 Edw. II. 184. The term "burgage-house" is still used. 16 *East*, 406.

BURGAGE TENURE. [L. Lat. *burgagium;* L. Fr. *bourgage*, from Sax. *burg*, L. Lat. *burgus*, a borough.] In English law. A tenure by which houses, or lands which were formerly the site of houses, in ancient boroughs, are held of the king, or other lord of the borough, at a certain yearly rent. *Glanv.* lib. 7, c. 3. *Litt.* sect. 162, 163. *Co. Litt.* 108 b. 2 *Bl. Com.* 82. *Blount.* 1 *Steph. Com.* 198. 1 *Crabb's Real Prop.* 593, § 749. It is considered to be a species of socage; the tenements being holden either by a certain annual pecuniary rent, or by some services relating to trade or handicraft; such as repairing the lord's buildings, providing the lord's gloves or spurs, &c., but no way smelling of the plough or tillage, and having no relation to military service. *Litt.* sect. 162. *Somner, Gavelk.* 142—148. *Spelman*, voc. *Burgagium. P. Cyclopædia.*

BURGAGIUM. L. Lat. In old English law. Burgage; the tenure of burgage. *Mag. Cart. Johan.* c. 37. *Id.* 9 Hen. III. c. 27.

BURGARII, *Burgenses.* L. Lat. [from *burgus*, a borough; Sax. *burghwarn.*] In old English law. Burghers or burgesses; inhabitants of a *burgus*, borough, or walled town. *Spelman*, voc. *Burgarii.*

BURGATOR. L. Lat. [from *burgus*, a borough, a town, or enclosed place.] In old criminal law. A burglar or housebreaker; one who broke into and robbed a *burg*, or enclosed place. *Spelman*, voc. *Burglaria.* The *burgator* was distinguished from the *prædo* and *robbator* (robber) as well as the *latro* and *fur*, (thief). *Fleta*, lib. 1, c. 16, § 6. *Id.* c. 20, § 5. *Id.* lib. 2, c. 52, § 9. See *Burglar.*

BURGBOTE, *Burghbote.* Sax. [from *burg*, a castle, or town, and *bote*, reparation.] In old English law. A tribute or contribution (*auxilium*,) towards the repairing of castles or walls of defence, or of a borough or city. *Spelman. Co. Litt.* 109 a. *Cowell.*

Exemption from such a tribute. *Fleta*, lib. 1, c. 47, § 21.

BURGEMOTUS. L. Lat. In Saxon law. A burg mote, or burgh mote. *Spelman.* See *Burghmote.*

BURGENSES. L. Lat. In old English law. Inhabitants of a *burgus* or borough; burgesses. *Fleta*, lib. 5, c. 6, § 10.

BURGESS. [L. Lat. *burgarius, burgensis.*] In English law. An inhabitant or freeman of a borough or town; a person duly and legally admitted a member of a municipal corporation. *Spelman*, voc. *Burgarii.* 3 *Steph. Com.* 188, 189. See *Municipal corporation.* A *burgess* of a *borough* corresponds with a *citizen* of a *city;* and these are mentioned as distinct classes in the statute 5 Ric. II. c. 4; although the inhabitants of a city were sometimes called *burgesses*, and this application of the word is now revived in England. *Spelman, ub. sup.* 5 *East*, 208. 1 *Man. & Gr.* 1, note (*a*).

An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Will. IV. c. 76, ss. 9, 13. 3 *Steph. Com.* 192.

A representative of a borough or town, in parliament. *Co. Litt.* 109 a. 1 *Bl. Com.* 174. See *Borough.* One of the branches of the legislature of the state of Virginia was formerly called the House of Burgesses.

A magistrate of a borough. *Blount.*

*** The origin of this term dates from a period prior to the Norman Conquest, it having been usual for such persons of free condition as were not land-owners, to settle in the towns, and occupy houses there, as tenants to the crown or some inferior lord, under the name of *burgesses;* to form themselves by license from the crown, (as many classes of persons did in that age,) into voluntary associations of fraternities called *guilds;* to be entitled in their capacity of burgesses to certain property, and in the

same capacity to be exempt from certain burthens, and to be subject to certain liabilities. 3 *Steph. Com.* 189. *Domesday Book*, cited *ibid.* *Spelman*, voc. *Burgarii.* *Stat. Merton*, c. 7.

BURGESS ROLL. In English law. A roll or list, in the form of a book alphabetically made out, required by the municipal corporation act, (5 & 6 Will. IV. c. 76,) to be kept in corporate towns or boroughs, containing the names of those burgesses who are entitled to such new rights as the act for the first time confers on these boroughs. 3 *Steph. Com.* 192, and note (*k*); 196, 197. This seems to be otherwise called the *burgess list*; although a distinction between the terms has been contended for. 3 *Ad. & El.* (N. S.) 475, 480.

BURGESSOURS, *Bourgessours.* L. Fr. Burglars are so called by Britton, cc. 10, 29.

BURGH. [Lat. *burgus.*] A borough. *Litt.* sect. 162, 164. *Co. Litt.* 108, 109.

BURGHBRECH, *Burghbrich*, *Borghbrech.* [Sax. *borhbryce*, *borhbrece*; from *borh*, a pledge or surety, and *bryce*, a breach or violation.] In Saxon law. Breach of pledge, (*fidejussionis violatio*, *plegii fractio*); the offence of violating the pledge given by every inhabitant of a tithing, to keep the peace; breach of the peace. *Spelman.* See *Borgbrech.*

BURGH ENGLISH. See *Borough English.*

BURGH ENGLOYS. Borough English, (q. v.) *Yearb.* P. 1 Edw. III. 38.

BURGHERISTH. Sax. A word used in Domesday, supposed to signify a breach of the peace in a town; although Spelman speaks doubtingly of its meaning. *Cowell.* *Spelman.* Mr. Sumner thinks it should be *burghbrich.*

BURGHMOTE, *Burgmote*, *Burgemote.* Sax. [L. Lat. *burgemotus*, *burgesmotus*, *burgimotus*; from *burg*, a burgh, and *mote* or *gemote*, a meeting.] In Saxon law. The court or meeting of a burgh or borough; a borough court, (*curia burgensis.*) A court held in burghs or towns three times a year, at which the earldorman, or alderman presided. *LL. Edg.* c. 5. *LL. Canuti*, c. 44. *Spelman.* 1 *Spence's Chancery*, 58. *Crabb's Hist. Eng. Law.* 27. See *Gemote.*

BURGHWAR, plur. *Burghwarn.* Sax. [from *burg*, and *war*, a man.] In Saxon law. An inhabitant of a burgh, or borough, (*burgi vir*); a burgess or burgher; (*burgensis*, *burgarius.*) *Williem, King, grets Williem, bisceop, & Godfred portrefan, & ealle tha* burghwarn *binnan London, &c.*; William, King, greets William, bishop, and Godfrey, portgreve, and all the burgesses within London. The commencement of a charter granted by William the Conqueror to the city of London. *Spelman.* *Cowell*, voc. *Portgreve.* *Blount*, h. v.

BURGLAR. [L. Lat. *burglator*, *burgator*, quasi *burgi latro*, the robber of a *burg*, or fenced place.] In criminal law. A nocturnal housebreaker; one who by night breaks and enters into a mansion [or dwelling] house, with intent to commit a felony. 3 *Inst.* 63. See *Night.*

In American law, this definition has been considerably modified. See *Burglary.*

BURGLARIOUSLY. In criminal pleading. A word held essential in indictments for burglary, as the corresponding Latin word *burglariter* formerly was. *Wharton's Am. Crim. Law*, 101. See *Burglariter.* In Massachusetts, however, under the revised statutes, it has been held not essential. 4 *Metcalf's R.* 357.

BURGLARITER. L. Lat. (Burglariously.) In old criminal pleading. A necessary word in indictments for burglary. 3 *Bl. Com.* 307. Held to be a word of art (*vox artis*,) which could not be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Cro. Eliz.* 920. 2 *East*, 30.

BURGLARY. [L. Lat. *burglaria*, *burgi latrocinium*; Fr. *burg laron*; Sax. *husbrec.*] In English criminal law. The crime of breaking and entering into a dwelling-house, or a building immediately connected therewith, in the night, with intent to commit a felony, whether such felonious intent be executed or not. 3 *Inst.* 63. 1 *Hale's P. C.* 549. 4 *Bl. Com.* 224. *Stat.* 7 & 8 *Geo.* IV. c. 29, s. 13. 4 *Steph. Com.* 146, 148. 1 *Russell on Crimes*, 785. *Wharton's Am. Crim. Law*, 352. Succinctly defined by Finch, "the night breaking of a house, with intent to steal or kill." *Finch's Law*, b. 3, c. 22.

The breaking *out* (*effractio*) of a dwelling-house in the night time, after having entered it with intent to commit felony, or after committing a felony while in such house. *Stat.* 7 & 8 *Geo.* IV. c. 29, s. 11. *Steph. Crim. Law*, 162. 4 *Steph. Com.* 151. See *Breaking*, *Effractores*, *Entry*, *Dwelling-house*, *Curtilage*, *Night.*

In American law, the English definition of burglary has been so far modified as to

include offences committed by *day* as well as by night, and in *other* buildings than *dwelling-houses;* and various *degrees* of the crime have been established by statute in several of the states. *Wharton's Am. Crim. Law*, 350, 352.

*** The term *burglary*, according to Spelman, is of Norman origin, the corresponding term in Saxon law being *husbrec.* It is usually supposed to be derived either from the Lat. *burgus*, a town, dwelling or enclosed place, and *latrocinium*, robbery, or from Fr. *bourg*, and *larrecin*, of similar significations; its radical meaning being the robbery, (or the breaking into, with a view to the robbery) of any fenced or *enclosed place*, as distinguished from the open country. *Spelman*, voc. *Burglaria. Cowell.* See *Burgus.* Hence it originally signified the breaking open, not only of a dwelling-house, but of a church, and also the breaking of the walls or gates of a town (*burgus*), or city, (which, after the civil law, were anciently considered sacred,) with intent to commit a felony. *Spelman. Bract.* fol. 8, 207 b. So Britton defines burglars to be "those who feloniously, in times of peace, break churches, or the dwelling-houses of others, or the walls or gates of cities, or burghs." *Britt.* c. 10. The circumstance of breaking *by night*, (*noctanter,*) was not originally considered a characteristic of this crime, but seems to have been introduced in the reign of Edward IV. *Spelman.* 4 *Reeves' Hist. Eng. Law*, 539. *Crabb's Hist. E. L.* 309. Bracton classes burglars with robbers and murderers, who practice their wickedness by day and by night; (*murdritores, et robbatores, et burglatores, qui malitiam suam exercent* die ac nocte.) *Bract.* fol. 115 b.

BURGLATOR. L. Lat. In old English law. A burglar. *Bract.* fol. 115 b, 117.

BURGUNDIAN LAW. See *Lex Burgundionum.*

BURGUS. L. Lat. [Sax. *burg, burh, burch, berg, beorg, birg, byryg, burug;* from Gr. πύργος, a tower.] In old European law. A fortified or enclosed place or dwelling, (*locus munitus, habitaculum munitum*). *Spelman.*

A town or place enclosed with a wall or rampart. *Id.* The large *burgi* or towns in England had gates like cities. *Fleta*, lib. 1, c. 24, § 4.

Any town of note, not enclosed. *Spelman.*

A borough or burgh. *Id.*

A place distinguished both from a city, (*civitas,*) and a town, (*villa,*) and occupying a middle rank between both. *Mag. Cart.* 9 Hen. III. c. 9. *Id. Johan.* c. 13. See *Borough.*

BURLAWS, *Birlaws, Byrlaws*, [from Belg. *buur*, a husbandman.] In Scotch law. Laws made by neighbors elected by common consent in the birlaw courts. *Skene de Verb. Signif.*

Laws made by husbandmen, &c., concerning neighborhood, (*rusticorum leges.*) *Id. in Reg. Maj.* lib. 4, c. 39, § 8. Spelman (voc. *Bellagines*) considers this word essentially the same with *by-laws*, (q. v.)

BURLAW (BYRLAW or BIRLAW) COURTS. In Scotch law. Courts composed of neighbors elected and chosen by common consent, which take cognizance of complaints between neighbor and neighbor; the judges (who are arbitrators) being called *birlaw-men*, or *byrlaw-men. Skene de Verb. Signif. Spelman*, voc. *Bellagines.* See *By-law-men.*

BURN. [Lat. *comburere.*] To consume with fire. The verb "to burn," in an indictment for arson, is to be taken in its common meaning of "to consume with fire." 17 *Georgia R.* 130. See *Fire.*

BURNING IN THE HAND. In old criminal law and practice. The punishment of burning with a hot iron on the brawn of the left thumb, formerly inflicted upon lay offenders who were allowed the benefit of clergy, in order to distinguish their persons, so as to prevent their claiming that privilege a second time. 4 *Bl. Com.* 367. 5 *Co.* 51.

The old entry of judgment in these cases was: *Ideo consideratum est quod* (le offender) cauterizetur in manu *sua læva*, &c.; Therefore it is considered that (the offender) be burnt in his left hand, &c. *Rast. Entr.* 1, 6, & 56 a. *T. Raym.* 370. See Siddons *v.* Johnson, 2 *Show.* 386. The burning itself was done in open court, and seems to have been subject to the direction of the judges. 1 *Salk.* 61. Thus, in an old case where a prisoner was found guilty of manslaughter, under circumstances of great provocation, it is said he "had his clergy at the bar, and was burned in the hand, and the court directed the executioner *to burn him gently*, because there could not be greater provocation." *T. Raym.* 212. To what length the courts carried their discretion in this particular appears strikingly from a remark made by counsel in a more

modern case, that "the punishment of burning in the hand is constantly and notoriously done in the *face*, and with the knowledge of the judges themselves, *with a cold iron*." 2 *Burr.* 794. See 12 *Mod.* 448. 3 *P. Wms.* 451. See *Clergy, Benefit of Clergy.*

BURROUGH. An old form of *Borough.* *Burr. Sett. Cas.* 19.

BURROWMEALIS, *Burrow-meals, Burrow-mailles,* (*Borough mailles.*) In Scotch law. Rents paid to the king by the burgesses, (*burgenses*) or inhabitants of a borough, or burrow, and which went to the king's private treasury, (*fisco et patrimonio regis*). The word *mealis*, (the form of the Scotch plural,) is considered by Spelman as signifying the same thing as the old English law term *firma*, a *ferm* or *farm*, i. e. provisions, or rent paid in provisions. It is probably the same with *mail* in the word *blackmail*, and with the modern English *meal*, a portion of food taken at stated intervals. See *Blackmail, Ferm, Maile.*

BURSA. L. Lat. In old English law. A purse. *Spelman.* *Bract.* fol. 84. *Fleta*, lib. 6, c. 28, § 1. *Bursarum scissores;* cutters of purses; cut-purses. *Fleta*, lib. 1, c. 38, § 11.

A bag. *Fleta*, lib. 2, c. 82, § 2.

BURSE. L. Fr. A purse. *Britt.* c. 29.

BURYING ALIVE. In English law. The ancient punishment of sodomites, and those who contracted with Jews. *Fleta*, lib. 1, c. 27, § 3.

BUSCA. L. Lat. In old English law. Hedgewood. *Reg. Orig.* 105.

Underwood, billet or brushwood. *Blount. Cart. de Forest.* c. 14. *Fleta*, lib. 2, c. 41, §§ 9, 10. See *Boscus.*

BUSCARL, *Butsecarl, Buzecarl.* Sax. [from *bussa*, a ship, and *carl*, an attendant.] In Saxon and old English law. Seamen or marines, (*milites nautici.*) *Spelman. Domesday*, Titt. *Wiltsc. Wilton.*

BUSELLUS, *Bussellus, Bussellum.* L. Lat. A bushel. See *Bussellus.*

BUSHEL. [L. Fr. *bussel;* L. Lat. *busellus, bussellus.*] A measure of capacity containing eight gallons. The Winchester bushel, which was the standard measure used in England from the time of Henry VII. to the year 1826, contained 2150.42 cubic inches. By statute 4 & 5 Geo. IV. c. 74, the Imperial bushel for liquids was made to contain (according to the standard gallon,) 80 pounds of distilled water, or 2218.192 cubic inches. By the same act the bushel for dry measure was prescribed to contain 2815 cubic inches. This was a heaped bushel, but it was abolished by stat. 4 & 5 Will. IV. c. 49.

In the United States, the Winchester bushel has generally been adopted. In New-York, the provisions of the statute 4 & 5 Geo. IV. c. 74, have been in a great degree followed, and the bushel is declared to contain, at the mean pressure of the atmosphere, at the level of the sea, eighty pounds of distilled water at its maximum density. 1 *Rev. St.* [608, § 14,] 618, § 19. See 3 *Rev. St.* 531—546, (2d ed.) The heaped bushel is expressly retained. 1 *Id.* [608, §§ 15, 16,] 618, §§ 20, 21.

BUSONES. L. Lat. A word occurring in the following passage of Bracton: *Justiciarii, vocatis ad se quatuor, vel sex, vel pluribus de majoribus comitatûs, qui dicuntur* busones *comitatûs*, &c. *Bract.* fol. 115 b. Mr. Reeves observes that the anomalous appellation of *busones* is to be met with no where but in this passage. 2 *Reeves' Hist. Eng. Law*, 2, note. Spelman says the words *qui dicuntur busones comitatûs* were wanting in his MS. copy. *Gloss.* in voc. The word *busones*, if genuine, no doubt signified the principal persons of the county, and is thought by some to have been synonymous with *barones*, (barons). *Crabb's Hist. Eng. Law*, 161. Some copies have *barones.*

BUSOYGNE. L. Fr. Matter; business. *Fet Assaver*, § 50.

BUSSA, *Buscia.* L. Lat. In old English law. A ship of large size and clumsy construction, (*panda alvo et obtusa prora*). *Spelman.* The word *buss* is now used to denote a small sea vessel employed by the English and Dutch, in the herring fishery. *McCulloch's Dict.*

BUSSEL. L. Fr. A bushel. *Bussels et demy bussels. Britt.* c. 30.

BUSSELLUS. L. Fr. [contracted from *butticellus, butticella*, dim. of *butta*, q. v.] In old English law. A bushel. *Fleta*, lib. 2, c. 8. *Id.* lib. 2, c. 73, § 3. It consisted of eight gallon measures of wheat, (*octo jalonatæ frumenti*). *Id.* c. 12, § 1. *Standardum* busselli, *galonæ et ulnæ sigillo domini Regis ferreo signentur;* the standard bushel, gallon and ell shall be stamped with the king's iron seal. *Stat. de Pistoribus*, 31 *Edw.* I. c. 8. *Spelman.* See *Galo.*

BUTLERAGE. In old English law. A very ancient hereditary duty belonging to the crown, at first called *prisage*, (q. v.)

being the right of *taking* two tuns of wine from every ship importing into England twenty tuns or more; which by charter of Edward I. was exchanged into a duty of two shillings for every tun imported by merchant strangers, and called *butlerage*, because paid to the king's butler. 1 *Bl. Com.* 315. *Termes de la Ley. Molloy de Jur. Marit.* 302. *Calthrop's R.* 23, 24. *Fleta*, lib. 2, c. 22. 2 *Inst.* 59, 60.

BUTT. In old English law. A measure of wine, containing at least 126 gallons. *Stat.* 1 *Ric.* III. c. 13. *Cowell.* See *Butta.*

A measure of land. See *Buttum.*

BUTTA, *Buttis.* L. Lat. [Fr. *bout;* Sax. *byt*, *bytte*, a leathern bottle or bag.] In old English law. A standing measure of wine. *Cowell*, voc. *Bussellus. Yearb.* M. 9 Hen. VI. 34. A vessel for measuring, holding or carrying liquids.* The bags of leather in which they formerly carried water from the Severn into the city of Worcester were called *byttes*, and each load of water was termed a *bytte* of water. *Kennett's Gloss.* voc. *Bussellus. Cowell.*

BUTTALS. [contracted from *abuttals*, q. v.] In old conveyancing. The boundary lines of lands on the *ends*, as distinguished from those on the *sides*, which were called *sidings.* "*Buttals* and sidings, east, west, north and south." *Cro. Jac.* 183. See 1 *Leon.* 30.

BUTTED AND BOUNDED. A phrase sometimes used in conveyancing, to denote the boundaries of lands. See *Butts and bounds.*

BUTTS. [L. Lat. *butta*, from Fr. *bouts*, ends.] In old English law. Short pieces of land left unploughed at the *ends* of fields, where the plough was *turned about*, (otherwise called *headlands*,) as sidelings were similar unploughed pieces on the sides.* See *Caputia, Headlands, Sidelings.*

*** This word is very obscurely defined in the old books, "the ends or short pieces of lands in arable ridges and furrows." *Cowell.* A case in Littleton's Reports, however, clearly illustrates its meaning. A libel was filed in the court christian for tithes of hay, and the defendant showed that the hay was growing upon headlands and *butts* in cornfields. A prohibition was applied for, and allowed, the court holding that the defendant was discharged of tithe in this case by necessity, for it was relinquished by the *turning of the plough. Litt. R.* 13. *Butts* seem to have been untilled slips of land in the *ends* of fields, just as *balks* (a term still used,) were similar untilled slips in the *body* of fields or commons. 2 *Steph. Com.* 9, note. *Brande*, voc. *Common.* Both words have the radical sense of a *stopping*, and *turning off*, or around. See *Butts and bounds.*

BUTTS AND BOUNDS. A phrase sometimes used in conveyancing, where a particular piece of land is described by enumerating the several lands or parcels which adjoin it, (or upon which it *abuts*) on the different sides. Properly, however, these words are descriptive of the *lines* which bound or circumscribe a piece of land, without reference to exterior objects, having nearly or quite the same sense as the more technical expression "*metes and bounds.*" In lands of the ordinary rectangular shape, *butts* are the lines at the *ends*, (Fr. *bouts*,) and bounds are those on the *sides*, or *sidings*, as they were formerly termed. See *Buttals, Abuttals.* But in lands of irregular shape, *butts* are the angular points, or corners, where the boundary lines stop and turn in a new direction. This has been sufficiently explained under other heads. See *Abuttals, Butts, Boundary, Corner.* These distinctions, however, are generally disregarded in practice.

A further illustration of the true meaning of *butt* is derived from that of *mete*, which, according to Spelman, is its synonyme. *Mete* is from the Lat. *meta*, the goal of a race-course, or point at which some object was set up, (like a *butt* or mark to shoot at,) about which the course *turned*, or where it finally came to an *end. Spelman*, voc. *Abuttare.*

BUTTUM. L. Lat. In old records. A butt or measure of land; (*buttum terræ.*) *Carta M. de Sibbeford*, cited in *Blount.*

BUYING OF TITLES. The purchase of titles to land from parties not in possession. See 4 *Kent's Com.* 448—450. See *Champerty.*

BY. A common word in deeds and other instruments, having various senses, according to its application.

As expressive of the relative position of objects in space, *by* has the sense of nearness, or juxtaposition. As used in describing the boundaries of land, it sometimes denotes mere contact, answering to the words "to" or "on;" sometimes contact united with direction, or continued contact, answering to the word "along." "By land of" an adjoining owner means "along the external boundary line of that land."

19 *N. Hampshire R.* 273. And see further, as to the construction of the word, 16 *Maine R.* 245. 20 *Wendell's R.* 149. 3 *Sumner's R.* 170. 3 *Kent's Com.* 427—434, and notes. *Angell on Water-Courses*, § 23, *et seq.*

In its application to time, *by* has the sense of reaching or touching, without inclusion. "By a certain day" excludes that day. 3 *Penn. R.* 48.

In its application to persons, *by* has the sense of instrumentality or agency, answering to the Lat. *per*, through.

BY-BIDDING. Bidding on property offered for sale at auction, by or in behalf of the owner for the mere purpose of raising the price, or inducing others to bid higher. Sometimes called *puffing*. By-bidding by the owner, or caused by the owner, or ratified by him, has often been held to be a fraud, and avoids the sale. 8 *Howard's R.* 153, and cases cited *ibid.*

BY BILL, BY BILL WITHOUT WRIT. In practice. Terms anciently used to designate actions commenced by original *bill*, as distinguished from those commenced by original *writ*, and applied in modern practice to suits commenced by *capias ad respondendum*. 1 *Arch. Pr.* 2, 337. 5 *Hill's* (N. Y.) *R.* 213.

BY ESTIMATION. A phrase used in conveyances, in describing the quantity of land conveyed, where it is not precisely ascertained by measurement. See *More or less.*

BY GOD AND MY COUNTRY. In old English criminal practice. The established formula of reply by a prisoner, when arraigned at the bar, to the question "Culprit, how wilt thou be tried?" Mr. Barrington thinks the correct formula must originally have been, "By God *or* my country," i. e. by ordeal (the *judicium Dei*,) or by jury; for the reason that the question asked supposes an option in the prisoner, and the answer is meant to assert his innocence by declining neither sort of trial. *Barringt. Obs. Stat.* 84, note [*i*]. But it is clear that in answering the question, the prisoner was expected to select one particular mode of trial, which the alternative expression contended for would not amount to. That the expression "By God" did not necessarily and exclusively import the *ordeal*, appears from the form of issue in cases of trial by the grand assise, which always was that the party put himself "on God and on the grand assise." See *Britt.* c. 48. *Yearb.* (Additions after) T. 20 Hen. VI. 4. That every word of this formula was deemed essential, appears from several cases on record, in which the prisoner's replies—"By God and my good country," "By God and honest men," were severally rejected, and he was compelled to use the precise words of the form. 1 *How. State Trials*, 1143. 3 *Id.* 520. 6 *Id.* 75. 7 *Id.* 831. On the trial of John James for high treason, 13 Car. II. 1661, the prisoner requesting an explanation of the form, the judge said that "By God" meant "by the law of God," and "by the country," twelve Middlesex men of truth, that would judge impartially between the king and him. 6 *St. Trials*, 75.

BY-LAWS. [L. Lat. *bilagæ, bilagines, bellagines*, from *by*, a town.] Originally, the local laws of towns, or municipal corporations, as distinguished from the general laws of the land. See *Bilagines.*

Now generally used to signify the private laws or regulations made by any corporation for its own government; which are binding upon it if made in conformity with the general law of the land; otherwise they are void. 1 *Bl. Com.* 475, 476. 2 *Kent's Com.* 296, and note. *Angell & Ames on Corp.* 323, ch. 10.

BY-LAW MEN. In English law. The chief men of a town, representing the inhabitants. See 6 *Ad. & Ell.* N. S. 60.

BY THE BYE. [Lat. *obiter.*] In practice. Incidentally. A term formerly applied in English practice to a peculiar mode of declaring, as distinguished from declaring in chief. A declaration *in chief* was at the suit of the same plaintiff for the principal cause of action, or that for which the writ was sued out; a declaration *by the bye* was at the suit of a *different* plaintiff, or of the same plaintiff for a *different* cause of action, 1 *Tidd's Pr.* 419. The practice of declaring *by the bye* is now abolished. *Archb. New Pr.* 293.

C

C. The letter inscribed on the ballots by which, among the Romans, jurors voted to condemn an accused party. It was the initial letter of CONDEMNO, I condemn. *Tayl. Civ. Law*, 192.

C. The initial letter of the word *Codex*, used by some writers in citing the Code of Justinian. *Tayl. Civ. Law*, 24.

C is sometimes used for T, in old Latin

records. *Tercia pars tocius terræ*, for *tertia* and *totius*. *Mag. Cart.* 9 Hen. III. c. 7.

CA. L. Fr. Here. *Ca et la;* here and there. *L. Fr. Dict.*

CABALLERIA. In Spanish law. A portion of spoils taken or lands conquered in a war, granted to a horse soldier. *Dict. Span. Acad.* 12 *Peters' R.* 444, note.

An allotment of land, being a lot of one hundred feet front and two hundred feet deep. 2 *White's Recop.* [38,] 49.

CABALLERO. Span. [from Lat. *caballus*, a horse.] In Spanish law. A knight. So called on account of its being more honorable to go on horseback (*à caballo*,) than on any other beast. *White's New Recop.* b. 1, tit. 5, c. 3, § 3. *Id.* b. 1, tit. 5, c. 1. *Id.* b. 3, tit. 10, c. 1, § 6.

CABLISH. [L. Lat. *cablicium, cablicia;* Fr. *cables, cablis.*] In the forest law. Brush wood, or browse wood. *Crompt. Jur.* 163, 263. According to Spelman, wind-fallen wood, (*caduca ligna ventis dejecta.*) *Spelman*, voc. *Cablicia. Blount.*

CACICAZGOS. Span. In Spanish-American law. Property entailed on the *caciques*, or heads of Indian villages, and their descendants. *Schmidt's Civ. Law*, 309.

CADASTRE. Span. In Spanish law. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 *Peters' R.* 428, note.

CADERE. L. Lat. In old practice. To fall, fail, cease, or come to an end; to abate. *Cadit actio;* the action fails, or abates. *Bract.* fol. 308, 308 b. *Cadit appellum. Id.* 140 b, 141. *Cadit assisa. Id.* 192 b, 210 b. *Cadit breve. Id.* 161, 182 b. *Cadit loquela. Id.* 260 b, 363. *Cadit warrantia. Id.* 394. *Cadit quæstio;* (q. v.) there is an end of the question. The opposite of *stare*, (to stand,) and *tenere*, (to hold). *Aut stabit appellum aut* cadet; the appeal will either stand or fall. *Bract.* 140 b. *Et sic vel* cadit *breve omnino, vel stabit quantum ad quosdam, et* cadet *quantum ad alios;* and so the writ either abates altogether, or will stand good as to some, and abate as to the others. *Id.* fol. 414. Cadit *breve et assisa versus tales, licet teneat versus alios;* the writ and assise fails against such, though it holds against the others. *Id.* fol. 203. *Ubi* cadit *actio, ibi* cadit *breve;* where the action fails or abates, there the writ abates also. *Id.* fol. 414. See *Chet.*

Cadere à, or *ab.* To fail in, or be defeated; to lose. Cadat *ab actione sua et à causa;* he shall fail in his action and cause. *Bract.* fol. 280. Cadit *mulier à casu;* the woman loses her case. *Id.* 301 b. *Cadit à causa;* she loses her cause. *Fleta*, lib. 2, c. 61, § 16. Cadat *à causa sua;* he shall lose his cause. *Bract.* fol. 308 b. *Qui* cadit *à syllaba* cadit *à tota causa;* he who mistakes in a syllable, loses his whole cause. *Stat. Wales*, 12 *Edw.* I. 3 *Bl. Com.* 407. 2 *Reeves' Hist. Eng. Law*, 98. See *Bract.* fol. 211. Used in the same sense without the preposition. Cadere *causa;* to fail in, or lose one's cause, to be cast. *Cic. De Orat.* i. 36. *Inst.* 4. 6. 33. Cadere *assisa;* to be nonsuited. *Fleta*, lib. 4, c. 15. Literally translated in Scotch law, to fall from. "To *fall from* a right," is to lose or forfeit it. 1 *Kames' Equity*, 228.

Cadere in. To fall into; to become liable to; to be the subject of. Cadit *donatio in partem;* the gift becomes the subject of division, (or *venit in divisionem*, goes into a common stock, for the purpose of making a general division.) *Bract.* fol. 22. Cadere *in assisam;* to be the subject of an assise, as an agreement or covenant; to be sued for in that form. *Id.* 213 b. The same as *incidere. Id.* 213. To become liable to an assise, as a person or party; to be suable in that form. *Possunt plures* cadere *in assisam, sicut unus;* several defendants may be included in an assise as well as one. *Id.* fol. 172. The same as *incidere*, which is more frequently used. *Id.* fol. 170 b, 171.

Cadere in. To fall into; to be changed or turned into. Cadit *assisa in juratam;* the assise is turned into a common jury. *Bract.* fol. 213 b. *Cadit assisa, nec est capienda ut assisa, sed vertitur in juratam;* the assise falls, nor is it to be taken as an assise, but it is turned into a jury. *Id.* fol. 192 b. Cadit *assisa et vertitur in juratam. Id.* fol. 210 b. Cadit *assisa in perambulationem;* the assise is turned into a perambulation. *Id.* 180, 211 b. 1 *Reeves' Hist. Eng. Law*, 336.

CADIT. Lat. [from *cadere*, q. v.] In old practice. (It) falls, fails, abates.

Cadit assisa; the assise fails. The title of the fifteenth chapter of the fourth book of Fleta.

Cadit quæstio; the question falls, there is an end of the question. Bayly, J. 3 *M. & S.* 444. *Cadet quæstio.* Lord Ellenborough, 12 *East*, 381.

CADUCUS, *Caduca.* L. Lat. [from

cadere, to fall.] In the civil and old common law. Falling; fallen. *Caducus morbus;* the falling sickness. *Cowell. Caduca ligna;* fallen wood. *Spelman*, voc. *Cablicia. Glans caduca;* nuts or acorns that fall from the tree, (*quæ ex arbore cecidit*). *Dig.* 50. 16. 30. 4.

Escheated; falling or fallen to the state. *Partes caducæ;* escheated portions. *Dig.* 5. 3. 20. 6, 7.

CADUCA. L. Lat. [pl. of *caducum*, from *cadere*, to fall.] In the civil law. Escheats; escheated estates or lands. *Co. Litt.* 13 a. Those that *fall* to the state. See *Escheat.* See the title *De caducis tollendis; Cod.* 6. 51.

CADUCARY. [from *caducus*, q. v.] Relating to escheat, forfeiture or confiscation. 2 *Bl. Com.* 245.

Having the character of escheat. "A sort of *caducary* succession." Lord Mansfield, 1 *W. Bl.* 163.

CADUS. L. Lat. In old English law. A barrel. *Towns. Pl.* 173. *Decem* cados *olei. Bract.* fol. 35.

CÆDERE. Lat. In the civil law. To cut, (as trees); to cut down; to strike with the view of cutting down. *Dig.* 47. 7. 5. pr.

CÆDUA. Lat. [from *cædere*, to cut.] In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood. *Silva* cædua *est quæ in hoc habetur ut cæderetur; sylva cædua* is that kind of wood which is kept for the purpose of being cut. *Dig.* 50. 16. 30. According to Servius, it was that kind which, when cut down, grew up again from the trunks or roots. *Id.* See *Dig.* 7. 1. 9. 7. *Id.* 7. 1. 10. 11. *Id.* 43. 24. 18.

CÆSAR. Lat. In the Roman law. A cognomen in the Gens Julia, which was assumed by the successors of Julius. *Taylor's Civ. Law*, 31.

CÆTERIS TACENTIBUS. Lat. The others being silent; the other judges expressing no opinion. *Comb.* 186. A phrase in the old reports.

CAHIER. Fr. In old French law. A list of grievances prepared for deputies in the States General. *Steph. Lect.* 254.

A petition for the redress of grievances enumerated. *Id.* 257.

CAIUS. Lat. A Roman name, sometimes used for *Gaius*, (q. v.)

CALAMUS. Lat. A pen; writing or penmanship. *Stylum calami. Fleta*, lib. 4, c. 10, § 3. Calami *diversitas vel atramenti;* difference of writing or of ink. *Id.* § 4.

CALANGIUM, *Calangia.* L. Lat. [from Fr. *calanger.*] In old English law. A challenge; a claim or dispute. 2 *Mon. Angl.* 252. *Cowell. Blount. Spelman*, voc. *Calumnia.*

CALAPHATES. Græco-Lat. A ship's carpenter or shipwright. *Molloy de Jur. Mar.* 243.

CALASNEO. In old European law. One who possessed land adjoining another, or having a common boundary with another, (*conterminus.*) *L. Baiwar.* tit. 21, § fin. *Spelman.*

CALATA COMITIA. See *Comitia Calata.*

CALCARIA. L. Lat. In old English law. Spurs. *Bract.* fol. 35.

CALCEATA, *Calcetum, Calcea.* L. Lat. [Fr. *chaussee.*] In old English law. A cause-way, or causey; a path or road raised with earth and paved; (*agger, via strata.*) *Spelman. Cowell*, voc. *Calcea.*

CALCETUM. L. Lat. In old English law. A cause-way. *Reg. Orig.* 154. *Fleta*, lib. 2, c. 52, § 33. See *Calceata.*

CALCIFURNIUM. L. Lat. In old European law. An oven for burning lime, (*furnus ad coquendam calcem;*) a lime-kiln. *Spelman.*

CALE. Fr. In old French law. A species of punishment inflicted upon sailors, by plunging into the water, and drawing up again. *Ord. Mar.* liv. 2, tit. 1, art. 22. The modern *keel-hauling.* (?)

CALEFAGIUM. L. Lat. In old records. A right to take fuel yearly. *Cowell. Whishaw.*

CALENDAR, *Kalendar.* [L. Lat. *calendarium*, from *calendæ*, q. v.] The established division of time into years, months, weeks and days. "The calendar is settled by law, and is part of the law." Holt, C. J. 6 *Mod.* 252.

A table or register of such divisions. *Encyclop. Americ. Brande.*

CALENDARIUM. L. Lat. A calendar. See *Calendar.*

CALENDAR (or *Solar*) MONTH. A month computed according to the calendar, and containing thirty or thirty-one days, except February, which contains twenty-eight days, and in the bissextile or leap year, twenty-nine. *Co. Litt.* 135 b. *Stat.* 16 *Car.* II. c. 7. *Com. Dig.* Ann. (B). 3 *Chitt. Gen. Pract.* 108. 4 *Kent's Com.* 95, note. See *Month.*

CALENDAR OF CAUSES. In practice. A list of litigated causes, prepared by the clerks of courts of record, a short time previous to the commencement of each term or sittings, containing the title of each cause, the nature of the action, the date of the issue, and the names of the attorneys for the respective parties. It is intended for the use of the court and bar, on the trial or hearing. In English practice, it is termed the *list*, or *paper*. 2 *Tidd's Pr.* 818, 819. 1 *Id.* 504. In some of the United States, it is called *docket*. See *Docket*.

CALENDAR OF PRISONERS. In English practice. A list kept by the sheriffs, containing the names of all the prisoners in their custody, with the several judgments against each in the margin. *Staundf. Pl. Cor.* 182. 4 *Bl. Com.* 403.

CALENDÆ, *Kalendæ*. Lat. [from O. Lat. *calo*, Gr. καλέω, to call.] In the Roman law. Calends. See *Calends*.

CALENDS. [Lat. *calendæ*.] The first day of the month in the Roman calendar; so termed from the custom of a priest *calling out*, or proclaiming to the people on that day, the month with the festivals occurring in it, and the time of the new moon. *Adam's Rom. Ant.* 335. *Encyclop. Americ.* 2 *Inst.* 675. *Cowell.*

CALFATEUR. Fr. In French marine law. A ship-caulker. *Ord. Mar.* liv. 2, tit. 9, art. 1.

To CALL. In American land law. To require a natural object, as a tree or stream, to correspond with a description or map in a survey, patent or grant of land; to designate a natural object as a landmark or boundary in patents, grants and surveys. Thus, a survey is said to "*call* for, as the place of beginning, a black oak on the state line." 2 *Binney's R.* 169. 2 *Penn. St. R.* 44. A grant is said to "*call* for two small chestnut oaks," "to *call* for a corner," &c. 3 *Peters' R.* 92—98. "The grant *calls* to be on the waters of Tygart valley." Marshall, C. J. *Id. ibid.* A deed of a city lot is said to "*call* for an alley." 4 *Ohio St. R.* 542, 543.

To designate courses and distances, as well as visible objects. 3 *Jones' Law R.* 496. 11 *Grattan's R.* 136, 157.

CALL. In American land law. The designation, in an entry, patent or grant of lands, of a visible natural object, as a limit or boundary; such description *calling* for the object, or requiring it to be actually found upon the land, in order to render the entry, &c., effectual; the object, when found, being said to "fit the calls" of the entry. 2 *Bibb's R.* 119. 4 *Id.* 380, 109. The designation of courses and distances, as well as visible objects. 16 *Georgia R.* 141. 11 *Grattan's R.* 136, 157. "The call of the deed is 'Beginning on the line of a survey made,' &c., 'running thence,' &c." 10 *Id.* 445. "In all, fourteen calls." 11 *Id. ub. sup.*

Calls are of two kinds, general and special; the former serving to guide and direct to the latter, which are termed *locative calls*, (q. v.) 2 *Bibb's R.* 117, 145. 3 *Id.* 414. See *Locative calls*.

CALLING THE PLAINTIFF. In practice. A formality practised in courts, on the trial of a cause before a jury, as preliminary to nonsuiting the plaintiff. It is usual in English practice, for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or to withdraw himself; whereupon the crier is ordered to *call the plaintiff*; and if neither he, nor any body for him, appears, he is nonsuited, the jurors are discharged, the action is at an end, and the defendant shall recover his costs. 3 *Bl. Com.* 376. Hence the phrase has become synonymous with *nonsuiting* the plaintiff. "The plaintiff must be called;" that is, must be nonsuited. See the reports *passim*. The practice of calling the plaintiff to hear the verdict was dispensed with in the Supreme Court of New-York, in 1847. *S. C. Rules*, ed. 1847, R. 46.

CALLING A SUMMONS. In Scotch practice. See this described in *Bell's Dict.*

CALLING TO THE BAR. In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the Inns of court. *Holthouse.*

CALPE, *Caupe*. In old Scotch law. A gift of a horse, or other thing, made by a man in his lifetime and liege poustie, (lawful power,) to the chief of his clan or other superior, for his maintenance and protection, and which was delivered immediately after his decease. *Skene de Verb. Sign.* voc. *Caupes*. A species of herezeld, (q. v.)

CALUMNIA, *Calumpnia*. L. Lat. In old English law and practice. A claim, or demand; (*vindicatio*, L. Lat. *clameus*.) *Spelman*. The demand of a right in any thing;

(*juris in re aliqua postulatio.*) *Id.* See *Calumpnia.*

A challenge. *Spelman. Reg. Orig.* 223, 224. *Co. Litt.* 155 b. *Crabb's Hist. Eng. Law*, 299.

In feudal law. An objection. *Feud. Lib.* 2, tit. 1.

CALUMNIA. Lat. In the civil law. Calumny, malice, or ill design; a false accusation; a malicious prosecution. *Inst.* 4. 16. 1. *Cooper's Notes. Dig.* 3. 6. *Cod.* 9. 46.

Calumniæ jusjurandum; the oath of calumny. An oath imposed upon the parties to a suit, that they did not sue or defend with the intention of calumniating, (*calumniandi animo,*) i. e. with a malicious design, but from a firm belief that they had a good cause. *Inst.* 4. 16. The same oath, under the name of *juramentum calumniæ*, was formerly practised in the canon law, but is now disused. 4 *Reeves' Hist. Eng. Law*, 16. *Cooper's Justinian*, Notes, 649. It was also used in admiralty practice. *Clerke's Prax.* tit. 42.

CALUMNIARE, *Calumpniare.* L. Lat. In old English law and practice. To claim or demand, (*vindicare, clamare.*) *Spelman.*

To object to. *Imprimis* calumpniari *poterit summonitio;* in the first place, the summons may be objected to. *Fleta*, lib. 2, c. 54, § 1. *Calumniata, calumpniata;* objected to. *Bract.* fol. 257, 334.

To challenge. *Ut omnes juratores in panello* calumniare *possit;* that he might be able to challenge all the jurors in the panel. *Reg. Orig.* 223. See *Stat. Westm.* 2, c. 32. *Co. Litt.* 155 b. *Calumpniavit arraiamentum panelli;* he challenged the array of the panel. *Dyer*, 37 b. (Fr. ed.)

CALUMNIARE. Lat. [from *calumnia.*] In the civil law. To calumniate, or maliciously injure; to accuse falsely. *Inst.* 4. 16. 1. See *Calumnia, Calumniator.*

CALUMNIATOR. Lat. [from *calumniare*, q. v.] In the civil law. One who accused another of a crime without cause; one who brought a false accusation. *Cod.* 9. 46.

CALUMPNIA. L. Lat. In old English law. Challenge or claim. *Sine calumpnia. Fleta*, lib. 2, c. 51, §§ 8, 9.

An objection or exception. *Ostensuri in hac parte rationes suas et* calumpnias, *si quas habuerint;* to show, in this behalf, their reasons and objections, if any they had. *Claus.* 28 *Edw.* I. m. 3, d.

CALUMPNIOSUS. L. Lat. In old practice. That may be challenged or objected to; objectionable. *Bract.* fol. 398 b.

CAMARA. Span. [from Lat. *camera*, q. v.] In Spanish law. A treasury. *Las Partidas*, part 6, tit. 3, l. 2.

The exchequer. *White's New Recop.* b. 3, tit. 8, ch. 1.

CAMBELLANUS. L. Lat. In old law. A chamberlain. *Spelman.*

CAMBIATOR. L. Lat. [from *cambiare*, q. v.] In old English law. An exchanger. *Cambiatores monetæ;* exchangers of money; money-changers. *Fleta*, lib. 1, c. 22, § 7.

CAMBIO. Span. In Spanish law. Exchange. *Schmidt's Civ. Law*, 148.

CAMBIPARTIA, *Cambipartita.* L. Lat. [from *campus*, a field, and *partiri*, to divide.] In old English law. Champerty. *Co. Litt.* 368 b. *Spelman*, voc. *Cambiparticeps.* See *Champerty, Campers.*

CAMBIPARTICEPS, *Cambipartitor.* L. Lat. (See *Cambipartia.*) In old English law. A champertor; one who promotes, undertakes or maintains another's suit, in order to obtain a stipulated *share* of the *land* or other thing that may be recovered; (*ad* campi partem, *vel pro* parte *lucri habendum.*) *Stat. de Conspiratoribus*, 33 *Edw.* III. *Spelman.* See *Champertor.*

CAMBIRE. L. Lat. In old English law. To change or exchange. *Cambire denarios. Ryl. Parl.* 527. *Towns. Pl.* 58.

CAMBIST. In mercantile law. A person skilled in exchanges; one who trades in promissory notes, and bills of exchange. *Wharton's Lex.*

CAMBITORIA. L. Lat. [from *cambium*, q. v.] In old pleading. Of, or relating to exchange. *Literæ cambitoriæ;* a bill of exchange. *Towns. Pl.* 58.

CAMBIUM, *Escambium.* L. Lat. [Ital. and Span. *cambio.*] In old European law. Change or exchange; (*permutatio.*) *Feud. Lib.* 1, tit. 4, § 3. *Id.* lib. 2, tit. 2, 5. *Grot. de Jur. Bell.* lib. 2, c. 12, § 3, par. 4. *Molloy De Jur. Mar.* 309, 313. *Towns. Pl.* 58. See *Escambium, Chambium.*

A bill of exchange. *Per* cambium, *intelligimus litteras solemni formula scriptas, quibus quis alterum solvi jubet præsentanti certam pecuniæ summam, sibi jam numeratam, suoque nomine satisfactionem promittit;* by exchange we mean a formal letter in writing, by which one orders another to pay to him who presents it, a certain sum of money, already received in value, and

promises satisfaction in his own name. *Heinec. Elem. Jur. Camb.* c. 1, § 9. *Story on Bills*, § 4.

CAMBOCA, *Cambuca.* L. Lat. In old ecclesiastical records. A crozier; a bishop's pastoral staff. *Spelman.*

CAMBRA. L. Lat. An old form of *Camera*, (q. v.) *Spelman.*

CAMERA. L. Lat. [Lat. *camera*, a vault, or arched roof; an upper gallery; Span. *camara.*] In old European law. A chamber; an apartment in a dwelling-house. *Facio tibi aulam, ut tu facias mihi cameram;* I make you a hall, in consideration of your making me a chamber. *Bract.* fol. 19. Camera *dividitur ab aula;* a chamber is separated from a hall. *Id.* fol. 76. *Non debet exire* cameram; he ought not to go out of the chamber. *Id.* fol. 357 b, c. 12. *Reg. Jud.* 13.

A treasure chamber, or treasury; a chamber with a vaulted roof, for the keeping of the public treasure; (*locus in quem inferuntur mulctæ et thesaurus principis.*) *Spelman*, voc. *Cambellanus.* This is the definition of the feudists, and other early writers. *Locus in quem thesaurus colligitur. Zasius de Feudis*, par. 4, num. 7. *Testudo sive fornix. Onuphrius de Interp. Voc. Ecclesiæ*, cited in *Cowell*, voc. *Chamberlain.* Hence the modern *vault*, as a place of deposit for money. See *Camerarius, Chamberlain, Camara.*

A private treasury; a place for keeping private funds or moneys; a coffer; personal funds, as distinguished from land. *Feudum de camera;* a fee or fief from the chamber or coffer; a pecuniary stipend paid to a vassal by his lord. *Feud. Lib.* 2, tit. 1, § 1. *Id. Lib.* 2, tit. 2, § 1. *Id.* tit. 58. *Hotom. de Verb. Feud.* An annuity is distinguished from a rent, (although both are termed in Latin *annuus redditus*, q. v.) as issuing or payable *ex camera*, and not *ex tenemento. Bract.* fol. 79 b, 180, 184, 203 b. *Fleta*, lib. 2, c. 62, § 15. *Reg. Orig.* 266. See *Annuity.*

A crooked plat, or nook of ground. *Dufresne*, cited in *Cowell.* The editor of Cowell (A. D. 1701,) makes this the original meaning of the word, deriving it from the Germ. kam, or kammer, crooked. But kammer seems to have always denoted a vaulted chamber. *Encyclop. Americ.* voc. *Chamber.*

In old English practice. A judge's chamber. *Dyer*, 59 b, (Fr. ed.) *Id.* 140 b.

CAMERA REGIS. L. Lat. In old English law. A chamber of the king; a place of peculiar privileges, especially in a commercial point of view. The city of London was so called. *Yearb.* P. 7 Hen. VI. 27. *Brownl.* part 2, 289. *Calthrop's R.* 48, 56. See *Chambers.*

CAMERA SCACCARII. L. Lat. In old English law. The chamber of the exchequer; the Exchequer Chamber. See *Exchequer chamber.*

CAMERA STELLATA. L. Lat. The Star Chamber. See *Star chamber.*

CAMERARIUS. L. Lat. [from *camera*, a chamber or treasury.] In old European law. A chamberlain; a keeper of the treasure chamber; a keeper of the public money; a treasurer. *Peregrinus de Jure Fisci*, lib. 6, tit. 13, cited in *Cowell*, voc. *Chamberlain.* Camerarius *dicitur* a camera, i. e. *testudine sive fornice, quia custodit pecunias quæ in* cameris *præcipue reservantur. Onuphrius de Interpr. Voc. Ecclesiæ*, cited *ibid.* See *Spelman*, voc. *Cambellanus. Towns. Pl.* 48. Used in this sense in England, in the times of the Anglo-Saxons. *Ealred in vit. S. Edw. Conf.* c. ii. p. 9, cited, *P. Cyclopædia.* It occurs also in the Domesday Survey. *Ibid.*

In old English law. A chamberlain; an officer who had the charge of the royal chambers or apartments, and whose office was quite distinct from that of the treasurer, (*thesaurarius*). His duties are described in Fleta, lib. 2, cc. 6, 7.

A bailiff or receiver. *Stat. Westm.* 2, c. 11. 2 *Inst.* 380.

CAM. SCACC. An abbreviation of *Camera Scaccarii*, (q. v.)

CAMINO. Span. [Fr. *chemin.*] In Spanish law. A high road; a highway. *White's New Recop.* b. 2, tit. 1, c. 5.

The right of road or way. *Id.* b. 2, tit. 6, c. 1.

CAMPANA. L. Lat. In old European law. A bell. *Spelman.*

Campana bajula; a small hand-bell used in the ceremonies of the Romish church; and among protestants, by sextons, parish clerks, and criers. *Cowell.*

CAMPANARIUM, *Campanile.* L. Lat. [from *campana*, q. v.] A belfry, bell tower or steeple; a place where bells are hung. *Spelman. Towns. Pl.* 191, 213.

CAMPARTUM. L. Lat. In old records. A part or portion of a larger field or ground. Champerty; a share or division of what would otherwise be in gross or

common. *Prynne, Hist. Coll.* vol. iii. p. 89. *Cowell.* See *Campers.*

CAMPERS, *Campipars.* L. Lat. [Fr. *champert.*] In old English statutes. A share or division of land, or other thing; champerty. *Nullus minister domini regis manuteneat placita vel querelas in curia sua, ad* campertem *inde habendum;* No servant of the king shall maintain pleas or plaints in his court, to have *champert* thereof. *Rot. Parl.* 21 *Edw.* I, cited in *Blount.* This corresponds with the Fr. *ne à champert*, in the first English statute of champerty. *Stat. Westm.* 2, c. 49. 2 *Reeves' Hist. Eng. Law*, 212. See *Champerty.*

CAMPERTUM. L. Lat. In old records. A corn-field; a field of grain. *Pet. in Parl.* 30 Edw. I. *Blount.*

CAMPFIGHT. In old English law. The fighting of two champions (*campiones,*) or combatants in the field, (*campus;*) the judicial combat, or *duellum.* 3 *Inst.* 221. See *Acre-fight.*

CAMPIO. L. Lat. [from *campus*, q. v.] In feudal and old English law. A champion. *Bract.* fol. 344. *Spelman*, voc. *Campus.* In old Scotch, a campion. *Skene de Verb. Sign.* voc. *Campiones.* One that striketh a legal camp-fight, or combat in another man's quarrel. 3 *Inst.* 221. See *Champion. Campio conductivus;* a hired champion. *Bract.* fol. 137 b. *Fleta*, lib. 1, c. 38, § 8.

CAMPSORES. L. Lat. [from *cambium*, exchange.] In old European law. Exchangers; Lombard or Italian merchants. 1 *Rob. Charles* V. Appendix, Note xxx.

CAMPUS. Lat. [Fr. *champ.*] In old European law. An assembly of the people; so called from being anciently held in the open air, in some *plain* capable of containing a large number of persons. 1 *Rob. Charles* V. Appendix, Note xxxviii.

CAMPUS. Lat. In feudal and old English law. A field, or plain. The field, ground or lists marked out for the combatants in the *duellum*, or trial by battel. *Hottoman. in Verb. Feud.* voc. *Campio.*

The *duellum*, or combat itself; camp-fight. *Spelman. Cowell*, voc. *Champion.* See *Acre-fight.* Spelman gives an elaborate account of the trial by battel under this head.

CAMPUS MAII. L. Lat. The field of May. An anniversary assembly of the Saxons, held on May-day, when they confederated for the defence of the kingdom against all its enemies. *LL. Edw. Conf.* c. 35. *Wharton's Lex.*

CAMPUS MARTII. L. Lat. The field of March. See *Champ de Mars.*

CANCELLARE. L. Lat. [from *cancelli*, q. v.] In old records. To lay or place crosswise. *Cancellare manus;* to cancellate the hands; to lay them across each other. *Cowell.*

CANCELLARIA. L. Lat. [from *cancellarius*, q. v.] In old English law. Chancery; the chancery; the court of chancery. 3 *Bl. Com.* 46. The office from which all writs were anciently issued, the chancellor being the keeper of the great seal under which the writs passed. *Fleta*, lib. 2, cc. 13, 29. *Clerici de cancellaria;* the clerks of the chancery. *Stat. Westm.* 2, c. 24.

CANCELLARIUS. L. Lat. [from *cancelli*, q. v.] An officer in the lower Roman empire, otherwise called *scriba, notarius, graphiarius, secretarius, scriniarius, à cancellis, à secretis, ab actis, à libellis, antigraphus, logothetes*, and *caniclinus. Spelman.* A scribe, secretary, register, notary; a chancellor. See *Chancellor.*

*** This term had originally no connection with courts of justice, or the cancelling of instruments. It first occurs in the history of Flavius Vopiscus, A.D. 287, and was the name of an officer of very humble rank, viz. an usher or doorkeeper, who had the charge of the *cancelli*, or latticed doors leading to the presence chamber of the emperors. *Vopisc. Hist. Aug. Scrip.* vol. ii. 300. *Salmas. ad Id.* vol. ii. 796, note. *Ducange*, voc. *Cancellarius.* 1 *Wooddes. Lect.* 95. 1 *Gibbon's Rom. Emp.* (c. 12,) 193, note, (Am. ed.) The name was afterwards applied to the secretaries, scribes, notaries, or registers, who attended on the emperors and principal judges, and sat in a separate place, enclosed with a partition of *cancelli*, or lattice work, (*seclusi à turbæ molestiis, inter* cancellos *agerent.*) *Spelman. Vopisc. Hist.* vol. ii. 797, 804. *Cod.* 1. 51. 1 *Wooddes. Lect. ub. sup.* See *Cancelli.* In the course of time, one of these *cancellarii* gained a precedency above the rest, and rose to a high degree of rank and power, as appears from the description given by *Cassiodorus.* Lib. 11, form. 6; Lib. 12, form. 1. The ordinary part of his function at this time seems to have been to receive petitions and supplications addressed to the throne, and to frame and issue the imperial writs and mandates. 1 *Wooddes. Lect.* 96. From the Roman empire, the name and office of *cancellarius*, or chancellor, passed to the

Romish church; and were finally adopted by the courts of most of the states of Europe. *Id. ibid. Spelman.* 3 *Bl. Com.* 46. The first mention of the chancellor, as a public officer in England, is in the time of Edward the elder, about A. D. 920. *Ingulph. apud Spelman.* 1 *Spence's Chancery*, 78, and notes.

CANCELLARIUS. L. Lat. In old English law. Chancellor; a chancellor. *Bract.* fol. 338 b. 403 b. *Fleta*, lib. 2, cc. 13, 27, 29. *Id.* c. 64, §§ 6, 7. *Cancellarius de scaccario;* chancellor of the exchequer. *Id.* c. 27. *Cancellarius et subthesaurarius scaccarii domini regis;* chancellor of the exchequer. *Towns. Pl.* 209. *Cancellarius ducatûs et comitatûs palatini domini regis Lanc';* chancellor of the duchy of Lancaster. *Id.* 210. *Officium* cancellarii *est sigillum regis custodire simul cum controrotulis suis de proficuo regni;* it is the office of the chancellor to keep the king's seal, together with the counter-rolls of the profit of the realm. *Fleta*, lib. 2, c. 29.

CANCELLATURA. L. Lat. In old English law. A cancelling. *Bract.* 398 b. *Rasura vel cancellatura. Fleta*, lib. 6, c. 34, § 5.

CANCELLI. Lat. Bars laid across each other. Lattices, or windows made with bars laid cross-wise, one over another. Enclosures in courts, composed of such cross-bars, to keep off the press of the people, without obstructing their view of the court, (*ingressum prohibentes, non visum.*) *Spelman*, voc. *Cancellarius. Cassiodorus*, lib. 11, form. 6.

*** The use of *cancelli*, in the sense of a railing or enclosure in courts, occurs as early as the time of Cicero. *De Orat.* i. 12. Spelman says the bars of courts (*barræ,*) were formerly called *cancelli*, and the advocates who pleaded there *cancellarii*, (citing *Budæus;*) the space within the bar was called *cancellorum area.* See *Bar.* A cancellis *curiæ explodi;* to be expelled from the bar. *Spelman, ub. sup.* These *cancelli* are otherwise called by this writer *fenestratæ partitiones*, partitions with windows. So Cassiodorus speaks of them as *lucidæ fores*, (transparent doors,) *claustra patentia*, (open barriers,) *fenestratæ januæ*, (windowed gates.) *Cassiod. ub. sup.*

CANCELLING. The defacing or obliterating a deed, will, or other instrument, so as to destroy its legal effect. This was anciently done, as it still frequently is, by drawing *lines diagonally* over it, and *crossing* them with other similar lines, in the form of *cancelli*, or lattice work. 2 *Bl. Com.* 309. See *Cancelli.* But it has been held in England, under the statute 1 Vict. c. 26, that *cancelling* a will in this way does not amount to a revocation or destruction of it. 2 *Curt.* 458. *Worthington on Wills*, 560.

CANFARA. L. Lat. In old records. A trial by hot iron, formerly used in England. *Whishaw.*

CANNA. In old records. A rod, in measures of ground or distance. *Cowell.*

"CANNOT," construed "may not." Lord Ellenborough, C. J. 8 *East*, 416.

CANON. [from Gr. κανών.] A law, rule or ordinance in general, and of the church in particular. *Jacob.*

CANON. In the civil law. A rent. 1 *Mackeld. Civ. Law*, 357, § 324. *Id.* 356, *Kaufman's note.* See *Emphyteusis.*

In old records. A prestation, pension, or customary payment. *Cowell.*

CANON. [L. Lat. *canonicus.*] In English ecclesiastical law. A prebendary or member of a chapter. 1 *Bl. Com.* 382. 3 *Steph. Com.* 67. A person possessing a prebend or revenue allotted for the performance of divine service in a cathedral or collegiate church. *Encyclop. Amer.* By the statute 3 & 4 Vict. c. 113, s. 1, it is provided that all the members of chapters, except the dean, in every cathedral and collegiate church in England, shall be styled *canons.* 3 *Steph. Com.* 67, note (*m*).

CANONICUS. L. Lat. In old English law. A canon. *Fleta*, lib. 2, c. 69, § 2.

CANONRY. In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. *Holthouse.* 1 *Man. & Gr.* 625.

CANON LAW. [Lat. *Jus Canonicum*, or *Corpus Juris Canonici.*] A collection of ecclesiastical constitutions for the regulation of the polity and discipline of the church of Rome, consisting, for the most part, of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes. 1 *Bl. Com.* 82. *P. Cyclopædia.*

The *Corpus Juris Canonici* consists, in particular, of the collections called Gratian's decree, (*Decretum Gratiani*, q. v.); Gregory's decretals, (*Decretalia Gregorii Noni*, q. v.); the sixth decretal, or Sext,

(*Sextus Decretalium*, q. v.); the Clementine constitutions, (*Clementinæ*, q. v.); and the Extravagants of John, (*Extravagantes Joannis*,) and his successors, (*Extravagantes communes*, qq. v.) 1 *Bl. Com.* 82. It was at first only a private collection, and was confirmed by Pope Gregory XIII. in the year 1580. 1 *Mackeld. Civ. Law*, 81, § 93, *Kaufman's note.*

CANON LAW OF ENGLAND. A kind of national canon law, composed of legatine and provincial constitutions enacted in England prior to the reformation, and adapted to the exigencies of the English church and kingdom.* 1 *Bl. Com.* 82. See *Legatine constitutions, Provincial constitutions.* At the time of the Reformation, it was provided by statute 25 Henry VIII. c. 19, that a review should be had of the canon law; and, till such review should be made, all canons, constitutions, ordinances and synodals provincial, being then already made, and not repugnant to the law of the land, or the king's prerogative, should still be used and executed. As no such review, however, was ever perfected, the authority of the canon law in England now depends upon this statute. 1 *Bl. Com.* 83. See 4 *Reeves' Hist. Eng. Law*, ch. xxiv. xxv. 5 *Co.* Caudrey's case. Lord Thurlow, C. 2 *Dick.* 716. 1 *Story's Eq. Jur.* § 279, note.

CANON RELIGIOSORUM. Lat. In ecclesiastical records. A book wherein the religious of every greater convent had a fair transcript of the rules of their order, frequently read among them as their local statutes. *Kennett's Gloss. Cowell.*

CANONS OF INHERITANCE. The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 *Bl. Com.* 208. 1 *Steph. Com.* 359. 2 *Crabb's Real Prop.* 1015, § 2394, *et seq.* 4 *Kent's Com.* 374—412. 2 *Hilliard's Real Prop.* 194—208.

CANTABR'. An abbreviation of *Cantabrigia*, or Cambridgeshire, in old English pleadings and records. 1 *Instr. Cl.* 28. *Towns. Pl.* 147.

CANTARIA. L. Lat. [from *cantare*, to chant.] In old English law. A chantry. *Fleta*, lib. 3, c. 5, § 10.

CANTEL. [L. Lat. *cantellum*, velut *quantillum.*] In old English law. That which is added above measure; heaped measure. *Spelman. Blount.*

CANTRED, *Cantref, Cantrep, Kantref.* [L. Lat. *cantredus, cantaredus;* from Brit. *cant*, a hundred, and *tre*, a town.] In old records. A district containing a hundred villages; a hundred. *Spelman*, voc. *Cantredus.* In Wales, the counties were divided into *cantreds*, as in England into hundreds. *Cowell*, vocc. *Cantred, Falco. Termes de la Ley. Blount*, voc. *Kantref.*

CANUM. L. Lat. [from Celt. *can, chan*, or *kain*, a head.] In old Scotch law. A tribute or duty paid by the tenant of land to the lord, especially to ecclesiastical superiors. According to Skene, it was payable either in the produce of the land, or in money. *Skene de Verb. Sign.* But it seems to have been generally paid in produce, such as wheat, oats, poultry, &c. The Scotch word was *cane* or *kain;* and the expressions "*cane* fowls, "*cane* cheese, "*cane* oats," are frequently made use of. See *Kain.*

CAPA, *Cappa.* L. Lat. In old records. A covering for the head; a cap. *Spelman.*

A garment, or covering for the body; a cope. *Id.*

A box for preserving relics. *Id.*

CAPACITY. [Lat. *capacitas*, from *capax*, able to take.] Strictly, ability to take.

Ability or power given by law to take or dispose. *Hale's Anal.* sect i. The legal ability or power of an individual or corporation to do certain acts, as to give or take lands or other things; or to bring actions, &c.* 2 *Bl. Com.* 290. *Termes de la Ley. Cowell.* See *Story's Confl. Laws*, ch. iv.

CAPAX. Lat. [from *capere*, to take.] One who takes or holds. *Capaces;* takers or holders. *Bract.* fol. 67 b.

One who can take, hold or entertain; capable of. See *Doli capax.*

CAPE. Lat. (Take.) In old English practice. A judicial writ concerning lands or tenements, formerly in use in England, and so termed from the emphatic word with which it began:—*Cape in manum nostrum tertiam partem messuagii*, &c.; (*Take* into our hand the third part of a messuage, &c.) It was divided into *cape magnum*, or *grand cape*, which lay before appearance; and *cape parvum*, or *petit cape*, which lay after appearance. *Termes de la Ley. Cowell. Reg. Jud.* 2, 2 b. See *Grand cape, Petit cape, Magnum cape, Parvum cape.*

CAPE AD VALENTIAM. L. Lat. (Take to the value.) A species of *cape magnum*, (*supra*), which issued in behalf

of the tenant, where a vouchee made default, on the return of the summons against him, and the demandant recovered; the writ commanding the sheriff to *take* as much land of the vouchee as was equal *to the value* of the land in question. *Bract.* fol. 258 b, 299 b. *Old Nat. Brev.* 161, 162. *Cowell. Termes de la Ley.* 1 *Reeves' Hist. Eng. Law*, 440, 441. *Reg. Jud.* 2. See *Vouchee.*

CAPELLA. L. Lat. [from *capa*, q. v.] In old records. A box, cabinet or repository in which were preserved the relics of martyrs. *Spelman.*

A small building in which relics were preserved; an oratory or chapel. *Id.*

In old English law. A chapel. *Fleta*, lib. 5, c. 12, § 1. *Spelman. Cowell.*

CAPELLARE, *Capulare.* L. Lat. In old European law. To cut, break or tear off; (*incidere, frangere, radere.*) *Spelman.*

CAPELLUS. L. Lat. In old English law. A cap. *Capellus ferreus;* a steel cap; a helmet or head-piece. *Fleta*, lib. 1, c. 24, § 12.

CAPERE. Lat. In the Roman law. To take; to take with effect, (*cum effectu*). *Dig.* 50. 16. 71. pr. To take effectually; to take with the intention of holding or keeping; to *accept*, as distinguished from *receive.* A distinction was made between this word, and *accipere*, (*aliud est* capere, *aliud* accipere); it not being properly applicable to cases where a restitution or redelivery of the thing taken was contemplated or required; (*non videtur quis* capere *quod erit restituruś*). *Dig.* 50. 16. 71. *Non videtur quisquam id* capere *quod ei necesse est alii restituere. Id.* 50. 17. 51.

CAPERE. Lat. In old English law and practice. To take; to seize or arrest. See *Capias.*

To take or receive judicially; to receive the verdict of an assise or jury; to hold courts at which such verdicts were given. *Qui cum militibus comitatuum*, capiant *in comitatibus assisas prædictas;* who, together with the knights of the shires, shall take in the counties the assises aforesaid. *Mag. Cart.* 9 Hen. III. c. 12. Capiatur *veredictum juratorum;* the verdict of the jurors shall be taken. *Fleta*, lib. 1, c. 41, § 6.

CAPIAS. Lat. (You take—*Quod capias;* that you take.) In practice. A judicial writ in actions at common law, so termed from the emphatic word in it, when the proceedings were in Latin, commanding the sheriff to *take* or arrest the party named in it. *Præcipimus tibi quod* capias *A.* &c. *Reg. Jud.* 1 b. The two principal kinds of *capias* are the *capias ad respondendum*, and the *capias ad satisfaciendum*, (qq. v.)

CAPIAS AD AUDIENDUM JUDICIUM. L. Lat. (You take—to hear judgment.) In English practice. A writ which is awarded and issued to bring in a defendant who has been found guilty of a misdemeanor, to receive his judgment. 4 *Bl. Com.* 375. 4 *Steph. Com.* 436.

CAPIAS AD RESPONDENDUM. L. Lat. (You take—to answer.) In practice. A well known writ, (usually simply termed a *capias*,) by which actions at law are frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 *Bl. Com.* 282. 1 *Tidd's Pr.* 128. *Arch. New. Pr.* 219. The form of this writ has been considerably modified in England by the Uniformity of Process Act, 2 Will. IV. c. 39; and is now only issued after the suit has been actually commenced by summons, where an arrest of the defendant is required. *Stat.* 1 *& 2 Vict.* c. 110. *Chitt. Arch. Pr.* 461. *Wharton's Lex.*

The *capias*, in its original form, ran thus: *Rex vicecomiti salutem. Præcipimus tibi quod* CAPIAS *A. si inventus fuerit in balliva tua, et eum salvo custodias, ita quod* habeas corpus *ejus coram justitiariis nostris apud Westmonasterium*, (*tali die,*) AD RESPONDENDUM B. *de placito quod*, &c. *Et habeas ibi hoc breve. Teste*, &c. *Reg. Jud.* 1 b. The modern English writ was, down to a recent period, a literal translation of this form; and, with some modifications, it has hitherto generally been adopted in American practice.

The *capias* was originally called a *habeas corpus*, from these words used in it. 2 *Reeves' Hist. Eng. Law*, 439.

CAPIAS AD SATISFACIENDUM. L. Lat. (You take—to satisfy.) In practice. A writ of execution, (usually termed, for brevity, a *ca. sa.*) which a party may issue after having recovered judgment against another, in certain actions at law. It commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, *to satisfy* the party by whom it is issued, the damages, or debt and dam-

ages recovered by the judgment. Its effect is to deprive the party taken of his liberty, until he makes the satisfaction awarded. 3 *Bl. Com.* 414, 415. 2 *Tidd's Pr.* 993, 1025. *Litt.* sect. 504. *Co. Litt.* 289 a.

The *ca. sa.* in its original form, ran as follows: *Rex vic' salutem. Præcipimus tibi quod* CAPIAS *J. de C. et eum salvo custodias, ita quod habeas corpus ejus coram justitiariis nostris apud Westmonasterium,* (*tali die,*) AD SATISFACIENDUM *G. de K. tam de viginti solidis quos idem G. in curia nostra, &c. recuperavit versus eum, quam de viginti solidis qui ei, in eadem curia nostra, adjudicata fuerunt pro damnis suis quæ habuit occasione detentionis debiti prædicti. Et habeas ibi hoc breve. Teste, &c. Reg. Jud.* 31. This has been very closely followed in the modern forms of *ca. sa.* in debt.

CAPIAS IN WITHERNAM. L. Lat. (You take in withernam.) In practice. A writ which lies where cattle or goods distrained have been driven or carried out of the county, so that the sheriff cannot take them on a writ of replevin; commanding him to *take* other cattle or goods of the distrainor, as a second or reciprocal distress, (*withernam*, or *repetitum namium*, signifying a second taking,) in lieu of the distress formerly taken and withheld. *Reg. Orig.* 82, 83. *F. N. B.* 69 A. 3 *Bl. Com.* 148, 413, 129. 3 *Steph. Com.* 522. See *Withernam.*

CAPIAS PRO FINE. L. Lat. (You take—for the fine.) In English practice. A writ by which a party condemned to pay a *fine* to the king, was *taken* and imprisoned until he paid it. *Cro. Eliz.* 170. 5 *Co.* 89. See *Capiatur pro fine.* This writ was disallowed by statute 5 & 6 W. & M. c. 12, in actions of trespass, ejectment, assault and false imprisonment. 3 *Bl. Com.* 398. It seems, however, to be still used in criminal cases. *Cole on Informations*, 97, Appendix A. No. 47. It has been recognised in American practice. 8 *Grattan's R.* 702.

CAPIAS UTLAGATUM. L. Lat. (You take the outlaw.) In English practice. A writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. *Reg. Orig.* 138 b. 3 *Bl. Com.* 284, and Appendix No. iii. sect. 2. 3 *Steph. Com.* 569.

CAPIATUR PRO FINE. L. Lat. (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it. *Cro. Jac.* 64.

The same form was used in actions of replevin, trespass, ejectment, assault and false imprisonment; the judgment ordering the party to be *taken* until he paid *a fine* to the king for the public misdemeanor which was considered as coupled with the private injury in those cases. 3 *Bl. Com.* 398. Since the statute 5 & 6 W. & M. c. 12, this form has been disused. *Id. ibid.* 3 *Steph. Com.* 636, note (*s*).

CAPITA. Lat. (plur. of *Caput*, q. v.) Heads, and figuratively, entire bodies, whether of persons or animals. *Spelman.*

Persons individually considered, without relation to others, (polls); as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita*, *per capita*, is derived from the civil law. *Inst.* 3. 1. 6. *Id.* 3. 2. 4. *Nov.* 118, c. 3, *ad finem.* See *Caput*, *In capita*, *Per capita.*

Heads of cattle. *Inst.* 2. 1. 38. *Id.* 2. 20. 18. *Dig.* 7. 1. 68, 70. *Bract.* fol. 374 b. Hence, according to Spelman, *capitalia*, contracted to *captalia* and *catalia;* whence *catalla*, chattels or goods, generally. *Spelman*, voc. *Capital.* See *Capitalia.*

Heads, chapters or general divisions; titles. *Capita legis;* heads of law. *Hale's Hist. Com. Law*, 87, 88. *Hale's Anal.* sects. xiii. xiv.

CAPITAINE. Fr. and L. Fr. [from L. Lat. *capitaneus*, q. v.] Leader; commander; captain. *Capitaine flote*; commander of the fleet. *Mem. in Scacc.* 24 Edw. I. *Ord. Mar.* liv. 2, tit. 1, art. 1.

Master of a vessel. *Emer. Tr. des Ass.* ch. 7, sect. 5.

CAPITAL. See *Capitale.*

CAPITAL. [Lat. *capitalis*, from *caput*, head or life.] Relating to, or affecting the *life* of a person. A *capital* crime or felony is a crime or felony punishable with death, (*quod ultimum inducit supplicium*). *Bract.* fol. 101 b.

Chief; principal; at the head. "Capital burgess." 10 *Mod.* 100. 5 *East*, 372. "Capital citizens." 8 *East*, 487. 1 *Stra.*

385. "Capital messuage." 3 *P. Wms.* 61.

CAPITAL. [from Lat. *caput*, a head.] A fund employed as the *head*, beginning or basis of an undertaking or enterprise. A fund of money, or property, or both, employed as the basis of a business; a fund upon which a merchant or other person trades or does business. A fund made up by the contributions of two or more persons as the basis of a joint business or copartnership.

CAPITAL STOCK. The fund of a trading company or corporation. See *Capital.*

The amount of money contributed or advanced by the stockholders of a company or corporation, for the purposes of the corporation, as distinguished from its property. 3 *Zabriskie's R.* 195, 196.

CAPITALE, *Captale.* L. Lat. [plur. *capitalia*, *captalia*, from *caput*, head.] In old European law. A beast or animal, considered as an article of property; hence, according to Spelman, the term *chattel. Reddant * * decimas, tam in viventi* capitali, *quam in mortuis fructibus terræ;* they shall pay tithes as well in the living animal, as in the dead fruits of the earth. *Fragm. LL. Aethelstani, apud Spelman. Si ceorl aliquod* captale *furetur*, &c.; if a churl steal any beast. *LL. Inæ*, c. 58, *ibid. Si * * introeat alicujus vicini sui* capitale *per suum apertum*, &c.; if any neighbor's beast enter through the opening left by himself, &c. *LL. Inæ*, c. 40, *apud Spelman*, voc. *Curtillum.*

CAPITALIA, *Captalia.* L. Lat. [plur. of *capitale*, *captale*, q. v.] In old European law. Any kind of goods moveable or immoveable, but properly that kind which consists in animals, from whose heads (*capita*) the things themselves were sometimes called *capita*, sometimes *capitalia*, and by contraction, *captalia* and *catalia;* whence the law term *catalla*, chattels. *Spelman. Dominica* capitalia *celata pro furto habeantur;* the concealing of the lord's beasts, or chattels shall be considered as theft. *LL. Hen.* I. c. 14.

CAPITALIS. Lat. [from *caput*, head or life.] Capital; affecting or involving life. *Crimen capitale;* a capital crime. *Bract.* fol. 120 b, 101 b. In the civil law, offences punishable by the loss of civil rights, (*amissio civitatis*), interdiction of fire and water, banishment (*deportatio,*) or labor in the mines, (*metallum*) were also termed capital. *Dig.* 48. 1. 2. *Id.* 50. 16. 103. *Inst.* 4. 18. 2.

CAPITALIS. L. Lat. [from *caput*, head or chief.] In old English law. Chief, principal; at the *head.* A term applied to persons, places, judicial proceedings, and some kinds of property.

Capitalis custos; chief warden or magistrate; mayor. *Fleta*, lib. 2, c. 64, § 2.

Capitalis debitor; a principal debtor, as distinguished from *plegius*, a surety. *Mag. Cart.* c. 8. *Id. Johan.* c. 9. Called *principalis. Fleta*, lib. 2, c. 63, § 5.

Capitalis dominus; chief lord. *Fleta*, lib. 1, c. 12, § 4. *Id.* c. 28, § 5.

Capitalis plegius; a chief pledge; a head borough. *Fleta*, lib. 2, c. 52, § 5. *Capitalis baro*, (q. v.); chief baron. *Capitalis justitiarius*, (q. v.); chief justiciary or justice.

Capitalis terra; a head-land. A piece of land lying at the head of other land. See *Forera. Capitale messuagium;* a chief messuage. *Bract.* fol. 76 b, 96.

Capitale placitum; a principal plea. *Bract.* fol. 366. See *Dig.* 50. 16. 103.

Capitalis redditus; a chief rent, (q. v.)

CAPITALIS BARO. L. Lat. In old English law. Chief baron. *Capitalis baro scaccarii domini regis;* chief baron of the exchequer. *Towns. Pl.* 211.

CAPITALIS JUSTITIARIUS. L. Lat. In old English law. Chief justiciar or justiciary; chief justice. *Capitalis* (or *summus*) *justitiarius totius Angliæ;* chief justice of all England. The title of the presiding justice in the court of Aula Regis. 3 *Bl. Com.* 38. 1 *Reeves' Hist. Eng. Law*, 48. *Nos, vel, si extra regnum fuerimus*, capitalis justitiarius *noster, mittemus justiciarios per unumquemque comitatum;* we, or if we shall be out of the realm, our chief justiciary will send justices through every county. *Mag. Cart.* 9 Hen. III. c. 12. This title ceased in the fifty-second year of Henry III. 2 *Reeves' Hist.* 91.

Capitalis justitiarius ad placita coram rege tenenda; chief justice for holding pleas before the king. The title of the chief justice of the King's Bench, first assumed in the latter part of the reign of Henry III. 2 *Reeves' Hist. Eng. Law.* 91, 285.

Capitalis justitiarius banci, or *de banco;* chief justice of the bench. The title of the chief justice of the (now) Court of Common Pleas, first mentioned in the first year of Edward I. 2 *Reeves' Hist. Eng. Law, ub. sup. Crabb's Hist. Eng. Law*, 146. See *Justiciar, Chief Justiciar.* The title

capitalis seems to have originally been confined to the justices of the *Aula Regis*, and the *Bancus*. *Bract.* fol. 108, 108 b.

CAPITANEUS. L. Lat. [from *caput*, a head; Fr. *capitaine*.] In feudal law. One who held an estate or dignity *in capite*, that is, immediately from the king. *Feud. Lib.* 1, tit. 7. *Lib.* 2, titt. 10, 51. A chief lord or baron of the king, (*baro regis vel regni*). *Spelman.* See *Caput.*

A leader; a captain. *Spelman. Towns. Pl.* 214, 210.

A naval commander. *Reg. Orig.* 191. *Capitaneus et custos maris;* captain and warden of the sea. The title given to a naval officer, A. D. 1264. *Chart.* 48 *Hen.* III. *apud Spelman*, voc. *Admiralius.* Thomas de Molton, who was Lord Egremond, a great baron of Lincolnshire, had this title, which Sir Matthew Hale supposed to be superior to that of Admiral, it having been given to lieutenants of England and Ireland, in the absence of the king. P. 24 Edw. I. *Hale's Hist. Com. Law*, (Runnington's ed.) 36, note.

CAPITARE. L. Lat. [from *caput*, head.] In old law and surveys. To head, front or abut; to touch at the head, or end. *Tenent octo acras juxta Goreswall*, capitantes *ad prædictum wallum;* they hold eight acres near Goreswall, heading to (or on) the said wall. *Cowell*, voc. *Abbuttals.* * * *Unam peciam prati apud Langmede, quæ* capitat *ad regiam stratam, et* laterat *ad terras hæredum Nicholai de Sandwyco militis;* one piece of meadow which *heads* on the highway, and *sides* [i. e. borders or touches on the side,] on the lands of the heirs of Nicholas de Sandwich, knight. *MS. Dat. A. D.* 1317, cited in *Cowell*, voc. *Laterare.*

CAPITATIM. Lat. By the head; to each individual. Lord Ellenborough, 4 *M. & S.* 206.

CAPITATION. [from Lat. *caput*, head.] A tax on the head or person; a poll-tax. *Const. U. S.* Art. 1, sect. ix. n. 4.

CAPITE. See *Caput, In capite.*

CAPITE MINUTUS. Lat. In the civil law. One who had suffered the *capitis deminutio. Dig.* 4. 5. See *Capitis deminutio.*

CAPITILITIUM. L. Lat. [from *caput*, head or poll.] In old law. Poll money. *Blount. Whishaw.*

CAPITIS DEMINUTIO, (sometimes written DIMINUTIO). Lat. In the civil law. The loss of a *status* or civil qualification; the change of a man's former condition, (*prioris statûs mutatio*). *Inst.* 1. 16. pr. 1 *Mackeld Civ. Law*, 131, § 121. Sometimes called *capitis minutio. Dig.* 4. 5. 1. This was of three kinds. See *Caput, Status.*

Capitis deminutio maxima; the highest kind of *capitis deminutio*, when liberty was lost, which carried with it citizenship (*civitas*,) and family, (*familia.*) *Inst.* 1. 16. 1. *Dig.* 4. 5. 11.

Capitis deminutio media; the less or middle kind of *capitis deminutio*, when the right of citizenship was lost, (which carried with it family) but liberty was retained. *Inst.* 1. 16. 2. *Dig.* 4. 5. 11.

Capitis deminutio minima; the least or lowest kind of *capitis deminutio*, when liberty and citizenship were retained, but *family* or family relations, (otherwise called *status hominis*,) underwent a change, as by arrogation of a person *sui juris*, or emancipation of a *filius-familias. Inst.* 1. 16. 3. *Dig.* 4. 5. 11. 1 *Mackeld. Civ. Law*, 131, § 121.

CAPITULA. L. Lat. [plur. of *capitulum*, q. v.] In feudal and old ecclesiastical law. Collections of laws or ordinances, (*legum canones*,) drawn up under certain divisions or heads, (*constitutorum capita*, i. e. *summas continentia.*) *Spelman. Feud. Lib.* 2, tit. 40.

Chapters or assemblies of ecclesiastical persons. See *Capitulum.*

CAPITULA ITINERIS. L. Lat. [L. Fr. *chapitres de eyre.*] In old English practice. Chapters of the eyre. Chapters, articles, heads or schedules of inquiry, delivered to the justices itinerant, (*in itinere, in eyre*,) in behalf of the crown, for their direction, and read and given in charge by them to the juries from the various hundreds, at the opening of the eyre. *Bract.* fol. 116, 109. *Britt.* cc. 2, 3. *Fleta*, lib. 1, c. 20. 1 *Reeves' Hist. Eng. Law*, 52, 201. 2 *Id.* 4, 5.

Bracton has given the form of one of these *capitula* at length. It consists of fifty heads, embracing every variety of crime and misdemeanor to which the attention of the jury could be directed. *Bract.* fol. 116—118. In Fleta, the number of distinct heads is extended to one hundred and thirty-six. *Fleta*, lib. 1, c. 20. According to Britton, a copy of these chapters had to be delivered to each *dozen* or twelve, as he calls the jury; (*a chescun* dozeyne *soient les chapitres severaument liveres*,) and upon these their *presentments* were made, each

head being separately answered to. *Britt.* c. 2. *Bract.* fol. 116. Hence, doubtless, has originated the modern practice of charging the grand jury at the opening of the higher criminal courts. The records of these inquisitions have been preserved in the Rolls officially denominated "*the Hundred Rolls.*" *Hubback's Evid. of Succession*, 603.

CAPITULA CORONÆ. L. Lat. In old English law. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris*, (q. v.) but of a more minute character, delivered in the year 1194, 5 Ric. I. 1 *Reeves' Hist. Eng. Law*, 201. *Hale's Hist. Com. Law*, c. 7. *Crabb's Hist. Eng. Law*, 130.

CAPITULA DE JUDÆIS. L. Lat. Chapters or articles concerning the Jews. Articles of inquiry relating to the Jews, delivered to the justices itinerant in the reign of Richard I. directing them to adjudge what revenue should be paid by the Jews to the king for protection, license to trade and the like. *Hoveden*, 423. 2 *Bl. Com.* 343. *Hale's Hist. Com. Law*, c. 7. *Crabb's Hist. Eng. Law*, 131.

CAPITULARY. [L. Lat. *capitulare*, from *capitulum*, a chapter.] A collection of chapters, (*capitulorum congeries*); a decree or ordinance. *Spelman.* Mr. Barrington applies the term to several of the English statutes. *Barringt. Obs. Stat.* 3, note, *et seq.* Mr. Butler observes that the word is generic, and denotes every kind of literary composition divided into chapters. *Horæ Juridicæ*, 86.

In feudal law, the capitularies (*capitularia*,) were a collection of laws, divided into short chapters or heads, promulgated by Charlemagne and other kings of the Franks. The earliest collection of them is that of Angesize, Abbot of Fontenelles, published A. D. 827. Three books were added by Benedict the Levite (that is, the deacon) of the church of Mentz. The best edition is that of Baluze in 1677; the latest is by De Chiniac, Paris, 1780, Basle, 1796. *Butler's Note* 77, Lib. 3. *Co. Litt. Butler's Hor. Jur.* 86. 1 *Robertson's Charles V.* Appendix, Note xxxix. *Esprit des Lois*, liv. 28, c. 9.

CAPITULUM. L. Lat. [dimin. of *caput*, a head.] In old English law. A chapter; a small head or division. *Spelman. Termes de la Ley. Cowell*, voc. *Chapter.*

An assembly of ecclesiastical persons. A congregation of clergymen under one dean in a cathedral church, (*clericorum congregatio sub uno decano in ecclesia cathedrali.*) *Co. Litt.* 96. *Bract.* fol. 12, 16. See *Chapter.*

CAPPA. L. Lat. In old records. A cap. See *Capa.*

Cappa honoris; the cap of honor. One of the solemnities or ceremonies of creating an earl or marquis. *Bacon's Works*, v. 474.

CAPTAIN. [Fr. *capitaine*, L. Lat. *capitaneus*, qq. v.] In maritime law. The commander of a ship or vessel, as being its head and conductor or director. More commonly termed in law, *master*, (q. v.)

CAPTIO. Lat. [from *capere*, to take.] In old English law and practice. A taking or seizure of a thing, as an animal. *Bract.* fol. 156. *Est omnis captio justa vel injusta. Fleta*, lib. 2, c. 44, § 1. *Bene cognoscit captionem*; (he) well avows the taking. 1 *Salk.* 3.

A taking or seizure of land. *Dies* captionis *indorsari debet in tergo brevis*; the day of the taking ought to be endorsed on the back of the writ. *Bract.* fol. 365 b.

A taking or arrest of a person. *Reg. Orig.* 278 b. *Bract.* fol. 145 b. *Injusta* captio *et injusta detentio. Fleta*, lib. 1, c. 42, § 1.

A taking or holding of a court. *Captio assisæ*; the taking of the assise. *Bract.* fol. 111, 202 b.

A taking or receiving. *Homagii captio*; taking of homage. *Id.* fol. 16.

CAPTION. [Lat. *captio*, q. v.] In practice. A taking, seizure or arrest of a person. 2 *Salk.* 498. The word in this sense is now obsolete in English law.

A taking or seizure of a thing, as an animal. *Vaugh.* 173. "Caption and asportation." *T. Jon.* 109.

A certificate of the taking of a commission, subscribed by the commissioners. *Blount.*

The title or *heading* of a legal document, as a bill in equity, an indictment, &c. 1 *Ld. Raym.* 548. Marshall, C. J. 8 *Peters' R.* 149. *Wharton's Am. Crim. Law*, 63. The word in this sense seems rather to be derived from *caput.*

CAPTION. [Lat. *captio*, q. v.] In Scotch practice. A taking of a person. Arrest; apprehension. *Bell's Dict.* 7 *Wils. & Shaw's R.* 519, 520.

CAPTOR. L. Lat. In old English law. A taker; a lessee. *Towns. Pl.* 37.

A taker of property; one who seized cattle as a distress. *Fleta*, lib. 2, c. 47, §§ 23, 29.

CAPTOR. L. Lat. and Eng. [from Lat. *capere*, to take.] In international law. One who takes or seizes property in time of war; one who takes the property of an enemy. In a stricter sense, one who takes a prize at sea. 2 *Bl. Com.* 401. 1 *Kent's Com.* 86, 96, 103.

CAPTURE. [Lat. *captura*, from *capere*, to take.] In international law. A taking or seizure of the goods of an enemy; a taking of prizes in time of war, particularly at sea. 2 *Bl. Com.* 401, 402. 2 *Steph. Com.* 79, 80. 1 *Kent's Com.* 91, 92. See *Seizure.*

CAPUD. Lat. Head; a or the head. An old form of *caput*, (q. v.) *Ad capud bosci;* at the head of the wood. *Rot. Peramb. Forest.* 29 Edw. I. m. 8. *Usque ad summum* capud *de Akemere. Id. ibid.*

CAPUT. Lat. A head; the head of a person; the whole person; the life of a person. See *Æstimatio capitis.*

In the civil law. A person or individual. *In* capite *libero;* in, or over a free person. *Inst.* 1. 13. 1. *Omnis noxalis actio* caput *sequitur;* every noxal action follows the person. *Id.* 4. 8. 5.

A certain personal qualification, otherwise called *status*, which formed the indispensable requisite to the capacity for civil rights among the Romans; and of which there were three kinds; freedom, citizenship and family. 1 *Mackeld. Civ. Law*, 129, § 119. *Inst.* 1. 16. pr. *et seq. Dig.* 4. 5. 3, 11, *et per tot.* See *Capitis deminutio.*

In feudal law. A head or chief; the king, as head of the state. See *Caput, principium et finis.* To hold lands *in capite*, was to hold directly from the king, as the sovereign lord; (*omnium terrarum capite*). *Spelman. Blount*, voc. *Capite. Caput comitatûs;* the head or chief of the county; one of the ancient titles of the earl. *Gilb. C. Pleas*, 2. *Caput feudi vel terræ;* the chief lord of a fee. *Spelman, Feuds*, c. 4.

In old English law. A head or upper end of a place. *Caput villæ;* the head of the town. *Cowell. Blount. Fleta*, lib. 1, c. 24, § 1. *Caput terræ;* the head or upper end of a piece of land.

A chief or principal place, house or messuage, (*capitale messuagium.*) *Caput comitatûs;* the chief seat of an earl. *Bract.* fol. 76 b. *Caput baroniæ;* the castle, manor house, or chief seat of a baron. *Id. ibid. Id.* fol. 93. *Blount. Spelman*, vocc. *Baronia, Baro.*

A head or beginning. *Caput anni;* the beginning of the year; the new year's day. *Cowell.*

A head, or principal division. *Caput legis;* a head of law.

CAPUT LUPINUM. L. Lat. [Sax. *wulfesheofod.*] In Saxon and old English law. A wolf's head. An outlawed felon was anciently so called, because he might be slain or knocked in the *head*, like a *wolf*, by any one that should meet him. *Bract.* fol. 128 b, 134. *Fleta*, lib. 1, c. 27, § 13. *Mirr.* c. 4, sect. 4. *Co. Litt.* 128 b. 4 *Bl. Com.* 320. That is to say, he might be killed, if he resisted being taken, or endeavored to escape, but if he did neither, whoever killed him was bound to answer for him, as for any other person. This important explanation, given by Bracton, has been overlooked by some later writers. *Bract. ub. sup.* 2 *Reeves' Hist. Eng. Law*, 20.

CAPUT PORTUS. L. Lat. In old English law. The head of a port. The town to which a port belongs, and which gives the denomination to the port, and is the head of it. *Hale de Jur. Mar.* pars 2, (*de portubus maris,*) c. 2. 4 *Taunt.* 660.

CAPUT, PRINCIPIUM ET FINIS. Lat. The head, beginning and end. A term applied, in English law, to the king, as head of parliament. 4 *Inst.* 3. 1 *Bl. Com.* 188.

CAPUTAGIUM. L. Lat. [from *caput*, head.] In old English law. Head, or poll money, or the payment of it. *Cowell. Blount.* By some considered the same with *chevagium*, (q. v.) *Cowell.* See *Spelman*, voc. *Capitagium.*

CAPUTIA. Plural of *caputium*, (q. v.)

CAPUTIUM, *Capucium.* L. Lat. [from *caput*, head.] In old English law. A head of land; a headland. *Cowell*, voc. *Buttum.*

CARABUS. L. Lat. In old English law. A kind of raft or boat. *Spelman.*

CARBONES. Lat. In the civil law. Coals. *Dig.* 50. 16. 167.

CARCANNUM. L. Lat. [from Sax. *cacarrne.*] In old English law. A prison or work-house. *LL. Canuti*, c. 62, *apud Spelman.*

CARCARE. L. Lat. In old English law. To load; to load a vessel, (*in navibus carcare*). *Reg. Orig.* 279. *Carcare et discarcare;* to load and discharge, *Towns. Pl.* 59. *Cowell*, voc. *Cartatus.* See *Car-*

ricare. To load a cart or wagon. *Fleta*, lib. 1, c. 25, § 9. *Id.* lib. 2, c. 85.

Carcata; freighted. *Pryn.* 112. *Towns. Pl. ub. sup.* Loaded. *Fleta*, lib. 1, c. 25, § 9. *Cartata. Cowell.*

Carcatio; lading. *Carcationes;* ladings. *Towns. Pl.* 226.

To charge, (in an account). *Fleta*, lib. 2, c. 17.

CARCER. Lat. A prison or gaol. Strictly, a place of confinement or detention and safe keeping, and not of punishment.

Carcer ad continendos homines, non ad puniendos haberi debet; a prison ought to be used for confining men, not for punishing them. *Dig.* 48. 19. 8. 9. Bracton quotes this passage with a slight alteration: *Carcer ad continendos et non puniendos haberi debeat. Bract.* fol. 105. See 2 *Mason's R.* 516. Lord Coke quotes it (from Bracton) with a further alteration: *Carcer ad homines custodiendos, non ad puniendos dari debet;* a prison should be assigned for keeping men, not for punishing them. *Co. Litt.* 260 a. See *Prison, Gaol.*

CARCOSIUM. L. Lat. In old English law. A carcass. *Fleta*, lib. 2, c. 79, § 17.

CARECTA, *Carrecta.* L. Lat. [from Fr. *charret*, dimin. of *char*, from Lat. *carrum*, a car, according to Spelman; or according to Blount, from Sax. *cret.*] In old English law. A cart. *Reg. Orig.* 281 b. *Bract.* fol. 217 b, 232. *Fleta*, lib. 1, c. 25, § 9. A vehicle distinguished from both *currus*, and *carrum. Bract.* fol. 168. *Vestigia malefactorum sunt sequenda per ductum* carectæ, *passus equorum, et vestigia hominum, et alio modo;* the traces of the malefactors are to be pursued by the wheel-tracks of carts, the hoof-prints of horses, the foot-steps of men, and other ways. *Id.* fol. 121 b. In Magna Charta, it is written *careta, caretta*, and *carretta*, (qq. v.)

Carectarius; a carter. *Reg. Orig.* 190. *Fleta*, lib. 2, c. 85.

Carectata; a cart load. 2 *Mon. Angl.* 340. *Cowell. Blount. Dyer*, 70.

CARENA, *Carina, Carrena.* L. Lat. [from Fr. *quarante*, forty.] In old ecclesiastical law. A period of forty days. Of the same meaning as *quarentena*, (Fr. *quarantaine,*) quarantine. *Spelman.* See *Quarantine.*

CARETA, *Caretta, Carretta.* L. Lat. In old English law. A cart. *Nullus vicecomes—capiat equos vel* carettas *alicujus pro cariagio faciendo, nisi reddat liberationem antiquitus statutum, scilicet pro* caretta *ad duos equos, decem denarios per diem, et pro* caretta *ad tres equos, quatuordecem denarios per diem;* no sheriff shall take the horses or carts of any man, to make carriage, unless he pay the livery ordained of old, that is to say, for a cart with two horses, ten pence per day, and for a cart with three horses, fourteen pence per day. *Mag. Cart.* 9 Hen. III. c. 21. Spelman, quoting this passage, writes the word *carecta. Nullus vice-comes—capiat equos vel* caretas *alicujus liberi hominis, pro cariagio faciendo, nisi de voluntate ipsius liberi hominis;* no sheriff shall take the horses or carts of any freeman, to make carriage, unless with the consent of the said freeman. *Mag. Cart. Johan.* c. 30. This is nearly the language of the original articles. C. 20. Fleta, quoting this passage, writes the word *carecta. Fleta*, lib. 2, c. 50, § 27.

CARGO. [Fr. *cargaison;* Span. *cargazon.*] In mercantile law. The load or lading of a vessel; goods and merchandize put on board a ship to be carried, (*merces in navi vehendæ*) to a certain port. This term is considered, both in English and American law, as applying to *goods* only, and does not include live animals, or persons. 4 *Pick. R* 429. 2 *Gill & Johns.* 136. 7 *Man. & Gr.* 744, 736, note. See 9 *Metcalf's R.* 354.

CARGA. Span. In Spanish law. An incumbrance; a charge. *White's New Recop.* b. 2, tit. 13, ch. 2, § 2.

CARGAISON. Fr. In French commercial law. Cargo; lading, (*tout ce qui est chargé*). *Emerig. Tr. des Ass.* ch. 10, sect. 1.

CARGARE. L. Lat. In old English law. To charge. *Spelman.*

CARIAGIUM. L. Lat. [from *cariare*, (q. v.); L. Fr. *cariage.*] In old English law. Carriage; the carrying of goods or other things for the king. *Nullus vicecomes—capiat equos, vel carettas alicujus, pro* cariagio *faciendo;* no sheriff shall take the horses or carts of any person, to make carriage. *Magna Charta*, 9 Hen. III. c. 21. A similar provision was contained in the statute of Westminster 1, c. 1. *Nul preigne chivals, bofes, chares, ne charets, neifes, ne bateux, ne auter choses affaire* cariage; no person shall take horses, oxen, wagons, carts, ships or boats, or other things to make carriage.

CARIARE. L. Lat. [L. Fr. *carier.*] In old English law. To carry. *Reg. Orig.*

46 b. *Cariare et recariare;* to carry and re-carry. *Id.* 127. *Cariavit;* (he) carried. *Id.* 110. *Ad cariandum;* to carry, for carrying. *Id. ibid.* 127. *Fleta*, lib. 2, c. 76, § 2. *Id.* c. 85.

CARIATOR. L. Lat. [from *cariare*, q. v.] In old English law. A carrier. *Cariatores;* carriers. *Fleta*, lib. 2, c. 73, § 4.

CARIER. L. Fr. To carry. *A carier ses bleez. Yearb.* II. 2 Edw. II. 27.

CARMEN. Lat. In the Roman law. Literally, a verse or song. A formula, or form of words used on various occasions, as of divorce. *Taylor's Civ. Law*, 349.

CARNAL. [L. Lat. *carnalis*, from *caro*, flesh.] Of the body; relating to the body; bodily.

CARNALITER. L. Lat. In old criminal law. Carnally. *Carnaliter cognovit;* carnally knew. Technical words in indictments for rape, and held essential. 1 *Hale's P. C.* 637—639. 3 *Inst.* 60. See 3 *Chitt. Crim. Law*, 812.

CARNISPRIVIUM. L. Lat. In old English law. Shrovetide. *Towns. Pl.* 43.

CARRERA. Span. In Spanish law. A carriage-way; the right of a carriage-way. *Las Partidas*, part 3, tit. 31, l. 3.

CARRETA, *Carrecta.* L. Lat. In old English law. A carriage, cart or wain load. *Cowell. Blount.*

CARRICARE. L. Lat. [from Ital. *carrico*, a load, or Lat. *carrum*, a car.] In old European law. To load; to carry any thing on a car or cart. *Spelman.*

CARRIER. One who carries or agrees to carry the goods of another, from one place to another, for hire, or without hire. See *Angell on Carriers, passim.* See *Common carrier.*

CARRUCA. Lat. In the civil law. A four-wheeled vehicle used for riding. *Dig.* 34. 2. 13.

CARRUM, *Carrus.* Lat. In old English law. A wagon or wain; a four-wheeled vehicle. *Bract.* fol. 168. *Carros vel carectas. Fleta*, lib. 3, c. 5, § 13.

CARRYING AWAY. In criminal law. The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it. 2 *Russell on Crimes*, 5. *Wharton's Am. Crim. Law*, § 1802, *et seq.*

"CART." A well known vehicle. A carriage with *two* wheels, fitted to be drawn by one horse or by a yoke of oxen, and used in husbandry, or commercial cities, for carrying heavy commodities. *Webster.* Ox-carts are classed under this definition. *Id.*

A carriage in general. *Id.*

Both these senses of the term were recognized in Favers *v.* Glass, 22 *Alabama R.* 621. But the court, in this case, decided that a vehicle with *four* wheels, drawn by oxen, suited to the ordinary purposes of husbandry, and employed in the same uses to which *carts*, in the common acceptation of the term, are appropriated, was protected from levy and sale by the statute exempting "one horse or *ox-cart*" from execution. The court departed from the ordinary sense of the word, in order to give effect to the manifest intention of the legislature. Chilton, C. J. *Id.* 624.

CARTA, *Charta.* Lat. In old English law. A charter, deed or writing. *Carta non est nisi vestimentum donationis;* the deed is nothing but the clothing of the gift. Staunford, J. *Plowd.* 160. *Carta partita de affrectamento;* a charter-party of affreightment. *Towns. Pl.* 224. *Carta perdonationis;* a charter of pardon. *Reg. Orig.* 288, 312. This form of the word occurs in the oldest records; as *Magna Carta*, the *Carta de Foresta*, (qq. v.) See *Charta.*

CARTA. Span. [from Lat. *charta*, q. v.] In Spanish law. A letter or charter. *Las Partidas*, part 3, tit. 18, l. 30.

A deed. *Id.* part 5, tit. 13, l. 14.

A power of attorney. *White's New Recop.* b. 1, tit. 6, ch. 1, § 1.

CARTA DE FORESTA. L. Lat. In old English law. The Charter of the Forest. More commonly called *Charta de Foresta*, (q. v.)

CARTE. Fr. In French marine law. A chart. *Ord. Mar.* liv. 1, tit. 8, art. 2, 3.

CART BOTE. Wood or timber which a tenant is allowed by law, to take from an estate, for the purpose of repairing instruments, [including necessary vehicles,] of husbandry. 2 *Bl. Com.* 35. See *Bote, Plough bote.*

CARTMEN are common carriers. 2 *Kent's Com.* 598, and note. See *Angell on Carriers*, § 74.

CARTEL, *Chartel.* An instrument or writing for settling the exchange of prisoners of war. See *Chartel.*

CARTEL SHIP. In international law. A ship of truce; a ship or vessel commissioned in time of war, for the purpose of effecting the exchange of prisoners, or carrying proposals of any kind between belligerent powers; and which is privileged from

capture. *Tomlins.* 1 *Kent's Com.* 68. *Brande.*

CARUA. L. Lat. [Fr. *carue, chare.*] In old English law. A plough. More commonly written *caruca*, (q. v.) *Spelman.*

Caruagium; caruage or carvage. *Bract.* fol. 37. See *Carucage.*

CARUCA. L. Lat. [See *Carua.*] In old English law. A plough. *Magna Charta*, c. 5. *Bract.* fol. 40. *Fleta*, lib. 2, c. 84. *Spelman*, voc. *Carua.* The same as *soca. Litt.* sect. 119. *Caruca boum;* a plough of oxen, that is, drawn by a pair of oxen. *Fleta*, lib. 2, c. 73, § 2. *Equos vel affros* carucarum *vel carectarum. Id.* § 5. *Præcederet* caruca *boves;* the plough would go before the oxen; it would be putting the plough before the oxen. *Id.* lib. 1, c. 31, § 8.

A car or cart, (*carruca.*) *Towns. Pl.* 198, 239, 59. 1 *Ld. Raym.* 75. But this is rather the classical meaning. *Spelman*, voc. *Carua. Sueton. Nero*, 30. It seems to have been confounded with *carucata*, (q. v.) by Jermyn, in *Latch*, 216.

Carucagium; carucage, caruage, or carvage. See *Carucage.*

CARUCAGE. [L. Lat. *carucagium*, from *caruca*, a plough.] In old English law. A kind of tax or tribute anciently imposed upon every plough, (*carue* or plough land) for the public service. *Spelman*, voc. *Carua.* Called by Bracton, (fol. 37,) *caruagium;* by other writers *caruage*, and carvage. *Cowell. Blount*, voc. *Carucata. Termes de la Ley.*

CARUCARIUS. Lat. In the civil law. The driver of a *caruca* or *carruca*, (q. v.) *Dig.* 19. 2. 13.

CARUCARIUS. L. Lat. [from *caruca*, a plough.] In old English law. A ploughman. *Reg. Orig.* 190. *Fleta*, lib. 2, c. 73, § 2.

CARUCATA. L. Lat. [from *caruca*, a plough.] In old English and Scotch law. A carucate, or carve of land; a ploughland. A quantity of land containing as much as might be tilled by one plough in a year and a day. *Reg. Orig.* 1 b. *Co. Litt.* 5 a, 69 a. *Skene de Verb. Signif. Blount*, voc. *Carucate.* By some said to be one hundred acres. *Blount.* But probably of no fixed quantity. *Thel. Dig.* lib. 8, c. 12. See *Carve, Ploughland.*

A team or draught of oxen, (*carucata boum,*) for drawing or ploughing. *Cowell. Blount.*

A cart load. *Blount.* Perhaps a corruption of *carecta, carreta*, or *carectata*, (qq. v.)

Carucatarius; one who held land in carvage, that is, in socage, or plough tenure. *Cowell. Kennett's Par. Ant.* 354, cited *ibid.*

CARUE. L. Fr. A carve (of land); a ploughland. *Britt.* c. 84.

CARVAGE. The same as carucage, (q. v.) *Cowell. Blount*, voc. *Carucata.*

CARVE. [L. Lat. *carua, carucata;* L. Fr. *carue.*] In old English law. A carucate or ploughland. *Stat.* 28 *Edw.* I. See *Carucata, Ploughland.*

CAS. Fr. Case; a, or the case; an event or occurrence. *En ceo* cas *et en* cas *semblables;* in this case and the like cases. *Britt.* c. 75. *Si* cas *aveigne;* if the case happen. *Id. ibid.*

CAS FORTUIT. Fr. In the law of insurance. A fortuitous event; an inevitable accident. *Emerig. Tr. des Ass.* ch. 12. 3 *Kent's Com.* 300. See *Casus fortuitus.*

CASA. Ital. and L. Lat. In old European law. A house. *LL. Longob.* lib. 1, tit. 18, l. 1. *Id.* lib. 2, tit. 17, l. 1. *Spelman.*

CASATA, *Cassata.* L. Lat. [from *casa*, q. v.] In old European law. A house with land sufficient for the support of one family. Otherwise called *hida*, a hide of land, and by Bede, *familia. Spelman*, voc. *Casa.*

CASATUS, *Cassatus.* L. Lat. [from *casa*, q. v.] In old European law. A vassal or feudal tenant possessing a *casata*, (q. v.); that is, having a house, household, and property of his own, (*suas ædes, suam familiam, suum peculium.*) The *casati*, or *cassati* embraced both bond and free tenants engaged in husbandry, (*vassalli colonici.*) *Spelman*, voc. *Casa.*

The ceorls mentioned in the later Anglo-Saxon charters are sometimes so named. *Cart. Offæ*, A. D. 780. 1 *Spence's Chancery*, 50, and notes (*i*), (*k*), *ibid.*

CASAMENTUM. L. Lat. [from *casa*, q. v.] In old European law. The land held by a vassal or tenant; his holding or tenement, (*territorium vassalli, tenementum.*) *Spelman.* The same as *casata*, (q. v.)

CASE. A suit or action; a cause. The Lat. *casus* had formerly the same meaning. *Bract.* fol. 301 b.

A *case*, in the sense of the constitution of the United States, (Art. III. Sect. II.) is a suit in law or equity, instituted according to the regular course of judicial proceedings, and arises when some subject, touching the constitution, laws or treaties of the United States, is submitted to the

courts by a party who asserts his rights in the form prescribed by law. *Story on Const.* § 1646, (b. 3, ch. 38.) See 1 *Kent's Com.* 325, 326. 9 *Wheaton's R.* 819. 9 *Peters' R.* 224. Bartley, C. J. (dissenting) 6 *Ohio St. R.* 357, 358.

CASE, [Lat. *casus*, Fr. *cas.*], or TRESPASS ON THE CASE. In practice. A form of personal action *ex delicto*, less ancient than the other forms, invented under the authority of the statute of Westminster 2, (13 Edw. I.) c. 24, as a remedy for injuries to which the older forms were not adapted, and intended to supply the defect which, in this respect, was found to exist in the original scheme of personal actions. 3 *Steph. Com.* 461. *Steph. Pl.* 6, 16, (Am. ed. 1824.) It received the name of *case* from the circumstance of the plaintiff's whole *case* or cause of complaint being set forth at length in the original writ, contrary to the usual practice in those formulæ. *Reg. Orig.* 105, 106. 3 *Bl. Com.* 122. It was called *trespass* on the case, because it was devised upon the analogy of the old form of *trespass*. 3 *Steph. Com. ub. sup.* The first example in the books, of the use of this action, or rather the earliest reported case in which it is mentioned, occurs in the reign of Edward III. 22 *Ass.* 41. 3 *Reeves' Hist. Eng. Law*, 89. See *Id.* 243, 391. And see 1 *Spence's Chancery*, 237—243.

This action is very comprehensive in its scope, and may be said to lie in every case where damages are claimed for an injury to person or property, not falling within the compass of the other forms. 3 *Steph. Com.* 462. 3 *Wooddes. Lect.* 88—119. It is the peculiar and appropriate remedy for injuries committed without force, and where the damage sustained is only consequential. 3 *Bl. Com.* 122, 123. See further as to this action, and the particular cases in which it lies, 1 *Chitt. Pl.* 132—145. *U. S. Digest*, Action upon the case, I.

CASE. In practice. A written statement of facts, drawn up in a certain form, and intended to be submitted to a court of law for its opinion or judgment. There are various kinds of cases, as *cases reserved* on the trial of a cause, *cases agreed on* without trial, and *cases made* to move for a *new trial*. See *infra*.

CASE AGREED ON. In practice. A statement of facts in writing, agreed upon between the parties to an action, and submitted to the court without trial, in order to obtain an opinion or decision upon the points of law arising on such facts. This is sometimes called a *case stated*. 3 *Wharton's R.* 143. 8 *Serg. & R.* 529.

In England, by statute 3 & 4 Will. IV. c. 42, s. 25, the parties are allowed to frame a case of this kind immediately after issue joined, and bring it at once before the court in banc for its decision, in order to avoid the expense and delay of a trial. 3 *Steph. Com.* 621.

CASE RESERVED, OR MADE. In practice. A statement in writing, of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties, under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in banc.* This is otherwise called a *special case;* and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a *case to be made;* instead of obtaining from the jury a special verdict. 3 *Bl. Com.* 378. 3 *Steph. Com.* 621. *Steph. Pl.* 92, 93. 1 *Arch. Pr.* 216. 1 *Burr. Pr.* 242, 463. See *Special verdict.*

Lord Mansfield said, in Luke *v.* Lyde, he always leaned, (even where he had himself no doubt) to make cases for the opinion of the court; but he took particular care that this should not create delay or expense to the parties, and therefore he always dictated the case in court, and saw it signed by counsel before another case was called, and always made it a condition in the rule that it should be set down to be argued within the first four days of the term. 2 *Burr.* 887. In modern practice, however, only a memorandum of the facts is made at the trial; and the case itself is not prepared until some days after.

CASE TO MOVE FOR NEW TRIAL. In practice. A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial. *Grah. Pr.* 330. 1 *Burr. Pr.* 469. See *New Trial.*

CASEATRIX. L. Lat. [from *caseus*, cheese.] In old English law. A dairywoman. *Fleta*, lib. 2, c. 87, where her duties are described.

CASSARE. L. Lat. [from Lat. *cassus*, void.] In old English law and practice.

To quash, or make void, (*irritum reddere*); to annul. *Ducange. Donum suum penitus cassetur;* his gift shall be entirely annulled. *Mag. Chart.* 9 Hen. III. c. 36. *Cassabitur breve;* the writ shall be quashed. *Fleta*, lib. 5, c. 6, § 47. *Cassatæ;* quashed, as pleas, (*exceptiones*). *Bract.* fol. 394.

To abate. *Towns. Pl.* 26, 59.

CASSATIO. L. Lat. [from *cassare*, q. v.] In old practice. A quashing, or making void; an abatement. *Towns. Pl.* 26, 59.

CASSATION, COURT OF. [Fr. *cour de cassation.*] The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases. It was established in 1790, under the name of the *Tribunal of cassation*, and received its present name in 1804. *Encyclop. Americ. Brande.*

CASSETUR BILLA, or QUOD BILLA CASSETUR. L. Lat. (That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*billa.*) 3 *Bl. Com.* 303. *Steph. Pl.* 128, 131, (Am. ed. 1824.)

The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting, in fact, to a discontinuance of the action. 2 *Arch. Pr.* 3, 236. 1 *Tidd's Pr.* 683.

CASSETUR BREVE, or QUOD BREVE CASSETUR. L. Lat. (That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ, (*breve.*) 3 *Bl. Com.* 303. *Steph. Pl.* 107, 109, (128, 131, Am. ed. 1824.)

To CAST. [L. Fr. *jecter, getter;* Lat. *projicere.*] In old English practice. To allege, offer or present; to put forward. To *cast an essoign* was to allege an excuse for the failure of a party to appear in court, on the return of the original writ. 3 *Steph. Com.* 659. 3 *Bl. Com.* 278. *Roscoe's Real Act.* 156. To *cast a protection* was to present or allege it as an excuse. *Co. Litt.* 128 a, 130, 131. 3 *Reeves' Hist. Eng. Law*, 406.

This word is now used as a popular rather than a technical term, in the sense of—to overcome, overthrow or defeat in a civil action at law. *Webster.*

CAST. [Lat. *jactus.*] Overthrown or defeated in an action. See *supra.*

CASTELGARDUM. L. Lat. In feudal law. The defence or guard of a castle, (*castelli guardia.*) *Spelman.* See *Castleguard.*

CASTELLAIN. [Fr. *chastellain, castelein;* L. Lat. *castellanus, castellarius*, qq. v.] In old English law. The keeper or captain of a castle or fortified house, (*præfectus castri,*) acting as, or for its owner, (*domini vices ibidem agens.*) *Spelman*, voc. *Castellum.* The constable of a castle. *Id. Bract.* fol. 363, 69 b. 2 *Inst.* 31. *Termes de la Ley. Blount.*

CASTELLANUS, *Castellanius, Castellarius.* L. Lat. [from *castellum*, q. v.] In old English law. A castellain; the keeper, captain or constable of a castle. *Spelman*, voc. *Castellum. Bract.* fol. 363. *Cart. de Forest.* c. 14. *Fleta*, lib. 2, c. 50, § 21. See *Castellain.*

An officer of the forest. *Manwood*, part 1, p. 113. *Blount.*

CASTELLANIA, *Castellatura.* L. Lat. [from *castellanus*, q. v.] In old English law. The office of a castellain; the territory or jurisdiction of a castle. *Spelman*, voc. *Castellum.*

CASTELLARIUM, CASTELLATUS. L. Lat. [from *castellum*, q. v.] In old English law. The precinct or jurisdiction of a castle. *Blount.*

CASTELLORUM OPERATIO. L. Lat. In Saxon and old English law. Castle work. Service and labor done by inferior tenants, for the building and upholding castles, and public places of defence. One of the three necessary charges, (*trinoda necessitas*) to which all lands among the Saxons were expressly subject. *Cowell. Kennett's Par. Ant.* 114. See *Trinoda necessitas.*

CASTELLUM. L. Lat. In old law. A castle; a fortified building, place or town. *Dicitur tam pro villa, quam pro oppido et structura munita. Spelman.*

CASTER, CESTER, CHESTER. Terminations of the names of various places in England; derived from the Lat. *castrum*, a fort or camp, which was appended by the Romans to the names of those places where they fortified themselves. *Tomlins. Whishaw.*

CASTIGATORIUM. L. Lat. In old English law. A castigatory. *Pillorium, timborale vel castigatorium. Fleta*, lib. 2, c. 12, § 29. See *Castigatory.*

CASTIGATORY. [L. Lat. *castigatori-*

um, from Lat. *castigare*, to correct.] In old English law. An engine of correction for the punishment of scolds or unquiet women; otherwise called the *cucking stool*, *trebucket*, and *tumbrel*. 4 *Bl. Com.* 168, 169. *Fleta*, lib. 2, c. 12, § 29. See *Castigatorium*, *Cucking stool*.

CASTLEGUARD, *Castelgard*, *Castleward*. [L. Lat. *castelgardum*, *castelli guardia*, *wardum castri*, *custodia castri*.] In feudal and old English law. The defence or guard of a castle, otherwise called *watch and ward*. A species of feudal service or tenure; a kind of tenure by knight's service. *Spelman*, voc. *Castelgardum*. *Termes de la Ley*. *Litt.* sect. 111. *Co. Litt.* 82 b. The service was sometimes changed into an annual rent, and then the tenure became a tenure in socage. 4 *Co.* 88; *Luttrel's case*. See 3 *How. St. Trials*, 866.

An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle. *Magna Charta*, c. 20. *Stat.* 32 *Hen.* VIII. c. 48. *Cowell*.

The circuit itself, inhabited by such as were subject to this service. *Cowell*. *Blount*. *Termes de la Ley*.

CASTLEGUARD RENTS. In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it. *Stat.* 22 & 23 *Car.* II. c. 24. See *Castleguard*.

CASTRENSIS. Lat. [from *castrum*, a camp.] In the Roman law. Relating to the camp or military service.

Castrense peculium; a portion of property which a son acquired in war, or from his connection with the camp. *Dig.* 49. 17. See *Peculium castrense*.

CASTRUM. Lat. In the Roman law. A camp.

In old English law. A castle. *Bract.* fol. 69 b. *Fleta*, lib. 2, c. 47, § 1.

A castle, including a manor. 4 *Co.* 88; *Luttrel's case*. 2 *Inst.* 31.

CASU CONSIMILI. See *Consimili casu*.

CASU PROVISO. L. Lat. (In the case provided.) In old English practice. A writ of entry given by the statute of Gloucester, 6 Edw. I. c. 7, where a tenant in dower aliened in fee, or for life. It lay for him in the reversion against the alience, during the life of the tenant in dower. *F. N. B.* 205 N. *Termes de la Ley*. *Roscoe's Real Act.* 94. It received its name from a clause which it contained, referring to the statute in that *case provided*. *Id.* 95.

CASUAL EJECTOR. In practice. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come *casually*, or by accident upon the premises, and to turn out or eject the lawful possessor, 3 *Bl. Com.* 203. 3 *Steph. Com.* 670, *et seq*. *Adams on Eject.* 15, 16. This, with other fictions of the action of ejectment, has been abolished by the laws of several of the United States. 2 *N. Y. Rev. St.* [304,] 231, § 6. *Mich. Rev. St.* 471, sec. 6, (ed. 1838.)

CASUALIS. Lat. [from *casus*, accident.] In old English law. Casual; accidental. *Homicidium casuale*. *Fleta*, lib. 1, c. 31, § 4.

CASUALTIES OF SUPERIORITY. In Scotch law. Certain emoluments arising to a superior, which, depending on the occurrence of certain circumstances, are termed *casualties*, in contradistinction to the feu-duty, or fixed emolument arising from the contract of feu. *Bell's Dict.*

CASUALTY. [from Lat. *casus*, q. v.] Inevitable accident; an event not to be foreseen or guarded against. A loss from such an event or cause; as by fire, shipwreck, lightning, &c. *Story on Bailm.* § 240.

CASUS. Lat. [from *cadere*, to fall, to happen; Fr. *cas*.] A case. *Casus iste evenit apud Clarendone*; that case happened at Clarendon. *Bract.* fol. 45. *Est tamen* casus, *quo*, &c.; there is, however, a case in which, &c. *Inst.* 2. 14. pr. *Facta et* casus *qui quotidie emergunt*; the facts and cases which daily arise. *Bract.* fol. 1 b. *In omni* casu. *Id.* fol. 23. *In hoc* casu. *Id. ibid*. *Id.* fol. 276. *Inst.* 2. 14. 6. *In primo casu*. *Fleta*, lib. 2, c. 65, § 18.

A case at law; a cause or action. *Cadit mulier à* casu; the woman loses her case. *Bract.* fol. 301 b.

An event; a circumstance or combination of circumstances. See *Casus fœderis*.

A chance; an accident or misfortune, *Inst.* 4. 3. 3. See *Casus fortuitus*.

CASUS FŒDERIS. Lat. The case of the treaty or compact; the case or event contemplated by a treaty; a case within it, or to which it applies. 1 *Kent's Com.* 49. Wells, arg. 3 *Cowen's R.* 104. Applied to an exigency contemplated by the constitution of the United States, (the *fœdus* of

the union.) *Id.* 264. Applied also to an ordinary contract, as to a respondentia bond. Story, J. 4 *Mason's R.* 253.

CASUS FORTUITUS. L. Lat. [Fr. *cas fortuit.*] A fortuitous or accidental event; an inevitable accident. An event occurring without the intervention of human agency, and producing a loss, in spite of all human effort or sagacity. 3 *Kent's Com.* 216, 300. *Quod fato* [*damno fatali*] *contingit, et cuivis diligentissimo possit contingere;* that which happens from a cause above human control, and which may happen to any one, even the most careful. *Id. ibid. Accidens quod per custodiam, curam, et diligentiam mentis humanæ evitari non potest;* an accident which cannot be avoided by the utmost caution and effort of the human mind. *Straccha, Glossa.* 22, cited 3 *Kent's Com.* 300, note. *Ad vim majorem vel ad* casus fortuitos *non tenetur quis, nisi sua culpa intervenerit;* in cases of superior force or inevitable accident, a person is not bound, unless his own misconduct be concerned. *Fleta*, lib. 2, c. 72, § 16.

Casus fortuitus non est sperandus; et nemo tenetur divinare. A fortuitous event is not to be expected, and no man is bound to foretell [or foresee it]. 4 *Co.* 66.

Casus fortuitus non est supponendus. A fortuitous event is not to be presumed. *Hardr.* 82, arg.

CASUS MAJOR. Lat. In the civil law. A casualty; an extraordinary casualty, as fire, shipwreck, &c. *Dig.* 44. 7. 1. 4. *Story on Bailm.* § 240.

CASUS OMISSUS. Lat. A case omitted, overlooked or not provided for. Applied usually to omissions in a statute to provide for a particular case. 2 *Bl. Com.* 260. 4 *Id.* 302. See 1 *W. Bl.* 426. *Com.* 50. 1 *P. Wms.* 392. 11 *East*, 1.

Casus omissus et oblivioni datus dispositioni juris communis relinquitur. A case omitted and given to oblivion [forgotten] is left to the disposal of the common law. 5 *Co.* 38. A particular case, left unprovided for by statute, must be disposed of according to the law as it existed prior to such statute. *Broom's Max.* [37.]

CATALLA. L. Lat. In old English law. Chattels, or *catals*, as anciently written. A term including all property moveable and immoveable, except fees and freeholds; (*omnia bona mobilia et immobilia, quæ nec feoda sunt, nec libera tenementa.*) *Spelman. Termes de la Ley*, voc. *Catals. Reg. Orig.* 139 b. 1 *Steph. Com.* 262. *Quamdiu* catalla *debitoris præsencia sufficiant ad debitum reddendum;* as long as there are present sufficient chattels of the debtor to pay the debt. *Mag. Cart.* 9 Hen. III. c. 8. *Quamdiu* catalla *debitoris sufficiant ad debitum reddendum. Mag. Cart. Johan.* c. 9. *Dum* catalla *debitoris sufficiant. Artic. Mag. Cart. Johan.* c. 5. *Omnia* catalla *cedant defuncto;* all the chattels shall belong to the deceased. *Mag. Cart.* 9 Hen. III. c. 18. *Id. Johan.* c. 26. See *Chattels.*

This word is considered by Spelman as derived, by contraction, from *capitalia*, (which see). The singular *catallum* (q. v.) rarely occurs, although Bracton uses it in several places. *Catalla*, according to the same writer, had nearly or quite the sense of *averia*, (beasts or cattle), being demandable under that name. *Bract.* fol. 159 b. See *Averia.* It seems to have been, from a very early period, united with the word *bona*, in the phrase *bona et catalla*, of which the familiar modern phrase *goods and chattels* is a translation. *Bract.* fol. 60 b. *Reg. Orig.* 140, 141.

CATALLA OTIOSA. L. Lat. In old English law. Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plough; called also *animalia otiosa*, and *averia otiosa. Bract.* fol. 217, 217 b. *Fleta*, lib. 4, c. 17, § 15. 3 *Bl. Com.* 9.

CATALLIS CAPTIS NOMINE DISTRICTIONIS. See *De catallis*, &c.

CATALLIS REDDENDIS. See *De catallis reddendis.*

CATALLUM. L. Lat. In old English law. A chattel. *Nisi* catallum *quod continetur in carta;* except the chattel which is contained in the charter. *Art. Mag. Cart. Johan.* c. 34. *Nisi sortem, hoc est,* catallum *in charta contentum;* except the principal, that is, the chattel contained in the charter. *Stat. Merton. Fleta*, lib. 2, c. 57, § 8. *Bract.* fol. 60 b. See *Id.* fol. 131, 272. *Laicum catallum*; a lay chattel. *Id.* fol. 412. A word of rare occurrence. See *Catalla.*

This word occurs in the laws of the Alamanni. *L. Alaman.* tit. 82. *Spelman*, voc. *Transpasso.* But it is not noticed by Spelman in his derivation of the plural *catalla* from *capitalia.* The singular of the latter was *capitale*, the change of which into *catallum* does not appear so obvious. See *Capitale.*

CATANEUS. L. Lat. In feudal law. A tenant *in capite*, or in chief. *Spelman.* A captain. *Id.*

Considered by Spelman as an abbreviation or contraction of *capitaneus*, just as *catalla*, or *catalia* was of *capitalia*. See *Capitaneus.*

CATCHPOLE. [L. Lat. *cachepolus, cacepolus.*] An officer who makes arrests.

Though now employed as a term of contempt for a sheriff's officer, this word seems to have been formerly used without reproach, as an ordinary official epithet. *Stat.* 25 *Edw.* III. st. 4, c. 2. *Cowell. Blount.*

CATENARE. L. Lat. [from *catena*, a chain.] In old English law. To chain. *Catenavit et in ferris tenuit;* chained and kept in irons. *Mem. in Scacc.* H. 23 Edw. I.

CATER COUSIN. A corruption of *quater cousin*, according to Blackstone. *Law Tracts*, 6.

CATEUX. Norm. Chattels. See *Chateux.*

CATHOLIC CREDITOR. In Scotch law. An universal creditor; one whose debt is secured over several subjects, or over the whole subjects belonging to the debtor. *Bell's Dict.*

CATHOLIC EMANCIPATION ACT. The statute of 10 Geo. IV. c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. 3 *Steph. Com.* 109.

CATTEL. An old form of cattle. *Finch's Law*, b. 2, c. 17.

CATTLE-GATE. In English law. A right to pasture cattle in the land of another. It is a distinct and several interest in the land, passing by lease and release. 13 *East*, 155. 5 *Taunt.* 811. See 34 *English Com. Law & Eq. R.* 511.

CAUDA TERRÆ. L. Lat. In old English law. A land's end; or the bottom or extreme part of a ridge or furrow in arable land. *Cowell.* The bottom or lower end of a field; perhaps, a slip of unploughed land at the lower end of a field, as *caput terræ*, a headland, was at the upper end.* See *Abuttals, Butts, Headlands.*

CAULCEIS. L. Fr. A word used in old statutes, (6 *Hen.* VI. c. 5,) to signify causeways, or causeys. From the Latin *calcetum*, (q. v.) *Cowell. Blount.*

CAUPO. Lat. In the civil law. An innkeeper. *Dig.* 4. 9. 4, 5. See *Caupones.*

CAUPONA. Lat. [from *caupo*, q. v.] In the civil law. An inn or tavern. *Inst.* 4. 5. 3. *Dig.* 4. 9. 1. 5. *Id.* 4. 9. 5. *Id.* 47. 5.

CAUPONES. Lat. (pl. of *caupo.*) In the civil law. Innkeepers. *Dig.* 4. 9. 1. 5. *Id.* 47. 5. *Story on Agency*, § 458.

CAURSINES. [L. Lat. *caorcini, caursini, corsini.*] Italian merchants who came into England in the reign of Henry III., where they established themselves as money lenders, but were soon expelled for their usury and extortion. *Cowell. Blount. Spelman*, voc. *Caursini. Matth. Paris*, cited *ibid.* They seem to have been Lombards, deriving their name from a town in Lombardy.

CAUSA. Lat. A cause; an occasion; a reason. *Causa proxima;* the next or immediate cause; sometimes called *causa causata*, a cause produced by a previous cause. *Causa remota;* the remote or original cause; sometimes called *causa causans*, a cause producing another cause. Lord Ellenborough, 4 *Campb.* 284. Sometimes called *causa causæ*, the cause of a cause. *Causa causæ est causa causati;* the cause of a cause is the cause of the thing caused. 12 *Mod.* 639. But see *infra.*

In actions on the case, a distinction was formerly made between *causa cousans*, the remote cause, and *causa causata*, the consequential damage, or immediate cause of the action. 3 *Reeves' Hist. Eng. Law*, 244. "Where a man is interrupted in exercising an office, that is *causa causans*, by which he loses his fees, &c., and that is *causa causata*, the immediate cause or point of the action." 9 *Co.* 50, 51; *The Earl of Shrewsbury's case.* The term *causa causans* is still in use. "The entrusting such a powerful and dangerous engine as a locomotive, to one who will not submit to control and render implicit obedience to orders, is itself an act of negligence, the *causa causans* of the mischief; while the proximate cause, or the *ipsa negligentia* which produces it, may truly be said, in most cases, to be the disobedience of orders by the servant so entrusted." Grier, J. 14 *Howard's R.* 487.

Causa proxima, non remota, spectatur. The immediate, not the remote cause, is looked at, or considered. Lord Ellenborough, 12 *East*, 648. 3 *Kent's Com.* 302. *Story on Bailm.* § 515, and notes. Or, in the language of Lord Bacon, **In jure non remota causa, sed proxima spectatur.** In

law, not the remote but the immediate cause is considered. *Bac. Max.* Reg. 1. "Though, in philosophy, they say *causa causæ est causa causati* [see *supra*,] yet in law, the immediate cause is respected." *Freem.* 329. "It were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." *Bac. Max. ub. sup.* Lord Bacon has illustrated this maxim by examples of covenants, leases, feoffments and other conveyances. In modern practice, however, it is chiefly applied to the law of marine insurance, in which it is an established rule that the loss must be a direct or immediate, and not a remote consequence of the peril insured against. *Park on Ins.* (8th ed.) 131. *Broom's Max.* 104, [166.] 1 *Kernan's R.* 9, 15. Thus, if a ship be driven ashore by the wind, and in that situation be captured by an enemy, the loss is to be imputed to the capture, and not to the stranding. 3 *Kent's Com.* 302, and note. In this instance, the stranding is the *causa remota*, or *causans*; the capture the *causa proxima*, or *causata*. But see 2 *Bing.* 205. 1 *Story's R.* 157. Curtis, J. 14 *Howard's R.* 366.

The same maxim is applied in the law of agency; an agent not being responsible for a loss occasioned by an act or omission on his part, where the loss is merely a remote consequence of such act or omission.* *Story on Agency*, § 217 c.

Causa et origo est materia negotii. The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 *Co.* 99, *Shelley's case.* Things are construed according to their cause and beginning. *Finch's Law*, b. 1, ch. 3, p. 10. *Wingate's Max.* 41, max. 21. *Id.* 61. max. 25. This is substantially the same with the maxim of the civil law:— **Cujusque rei potissima pars principium est.** The chiefest part of every thing is the beginning. *Dig.* 1. 2. 1.

CAUSA. Lat. In old English law. A title; a source, mode or ground of acquisition. 1 *Mackeld. Civ. Law*, 273, § 263. *Titulus est justa* causa *possidendi id quod nostrum est*; title is the lawful ground of possessing that which is ours. 8 *Co.* 153, [305]. *Inter alias* causas *acquisitionis, magna, celebris, et famosa est causa donationis*; among other sources of acquisition, a great, distinguished and well known source or title is that of gift. *Bract.* fol. 11. *Est etiam alia* causa *acquirendi rerum dominia, quæ dicitur* causa *successionis*; there is also another source or mode of acquiring the ownership of things, which is called the source of succession, [title by succession]. *Id.* fol. 62 b. See *Id.* fol. 31 b, 40.

CAUSA. L. Lat. In old English law. A condition. *Item alia* [*donatio*] *fit ob* causam, &c. *Et hoc genus donationis improprie dicitur donatio, cum fiat* sub conditione, &c.; another kind of gift is made for cause, &c. And this kind of gift is improperly called a gift, since it is made under a condition, &c. *Bract.* fol. 11.

A cause, reason, or consideration; the consideration of a contract. *Dig.* 2. 14. 7. 1 & 2. *Fit etiam donatio quandoque ex* causa *præcedente, et quandoque ex* causa *subsequente; præcedente, ut si dicam, do tibi hanc rem quia mihi bene servisti*, &c. A gift is also sometimes made for a preceding consideration, and sometimes for a subsequent consideration; a preceding one, as if I should say, I give you this thing because you have served me well. *Bract.* fol. 19 b. *Fit donatio alicui ob* causam præteritam, *quia diu* servivit, *vel* præsentem, *quia bene* servit, *vel* futuram, *quia bene* serviet, &c. A gift is made to one for a past consideration, because he hath served long, or a present consideration, because he doth serve well, or a future, because he will serve well. *Id.* fol. 33 b. In Scotch law, the consideration of a deed is still called the *cause. Bell's Dict.*

Quia, in the civil law, was the proper word to denote a cause or consideration, as *ut* denoted a qualification, and *si*, a condition. *Id.* fol. 18 b. Hence the verse,

Scito quod ut *modus est*, si, *conditio*, quia, *causa*.
Id. ibid.

CAUSA. Lat. In old English law. A cause; a suit or action pending. *Causa testamentaria*; a testamentary cause. *Causa matrimonialis*; a matrimonial cause. *Bract.* fol. 61. *Causa jactitationis matrimonii*; a suit of jactitation of marriage. All these causes have in England, until recently, been exclusively cognizable in the spiritual courts. *Id. ibid.* 3 *Steph. Com.* 712—715.

CAUSA. L. Lat. In old European law. Any moveable thing or article of property, (*pro re quavis et bonorum parte.*)

Capitul. lib. 5, tit. 208. *L. Salic.* tit. 46. *Spelman.*

CAUSA REI. Lat. In the civil law. The accessions, appurtenances or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. *Inst.* 4. 17. 3. *Dig.* 6. 1. 20. 1 *Mackeld. Civ. Law*, 155, § 153. *Id.* 310, § 289.

CAUSA. Lat. By reason of; on account of. *Causâ adulterii, sævitiæ, consanguinitatis, præcontractûs, frigiditatis;* by reason of adultery, cruelty, consanguinity, pre-contract, frigidity. *Hale's Anal.* sect. xiv.

With reference to; in contemplation of. *Causâ mortis;* in anticipation of death. See *Donatio causa mortis.*

CAUSA DATA ET NON SECUTA. In the civil law. Consideration given and not followed, that is, by the event upon which it was given. The name of an action by which a thing given in the view of a certain event, was reclaimed if that event did not take place. *Dig.* 12. 4. *Cod.* 4. 6. See *Cas. temp. Talbot*, 122.

CAUSA HOSPITANDI. Lat. For the purpose of being entertained as a guest. 4 *M. & S.* 310.

CAUSA MATRIMONII PRÆLOCUTI. L. Lat. (By reason of a marriage before treated of.) In old English practice. A writ of entry that formerly lay where a woman had given lands to a man in fee simple, with the intent that he should marry her, and he refused to do so within a reasonable time, after having been required by the woman. *Reg. Orig.* 233. *F. N. B.* 205. 3 *Reeves' Hist. Eng. Law*, 38. 3 *Bl. Com.* 183, note. *Roscoe's Real Act.* 98.

CAUSA PATET. Lat. The reason is open, obvious, plain, clear, or manifest. A common expression in Perkins and other old writers. *Perk.* ch. 1, ss. 11, 14, 97. *Causa patet ex præmissis;* the reason is plain from the premises. *Id.* c. 3, s. 226.

CAUSA SCIENTIÆ PATET. L. Lat. The reason of the knowledge is evident. A technical phrase in Scotch practice, used in depositions of witnesses.

CAUSAM NOBIS SIGNIFICES. L. Lat. (You signify to us the reason.) In old English practice. A writ which formerly lay where a mayor of a town or city, after having been commanded by the king's writ to give seisin to the king's grantee, had delayed to do so; commanding him to *show cause* why he so delayed the performance of his duty. *Cowell. Blount.*

CAUSARE. L. Lat. [from *causa*, q. v.] In old English practice. To cause or produce. *Causans*, causing. *Causata*, caused.

To complain of; to show cause against, or object to. Causari *poterunt et calumpniari multis modis;* they may be objected to, and challenged in many ways. *Bract.* fol. 75 b. *Id.* fol. 238, 334.

In old European law. To manage a cause; to litigate, (*causam agere, litigare*). *Spelman*, voc. *Causa. Si quis causam alterius agere aut* causare *præsumpserit;* if any one shall presume to prosecute or manage the cause of another. *LL. Longob.* lib. 2, tit. 52, l. 1, cited *ibid.* So *actionare*, (q. v.) to prosecute an action.

CAUSATOR. L. Lat. [from *causare*, q. v.] In old European law. One who manages or litigates another's cause. *Spelman*, voc. *Causa.*

CAUSE. [Lat. *causa*, q. v.] The origin or foundation of a thing, as of a suit or action; a ground of action. 1 *Comstock's R.* 47.

That which produces an effect; that which moves, leads, or induces. The consideration of a contract, that is, the inducement to it, or the reason which moves the contracting party to enter into it, is, in the civil and Scotch law, called the *cause.* See *Consideration.*

An action or suit at law or in equity; a case in court. The terms "cause" and "action" are not strictly synonymous. A *cause* is not, like an action or suit, said to be *commenced;* nor an *action*, like a cause, said to be *tried.* There are other peculiar applications of the term, as in the expressions "title of a cause," "counsel in a cause," &c.

CAUSIDICUS. Lat. [from *causa*, and *dicere*, to speak.] In the civil law. A pleader; one who argued a cause *ore tenus. Cod.* 2. 6. 6. *Nullus clericus nisi causidicus;* no clerk who was not a pleader. *Will. Malms. De Gest Reg.* l. 4. 1 *Bl. Com.* 17. 1 *Spence's Chancery*, 14, note (*d*). In the civil law, there was a distinction between *causidicus* and *advocatus. Cod. ub. sup.*

CAUTELE. L. Fr. Precaution. *Et bone* cautele *serra;* and it will be a good precaution. *Britt.* c. 39.

CAUTIO. Lat. [from *cavere*, to take care, provide for, secure.] In the civil law.

Security for the performance of an obligation, or other act; security in an action; bail, or, as literally rendered in the Scotch law, *caution;* otherwise termed *satisdatio.* *Inst.* 4. 11. *Dig.* 2. 8. *Fleta*, lib. 6, c. 45. See *Caution. Idonea cautio;* sufficient security. *Reg. Orig.* 67.

Cautio juratoria; security given by the oath of the party. *Inst.* 4. 11. 2. 1 *Mackeld. Civ. Law*, 176, § 184. *T. Raym.* 226, arg.

Cautio fidejussoria; security given by sureties, pledges, or bondsmen. *Id. ibid. Bract.* fol. 337 b. *Clerke's Prax. Cur. Adm.* tit. 4.

Cautio pignoratitia; security given by pledge, or deposit, as plate, money, or other goods. *T. Raym. ub. sup. Reg. Orig.* 66, 67, *et in marg.* See *De cautione admittenda.*

CAUTIO PRO EXPENSIS. Lat. Security for costs. See *Nov.* 112, c. 2.

CAUTION. In admiralty and Scotch law. Security; bail. *P. Cyclopædia*, voc. *Bail.* 6 *Mod.* 162. See *Cautio.*

CAUTIONARY. In Scotch law. The obligation by which a party becomes surety for another, answering to the English *guarantee.* It is defined by Stair, "the promise or contract of a man, not for himself, but another." *Brande.* See *Ersk. Inst.* b. 3, tit. 7, § 22. See *Cautionry.*

CAUTIONER. In Scotch law. A surety for a debt. 1 *Kames' Equity*, pref. *Id.* 410, 417. *Ersk. Inst.* b. 3, tit. 7, § 23. *Bell's Dict.* A guarantor. *Brande.*

CAUTIONRY. In Scotch law. Suretyship. 1 *Forbes' Inst.* part 2, b. 3, ch. 2, tit. 3. The obligation of suretyship. *Bell's Dict.*

CAVEAT. Lat. [from *cavere*, to take care, or beware.] Let him beware. A formal notice, or caution, given by a party interested, to a court, judge, or public officer, against the performance of certain judicial or ministerial acts. *P. Cyclopædia.* A process used in the spiritual courts in England, and in courts of similar jurisdiction in the United States, to prevent the proving of a will, or the granting of administration; and in the English and United States courts, to prevent the granting of letters patent. 3 *Bl. Com.* 98, 246. *Lovelass on Wills*, 35. 2 *Steph. Com.* 89. *Dane's Abr.* c. 223.

In American law. A kind of equitable process, resembling an injunction, issued to prevent the granting of a patent for lands. 3 *Call's R.* 495. 1 *Wash.* (Va.) *R.* [38,] 50. 12 *Grattan's R.* 670. 2 *Hilliard's Real Prop.* 251, note (1). The expressions "to *caveat*," "*caveator*," and "*caveatee*," are used in some of the states. 4 *Call*, 196. 3 *Id.* 28. 1 *Harr. & McH. R.* 189. 9 *Grattan's R.* 508. 12 *Id.* 670.

The object and effect of a *caveat* are to stay the proceedings, in order to allow the party interested an opportunity of contesting the validity of the will, or the right to the administration, or letters patent. 2 *Chitt. Gen. Pract.* 502, 503. 3 *Bl. Com.* 98.

Caveat emptor. Let the buyer take care; the buyer must take care, or be on his guard. *Hob.* 99. *Co. Litt.* 102 a. 2 *Inst.* 714. *Broom's Max.* [605.] The purchaser must examine for himself the article offered to him for sale, and exercise his own judgment respecting it. If he purchase without examination, or after a hasty examination, or in mere reliance upon the seller, and the article turns out to be defective, it is his own fault, and he has no remedy against the seller, unless the latter expressly warranted the article, or made a fraudulent representation concerning it, or knowing it to be defective, used some art to disguise it. This is a leading maxim of the law relating to the contract of sale; and its application is not affected by the circumstance that the price is such as is usually given for a sound commodity. 2 *Steph. Com.* 126, and cases cited *ibid. Cro. Jac.* 2. 1 *Selden's R.* 88. 1 *Smith's Leading Cases*, 78. *Broom's Maxims*, [605—638.] 2 *Wooddes. Lect.* 251. 2 *Kent's Com.* 478—488, and notes. 1 *Story's Eq. Jur.* § 212. It seems to have been originally applicable not to the quality, but the title of the goods sold. *Hob.* 99. *Stat.* 13 *Edw.* I. c. 40. 2 *Wooddes. Lect.* 251, note. In modern law, however, the rule is, that if the seller has possession of the article, and sells it as his own, and not as agent for another, and for a fair price, he is *understood* to warrant the *title.* 2 *Kent's Com.* 478.

This maxim is applicable to sales of lands as well as goods, though not referred to with the same frequency. See *Broom's Max.* [605—613.] But see 2 *Jones' Eq. R.* 233. It applies to judicial as well as other sales; such as sales by sheriffs, administrators, and other officers. 2 *Ohio R.* (N. S.) 36. 15 *Illinois R.* 295. 25 *Alabama R.* 626, 681, 690.

*** Lord Hobart, in the case of Moore

v. Hussey, refers to the statute of Westminster 2, c. 14, [40], as giving this maxim at length in the following words: **Caveat emptor, qui ignorare non debuit quod jus alienum emit,** (let the purchaser beware, who should not be ignorant that he is buying the right of another.) *Hob.* 99. The important word *caveat*, however, is not used in the passage of the statute referred to, which is in the following words: *Expectet emptor (qui ignorare non debuit quod jus alienum emit) usque ad ætatem warranti sui*, &c.; the purchaser shall wait, (who ought not to have been ignorant that he bought the right of another,) until the age of his warrantor, &c. See it quoted, *Yearb.* M. 6 Edw. III. 36. The case of a sale of goods does not appear to be contemplated by the statute. 2 *Inst.* 455.

CAVENA. L. Lat. In feudal law. A vault or repository for keeping grain, wine, oil, &c. *Feudum de cavena* or *feudum cavenæ*, was an annual stipend of wine, grain, or other provisions, paid to a military vassal, or feudatory. *Feud. Lib.* 2, tit. 1, § 1. *Id.* tit. 2, § 1. Called a barbarous word. *Hotom. de Verb. Feud.*

CAVERE. Lat. In the civil and common law. To take care; to exercise caution. See *Caveat emptor.*

To take care or provide for; to provide by law. *Cavetur;* provision is made, a remedy is given. *Inst.* 4. 3. 13. *Cautum est;* it is provided or enacted. *Id.* 3. 8. 2. *Id.* 4. 3. pr.

To provide against; to forbid by law. *Inst.* 1. 25. 13.

To give security. *Nisi* caveant *tutores et curatores*, &c. *Inst.* 1. 24. 3. *Cautum;* secured. *Dig.* 50. 16. 188. § 1.

To give caution or security on arrest. *Clerke's Prax. Cur. Adm.* tit. 4.

CAYA. L. Lat. [Sax. *cæg.*] In old English law. A quay, kay, key, or wharf. *Cowell.*

CAYAGIUM. L. Lat. [from *caya*, q. v.] In old English law. Cayage or kayage; a toll or duty anciently paid for landing goods at a quay or wharf. *Cowell.* See *Kayage.*

C. B. An abbreviation of *Communis Bancus*, (Common Bench). Initial letters employed in the books to designate the court of *Common Bench*, or Common Pleas, in England. See *Bancus, Communis Bancus.* The letters C. P. are now generally used.

CE, *Ceo, Cecy.* L. Fr. This; that. *Kelham. Ceals;* those. *Id.*

CEAPGILD, *Ceapgel.* Sax. [from *ceap*, a beast, or other chattel, (Lat. *merx, pecus, catallum,*) and *gild*, or *geld*, a payment or forfeiture.] The payment or forfeiture of a beast; a species of forfeiture anciently imposed in England. *Spelman. Id.* voc. *Hundredus.* In several of the Lexicons, this word is erroneously written *caepgildum.*

CEAUS, *Ceaux.* L. Fr. Those. *Assiz. de Jerus.* c. ix. *Kelham.*

CEDENT. [from Lat. *cedens*, one who cedes or transfers.] In Scotch law. An assignor. 1 *Kames' Equity*, pref. *Id.* 403. 2 *Id.* 351. *Bell's Dict.* voc. *Assignation.*

CEDERE. Lat. In civil and old English law. To yield or give up; to assign or transfer; to cede. *Si quis ex sociis— bonis suis* cesserit; if a partner make an assignment of his goods. *Inst.* 3. 26. 8. *Id.* 4. 6. 40.

To yield or give way to another, as superior; to go or pass with a thing, as an inferior or subordinate thing; to follow as a part of a thing; to belong to. Hence the compounds *accedere*, and *accessio*, (qq. v.)

To belong to a person; to be a subject of rightful claim by a person. *Quum tota dies* cedat *debitori;* since the whole of the day belongs to the debtor. *Fleta*, lib. 3, c. 9, § 24.

Cedere is of very frequent occurrence in the civil law. *Cedere solo, picturæ, vestimento*, &c., to go with, or belong to the soil, painting, garment, &c. *Inst.* 2. 1. 26, 32—34. **Omne quod inædificatur solo cedit.** Every thing which is built upon [land] goes with or belongs to the land. *Id.* 2. 1. 29. *Dig.* 41. 1. 10. *Frumenta quæ sata sunt solo* cedere *intelliguntur;* grains which are planted are understood to belong to the soil. *Inst.* 2. 1. 32.

So, in Bracton, who borrows from the civil law:—*Tabula* cedit *picturæ;* the tablet goes with the painting. *Bract.* fol. 10. *Purpura* cedit *vestimento, jure accessionis;* the purple goes with the garment by right of accession. *Id. ibid. Minor* cedit *majori vel præciosiori;* the lesser goes with the greater, or more valuable. *Id.* fol. 9 b. And see the maxims **Aqua cedit solo, Bello parta cedunt reipublicæ.**

CEDULA. Lat. In old English law. A schedule. *Mem. in Scacc.* T. 4 Edw. I.

CEDULA. Span. In Spanish colonial law. A circular letter or order. *White's New Recop.* b. 4, tit. 4.

A bill or order. *Id.* b. 3, tit. 7, ch. 5, § 3.

CEDULE. Fr. In French law. A note in writing. *Poth. Oblig.* part 4, ch. 1, art. 2, § 1.

CEL. L. Fr. This. *A cel jour;* at this day. *Litt.* sect. 140, 217.

CELARIUM. L. Lat. In old English law. A cellar. *Fleta*, lib. 2, c. 5, § 6.

CELDRA, *Celda.* L. Lat. In old English law. A chaldron. *Chaldra. Pryn.* 183. *Celda carbonum. Towns. Pl.* 172.

In old Scotch law. A measure of grain; a chalder. 1 *Kames' Equity*, 215. *Cowell. Celdra frumenti. Id.*

CELERARIUS. L. Lat. In old English law. A steward of a monastery; a cellarer or bursar. *Bract.* fol. 318. *Fleta*, lib. 6, c. 37, § 3. *Blount.*

CELI, *Cely.* L. Fr. Such a one, (*talis*). *Celi se profri à tiel jour, vers cely;* such a one offers himself at such a day, against such a one. *Fet Assaver*, § 18.

CELUI, *Celuy.* L. Fr. He; him. Celuy *que fist le lease est appel lessor, et* celuy *a que le leas est fait est appel lessee. Litt.* sect. 57. *Appertient a* celuy *a que le fait est fait;* belongs to him to whom the deed is made. *Id.* sect. 375.

CENDULÆ. L. Lat. In old records. Shingles, (shindles, *scandulæ*). *Pat.* 4 H. III. p. 1, m. 10. *Cowell.*

CENEGILD. [Sax. *cynegild;* from *cyn*, relationship, kin, and *geld*, a payment.] In Saxon law. A mulct, or pecuniary composition paid by one who had killed another, to the relatives of the deceased, by way of expiation. *LL. Æthelstan*, c. 7. *Spelman.*

CENELLÆ. L. Lat. In old records. Acorns. *Cowell.*

CENNINGA. L. Lat. [from Sax. *cennung*, knowledge.] In Saxon law. Notice given by a buyer to a seller, that the thing sold was claimed by another, that he might appear and justify the sale. *Add. ad Leg. Inæ MS. apud Spelman.*

CENS. Fr. [Lat. *census*, q. v.] In old French and Canadian law. A tribute or payment imposed on a tenant; an annual payment or due (*redevance,*) reserved to a seignior or lord, and imposed merely in recognition of his superiority. *Guyot, Inst. Feod.* chap. 9. *Dunkin's Address*, 39. Originally, a real and onerous tribute, but, in the course of ages, rendered light in amount, and in modern times, quite nominal. *Id. ibid.* It was distinguished from the *rentes*, which also formed the larger part of the yearly dues. *Id.*

An annual payment made by the possessors of a heritage, to the seignior of the fief, from whom it is held, in acknowledgment of his direct seigniory. Called also *censive*, or *fond de terre.* It consists in money, grain, fowls or other articles in kind. *Id.* 50.

A quit rent. *Steph. Lect.* 351.

CENSARIA. L. Lat. In old English law. A farm, or house and land let at a standing rent, (*ad censum.*) *Cowell. Blount.*

CENSARII. L. Lat. Farmers. *Blount.* Or, according to Cowell, those who were liable to pay a tax, (*census.*) *Cowell. Domesday*, cited in *Blount.*

CENSERE. Lat. In the Roman law. To ordain; to decree. *Dig.* 50. 16. 111.

CENSIVE. Fr. [from *cens*, q. v.] In old French law. Tenure by *cens;* an estate held by the payment of a *cens. Guyot, Inst. Feod.* ch. 9. *Dunkin's Address*, 61.

CENSITAIRE. Fr. [from *cens*, q. v.] In old French and Canadian law. One who held by the title or tenure of *cens*, (*à titre de cens*); a tenant by *cens. Guyot, Inst.* ch. 9. *Dunkin's Address*, 34, *et passim.*

CENSO. Span. [from Lat. *census*, q. v.] In Spanish law. An annuity. *White's New Recop.* b. 2, tit. 7, § 4. 13 *Texas R.* 655.

Ground rent. *Schmidt's Civ. Law*, 149, 309.

CENSUALES. L. Lat. [from *census*, a rent or tribute.] In old European law. A species of the *oblati*, or voluntary vassals of churches or monasteries. Persons who paid an annual tax or quit rent out of their estate, to a church or monastery, in order to procure its protection, and who sometimes engaged to perform certain services. 1 *Robertson's Charles V. Appendix*, note xx.

CENSUERE. Lat. In the Roman law. They have decreed. The term of art, or technical term for the judgment, resolution or decree of the senate. *Tayl. Civ. Law*, 566. See *Censere.*

CENSUMORTIIIDUS. L. Lat. A dead rent; the same as mortmain. *Cowell. Holthouse.*

CENSUS. Lat. In the Roman law. A numbering or enrolment of the people, with a valuation of their fortunes, (*personarum et bonorum descriptio.*) *Brissonius.*

The right of being enrolled in the censor's books. *Butler's Hor. Jur.* 27.

CENSUS. L. Lat. In old European law. A tax, or tribute, (*tributum*); a toll. *Esprit des Lois*, liv. 30, c. 14.

A particular tax imposed on bondmen by their masters. *Id.* c. 15.

A yearly payment or rent. See *Censaria, Censuales.*

A yearly income or revenue. *Census regalis;* the king's or royal revenue. *Hale's Anal.* sect. vii. 1 *Bl. Com.* 306. 2 *Steph. Com.* 564.

CENTENA. L. Lat. [from *centum*, a hundred.] A hundred. A district or division containing originally a hundred freemen, established among the Goths, Germans, Franks and Lombards, for military and civil purposes, and answering to the Saxon *hundred. Spelman.* 1 *Bl. Com.* 115. *Esprit des Lois*, liv. 30, c. 17. The Saxon division is also sometimes called *centena*, but is more commonly rendered in law Latin, *hundredum*, or *hundredus. Spelman, ubi sup.* See *Hundred, Hundredum, Centenarius, Centeni.*

CENTENA. L. Lat. In old records and pleadings. A hundred weight. *Centena piscium;* a hundred weight of fish. *Pryn.* 303. *Centena ceræ, zucarii, piperis, cumini, &c. continet tredecim petras et dimidium;* the hundred weight of wax, sugar, pepper, cummin, &c., contains thirteen stone and a half. *Fleta*, lib. 2, c. 12, § 4. See *Cro. Eliz.* 754.

CENTENARIUS. L. Lat. [Fr. *centenier*, from *centena*, q. v.] In old European law. One of a *centena*, or hundred; the head or chief of a *centena*, (*præfectus centenæ*,) among the Goths, Germans, Franks and Lombards; an inferior judge. See *infra.*

*** According to Spelman, this term was originally used to denote any member of a *centena*, but was finally restricted to the head or chief; (*centenarius primo dictus est* unusquisque ex eadem centena, *demum* præfectus *tantum*,) who, in addition to his military rank as leader of the freemen of the *centena*, under the *comes*, or count, had also judicial powers, and held courts answering to the hundred courts among the Saxons. *Spelman*, voc. *Centena. Esprit des Lois*, liv. 28, c. 28; liv. 30, c. 17, 18, 22. See *Centenarii.* In the laws of the Anglo-Saxons, the term *centenarius* was applied to that judicial magistrate (otherwise called *centurio*,) who had jurisdiction over a hundred friborgs, or ten tithings; afterwards called bailiff or constable of the hundred, (*dominus hundredi*). *LL. Edw. Confess.* c. 32, *apud Spelman.* 1 *Bl. Com.* 115.

CENTENARII. L. Lat. [plur. of *centenarius*, q. v.] In old English law. The freeholders of a hundred; (*liberi tenentes qui in centena degunt;*) hundredors. *Spelman*, voc. *Centena.*

CENTENI. Lat. [from *centum*, a hundred.] A hundred men; hundred men. The number of men enrolled for military service from each district, among the ancient Germans, and which afterwards became their distinctive name. Centeni *ex singulis pagis sunt; idque ipsum inter suos vocantur; et quod primo numerus fuit jam nomen et honor est;* there are a hundred [fighting] men from each district; and they are called the same thing [i. e. hundred] among their companions; and what was at first a mere number is now a name and a distinction. *Tacitus de Mor. Germ.* c. 6. *Spelman*, voc. *Centena.* This is supposed to be the origin of the military and civil divisions called *centenæ*, or hundreds. *Ibid.* 1 *Bl. Com.* 115, 116.

CENTESIMA. Lat. [from *centum*, a hundred.] In the Roman law. One per cent. monthly, or twelve per cent. *per annum.* In calculating the rate of interest, the Romans divided the principal sum into a *hundred* parts, one of which they allowed to be taken monthly; and this, which was the highest rate of interest permitted, they called *usuræ centesimæ*, amounting yearly to twelve per cent. 2 *Bl. Com.* 462, note (*m*).

CENTRAL CRIMINAL COURT. An important court established in London in 1834, by statute 4 & 5 Will. IV. c. 36, and to which the entire criminal jurisdiction of the court of admiralty was transferred. 4 *Steph. Com.* 331. *Wharton's Lex. Warren's Law Studies*, 365.

CENTUMVIRI. Lat. A hundred men. The name of a Roman court consisting of a *hundred* judges, to whom belonged the decision of the most important questions of law, such as those relating to inheritances, wills, guardianships, sales, the enjoyment of party walls, windows, the drip of water, and numerous other important subjects, which were called *causæ centumvirales. Cic. de Orat.* i. 38, 39. *Plin. Epist.* ii. 14. 3 *Bl. Com.* 315. Properly there were 105 judges, three being chosen from each of the thirty-five tribes; but they were always named by a round number, *centumviri. Festus.*

CEO. L. Fr. [Lat. *hoc.*] This; that; (plur. *ceux.*) *Et* ceo *voil jeo averer, la ou il duist dire et* ceo *profre jeo a prover;*

"and this I will aver," where he should say, "and this I offer to prove." *Britt.* c. 22. Ceo *oyes vous home qui jeo teigne par la mayn;* hear this you man whom I hold by the hand. *Id. ibid.* Ceo *vous monstre;* this shows to you; (Latinized in Bracton, *hoc ostendit vobis. Bract.* 296 b, 372 b.) The beginning of a declaration, when in French, and actually pronounced in court; as it occurs in the Year Books, before the thirty-sixth year of Edward III. "This showeth unto you A. who is here, that B. who is there, unjustly detains from him," &c. 3 *Reeves' Hist. Eng. Law*, 59. See *Yearb.* T. 1 Edw. II. 9. *Crabb's Hist.* 217. *Steph. Pl.* 422, (Am. ed. 1824.) *Id. Appendix*, Note (75).

Coe is a corrupted form of this word, used throughout the tract called *Fet Assaver.*

CEORL, *Carl, Churl.* Sax. [L. Lat. *ceorlus, cirlus, cirliscus.*] A freeman of inferior rank, chiefly employed in husbandry; a husbandman; (Lat. *rusticus, paganus.*) *Spelman*, voc. *Ceorlus. LL. Inæ*, cc. 38, 42, 52, cited *ibid.* A tenant at will of free condition, among the Anglo-Saxons, who held land from the thane, on condition of rents and services. *Cowell*, voc. *Churle.* 1 *Reeves' Hist. Eng. Law*, 5. The ceorls are mentioned in the earliest Saxon codes, and in the later charters, under the names of *cassati, manentes*, and *tributarii.* 1 *Spence's Chancery*, 50, 51, and notes. Mr. Barrington considers the word synonymous with *villeins. Obs. Stat.* 302.

Churl, one of the forms of this word, (and probably pronounced *curl*, with the *ch* hard,) has, like the corresponding term *villain*, among the Normans, become a term of reproach. *Spelman, ubi sup.*

CEP, *Ceppe.* L. Fr. In old English law. Stock; a stock. *Del common* cep; of a common stock. *Britt.* c. 119.

CEPER. L. Fr. In old English law. A gaoler. *LL. Gul. Conq.* l. 4.

CEPI CORPUS. L. Lat. (I have taken the body.) In practice. The technical name of the return made by a sheriff to a *capias*, that he has *taken the body* of the party. *F. N. B.* 26. 3 *Bl. Com.* 288. 1 *Tidd's Pr.* 308—310. See *Capias.* It is derived from the two emphatic words of the return which was anciently endorsed in law Latin on the writ.

Cepi corpus properly is the return where the defendant is out on bail; where he is in actual custody, the return is *cepi corpus in custodia.* 1 *Tidd's Pr.* 308, 309. *Sewell's Law of Sheriff*, 387. *Cepi corpus et paratum habeo*, (I have taken the body and have it ready,) is another form of this return, which anciently implied that the party was in actual custody, but is now the proper return where the defendant has been arrested and discharged on bail. *Id. ibid.* 1 *Tidd's Pr. ub. supra.*

CEPIT. Lat. [from *capere*, to take.] In pleading. (Took, *or* he took.) The emphatic word formerly used in writs of trespass for taking personal property, and in declarations in replevin and trespass; and literally translated in the modern forms of those pleadings. See *infra.* The Latin word is still used as descriptive of the action in certain cases. Thus, in replevin, when the action is for the *taking* only, it is said to be "in the *cepit.*" 3 *Hill's* (N. Y.) *Rep.* 282, 348. 3 *Comstock's R.* 506.

CEPIT ET ABDUXIT. L. Lat. In old English practice. (Took and led away.) The emphatic words in writs of trespass, where the writ was for live things, as animals. *Reg. Orig.* 92, 163. *F. N. B.* 86 A, note. *Id.* 88 B.

CEPIT ET ASPORTAVIT. L. Lat. In old English practice. (Took and carried away.) The emphatic words in writs of trespass, where the writ was for dead things. *F. N. B.* 86 A, note. *Id.* 88 B. Literally translated in modern declarations in trespass, and in indictments for theft. 4 *Bl. Com.* 231. *Cepit et abcariavit* was a different form of the same expression. *Towns. Pl.* 166, 167.

CEPIT IN ALIO LOCO. L. Lat. In pleading. [He] took in another place. The name given to a plea in the action of replevin, which should be pleaded where the defendant desires a return of the cattle taken. 1 *Chitt. Pl.* 499. 3 *Id.* 1045.

CEPPAGIUM. L. Lat. [from Fr. *cep, ceppe*, a stock or root.] In old English law. The stumps or roots of trees which remain in the ground after the trees are felled. *Fleta*, lib. 2, c. 41, § 24.

CEPPE. L. Fr. Stock. *Les deux freres sount en une ceppe. Yearb.* H. 2 Edw. II. 31.

CERA. Lat. In old English law. Wax; a seal of wax. *Brevia sua porrigunt in* cera; deliver their writs in wax, [under seal]. *Stat. Westm.* 2, c. 10.

CERE. L. Fr. [from Lat. *cera*, q. v.] Wax; a seal. *Ove* cere *affix.* 1 *And.* 54.

CEREVISIA, *Cervisia.* L. Lat. In old English law. Ale or beer. See *Cervisia.*

CERISARIUS. L. Lat. In old English law. A cherry tree. *Fleta*, lib. 2, c. 82, § 2.

CERT MONEY. [*quasi* certain money.] In old English law. Head money or common fine. Money paid yearly by the resiants of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo letæ*); and sometimes to the hundred. *Blount.* 6 *Co.* 78, *Bullen's case.*

CERTA RES. Lat. In old English law. A certain thing. *Fleta*, lib. 2, c. 60, §§ 24, 25.

CERTAIN. [Lat. *certus, certum.*] Clear or distinct; as opposed to obscure. *Steph. Pl.* 380, note (*a*).

Particular; as opposed to general. *Id. ibid.* 132.

Limited, specified, defined; as opposed to indefinite. See *Certainty.*

"To put in certain," (L. Fr. *mitter en certaine.*) *Litt.* sect. 137. "To put into certainty," (L. Lat. *ad certitudinem ponere;*) to reduce to certainty. *Co. Litt.* 96 a. *Mys en certain;* ascertained. *Dyer*, 55 b. (Fr. ed.)

CERTAIN SERVICES. In feudal and old English law. Such services as were stinted (limited or defined,) in quantity, and could not be exceeded on any pretence; as to pay a stated annual rent, or to plough such a field for three days. 2 *Bl. Com.* 61.

CERTAINTY. [L. Lat. *certitudo.*] In pleading. Clearness or distinctness; as opposed to obscurity or ambiguity.

Particularity; as opposed to undue generality. *Steph. Pl.* 132, 380, note.

Lord Coke distinguishes three kinds of certainty; first, certainty to a common intent, [that is, according to reasonable intendment or construction, *Steph. Pl.* 380:] which is sufficient in a bar [plea,] which is to defend the party, and to excuse him: secondly, certainty to a certain intent in general, which is sufficient in counts, [declarations,] replications, and other pleadings of the plaintiff: thirdly, certainty to a certain intent in every particular, which is required in estoppels. *Co. Litt.* 303 a. 1 *Tidd's Pract.* 451. Certainty to a certain intent in general, is ordinarily sufficient in the construction of statutes. 1 *Kent's Com.* 462, note.

CERTIFICARE. L. Lat. [from *certus*, certain, and *facere*, to make.] In old practice. To certify; to make certain; to give information.

CERTIFICATE. [L. Lat. *certificatorium*, from *certificare*, q. v.] In practice. A writing made in any court, to give notice to another court of any thing done therein. *Cowell. Blount. Termes de la Ley.* A writing signed by the judges of a court, or a single judge, or by an officer of the court, certifying to, or giving formal and official notice of certain facts; generally, for the use of another court, judge or officer.*

CERTIFICATE FOR COSTS. In practice. A certificate granted by a judge before whom a cause has been tried, stating some matter of fact which is necessary to be ascertained in order to fix the amount of the costs.* 1 *Tidd's Pr.* 792, 952. 3 *Steph. Com.* 631, 640. 3 *Wooddes. Lect.* 148. 3 *Chitt. Gen. Pr.* 458.

CERTIFICATE OF REGISTRY. In maritime law. A certificate of the registration of a vessel according to the Registry Acts, for the purpose of giving her a national character. 3 *Steph. Com.* 274. 3 *Kent's Com.* 139—150. *Abbott on Ship.* [72], 89, (Perkins' ed.) Sometimes confounded with the register itself, although it is only an abstract of it. *Act of Congress*, 31 Dec. 1792, § 9. It is a custom-house document, and one of the most important of a ship's papers, though it is not required by the law of nations as expressive of a ship's national character. 4 *Taunt.* 367. 3 *Kent's Com.* 149. See *Register.*

CERTIFICATION. In Scotch practice. A term used in judicial writs, to express the penalty annexed to the disregard of the order contained in the writ. *Bell's Dict.*

CERTIFICATION OF ASSISE OF NOVEL DISSEISIN. [L. Lat. *certificatio assisæ novæ disseisinæ.*] In old English practice. A writ formerly granted for the re-examination or review of a matter passed by assise before any justices, where some point of the assise had been overlooked, or not sufficiently examined. *Reg. Orig.* 200. *Cowell. Blount.*

CERTIFICATORIUM. L. Lat. In old practice. A certificate. *Clerke's Prax. Cur. Adm.* tit. 29.

CERTIORARI. L. Lat. [*certior fieri*, to be made more certain; to be certified, or more distinctly informed.] In practice. A writ, used generally for the purpose of removing causes, before trial or judgment, from inferior to superior courts. It is issued out of the superior court, (or, in England, out of the court of chancery,) and is directed to the judges or officers of the

inferior court, reciting the will of the king or people *to be certified* of the proceeding, (*quia certis de causis* CERTIORARI *volumus, &c.*) and commanding the record to be sent or returned before them. See the old forms, *Reg. Orig.* 284. *F. N. B.* 242 b, *et seq.* It may be had either in criminal or civil cases. 3 *Steph. Com.* 703. 4 *Bl. Com.* 265, 272, 320. 1 *Tidd's Pr.* 397. *Bac. Abr.* Certiorari, A. *Com. Dig.* Certiorari, A. It lies also as an auxiliary process on writs of error, where the whole of the record is not certified by the court below, to obtain a complete return. 2 *Tidd's Pr.* 1167. *U. S. Dig.* Certiorari, I. And it lies (in place of a writ of error) after judgment, to review the judgments of inferior courts and judges, when they act in a summary way, or in a new course different from the common law. 1 *Tidd's Pr.* 400. 2 *Id.* 1134.

In American practice, a *certiorari* is used as a mode of appeal from the judgments of courts not of record. 2 *Burr. Pr.* 193. *U. S. Dig.* Certiorari, I. It is also the proper process for correcting any error that may have occurred in the proceedings of an inferior court, when such proceedings are, in any stage of them, different from the course of the common law, unless some different process is given by statute. *U. S. Dig.* Certiorari, I, 2, 3, *et seq.* and the cases there cited. Its application also is not confined to the decisions of *courts*, properly so called, nor to proceedings in *actions*, but comprehends the determinations of special tribunals, commissioners, magistrates and officers exercising judicial powers affecting the property or rights of the citizen, and who act in a summary way, or in a new course different from the common law, and also the proceedings of municipal corporations in certain cases. Paige, Senator, 25 *Wendell's R.* 167. 2 *Hill's R.* 9, 14.

CERTITUDO. L. Lat. [from *certus*, certain.] Certainty. *Fleta*, lib. 4, c. 17, § 1. *Talis certitudo certitudinem confundit;* such [nice and captious pretence of] certainty confounds [true and legal] certainty. 8 *Co.* 112.

CERTITUDINALITER. L. Lat. In old practice. Certainly. *Reg. Orig.* 22.

CERTUM. Lat. Certain. See *Certain.*

[Id] certum est quod certum reddi potest. That is certain, which can be made certain, or is capable of being reduced to a certainty. 9 *Co.* 30. *Co. Litt.* 96 a. Lord Ellenborough, 2 *M. & S.* 50. *Broom's Max.* [481.] Thus, if a man make a lease to another, for so many years as J. S. shall name, it is a good lease for years; for though it is at present uncertain, yet when J. S. has named the years, it is then reduced to a certainty. 6 *Co.* 35 b. 2 *Bl. Com.* 143. 1 *Steph. Com.* 267. The same maxim has been applied to a custom, a conveyance, an award, a contract for the sale of goods, a contract for the performance of labor, and an indenture of apprenticeship. *Broom's Max.* 416, and note (*f*), [481—485, 4th ed.] and cases there cited. 6 *Ad. & Ell.* N. S. 152, 566. *Story on Bailm.* § 375.

Another form of this maxim is **Certum est quod certo reddi potest.** That is certain which can be reduced to a certainty. Cowper, Lord C. 3 *Rep. in Ch.* 142.

CERTUS, *Certa.* Lat. Certain; defined; particularly described or specified. *Oportet quod* certa res *deducatur in donationem, quia incertæ rei nulla est donatio;* it is necessary that the thing which is the subject of the gift should be certain, because the gift of an uncertain thing is null. *Bract.* fol. 15 b. *Fleta*, lib. 3, c. 7, § 2. See *Id.* lib. 2, c. 60, § 24. Certa *debet esse intentio, et* certum *fundamentum, et* certa *res quæ deducitur in judicium;* the count ought to be certain, and its foundation certain, and the thing which is brought into court certain. *Bract.* fol. 240. See *Fleta*, lib. 5, c. 13, § 1.

CERVISARII. L. Lat. [from *cervisia*, q. v.] Certain tenants among the Saxons, who were liable to a duty called *drinclean*, which was a contribution towards providing ale (*cervisia*,) to entertain the lord or his steward. *Domesday. Blount.*

CERVISIA. L. Lat. [L. Fr. *cervoise.*] In old English law. Ale or beer, properly the former. *Reg. Orig.* 280. *Bract.* fol. 117 b. *Fleta*, lib. 2, c. 11. *Cervisia lupulata;* beer. *Towns. Pl.* 234. *Una mensura* cervisiæ; one measure of ale. *Magna Charta*, 9 Hen. III. c. 25. See *Britt.* c. 30. *Cervisiæ;* ales. *Bract.* fol. 117 b.

A compotation or entertainment. *Fleta*, lib. 1, c. 20, § 102. See *Filctale.*

CERVISIARIUS. L. Lat. [from *cervisia*, q. v.] In old records. An ale-house keeper. *Towns. Pl.* 267.

A beer or ale brewer. *Blount*, voc. *Cervisarii.*

CERVUS. Lat. A stag or deer. *Et vulgariter dicitur, quod primó oportet* cervum *capere, et postea, cum captus fuerit,*

illum excoriare ; and it is a common saying that you must first catch your stag and then skin him. *Bract.* fol. 191.

CESIONARIO. Span. In Spanish law. An assignee. *White's New Recop.* b. 3, tit. 10, ch. 1, § 3.

CESS. In old English law. To cease. *Hale's Anal.* sect. xxxviii.

CESSANTE. See *Cessare.*

CESSARE. L. Lat. To cease ; to stop, or stay. **Cessante causa, cessat effectus.** The cause ceasing, the effect ceases also. *Bract.* fol. 202. 4 *Co.* 38. *Finch's Law,* b. 1, ch. 3. *Broom's Max.* 68, [118.] *Shep. Touch.* 287. *Bacon's Works,* iv. 344. **Cessante ratione legis, cessat et ipsa lex.** The reason of the law ceasing, the law itself ceases also. *Co. Litt.* 70 b. 2 *Bl. Com.* 390, 391. *Broom's Max.* 68, [118.]

To come to an end, or determine, as an estate. **Cessante statu primitivo, cessat derivativus.** When the primitive or original estate determines, the derivative estate determines also. *Shep. Touch.* (by Preston,) 155. 4 *Kent's Com.* 32. *Broom's Max.* [372.] Applied to the cessation of the estates of dower and curtesy, on the determination of the principal estate out of which they are derived. *Id. ibid.* 8 *Co.* 67. See *Determine.*

To cease or neglect ; to *cess,* in the old books. *Cowell,* voc. *Cessor. Cessavit per biennium* (q. v.) ; he ceased or neglected for two years. See *infra.*

CESSAVIT PER BIENNIUM. L. Lat. (He ceased for two years.) In old English practice. A writ in the nature of a writ of right, founded upon the doctrine of tenure, and formerly a very common remedy. *Roscoe's Real Actions,* 31, 32. 2 *Reeves' Hist. Eng. Law,* 326. It lay first, upon the statute of Gloucester, (6 *Edw.* I. c. 4,) which gave it to the lord against the tenant in fee, who *ceased for two years* to pay and perform his fee farm rent and services, extended by the statute of Westminster 2, c. 21, to other rents and services : and secondly, upon the statute of Westminster 2, c. 41, where land was given for a chantry (*cantaria,*) light, sustenance of poor people, &c., and the alms were withdrawn for the space of two years. *Reg. Orig.* 237 b. *F. N. B.* 208 H. *Rosc. Real Actions,* 32, 33. 2 *Reeves' Hist. Eng. Law,* 145. 3 *Id.* 50. 3 *Bl. Com.* 232. This writ did not lie, unless the land had lain fresh and uncultivated for two years (*biennium,*) and there was not a sufficient distress upon the premises, or unless the tenant had so enclosed the land that the lord could not come upon it to distrain. 2 *Inst.* 296. *Rosc. Real Actions, ub. supra.*

CESSE. In old English law. An assessment, exaction or tax. *Stat.* 22 *Hen.* VIII. c. 3. *Cowell.*

CESSER, *Cessure.* Neglect ; a ceasing from, or omission to do a thing. 3 *Bl. Com.* 232. "A substantial dismission and cesser." 6 *Mod.* 232.

The determination of an estate. 1 *Co.* 84. 4 *Kent's Com.* 33, 90, 105, 295.

CESSET EXECUTIO. L. Lat. (Let execution stay.) In practice. A stay of execution ; or an order for such stay ; the entry of such stay on record. 2 *Tidd's Pr.* 1104. 3 *Wooddes. Lect.* 8.

CESSET PROCESSUS. L. Lat. (Let the process stay.) In practice. A stay of the process or proceedings on an issue ; the entry on record, of a stay of the process. 11 *Mod.* 231—234.

CESSIO. Lat. [from *cedere,* to give up, or yield.] A cession, giving up or surrender ; an assignment. 1 *Kames' Equity,* 403. See *Cessio bonorum.*

CESSIO BONORUM. Lat. In the Roman law. A cession, or giving up of goods. The surrender of all a debtor's property to his creditors, by which, under the law of cession introduced by the christian emperors, he obtained an exemption of his person from imprisonment, and all bodily punishment, (*omni quoque corporali cruciatu semoto*). *Cod.* 7. 71. 8. 2 *Bl. Com.* 473. This term is now applied, in the modern jurisprudence of most of the states of Europe, and also in American law, to the surrender of an insolvent's estate and effects to his creditors. *Ersk. Inst.* b. 4, tit. 3, § 26. *Bell's Dict.* 3 *Burge's Col. & For. Law,* 890, *et seq.* 1 *Kent's Com.* 422, 247. 2 *Id.* 396, note.

CESSION. [from Lat. *cessio,* q. v.] A giving up, relinquishment or abandonment of a right, or of property. See *Abandonment.*

In the civil law. A giving up, surrender or assignment of goods to, or for the benefit of creditors. See *Cessio bonorum.*

In ecclesiastical law. A giving up, or vacating a benefice, by accepting another without a proper dispensation. 1 *Bl. Com.* 392. *Latch,* 234. 4 *Co.* 78, *Dygby's case.*

CESSIONARY, *Cessioner.* In Scotch law. An assignee. *Bell's Dict.* voc. *Assignation.*

CESSOR. In old English law. One who ceased or neglected so long to perform

a duty belonging to him, as to incur the danger of the law, and to become liable to have a writ of *cessavit* brought against him. *Old Nat. Brev.* 136. *Cowell.*

CESSURE. L. Fr. A receiver; a bailiff. *Kelham.*

CESSURE. See *Cesser.*

C'EST ASCAVOIR. L. Fr. That is to say, or to wit; this is to be known. Generally written as one word, *cestascavoir, cestascavoire, cestassavoir.* *Stat. Westm.* 1, c. 22. *Artic. sup. Chart.* c. 1. *Litt.* sect. 13, 239. *Yearb.* P. 8 Edw. II. 275. Another form was *cest asaver.* *Britt.* c. 126. And, in one word, *cestasaver.* *Id.* c. 22. *Co est a saveir* occurs in *LL. Gul. Conq.* l. 1, pr. *Si est assaver* occurs in *Fet Assaver*, § 22.

CESTR'. An abbreviation of *Cestria*, Cheshire, in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

CESTUI, *Cestuy.* L. Fr. He. **Cestuy que doit enheriter al pere, doit enheriter al fitz.** He who would have been heir to the father, shall be heir to the son. *Yearb.* M. 12 Edw. IV. 14, [12.] 2 *Bl. Com.* 223, 239, 250.

CESTUY QUE USE. L. Fr. [*Cestuy a l'use de qui;* Lat. *ille cujus usui*, or *ad cujus usum.*] He to whose use another is enfeoffed of lands or tenements. *Cowell.* 2 *Bl. Com.* 328—333. 4 *Kent's Com.* 289—296. 1 *Steph. Com.* 332. *Cestuy a que use.* *Dyer*, 57 b. The substantial and beneficial owner, as distinguished from the feoffee to uses. *Id.* See *Use, Feoffee to uses.*

CESTUY QUE TRUST. L. Fr. He in trust for whom, or for whose benefit, another is enfeoffed or seised of lands or tenements; he who is entitled in equity to take the rents and profits of lands whereof the legal estate is vested in some other person who is called the trustee; or, in other words, he who is the real, substantial and beneficial owner of lands which are held in trust, as distinguished from the trustee. *Holthouse. Whishaw.* 1 *Cruise's Dig.* 381, tit. 12, c. 1. 1 *Steph. Com.* 343. 4 *Kent's Com.* 301 — 305. See *Trust, Trustee.*

*** The late Mr. Justice Story has observed of this phrase, that it is "a barbarous Norman Law-French phrase, and is so ungainly and ill adapted to the English idiom, that it is surprising that the good sense of the English legal profession has not long since banished it, and substituted some phrase in the English idiom, furnishing an analogous meaning." 1 *Story's Eq. Jur.* § 321, note. *Fide-commissary* and *beneficiary*, (the former adapted from the *fidei-commissarius* of the Roman law,) are the terms suggested by the same author as proper substitutes. *Id. ibid.* See *Beneficiary.* With deference, however, to the criticism of this eminent jurist, the phrase in question seems little more awkward than the similarly formed expressions *cestuy que use*, and *cestuy que vie*, and other terms of Norman origin now in daily use, for which no English equivalents have been sought or desired. Indeed, the mere fact that these terms and phrases, with all their apparent rudeness of construction and want of harmony with the English idiom, have nevertheless been scrupulously retained in modern law and practice, seems to warrant the inference that their essential convenience and expressiveness have always been found effectually to outweigh any objections of the kind alluded to.

CESTUY QUE VIE. L. Fr. (*cestuy a qui vie.*) He for whose life lands or tenements are granted. Thus if A. grant lands to B. during the life of C., here C. is termed the *cestuy que vie*, and B. tenant *pur autre vie*, (q. v.) 2 *Bl. Com.* 123. 1 *Steph. Com.* 242.

CEU. L. Fr. This; that. *Kelham.* A corruption, probably, of *ceo*, (q. v.)

Knowledge. *Saunz le ceu;* without the knowledge. *Kelham.* A corruption of *sceu*, or *sceau.*

CEULS. L. Fr. Those. *Kelham.* See *Ceux.*

CEUX, *Ceaux.* L. Fr. These; those. *Ceux parolx;* these words. *Litt.* sect. 1.

CHACE. See *Chase.*

CHACE. L. Fr. A chase or hunting ground. *Tout le bois ou il se pleint est comon* chace *de touts beasts chaceable a toutz gentz;* all the wood where he complains is a common chase of all beasts that may be hunted by everybody. *Yearb.* P. 10 Edw. III. 28.

CHACEA, *Chasea, Chacia, Chaicia.* L. Lat. [from Fr. *chasser*, to drive.] In old English law. A chace, or chase; a driving, chasing or hunting [of animals]; (Lat. *fugatio, actus.*) *Spelman. Reg. Orig.* 258. A driving of animals to pasture; the right or privilege of driving. *Fleta*, lib. 4, c. 20, § 5.

The road or way by which cattle are driven to pasture; called also a drove,

drove-way or drift-way, (Lat. *actus*, q. v.) *Spelman. Bract.* fol. 227 b, 232.

A station of game, or hunting ground, (Lat. *fugacia ;*) an extent of ground less than a forest, and larger than a park, where wild animals are kept for the diversion of the chase, (*saltus et ipsa statio qua, venationis gratiâ, aluntur feræ.*) *Spelman.* See *Chase.*

CHACEABLE. L. Fr. That may be chased or hunted. *Yearb.* P. 10 Edw. III. 28, See *Chace.*

CHACEARE. L. Lat. In old English law. To chase, drive, or hunt. *Cowell.*

CHACER, *Chaser.* L. Fr. To drive, compel, oblige. *Chace, chase ;* obliged, compelled, driven. *Il fuit* chace *ouster ;* he was driven [to plead] over. *Yearb.* M. 5 Edw. III. 125. See *Chaser.*

To chase or hunt. *Per que no'* chaceamus *come bien no' list ;* wherefore we hunted, as it was lawful for us to do. *Yearb.* P. 10 Edw. III. 28.

CHAFEWAX. [*chafe*, Fr. *chaffer*, to heat.] An officer in chancery in England who fits (by *heating* or melting) the *wax* for the sealing of writs and other instruments. *Cowell.*

CHAFFERS. A word used in the English statute 3 Edw. IV. c. 4, and supposed to mean wares or merchandize. *Cowell. Blount.* Cowell says, "we yet use *chaffering* for buying and selling." In modern parlance, the latter word rather denotes a bargaining, or negotiating the terms of a bargain. *Webster.*

CHAIER. L. Fr. To fall. *Lesser chaier ;* to let fall. *Kelham.* See *Cheir.*

CHALENGER. L. Fr. In old English law. To object or except to a writ or pleading. *Par taunt est le brefe vicious et abatable, si il soit* chalenge ; for so much is the writ bad and abatable, if it be challenged. *Britt.* c. 84. *Et si le counte soit* chalenge *pur le omission ;* and if the count be challenged for the omission. *Id.* c. 85.

To object or except to a person, as a juror. *Britt.* c. 52.

To claim, or demand as a right. *Et come deux seigniours ou plusurs* chalengent *mariage ;* and where two or more lords challenge (claim) the marriage. *Britt.* c. 67. *Si nul autre ust* chalenge *l'heritage ;* if no other person have challenged (claimed) the inheritance. *Id.* c. 70.

CHALLENGE. [L. Fr. *chalenge*, from *chalenger, calanger*, to object, to claim ; L. Lat. *calumnia, calangia ; exceptio.*] In practice. An exception or objection taken either against persons or things. *Cowell.* The word had this large sense in old practice, a *writ* or *count* being as proper a subject of challenge as a juror. See *Chalenger.* In modern practice, however, its signification has been materially narrowed, and it is now almost exclusively used to denote

An exception or objection taken to the jurors summoned and returned for the trial of a cause, either individually, (to the polls), or collectively, (to the array). See *infra.*

Bracton, in treating of the law of challenge, (which has undergone comparatively little change since his time,) employs neither *calumnia* nor *calangia* to designate the objection taken, but calls it *exceptio contra juratores. Bract.* fol. 185. In Britton, the word *chalenge* (from which is derived the modern term *challenge*) is introduced. *Britt.* c. 52.

To CHALLENGE. [L. Fr. *chalenger, calenger, calanger ;* L. Lat. *calumniare, calumpniare.*] In old English law. To claim or assert a right. "I, Henry of Lancaster, chalenge this rewme [realm] of Ynglonde." 1 *How. St. Trials*, 152. See *Chalenger.*

In practice. To call to answer; to accuse ; to appeal, in the ancient sense of the word. See *Appeal*, and see *infra.*

To dispute or call in question another's right ; hence to object or except to.

To object or except to a person. To except against those that are returned to be jurors. *Co. Litt.* 155 b. This is the proper signification of the term in modern practice.

*** The etymology of this word has been variously explained. The Fr. *chalenger*, from which it is immediately derived, was used in several senses, as given under that word, *supra.* Lord Coke traces it, through the L. Lat. *calumniare, chalumniare*, and *calumpniare*, from the old Fr. *caloir* or *chaloir*, to care for or foresee. *Co. Litt.* 155 b. Mr. Crabb inclines to derive it from *call*, "*to challenge*," meaning "*to call* or *single out*" a person by way of objection to him. *Crabb's Hist. Eng. Law*, 299. This derivation is adopted by Webster, (who explains *challenge* to mean "to *call off* a juror or jurors," "to demand that a juror shall not sit in trial upon a cause;") and receives great support from the fact that *appel*, the French word for challenge,

is derived from the Latin *appellare*, to call upon, to call by name.

The practice of challenging jurors is mentioned by Blackstone as answering to the *recusatio judicis*, (rejection of a *judex*,) in the civil and canon laws. *Cod.* 3. 1. 16. *Decretal.* lib. 2, tit. 28, c. 36. Mr. Spence goes further, and speaks of "the Roman right of challenge" as introduced into England or confirmed at the Conquest. 1 *Spence's Chancery*, 106. There was a usage of the middle ages, however, which, from its connection with the old trial by peers, and the judicial combat, as well as its bearing upon the present popular sense of the term *challenge*, deserves a passing notice. This was the proceeding called an *appeal of false judgment;* by which a party dissatisfied with the judgment of a court was allowed to *appeal the peers* of whom the court was composed, that is, to *challenge and fight* them. *Esprit des Lois*, liv. 28, c. 27. *Beaumanoir*, c. 61, 67. *Defontaines*, ch. 21, 22, cited *ibid.* See *Appeal of false judgment.*

Challenge to the array. An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return.* 2 *Bl. Com.* 359. *Co. Litt.* 155 b, 156 a. *Wharton's Am. Crim. Law*, 599. See *Array, Panel.*

Challenge to the polls. [L. Fr. *à les testes;* Lat. *in capita*, against the individuals.] An exception to any one or more of the individuals returned as jurors on the trial of a cause, as not being indifferent between the parties. *Termes de la Ley. Co. Litt.* 156 a. 3 *Bl. Com.* 361. The grounds of this kind of challenge, or rather of principal challenges to the polls, are reduced by Lord Coke under four heads:—*propter honoris respectum, propter defectum, propter affectum* and *propter delictum*, (qq. v.) *Co. Litt.* 156 b.

Challenge peremptory. A privilege allowed to a prisoner in criminal cases, of challenging peremptorily a certain number of jurors, without assigning any cause. *Termes de la Ley.* 4 *Bl. Com.* 353. *Co. Litt.* 156 b. This is called by Blackstone "an arbitrary and capricious species of challenge," and is permitted in capital cases in *favorem vitæ*. 4 *Bl. Com.* 353. *Co. Litt.* 156 b. The number of peremptory challenges allowed by the law of England is thirty-five in cases of treason, and twenty in cases of felony. 4 *Bl. Com.* 354. 4 *Steph. Com.* 424. *Stat.* 22 *Hen.* VIII. c. 14. *Stat.* 6 *Geo.* IV. c. 50, s. 29. The same numbers were adopted by the Act of Congress, April 30, 1790, sec. 30. For the provisions made by the laws of the different states on this subject, see *Wharton's Am. Crim. Law*, 602, 604. And see *United States Digest*, Jurors, I.

Challenge for cause. [L. Fr. *pur cause.*] A challenge for which some cause or reason is alleged. *Termes de la Ley.* 4 *Bl. Com.* 353. Thus distinguished from a peremptory challenge.

Challenge principal. A species of challenge to the polls, so called, according to Lord Coke, because if it be found true, it stands sufficient of itself, without leaving any thing to the conscience or discretion of the triers. *Co. Litt.* 156 b. Or, according to Sir Wm. Blackstone, (who confines it to the species of challenge *propter affectum*,) it is so called from the circumstance that the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor, and which, if true, cannot be overruled. 3 *Bl. Com.* 363. See 4 *Id.* 353.

A species of challenge to the array, as distinguished from a challenge to the favor. *Co. Litt.* 156 a.

Challenge to the favor, or for favor, is where the party has no principal challenge, but objects only some probable circumstances of suspicion, as acquaintance, and the like, the validity of which must be left to the determination of triors, whose office it is to decide whether the juror be favorable or unfavorable. 3 *Bl. Com.* 363. 4 *Id.* 353.

*** There is some confusion in the books, in regard to classifying the various subdivisions of challenges above defined. The older authorities seem to have understood *peremptory* and *principal* challenges to signify the same thing. *Cowell*, citing *Staundf. Pl. Cor.* 157, 158. *Blount*, citing *Lamb. Eiren.* lib. 4, c. 14. *Termes de la Ley.* The challenge *for cause* seems also to have been confounded with the challenge *for favor. Termes de la Ley. Cowell*, citing *Kitch.* 92. Sir Wm. Blackstone makes principal challenges and challenges to the favor, subdivisions of one species of challenge to the polls, viz., the challenge *propter affectum.* 3 *Bl. Com.* 363. Lord Coke, on the other hand, makes them the leading divisions both of challenges to the

array, and challenges to the polls. *Co. Litt.* 156 a, 156 b.

CHALUNGE. L. Fr. A claim. *Kelham.*

CHAMBER. [L. Lat. *camera.*] A term applied to courts, (the Star Chamber, the Exchequer Chamber,) legislative bodies, (Chamber of Peers, Chamber of Deputies,) and other public associations; (Chamber of Commerce, &c.)

In old English law. A private repository of money; a coffer. See *Camera, Chambre.*

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bedchamber, is called in London the *widow's chamber.* 2 *Bl. Com.* 518.

CHAMBERS. In practice. The office or private rooms of a judge, where parties are heard, and orders made in matters not requiring to be brought before the full court; and where costs are taxed, judgments signed, and similar business transacted. 3 *Chitt. Gen. Pr.* 19, *et seq. Bagley's Chamber Practice, per tot.*

CHAMBERS. In international law. Portions of the ocean included within lines drawn from one promontory to another, or stretches of sea between adjacent headlands, (and called in England the *king's chambers, cameræ regis,*) claimed by the nation on whose coasts they are situated, as places of protection to merchantmen, where all hostilities are to cease.* *Opinion of Sir Leoline Jenkins*, cited *Jacobsen's Sea Laws*, 416. 1 *Peters' Adm. Dec.* 29, note. 1 *Kent's Com.* 30, 31. See *Camera regis.*

CHAMBERLAIN. [L. Lat. *camerarius, cambellarius, cambalarius, chamberlanus, chamberlingus;* from Fr. *chambellan. Spelman. Cowell.*] Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera,*) of the prince or state; otherwise called treasurer. *Cowell*, voc. *Chamberlain.* See *Camerarius.* Sir William Cavendish was *treasurer of the chamber* in the 24th year of Edward III. 3 *Co.* 12.

The receiver of the rents and revenues of a city. *Cowell. Blount.* This is the modern meaning of the word in various cities of England and America.

The name of several high officers of state in England, as the Lord Great Chamberlain of England, Lord Chamberlain of the Household, Chamberlain of the Exchequer. See *Cowell. Blount. Holthouse. Wharton.* In modern times, the court officer styled *chamberlain* has the charge of the private apartments of the sovereign or noble to whom he is attached. *Brande.*

CHAMBERLARIA. L. Lat. Chamberlainship; the office of a chamberlain. *Cowell.*

CHAMBIUM. L. Lat. In old English law. Change, or exchange. *Bract.* fol. 117, 118. Probably another form of *cambium,* (q. v.)

CHAMBRE. L. Fr. In old English law. A private repository of money; a private treasury; a coffer. *Pension de chambre,—rente de chambre;* a payment of money out of personal funds, as distinguished from a rent out of lands; an annuity. *Britt.* c. 68.

CHAMP DE MAI. Fr. [Lat. *Campus Maii.*] The field or assembly of May. The national assembly of the Franks, held in the month of May. 1 *Rob. Charles* V. Appendix, Note xxxviii.

CHAMP DE MARS. Fr. [L. Lat. *Campus Martii.*] The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air. 1 *Rob. Ch.* V. *ub. sup.*

CHAMPART. Fr. In French law. A share or division of the profits of land; a part of the crop annually due to the landlord by bargain or custom. 4 *Bl. Com.* 135. Otherwise called *agreer, tasque* and *terrage. Guyot, Inst. Feod.* ch. 9, sect. 9.

CHAMPARTY. See *Champerty.*

CHAMPERT. L. Fr. [L. Lat. *campers,* q. v.] In old English law. A share or division of land; champerty. *Stat. Westm.* 2, c. 49. See *Champerty.*

In old Scotch law. A gift or bribe, [Scotticé, *bud,*] taken by any great man or judge from any person, for delay of just actions, or furthering of wrongous actions, whether it be lands or any goods moveable. *Skene de Verb. Sign.* citing *Stat.* 2 *Rob. Br.* c. dominus Rex, 22.

Skene defines *champert*, in the laws of England, to be "where the judge, by himself directly, or by another indirectly, maintains the plea, to obtain the maintenance of the one party against the other." *Id.*

CHAMPERTIA. L. Lat. In old English law. Champerty. *Reg. Orig.* 183, *in marg.*

CHAMPERTOR, *Champerter, Champartor.* [L. Lat. *cambiparticeps,* q. v.] In criminal law. One who is guilty of the offence of champerty. A purchaser or

promoter of other persons' suits.* 4 *Bl. Com.* 135. See *Champerty.*

*** Champertors are defined by the statute *De Conspiratoribus*, (of conspirators,) 33 Edw. III. to be "those who move or cause to be moved pleas and suits, either by their own procurement, or by that of others, and sue them at their own costs, to have *part of the land* in dispute, or part of the gains; (*ad campi partem, vel pro parte lucri habend*)." This definition is, in the English edition of the statutes, at the end of the statute of conspirators; but, according to Mr. Reeves, no original text appears to warrant it; and he considers it probable that it was added by some reader, to explain what followed; for the *next* statute is entitled the "statute of champerty." 2 *Reeves' Hist. Eng. Law*, 243. The Latin text is given by Cowell and Spelman, but neither of them takes any notice of the deficiency.

In Fleta, a statute is quoted, providing that no chancellor, treasurer, justice, or other of the king's council, or of the chancery, of the household, exchequer, eyre, or any bench, nor any minister, clerk of the crown or other layman, shall receive presentations of churches, or the advowson of any church lands, tenements or fees, by exemption or gift either to farm, or to champert, (*seu ad campi partem*,) viz. to become *a sharer* in it, nor shall in any way interfere therewith, while a controversy concerning it is pending before the king, or any of his ministers, nor shall any stipend be taken thereof. *Fleta*, lib. 2, c. 36, § 4.

CHAMPERTY, *Champarty.* [L. Fr. *champert;* L. Lat. *campers, cambipartia*, qq. v.] In criminal law. The maintenance of any man in his suit, upon condition to have part of (*partire*) the thing in dispute, when it is recovered, (or *pro parte rei quæ est in placito habenda*,) whether it be *land* (*cumpus*,) or any thing out of land, or goods, or a debt, or any other thing in plea or suit. *Cowell. Blount. Reg. Orig.* 183. *F. N. B.* 172. *Stat. Westm.* 1, c. 25. *Co. Litt.* 368 b. 2 *Inst.* 208.—The unlawful maintenance of a suit, in consideration of some bargain to have part of the thing in dispute, or some profit out of it. *Hawk. P. C.* b. 1, c. 84. Shaw, C. J. 1 *Pick. R.* 416. 6 *Porter's* (Ala.) *R.* 488. *U. S. Dig.* Champerty and Maintenance, I.—A species of maintenance, being a bargain with a plaintiff or defendant *campum partire*, to divide the land, or other matter sued for, between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expense. 4 *Bl. Com.* 135.

In the modern sense of the word, *champerty* signifies the purchasing of a suit or right of suing. *Id. ibid.* Or rather, the purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. Tindall, C. J. 7 *Bing.* 369. *Holthouse.* The purchase of land, pending a suit concerning it, is champerty. 4 *Kent's Com.* 449. See 2 *Story's Eq. Jur.* §§ 1048—1054, and notes.

In the United States, the English doctrine of champerty and maintenance has been much modified. In New-York, the taking of a conveyance from a party in possession of land, the subject of controversy by suit in court, is no longer forbidden. See 2 *Rev. Stat.* [691,] 576, §§ 5, 6. 21 *Wendell's R.* 98. In Michigan, the application of the doctrine to sales of land by a party out of possession, has been annulled. 20 *Howard's R.* 467. In Vermont, the *bonâ fide* purchase of a right of action is not champerty. 28 *Vermont R.* 490, 496. And see the observations of Grier, J. 20 *Howard's R.* 483. As to agreements between attorney and client, for a part of the matter in litigation as a compensation for services, see 2 *Denio's R.* 607. 1 *Hoffman's Ch. R.* 421. 4 *Kent's Com.* 449, note.

The distinction between *maintenance* and *champerty* seems to be this: where there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only, but where he stipulates to receive part of the thing in suit, he is guilty of champerty. 4 *Chitty's Bl. Com.* 135, note. Hence the rule of Lord Coke, that every champerty is maintenance, but every maintenance is not champerty. 2 *Inst.* 208. See *Maintenance.* See the English authorities on this subject, cited in 4 *Steph. Com.* 264, note (*l*). For the American law of champerty, see 4 *Kent's Com.* 449, and note. *United States Digest*, Champerty and Maintenance. 2 *N. Y. Rev. St.* [288, §§ 71—74,] 216, §§ 72—75. *Id.* [691,] 576, §§ 5—7. *Lewis' U. S. Crim. Law*, 493—498.

CHAMPION. [L. Lat. *campio.*] He who, in the trial by battel or combat, (*campus* or *duellum*,) fought either for the tenant or demandant. 3 *Bl. Com.* 339. *Certator pro alio datus in duello. Hotom. de Verb. Feud.*

One who fought in his own cause. *Cowell. Blount.* See *Campio.*

CHANCE. [Lat. *casus;* L. Lat. *infortunium.*] In criminal law. Accident; that which happens or falls out unexpectedly or unintentionally; the opposite of contrivance, intention or design. Applied to injurious acts, such as the killing of a person, which happen as the consequences of other acts by other persons, where such consequences are not intended or foreseen. "If any accidental mischief happens to follow from the performance of a lawful act, the party stands excused from all guilt." 4 *Bl. Com.* 27. See *Id.* 182. As to the accidental consequences of unlawful acts, see *Id.* 27. *Foster's Cr. Law*, 259. 2 *New-York Rev. St.* [661,] 551, § 13.

CHANCELLARY, *Chancellarie.* L. Fr. Chancery. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Chanc.* Appendix.

CHANCELLOR. [L. Lat. *cancellarius;* L. Fr. *chancelier, chauncellour.*] The presiding judge in the court of chancery. See *Chancery.*

In England, the Lord High Chancellor is the highest judicial officer of the realm, and, in point of precedency, ranks above every temporal lord. 3 *Bl. Com.* 46. 1 *Wooddes. Lect.* 95. 3 *Steph. Com.* 407. He is, however, much more than a judicial officer, being also keeper of the great seal, a privy counsellor, and prolocutor of the House of Lords. 3 *Bl. Com.* 47.

In American law, the judges of such state courts as are exclusively courts of equity, are called chancellors, but the office is strictly a judicial one. See *Chancery.*

*** The title and office of *chancellor* are generally supposed to be derived from the *cancellarius* (q. v.) of the lower Roman empire, from which source they passed to the various modern kingdoms of Europe, including the Anglo-Saxons, among whom the office is well ascertained to have existed. Sir Henry Spelman has given a list of all the chancellors of England, from the earliest Saxon period. *Gloss.* voc. *Cancellarius.* According to Selden, the oldest mention in good authority, of the name of chancellor of England, is in the time of Edward the elder, about the year 920, who constituted Turketill (*Turketulus*) his chancellor with very transcendent powers. *Selden's Office of Chancellor*, (Works, vol. iii. 1466,) cited 1 *Wooddes. Lect.* 96, 97. 1 *Spence's Chancery*, 78, 79. The word *chancellor* itself seems to have been formed immediately from the L. Fr. *chancelier*, or *chauncellier.* The Saxon word was *boceras;* but the Lat. *cancellarius* was always used in charters and records, as well as by the old chroniclers. *Spelman*, voc. *Cancellarius.* For the original derivation of the term, see *Cancellarius.*

CHANCELLOR OF A DIOCESE, or OF A BISHOP. In English ecclesiastical law. An officer appointed to hold the bishop's court for him, and to assist him in matters of ecclesiastical law. 1 *Bl. Com.* 382. *Tomlins.*

CHANCELLOR OF THE DUCHY OF LANCASTER. [L. Lat. *cancellarius ducatûs et comitatûs palatini domini regis Lanc.*] In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction, concerning all manner of equity relating to lands holden of the king, in right of the Duchy of Lancaster. *Hob.* 77. 3 *Bl. Com.* 78.

CHANCELLOR OF THE EXCHEQUER. [L. Lat. *cancellarius de scaccario,* or *cancellarius et subthesaurarius scaccarii domini regis.*] A high officer of the British crown, who sometimes sits in the Exchequer with the regular judges or barons of the court, where his duty is to take care of the interests of the crown. 3 *Bl. Com.* 44. *Wharton's Lex.* In this capacity, he has precedence above the barons. *Brande.* He seems to have originally actually exercised the functions of a chancellor, or, in the phrase of the old books, "to have been created for the *qualifying of extremities* in the exchequer." *Cowell.* And see *Fleta*, lib. 2, c. 27. His legal functions, however, have long been merely formal, and by the statute 5 Vict. c. 5, abolishing the equity side of the Court of Exchequer, seem now to be entirely extinguished. The most important duties of this officer concern the management of the royal revenue, he being the principal finance minister of the government. 3 *Bl. Com. ub. sup.* This office is commonly united to that of first lord of the treasury, when the premier happens to be below the peerage. *Brande.* See *Exchequer.*

CHANCELLOR, *Chancellare.* In Scotch practice. The foreman of an assise or jury. 1 *Pitcairn's Crim. Trials*, part 1, p. 78.

CHANCE MEDLEY. [from Fr. *chance*, accident, and *meler*, to mingle. A casual meeting or affray.] In criminal law. The accidental killing a man in self-defence, in a sudden rencounter; a species of excusa-

ble homicide. 4 *Bl. Com.* 184. 3 *Inst.* 55, 57. *Foster's Crown Law*, 275, 276. —Manslaughter without former malice. *Finch's Law*, b. 3, ch. 19.—Manslaughter on a sudden quarrel. 4 *Steph. Com.* 103, note (*t*).

Chance medley is distinguished by Blackstone from homicide *per infortunium*, or by misadventure, (4 *Bl. Com.* 182); though the terms seem to be confounded in the old books, (*Staundf. Pl. Cor.* lib. 1, c. 8. *Termes de la Ley. West's Symboleog.* par. 2, tit. Indictments, sec. 5, cited in *Blount;*) and by so late a writer as Whishaw. It is also sometimes confounded with *chaud-medley*, (q. v.) Sir Michael Foster, however, considers the difference between *chance medley* and *chaud medley*, in point of sense, as very small. *Fost. Cr. Law*, 276, note.

CHANCERY, or COURT OF CHANCERY. [L. Lat. *cancellaria, curia cancellariæ;* L. Fr. *chauncerie, chauncelrie, court de chauncellerie.*] In English and American law. A court of equity; the name given to a court in which equity is either exclusively or chiefly administered; the court of the chancellor. Sometimes used as a synonyme of equity, or proceedings in equity.* See *Equity.*

In English law. A court of common law held by the chancellor, called the ordinary or legal court, where is kept the *officina justitiæ;* out of which issue all original writs, commissions, &c., under the great seal, of which the Lord Chancellor is keeper.* 3 *Bl. Com.* 47, 48.

*** In England the Court of Chancery is the highest court of the kingdom, next to the parliament, and is both a court of equity and of common law. Its jurisdiction in the latter character, however, though of superior antiquity, and called the *ordinary* jurisdiction of the court, (and in respect of which only it is called a court of record) has been completely overshadowed by its equitable or *extraordinary* jurisdiction, which embraces the principal and most important business of the court. 3 *Bl. Com.* 46—49. 3 *Steph. Com.* 407—410.

There are in fact five superior courts of chancery in England, viz. the *High Court of Chancery*, presided over by the Lord High Chancellor of Great Britain, to whom an appeal lies from the others; the *Court of the Master of the Rolls*, who is assistant to the Lord Chancellor, when present, and his deputy when absent; and the *Court of the Vice-Chancellor of England*, created by stat. 53 Geo. III. c. 24; and two additional vice-chancellors have been since appointed, with powers precisely similar to those of the Vice-Chancellor of England. *Wharton's Lex.*

In American law, the terms *chancery*, and *court of chancery* have been adopted to some extent, though the corresponding terms *equity* and *court of equity* are more generally used. In some of the states (as Delaware, Virginia, South Carolina, Alabama and Mississippi) equity powers are exercised by distinct and independent tribunals, and to these the appellation of *courts of chancery* is usually given. In most of the states, however, the jurisdiction of law and equity is vested in the same tribunal, though exercised by a different course of procedure. See 4 *Kent's Com.* 163, 164, note. As to the origin and history of the Court of Chancery, see 1 *Story's Eq. Jur.* ch. 2. 1 *Spence's Chancery*, part 2, b. 1.

CHANGER. An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others. It is mentioned in the statute 2 Hen. VI. c. 12, where it is written, (after the old way,) *chaungeour. Cowell. Blount.*

CHANTER, *Chaunter.* L. Fr. To declare aloud; (literally, to sing or chant;) to pronounce or find, as the verdict of a jury. *Al nisi prius, l'enquest* chaunta *pur le pl';* at nisi prius, the jury found for the plaintiff. *Yearb.* M. 7 Hen. VI. 17. See T. 7 Hen. VI. 91. *Si les recognitors de le assise* chaunta *pur le plaintife;* if the recognitors of the assise find for the plaintiff. *Litt.* sect. 442. Translated in some of the editions of Coke Littleton, "*chante* for the plaintiff."

CHANTRY, *Chauntry.* [L. Lat. *cantaria.*] In old English ecclesiastical law. A church or chapel endowed with lands or other yearly revenues, for the maintenance of one or more priests to sing [or chant, *cantare,*] mass daily for the souls of the donors, and such others as they appointed. *Termes de la Ley. Cowell. Spelman*, voc. *Cantaria.* See 4 *Co.* 96, *Adams & Lambert's case*, where a will granting such an endowment is given.—A private religious foundation, of which there were many in England before the Reformation, established for the purpose of keeping up a perpetual succession of prayers for the

prosperity of some particular family while living, and the repose of the souls of those members of it who were deceased; but especially of the founder and other persons specifically named by him in the instrument of foundation. *P. Cyclopædia.* They were usually little chapels, or particular altars in some cathedral or parochial church. *Blount.* See *P. Cyclopædia.*

CHAPEL. [L. Lat. *capella.*] In ecclesiastical law. A minor religious edifice, in which divine service is celebrated in the same manner as in the parochial church, but generally of more modern erection, and of a subordinate and auxiliary character.* 3 *Steph. Com.* 151.

CHAPEL OF EASE. In English ecclesiastical law. A chapel founded in general at some period later than the parochial church itself, and designed for the accommodation of such of the parishioners as, in course of time, had begun to fix their residence at some distance from its site; and so termed because built *in aid* of the original church.* 3 *Steph. Com.* 151. *Watson's Ch. L.* 645, cited *ibid. Cowell.* Places of worship of modern foundation, especially those in towns, are called *chapels of ease*, being erected for the *ease* and convenience of the inhabitants, when they have become too numerous for the narrow limits of their parish church. *P. Cyclopædia.*

CHAPELRY. [L. Lat. *capellaria.*] The precinct and limits of a chapel. The same thing to chapel, as a parish is to a church. *Termes de la Ley. Cowell. Blount.*

CHAPITER. [L. Fr. *chapitre;* L. Lat. *capitulum.*] In old English law. A summary in writing of such matters as were to be inquired of, or presented before justices in eyre, justices of assize, or of the peace, in their sessions. *Stat. Westm.* 1, c. 27. *Termes de la Ley. Britt.* c. 3. These chapiters, (otherwise called *capitula itineris,*) were delivered to the justices from the king for their direction; and, upon the opening of their courts, were first read over to the grand inquests, and then delivered to them in writing. *Termes de la Ley. Cowell. Crabb's Hist. Eng. Law,* 130, 162. They were afterwards called *articles. Mirr.* lib. 3. *Cowell. Blount.* See *Capitula.*

CHAPMAN. [said to be from Germ. kopeman.] A trader who trades from place to place. Ryder, C. J. construing the stat. 5 Ann. c. 14. *Say.* 191, 192.

CHAPTER. [L. Lat. *capitulum,* q. v.] In English ecclesiastical law. An assembly of the prebendaries and canons in a cathedral, conventual or collegiate church; called in the old books *congregatio clericorum,* an assembly of clerks or congregation of clergymen. *Termes de la Ley. Cowell. Co. Litt.* 103, 300. The chapter is presided over by the *dean,* and acts as the council of the bishop, taking the place of the prior and convent, who acted in that capacity before the Reformation. 1 *Bl. Com.* 382. 3 *Co.* 75. *Bract.* fol. 12. 3 *Steph. Com.* 67. See *Dean.*

This word is also applied to the meetings of other religious communities when assembled for business, and sometimes to the *places* where such meetings are held. *Termes de la Ley. Cowell.* But these are more properly termed chapter-houses. *P. Cyclopædia.*

CHARACTER. [from Gr. χαρακτὴρ, from χαράσσω, to mark, cut or engrave, as on stone or metal.] Literally, a distinctive mark or impression. In the civil law, the device on a seal or signet ring, (*annulus*). *Dig.* 28. 1. 22. 5.

A quality or aggregate of qualities of mind or morals, especially the latter, impressed by nature or habit on a person, and distinguishing him from others.

In the law of evidence. A moral quality, or aggregate of moral qualities, which a party to a suit or prosecution, or a witness who has given testimony in a cause, is believed, from general report, to possess. Otherwise termed *general character, general report* and *reputation.* See 2 *Russ. Crimes,* 784. 1 *Phill. Evid.* 469, 470. 2 *Stark. Evid.* 366. 26 *Vermont R.* 270. General character is the estimation in which a person is held in the community where he has resided. Marcy, J. 2 *Wendell's R.* 352, 354. Character and reputation are the same. Duncan, J. 3 *Serg. & Rawle,* 337. Character is a term convertible with common report. Gibson, J. *Id. ibid.* One's character is the aggregate or abstract of other men's opinions of one. Redfield, C. J. 26 *Vermont R.* 278, 279.

The word "*general,*" as applied to character, is used in different senses, which it may be well to distinguish. By "general character" is ordinarily meant a combination of various moral qualities, making up a person's whole moral character. But character, to this extent, is rarely made the subject of evidence. It is the possession

of some *particular* moral quality, supposed to be capable of raising a presumption conflicting with the particular offence charged, which evidence is used to establish. So far, it may be termed particular character. *Wharton's Am. Crim. Law*, 294. But it is strictly *general* in another sense, that is, habitual, derived from a course of life, and not from particular acts of conduct. 2 *Russ. Crimes*, 784. 1 *Phill. Evid.* 469, 470. In these cases, the term "general" is applied to the person whose character is made the subject of evidence. But the more common application of the term is to the persons whose opinions of such character are referred to. The *general character* of a person is the character or reputation which he *generally* bears, that is, which he is supposed or believed to possess, not by one or two individuals, but by the *community* in which he has resided, or where he has been generally known.

CHARAXARE, *Caraxare.* L. Lat. In old records. To mark; to write. *Spelman. Charaxator;* a writer; a notary. *Id. Charaxatura;* a writing; the obliteration of a writing. *Id.*

CHARE. L. Fr. In old English law. A plough. *Stat. Westm.* 1, c. 1.

CHARETTE, *Charet, Charret.* L. Fr. In old English law. A cart. *Stat. Westm.* 1, c. 1, 32. *Britt.* c. 1. *Charretter;* a carter. *Kelham.*

A cart-load. 1 *And.* 60.

CHARGE. [Lat. *onus;* Span. *carga.*] A burden; an incumbrance or lien upon land; a duty or liability attached to, or obligation imposed upon a person.* 3 *Co.* 14, *Harbert's case.* 1 *Steph. Com.* 348. 3 *Id.* 637.

To CHARGE. [Lat. *onerare.*] To bind; to make or hold liable; to subject to, or burthen. Thus, land is said to be *charged* with a covenant of warranty, a debt, execution, (3 *Co.* 12, 14,) or trust. 4 *Kent's Com.* 540. So a person is said to be *charged* with a duty or liability. 3 *Co. ub. sup.* "If two be bound in an obligation, there the *charge* shall survive: so it appears that when land shall be *charged* by any lien, the *charge* ought to be equal, and one alone shall not bear all the burthen, and the law on this point is grounded on great equity: but in all the cases at the common law, if the party who should be *charged* had alienated the land *bona fide*, before any action brought, the land in the hands of the purchaser was not subject to any *charge* or execution." *Id.* 14.

In practice. To subject land or person to execution. 3 *Co. ub. sup.* To charge a person in execution, is to take or arrest him by virtue of a writ of execution. 1 *Tidd's Pr.* 365, 367. 4 *Term R.* 367.

CHARGE. In practice. An address to a jury impannelled in a cause, by the presiding judge, after the case has been closed on both sides, recapitulating and commenting upon the testimony adduced by the respective parties, and instructing the jury in any matter of law arising upon it.* 3 *Steph. Com.* 617. Story, J. 10 *Peters' R.* 657, 660. In English practice, this is called the *summing up*, (q. v.) 2 *Tidd's Pr.* 867. 1 *Archb. Pr.* 195.

An address to the grand jury or inquest of a county, by the presiding judge of the Court of Oyer and Terminer, or other principal criminal court, instructing them in their duty.* 4 *Bl. Com.* 303.

To charge. To deliver such an address.

To CHARGE. In equity pleading. To make a distinct and formal allegation in a bill, usually for the purpose of anticipating and meeting some allegation or defence on the part of the defendant.* If the plaintiffs are aware of any defence which may be made, and have any matter to allege which may avoid it, the general charge of confederacy is usually followed by an *allegation* that the defendants pretend or set up the matter of their defence, and by a *charge* of the matter which may be used to avoid it. This is commonly called the *charging part* of the bill. *Mitford's Ch. Pl.* 43. *Story's Eq. Pl.* § 31.

CHARGE. In equity practice. A statement in writing made by a party to a suit in equity, before a master of the court, of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a charge may embrace the whole liabilities of the accounting party. *Hoffman's Master in Chanc.* 36.

CHARGE. In Scotch law. The command of the king's letters to perform some act; as a *charge* to enter heir. *Bell's Dict.*

A messenger's execution, requiring a person to obey the order of the king's letters; as a *charge* on letters of horning, or a *charge* against a superior. *Id.*

CHARGE AND DISCHARGE. In equity practice. The mode or form of accounting before a master. Where a decree

or order of the court directs an account to be taken and examined before a master, in such case the plaintiff delivers in an account before the master, in the form of a *charge*, (q. v.) against the defendant; which being examined and gone through, the defendant or adverse party must bring in his *discharge*, (q. v.) against such charge; which being likewise examined and gone through, the master will exercise his judgment upon the evidence, and allow or disallow the charge, or any part of it, as he thinks proper, and so, *e contra*, as to the discharge, after which the report is made. *Cunningham. Whishaw.* 2 *Daniell's Chanc. Pr.* 1420—1422. *Hoffman's Mast. in Chanc.* 36—39.

CHARGE D'AFFAIRES. Fr. In international law. A person *entrusted with the affairs* of his nation. The title of a diplomatic representative, or minister of the fourth grade. 1 *Kent's Com.* 39, note. *Wheaton's Elem. Intern. Law*, 277.

CHARGEANT, *Chargaunt.* L. Fr. [from *charger*, q. v.] Weighty; heavy; forcible; penal; expensive. *Kelham.*

CHARGER. L. Fr. To load. *Ont* charge *certein vesselz ove lour bienz;* have loaded certain vessels with their goods. *Yearb.* T. 11 Hen. VI. 3. *Chargeez;* loaded; laden. *Kelham.*

CHARGES. In practice. Expenses incurred in a suit at law or in equity, or other judicial proceeding; including such as do not come under the technical denomination of *costs.* The expression "*costs and charges*" is of frequent occurrence in practice. See 2 *Wils.* 267, 268.

CHARITABLE. This word, in the expressions "*charitable uses*," "*charitable trusts*," is understood in a very large sense, comprising not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and for any other useful and public purpose, as well as donations for pious or religious objects. 3 *Steph. Com.* 229. See 1 *Id.* 428, and note (*b*). 2 *Chitt. Bl. Com.* 273, 274, and notes. 2 *Kent's Com.* 285—288, and notes. 2 *Story's Eq. Jur.* §§ 1160—1164. *Duke on Charit. Us.* 105, 113, cited *ibid.* *U. S. Digest*, Charities and Charitable Uses.

CHARITY. A charitable gift or bequest; a gift or bequest to charitable uses or purposes. See *Charitable.* Described by Lord Camden as a "gift to a general public use, which extends to the rich as well as to the poor." *Ambl.* 651. See 2 *Story's Eq. Jur.* ch. 32. *U. S. Digest*, Charities and Charitable Uses.

CHARRE, *Char.* [L. Lat. *charrus.*] An old weight of lead in England. *Cowell.* See *Charrus.*

CHARRETE. L. Fr. A cart. *Yearb.* (Additions) H. 2 Edw. III. 3.

CHARRUS. L. Lat. In old English law. A char, or charre. A weight of lead consisting of thirty pigs (*fotmelli,*) each pig containing six stone wanting two pounds, and each stone twelve pounds. *Fleta*, lib. 2, c. 12, §§ 1, 2. It seems to have been sometimes written *carectata.* See *Cowell*, voc. *Fotmel.*

CHARNEL. L. Fr. [L. Lat. *carnalis.*] Of the same flesh, (or blood). *Charnels amys;* relations by blood. *Britt.* c. 52.

CHARTA. Lat. [Gr. χάρτης.] In the civil law. Paper; the material on which instruments, books, &c. were written. *Dig.* 32. 52. *Nov.* 44, c. 2. Distinguished from *papyrus.* *Dig.* 32. 52. 6. *Charta pura;* blank paper. *Id.* 32. 52. 4. What passed by a bequest of *chartæ*, and *chartæ puræ*, see *Id.* 32. 52. 4, 6. *Id.* 32. 76.

An instrument or writing. See *Nov.* 44, c. 2, instructing the *tabelliones* (notaries) in the preparation of their instruments.

CHARTA, *Carta.* L. Lat. [Lat. *symbolum, tabulæ;* L. Fr. *chartre;* Fr. *charte;* Span. *carta.*] In old English law. A charter, or deed; a writing under seal, by which conveyances of lands, contracts, covenants and the like were evidenced and ratified; (*scriptum obsignatum, quo prædiorum cessiones, contractus, conventiones et hujusmodi ratæ fiunt.*) *Spelman. Bract.* fol. 33 b—38. *Id.* fol. 40. So called from the material (*charta*, paper,) upon which it was written. 2 *Bl. Com.* 295. See *Charter, Deed. Charta de feoffamento;* a charter of feoffment. *Bract.* fol. 33 b. *Charta de quietè clamantia;* a charter of quit claim. *Id. ibid. Charta de confirmatione;* a charter of confirmation. *Id. ibid. Fleta*, lib. 3, c. 14, § 1. See *Carta.* **Charta [carta] de non ente non valet.** A deed of a thing not in existence is void. *Co. Litt.* 36 a.

Any signal or token by which an estate was held; as a horn, &c. *Willelmus, filius Nigelli, tenuit custodiam forestæ de Bernwode de domino rege, per unum cornu, quod est* charta *prædictæ forestæ;* William, son of Nigel, held the ward of the forest of Bernwode of the king, by one horn, which

is the *charter* of the said forest. *Kennett's Par. Ant.* 73. *Cowell.*

A royal grant of privileges or liberties, (*charta regia*,) either to an individual, as a charter of pardon, (*carta perdonationis*,) to a public body, (see *Charter*,) or to a whole nation, as *Magna Charta*, the Great Charter; *Charta de Foresta*, the Charter of the Forest. See *Magna Charta.*

*** The term *charta* was introduced into England by the Normans, in lieu of *chirographum*, which was the Latin word used among the Saxons, answering to the vernacular *boc*. *Normanni chirographa* chartas *vocabant*. *Ingulph. apud Spelman.* 1 *Reeves' Hist. Eng. Law*, 88. Lord Coke distinguishes *charta*, (a charter,) from *factum*, (a deed); the former touching inheritance, not so the latter, unless it have some other additions. *Co. Litt.* 9 b. Bracton, however, applies both words to royal grants. *De* chartis *vero regiis et* factis *regum*, &c. *Bract.* fol. 34. The *ch* in this word seems to have always been pronounced hard, (after the Gr. χάρτης,) which led to the practice of writing the word *carta*, in which form it occurs in the Register, and in some of the old writers. *Reg. Orig.* 157—160. *Co. Litt.* 36 a. *Magna Charta* was originally entitled "*Magna Carta.*"

CHARTA COMMUNIS. L. Lat. In old English law. A common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. *Bract.* fol. 33 b, 34. Hence these deeds were executed in two parts, each party keeping one, and were otherwise termed *chartæ cyrographatæ*, chirographed charters. *Id. ibid.* See *Fleta*, lib. 3, c. 14, §§ 2, 3.

CHARTA CYROGRAPHATA, (or CHYROGRAPHATA.) L. Lat. In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium*,) where the word *cyrographum*, or *chirographum* was written in large letters. *Bract.* fol. 34. *Fleta*, lib. 3, c. 14, § 3. See *Chirograph.*

CHARTA (or CARTA) DE FORESTA. L. Lat. In old English law. The charter of the forest. A charter or ordinance containing the laws of forest, granted in the ninth year of the reign of Henry III. In all editions of the statutes, it immediately follows Magna Charta, which is said to have originally included it. 1 *Reeves' Hist. Eng. Law*, 254, *et seq.* *Crabb's Hist. Eng. Law*, 136, c. 11. *Barringt. Obs. Stat.* 35. Hence it is sometimes called *Charta Parva*, the little or lesser charter. *Hardr.* 437. Sir Matthew Hale describes it as entered, *Mag. Rot. Stat.* membr. 19, (Great Statute Rolls, sheet 19;) and *Rot. Cartar.* (Charter Rolls), 28 Edw. I. membr. 26. *Hale's Hist. Com. Law*, ch. 1. An edition of this Charter was published by Sir W. Blackstone, from an original in the archives of the cathedral of Durham, with various readings from two charters of Inspeximus, 28 Edw. I. and two enrollments in the Tower of London. See *Magna Charta.*

CHARTA PARTITA. L. Lat. [literally, a deed divided.] A charter party. *Towns. Pl.* 112. 3 *Kent's Com.* 201. See *Charter party.*

CHARTE-PARTIE. Fr. In French marine law. A charter party. *Ord. Mar.* liv. 3, tit. 1. *Emerig. Tr. des Ass.* ch. 11, sec. 3. Called also *affretement*, and *nolissement. Ord. Mar. ub. sup.*

CHARTEL. L. Fr. In old English law. A letter of defiance or challenge to single combat, in use during the period when trial by battel was practised. *Cowell. Blount.*

CHARTER. [L. Lat. *charta, carta;* L. Fr. *chartre;* Fr. *charte;* Sp. *carta;* qq. v.] In old English law. A written instrument under seal, containing the evidence of things done between man and man.* *Cowell. Holthouse.* Otherwise called a private charter. *Bract.* fol. 33 b. A conveyance of lands; a contract, covenant or other sealed instrument, (*scriptum obsignatum*). *Spelman*, voc. *Charta.* This term was much more comprehensive than the modern *deed*, which has taken its place; and was used as an English word, (framed probably from the Fr. *chartre*,) as early as the time of Bracton, who gives the following as an *English* phrase, (*secundum quod* Anglicè *dicitur*)—hee had bothe writ and charter; signifying that a party had both a *charter*, or deed of land, and a *writ*, that is, a letter of attorney to deliver possession. *Bract.* fol. 40. See *Fleta*, lib. 3, c. 15, § 5. 1 *Leon.* 34. The term *charter* was not obsolete when Blackstone wrote, and was particularly appropriate to a conveyance by feoffment. 2 *Bl. Com.* 295. *Co. Litt.* 36 a. And as to the distinction between charters and deeds, see *Maddox*

Formul. Angl. Diss. p. 2. *Mad. Hist. Exch.* pref. ep. p. 8.

An instrument in writing, containing a grant from the crown to any person or persons, or to any body politic, of any rights, liberties, franchises or privileges.* Otherwise called a royal charter (*charta regia*). *Bract.* fol. 33 b. Some of the old acts of parliament were in the form of charters. 8 *Co. The Prince's case.* These royal charters are preserved in the *Charter Rolls*, the series of which commences in the year 1199, and terminates in 1516, when that species of royal diploma ceased; and all the written acts of the sovereign in the nature of grants were thenceforward made in the form of *letters patent*, and recorded upon the *Patent Rolls. Hubback's Evid. of Succession*, 616. See *Charter Rolls.*

CHARTER. In old Scotch law. A disposition made by a superior to his vassal, for some thing to be performed or paid by him. 1 *Forbes' Inst.* part 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. *Ersk. Inst.* b. 2, tit. 3, § 10. See *Bell's Dict.*

CHARTER. In modern law. A grant in writing of certain privileges and franchises, (usually to a corporation) by the supreme power of a state; an act of incorporation. In this sense, the original meaning of the term *charter*, as applied to grants by the sovereign to individuals or corporate bodies, is, with some modification, retained. See *Charter, supra.*

To CHARTER. In mercantile law. To engage a vessel for a voyage. A "chartered" is distinguished from a "seeking" ship. Lord Ellenborough, 7 *East*, 24.

CHARTER OF THE FOREST. See *Charta de Foresta.*

CHARTERER. In mercantile law. One who charters (i. e. hires or engages) a vessel for a voyage; a freighter. 2 *Steph. Com.* 184. 3 *Kent's Com.* 137.

CHARTER LAND. [Sax. *boc land.*] In old English law. Land held by charter, (deed) or written evidence; deed land, book-land. Freehold lands were so called, as distinguished from copyhold. *Termes de la Ley. Co. Litt.* 6 a. 2 *Bl. Com.* 90. See *Bocland.*

CHARTER OF PARDON. [L. Lat. *charta* or *carta perdonationis.*] In English criminal law. A charter or instrument under the great seal, by which a man is forgiven a felony, or other offence committed against the king's crown and dignity. *Bro. Abr.* Charter of Pardon. *Dyer*, 34. *Cowell.* 4 *Bl. Com.* 400, 402. See the old form, *Reg. Orig.* 288, 308; and see 2 *Reeves' Hist. Eng. Law*, 437.

CHARTER PARTY. [L. Lat. *charta partita;* Fr. *charte-partie.*] In mercantile law. A contract by which an entire ship, or some principal part thereof, is let to a merchant, for the conveyance of goods on a determined voyage to one or more places. *Abbott on Ship.* [241,] 315.—A contract of affreightment in writing, by which the owner of a ship lets the whole or a part of her to a merchant, for the conveyance of goods on a particular voyage, in consideration of the payment of freight. 3 *Kent's Com.* 201. Expressively called "a mercantile lease of a ship." *Id.* 302. See 2 *Steph. Com.* 184. See *Affreightment.*

A charter party contains stipulations by both parties, as to the vessel and voyage, the cargo, and amount of freight to be paid, &c. It is signed by both, and is executed in parts, one being kept by each party. Its name (more clearly expressed by the Lat. *charta partita*, a deed divided, and probably immediately derived from the Fr. *chartre parti,*) has preserved a relic of the ancient practice of *dividing* indentures after execution, into two parts, of which each party kept one. 3 *Kent's Com.* 201. *Abbott on Ship.* [241, 242,] 315, 316. *Ord. Mar.* liv. 1, tit. 2, art. 2, note. See *Chirograph, Indenture.* Hence it is called in the old books, *a pair of indentures. Blount.*

In a late case in the Supreme Court of the United States, a charter party was said to be "an informal instrument as often as otherwise, having inaccurate clauses; and on this account they must have a liberal construction, such as mercantile contracts usually receive, in furtherance of the real intention of the parties and usage of trade." Wayne, J. 17 *Howard's R.* 59.

CHARTER ROLLS. [L. Lat. *rotuli cartarum.*] Rolls preserved amongst the ancient English records, containing the royal charters from the year 1199 to 1516. They comprise grants of privileges to cities, towns, bodies corporate, and private trading companies; grants of markets, fairs, and free warrens, of creations of nobility, of privileges to religious houses, &c. *Hubback's Evid. of Succession*, 616, *and notes, ibid.*

CHARTIS, (or CARTIS) REDDENDIS. See *De cartis reddendis.*

CHARTOPHYLAX. Græco-Lat. [from Gr. χαρτης, paper or writing, and φύλαξ, a keeper.] In old European law. A keeper of records or public instruments; a chartulary; a registrar. *Spelman.*

CHARTOPRATES, (pl. *Chartoprati.*) Græco-Lat. [from Gr. χαρτης, paper, and πράτης, a seller.] In the Roman law. A seller of paper; a dealer in paper. *Cod.* 11. 17, *De collegiatis et chartopratis.*

CHARTRE. L. Fr. In old English law. A charter. *Quant à garnement del escrit, que home appele* chartre; as to that garment (vestment or clothing) of writing which men call a charter. *Britt.* c. 39.

CHARUE. L. Fr. In old English law. A plough. *Bestes des charues;* beasts of the plough. *Artic. sup. Chart.* c. 12. *Britt.* c. 21.

CHASCUN. L. Fr. Every. *Assiz. de Jerus.* c. ix.

CHASE, *Chace.* [L. Lat. *chasea, chacea.*] In English law. A large extent of woody ground, (Lat. *saltus,*) less than a forest, and larger than a park, lying open and privileged for wild beasts, and wild fowl. *Termes de la Ley. Co. Litt.* 233 a. *Spelman,* voc. *Chacea. Manwood,* 52. 2 *Bl. Com.* 38, 414, 416.—A franchise granted by the crown to a subject, empowering the latter to keep for his diversion, within a certain precinct so called, the wild animals of chase, (which in a legal sense are the same with those to which the right of forest extends,) but not authorizing the establishment of forest law within such precinct. 2 *Steph. Com.* 21. 1 *Crabb's Real Prop.* 91, § 97; 487, § 629. This was properly a *free chase,* (q. v.) There was also the privilege called a *common chase,* (q. v.) See *Forest, Park.*

In one sense, *chase* is a generic term, embracing both a forest and a park. Thus, a forest is called a royal chase, a park an enclosed chase. 2 *Bl. Com.* 38. Every forest, says Lord Coke, is a chase, but every chase is not a forest. *Co. Litt.* 233 a. It differs from a forest in being of smaller extent, and not endowed with so many liberties, nor subject to the forest laws; and from a park, in being of larger size, and not enclosed. *Termes de la Ley.* 2 *Bl. Com.* 38. *Spelman,* voc. *Chacea.*

CHASEA. L. Lat. In old English law. A chase. *Spelman,* voc. *Chacea.* See *Chace, Chacea.*

CHASER. L. Fr. To chase or hunt; to drive. *Chase et rechase les bestes. Yearb.* M. 11 Hen. VI. 4.

To drive; to compel. *Chase de pleder;* driven to plead. *Dyer,* 6 b. (Fr. ed.) *Chase à repondre. Id.* 33 b. *Chase à conustre. Yearb.* H. 5 Edw. III. 12.

CHASIARE. L. Lat. In old English law. To chase. *Non chasiavit;* he did not chase. *T. Jon.* 21.

CHASTELL. L. Fr. In old English law. A castle. *Stat. Westm.* 1, c. 17.

CHATE. L. Fr. Bought. *Kelham.* See *Achate, Achater.*

CHATEAUX. L. Fr. [pl. of *chatelle,* q. v.] Chattels. *Litt.* sect. 323.

CHATELLE, *Chatell, Chatel.* L. Fr. [pl. *chateux, cateux, chateaux.*] In old English law. A chattel. *Reg. Orig.* 93 b, *nota. Chatelle moeble;* a moveable or personal chattel. *Id. ibid.* Britton writes the word *chatell,* and *chatel. Britt.* cc. 27, 101.

CHATEUX, *Chateus, Cateux.* L. Fr. [pl. of *chatelle.*] In old English law. Chattels. *Britt.* cc. 1, 20, 26, 27, 28, 101. *Litt.* sect. 321. *Reg. Orig.* 93 b, *nota. Chateux moebles;* moveable or personal chattels. *Id. ibid. Chateux,* and *chateaux* are used by Britton, Littleton and the Register. *Par lour avers et par lour chateux;* by their beasts and by their chattels. *Britt.* c. 20. *Biens et chateux;* goods and chattels. *Id.* c. 28. *Chateus* is the form in *Fet Assaver,* §§ 59, 61. *Cateux* is used in the Norman laws. *LL. Will. Nothi* 4, *apud Dufresne,* I. 409. *Cateux meubles et inmeubles. Id. ibid.* 2 *Bl. Com.* 386, note (*e*).

Cattle. *Keilw.* 139 b.

CHATTEL. [L. Fr. *chatelle, chatel;* L. Lat. *captale, catallum.*] Any article or subject of property, moveable or immoveable, not amounting to a freehold.* 1 *Steph. Com.* 262. *Chattel* is a very comprehensive term in our law, and includes every species of property, which is not real estate or a freehold. 2 *Kent's Com.* 342. It is more frequently used (like *bona,* goods,) in the plural number. See *Chattels, Catalla.*

CHATTELS, formerly written CATALS. [L. Lat. *catalla;* L. Fr. *chateux, chateus, cateux.*] Moveable goods, and all other property or estate, not amounting to a freehold.

Chattels were formerly divided into moveable and immoveable, (*moebles et nient moebles*); a division borrowed from the *bona mobilia et immobilia* and *res mobiles*

et immobiles of the civil law. *Reg. Orig.* 93 b, *nota. LL. Will. Nothi, apud Dufresne*, cited 2 *Bl. Com.* 386, note (*e*). *Cowell*, voc. *Catalls. Bract.* fol. 102. The present division of chattels into real and personal was introduced in the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 15. See *Chattels Real, Chattels Personal.*

The term *chattels* is a more comprehensive one than *goods*, as it includes animate as well as inanimate property. 2 *Chitt. Bl. Com.* 383, note. In a devise, however, they seem to be of the same import. *Shep. Touch.* 447. 2 *Fonbl. Equity*, 335. In practice, they are almost always united in the expression *goods and chattels*, which is of very ancient date. 2 *Steph. Com.* 65. See *Bona et catalla, Goods and Chattels, Effects, Personal estate, Moveables.*

*** As to the etymology of this word, the singular *chattel* seems to be immediately formed from the Fr. *chatelle*, or *chatel*, (q. v.); the plural *chattels*, (or, as it was formerly written, *catals*,) is supposed to be derived from the L. Lat. *catalla*, the *ch* being pronounced hard, as in the word *charta*, which is evident from the form of the old Norman plural, *cateux*, (q. v.) *Catals* is the form used in the *Termes de la Ley*, and *Cowell.* As to any further derivation, *catalla* or *catalia* is clearly shown by Spelman to be merely a contracted form of writing *capitalia*, which, with the singular *capitale*, or *captale*, occurs frequently in the Saxon and early English laws. See *Capitale.* The Fr. singular *chatell* may have been formed from the latter word. The primary meaning of *capitalia* was animals, beasts of husbandry, (otherwise called *averia*, q. v.) or *cattle;* in which last word it is still identically retained. This will appear from the extracts given under *capitale*, (q. v.)

Capitalia is derived by Spelman from *capita*, heads; a term still popularly applied to beasts, as "so many *heads of cattle.*" When the word took the form *catalla*, it continued to retain this primary meaning, but gradually acquired the secondary sense of *moveables* of any kind, inanimate as well as animate, and finally became used to signify interests in lands. 1 *Steph. Com.* 262. *Dufresne* II. 409. *Bract.* fol. 159 b. 2 *Reeves' Hist. Eng. Law*, 52.

CHATTELS REAL. Such chattels as concern, are annexed to, or savor of the *realty;* as terms for years of land, and mortgages; and, in English law, next presentations to a church, estates by statute merchant, statute staple, *elegit*, &c. 2 *Bl. Com.* 386. *Co. Litt.* 118 b. 1 *Steph. Com.* 262, 263. 2 *Kent's Com.* 342. 1 *Crabb's Real Prop.* 5, *et seq.* They are so called, as being interests issuing out of, or annexed to real estates, of which they have one quality, viz. *immobility*, which denominates them real, but want the other, viz. a sufficient legal indeterminate *duration;* and this want it is that constitutes them *chattels.* 2 *Bl. Com.* 386. They are otherwise denominated estates less than freehold. 1 *Steph. Com.* 262.

Mr. Stephen observes of chattels real, that they "are not properly the subjects of property, but rather modifications of property, or species of estates in a certain kind of subjects, viz. in things real. When considered, indeed, in reference to the distinction between real and personal *estate*, they are held to fall under the latter denomination, their incidents being in general the same with those of property in moveables; but as regards the distinction between *things* real, and *things* personal, they appertain to the division of things *real.* 2 *Steph. Com.* 65.

CHATTELS PERSONAL, otherwise called THINGS PERSONAL, comprise all sorts of things moveable, as goods, plate, money, jewels, implements of war, garments, animals and vegetable productions; as the fruit or other parts of a plant, when severed from the body of it, or the whole plant itself, when severed from the ground. 2 *Steph. Com.* 66, 67. 2 *Bl. Com.* 387. Besides things moveable, they include also certain incorporeal rights or interests, growing out of, or incident to them, such as patent rights and copyrights, to which Mr. Stephen has given the name of *incorporeal chattels.* 2 *Steph. Com.* 72.

There are, however, many chattels, which, though they be even of a moveable nature, yet being necessarily attached to the freehold, and contributing to its value and enjoyment, go along with it, in the same path of descent or alienation. This is the case with the *deeds* and other papers which constitute the muniments of title to the inheritance, and so with heir looms. 2 *Kent's Com.* 343. A box of charters or deeds was always classed with chattels real. *Cromp. Just.* 33 b. *Termes de la Ley. Cowell.*

CHATTEL INTEREST. An interest in corporeal hereditaments, not amounting to a freehold, as distinguished from a free-

hold interest; such as an estate for years in land. 1 *Steph. Com.* 262. 2 *Kent's Com.* 342. See *Burton's Real Prop.* ch. 5. A subject of ownership, though in its nature real, may be owned in such a way as to constitute a chattel interest, or personal estate. 1 *Hilliard's Real Prop.* 51.

CHATTEL MORTGAGE. A mortgage of goods, or personal property. See 2 *Kent's Com.* 516—532, and notes.

CHAUDMEDLEY. [L. Fr. *chaud melle*, from *chaud*, hot, and *mesler*, *meler*, to mingle; L. Lat. *calida melleia*.] In criminal law. The killing of a person in an *affray*, in the *heat* of blood, and while under the influence of passion; and thus distinguished from *chance medley*, (with which, according to Blackstone, it is sometimes confounded,) which is killing in a *casual* affray in self defence. 4 *Bl. Com.* 184. *Ersk. Inst.* b. 4, tit. 4, § 40. Called, in old Scotch law, *chaud mella*, and *chaud melle*. *Bell's Dict. Skene de Verb. Signif.*

CHAUMPERT. L. Fr. A kind of tenure mentioned in a patent of 35 Edw. III. *Cowell. Blount.*

CHAUNCELLERIE, *Chauncelrie*. L. Fr. Chancery. *Britt.* c. 21. *Fet Assaver*, § 25. *Chauncerie. Britt.* c. 26.

CHAUNCELLOUR. L. Fr. Chancellor. *Dyer*, 57 b.

CHAUX. L. Fr. Those. *Kelham.*

CHAYE. L. Fr. Fallen. *Kelham.*

CHEAT or CHEATING. In criminal law. The offence of defrauding or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty. *Hawk. P. C.* b. 1, c. 71.—The offence of fraudulently obtaining the property of another by any deceitful and illegal practice or token, (short of felony,) which affects or may affect the public. *Steph. Crim. Law*, 93. See 2 *Russell on Crimes*, 275—317, b. 4, c. 31. *Wharton's Am. Crim. Law*, 444—463. *Lewis' U. S. Crim. Law*, 150—199. *United States Digest*, Cheat.

The words "cheat and defraud" do not import any known common law offence. If punishable at all as a crime, it is only when the cheat is effected by false tokens, false pretences, or the like. Dewey, J. 1 *Cushing's R.* 227. To constitute the crime under the New-York statute, two things are essential: a false representation as to an existing fact, and a reliance on that representation as true. 1 *Parker's Crim. R.* 224.

CHEAUNCE. L. Fr. An accident; chance. *Kelham.*

CHECER, *Cheser*. L. Fr. To fall. *Checer in debat;* to come in question or debate. *Kelham.* See *Cheir.*

CHECK, *Cheque*. A written order or request addressed to a bank, or to persons carrying on the business of bankers, by a party having money in their hands, requesting them to pay, on presentment, to a person therein named, or to him or bearer, or order, a named sum of money.* *Chitty on Bills*, 511, (Perkin's ed. 1854). *Story on Prom. Notes*, § 487.

A check nearly resembles a bill of exchange, yet it differs from it in several particulars, the principal of which are the following: (1) a check is drawn upon an existing fund, and is an absolute transfer or appropriation to the holder, of so much money in the hands of the drawee; (2) it requires no acceptance, and when presented the presentment is for payment; (3) it is always payable on presentation and demand, and is not entitled to days of grace; and (4) the drawer is always the principal. See 3 *Kent's Com.* 75, 104, note. *Story on Prom. Notes*, § 489. Story, J. 2 *Story's R.* 512. 21 *Wendell's R.* 372. 2 *Hill's* (N. Y.) *R.* 425. And see 5 *Ohio St. R.* 13, 17, where the distinctions are laid down in detail. As to the necessity of diligence in presenting a check for payment, see *Id. ibid.* 2 *Hill's R.* 425. A draft for money in the usual form of a check, but payable on a future specified day, is a bill of exchange, and entitled to days of grace. 5 *Ohio St. R.* 13. See 2 *Selden's R.* 412.

CHECKER. The old Scotch form of Exchequer. *Skene de Verb. Signif.* vocc. *Ballivus, Scaccarium.*

CHEF, *Chefe*. L. Fr. A, or the head. *Chefe del an;* the head or beginning of the year. Translated by Kelham, the *end* of the year. See *Caput anni.*

Chief. See *Chief.*

CHEFE. L. Fr. In Anglo-Norman law. Were or weregild; the price of the head or person, (*capitis pretium*). *LL. Gul. Conq.* l. 11.

CHEIR, *Cheyr, Chier, Chaier, Charer, Checer, Cheser*. L. Fr. To fall; to abate; to fall out; to happen. *Kelham.*

Chet, cheyt, chiet; it falls or happens. *Chet le brefe;* the writ abates. *Britt.* c. 48, 74. *Cheyt lassise;* the assise falls or abates. *Id.* c. 51. *Chiet en le droit. Yearb.* M. 5 Edw. III. 58. *A ceo que* chiet *in evidence. Id.* 74.

Cherra, chirra; it will fall. *Lassise cherra;* the assise shall fall or abate. *Britt.* c. 75. *Chiret en la possession. Yearb.* M. 5 Edw. III. 58.

Cheie, cheye, cheu; fallen; happened. *Kelham. L. Fr. Dict.*

CHELANDRIUM. L. Lat. In old European law. A kind of ship or vessel. So termed by the lower Greeks. *Luitprand. Hist.* lib. 5, c. 6. *Paul. Diac. in Just. Spelman. Meursius.*

CHEMERAGE. Fr. In old French law. The privilege or prerogative of the eldest. A provincial term derived from *chemier*, (q. v.) *Guyot, Inst. Feod.* ch. 18, sect. 4.

CHEMIER. Fr. In old French law. The eldest born. A term used in Poitou and other places. *Guyot, Inst. Feod.* ch. 18, sect. 4.

CHEMIN, *Chemyn.* L. Fr. In old English law. A way; a journey. *Britt.* c. 61, 122. "Chemins or ways." *Hale's Anal.* sect. xlii. See *Chimin. Cheminaunt;* journeying; travelling. *Britt.* c. 122.

CHEMIS. Sc. [O. Fr. *chesmez, chef mez*, i. e. *chef meason.*] In old Scotch law. Mansion-house; chief dwelling. 1 *Pitc. Crim. Trials*, part 2, p. 7.

CHESCUN. L. Fr. Every one; every. *En* chescun *article et* chescun *point;* in every article and every point. *Artic. sup. Chart.* c. 1.

CHET. L. Fr. (It) falls or abates. See *Cheir.*

CHEVAGE, *Chivage, Chiefage.* L. Fr. and Eng. [L. Lat. *chevagium, chivagium*, from Fr. *chef*, a head.] In old English law. A tribute or sum of money formerly paid by villeins or bondmen, (*servi*) to their lords, in acknowledgment of their bondage. *Bract.* fol. 6 b. *Co. Litt.* 140 a. Bracton speaks of it as paid by those villeins who were permitted to go about the country (*vagantes per patriam,*) and engage in employments, such as traders and hired workmen, (*sicut mercatores vel mercenarii*); the payment being made in token of subjection to their lord, and of his property in them; (*in signum subjectionis, et dominii de capite suo*). *Bract. ub. sup.* Fleta speaks of it as an annual payment, (*chevagium annuum*). *Fleta*, lib. 1, c. 7, §§ 7, 8.

Chevage was so called, according to Spelman, because paid to the lord as to their *chief* or *head*, (*domino tanquam capiti*). *Spelman*, voc. *Chevagium.* According to others, because it was paid for their several *heads*, (*de capite suo,*) being a kind of *head* or poll money. *Co. Litt.* 140 a. *Blount.* The Jews, while they were admitted to live in England, paid *chevagium* or poll money to the king; as appears by Pat. 8 Edw. I. par. 1, M. 15. And it was three pence for every head, paid yearly at Easter, in token of their servitude. *Stat. de Judaismo. Blount. Chevage* seems also to have been used for a sum of money yearly given to a man of power, for his countenance and protection as a chief or leader. *Termes de la Ley. Cowell.*

CHEVAGIUM, *Cheuagium, Chivagium.* L. Lat. In old English law. Chevage, or chivage. *Bract.* fol. 6 b. *Fleta*, lib. 1, c. 7, § 7. *Spelman.* See *Chevage.*

CHEVANCE. L. Fr. Goods; money; riches; substance. *Kelham.*

A bargain. *A faire chevances;* to borrow, to make bargains for. *Kelham.*

CHEVANTIA, *Chevancia.* L. Lat. [L. Fr. *chevance.*] In old records. A loan or advance of money upon credit. *Cowell.*

CHEVERES. L. Fr. Goats. *Britt.* c. 71.

CHEVIR. L. Fr. To come to a head; to come to an agreement touching property. *Kelham. Chevir de denier;* to take up money on loan. *Id.*

CHEVISANCE. Fr. [from *chevir*, to come to the head, (*chef,*) or end of a business.] In old English law. A bargaining, or perfecting of a bargain—(drawing the matter to a *head*). *Termes de la Ley.* A making of contracts. *Dufresne* II. 569. *Stat.* 37 *Hen.* VIII. c. 9. *Stat.* 13 *Eliz.* c. 5, 7, 8, cited 2 *Bl. Com.* 474. *Cowell.*

A bargain or contract. *Cowell. Blount.* An unlawful or usurious bargain or contract. *Stat.* 12 *Car.* II. c. 13. *Ibid.* Sometimes erroneously written *cherisance. Whishaw.*

CHEVITIÆ, *Cheviscæ.* L. Lat. In old records. Pieces of ground, or *heads* at the end of ploughed lands. 2 *Mon. Angl.* 116. *Cowell. Blount.* See *Caputiæ.*

CHI APRES. L. Fr. Hereinafter. *Kelham.*

CHIEF. [Fr. *chef;* L. Lat. *caput.*] A head or lord. In feudal law, those tenants who held immediately under the king, in right of his crown and dignity, were called his tenants *in capite*, or in chief—that is, *head* tenants, holding from the head (*de capite*) of the government. 2 *Bl. Com.* 60. *Gilb. Com. Pleas, Introd.* 17.

In practice. A principal thing, as distinguished from that which is incidental or

subordinate. To declare *in chief*, in the old books, signified to declare for the principal cause of action. 1 *Tidd's Pr.* 419.

A beginning; that which comes first in order or proceedings. Examination *in chief* is the first examination of a witness on a trial, by the counsel of the party on whose behalf he is called, as distinguished from his *cross-examination.* 3 *Carr. & P.* 113. See *In chief.*

CHIEF BARON. [L. Lat. *capitalis baro.*] The presiding judge of the English Court of Exchequer; answering to the chief justice of other courts. 3 *Bl. Com.* 44. 3 *Steph. Com.* 401. See *Baron.*

CHIEF JUSTICE. [L. Lat. *capitalis justiciarius.*] An appellation given to the presiding or principal judge of a court. See *Justice.*

CHIEF JUSTICIAR, JUSTICIER, or JUSTICIARY. [L. Lat. *capitalis justitiarius, justiciarius, justicia.*] In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and, by virtue of his office, guardian of the realm in the king's absence. 3 *Bl. Com.* 38. *Gilb. C. P. Introd.* 18—20. *Spelman*, voc. *Justitia.* See *Justicier, Justitiarius.*

CHIEF LORD. [L. Lat. *capitalis dominus*, q. v.] In English law. The immediate lord of the fee, to whom the obligation of the tenant is direct and personal. *Stat Quia Emptores*, (18 *Edw.* I.) c. 1. 2 *Inst.* 501. *Litt.* sect. 479, 538. *Burton's Real Prop.* 317. The Fr. *chiefe seigniour* is used to signify the lord paramount, as distinguished from the mesne lord. *Chiefe seigniour, mean et tenaunt. Reg. Orig.* 15 b, *regula.*

CHIEF PLEDGE. [L. Lat. *capitalis plegius.*] In old English law. A headborow, or borsholder; the head of a decennary. *Fleta*, lib. 2, c. 52, § 5. *Spelman*, voc. *Borsholder, Friborga. Yelverton*, 186.

CHIEF RENTS. [L. Lat. *reditus capitales.*] In English law. Rents of the freeholders of a manor. 2 *Bl. Com.* 42. Called also *quit* rents, (*quieti reditus,*) because thereby the tenant goes *quit* and free of all other services. *Id. ibid.*

CHIER, *Chire.* L. Fr. Dear. *Kelham.*

CHILDREN. Legitimate offspring; children born in wedlock. 7 *Vesey*, 458. 5 *Scott*, (N. R.) 990. When the word may be understood otherwise, see *Id. ibid. Broom's Max.* [431—432.]

In deeds, the word "*children*" signifies the immediate descendants of a person, in the ordinary sense of the word, as contradistinguished from *issue;* unless there be some accompanying expressions, evidencing that the word is used in an enlarged sense. *Lewis on Perpetuity*, 196. 1 *Vesey*, 196. *Ambl.* 555, S. C.

In wills, where greater latitude of construction is allowed, in order to effect the obvious intention of the testator, the meaning of the word has sometimes been extended, so as to include *grandchildren*, and it has been held to be synonymous with *issue. Lewis on Perp.* 195, 196. 2 *Crabb's Real Prop.* 38, 39, §§ 988, 989. 4 *Kent's Com.* 345, 346, note. *Id.* 419. 1 *Sumner's R.* 367. 10 *Metcalf's R.* 502. See *Issue.* But even in wills, this construction is not adopted unless a strong case of intention or necessary implication requires it, but the word "children" is understood in its popular signification, namely, as designating the immediate offspring. Grier, J. 17 *Howard's R.* 417, 421. 4 *Vesey*, 697. Chilton, C. J. 25 *Alabama R.* 285, 294. As to when "children" will be construed as a word of limitation, and when as a word of purchase, see *Id. ibid.* 6 *Co.* 17 a. 2 *Atk.* 220. 2 *Stra.* 1172. 1 *Ball & B.* 459. 4 *Comstock's R.* 263. 6 *Ohio St. R.* 465.

CHILDWIT. Sax. [from *child*, and *wite*, a fine.] In Saxon law. The right which a lord had of taking a *fine* of his bondwoman gotten with *child* without his license. *Termes de la Ley. Cowell.* Or, according to some, the fine itself. *Holthouse.*

CHILTERN HUNDREDS. In English politics. A tract of country extending through part of Buckingham and Oxfordshires, comprising the hundreds of Stoke, Desborough and Bonenham; the stewardship of which is a nominal office in the gift of the crown. As members of parliament, strictly speaking, cannot resign their seats, and as, on the other hand, the acceptance of an office under the crown has the effect of vacating a member's seat, the mode of abandoning a seat is by taking the stewardship of the Chiltern Hundreds. 2 *Steph. Com.* 403. *Holthouse. Wharton. Brande.*

CHIMIN, *Chymin, Chemyn.* L. Fr. [L. Lat. *chiminus.*] In old English law. A way, or right of way; the same with the Lat. *via*, or *aditus. Co. Litt.* 56 a. *Spel-*

man, voc. *Chiminus*. *Termes de la Ley*. *Com. Dig.* Chimin. *Le haut chimin;* the highway. See *Via*, *Way*, *Aditus*.

CHIMINAGE, *Cheminage*. L. Fr. [L. Lat. *chiminagium*, from *chimin*, q. v.] In old English law. A toll due by custom for having a way through a forest. *Co. Litt.* 56 a. A toll exacted by the foresters from carriages and horses passing through forests. *Spelman*, voc. *Chiminus*. *Charta de Foresta*, c. 14. Called by the feudists *pedagium*. *Co. Litt. ub. sup. Blount.*

CHIMINAGIUM, *Cheminagium*. L. Lat. In old English law. Chiminage. *Charta de Foresta*, c. 14. See *Chiminage*.

CHIMINUS. L. Lat. [L. Fr. *chimin*.] In old English law. A way; a road or street. *Spelman*. *Quatuor* chimini, Watling streete, Fosse, Hikenild streete, & Erming streete, &c. *LL. Edw. Conf.* c. 12, *apud Spelman*. — *Chiminum. Reg. Orig.* 155. *In chimino regis;* on the king's highway. *Bract.* fol. 144.

CHIMNEY MONEY, or *Hearth Money*. A tax upon chimneys or hearths; an ancient tax or duty upon houses in England, now repealed. *Cowell*. See *Fuage*, *Hearth-money*.

CHIPPINGAVEL, *Cheapingavel*. (Probably Sax. *ceapingavel;* from *ceap*, ware, and *gavel*, duty.) In old English law. A toll or duty for buying and selling; an ancient tax imposed upon wares brought to a place to be sold. *Blount*. See *Bagavel*, *ibid*.

CHIR. L. Fr. A contraction of *chivaler*, knight.

CHIRGEMOT, *Chirchgemot*. [Sax. *circgemot;* from *circ*, *ciric* or *cyric*, a church, and *gemot*, an assembly.] In Saxon law. An ecclesiastical assembly or court; (*forum ecclesiasticum*). *Spelman*. *LL. Hen.* I. c. 8, cited *ibid*. A synod or meeting in a church or vestry. 4 *Inst.* 321.

CHIROGRAPH. [L. Lat. *chirographum*, q. v.] In English law. A deed or charter. See *Charter*, *Charta*.

An indenture executed in parts. 2 *Bl. Com.* 296. *Hargr. Co. Litt.* note 234, lib. 2.

A fine of lands. *Blount*. See *Chirographum*.

A word used in the execution of indentures, and in levying fines. 2 *Bl. Com.* 296. *Hargr. Co. Litt. ub. sup.* See *Chirographum*.

CHIROGRAPHER OF FINES. [L. Lat. *chirographus* or *chirographarius finium et concordiarum*.] In old English law. An officer of the court of common pleas, who engrossed the fines acknowledged in that court after they were examined, and fully passed by other officers; and who wrote and delivered the indentures of them to the parties. 2 *Bl. Com.* 351. 2 *Inst.* 468. *Cowell*. *Blount*. See *Fine*.

CHIROGRAPHUM, *Chirographus*. Lat. or Græco-Lat. [from Gr. χειρόγραφον, from χείρ, a hand, and γράφω, to write.] In the Roman law. A hand-writing; that which was written with a person's own hand. An obligation which a person wrote or subscribed with his own hand; an acknowledgment of debt, as of money received, with a promise to re-pay. A form of one of these instruments is given in the Digests in these words: *Ille scripsi, me accepisse, et accepi ab illo mutuos et numeratos decem, quos ei reddam kalendis illis proximis, cum suis usuris placitis inter nos.* I, (such a one,) have written that I have received, and I have received from (such a one) ten (so much money) borrowed, which I will return to him (on such a day) next, with the interest agreed upon between us. *Dig.* 22. 1. 41. 2. See another form in *Dig.* 2. 14. 47. 1.

An evidence or voucher of debt; a security for debt. *Dig.* 26. 7. 57. pr.

A right of action for debt. *Appellatione* chirographi *uti nos pro ipsis actionibus. Dig.* 32. 59. And see *Id.* 34. 3. 31. 3. *Id.* 46. 3. 89. pr. *Cod.* 4. 2. 17.

CHIROGRAPHUM, *Cirographum*, *Cyrographum*. L. Lat. In Saxon law. A deed, charter, or instrument of conveyance in writing; a chirograph. *Spelman*, voc. *Charta*. *Ingulphus*, *ibid*. See *Charter*, *Charta*, and *infra*.

In English law. A deed or indenture executed in two parts, and divided by a cut through certain words written in the middle; called also *scriptum chirographatum*, or *charta cyrographata*; a chirograph. *Bract.* fol. 34. *Co. Litt.* 143 b. *Hargr. Co. Litt.* note 234, lib. 2. *Bl. Com.* 296. 1 *Reeves' Hist. Eng. Law*, 89. *Cowell*. *Blount*. See *Indenture*.

The word itself, through which deeds were cut or indented, and divided. 2 *Bl. Com.* 296.

A fine of lands. *Blount*.

In the civil and canon law. An instrument executed between two parties, as debtor and creditor, and called *chirographus*, because *written* only *with the hand* of one party, (sc. the debtor,) and left in the hands of the creditor. *Lindewode*, tit. *de Offic.*

Archidiac. c. 1, *apud Spelman*, voc. *Indentura.* Sometimes, however, used in the same sense as *syngrapha*, (q. v.) *Id. ibid.*

In modern law. An evidence of debt, as a bond, bill or note. **Chirographum apud debitorem repertum præsumitur solutum.** An evidence of debt found in the debtor's possession is presumed to be paid. *Halkerst. Max.* 20, cited *Broom's Max.* Introd. xv. *Bell's Dict.* Where a bill of exchange or promissory note is found in the possession of the drawee or maker, a presumption is raised that he has paid the money due upon the instrument. 1 *Tayl. Ev.* 117. See 14 *Mees. & W.* 379. *Broom's Max. ub. sup.*

*** In the Saxon times, any public instrument of gift or conveyance, attested by the subscription and crosses of the witnesses present, was called *chirographum*, a word taken from the Roman writers, who used it to signify a bond or obligation which a person wrote or subscribed with his own hand. *Juvenal*, xiii. 137. *Suet. Aug.* 87. The Normans, besides changing the mode of executing these instruments, altered their name also to *charta*. *Spelman*, voc. *Charta*. *Ingulphus*, cited *ibid.* and in *Cowell.* When the practice was afterwards introduced, of executing charters or deeds *in parts*, i. e. in a part and counterpart, (or as Cowell calls it, in *script* and *rescript*,) it was done as follows: The whole of the instrument was written *twice* on the same sheet or skin of paper or parchment, leaving a space in the middle, where certain *capital letters* were written. What these letters at first were, and in what form, does not precisely appear. Cowell says they were the capital letters of the alphabet. The idea of employing a *single word* for this purpose was probably borrowed from the civilians and canonists, who had the same fashion of executing their instruments, and who made use of the very expressive word *syngrapha or syngraphus. Lindewod.* tit. de offic. archidiac. c. 1, cited in *Spelman*, voc. *Indentura. Cowell*, voc. *Indenture.* See *Indenture, Syngraphus.* Instead of *syngraphus*, however, the word CHIROGRAPHUM was adopted, probably, from its ancient use in Saxon conveyances, (*supra*,) and from its convenient length, as well as appropriate meaning. After the instrument had been executed, with this word so written in capital letters between the parts, the parchment was divided by cutting it across, through the middle of these letters, so that when the two parts were separated, one would exhibit one half of the capital letters and one the other, and when joined, the words would appear entire. See *Indenture.* This cut or division was at first made in a straight line. Afterwards, the fashion came into use of cutting through the word in acute angles, (the cuts passing between the letters alternately,) like the *teeth* of a saw, (*instar dentium*,) which gave these deeds the name of *indentures.* 1 *Reeves' Hist. Eng. Law*, 89. This was afterwards changed to a waving line, which seems to have been continued as long as the word itself, (now Englished and written *chirograph*,) or the practice of cutting was retained. From this peculiar formality, the instruments themselves so executed were called *chirographs.* 2 *Bl. Com.* 295. 1 *Reeves' Hist. ub. sup. Hargr. Co. Litt.* note 234, lib. 2.

The practice of executing deeds, (or charters, as they were termed) in this form, seems to have originally been confined to what were called *chartæ communes*, (common or mutual charters,) which are spoken of by Bracton under the name of *charta cyrographata*, (*quæ scinditur per medium, et una pars remanet parti uni, et altera alteri.*) *Bract.* fol. 34. *Glanv.* lib. 8, c. 1. The peculiar fashion of dividing or indenting through the word *chirograph* was continued in fines after it had been discontined in ordinary deeds; and hence the foot or conclusion of the fine, where the word was used, came to be itself called the *chirograph.* 2 *Bl. Com.* 351; and *Appendix*, No. IV. § 5. *Blount.* See *Indenture.*

Other instruments besides charters were anciently prepared in the form of a chirograph. Fleta, in his description of the duties of a steward, (*senescallus*) says that he should inquire about the stock (*instauro*) existing in every manor, the inventory of which ought to be set down in a *chirographed writing* between him and the serjeant. *Fleta*, lib. 2, c. 72, § 7.

CHIROTHECA, *Ciroteca.* L. Lat. In old English law. A glove. *Bract.* fol. 35 b. *Par chirothecarum;* a pair of gloves. *Towns. Pl.* 258.

CHIVAGE. See *Chevage,*

CHIVALRY. [L. Fr. *service de chivaler;* L. Lat. *servitium militare.*] In feudal law. Knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 *Bl. Com.* 61, 62.

CHIVAUCHER, *Chivacher, Chivalchier.*

L. Fr. [from *chival*, a horse.] To ride; to ride over, or about. *Kelham. Chivauchants;* riding. *Keilw.* 82.

To perambulate. *Kelham.*

CHOA, *Chou, Chu.* L. Fr. Corrupted forms of *ceo*, (q. v.) *Kelham.*

CHOCHAUNT. L. Fr. Lying down. An old form of *couchant. Yearb.* T. 1 Edw. II. 9. *Chochauntz et levauntz. Id.*

CHOP-CHURCH, *Chop-chirch, Choppe-church.* In old English law. A name given to parsons who changed or exchanged their benefices. Its meaning may be inferred from a case in the Year Book, H. 9 Hen. VI. 19, in which trespass was brought against "A. of D. *chop-chirch.*" Chant. for the defendant, prayed judgment of the writ, on the ground that the statute required an addition of surname to be given to the party; "and *chop-chirch* is no surname, any more than if he should say, 'A. of D. thief.'" But the court held that *chop-chirch* was not an occupation against law, and therefore the addition was good. The epithet, however, seems to have been an opprobrious one. Cowell and Blount call it a nick-name, and refer to the expression "to *chop* and change," as a common expression at that time, as it still continues to be. Blount says he had met with the word *church-chopper*, and gives an extract from a circular letter to suffragan bishops against *choppe-churches*, dated A. D. 1391, in which the abuses of the practice are exposed. *Spelman, de Conc.* vol. 2, fol. 642.

CHOREPISCOPUS. Græco-Lat. [*quasi* του χωρου, of the country.] In old European law. A rural bishop, or bishop's vicar. *Spelman. Cowell.*

CHOSE. Fr. A thing. Generally used in combination with other words; as *chose in action, chose in possession*, &c. See *infra.* Sometimes written in Law French, *choce. Kelham.*

CHOSE IN ACTION. A thing in action. A thing of which one has not the possession or actual enjoyment, but only a right to it, or a right to demand it by action at law.* 2 *Bl. Com.* 396, 397. *Termes de la Ley.*—A personal right, not reduced to possession, but recoverable by suit at law. 2 *Kent's Com.* 351. Thus, money due on a bond, note, or other contract, is a chose in action, for a property in the money vests whenever it becomes payable, but there is no possession till recovery by course of law, unless payment be first voluntarily made. 2 *Bl. Com.* 396, 397. 2 *Steph. Com.* 74. 2 *Kent's Com.* 351. So a right to recover damages for breach of covenant, or for a tort, is a chose in action. *Id. ibid.* 1 *Chitty's Gen. Pract.* 99, and note.

A chose in action is a thing rather *in potentia* than *in esse*, though the owner may have as absolute a property in, and be as well entitled to such things in action, as to things in possession. 2 *Bl. Com.* 397, 398. It has been called with propriety, a chose in suspense. *Id.* 397. *Bro. Abr.* Chose in action. *Cowell.*

The term *chose in action* is one of comprehensive import. It includes the infinite variety of contracts, covenants and promises which confer on one party a right to recover a personal chattel or sum of money from another, by action. Grier, J. 8 *Howard's R.* 441, 449. A deed or title for land is not a *chose in action.* But a bond and mortgage is, or rather, a debt secured by bond and mortgage is a chose in action. *Id. ibid. Choses in action*, in the New-York statute against usury, are a particular species of property, which, on the death of the owner, would be inventoried as such, by his legal representatives. 3 *Comstock's R.* 344.

CHOSE IN POSSESSION. A thing in possession, as distinguished from a thing in action. See *Chose in action.* Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 *Bl. Com.* 408.

CHOSE LOCAL. A local thing; a thing annexed to a place, as a mill. *Kitchin.* fol. 18. *Cowell. Blount.* Answering probably to the *res immobilis* of the civil law.

CHOSE TRANSITORY. A thing which is moveable, and may be taken away or carried from place to place. *Cowell. Blount.*

CH'RE. A contraction of *chartre.*

CHRENECRUDA. L. Lat. A singular ceremony among the Salians, by which a poor person applied to a rich relative to pay his debt or fine. It consisted (after certain preliminaries) in throwing green herbs upon the party, the effect of which was to bind him to pay the whole demand. *L. Salic.* tit. 61. Spelman, who describes it, finds the elements of the word in the Belg. groen, green, and cruid, herb.

ΧΡΗΣΙΣ, χρῆσις. Gr. In the civil law. Use; the use of a thing. *Dig.* 7. 8. 10. 1.

CHRISTIANITATIS CURIA. L. Lat. The court of Christianity; the court Chris-

tian, or ecclesiastical judicature, as opposed to the civil court, or lay tribunal. *Cowell.* See *Court Christian.*

CHRONICON PRETIOSUM. The title of a work written by Bishop Fleetwood, at the beginning of the 18th century, showing the value of money at different periods in English history. 1 *Bl. Com.* 173.

CHUEPA. L. Lat. In old records. Chop or exchange. *Cartular. Radings.* fol. 94. *Cowell.*

CH'UN. A contraction of *chescun.*

CHURCH. [Sax. *cyric, ciric, circ;* Sc. *kirk;* Lat. *ecclesia;* Fr. *esglise.*] An edifice appropriated to Christian worship and the performance of religious services.* A house consecrated to the worship of God among Christians. *Webster.* In English ecclesiastical law, a church is otherwise called a *benefice*, and includes the glebe, parsonage and tithes. 1 *Crabb's Real Prop.* 77, § 90. To entitle a place of worship to be adjudged a *church* in law, it must have administration of the sacraments and sepulture annexed to it. 2 *Inst.* 363. 1 *Wooddes. Lect.* 188. See *Ecclesia.*

A body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies.* *Webster.*

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 *Steph. Com.* 54. The word "church" is said to mean, in strictness, not the material fabric, but the cure of souls and the right of tithes. 1 *Mod.* 201. But see *Ecclesia.* For the American law under this head, see *United States Digest*, Church.

CHURCH BUILDING ACTS. Statutes passed in England in, and since the year 1818, with the object of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people. 3 *Steph. Com.* 152—164.

CHURCHESSET, *Churchset, Cirset, Kirkset, Chirset.* In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to Fleta, was paid as well in the time of the Britons as of the English. *Fleta*, lib. 1, c. 47, § 28. An annual tribute paid to the church in grain or other product; (*census vel tributum ecclesiæ; frumenti tributum*). *Spelman*, voc. *Cirset. Lindenbrog*, and *Domesday*, cited *ibid.* Sometimes written *chirchsed*, and translated *churchseed*, (*semen ecclesiæ*). *Fleta, ub. sup. Co. Litt.* 88 b. But the proper spelling, according to Spelman, is *ciricset*, or *ciricsceat*, (q. v.)

CHURCH RATE. A rate imposed upon the parishioners of a parish for the repairs of the church. Sometimes called a *church lay. Holthouse.* 1 *Wooddes. Lect.* 160.

CHURCH REEVE. A church warden; an overseer of a church, (*præpositus ecclesiæ*). Now obsolete. *Cowell.* See *Reeve.*

CHURCH WARDENS. [L. Lat. *ecclesiæ guardiani.*] Guardians, overseers or keepers of the church. Parochial officers annually appointed by the parish, whose peculiar province it is *to take care of the church*, that is, to see to the repairs of the church, and to have the care of the goods belonging to it. 1 *Bl. Com.* 394, 395. 1 *Wooddes. Lect.* 160. 3 *Steph. Com.* 90, 91. *Cowell. Termes de la Ley.* They are the representatives of the body of the parish, and are taken, in favor of the church, to be, for some purposes, a kind of corporation at the common law, that is, they are enabled by that name to have a property in goods and chattels, and to bring actions for them, for the use and profit of the parish. 1 *Bl. Com.* 394. 3 *Steph. Com.* 90. 1 *Wooddes. Lect.* 161. Story, J. 9 *Cranch's R.* 43.

CHURL. [Sax. *ceorl;* L. Lat. *ceorlus, cirlus, cirliscus.*] In Saxon law. A freeman of inferior rank, chiefly employed in husbandry. 1 *Reeves' Hist. Eng. Law*, 5. —A tenant at will of free condition, who held land from a thane, on condition of rents and services. *Cowell.* See *Ceorl.*

CHYMIN. L. Fr. A way or road; a highway. *Yearb.* P. 6 Edw. III. 48. See *Chimin.*

CI, *Cy, Si.* L. Fr. So. *Pur ceo que fine est* ci *hault barre, et de* ci *graund force, et de* ci *puissant nature;* because a fine is so high a bar, and of so great force, and of so powerful a nature. *Stat. Modus Lev. Fin.* 2 *Inst.* 510.

Ci *Dieu vous eyde* (*aide*); so help you God. *Reg. Orig.* 302 b, 303. Britton uses *si*, (q. v.) See *Oath.*

CIBARIA. Lat. [pl. of *cibarium*, from *cibus*, food.] In the civil law. Food; victuals. *Dig.* 34. 1.

CIBATUS, *Cibata.* Lat. Victualled.

Cibat' velat' et parat'; victualled, tackled and apparelled. *Towns. Pl.* 227.

CIENS. L. Fr. Here; hitherto. *Yearb.* M. 8 Edw. III. 29. *Cieins.* M. 10 Edw. III. 61, 62.

CIER, *Sier.* L. Fr. To mow. *Kelham.*

CIEUS. L. Fr. Those; such. *Kelham.*

CIGNES. L. Fr. Swans. *Yearb.* P. 7 Hen. VI. 21.

CIL. L. Fr. He. *Cil ky prendra;* he who shall take. *LL. Gul. Conq.* l. 5. See *Id.* l. 6.

CILI. L. Fr. He. *Kelham.* A corruption of *celui.*

CINCAUNT, *Sinkaunt.* L. Fr. Fifty. *Kelham.*

CINQUE, *Cink, Sink, Sinke.* L. Fr. Five. *Kelham.*

CINQUE PORTS. [L. Lat. *quinque portus;* five ports.] Five (now seven,) ports or havens on the S. E. coast of England, towards France, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings and Hythe; (sometimes called in the old books, Doure, Sandwyz, Romual, Hastings and Heya; *Bract.* fol. 118;) to which Winchelsea and Rye have been since added. They have similar franchises in some respects, with the counties palatine, and particularly an exclusive jurisdiction (before the mayor and jurats, [corresponding to aldermen,] of the ports,) in which the king's ordinary writ does not run. 3 *Bl. Com.* 79. They have a governor called the Lord Warden of the Cinque Ports, who is always the constable of Dover castle. *Id. ibid. P. Cyclopædia.* See *Warden of the Cinque Ports.* The members returned from these ports to parliament have always been termed *barons* of the Cinque Ports. *Brande.* See *Baro, Baron.*

The superior importance of these haven towns dates from a remote period, and originally grew out of their local situation, it being considered necessary, from their proximity to France, that they should be guarded with peculiar vigilance against invasion. *Cowell.* In the time of the Saxons there were but three, which are mentioned in Domesday Book, namely, Dover, Sandwich and Romney; to these the Conqueror is said to have added Hastings and Hythe, making the number which has ever since given them their name. *Crabb's Hist. Eng. Law,* 141. Their franchises are expressly mentioned by Bracton, and, with some exceptions, are still preserved; although the towns themselves have long since lost their ancient importance. *Bract.* fol. 118. *Municipal Corporation Act, Stat.* 5 *&* 6 *Will.* IV. c. 76, cl. 134, 135.

CIPPI. L. Lat. [L. Fr. *cipps, ceps.*] In old English law. The stocks; an instrument for punishing offenders. *Quare vi et armis clausum et* cippos *ipsius abbatis apud Berton', in quibus* cippis, *Henricus le Smyth nativus suus pro quibusdam inobedientiis suis per ipsum abbatem positus fuit, fregit,* &c. Wherefore, with force and arms he broke the close and stocks of the said abbot at Berton, in which stocks Henry the Smyth his villein had been put by the said abbot for certain disobediences, &c. *Reg. Orig.* 96 b. Bracton and Fleta use the singular, *in cippo. Bract.* fol. 145 b. *Fleta,* lib. 1, c. 42, §§ 1, 2. See *Stocks.*

CIPPS, *Cips, Ceps, Seps.* L. Fr. Stocks. *Kelham.*

CIRCA. Lat. About; concerning; respecting; in relation to. *Bract.* fol. 188 b. *Fleta,* lib. 4, c. 10, § 8.

CIRCADA. L. Lat. In old English law. A tribute paid to the bishop or archdeacon for visiting the churches. *Dufresne. Whishaw.*

CIRCBOTA. L. Lat. [Sax. *circbote,* from *circ,* a church; and *bote,* restoration.] In Saxon law. The repairing of a church, (*ecclesiæ restauratio*). *Spelman,* voc. *Bota.*

CIRCSET, *Kirkset, Cyricset.* [properly *curcset,* or *ciricsceat,* Sax. from *cyric,* a church, and *sceat,* a portion.] In old English law. A tribute paid to the church. *Spelman.* See *Churchesset.*

CIRCUIT. [Lat. *circuitus,* from *circum,* around, and *ire,* to go; to go around.] A civil division of a country, state or kingdom, for the more convenient administration of justice; courts being held in the different circuits at stated periods, by the judges of the superior courts, who *go around* for that purpose. In England, there are eight of these judicial circuits, each embracing several counties, into which the judges go twice a year, viz., in the vacations after Hilary and Trinity Terms. 3 *Bl. Com.* 57, 58. 3 *Steph. Com.* 421, 423. *Warren's Law Studies,* 318. The United States are divided into nine circuits. 1 *Kent's Com.* 301. A similar division prevails in most of the individual states. See *Nisi Prius, Courts of assise and Nisi Prius, Circuit courts.*

Circuits, as the term is used in England, may be otherwise defined to be, *the periodical progresses of the judges* of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice. *P. Cyclopædia.* These modern circuits or progresses have taken the place of the *eyres* or *itinera* of the ancient system. See *Assises, Eyre, Iter.*

CIRCUIT COURTS. In American law. Courts held in the several federal and state circuits. The United States circuit courts are held by one of the justices of the supreme court appointed for the circuit, (and bearing the name, in that capacity, of *circuit judge,*) together with the district judge of the district in which they are held. Their business is not only the supervision of trials of issues in fact, but the hearing of causes as a court in banc; and they have equity as well as common law jurisdiction, together with appellate jurisdiction from the decrees and judgments of the district courts. 1 *Kent's Com.* 301—303.

The state circuit courts are usually held solely for the trial of issues of fact, like the English courts of *Assise and Nisi Prius.*

CIRCUIT PAPER. In English practice. A paper containing a statement of the time and place at which the several assizes will be held, and other statistical information connected with the assizes. *Holthouse.*

CIRCUIT OF ACTION. An old form of *circuity of action,* (q. v.) *Wingate's Max.* 680, max. 179. **The law hateth circuit of action.** *Id. ibid. Finch's Law,* b. 1, ch. 3, n. 73.

CIRCUITUS. Lat. [from *circa,* or *circum,* around, and *ire,* to go.] In old English law. A going around; a round-about way. *Oportebit me ire per* circuitum, *ubi prius ingressus fui per compendium;* I shall have to go by a round-about way, where I formerly entered by a short cut. *Fleta,* lib. 4, c. 18, § 1.

An area of space. *Id.* lib. 2, c. 2, § 2.

Circuity. **Circuitus est evitandus.** Circuity is to be avoided. 5 *Co.* 31. *Wingate's Max.* 680, max. 179. *Broom's Max.* [255.]

CIRCUITY OF ACTION. [L. Lat. *circuitus actionis.*] A longer course of proceeding to recover a thing sued for than is needful; called in some of the old books, *circuit* of action, (q. v.) *Termes de la Ley. Cowell.* A circuitous or round-about course of legal procedure, instead of a direct and shorter one. As where a defendant, instead of availing himself of a counter claim against the plaintiff, [e. g. damages for breach of warranty,] in the *same* action, allows him to recover the full amount sued for, and then commences a *cross* action to recover his own demand. *Termes de la Ley.* 2 *B. & Ad.* 462.

CIRCUMDUCTION OF THE TERM. In Scotch practice. The sentence of a judge, declaring the time elapsed within which a proof ought to have been led, and precluding the party from bringing forward any further evidence. *Bell's Dict.*

CIRCUMSPECTE AGATIS. L. Lat. (Act circumspectly.) The title of a statute passed 13 Edw. I. A. D. 1285, and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 *Reeves' Hist. Eng. Law,* 215, 216.

This statute is, in fact, in the form of a *writ* from the king to his justices, concerning the bishop of Norwich and his clergy, beginning: "*Rex talibus judicibus salutem; Circumspecte agatis, &c.,*" without any mention of the concurrence of parliament. 2 *Inst.* 487. *Barringt. Obs. Stat.* 123, [158], cited 3 *Bl. Com.* 88. It has, however, always been considered as a statute, and its authority as such is not questioned. 2 *Reeves' Hist. Eng. Law,* 215, 216. 2 *Inst. ub. sup.* 12 *Ad. & Ell.* 315. There is some doubt as to its date.

CIRCUMSTANCE. [L. Lat. *circumstantia,* q. v.] In the law of evidence. A relative fact; a fact standing in a certain relation to another fact, and from which, when proved, the existence of such other fact may be inferred or presumed. *Burr. Circ. Evid.* 121, note (*d*). A minor fact. *Theory of Pres. Proof,* 29. *Wills' Circ. Evid.* 27. An accompanying or incidental fact; an indicatory fact or indication, (Lat. *indicium;* Fr. *indice*).

The terms "circumstance" and "fact" are, in many applications, synonymous; but the true distinction of a circumstance is its *relative* character. "Any fact may be a circumstance with reference to any other fact." 1 *Benth. Jud. Evid.* 42, note. *Id.* 142. The force of the term appears in its plural form. Several circumstances are said to *stand around,* (*circum stare*) or

surround a principal fact. *Burr. Circ. Evid. ub. sup.*

CIRCUMSTANTIA. L. Lat. [from *circum*, around, and *stare*, to stand.] A circumstance. *In omnibus* circumstantiis. *Bract.* fol. 138. *Circumstantias. Id.* 153. *Circumstantiis. Fleta*, lib. 5, c. 3, § 7. This word is often treated as being essentially plural in its form, importing facts standing around (*circum stantia*,) another or principal fact.

CIRCUMSTANTIAL EVIDENCE. Evidence derived from *circumstances*, as distinguished from *direct* and positive proof. Evidence operating in the way of *inference from circumstances.** Otherwise called *indirect* or oblique, (*Vinnius Jurispr. Contr.* lib. 4, c. 25,) *inferential* (4 *Barr's R.* 272,) and *argumentative* evidence. Mackintosh, arg. 19 *How. St. Trials*, 33. Frequently termed from the characteristic process of presumption, involved in its application, *presumptive evidence ;* and by some writers the *doctrine of presumptions.* 3 *Bl. Com.* 371. 3 *Steph. Com.* 614, 615, and note. See *Presumptive evidence.*

*** The term *presumptive* is frequently used as synonymous with *circumstantial*, in its application to evidence, but it is not so used with strict accuracy. *Wills on Circumst. Evid.* chap. 2, sect. 1. 1 *Greenl. on Evid.* § 13. According to Mr. Wills, circumstantial and presumptive evidence differ as genus and species. *Wills on Evid. ub. sup.* All presumptive evidence is circumstantial, because necessarily derived from or made up of *circumstances*, but all circumstantial evidence is not presumptive, that is, it does not operate in the way of *presumption*, being sometimes of a higher grade, and leading to necessary conclusions, instead of probable ones. *Burr. Circ. Evid.* 7, 77, 78. The great peculiarity of circumstantial evidence is its *indirect* character, it being made to bear upon the principal fact in question, (the *factum probandum*,) through other and minor or collateral facts; a fact of this last kind being distinguished as *factum probans.* See *Factum probandum.* Mr. Wills, indeed, considers circumstantial evidence to be of a nature identically the same with direct evidence, and what he observes in confirmation of this position is undoubtedly true, that *as to the minor facts* themselves, the evidence by which *they* are to be established must be direct in its nature; but it is certainly not the less true that *as to the principal fact, this same evidence* is wholly *indirect.* The following distinctions made by Mr. Best, in his treatise on *Presumptions of law and fact*, may serve to illustrate more fully the nature of circumstantial evidence. When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be *direct* or positive. When, on the contrary, the existence of the principal fact is *only inferred* from one or more circumstances which have been established directly, the evidence [of such principal fact] is said to be *circumstantial.* And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the law of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be *presumptive. Best on Presumptions*, 246. *Id.* 12. See 1 *Greenl. Evid.* § 13.

CIRCUMSTANTIBUS, *Tales de.* See *Tales de circumstantibus.*

CIRCUMVENTION. [Lat. *circumventio*, from *circum*, around, and *venire*, to come.] Deceit; fraud; stratagem; imposition. Deceit practised to induce a weak person to enter into a deed. *Bell's Dict.*

CIRLISCUS. L. Lat. A ceorl, or churl. *Spelman.* See *Ceorl.*

CIROGRAPHUM. L. Lat. In old English law. A chirograph. An old form of *chirographum*, (q. v.) *Fleta*, lib. 1, c. 8, § 4. *Id.* c. 13, § 14.

Cirographatum ; chirographed, in the form of a chirograph. *In scripto cirographato;* in a chirographed writing. *Fleta*, lib. 2, c. 72, § 7.

CIROTECA. L. Lat. In old English law. A glove. A covering for the hand, worn by threshers, (*trituratores*,) and fanners (*ventrices*) of grain. *Fleta*, lib. 2, c. 82, § 2. An old form of *chirotheca*, (q. v.)

CIST, *Cyst, Chist.* L. Fr. [from Lat. *cista*, q. v.] In old English law. A chest; a box. *Detinue de iij* chists *ove divers chartres. Yearb.* H. 9 Hen. VI. 20. *Detinue d'un* chist *plein des ch'res :* detinue for a chest full of charters. M. 11 Hen. VI. 18, 19. *Cist.* 14 Hen. VI. 1. *Cyst.* Add. after T. 20 Hen. VI. 34.

CISTA. Lat. In civil and old English law. A chest or box, for containing

charters, deeds or other things. *Dig.* 16. 3. 1. 41. *Reg. Orig.* 110 b. *Towns. Pl.* 192. 3 *Reeves' Hist. Eng. Law*, 73. Translated in Law French, *cist*, *cyst* and *chist*, indifferently. See *Cist.*

CISTERNA. Lat. In civil and old English law. A cistern; a receptacle for rain-water. *Dig.* 43. 22. 4. *Fleta*, lib. 4, c. 27, § 8.

CITATIO. L. Lat. [from *citare*, to summon.] A citation or summons to court. *Skene de Verb. Sign.* voc. *Adjurnatus*, citing *Wesenbec. in Parattil.* tit. de in jus vocando, nu. 13. *Citationes non concedantur priusquam exprimatur super quâ re fieri debet citatio;* citations should not be granted before it is expressed upon what ground a citation ought to be issued. 12 *Co.* 44.

CITATION. [Lat. *citatio*, q. v.] In practice. The process used in the ecclesiastical courts, to call a party before them. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. It is the first step which is taken in an ecclesiastical cause; and is somewhat analogous to the writ of *capias* or summons at common law, or the subpœna in chancery. *Holthouse.*

In Scotch practice. The calling of a party to an action, done by an officer of court under a proper warrant. *Bell's Dict.*

In American practice. An official call or notice to appear in court. Forbes, J. 1 *Cushing's R.* 529. A process used in surrogates' courts, requiring the attendance of parties on the probate of wills. *Dayton's Surrogate*, 18, 21, and Appendix No. 5.

CITE, *Citee*, *Citie*. L. Fr. City; a city. *Citee de Loundr';* city of London. *Yearb.* M. 3 Edw. II. 55. *Cité de Londres.* P. 7 Hen. VI. 27. *En la citie de Everwike;* in the city of York. T. 10 Edw. III. 3.

CITIZEIN. L. Fr. Citizen; a citizen. *Les* citezeinz *de Loundr'. Yearb.* M. 3 Edw. II. 55.

CITIZEN. [Lat. *civis.*] Strictly, a member of a commonwealth (*civitas*,) possessing all the rights which can be enjoyed or exercised under its fundamental laws.

In English law. A freeman, or one who resided and kept a family in a city. 1 *Roll. R.* 138—149. An inhabitant having certain rights or privileges. "Every inhabitant is not a citizen." *Com.* 689. The citizens of London were formerly distinguished into five kinds. See *Calthrop's R.* 34, 36.

The representative of a city in parliament, as a burgess is the representative of a borough. 1 *Bl. Com.* 174. 2 *Steph. Com.* 362, 363. But see *Burgess.*

In American law. One who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people. 3 *Story on Const.* 1687, (1st ed.)—A free inhabitant, born within the United States, or naturalized under the law of Congress. 2 *Kent's Com.* 258, note. The term "citizen" is confined by the Constitution of the United States, to *white* persons. Indians and negroes are not citizens of the United States. 19 *Howard's R.* 393. 4 *Comstock's R.* 294. A citizen of the United States, residing permanently in any state, is a citizen of that state. Marshall, C. J. 1 *Brock. R.* 389, 391. But a person may be a citizen of a state, without being a citizen of the United States. 19 *Howard's R.* 393. See *United States Digest*, Citizen.

*** The term *citizen* has been supposed to have a peculiar reference to a *city*, importing radically, the inhabitant of a *city*, with certain privileges. In England, where citizens at large are called *subjects*, the word seems to have been always used in this sense. See *Fleta*, lib. 2, c. 55, and *supra.* But in the United States, it is used to express the relations of persons, whether inhabitants of a city, or other place, to the state, or the Union. They are termed, not citizens of cities, but of *states*, or of the *United States.*

CITY. [L. Fr. *cite*, *citie*, *citee*, *cytee;* L. Lat. *civitas.*] In English law. A town [or borough, *Co. Litt.* 108 a, b,] incorporated, [and usually of principal note or importance, 1 *Steph. Com.* 115,] which either is, or has been the see of a bishop. 1 *Bl. Com.* 114. *Termes de la Ley.*

*** This definition has been made the subject of considerable criticism. The qualities of being *incorporated*, and of being or having been the *see of a bishop*, do not appear to have been invariably attached to cities in England; Westminster being a city, though not incorporated, and Thetford and several other places being but towns, though once the seats of bishops. *Co. Litt.* 109 b. *Hargr. note ibid. P. Cyclopædia.* Dr. Wooddeson remarks as to the latter feature, that whatever distinction in very early times prevailed between cities and towns in England, it certainly was not this; for in the great council of bishops and abbots, held in the year 1072,

by command of Pope Alexander II., by the consent, and in the presence of the king, for settling the disputed superiority between the archbishops, it was decreed that bishops' sees should be *transferred from towns* to cities. This decree, he thinks, probably gave rise to the opinion that a bishop's see constituted a city, in the case also of the new foundations. 1 *Wooddes. Lect.* 180, citing *Ingulph. Hist.* 92, 93. Spelman alludes to the same decree and its consequences, in confining the title of *city* to the towns or boroughs in which such sees were located; (*civitatis titulus apud* cathedrarios *tantum* burgos *remanebat.*) *Spelman*, voc. *Burgus.* See *Borough, Burgus.* The practice of locating bishops' sees in cities, may be traced to a constitution of the Emperor Zeno: Εκάστη πόλις ἴδιον ἐπίσκοπον ἐχέτω; Let every city have its own bishop. *Cod.* 1. 3. 36. As to the modern distinction, in England, between a city and any other incorporated town or borough, it seems to be little more than nominal. Both cities and boroughs have the same form of local government, and both send special representatives to parliament, the only difference being, that in the one case these representatives are or have been called *citizens*, and in the other *burgesses. Spelman*, voc. *Burgus. Municipal Corporation Act*, cited 3 *Steph. Com.* 193, *et seq.* In *Brande's Dictionary*, it is said that a city differs in no respect but that of superior dignity, from another borough. See *P. Cyclopædia.* And the distinction between citizen and burgess seems now to be disregarded. See 1 *Man. & Gr.* 1, note (*a*).

CITY. In American law. A corporate town; a town of the larger or more important class, incorporated, and governed by a mayor and council of aldermen.* *Webster.*

CIVIL. [Lat. *civilis*, q. v.] Belonging or relating to, or affecting a person as a *citizen* (*civis*). Relating to, or affecting the rights or duties of a citizen, particularly as between one citizen and another.*

Relating to the community, or to the policy and government of the citizens and subjects of a state. *Webster.*

The meaning of this term will be best understood from its application, as under the following heads:

CIVIL ACTION. An action brought to recover some civil right, or to obtain redress for some wrong, not being a crime or misdemeanor. 3 *Bl. Com.* 2, 116. In this latter respect, it is distinguished from a *criminal* action or prosecution. See *Civil right, Civil injury.*

CIVIL CORPORATIONS. One of the two classes into which lay corporations are divided; the other division embracing what are termed *eleemosynary* corporations. 3 *Steph. Com.* 170. Municipal corporations, (as counties, cities, towns and villages,) incorporated manufacturing, banking, insurance and trading companies, and the like, are examples of civil corporations.* *Id. ibid.* 2 *Kent's Com.* 275. See *Eleemosynary corporations.*

CIVIL DEATH. [Lat. *mors civilis.*] That change of a person's civil condition which is produced by certain acts or offences on his part; and which extinguishes his civil rights and capacities, just as natural death extinguishes his bodily existence. It anciently followed on a man's entering into religion, (i. e. going into a monastery,) or abjuring the realm; and is still in England the consequence of being attainted of treason or felony. *Bract.* fol. 301 b, 421 b. 1 *Steph. Com.* 132. 1 *Bl. Com.* 132. 2 *Id.* 121. 4 *Id.* 380. In New-York, it follows on a person's being sentenced to imprisonment for life in a state prison. 2 *Rev. St.* [701,] 586, § 20. See *Civiliter mortuus.*

CIVIL INJURY. An infringement or privation of some civil right, and which is a subject for civil redress or compensation; as distinguished from a *crime*, which is a subject for punishment.* 3 *Steph. Com.* 556. See *Civil right.*

*** Civil injuries are defined or described by Sir W. Blackstone as "*private* wrongs," being "an infringement or privation of the *private* or civil rights belonging to individuals, considered as individuals," and in this respect distinguishable from crimes or misdemeanors, which "are a breach and violation of *public* rights and duties, which affect the whole community, considered as a community." 3 *Bl. Com.* 2. This distinction between *private* and *public* hardly seems to express that which exists between civil injuries and crimes; as a wrong may obviously be of a public character, affecting (though indirectly,) a whole community, and yet, at the same time, in its nature, only a *civil* injury. The withholding of debts or duties from a public (municipal) corporation, a state, and the national government itself, is obviously of this description; the remedy being merely by a *civil* action, though a community is the complaining party.

The distinction between *private* and *public* rights, in the definition of civil injuries, has been properly rejected by Mr. Stephen, who, in place of the definition of Blackstone, describes civil injuries as "the violation of *private or public* rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation," and distinguishes them in this respect from crimes, which "are the violation of *public or private* rights, when considered in reference to their evil tendency as regards the community at large, and accordingly visited with punishment." 3 *Steph. Com.* 356, and note (*d*).

CIVIL LAW. [Lat. *Jus civile Romanum.*] The Roman law, as comprised in the Code, Pandects, Institutes and Novels of Justinian, and his successors, constituting together what is termed the *Corpus Juris Civilis*, as distinguished from the canon and common law. *Butler's Hor. Jurid.* 30. *Tayl. Civ. Law*, 134. 1 *Kent's Com.* 538—543. See *Corpus Juris Civilis.*

*** The Roman law of an earlier period was introduced into Britain on its subjugation by Agricola, towards the end of the first century, and is supposed to have prevailed there until the abandonment of the island by the Romans, at the beginning of the fifth century; after which it was superseded by the laws of the Saxons and other invaders. See *Roman law.* The *civil law*, properly so called, was first introduced during the reign of Stephen, (about the middle of the twelfth century,) and is represented by Blackstone and other standard writers on the law of England, as a foreign and rival system, between which and the native *common law* a continual struggle was maintained until the reign of Edward I. when the common law obtained a complete and permanent victory; the civil law being thenceforward confined within certain limits, and regarded or tolerated as a merely auxiliary and subordinate system. 1 *Bl. Com.* 18—25. 4 *Id.* 421—425. 3 *Id.* 87. It is not surprising that the merits of the civil law, and its influence upon the law of England, should have been differently viewed and represented by English civilians; but none appear to have gone the length of Mr. Spence, who, in his treatise on *The Equitable Jurisdiction of the Court of Chancery*, has undertaken to prove the *common law itself* to be, in many of its most important and (as generally supposed) characteristic doctrines and proceedings, of decidedly Roman origin. See *Common law.*

CIVIL LAW. [Lat. *jus civile.*] That system of law which a community, state or nation establishes for its own peculiar government; (*quod quisque populus sibi jus constituit;*) as distinguished from the *jus gentium*, or general law of nations. *Inst.* 1. 2. 1. *Tayl. Civ. Law*, 134. Otherwise termed by Blackstone, *municipal* law. 1 *Bl. Com.* 44. See *Jus civile, Jus gentium, Municipal law.*

That division of municipal law which is occupied with the exposition and enforcement of *civil rights*, as distinguished from *criminal law.* See *Criminal law.*

CIVIL LIBERTY. The liberty of a member of society, being a man's natural liberty, so far restrained by human laws, (and no farther,) as is necessary and expedient for the general advantage of the public. 1 *Bl. Com.* 125. 2 *Steph. Com.* 487. The power of doing whatever the laws permit. 1 *Bl. Com.* 6. *Inst.* 1. 3. 1.

*** The above definitions are founded in a great degree upon that of the civil law, which is quoted by Blackstone in one of the passages above referred to, as "*Facultas ejus quod cuique facere libet, nisi quid vi aut jure prohibetur;*" (the power of doing whatever one pleases, except what is prohibited by force or law;) and in the other, as "*Facultas ejus quod cuique facere libet nisi quid jure prohibetur;*" (the power of doing whatever one pleases, except what is prohibited by law). The definition, as given by the Institutes of Justinian, is in the following words: "*Libertas est naturalis facultas ejus quod cuique facere libet, nisi quid* vi aut *jure prohibetur.*" Liberty is the natural power of doing whatever one pleases, except what is prohibited by *force* or law. *Inst.* 1. 3. 1. This is adopted by Bracton, almost in terms, and copied from him by Lord Coke. *Bract.* fol. 46 b. *Co. Litt.* 116 b. See *Libertas.* The emendation of Blackstone, it will be seen, consists in the very proper omission of the objectionable words "*vi aut;*"—liberty, according to any correct idea of the term, admitting of no restraint by *force*, as independent of law.

CIVIL LIST. In English politics. An annual sum granted by parliament, at the commencement of each reign, for the expenses of the royal household and establishment, as distinguished from the general

exigencies of the state; being a provision made for the crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. 2 *Steph. Com.* 591. 1 *Bl. Com.* 332.

The term *civil list* was formerly applied in England, to the list of all the expenses of the government, or of all the heads of public expenditure, excepting those of the army, the navy, and the other military departments. *Id. ibid. Brande.* And this seems to be its present meaning, as applied to the expenditures of the government of the United States.

CIVIL RIGHT. The right of a citizen; the right of an individual as a citizen; a right due from one citizen to another, the privation of which is a *civil injury*, for which redress may be sought by a *civil action.*

CIVILIAN. One who is skilled or versed in the civil law. A doctor, professor or student of the civil law. A writer on the civil law.

CIVILIS. Lat. [from *civis*, a citizen.] Civil, as distinguished from criminal. *Civilis actio;* a civil action. *Bract.* fol. 101 b, 102. *Civilis causa;* a civil cause. *Id. ibid. Placita civilia;* civil pleas. *Fleta*, lib. 2, c. 1, § 25. *Injuriæ civiles;* civil injuries. *Id.* lib. 2, c. 1, § 5.

Civil; belonging to a *civitas* or state. *Jus civile;* civil law, the particular law of a state, as distinguished from *jus gentium*, the common law of nations. *Inst.* 1. 2. 1, 2.

CIVILISTA. L. Lat. In old English law. A civil lawyer or civilian. *Dyer*, 267.

CIVILITER. Lat. Civilly; by a civil course of procedure. This term, with its opposite *criminaliter*, occur in the civil law, from which source they were introduced (most probably through Bracton) into the law of England. *Sciendum est de omni injuriâ, eum qui passus est, posse vel* criminaliter *agere vel* civiliter; it is to be known (or observed) concerning every injury, that he who has suffered it may sue either civilly or criminally. *Inst.* 4. 4. 10. *Cum actio fuerit mere criminalis, institui poterit ab initio* criminaliter *vel* civiliter; where the action was merely criminal, it may be prosecuted from the beginning criminally or civilly. *Bract.* fol. 102.

Civilly; as a citizen. See *Civiliter mortuus.*

CIVILITER MORTUUS. L. Lat. Civilly dead; dead as a citizen; dead in law. (L. Fr. *mort en ley.*) *Litt.* sect. 200. Deprived of all civil rights and capacities, such as those of taking, holding and transmitting property; the rights of suffrage, of suing, of giving testimony in courts, &c.* See *Civil Death.* A monk was accounted *civiliter mortuus;* and when he entered into religion might, like other dying men, make his testament and executors. 1 *Bl. Com.* 132.

CIVIS. Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant); origin or birth constituting the former, domicil the latter. *Code*, 10. 40. 7. *Phillimore's Law of Domicil*, 25, 26. *Civibus civitatis legatum vel fidei commissum datum, civitati relictum videtur;* that which is bequeathed or given in trust to the citizens of a state, is considered as left to the state. *Dig.* 34. 5. 2.

CIVITAS. Lat. [from *civis*, a citizen.] In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis;* the law of a state; civil law. *Inst.* 1. 2. 1, 2. *Civitates fœderatæ;* towns in alliance with Rome, and considered to be free. *Butl. Hor. Jur.* 29.

Citizenship; one of the three *status*, conditions or qualifications of persons. 1 *Mackeld. Civ. Law*, 129, § 119. See *Jus civitatis.*

CIVITAS. Lat. and L. Lat. In old English law. A city. (Lat. *urbs.*) *Civitas London habeat omnes antiquas libertates;* the city of London shall have all its ancient liberties. *Mag. Cart.* 9 Hen. III. c. 9. *Id. Johan.* c. 13. By *civitas* is properly meant the inhabitants, (*incolæ;*) *urbs* includes the buildings. But the one is commonly taken for the other. *Co. Litt.* 109 b. See *Urbs.*

CLAIA, *Cleia, Cleta, Clida.* L. Lat. In old English law. A hurdle. *Spelman. Reg. Orig.* 103 b. Fitzherbert translates it *clay. F. N. B.* 95 A. See *Clay.*

CLAIM. [L. Lat. *clameus, clamius, clamea, clameum, clamor; vendicatiô.*] A challenge [or demand] by any man, of the property or ownership of a thing, [or of some interest in it,] which he has not in possession, but which is withholden from him unlawfully. *Termes de la Ley. Cowell. Blount. Litt.* sect. 420. *Plowd.* 359 a. 4 *Sandford's Ch. R.* 381.—An unascertained right to property in the possession of another. *Bell's Dict.*—A right or title, actual or supposed, to a debt, privilege, or other thing in the possession of another.

Gardiner, J., 2 *Comstock's R.* 245, 254. The means to an end, and not the end itself. *Id. ibid.* A claim for dower is not an estate in dower. *Id.* Claims include notes. 28 *Vermont R.* 645.

A demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. Story, J. 16 *Peters' R.* 539, 615.

CLAM. Lat. In the civil law. Covertly; secretly. See *Vi aut clam.*

CLAMARE. L. Lat. In old English law. To claim; to demand or challenge; to assert a right to a thing. *Spelman. Clamans;* claiming. *Reg. Orig.* 36. *Clamantis. Fleta*, lib. 1, c. 7, § 8.

To complain. *Glanv.* lib. 1, c. 5.

To cry out; to publish or declare aloud; to proclaim. *Facias* clamari *et sciri;* you shall cause to be proclaimed and known. *Bract.* fol. 109 b.

To cry, as a newly born child. *Fleta*, lib. 4, c. 17, § 10.

CLAMEA, *Clamia.* L. Lat. In old English law. A claim. *Reg. Orig.* 19 b. *De* clamia *admittenda. Id. ibid.*

Clameum, clameus; a claim. *Co. Litt.* 291 b. *Bract.* fol. 7, 435 b. *Clamium, clamius. Fleta*, lib. 6, c. 53, § 1.

CLAMOR. L. Lat. [L. Fr. *clamur.*] In old English law. A claim or complaint; clamour. *Ne amplius inde* clamorem *audiamus;* that we may hear no more complaint thereof. *Fleta*, lib. 2, c. 62, § 2. *In misericordia pro falso* clamore *suo;* in mercy for his false claim or clamour. A common clause in old judgment records. See *Misericordia.*

A cry, or outcry. *Levare hutesium et* clamorem; to raise the hue and cry. *Bract.* fol. 16 b, 115 b, 358. Called by Glanville, *clamor popularis;* the cry of the people. *Glanv.* lib. 14, c. 3. Called by Fleta, *clamor patriæ;* the cry of the country. *Fleta*, lib. 1, c. 24, § 1.

The cry of a newly born child. *Id.* lib. 6, c. 55, §§ 4, 6.

CLARE CONSTAT. L. Lat. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. *Ersk. Inst.* b. 3, tit. 8, § 71. See *Bell's Dict.*

CLAREMETHEN, *Clamarthen.* In old Scotch law. The warranty of stolen cattle or goods; the law regulating such warranty. *Skene de Verb. Signif.*

CLARENDON, *Constitutions of.* Certain declaratory ordinances, in sixteen articles, brought forward by King Henry II. at a great council held at Clarendon, A. D. 1164; and confirmed, A. D. 1176, at a council held at Northampton. 1 *Reeves' Hist. Eng. Law*, 75—79. Their object was to define the limits between civil and ecclesiastical jurisdiction; to prevent the further encroachments of the clergy; and to abolish the abuses which had arisen from the gradual and increasing usurpations of the pope.* 4 *Bl. Com.* 422. *P. Cyclopædia.* 1 *Reeves' Hist. ub. sup. Crabb's Hist. Eng. Law*, 110, 111. A transcript of these constitutions is given in Lord Lyttleton's life of Henry II. See *Hale's Hist. Com. Law*, 164—167 note, (Runnington's ed.)

CLARIFICATIO. Lat. In old Scotch law. A making clear; the purging or clearing (clenging) of an assise. *Skene de Verb. Sign.* citing *Ass. Reg. Dav.* c. 3. *Clarificatio debiti;* the clearness of a debt, which is clearly and sufficiently proved and verified. *Id.* citing *Leg. Forest.* c. probato, 86.

CLASS. [Lat. *classis.*] An order or rank of persons or things. A number of persons or things arranged collectively under one head, having certain qualities in common; such as creditors, legatees, &c.

CLASSICI. [Lat. from *classis*, a fleet.] In the Roman law. Persons employed in servile duties on board of vessels. *Cod.* 11. 12.

CLAUDERE. L. Lat. In old English law. To enclose; to turn open fields into closes and enclosures. *Cowell.* See *Close.*

To close, finish or end. *Diem clausit extremum;* (he) closed his last day. See *Diem clausit extremum.*

CLAUSE. [L. Lat. *clausi, clausæ.*] In old English law. Close, as distinguished from patent. See *Clausum, Close, Patent.*

CLAUSE. [Lat. *clausula.*] A part of a written instrument enclosing certain words; a sentence or part of a sentence in a deed, will, lease, or other private writing, or in a statute. See *Clausula.*

CLAUSE ROLLS, or CLOSE ROLLS. [L. Lat. *rotuli clausi.*] Rolls preserved in London, containing the records of writs close, *literæ clausæ*, &c. See *Close Rolls.*

CLAUSTRUM. Lat. In the Roman law. A bar for securing a door. *Claustra;* bars. *Dig.* 19. 1. 17.

CLAUSTURA. L. Lat. [from *claudere*, q. v.] In old English law. An en-

closure, or that which fences it. *Blount.* 2 *Mon. Angl.* 403.

Brush-wood for hedges or fences. *Cowell. Kennett's Par. Ant.* 247.

CLAUSULA. L. Lat. [from *claudere*, to enclose.] A clause; a sentence or part of a sentence in a written instrument or law. So called, as *enclosing* or including certain words. *Per* clausulam *contentam in charta. Bract.* fol. 17 b, 22 b. *In clausulâ de Nisi Prius;* in the clause of Nisi Prius. *Fleta*, lib. 5, c. 11, § 7.

Clausula quæ abrogationem excludit ab initio non valet. A clause [in a law] which precludes its abrogation, is void from the beginning. *Bacon's Max.* 77. A clause of this kind is called by Lord Bacon *clausula derogatoria*, or *clausula de non obstante. Id.* 74. *Broom's Max.* 24.

Non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur a quibus constituuntur. A restraining or precluding clause does not [is of no force to] prevent things [laws or acts] from being dissolved by the same power by which they are made. *Bacon's Max.* 74, *regula* 19.

Clausula generalis non refertur ad expressa. A general clause does not refer to things expressed. 8 *Co.* 154.

Clausula generalis de residuo non ea complectitur quæ non ejusdem sint generis cum iis quæ speciatim dicta fuerant. A general clause of remainder does not embrace those things which are of the same kind with those which had been specially mentioned. *Loffts' R.* Appendix, 419.

Clausula vel dispositio inutilis per presumptionem remotam, vel causam ex post facto non fulcitur. A useless clause or disposition [one which expresses no more than the law by intendment would have supplied,] is not supported by a remote presumption [or foreign intendment of some purpose, in regard whereof it might be material] or by a cause arising afterwards, [which may induce an operation of those idle words]. *Bacon's Max.* 82, *regula* 21. *Broom's Max.* [521.]

Clausulæ inconsuetæ semper inducunt suspicionem. Unusual clauses [in an instrument] always induce suspicion. 3 *Co.* 81. *Broom's Max.* 217.

CLAUSUM. L. Lat. [from *claudere*, q. v.] In old English law. Close. A term applied to writs. Clausum *vel apertum;* close or open. *Bract.* fol. 188, 372 b. *Fleta*, lib. 2, c. 13, § 6. See *Close.*

A close. 2 *Bl. Com.* 209. 1 *Salk.* 254. *Infra* clausum; within the close. *Bract.* fol. 97 b. "The word *clausum* imports possession." 10 *Mod.* 141. But see *Id.* 169, 170.

An enclosure. *Fleta*, lib. 2, c. 47, § 1.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit*, (q. v.) See *Breach of close.*

The breaking of a close. "A *clausum fregit*" called a cause of action. 11 *Mod.* 304.

CLAUSUM PASCHÆ. L. Lat. [L. Fr. *cluse de Pasche.*] In old English practice. The close of Easter; the octave, (*octas* or *utas*, the eighth day after the feast) of Easter. *Stat. Westm.* 1, pr. 2 *Inst.* 157. *Cowell. Blount.* So called because it closed the feast. *Blount.*

CLAUSURA. L. Lat. [from *claudere*, q. v.] In old English law. An enclosure. *Clausura heyæ;* the enclosure of a hedge. *Cowell.*

CLAUSURE. L. Fr. An enclosure. *Le clos est environ' ove un clausur';* the close is surrounded with an enclosure. *Yearb.* P. 20 Hen. VI. 18.

CLAVES. Lat. Keys. *Dig.* 19. 1. 17.

CLAVES CURIÆ. L. Lat. The keys of the court. A term applied, in old Scotch law, to the officers of a court, such as the serjeant, clerk, and dempster or doomster. *Skene de Verb. Sign.* voc. *Curia.*

CLAVES INSULÆ. Lat. The keys of the island. A term applied, in the Isle of Man, to twelve persons to whom all doubtful and important cases were referred. *Cowell. Blount.*

CLAVIA. L. Lat. In old English law. A club or mace; (Lat. *clava.*) Tenure *per serjeantiam claviæ*, by the serjeanty of the club or mace. *Cowell.*

CLAVUS. Lat. A nail. *De ferris et clavis;* for horse-shoes and nails. *Fleta*, lib. 2, c. 74, § 3.

CLAWA. L. Lat. A close, or small enclosure. *Cowell.*

CLAY. L. Fr. and Eng. [L. Lat. *claia.*] In old English law. A hurdle out of which sheep folds were made. *Les clayes. Yearb.* H. 3 Edw. III. 7. *Des-joiner' les cleyes;* they broke apart the clays. P. 8 Edw. III. 48.

CLEARANCE. In maritime law. The name of a certificate given by the collector of the port from which a vessel is about to

sail, to the master, describing the vessel, cargo, and port of destination; and stating that he has entered and *cleared* his vessel according to law. It is obtained on delivery to the collector of a manifest of the cargo, sworn or affirmed to by the master. The penalty in the United States for sailing without a clearance is five hundred dollars. *Act of Congress, March* 2, 1799, § 93. *Jacobsen's Sea Laws*, 303.

CLEARING. In mercantile law. A method of making exchanges and settling balances, adopted among banks and bankers. *Gilb. on Banking*, 16—20. See an account of the New-York Clearing House, in the Appendix to *Cleaveland on the Banking System of the State of New-York*, 1857.

CLEARING HOUSE. The place where the business of *clearing*, (q. v.) is carried on.

CLEMENTINE CONSTITUTIONS. [Lat. *Clementinæ* (or *Clementis Papæ*) *Constitutiones.*] A collection of the decretals and constitutions of Pope *Clement* V.; published A. D. 1308, (or 1313, according to some,) under the title of *Liber septimus decretalium;* being the *seventh* book, in order of time, of the collection of the decisions and rescripts of the popes on matters of ecclesiastical discipline, and also on matters concerning laymen, which then came within the cognizance of the ecclesiastical courts. *P. Cyclopædia.* These constitutions were authenticated by Pope John XXII. A. D. 1317, and form part of the *Corpus Juris Canonici*, or body of the canon law. 1 *Bl. Com.* 82. *Butler's Hor. Jur.* 116. See *Canon Law.*

CLENGE. In old Scotch law. To clear or acquit of a criminal charge. Literally, to cleanse or clean, (Lat. *mundare*). *Skene de Verb. Sign.* voc. *Assisa.*

CLEP AND CALL. In old Scotch practice. A solemn form of words prescribed by law, and used in criminal cases, as in pleas of wrong and unlaw. "As when the persewer did *clep and call* the defender with wouth wrang and unlaw, in harming and skaithing of him of sik ane thing, or of sik ane summe of silver mair or lesse, to his great harme and skaith." *Skene de Verb. Sign.*

CLER, *Cleur, Clur.* L. Fr. A clerk. *Kelham. De* clers *de nostre court de la chauncellerie, et de lun bancke et de lauter, et de* clers *del escheker;* of the clerks of our court of the chancery, and of the one bench and of the other, and of the clerks of the exchequer. *Britt.* c, 21.

CLERE. L. Fr. Clear; confident. *Dyer*, 31, (Fr. ed). Plain. *Keilw.* 75 b. *Clerement;* clearly. *Dyer*, 32.

CLERGY. [L. Lat. *clerus.*] In English law. That division of the people which comprehends all persons in holy orders, (*infra sacros ordines,*) and in ecclesiastical offices, as distinguished from the *laity.* 1 *Bl. Com.* 376. 3 *Steph. Com.* 55. See *Orders.*

In old English law. That peculiar privilege (L. Lat. *clerimonia,*) anciently enjoyed by the clergy, otherwise called benefit of clergy. See *Benefit of clergy. To pray clergy* was to claim this privilege, by praying to have a book, so that the prisoner could show that he could *read as a clerk*, which was the test established. *Termes de la Ley.* 4 *Bl. Com.* 364, *et seq. Dyer*, 205. 1 *Salk.* 61. 2 *Show.* 386. See *Burning in the hand.*

The delivery of a clerk to the ordinary, to be kept in prison. *Finch's Law*, b. 4, ch. 45.

CLERGYABLE. In old English law. Admitting of clergy, or benefit of clergy. A clergyable felony was one of that class in which clergy was allowable. 4 *Bl. Com.* 371—373.

CLERICAL ERROR. [L. Lat. *vitium clerici.*] A mistake in writing or copying; the mistake of a clerk, or writer. 1 *Ld. Raym.* 183.

CLERICAL TONSURE. The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 *Bl. Com.* 24, note (*t*). 4 *Id.* 367.

CLERICALE PRIVILEGIUM. L. Lat. In old English law. The clerical privilege; the privilege or benefit of clergy. *Fleta*, lib. 1, c. 28, § 12. *Id.* lib. 2, c. 69. See *Benefit of clergy.*

CLERICI. L. Lat. [plur. of *clericus.*] Clerks; clergymen. See *Clericus.*

CLERICI DE CANCELLARIA. L. Lat. Clerks of the chancery. *Stat. Westm.* 2, c. 24.

CLERICI DE PRIMA FORMA, or DE PRIMO GRADU. L. Lat. Clerks of the first form or rank. The chief clerks of chancery, who acted as the chancellor's assistants, (*collaterales et socii cancellarii,*) in the framing of writs *in consimili casu;* and were afterwards termed masters in chancery. *Crabb's Hist. Eng. Law*, 547, 184. 2 *Reeves' Hist. Eng. Law*, 250, 251.

Treatise of the Maisters of the Chauncery, II. Called *clerici primi gradûs*. *Rot. Claus.* 35 Edw. III. and 43, in dors. Called *clerici de majori gradu*, in *Codington's patent*, 49 Edw. III.

CLERICI DE SECUNDA FORMA. L. Lat. Clerks of the second form, or grade. Clerks of the second rank in chancery, called in the statute of Westminster 2, clerks of course, (*clerici de cursu*,) and afterwards cursitors, (*cursitores*,) whose business was to make out the common writs or writs of course, (*de cursu*). *Crabb's Hist. Eng. Law*, 547. See *Cursitor*.

These phrases of *prima*, *secunda* and *tertia forma* were derived from the civil law. *Cod.* 12. 24. 7. *Id.* 12. 26. 1.

CLERICI PRÆNOTARII. L. Lat. The six clerks in chancery. 2 *Reeves' Hist. Eng. Law*, 251. Fleta calls them *sex clerici prænotarii*. Lib. 2, c. 13, § 15. See *Id.* c. 36. See *Six clerks*.

CLERICK. An old form of *clerk*, closely following the Lat. *clericus*. 2 *Show.* 386, arg.

CLERICO ADMITTENDO. See *De clerico admittendo*.

CLERICO CAPTO PER STATUTUM MERCATORUM, &c. See *De clerico capto*, &c.

CLERICO CONVICTO, COMMISSO GAOLÆ, &c. See *De clerico convicto*, &c.

CLERICO INFRA SACROS ORDINES CONSTITUTO, &c. See *De clerico infra sacros*, &c.

CLERICUS. Lat. [Gr. κληρικος.] In the Roman law. A minister of religion in the Christian church; an ecclesiastic or priest. *Cod.* 1. 3. *Nov.* 3, 123, 137. A general term, including bishops, priests, deacons, and others of inferior order. *Brissonius.* In the Code of Justinian, however,(*ub. sup.*) bishops (*episcopi*) are named distinctly from *clerici*.

In feudal law, the term occurs in the same sense. *Feud. Lib.* 2, tit. 35.

CLERICUS. L. Lat. In old English law. A clergyman, a clerk, or priest; a person in holy orders. *Fleta*, lib. 2, c. 28, § 12. *Id.* c. 69. *Legit ut clericus*; he reads as a clerk. *Dyer*, 205. See *Clerk*. *Nullus* clericus *nisi causidicus*; there is no clerk that is not an advocate. *Will. Malmsb. de Gest. Reg.* lib. 4, cited 1 *Bl. Com.* 17.

A secular priest, as distinguished from a religious or regular. *Kennett's Par. Ant.* 171. *Cowell.*

A clerk or person who used his pen in any courts or otherwise. See *Clerk*. A clerk of court; an officer whose duties were to issue writs, enrol pleas, &c. *Fleta*, lib. 2, c. 36.

An officer of the royal household, having charge of the receipt and payment of moneys, &c. Fleta enumerates several of them, with their appropriate duties; as *clericus coquinæ*, clerk of the kitchen; *clericus pœnetr' et butelr'*, clerk of the pantry and buttery. Lib. 2, c. 18, 19.

CLERICUS MERCATI. L. Lat. In old English law. Clerk of the market. *Fleta*, lib. 2, c. 8. 2 *Inst.* 543.

CLERICUS PAROCHIALIS. L. Lat. In old English law. A parish clerk. *Towns. Pl.* 213. Otherwise called *clericus sacerdotis*, the priest's clerk. *Cowell.*

CLERICUS ET CUSTOS ROTULORUM. L. Lat. In old English law. Clerk and keeper of the rolls; otherwise called *clericus parvæ bagæ, et custos rotulorum, et domûs conversorum*; clerk of the petty bag, and keeper of the rolls, and of the house of the converts. Ancient titles of the *Master of the Rolls*. 3 *Reeves' Hist. Eng. Law*, 154.

CLERIGOS. Span. [from Lat. *clericus*, q. v.] In Spanish law. Clergy; men chosen for the service of God. *White's New Recop.* b. 1, tit. 5, ch. 4.

CLERIMONIA. L. Lat. [from *clerus*, q. v.] In old English law. Clergy, or privilege of clergy. 2 *Inst.* 635.

CLERK. [L. Lat. *clericus*; L. Fr. *cler*; Span. *clerigo*; O. Eng. *clerick*.] In English ecclesiastical law. A priest or clergyman; a person in orders. When a person has been ordained a priest, he is, in the language of the law, a *clerk in orders*. 1 *Bl. Com.* 388. A person presented to a benefice or living is technically called a *clerk*. *Id. ibid. et seq.*

In general law and practice. An officer of a court, who keeps its minutes or records its proceedings, and has the custody of its records and seal. Sometimes called a *prothonotary*, (q. v.) See *Clerkship*.

*** This latter meaning of the term *clerk*, which is the prevalent one in modern law, though itself of considerable antiquity, seems to have entirely grown out of the primitive signification of *ecclesiastic*. *Selden's Diss. ad Fletam*, ch. 9, sect. 3. Among other branches of learning formerly exclusively confined to the clergy were the (now ordinary) accomplishments of reading and writing. The ability *to read*, as we have seen, was at first so entirely

peculiar to that body, that for a convict to be able to read (though never in holy orders,) was, of itself, sufficient to entitle him to the privilege of clergy. 4 *Bl. Com.* 367. The mere certificate of the ordinary or his deputy, *legit ut clericus*, (he reads as a clerk, like one of the clergy,) procured his immediate discharge from the temporal court. See *Benefit of clergy*, *Clericus.* The still rarer accomplishment of *writing* was so far engrossed by the clergy as, in the course of time, to obtain for any person who *habitually used his pen*, in any employment, the appellation of "*a clerk*," (*clericus*); and this circumstance, in addition to the fact that the judges of courts were formerly usually created out of the sacred order, and that all the inferior offices were supplied by the lower clergy, sufficiently accounts for the application of the term *clerk* (once peculiar to the clergy) to those officers of courts whose principal function was *to use their pen* in recording the proceedings. *Termes de la Ley.* 1 *Bl. Com.* 17. *Selden's Diss. ad Fletam*, ch. 9, sec. 3.

CLERKSHIP. In practice. The period during which a person is required to serve in the office of a practising attorney or solicitor, in order to qualify himself to practice as an attorney or solicitor. The person so serving is properly termed a *clerk*, and in England, (from the circumstance of his being bound by written articles) an *articled clerk.* 1 *Tidd's Pr.* 61—70. 1 *Archb. Pr.* 14—18 *Arch. New Pr.* 105. *Stat.* 6 & 7 *Vict.* c. 73.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law." *Towns. Pl.* 1—5, 12—25, *et passim.* Clerkship, in the court of Common Pleas, was formerly a distinct profession of itself. *Id.* 2. See *Court hand*, *Law Latin.*

CLERONIMUS. L. Lat. In old records. An heir. 3 *Mon. Angl.* 129. *Whishaw.*

CLERUS. L. Lat. or Græco-Lat. [from Gr. κλῆρος, a lot or patrimony.] In old English law. The clergy. *Ad specialem requisitionem prælatorum et* cleri *regni;* at the special request of the prelates and clergy of the realm. *Reg. Orig.* 289 b. *Articuli cleri;* articles of the clergy. See *Articuli cleri.*

CLEYMER. L. Fr. To claim. *Fet Assaver*, § 21.

CL'ICUS. A contraction of *clericus*, in old pleadings and records. 1 *Instr. Cler.* 9.

CLIENS. Lat. In the Roman law. A client or dependent. One who depended upon another as his patron or protector, adviser or defender, in suits at law and other difficulties; and was bound in return, to pay him all respect and honor, and to serve him with his life and fortune in any extremity. *Dionys.* ii. 10. *Adam's Rom. Ant.* 33.

CLIENT. [from Lat. *cliens.*] A person who employs or retains an attorney, solicitor, proctor or counsellor, to appear for him in courts; advise, assist and defend him in legal proceedings; and to act for him in any legal business.

Client is entirely a relative term, and is obviously derived from the Lat. *cliens*, (q. v.) It seems to be essentially a French word, and is thus used by Britton: *Et come ascun soit issi fait attorne, mes ne se p'ra repenter pendaunt la p'ole, sauns la volunte son* client; and where one has been thus made an attorney, he may not afterwards repent or withdraw during the plea, without the consent of his client. *Britt.* c. 126.

CLIENTELA. Lat. [from *cliens*, q. v.] In old English law. The state of a client; clientship; protection; patronage; guardianship. Applied to the relation of a church to its patron. 2 *Bl. Com.* 21.

CLITO. L. Lat. [from Gr. κλυτος, illustrious.] In Saxon law. The son of a king, or emperor. The next heir to the throne; the Saxon Adeling. *Spelman*, vocc. *Clito*, *Adelingus.*

CLOS. L. Fr. Shut up. *Si les bestes soient* clos *dedens mason;* if the beasts be shut up within a house. *Britt.* c. 27.

Close; closed. *Brefe clos;* a writ close. *Id.* c. 73.

A close. *Yearb.* M. 3 Hen. VI. 14.

CLOSE. [Lat. *clausum;* L. Fr. *clos*, qq. v.] A portion of land, as a field, enclosed, as by a hedge, fence or other visible enclosure.* 3 *Bl. Com.* 209.—A piece of land adjoining a house. 1 *Leon.* 103. 3 *Bl. Com.* 209.

The interest of a person in any particular piece of ground, whether actually enclosed or not. 7 *East*, 207. *Doct. & Stud.* dial. 1, c. 8.

*** Every man's land is, in the eye of the law, *enclosed* and set apart from his neighbor's; and that either by a *visible* and material fence, as one field is divided from another by a hedge; or by an *ideal* invisible boundary, existing only in the contem-

plation of law, as when one man's land adjoins to another's in the same field. 3 *Bl. Com.* 209, 210. In common acceptation, *close* means an enclosed field; but in law it rather signifies the separate interest of the party in a particular spot of land, whether enclosed or not. 7 *East*, 207. *Doct. & Stud.* dial. 1, c. 8.

The idea of a *close*, as a piece of land adjoining and enclosing a dwelling-house, and peculiarly privileged from entry or invasion, is of very great antiquity in European law, and is clearly traced by Montesquieu to the habits of the ancient Germans, of whom it is said by Tacitus,—*Suam quisque domum* spatio *circumdat;* every one surrounds his house with a space of ground. *De Mor. Germ.* c. 16. Montesquieu translates this passage "*chacun laisse autour de sa maison un petit terrien ou space, qu'est clos et fermé,*" and refers to some of the laws of the barbarian codes (as the law of the Allemans, c. 10, and the law of the Bavarians, tit. 10, §§ 1, 2;) as containing decrees against those who threw down this enclosure, as well as against those who broke into the house. *Esprit de Lois*, liv. 18, c. 22. This enclosure was called *curtis* (a court) in the ancient charters. See *Court*, *Curtis*.

CLOSE. [L. Fr. *clos;* L. Lat. *clausus*, *clausum*, *clausi*, *clausæ*.] In practice. Close or sealed up. A term applied to writs and letters, as distinguished from those that are open or patent, (*patentes*). See *Clausum*, *Close writs*.

CLOSE (or CLAUSE) WRITS, or WRITS CLOSE. [L. Lat. *brevia clausa*.] In English practice. Writs directed to the sheriff, as distinguished from those which were directed to the lord, which were called patent. 3 *Reeves' Hist. Eng. Law*, 45. This distinction prevailed in writs of rights, some being patent, and others close. *F. N. B.* 1 F. *Id.* 11 F. *Cro. Eliz.* 158. The term *close* (writ close) is still occasionally applied to writs, and is derived from the circumstance of the writ being *close* folded up, with the wax round it; being thus distinguished from a writ *patent*, which, although folded up, is sealed at the end of the label which issues from the same piece of parchment, and surrounds the writ. *Sewell's Law of Sheriff*, 372.

Letters of the king, sealed with his great seal, directed to particular persons, and for particular purposes, which, not being proper for public inspection, are *closed up* and sealed on the outside, and are therefore called *writs close*, (*literæ clausæ*,) and are recorded in the *close rolls*, in the same manner as writs or letters patent are in the *patent rolls*. 2 *Bl. Com.* 346.

*** The terms *writ* and *letter*, or *letters*, appear to have anciently been synonymous. Writs were, in England, from the earliest period, framed in the style of letters or epistles, and are frequently described as such. See *Breve*, *Epistola*, *Literæ*, *Writ*. Letters of attorney, on the other hand, were frequently termed *writs*. *Bract.* fol. 40. The ancient justices in eyre acted under the authority of writs or commissions directed to them. Where there were several, each justice had a writ specially directed to himself, called *breve clausum*, a close writ. Besides this, there was a writ directed to all of them jointly, called *breve patens*, a writ patent, which was publicly read at the opening of the eyre, as their warrant for holding the court. *Bract.* fol. 108, 109, *et seq.* *Id.* fol. 115 b.

CLOSE or CLAUSE ROLLS. [L. Lat. *rotuli clausi*.] Rolls preserved among the public records in England, containing the records of the writs or letters close, and other documents. 2 *Bl. Com.* 346. *Hubback's Evid. of Succession*, 619.

*** Mr. Hubback observes that these close or "*clause*" rolls contain many important documents relative to the prerogatives of the crown, and other matters of a very miscellaneous nature. Among their contents, he enumerates writs of summons to parliament, and for the expenses of knights, citizens and burgesses, proclamations, enrollments of deeds between party and party, liveries and seisins of land, with a great variety of instruments, too numerous to be recounted. Like the patent rolls, some of them are deposited in the Tower, and some at the Rolls' Chapels. The former comprise those from their earliest existing date, 6 John, A. D. 1204, to the end of the reign of Edward IV. The latter, beginning with Edward V. are continued down to a recent period. *Hubback's Evid. of Succession*, 619, 620.

CLOSE COPIES. In old English practice. Copies of papers which might be written as close as the writer pleased; as distinguished from *office copies*, which were required to contain a certain determinate number of words in a sheet. 2 *Burr.* 1177—1181. 1 *W. Bl.* 288, S. C.

CLOUGH. A valley. *Domesday.*

An allowance for the turn of the scale, on buying goods wholesale by weight. *Whishaw.*

CO. L. Fr. This. An old form of *ceo. Co est à savier;* this is to wit. *LL. Gul. Conq.* l. 1, pr.

CO. A prefix to words, denoting conjunction of action, or of right, power or duty; as in the words *co-administrator, co-executor, co-trustee*, and others.

COADJUTOR. Lat. [from *coadjuvare*, to help or aid.] A fellow-helper; one who aids or assists another (*qui auxiliatur alteri.*) *Co. Litt.* 181 a. Applied by Littleton to one who assists another in a disseisin. *Litt.* sect. 278.

COADUNARE. L. Lat. [from *con*, together, *ad*, to, and *una*, together.] To get together; to heap up, as hay, manure, &c. *Fleta*, lib. 2, c. 76, § 1. *Id.* c. 81, § 1.

COADUNATIO. L. Lat. [from *coadunare*, q. v.] In old English law. A uniting of persons together; a combination or conspiracy. 9 *Co.* 56.

COALITION. A combination or union of persons. Used in French law to denote the offence of conspiracy, (q. v.) *Bouvier.*

COARCTARE, *Coartare.* Lat. [from *con*, together, and *arctus*, close.] In old English law. To straiten; to restrain, narrow, limit or confine. Bracton and Fleta use *coarctari* as the opposite of *ampliari. Bract.* fol. 17 b. *Coarctata;* limited or restrained.

COARCTATIO. Lat. [from *coarctare*, q. v.] A restriction or limitation. *Bract.* fol. 22 b. *Fleta*, lib. 4, c. 19, § 8.

COAST. [from Fr. *coste*, a side.] The edge or margin of land next to the sea; the sea-shore. See 1 *Kent's Com.* 29—31.

COCKET, *Cocquet, Coquet.* [L. Lat. *cockettum*, from *quo quietus*, see *infra.*] In English law. A seal belonging to the custom-house. *Reg. Orig.* 192. *Pars sigilli quod dicitur* cocket. *Id. ibid.* 3 *Salk.* 172.

A scroll or piece of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are customed. *Stat.* 11 *Hen.* VI. c. 16.—A testimonial that the customs outward, due to the king, are paid. *Hale de Jur. Mar.* pars 2 (de port. maris,) c. 11. Anciently called *literæ de coketto*, or *literæ testimoniales de cocketto. Reg. Orig.* 279. *Cowell. Blount. Spelman*, voc. *Cockettum.*

The form of the *cocquet* anciently ran in the king's name, as follows: *Edwardus*, &c. *Omnibus ad quos*, &c. *salutem. Sciatis quod J. S. nobis solvit in portu nostro London, custumas nobis debitas pro tribus saccis lanæ*, QUO QUIETUS *est. Testibus collectore et contrarolatore custumarum nostrarum, in portu prædicto, die, anno*, &c. Edward, &c. To all to whom, &c. Greeting: Know ye, that J. S. hath paid to us, in our port of London, the customs due to us for three sacks of wool, *whereby he is quit* (or discharged). Witness, the collector and controller of our customs in the port aforesaid, the day and year, &c. *Hale de Jur. Mar. ubi supra.*

COCKETTARE. L. Lat. [from *cokettum.*] In old English law. To cocket. *Cokettari;* to be cocketted, that is, furnished with a cocket, or certificate that goods are customed. *Reg. Orig.* 279. *Lanæ ponderatæ et cokettatæ,—customatæ et cokettatæ;* wools weighed and cocketted, —customed and cocketted. *Id. ibid.*

COCTILIS. L. Lat. Built of brick. *Murus coctilis;* a brick wall. *Dyer*, 108.

CODE. [Lat. *codex.*] A body of laws; a collection or compilation of laws, by public authority.*

A code may be either a mere compilation of existing laws, (though this is more properly a *digest*,) or a new system of laws founded on new fundamental principles. *P. Cyclopædia.*

*** The term *code* is of Roman origin, and was first applied, in its proper sense, to the collection of imperial constitutions made by the emperor Theodosius the younger. See *Code of Theodosius.* It is unknown to the common law of England, but frequently occurs in the jurisprudence of those nations who have adopted the method of the civil law, especially in France, since the period of the revolution. In the United States, with the exception of Louisiana, the term has not hitherto been in use. Of late years, however, it appears to be rapidly coming into favor.

CODE CIVIL. A code of law prepared under the direction of Napoleon, and promulgated in 1804, as the civil law of France, (*Code Civil des Français*). Under the Empire, its name was changed to that of *Code Napoleon*, by which it is still often designated, though it has now officially resumed its original title of *Code Civil.* In its general arrangement and distribution, it resembles the Institutes of Justinian. It consists of three books, divided into titles

or heads, each of which is subdivided into chapters and sections. *P. Cyclopædia.*

CODE OF JUSTINIAN. [Lat. *Codex Justinianeus.*] A collection of imperial constitutions in twelve books, compiled by Tribonian and nine associates, under the direction of Justinian, A. D. 529; and so called to distinguish it from the code of Theodosius, (q. v.) published about a century before. This code was the first of the four collections of law which make up the *Corpus Juris Civilis*, (q. v.) A new edition, called *Codex repetitæ prælectionis*, was published by Justinian, A. D. 534. 1 *Bl. Com.* 81. *Inst.* proœm. § 2. *Cooper's notes, in loc.* 1 *Kent's Com.* 537. 1 *Mackeld. Civ. Law*, 51, § 61; 57, § 69; 92, § 101. The old code, called *Codex Vetus*, is now lost. *Id.* 51, § 61.

The code is sometimes cited thus:—Const. 22, C. 4. 35—that is, the 22d constitution, Code, book 4, tit. 35. Sometimes more simply:—*Cod.* 4. 35. 22.

CODE OF THEODOSIUS, more properly and usually called THEODOSIAN CODE. [Lat. *Codex Theodosianus.*] A code compiled by the emperor Theodosius the younger, A. D. 438, (or 435, according to Selden,) being a methodical collection, in sixteen books, of all the imperial constitions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being, during that interval, confined to the East. 1 *Bl. Com.* 81. *Selden's Diss. ad Flet.* c. 5, sect. 2; c. 6, sect. 1. *Taylor's Civ. Law*, 17. *Butler's Hor. Jur.* 54, 55.

CODE NAPOLEON. See *Code civil.*

CODEX. Lat. A code or collection of laws; particularly the code of Justinian. The Code and Digest appear to be more frequently referred to by the old English law writers, than the other parts of the civil law. Bracton introduces them both in an illustration of a consideration. *Do tibi* digestum, *ut des mihi* codicem; I give you a Digest, that you may give [in consideration of your giving] me a Code. *Do tibi* codicem, *ut facias mihi scribi* digestum; I give you a Code, that you may have a copy made for me of a Digest. *Bract.* fol. 19.

A book or manuscript; a writing on paper, parchment, tablets or other materials, folded like modern books, with a number of distinct leaves one above another. *Adam's Rom. Ant.* 560.

A copy or counterpart of a written instrument, as a will. *Inst.* 2. 10. 13.

CODEX GREGORIANUS. A collection of imperial constitutions made by *Gregorius*, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. 1 *Mackeld. Civ. Law*, 44, § 54.

CODEX HERMOGENIANUS. A collection of imperial constitutions made by *Hermogenes*, a jurist of the fifth century. It was nothing more than a supplement to the Codex Gregorianus, (*supra*,) containing the constitutions of Diocletian and Maximilian. 1 *Mackeld. Civ. Law*, 44, § 54.

Mr. Long contends that the proper names of these jurists are *Gregorianus* and *Hermogenianus*, instead of Gregorius and Hermogenes. *Long's Discourses*, 80. But Selden and other eminent writers make constant use of the latter names, without objection. Taylor uses both. *Civ. Law*, 17. According to Selden, Gregorius and Hermogenes were heathen civilians who lived in the time of the Constantines, and fearing lest by the new constitutions of the Christian princes, the heathen jurisprudence should be lost, they applied themselves to the compiling their codes, in which they united together the laws of the heathen emperors from Hadrian down to Diocletian, in order as much as possible to preserve the ancient. But all that remains of these two codes are some fragments which Cujacius has placed at the end of the Theodosian code. *Seld. Diss. ad. Flet.* c. 5, sec. 2, p. 78, note.

CODEX JUSTINIANEUS. The code of Justinian; so called by Justinian himself. *Const.* Cordi nobis, *de emendat. Cod.* § 5, cited 1 *Mackeld. Civ. Law*, 51, § 61, note (c).

CODEX REPETITÆ PRÆLECTIONIS. The new code of Justinian; or the new edition of the first or old code, promulgated A. D. 534, being the one now extant. 1 *Mackeld. Civ. Law*, 57, § 69. *Taylor's Civ. Law*, 22. See *Code of Justinian.*

CODEX THEODOSIANUS. The code of Theodosius. See *Code of Theodosius.*

CODEX VETUS. The old code. The first edition of the code of Justinian; now lost. 1 *Mackeld. Civ. Law*, 51, § 61.

CODICIL. [Lat. *codicillus*, q. v.] A supplement to a will, or an addition made

by the testator, and annexed to, and to be taken as part of a testament, by which its dispositions are explained, added to, or altered.* 2 *Bl. Com.* 500. 4 *Kent's Com.* 531. 1 *Steph. Com.* 545.—A testamentary disposition subsequent to a will, and by which the will is altered, explained, added to, subtracted from, or confirmed by way of republication, but in no case totally revoked. 2 *Wooddes. Lect.* 284. De Grey, C. J. 3 *Wils.* 513. For general purposes, a codicil is considered as a will, the distinction between them existing only in their relation to each other. 1 *Powell on Devises*, 20, note (4). 1 *Steph. Com.* 545. By the English Statute of Wills, 7 *Will.* IV. and 1 *Vict.* c. 26, the term *will* is to be taken as including a *codicil.* And the rule is the same in the state of New-York. 2 *Rev. Stat.* [68, § 71,] 12, § 78. So that a codicil must be executed with the same formalities, and proved in the same manner as the will itself. 4 *Kent's Com.* 531. See 7 *Hill's* (N. Y.) *Rep.* 346. 12 *Gill & Johns.* 288. 14 *B. Monroe's R.* 333. *United States Digest*, Will.

*** The name, and, to some extent, the modern use of a codicil, are taken from the *codicillus* of the Roman law, which, however, was, in many respects, a very different instrument. See *Codicillus.* Two definitions of the term are given in the old dictionaries. The last in order is substantially the modern definition, but the first, and apparently the preferred one, is in the following words: "A codicil is the will or testament of a man, concerning that which he would have done after his death, *without the appointing of an executor.*" *Termes de la Ley.* "A codicil is the same with a testament, but that it is *without an executor.*" *Cowell. Blount.* This definition seems to be modelled after the idea of a *codicillus* in the Roman law, which was merely an informal, and subordinate, but distinct and independent species of will. See *Codicillus.* Its peculiar feature, however, is that which denies to a codicil the *appointment* of an *executor.* Dr. Wooddeson observes on this point, as if in explanation of this peculiarity, that codicils were never thought to *require* the appointment of a *new* executor to carry them into execution. 2 *Wooddes. Lect.* 284. In this view, no doubt, we may still say with propriety that a codicil is "*without* the appointment of an executor." But that the old definition signified something more is obvious from the language of Swinburne, who expressly lays down the position that a codicil does not *admit* the appointment of an executor, and bases upon that circumstance the peculiar and principal distinction between it and a will. *Swinburne on Wills*, part 1, § 5, n. 3, p. 13. It is hardly necessary to say that this doctrine of Swinburne's is not now law. 2 *Wooddes. Lect. ub. sup.*

CODICILLUS. Lat. [a little book, dimin. of *codex*, a book.] In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans. Its peculiarities were, that it required no solemnity in its execution, (*nullam solemnitatem ordinationis desiderant;*) that an inheritance could neither be given nor taken away by it, except through a trust; and that it might be made *before* as well as after a testament. *Inst.* 2. 25. 1, 2, 3. In all these particulars, but especially the last, this instrument was the very opposite of the modern codicil. *Supra.* Indeed, by the express declaration of Justinian, the law of wills and that of codicils were established upon entirely different foundations, (*ne confundatur jus testamentorum et codicillorum.*) *Inst.* 2. 25. 2.

The expression *nullam solemnitatem* in the Institutes (*supra*) is not generally understood literally to mean that *no* solemnity *whatever* was required in the execution of a codicil; but only that a *less* degree of solemnity was necessary than in case of a will. *Cooper's Justinian*, Notes *in loc.* And see *Dig.* 29. 7. *Cod.* 6. 36.

COE. A contraction of *commune. Co'er;* a commoner. *Les co'es;* the commons. *Kelham.*

COE. A corruption of *ceo*, (this) constantly occurring in the tract called *Fet Assaver*, (q. v. *passim*).

COEMPTIO. Lat. Mutual purchase. One of the modes in which marriage was contracted among the Romans. The man and the woman delivered to each other a small piece of money. The man asked the woman, *An sibi materfamilias esse vellet*, whether she would become to him a *materfamilias* (mistress of his family); to which she replied that she would, (*se velle*). In her turn, she asked the man whether he would become to her a *paterfamilias*, (master of a family). On his replying in the affirmative, she delivered her piece of money and herself into his hands, and so became his wife. *Adam's Rom. Ant.* 501.

Cooper's Justinian, Notes, *421. *Taylor's Civ. Law*, 280, 281.

COERCION. [L. Lat. *cohertio.*] Constraint; compulsion. See *Duress.*

Cogitationis pœnam nemo patitur. No man suffers the punishment of thought; no man is subjected to punishment for his thoughts. *Dig.* 48. 19. 18. So long as an act rests in bare intention, it is not punishable by law. *Broom's Max.* [228.]

COGNATES. [Lat. *cognati.*] Relations by the mother's side, or by females. 1 *Mackeld. Civ. Law*, 137, note. A common term in Scotch law. *Ersk. Inst.* b. 1, tit. 7, § 4. *Bell's Dict.*

COGNATI. Lat. In the civil law. Cognates; relations by the mother's side. 2 *Bl. Com.* 235. Relations in the line of the mother. *Hale's Hist. Com. Law*, c. xi. Relations by, or through females; (*qui per fœminini sexûs personas cognatione junguntur.*) *Inst.* 1. 15. 1. *Id.* 3. 5. A man's cognates are his mother, grandmother, (mother's mother,) mother's brother, mother's sister, sister's son, &c. 1 *Mackeld. Civ. Law*, 137, note.

Relations generally; properly, by blood; persons of the same blood; (from *con*, together, and *nati*, born;) as though *born together*, (*una communiterve nati*, Gr. συγγενεῖς,) or sprung from one and the same source, (*ex uno nati; ab eodem orti*). *Dig.* 38. 8. 1. 1. *Id.* 38. 10. 4. 1. *Id.* 38. 10. 10. 1.

COGNATIO. Lat. In the civil law. Cognation. Relationship, or kindred generally. *Dig.* 38. 10. 4. 2. *Inst.* 3. 6. pr. *Bract.* fol. 67. *Fleta*, lib. 6, c. 2.

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit*, cognatio *a matre. Inst.* 3. 5. 4.

*** The use of this word, (like that of *cognati*,) sometimes in one of these senses, and sometimes in the other, as it occurs in the civil law often in the same paragraph, renders a correct translation a matter of some difficulty. Thus, in the following passages: *Sunt autem* agnati cognati *per virilis sexûs* cognationem *conjuncti, quasi a patre* cognati.—*At qui per fœminini sexûs personas* cognatione *junguntur*, agnati *non sunt, sed alias naturali jure* cognati. *Inst.* 1. 15. 1. Here both *cognati* and *cognatio* are used in their general sense, in explaining *agnati*, and the passages may be translated thus: "*Agnates* are relations (*cognati*) united by a relationship (*per cognationem,*) of the male sex, as though related (*cognati*, born together, having a common origin) from (by, or on the part of) the father.—But those who are united in relationship (*cognatione*) through persons of the female sex, are not *agnati*, but otherwise related by a natural tie." Here, the meaning of *cognati* begins to change from general to particular, or to the technical meaning which was given to it in contrast with that of *agnati.* And this is fully brought out in the sentence which immediately follows: "*Itaque amitæ tuæ filius, non est tibi* agnatus, *sed* cognatus, *&c.* Therefore the son of your paternal aunt is not an *agnate* to you, but a *cognate.*" See also *Inst.* 3. 5. 4. On the other hand, *cognatio* is used in the general sense of relationship throughout the sixth title of the third book of the Institutes. *Agnatio* is called by Justinian a technical term of law, (agnatio *juris civilis nomen est,*) and was so distinguished from *cognatio*, which rests on the broader basis of natural law. *Inst.* 1. 15. 3. See *Agnatio.* So, *cognatus* is called in the Digests a natural term (*nomen naturale*); and the same passage, quoting Paulus, explains *cognatus* and *agnatus* (or *adgnatus*) to differ as genus and species. Every *agnatus* was a *cognatus*, but not *e converso. Dig.* 38. 10. 10. 4. And see Taylor's explanation. *Civil Law*, 314.

COGNATIO. Lat. In the canon law. Consanguinity, as distinguished from affinity. 4 *Reeves' Hist. Eng. Law*, 56—58.

Consanguinity, as including affinity. *Id. ibid.*

COGNATIO. Lat. In the common law. Cousenage, or cosinage. See *Cosinage.*

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate.

A relation, or kinsman, generally. See *Cognati, Cognatio.*

COGNISANCE, *Cognizance, Conusance.* [L. Lat. *cognitio*, q. v.] In practice. Acknowledgment or recognition of right. That part of a fine in which the defendant *acknowledged* that the land in question was the right of the complainant. 2 *Bl. Com.* 350. From this the fine itself derived its name, as being *sur* cognizance *de droit*, &c., and the parties their titles of *cognizor* and *cognizee. Id.* 351—353.

Acknowledgment, confession or admission. The name of an answer made by a defendant in an action of replevin, where he has acted as bailiff to another in making a

distress, by which he *acknowledges* the taking, but insists that such taking was legal, as he acted by the command of one who had a right to distrain. 3 *Bl. Com.* 149. See *Cognoscere.*

Judicial notice, or examination; the hearing of a matter judicially. As, "to take *cognizance* of a cause." *Cowell. Blount.*

Jurisdiction of a court over a cause, usually of an exclusive character. Cognisance (or rather *conusance*) of pleas in English law is a privilege or franchise granted to a city, town or corporation, and sometimes to an individual, to hold pleas, (i. e. to hold courts and hear causes,) within the precinct of the franchise. *Termes de la Ley*, voc. *Conusance.* See *To hold pleas.* And it involves the power of calling a cause or plea out of another court in which it has already been commenced. *Id. Cowell.* 2 *Arch. Pract.* 191. The claim of conusance very seldom occurs in practice, and the few modern instances to be found in the books are of claims of the universities of Oxford and Cambridge. *Arch. N. Pract.* 234.

COGNITIO. Lat. [from *cognoscere*, to know, to understand, to hear, to acknowledge, to confess.] In old English law. The acknowledgment of a fine; the certificate of such acknowledgment. *Potestas recipiendi* cognitiones; the power of taking acknowledgments. *Reg. Orig.* 168 b. *De cognitionibus certificare;* to certify (give a certificate) of acknowledgments. *Id. ibid.*

Cognizance, or jurisdiction. *Hujusmodi causæ* cognitio *ad forum spectat ecclesiasticum;* the cognizance of this kind of cause belongs to the ecclesiastical tribunal. *Bract.* fol. 302 b. *Artic. Cleri*, c. 6. *Cognitio placitorum;* cognizance of pleas. 10 *Mod.* 126.

COGNITIO. Lat. In the Roman law. The judicial examination or hearing of a cause. *Plin. Epist.* vii. 33. How the *cognitiones* before the emperor were conducted, see *Dig.* 28. 4. 3. The term was adopted in feudal law. *Feud. Lib.* 2, tit. 1.

COGNITIONIS CAUSÆ. Lat. (For the purpose of ascertaining.) In Scotch practice. A name given to a judgment or decree pronounced by a court, ascertaining the amount of a debt against the estate of a deceased landed proprietor, on cause shown, or after a due investigation. *Bell's Dict.*

COGNITOR. L. Lat. [from *cognoscere*, to acknowledge.] In old English law. One who acknowledges; a cognizor, or conusor. See *Cognizor.*

COGNITOR. Lat. In the Roman law. An advocate or defender in a private cause; one who defended the cause of a person who was present. *Brissonius. Calv. Lex.*

COGNIZATUS. L. Lat. [from *cognoscere*, to acknowledge.] In old English law. One to whom an acknowledgment is made; a cognizee, or conusee. See *Cognizee.*

COGNIZOR, *Conusor.* [L. Lat. *cognitor.*] In old conveyancing. The party levying a fine. 2 *Bl. Com.* 350, 351. The party defendant in the proceedings, who *acknowledged* the other party's right to the land in question.*

COGNIZEE, *Conusee.* [L. Lat. *cognizatus.*] The party to whom a fine was levied. 2 *Bl. Com.* 351. The party plaintiff in the proceedings, to whom the other party's acknowledgment of his right to the land in question was made.*

COGNOMEN. Lat. In the Roman law. The last of the three names by which all Romans, at least those of good family, were designated. The first, or *prænomen*, served to denote the individual; the second, or *nomen*, the clan or *gens*, and the third, or *cognomen*, the house or *familia* to which he belonged. *Inst.* 2. 20. 29. *Adam's Rom. Ant.* 35. *Dig.* 28. 2. 1. *Brande.* There was sometimes a fourth name, termed *agnomen*, (q. v.) *Inst. ub. sup. Butler's Hor. Jur.* 28.

In English law. A surname. A name added to the *nomen* proper, or name of the individual; a name descriptive of the family. Some of the earliest English surnames were formed (as in much earlier times) by taking the father's name, and prefixing the word *filius* or *fitz*, (son). Fleta mentions *filius Willielmi*, (the son of William, or Fitz William,) and *filius Petri*, (the son of Peter, or Fitz Peter,) as examples of the *cognomen* of that period. *Fleta*, lib. 4, c. 10, § 7. Sometimes the word *filius* was merely understood, as *Hughbertus Roberti*, *Hughbertus Walteri.* *Bract.* fol. 188 b. Cognomen *majorum est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum, ab eventu;* a cognomen or surname is derived from the blood of one's ancestors, this is intrinsic; an agnomen is extrinsic, (or of foreign origin,) being derived from some event. 6 *Co.* 65.

COGNOSCE. [from Lat. *cognoscere*, to know.] In Scotch practice. To examine; to inquire into. "Brieves for *cognoscing* an

idiot or furious person." *Bell's Dict.* voc. *Idiots.* See 6 *Bell's Appeal Cases*, 241.

COGNOSCERE. Lat. In the civil law. To hear a cause. *Brissonius. Calv. Lex.*

COGNOSCERE. Lat. In old practice. To acknowledge. *Bene* cognoscit *captionem ;* he well acknowledges the taking. 1 *Salk.* 3, pl. 8. *Cognovit ;* he has acknowledged. See *infra. Bene cognosco;* I well acknowledge. *Fleta*, lib. 5, c. 6, § 47.

COGNOVIT ACTIONEM. L. Lat. (He hath acknowledged the action); sometimes simply termed a COGNOVIT. In practice. A written confession of an action at law, signed by the defendant, or his attorney, given to the plaintiff after receiving his declaration, and before plea. In substance, it acknowledges the demand to be just, and authorizes the plaintiff to enter judgment for a sum named, either absolutely, or upon specified conditions.* 1 *Tidd's Pr.* 559. Where it is given after plea pleaded, it is usually termed a *relicta*, or *relicta* and *cognovit. Id. ibid.* See *Relicta.*

COHABIT. [from Lat. *cohabitare*, q. v.] To live together as husband and wife; to live together at bed and board. *Burr. Settl. Cases*, 26.

To live together, as in the same house. "That his sisters, the lady Turner and Arabella Clerk, might *cohabit* in the capital house." 2 *Vern.* 323.

COHABITARE. L. Lat. [from *con*, together, and *habitare*, to dwell, or be often with.] In old English law. To live with, or together, as husband and wife; to be often with, or together; to cohabit. *Stat. Westm.* 2, c. 34. *Cohabitabant ut vir et uxor. Dyer*, 76 b, (Fr. ed).

COHÆRES. Lat. [from *con*, together, and *hæres*, an heir.] In old English law. A co-heir, or joint heir. *Co-hæredes ;* co-heirs. A term applied to coparceners, who constitute, as it were, one heir or body; (*quasi unum corpus propter unitatem juris quod habent*). *Bract.* fol. 76 b, 67 b. Cohæres *particeps cum* co-hærede *participe;* coparcener with coparcener. *Id.* fol. 97 b.

COHERTIO. L. Lat. [from *coercere*, corrupted to *cohercere*, to compel.] In old English law. Coercion; the coercive power of a court. *Bract.* fol. 344. *Stat. Westm.* 2, c. 34. Lord Coke uses *cohertion* as an English word. 2 *Inst.* 436.

Restraint without process of law. *Fleta*, lib. 2, c. 47, § 13.

COIF. [L. Lat. *coifa*, from Fr. *coiffe ; birretum.*] In English practice. A covering for the head, formerly worn as a distinctive badge by serjeants at law, (*tegmen capillare album quo insigniuntur servientes ad legem.*) *Spelman*, voc. *Coifa.* It is mentioned by Matthew Paris as early as A. D. 1259, under the name of *coifa*, from the Fr. *coiffe.* Sir John Fortescue calls it *birretum*, (q. v.) *De Laud. Leg. Angl.* c. 50. The original use of this covering is supposed to have been, to conceal the *clerical tonsure*, (q. v.) *Matt. Par. apud Spelman, ub. sup.*

COIFA. L. Lat. In old records. A coif. *Spelman.* See *Coif.*

COILLER. L. Fr. To collect. *Britt.* c. 21. *Bendl.* pl. 26.

COIRE. Lat. [from *con*, together, and *ire*, to go.] In the civil law. To come together; to associate as one body. *Corpus cui licet coire ;* a body which is allowed to associate as a corporation, (*collegium*). *Dig.* 34. 5. 20. See *Dig.* 40. 3.

CO'IS. A contraction of *communis.* 1 *Instr. Cler.* 9.

COJUDICES. Lat. In old English law. Associate judges having equality of power with others. *Treatise of the Maisters of the Chauncerie*, II. *Hargr. Law Tracts.*

COLIBERTUS, *Collibertus*, *Conlibertus*, (plur. COLIBERTI.) L. Lat. *Coliberti*, or *coleberti*, are a class of inferior tenants mentioned in Domesday, whom Lord Coke considers to have been tenants in free socage by free rent. *Domesday*, cited in *Cowell. Co. Litt.* 5 b, 86 a. Cowell defines them also to be such as, being villeins, were manumitted.

COLLATERAL. [L. Lat. *collateralis*, from *con*, together, and *lateralis*, on the side.] Connected by, or on the side.* Coming in, or adhering to the side of any thing. *Termes de la Ley. Hæredes* à latere *venientes ;* heirs coming in, on, or *from the side*, collateral heirs. *Bract.* fol. 20 b. Answering to the ἐκ πλάγιου κατιόντες, in the Greek of the civil law. *Nov.* 118, c. 3.

That which is *beside* another thing; additional. See *infra.*

COLLATERAL CONSANGUINITY or KINDRED. [L. Lat. *cognatio à latere.*] That kind of consanguinity, kindred or relationship, which exists between persons who are descended from one and the same stock or ancestor, whether near or remote; as between two brothers descended from the same father, or between two cousins descended from the same grandfather. 2

Bl. Com. 204, 205. It is thus distinguished from *lineal* consanguinity, in which the relatives are descended the one from the other. *Id.* 204. See *Lineal consanguinity.*

Lineal consanguinity being usually represented by a perpendicular or *right line*, (*linea recta*,) in which the kindred are ranked relatively, one above or below the other, as father, son, grandson, *collateral* consanguinity is properly denoted by one or more *transverse* lines, crossing this, or proceeding *obliquely* from it *on the side* (*à latere*) upon which the kindred are ranked in their order. See *Dig.* 38. 10. 9. 10.

COLLATERAL ISSUE. In practice. An issue taken upon matter *aside* from the intrinsic merits of the action, as upon a plea in abatement; or *aside* from the direct and regular order of the pleadings, as on a demurrer. 2 *Arch. Pr.* 1, 6; book 2, part 1, 2.

The term *collateral* is also applied, in England, to an issue raised upon a plea of diversity of person, pleaded by a criminal who has been tried and convicted, in bar of execution, viz.: that he is not the same person who was attainted, and the like. 4 *Bl. Com.* 396.

COLLATERAL LIMITATION. In the law of estates. A limitation of an estate which gives an interest for a specified period, but makes the right of enjoyment to depend on some *collateral* event; as a limitation of an estate to a man and his heirs, tenants of the manor of Dale, or to a woman during widowhood, &c. 4 *Kent's Com.* 128.

COLLATERAL SECURITY. A security in addition to or *besides* another, or principal security; to be resorted to in case of failure of the principal security. A bond in this sense is collateral security to the mortgage which it accompanies, although the mortgage, in its form, purports rather to be collateral to the bond.* *Termes de la Ley.*

COLLATERAL WARRANTY. A warranty of lands, collateral to the title of the heir, or him upon whom the warranty falls; a warranty made by a person who is collateral to the title, i. e. a person out of the line, or *on the side* (*à latere*) of the title, and through whom the title did not pass.* *Litt.* sect. 717. Described in the books to be "where the heir's title to the land neither was, nor could have been derived from the warranting ancestor." 2 *Bl. Com.* 301. 4 *Kent's Com.* 469. Story, J. 1 *Sumner's R.* 262. As where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. *Litt.* sect. 705, 707. So where a son purchased lands in fee, and his father disseised him, and aliened to another with warranty, and died, this was a collateral warranty to the son. *Id.* sect. 704, 705. See 2 *Hilliard's Real Prop.* 361, 362. *U. S. Digest*, Collateral warranty. See *Lineal warranty.*

*** The distinction between *lineal* and *collateral* warranty seems to have always been a subtle one, and not easily apprehended; and the most careful definitions given in the books are not free from obscurity, owing in a great degree to the peculiar meaning given to the word *collateral.* Lord Coke, in commenting upon Littleton, (sect. 717,) observes that "it is not adjudged in law a collateral warranty in respect of the *blood*, for the warranty may be collateral, albeit the blood be lineal, and the warranty may be lineal, albeit the blood be collateral. But it is in law deemed a collateral warranty in respect that *he that maketh the warranty is collateral to the title* of him upon whom the warranty doth fall." *Co. Litt.* 376 a.

COLLATERALES ET SOCII. L. Lat. Assessors; assistants and associates [of the chancellor]. Former titles of masters in chancery. 2 *Reeves' Hist. Eng. Law*, 251. *Fleta*, lib. 2, c. 13, § 12. So called, because they *sat by his side* at a certain table in Westminster Hall, and in other places. *Treat. of the Maisters of the Chauncerie*, II.

COLLATIO. Lat. [from *conferre*, to bring or put together; to confer.] A bringing or putting together; a throwing into one fund or mass. See *Collatio bonorum.*

Contribution or average, in maritime law. *Loccen. de Jur. Mar.* lib. 2, c. 8, § 1.

A comparison of two things by *putting* them *together. Collatio signorum* or *sigillorum;* comparison of seals. The ancient mode of testing the genuineness of a seal, by comparing it with another known to be genuine. *Bract.* fol. 389 b, 398 b. *Fleta*, lib. 6, c. 34, § 5. See *Comparatio literarum, Comparison of hands.*

A conferring or bestowment of a thing; collation. *Reg. Orig.* 31 b. See *Collation.*

COLLATIO BONORUM. In the civil

law. Collation of goods. A bringing together of goods or property into a common fund; especially of property received of a testator by way of advancement, for the purpose of a more equitable division among the heirs. *Dig.* 37. 6. 1. *Cooper's Justin. Inst.* Notes, *574, 575. *Cod.* 6. 20.

This term has been applied, in the common law, to the bringing of any portion or sum of money advanced by a father to a son or daughter, into *hotchpot*, or common fund, in order to have an equal share with the other children, of his personal estate when he dies, in pursuance of the statute of distributions. *Tomlins.* 2 *Bl. Com.* 517. 4 *Kent's Com.* 419. 1 *Sumner's R.* 421. See *Hotchpot.*

In Louisiana, this return of property to the mass of the succession is termed *collation*, or, in French, *rapport. Civil Code of Louisiana, Art.* 1305—1367. 4 *Kent's Com.* 419, note.

COLLATION TO A BENEFICE. [L. Lat. *collatio beneficii.*] In English ecclesiastical law. The conferring or bestowing of a benefice by the bishop, where he has himself the advowson, or right of patronage, and which single act of collation effects all that is done in common cases by the acts of *presentation* and *institution.* 2 *Bl. Com.* 22. Or, in other words, the presentation and institution are one and the same act, and taken together are called a *collation.* 1 *Bl. Com.* 391. 1 *Wooddes. Lect.* 193. The advowson, in such cases, is termed an *advowson collative.* 2 *Bl. Com.* 22.

COLLECTORES. L. Lat. In old English law. Collectors; persons appointed to make collections for another. In a writ of protection in the Register, granted to the Hospital of St. John of Jerusalem, they are classed with *procuratores, attornati* and *nuncii. Reg. Orig.* 282 b.

COLLEGA. Lat. In the civil law. A colleague; an associate; one having the same power with another, (*qui sunt ejusdem potestatis*). *Dig.* 50. 16. 173.

COLLEGATARIUS. Lat. In the civil law. A co-legatee. *Inst.* 2. 20. 8.

COLLEGE. [from Lat. *collegium*, q. v.] A collection, assemblage or company of persons. An association of persons, authorized by law, for the performance of some duty or office, or the attainment of some object, whether literary, scientific, political or ecclesiastical.

COLLEGIALITER. L. Lat. [from *collegium*, q. v.] In a corporate capacity. 2 *Kent's Com.* 296.

COLLEGIATE CHURCH. In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church. Such as the churches of Westminster, Windsor, and others. *Cowell.*

COLLEGIUM. Lat. [from *colligere*, to gather together; Gr. συστημα.] In the civil law. An association of persons, usually of the members of a trade; a corporation, company, or college; (otherwise called *universitas,*) established by authority of law. *Dig.* 3. 4. 1. et per tot. See *Id.* 47. 22. It necessarily consisted of *three* persons at least, (*tres faciunt collegium*). *Dig.* 50. 16. 85. A *collegium* which was confirmed by special enactment, or by a *senatûs consultum*, or an imperial constitution, was called *collegium licitum*, or *legitimum.* Otherwise it was illegal, (*illicitum*). *Dig.* 47. 22. 3. 1. 2 *Kent's Com.* 268, 269. See *Tayl. Civ. Law*, 567, 568, 570. As to the application of this word in English law, see *Dyer*, 233 b, 267.

COLLEGIUM AMMIRALITATIS. L. Lat. The college or society of the admiralty. See a description of this institution in *Loccenius de Jur. Mar.* lib. 2, c. 2.

COLLIGENDUM BONA DEFUNCTI. See *Ad colligendum.*

COLLISION. [Lat. *collisio*, from *collidere*, to dash together; Fr. *abordage.*] A dashing, or violently running together. Usually applied to the running foul of vessels. Sometimes distinguished from *allision*, (q. v.) *Jacobsen's Sea Laws*, 324. *Strykius de Collis. Nav.* cited *ibid.* 3 *Kent's Com.* 230, 302, note. *Abbott on Ship.* part 3, ch. 1.

COLLISTRIGIUM. L. Lat. [*quasi collum stringens*, binding the neck.] In old English law. The pillory. *Spelman. Cowell*, voc. *Pillory.* Called in Saxon *halsfang* or *healsfang.* In old Scotch, "the joggs." *Skene de Verb. Signif.* Mr. Barrington translates the word, *stretch-neck*, and hence infers that the offender was actually suspended by the neck. *Obs. Stat.* 55, 211. But *stringere* does not signify "to stretch," but "to grasp or bind." See *Healsfang, Pillory.*

COLLOBIUM. L. Lat. A hood or covering for the shoulders, formerly worn by serjeants at law, (*cucullus, sive super-*

humerale, quo induuntur servientes ad legem.) *Spelman.*

COLLOCATION. Fr. In French law. The arrangement or marshalling of the creditors of an estate in the order in which they are to be paid according to law. *Merlin, Repert.*

COLLOQUIUM. L. Lat. [from *colloqui*, to speak together, to converse.] In pleading. Conversation; discourse. A term applied to that part of the declaration in actions of slander, where it is alleged that the defendant spoke the words in a certain *discourse* or conversation (*in quodam colloquio,*) which he had with others, or with the plaintiff in the presence of others, concerning the plaintiff; and which is followed by an averment that the words were spoken of and concerning the plaintiff. 2 *Chitt. Pl.* 633. Bronson, J. 2 *Hill's* (N. Y.) *Rep.* 282, 284. The term *colloquium* is also sometimes applied to the whole of this averment. 1 *Chitt. Pl.* 403. 1 *Starkie on Slander*, 383. *Cooke on Defamation*, 92.

COLLUSION. [Lat. *collusio*, from *colludere*, to play together.] A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right. *Cowell. Reg. Orig.* 179. *Termes de la Ley.* An agreement between two or more persons to defraud another by the forms of law, or to employ such forms as means of accomplishing some unlawful object.

COLLYBISTA. Græco-Lat. [Gr. κολλυβιστης.] In the civil law. A money-changer; a dealer in money, (*argentarius, nummularius, trapezita.*) See *Argentarius.*

COLLYBUM. Græco-Lat. [Gr. κολλυβον.] In the civil law. Exchange, (*cambium*). *Grotius de Jur. Bell.* lib. 2, c. 12, § 3, par. 4.

COLNE. Sax. In Saxon and old English law. An account or calculation. 1 *Reeves' Hist. Eng. Law*, 284, note. Otherwise written *cone. Bract.* fol. 86 b. *Spelman*, voc. *Cone et Key. Cowell.* See *Cone & Key.*

COLOMBIER. Fr. In French law. A dove-cot or pigeon-house. *Guyot, Inst. Feod.* ch. 21.

COLONIA, *Colonica.* L. Lat. [from *colonus*, q. v.] In old European law. A portion of land assigned to a single *colonus* for cultivation, as a task, (*ad unius coloni pensum designata.*) Or a country house, with sufficient land for the support of a husbandman and his family. *Spelman.*

COLONUS. Lat. [from *colere*, to cultivate.] In old European law. A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon *ceorl.* 1 *Spence's Chancery*, 51. See *Barringt. Obs. Stat.* 302, note [*u*].

COLOR. Lat. Colour. A term of the ancient rhetoricians, adopted at an early period into the language of pleading in actions at common law. *Steph. Pl.* 202. Color *a rhetoribus appellatur probabilis alicujus rei causa, quâ quod falsum aut turpe est velamus.* Colour is called by the rhetoricians the probable cause of any thing, with which we disguise what is false or base. *Turneb. in notis ad Quinctil.* cited *Steph. Pl.* Appendix, Note (49).

In a general sense, mere appearance as distinguished from reality; the exterior or *prima facies* of a thing; a false or assumed appearance; a cover, cloak, disguise or pretext.* See *Prima facie, Color officii.*

COLORE. Lat. By color (of a supposed estate or right.) Usually taken in a bad sense. *Towns. Pl.* 24. See *Colore officii.*

COLOR OFFICII. L. Lat. Colour of office. The mere semblance, shadow or false appearance of official authority.* The dissembling face of the right of office. *Termes de la Ley.* The use of official authority as a pretext or cover for the commission of some corrupt or vicious act.* See *Colore officii.*

COLORABLE. See *Colourable.*

COLORE OFFICII. L. Lat. [L. Fr. *per colour de son office.*] By color of office; under pretence of official authority.* This term is always taken in a bad sense (*in malam partem,*) and differs from the words *virtute officii*, or *ratione officii*, which are always taken in a good sense, (*in bonam partem*); and where the office is the just cause of the thing, and the thing is pursuant to the office. See 2 *Esp. N. P. C.* 542, cited 9 *East*, 364. But *colore officii* implies that the thing is under pretence of office, but not duly, and the office is no more than a cloak to deceit, and the thing is grounded upon vice, and the office is as a shadow thereto. *Plowd.* 64, arg. See *Id.* 68. *Termes de la Ley.*

COLOUR. [Lat. *color*, q. v.] In pleading. An apparent or *prima facie* right.

"To give colour" is to admit such a right. *Steph. Pl.* 202, 203. Colour is of two kinds, implied and expressed.

Implied colour is that which is naturally inherent in the structure of all pleas in confession and avoidance. *Id.* 206. That is, they all *admit a right* in the opposite party, but at the same time *avoid* it.* See *Confession and avoidance.*

Express colour is defined to be, "a feigned matter pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good cause or action, whereas he has in truth only an appearance or *colour* of cause." *Bac. Abr.* Trespass, (T. 4). Or, in the words of the author of the *Termes de la Ley*, it is "feigned matter which the defendant or tenant uses in his bar [plea,] when an action of trespass or an assise is brought against him, in which he gives the demandant or plaintiff a *show at first sight* that he hath good cause of action, where in truth it is no just cause, but only the *colour and face* of a cause." See this subject further explained in *Stephen on Pleading*, 206, *et seq.* *Id.* 225, (Am. ed. 1824), *et seq.* 3 *Reeves' Hist. Eng. Law*, 438.

COLOURABLE PLEADING. The practice of giving *colour* in pleading. 3 *Reeves' Hist. Eng. Law*, 438.

COLPARE. L. Lat. In old English law. To lop or top, as trees; to cut off the boughs. *Cowell. Colpatura;* a lopping or topping of trees. *Id.*

COLPER. L. Fr. To cut. *LL. Gul. Conq.* l. 13.

COLPICIUM. L. Lat. In old records. *Salvis* colpiciis *infra boscum predictum.* The editor of Cowell (who is followed by Blount,) citing an old charter in which these words occur, supposes that by *colpiciis* is meant samplars [saplings?] or young poles, &c. This word undoubtedly is the Latin form of the English *coppice* or copse-wood; i. e. young wood, subjected to frequent cutting or lopping (*colpatura*), and probably the same with *sylva cædua*, (q. v.)*

COLPINDACH. In old Scotch law. A young beast or cow, of the age of one or two years; in later times called a *cowdach*, or *quoyach.* Skene says it is an Irish word, and properly signifies a *foot-follower*, (ane fut follower). *De Verb. Signif.*

COLUMBARIUM. Lat. [from *columba*, a dove.] In old English law. A dove-house, or dove-cot. *Shep. Touch.* 10. *Towns. Pl.* 183.

COMANDER, *Comaunder.* L. Fr. To commit or send. *Comaundes a la prison;* committed to prison. *Britt.* c. 21.

COMBARONES. L. Lat. In old English law. Fellow barons; fellow citizens. The citizens or freemen of the Cinque ports being anciently called *barons;* the term *combarones* is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. *Cowell.* See *Baron.*

COMBAT. Eng. and Fr. [L. Lat. *duellum, campus;* L. Fr. *battail, bataille.*] In old English law. The formal trial of a doubtful cause or quarrel, by the swords or batons of two champions. *Termes de la Ley. Cowell.* Otherwise called *trial by battel.* See *Battel, Duellum.*

COMBE. [Sax. *cumbe*, L. Lat. *comba.*] In old English law. A valley. *Domesday. Cowell. Co. Litt.* 4 b, 5 b.

COMBINATION. Union of persons or things.

In patent law. Union of parts, as of machines or machinery. See 2 *Mason's R.* 112. 1 *Curtis' R.* 279. Curtis, J. *Id.* 292.

COMBUSSOR. L. Lat. [from *comburere*, to burn.] In old English law. A burner; an incendiary. *De* combussoribus *domorum. Fleta*, lib. 2, c. 52, § 9.

COMBUSTIO. Lat. [from *comburere*, to burn.] In old English law. The punishment of burning, inflicted upon apostates and others. *Fleta*, lib. 1, c. 37, § 2.

COMBUSTIO DOMORUM. Lat. In old English law. The burning of houses; house-burning. A term formerly used to denote the crime of arson. 1 *Hale's P. C.* 346, [566]. 4 *Bl. Com.* 373. *Bract.* fol. 146 b. *Fleta*, lib. 1, c. 37.

COMBUSTIO PECUNIÆ. L. Lat. In old English law. The burning [that is, melting] of money. The old way of trying mixed and corrupt money, by melting it down upon payments into the exchequer. *Cowell.*

In the time of King Henry II. the bishop of Salisbury being treasurer, considered that though the money did answer *numero et pondere* (in number and weight,) it might be deficient in value, because mixed with copper or brass. Therefore, (*consilio regis, et regiæ simul et publicæ providere utilitati,*) a constitution was made, called the trial *by combustion*, the practice of which differed in little or nothing from the present method

of assaying silver. *Lowndes' Essay upon Coin*, 5, cited in *Cowell.*

COME. L. Fr. As. *Come de det;* as of duty, (*ex debito*). *Mirr.* c. 5, § 1. *Come ceo que il ad*, &c.; as that which he hath, &c. See *Sur cognizance*, &c.

So. *Come Dieu luy aide;* so help him God. The conclusion of the old coronation oath of the English sovereigns. 1 *Bl. Com.* 236, note.

Whereas. *Rot. Parl.* 4 Hen. IV. 1 *Rep. Ch.* Appendix.

To COME. In pleading and practice. To appear in court; as a party does in an action at law. A defendant in pleading is said to "*come* and defend." Where a party fails to appear, the language of the record is, that he "*comes not*, but makes default."

To COME TO LAND. [Fr. *venir a la terre.*] In old English law. To acquire land; to obtain possession under a title. This, together with the still used term *in*, (Fr. *eins*,) appears to be derived from the old practice of giving livery of seisin, in which the feoffee actually *went* in person *to the land*, and entered *upon it.** "If he *come to* the land (*s'il vient a la terre*,) by a later title, yet the law will adjudge him *in* (*la ley lui adjugera eins*) by force of the elder title." *Litt.* sect. 659, 660. See *In.*

COMEN. L. Fr. Common. *La comen ley;* the common law. *Thel. Dig.* lib. 11, c. 10, ¶ 8, 21. *Le comen banke;* the common bench. *Id.* ¶ 17. *Comen counsel. Yearb.* M. 10 Edw. III. 67.

COMENT. L. Fr. Although; notwithstanding. *Litt.* sect. 15.

COMES AND DEFENDS. [L. Lat. *venit et defendit.*] A phrase of great antiquity in pleading, and hitherto always used at the commencement of a defendant's pleas and demurrers to the declaration; the word "*comes*" very appropriately and significantly expressing his appearance, and "*defends*" his defence. "And the said defendant *comes and defends* the wrong and injury, when, &c., and says that," &c. *Steph. Pl.* 62, 67, 71. (Am. ed. 1824.) 1 *Burr. Pr.* 163. In the recent revision of the forms of pleadings in England, this clause has been omitted. See *Venit et defendit.*

COMES. Lat. [pl. *comites*, from *comitor*, to accompany, or follow; L. Fr. *comte.*] A companion, follower or attendant. An official and honorary title of great antiquity, and very various application; originating under the Roman empire, and retained in the institutions of most of the early nations of Europe, but chiefly remarkable for its equal use in denoting the *comte* or *count* of the Franks, the *grave*, *graf*, or *graff* of the Germans, the *countee* of the Anglo-Normans, the *ealdorman*, *alderman*, or *shireman* of the Saxons, and finally, the *earl* of the English and Scotch. 1 *Bl. Com.* 116, 398. *Spelman. Termes de la Ley*, voc. *Countee. Ersk. Inst.* b. 1, tit. 4, § 1. See *Count*, *Countee*, *Alderman*, *Earl*, *Grave*, *Reeve*, *Schire-man.*

*** The origin of this title has been traced by Spelman to the household or court of the Roman emperors, who gave the name of *comites* to their personal attendants, or those who belonged to their *following* or retinue, (comites *vocabant quotquot* e comitatu *principis erant.*) It came afterwards to be used (with the Græco-barb. κομης) as a title not only of honor, but of office, and with no restriction as to grade in either; but its prevailing signification was that of *chief*, *superintendent*, or *governor*, (Gr. αρχων.) See *Cod.* 1. 32, 33, [34,] 34, 36. *Cod.* 12. 10, 11, 12, 13, 14. *Nov.* 8, cc. 2, 3, 5. *Nov.* 27. Thus, among other officers noticed at length by Spelman, the *comites provinciarum* were the rulers or governors of provinces, who combined the authority of a civil magistrate and judge, with the powers of a military commander. From these, according to the same writer, were immediately derived the *comites* of the lower ages. And see *Feud. Lib.* 1, tit. 1. *Lib.* 2, tit. 10.

Among the Franks, Germans, and other early nations, the term *comes* was applied to one who was selected by the king from his own attendants, (*e comitatu suo*,) and sent to govern some city or territory, and from whom such territory, as well as the office itself, was called *comitatus.* A prominent feature of this officer was his judicial character. Spelman calls him expressly a judge, (*reges e comitatu suo miserunt* judicem,—*munus comitis* judiciarium *fuit*,) and refers to the use of the word in this sense, among the ancient Germans, as early as the time of Tacitus. See *Comte.*

As to the introduction of this term into England, it may be observed that the title *comes* is found associated among the Anglo-Saxons, with some kind of territorial authority, at a period anterior to the division of the kingdom into counties, but its use does not appear to have been fully established until afterwards, when it was applied by

the Latin interpreters, to the *reeve*, *alderman*, or chief magistrate of the shire, as denoting the union in these officers of territorial jurisdiction with judicial authority. The Danes introduced the corresponding title of *eorle*, and the Normans that of *comte*, or *countee*; but the former being adopted by the Saxons, seems to have soon superseded the latter. *Comites* are mentioned in Magna Charta, (c. 14,) and by Bracton, as the highest order of persons in the kingdom, whose title the last named author derives *a* comitatu *sive a societate*, and whom he otherwise calls *consules*, (*a consulendo*,) as being the king's advisers and associates in the government of the people. *Bract.* fol. 5 b. *Id.* fol. 34, 351 b. The deputy of the *comes*, (earl or count,) was called *vice comes*, which is still the Latin appellation of sheriff, (the earl's successor in the government of the shire,) as *comes* is of earl at the present day. 1 *Bl. Com.* 116. See *Sheriff*.

COM'IA. A contraction used for *Communia*, (q. v.) *Fleta*, lib. 4, c. 1, § 16.

COMINALTIE. L. Fr. The commonalty or people. See *Comminalty*.

COMITAS. Lat. Comity; courtesy; civility. *Comitas inter communitates;* comity between communities or nations; comity of nations. 2 *Kent's Com.* 457. That indulgence or liberality by which the laws of one nation are allowed to operate within the territories of another. See *Comity*. The rule is, that *comitas* is to be observed *quatenus sine præjudicio indulgentium fieri potest*, (as far as can be done without prejudice to those who allow it). Kent, C. 4 *Johns. Ch. R.* 460, 477.

COMITATUS. Lat. In the Roman law. The court (*aula*,) or household of the emperor. *Dig.* 29. 1. 43.

In feudal law. The dignity, office or fief of a *comes* or count. *Feud. Lib.* 1, tit. 14. *Lib.* 2, tit. 10.

COMITATUS. L. Lat. In old English law. A county or shire. So called from the *comes*, or earl, who formerly had the government of it, as *county* is derived from Fr. *comte*, count, denoting the same officer. 1 *Bl. Com.* 116, 398. *Co. Litt.* 168 a. *Spelman*, voc. *Comites*. *Mittemus justiciarios per unumquemque* comitatum *semel in anno, qui cum militibus* comitatuum *capiant in* comitatibus *assisas prædictus;* we will send justices through every county once a year, who, with the knights of the shires, shall take in the counties the assises aforesaid. *Mag. Cart.* 9 Hen. III. c. 12. See *Comes*.

An earldom. *Bract.* fol. 84. Still so called in Latin, although an earl has no territorial authority as formerly. *Co. Litt.* 83 b. 1 *Ld. Raym.* 13.

The county court, called among the Saxons *scyre gemote;* the *mallum* or *placitum* of the early continental nations. *Magna Charta*, c. 35. *Crabb's Hist. Eng. Law*, 47, 146. *Nullus* comitatus *teneatur nisi de mense in mensem;* no county court shall be held unless from month to month. *Fleta*, lib. 2, c. 52, § 2. Anciently a court of great dignity, and called by Spelman *forum plebeiæ justitiæ et theatrum comitivæ potestatis;* the tribunal of common justice, and the seat of the power of the county. *Spelman*, vocc. *Comites*, *Comitatus*. 3 *Bl. Com.* 36.

A train or body of companions, followers, or attendants; literally, a following, or attendance; a prince's court or household. *Spelman, ub. sup.* In the Roman law, the retinue of the governor of a province. *Adam's Rom. Ant.* 171.

COMITES. [pl. of *comes*, q. v.] Companions, attendants or followers; retainers or adherents. 1 *Bl. Com.* 254. 1 *Steph. Com.* 161. *Spelman*, voc. *Comites*. *Esprit des Lois*, liv. 30, c. 16.

Earls or counts. *Magna Charta*, c. 14. *Bract.* fol. 5 b. *Fleta*, lib. 1, c. 17, § 9. *Brownl.* part. 2, 339. See *Comes*.

COMITES PALEYS. L. Lat. Counts or earls palatine; those who had the government of a county palatine. *Bract.* fol. 122 b. Other copies of Bracton have *comites palentynes*. See *County palatine*.

COMITIA. Lat. [from *coire*, quasi *comire*, to assemble.] In the Roman law. General assemblies of the people, convened by the constitutional authority of some magistrate, in order to enact or repeal any thing by their suffrages. *P. Cyclopædia. Aulus Gellius*, *Noct. Att.* xv. 27. *Id.* xiii. 15. *Sigonius de Ant. Jur. Civ. Rom.* i. 17. *Gruchius de Comit. Rom.* lib. iii. They were of three kinds; *curiata*, *centuriata*, and *tributa*. See *infra*.

A name sometimes given to the English parliament. *Bacon's Works*, ix. Index.

COMITIA CURIATA. Lat. Assemblies of the people instituted by Romulus, in which they voted in *curiæ*, or parishes, of which there were thirty. See *Curiæ*. They were assemblies of the patrician order, or at least they were so constituted that that

order must have possessed a great preponderance in them. But see *Taylor's Civ. Law*, 183. They were also termed *comitia calata*. *Aulus Gellius, Noct. Att.* xv. 27. 1 *Kent's Com.* 518, 519, note.

COMITIA CENTURIATA. Lat. Comitia of centuries. Assemblies of the people, instituted by Servius Tullius, in which they gave their votes in centuries. These *comitia* embraced all the orders of the state, though the patricians and men of property generally exercised a controlling influence in them. *Aulus Gellius, Noct. Att.* xv. 27. 1 *Kent's Com.* 519, and note. *Taylor's Civ. Law*, 183. *Federalist*, No. 34. They were held for the election of magistrates, the making of laws, and the trial of offences against the state, and were the most important of the three kinds of *comitia*.

COMITIA TRIBUTA. Lat. Comitia of tribes. Assemblies of the Roman people, established B. C. 491, in which they voted according to tribes. From the circumstance that neither birth nor fortune gave any advantage in these *comitia* as in the others, all the people meeting on an equality, and voting *per capita*, they have been considered as assemblies of the plebeians only. 1 *Kent's Com.* 519, and note. *Aulus Gellius, Noct. Att.* xv. 27. *Federalist*, No. 34. *Taylor's Civ. Law*, 200.

COMITIA CALATA. Lat. [from O. Lat. *calare*, to call or convoke.] *Comitia* convened for certain religious purposes, and at which testaments were usually made. *Aul. Gell. Noct. Att.* xv. 27. The term is usually applied to the *comitia curiata*, but Gellius applies it to the *comitia centuriata* also; the only distinction being that the former were called by a lictor, the latter by a cornicen, or trumpeter. *Id. ibid.*

COMITISSA. L. Lat. [from *comes*, an earl.] In old English law. A countess; an earl's wife. *Towns. Pl.* 149. *Bract.* fol. 93 b, 219.

COMITIVA. L. Lat. [from *comes*, q. v.] In old English law. The dignity and office of a *comes*, (count or earl); the same with what was afterwards called *comitatus*. *Spelman.*

Used in the Register, in the sense of *comitatus*, a train, suite, following, attendance, or household. *Reg. Orig.* 23, 24.

COMITY. [Lat. *comitas*, q. v.] Courtesy. *Comity of nations* is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. *Story, Confl. Laws*, § 38. See 20 *Johns. R.* 263, Platt, J.

COMMANDERY, *Commandry*. [Lat. *præceptoria*.] In English law. An establishment belonging to the priory of St. John of Jerusalem, consisting usually of a manor, or chief messuage, with lands and tenements appertaining thereto, under the government of an officer called a *commander*, who received a part of the income thence arising for his own use, and accounted for the rest. *Cowell. Termes de la Ley. P. Cyclopædia. Encycl. Americ.*

COMMANDITÉ or SOCIETE EN COMMANDITÉ. Fr. [Ital. *accomandita*; from Lat. *commendare*, to deposit or entrust.] In French law. A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called *commandataire*, or *commendataires*, or partners *en commandité*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. *Story on Partn.* § 78. *Wordsworth on Joint Stock Companies*, 2. 3 *Kent's Com.* 34. This kind of partnership has been introduced into American law, and is authorized by statute in several of the states. *Id.* 35. See *Troubat on the Law of Commandatary and Limited Partnership*, chap. 3, 4.

COMMANDITAIRES. Fr. Special partners; partners *en commandité*. See *Commandité*.

COMMANDMENT. [L. Fr. *commandement*; L. Lat. *præceptum*.] In practice. An act of authority, as of a magistrate or judge, in committing a person to prison.* *Cowell.*

In criminal law. The act or offence of one who commands another to transgress the law, or do any thing contrary to law, as theft, murder, or the like. *Bract.* fol. 138, 139. *Termes de la Ley. Stat. Westm.* 1, c. 14. Particularly applied to the act of an accessary before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 *Inst.* 182.

COMMARCHIO. L. Lat. A boundary or border; a common boundary. See *Marchiare*.

COMMEATUS. Lat. Provisions. The Haabet, 2 *Rob. Adm. R.* 182.

COMMENDA. L. Lat. [i. e. *ecclesia commendata, vel custodia ecclesiæ alicui commissa;* a church commended, or the care of a church committed to any one.] In English ecclesiastical law. A living or benefice *commended* by the crown to the care of a clerk, to hold till a proper pastor is provided for it; otherwise called a *commenda retinere.* 1 *Bl. Com.* 393. When a clerk is promoted to a bishopric, all his other preferments are void the instant he is consecrated. But he is sometimes allowed, by favor of the crown, to retain or hold them *in commendam*, as it is termed, from which these livings have obtained the name of *commendam. Id. ibid.* 3 *Steph. Com.* 87. *Termes de la Ley. Cowell.* By the statute, 6 & 7 Will. IV. c. 77, s. 18, no *commendam* can in future be granted.

COMMENDA. Lat. [Fr. *commande;* from *commendare*, to deposit, to lend or entrust.] In mercantile law. An association in which capital was entrusted to individuals. *Troubat on Command. & Lim. Part.* ch. 3, § 27.

COMMENDAM. See *Commenda.*

The limited partnership (or *Societé en commandité*) of the French law has been introduced into the Code of Louisiana under the title of partnership *in commendam. Civ. Code of Louis.* Art. 2810. 3 *Kent's Com.* 34, 35.

COMMENDARE. Lat. In the civil law. To commend; to recommend a person. *Si petieris a me uti te alicui* commendarem, *et eas* commendaticias *tibi misero literas;* if you should ask of me to recommend you to a person, and I should give you a letter of recommendation. *Dig.* 41. 1. 65. pr. See *Id.* 47. 2. 64. 4.

To commend or praise a thing, as an article offered for sale. *Quod venditur ut* commendet *dicit;* what a seller says in order to commend. *Dig.* 4. 3. 37. See *Id.* 18. 1. 43. pr.

To deposit; to lend; to entrust a thing. *Dig.* 50. 16. 186. *Id.* 16. 3. 34.

COMMENDARE. L. Lat. In old European and feudal law. To commend, commit or entrust one's self to the protection of another, (called among the Saxons *mundeburde*, or *mundbyrd.*) *Spelman. Cowell*, voc. *Mundeburde.* Mr. Spence traces this practice to the Roman law. 1 *Spence's Chancery*, 29.

COMMENDATI. See *Commendatus.*

COMMENDATIO. Lat. [from *commendare*, to commend.] In the civil law. Commendation; praise or recommendation. **Simplex commendatio non obligat.** Mere commendation [of an article] does not bind [the seller; does not amount to a warranty]. 2 *Kent's Com.* 485. **Ea quæ, commendandi causa, in venditionibus dicuntur, si palam appareant, venditorem non obligant.** Things which are said, on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. *Dig.* 18. 1. 43. pr.

COMMENDATUS. L. Lat. [from *commendare*, q. v.] In feudal law. One who entrusts himself to the protection of another. *Spelman.* A person who, by voluntary homage, put himself under the protection of a superior lord. *Cowell*, voc. *Commendati.* His obligation in such case was to faith and obedience, (*fide et obsequio,*) but without oath, or any tenure. *Spelman. Domesday*, cited *ibid.*

COMMERCE. [Lat. *commercium*, from *con*, together, and *mercari*, to trade, from *merx*, merchandise.] In a strict sense, traffic in merchandise.

In a general sense, an interchange or mutual change of goods, wares, productions or property of any kind, between nations or individuals, either by barter, or by purchase and sale. *Webster.* Opinion of Daniel, J. 7 *Howard's R.* 501. *Commerce* is made by Webster and others, the synonyme of *trade*, and divided into foreign and inland. A distinction, however, is frequently made between *commerce* and *trade*, properly so called; the former term being used to denote intercourse with foreign nations; the latter, intercourse between citizens or subjects of the same nation. *Wharton's Lex. Holthouse.*

Intercourse between nations; intercourse with foreign nations, including navigation. So defined, in construing the Constitution of the United States, Art. I. Sect. VIII. Marshall, C. J. 9 *Wheaton's R.* 1, 189. McLean, J. 7 *Howard's R.* 401. Wayne, J. *Id.* 436. Grier, J. *Id.* 462. The term seems, almost *ex vi termini*, to import intercourse by means of shipping. *Federalist*, No. 11. 3 *Kent's Com.* 1—21. See *Commercial law.*

COMMERCIA BELLI. Lat. In international law. Communications or conventions of war. Compacts or arrangements entered into between hostile powers or contending armies, by which a peaceful inter-

course is, for the time, established between them; as for the purpose of burying the dead, exchanging prisoners, and the like. *Grotius, de Jur. Bell.* lib. 2, c. 19, § 3. *Id.* lib. 3, c. 21, § 1. A truce is also a convention of this kind. *Id. ibid.* 1 *Kent's Com.* 159. Sir Wm. Scott, The Daifjie, 3 *Rob. Adm. R.* 140. This phrase is taken from Grotius, who borrowed it from Philo. *Grot. de J. B.* lib. 2, c. 19, § 3, citing *Philo in Flacc.* p. 974 A.

War contracts. Contracts or conventions made between the subjects of two powers at war with each other; such as ransom bills, contracts made by prisoners of war for subsistence, and the like. 1 *Kent's Com.* 104, 105, 169.

COMMERCIAL LAW. The law by which the commerce of nations is regulated. The word *commercial* here so far implies intercourse by sea, or by means of shipping, as to be constantly used almost as the synonyme of *maritime.* 3 *Kent's Com.* 1—21. See *Maritime law.*

COMMERCIUM. Lat. In the civil law. Commerce, trade or traffic; dealing between one person and another, in the way of purchase and sale; a contract. *Dig.* 49. 15. 6. *Feud. Lib.* 2, tit. 52. Commercium *jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum;* commerce, by the law of nations, ought to be common, and not converted into monopoly and to the private gain of a few. 3 *Inst.* 181, *in marg.*

The right or power of purchase and sale; power over a subject of sale. *Inst.* 3. 20. 2. *Esse in commercio;* to be a subject of dealing, contract or acquisition. *Id.*

COMMESSALIS. L. Lat. In old English law. A table-companion; a messmate. *Fleta,* lib. 4, c. 8, § 8.

COMMINALTY, *Comminaltie.* L. Fr. The commonalty or people. *Stat. Westm.* 1, pr. *Confirm. Chart.* cc. 6, 7. 2 *Inst.* 530.

COMMINATORIUM. L. Lat. [from *comminari,* to threaten.] In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. *Bract.* fol. 398.

COMMISE. Fr. In old French law. Forfeiture; the forfeiture of a fief; the penalty attached to the ingratitude of a vassal. *Guyot, Inst. Feod.* c. 12.

COMMISSARY. [L. Lat. *commissarius, officialis foraneus.*] In English ecclesiastical law. A title formerly applied to an officer who exercised spiritual jurisdiction in distant places of the bishop's diocese; being specially ordained for the purpose of supplying the bishop's jurisdiction and office in the outplaces of his diocese, or else in such places as were peculiar to the bishop, and exempted from the jurisdiction of the archdeacon. *Termes de la Ley. Cowell. Lyndewode Provinc.* cap. 1.

COMMISSION. [Lat. *commissio,* from *committere,* to commit or entrust.] In practice. A warrant or authority in writing and under seal, sometimes in the form of letters patent, empowering those to whom it is directed, to perform certain acts, or to exercise a certain jurisdiction.* *Termes de la Ley.* It is for the most part the same as the *delegatio* of the civilians. *Cowell.* See old forms of commissions, *Reg. Orig.* 64, 88, 128, 138. *Reg. Jud.* Appendix, 19. In England, the judges of the superior courts sit upon their circuits, by virtue of commissions. 1 *Tidd's Pr.* 41. And justices of the peace are always appointed by commission. See *infra.*

The individuals themselves, who act by virtue of such an authority.*

A writ issued out of some court under its seal, authorizing the persons named in it to perform certain specified duties, as to take the testimony of witnesses, &c.* See *Commission to take testimony.*

The order or instruction under which one person traffics, negotiates or acts for another.

The compensation allowed an agent for his services. *Story on Agency,* § 326.

To COMMISSION. To authorize or empower by virtue of a written warrant, authority or commission; to appoint with such authority.* The emphatic word in the old commissions is *constituimus,* (we have constituted,) or *assignavimus,* (we have assigned). *Bract.* fol. 109, 110. *Reg. Orig.* 64, 88, 128. *Reg. Jud.* Appendix, 19.

COMMISSION OF ASSIZE. In English law. One of the five several authorities, by virtue of which, until recently, the judges of the superior courts sat upon their circuits. 3 *Bl. Com.* 58. It was a commission directed to the justices and serjeants therein named, *to take* (together with their associates) *assizes* in the several counties; that is, to take the verdict of a peculiar species of jury called an *assise,* and summoned for the trial of landed dis-

putes. *Id.* 59. 1 *Tidd's Pr.* 41. 2 *Reeves' Hist. Eng. Law*, 426. See *Assise.* The recent abolition of assises and other real actions in England, has thrown this commission out of force; and it is accordingly omitted by Mr. Stephen in enumerating the commissions of the judges. 3 *Steph. Com.* 424, note (*x*).

COMMISSION OF BANKRUPT. A commission or authority formerly granted by the Lord Chancellor, in cases of bankruptcy, to such persons, (usually five,) as he should think proper, (who were thence styled commissioners of bankrupt,) authorizing them to proceed according to the statute against bankrupts. Instead of a commission, a *fiat* now issues by virtue of 1 & 2 Will. IV. c. 56, § 12; the commissioners constituting a permanent court. 2 *Steph. Com.* 199. See *Commissioners of bankrupt.*

COMMISSION TO EXAMINE WITNESSES. In practice. A commission issued out of, and under the seal of the court in which an action is pending, to obtain the testimony of persons not residing within the jurisdiction of the court, and whose personal attendance cannot be compelled by subpœna. It is directed to one or more individuals residing at the same place with the witnesses, authorizing them to take their testimony in writing and return it under seal, and in accordance with certain prescribed formalities, to the court which issued it. 2 *Tidd's Pr.* 810, 811. In England, a commission is also sometimes issued to take the testimony of witnesses within the jurisdiction of the court, as where a witness is going abroad, &c. *Id. ibid.*

COMMISSION OF LUNACY, (otherwise called a commission DE LUNATICO INQUIRENDO.) In equity practice. A commission issuing out of chancery, authorizing certain persons to *inquire* whether a person represented to be a *lunatic*, be so or not; in order that, if he or she be found a lunatic, their person or estate may be properly taken care of. 1 *Bl. Com.* 305. See old form of commission, *Reg. Jud.* Appendix, 19. This is usually done by committing the care of it to some suitable persons, called the lunatic's *committee.* 1 *Bl. Com. ub. sup.* 2 *Steph. Com.* 531. *Stock on Non Compotes Mentis*, 86—128. [2] *N. Y. Rev. St.* [52]. 1 *Id.* 813.

COMMISSION OF NISI PRIUS. In English law. One of the five [now four] commissions by virtue of which the judges of the superior courts sit upon their circuits. It is a consequence of the [ancient] commission of assise (*supra*); being annexed to the offices of the justices by the statute of Westminster, 2, c. 30, and it empowers them to try all questions of fact issuing out of the courts of Westminster, that are then ripe for trial by jury. 3 *Bl. Com.* 58, 59. 3 *Steph. Com.* 424.

COMMISSION OF THE PEACE. In English law. A commission from the crown, appointing certain persons therein named, jointly and severally to keep the *peace*, &c. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 *Bl. Com.* 351. 3 *Steph. Com.* 39, 40.

COMMISSION OF REBELLION, (sometimes called a *writ of rebellion.*) In equity practice. A process formerly used in the court of chancery in England, being one in the series of what was called *process of contempt.* Where a defendant was in contempt, the order of this process was, 1. attachment; 2. attachment with proclamations; 3. commission of rebellion; 4. sending a sergeant-at-arms; and 5. sequestration. 3 *Bl. Com.* 443, 444. See *Contempt.* The commission of rebellion issued on the attachment with proclamations being returned *non est inventus*, and was directed to four commissioners, authorizing them to attach the party as a rebel and contemner of the laws, (*tanquam rebellis et legis nostræ contemptor,*) wherever he might be found in the kingdom, and bring, or cause him to be brought before the court on a day assigned. *Id. ibid. Termes de la Ley. Reg. Jud.* Appendix, 47. This process has, by order of 26th August, 1841, r. 6, been dispensed with. 4 *Steph. Com.* 20, note (*d*).

COMMISSION OF REVIEW. In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 *Bl. Com.* 67. Now out of use, the privy council being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. *Stat.* 2 & 3 *Will.* IV. c. 92. 3 & 4 *Will.* IV. c. 41, s. 3. 6 & 7 *Vict.* c. 38. 3 *Steph. Com.* 432.

COMMISSION OF SEQUESTRATION. See *Sequestration.*

COMMISSION OF SEWERS. In Eng-

lish law. A commission under the great seal, constituting the persons to whom it is directed a court of special jurisdiction under the name of *commissioners of sewers*, (q. v.) 3 *Bl. Com.* 73.

COMMISSION DAY. In English practice. The opening day of the assizes. *Wharton's Lex.*

COMMISSIONER. [L. Lat. *commissionarius.*] A person holding a commission for the discharge of certain duties, as the execution of a public office.* *Cowell.* See *Commission.* A person holding a commission to take affidavits or depositions and the acknowledgments of deeds, is frequently simply termed a *commissioner.*

A person to whom a commission is directed, authorizing the performance of certain specific acts, as the examination of witnesses.* *Jacob.*

COMMISSIONERS OF SEWERS. In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones; and to cleanse such rivers, and the streams communicating therewith. *Stat.* 3 & 4 *Will.* IV. c. 22, s. 10. 3 *Steph. Com.* 442, and note (*r*). *Crabb's Hist. Eng. Law*, 469. The word *sewer* is used in this phrase in the sense of a trench, ditch or channel for draining marshy lands, and carrying water into the sea, as well as in that of a natural water-course. See *Sewer.*

Commissioners of sewers have sometimes been appointed in the United States, to remove obstructions and regulate the flow of water in creeks and rivers. See 7 *Pick. R.* 207.

COMMISSIONERS OF BANKRUPT. In English law. Commissioners appointed under the great seal, and whose duties are, to take proof of the petitioning creditor's debt, the trading and act of bankruptcy, to examine the bankrupt in all matters relating to his trade and effects, assign his property to assignees, and to perform various other important duties connected with bankruptcy matters. 1 *Bl. Com.* 480—486. *Eden's Bankrupt Law*, 79, and *passim.*

These commissioners now compose permanent courts of bankruptcy. *Stat.* 1 & 2 *Will.* IV. c. 56; 5 & 6 *Will.* IV. c. 29, s. 21; 5 & 6 *Vict.* c. 122. 2 *Steph. Com.* 199, 200. 3 *Id.* 425, 426.

COMMISSOR. L. Lat. [from *committere*, q. v.] In old English law. A committer; one who committed or entrusted land to another to hold during his pleasure. *Fleta*, lib. 5, c. 5, § 18.

COMMISSORIA LEX. See *Lex commissoria.*

COMMIT. [Lat. *committere;* L. Fr. *comaunder.*] In practice. To send a person to prison for any crime or contempt.* 4 *Bl. Com.* 295, 300. 1 *Tidd's Pr.* 479, 481.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 285, 287.

COMMITMENT. In practice. The sending or committing a person to prison or gaol, by warrant or order, either for a crime, contempt, or contumacy.* 4 *Bl. Com.* 296, 300. 3 *Steph. Com.* 364, 367.

The delivery of a defendant to the custody of a sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 286, 289. See *Committitur.*

A part of the process of charging a defendant in execution. *Id.* 364, 365.

The warrant or order by which a party is committed.* Sometimes termed a *mittimus.* See *United States Digest*, Commitment.

COMMITTEE. In practice. One or more individuals to whom the consideration or management of any matter is *committed* or referred by some court, or by consent of parties to whom it belongs.* *Termes de la Ley. Cowell.* The *committee* of a lunatic, idiot, &c. is the person to whom the care and custody of the person or estate of such lunatic is *committed* by the court of chancery. 1 *Bl. Com.* 305.

COMMITTERE. Lat. In old English law. To commit; to entrust or put in charge. *Terra* committetur *duobus legalibus et discretis hominibus;* the land shall be committed to two lawful and discreet men. *Mag. Cart. Joh.* c. 4.

To commit, or be guilty of. *Committit jurator perjurium, quando,* &c. the juror commits perjury, when, &c. *Fleta*, lib. 5, c. 22, § 9.

To send to; to send to prison or into custody. See *Committitur.*

COMMITTITUR. Lat. (He is committed—from *committere*, to commit.) In practice. An order or minute, setting forth that the person named in it *is committed* to the custody of the sheriff. Most commonly used on the surrender of a defendant by

his bail, in which cases it is a minute of the render and commitment. 1 *Tidd's Pr.* 285. 10 *East*, 47.

COMMITTITUR PIECE. In English practice. An instrument in the form of a bail-piece, by which a defendant already in custody is charged in execution, at the suit of the same or another plaintiff. 1 *Tidd's Pr.* 363, 364.

COMMIXTIO. Lat. [from *commisceri*, to mix together.] In the civil law. Commixture or commixtion; a mixing together of things solid or dry, (as *confusio* is of things liquid,) which belong to different owners. *Inst.* 2. 1. 28. 27. 1 *Mackeldey's Civ. Law*, 285, § 270. One of the modes of acquiring property in goods. See *Confusio.*

COMMODARE. Lat. In the civil law. to loan or lend; to give a thing to another to be used. *Inst.* 3. 14. [15]. 2. *Dig.* 13. 6.

COMMODATE. In Scotch law. A gratuitous loan for use. *Ersk. Inst.* b. 3, tit. 1, § 20. Closely formed from the Lat. *commodatum*, (q. v.)

COMMODATOR. Lat. [from *commodare*, to lend.] In the civil law. A, or the lender, as distinguished from him to whom a thing is loaned, (*cui commodata res est.*) *Inst.* 4. 1. 16.

COMMODATUM. Lat. [from *commodare*, to lend.] In the civil law. A thing loaned, (*res commodata*). *Dig.* 13. 6. 1. 1. *Bract.* fol. 99 b.

The contract by, or upon which a thing is loaned; a loan for use without pay. A bailment of a thing, or of goods, to be used by the bailee for his own benefit, (*ad commodum,*) temporarily, or for a certain time, without reward, (*nulla mercede accepta vel constituta,*) and then to be identically returned to the lender.* *Inst.* 3. 15. [14.] 2. *Dig.* 13. 6. *Bract.* fol. 99 b. *Fleta*, lib. 2, c. 56, § 6. 2 *Kent's Com.* 573, 574. *Story on Bailment*, § 6. Called in Scotch law, *commodate;* a term which Mr. Justice Story regrets has not been introduced into the English law of bailment. *Ersk. Inst.* b. 3, tit. 1, § 20. 1 *Bell's Com.* [197,] 295. *Story on Bailm.* § 221.

COMMODATI ACTIO. Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned, (*commodatum*) and not returned to the lender. *Inst.* 3. 15. 2. *Id.* 4. 1. 16. *Dig.* 13. 6. *Cod.* 4. 23.

COMMODUM. Lat. Advantage, benefit or profit. **Commodum ex injuria sua nemo habere debet.** No man ought to have advantage [to derive benefit] from his own wrong. *Jenk. Cent.* 161. No man shall take a benefit of his own wrong. *Finch's Law*, b. 1, c. 3, num. 62. **Un ne doit prise avantage de son tort demesne.** 2 *And.* 38, 40. See **Nemo ex suo delicto, &c.**

Cujus est commodum, ejus debet esse incommodum. Whose the advantage is, his ought the disadvantage to be. He who has the benefit of a thing, ought also to be subject to the disadvantage of it. 1 *Kames' Equity*, 289. This maxim is more frequently expressed in the hexameter line,

Qui sentit *commodum*, sentire debet et onus.

Secundum naturam est commoda cujusque rei eum sequi quem sequentur incommoda. It is according to nature, that the advantages of a thing should follow him who is to be subject to its disadvantages. *Dig.* 50. 17. 10. This maxim of the civil law embodies the converse of the preceding, and is applied by Bracton in the following passage: *Ipsum sequi debent* commoda *quem sequuntur* incommoda, *et* commodum *ejus esse debebit cujus est periculum;* the advantages [attending a sale before delivery] ought to attach to him who is subject to the disadvantages; and the benefit [arising from an accidental increase of value during that interval] ought to be his who takes the risk [of loss during the same interval.] *Bract.* fol. 62. *Fleta*, lib. 2, c. 58, § 8.

COMMON. [Lat. *communis.*] Bracton distinguishes between common and public. Publica *ita accipiuntur quæ sunt omnium populorum, i. quæ spectant ad usum* hominum *tantum.* Communia *vero dici poterunt aliquando quæ sunt omnium* animantium. *Public* things are understood to mean those which belong to all people, that is, with reference to the use of *men* only. *Common* things may be defined to be those which belong to all living *creatures. Bract.* fol. 8. But see 6 *Mod.* 256.

COMMON. [L. Fr. *comon, comen, comun;* L. Lat. *communia*, q. v.] A profit which a man hath in the land of another; as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. 2 *Bl. Com.* 32. 2 *Steph. Com.* 3.—A right or privilege which one or more persons claim, to take or use some part of that which another man's lands, waters, woods, &c. naturally produce, without having an absolute pro-

perty in such lands, waters, woods, &c. 1 *Crabb's Real Prop.* 257, 258, § 268.—A privilege which a man may enjoy, of taking a profit, in *common* with many, in the land of another, as to feed his beasts, &c. *Roscoe's Real Act.* 366.—A right of taking a profit in the land of another, *in common* either with the owner or with other persons.* The radical meaning of the term *common*, in all its applications, is —something enjoyed by *more than one* person; properly, by *many* together. *Co. Litt.* 122 a. Savage, C. J. 10 *Wendell's R.* 639, 647. Fleta calls it a servitude. *Fleta*, lib. 4, c. 18, § 3.

Common, in English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258, § 268. It is chiefly of four sorts; common of *pasture*, of *piscary*, of *turbary*, and of *estovers*, (qq. v.) "The ancient books," it has been said, "are more explicit on rights of common than the modern; probably on account of the great increase of inclosures." De Grey, C. J. 2 *W. Bl.* 818.

Common is little known or used in this country, and probably does not exist in any of the northern or western parts of the United States which have been settled since the revolution. 3 *Kent's Com.* 404. But see the Constitution of Illinois, (1818,) art. 8, sect. 8. The term, however, is frequently used to denote a space or tract of ground in a town or other municipal district, set apart for the public use of the inhabitants. 2 *Hilliard's Real Prop.* 77. See *United States Digest*, Common.

As to the etymology of the word, the Lat. *communia* is derived by Bracton from *cum*, with, and *una*, together, or by transposition, from *una*, and *cum*, the word *alio* (another) or *aliis* (others) being understood. *Bract.* fol. 208, 222. Whatever may be said of the correctness of this derivation, it serves to show with great force the original meaning of the term, as deriving its name from the *community* of interest which arises between the claimant of the right and the owner of the soil, or between the claimant and other commoners entitled to the same right. 2 *Steph. Com.* 3. Lord Coke says it is so called because it is *common* to many. *Co. Litt.* 122 a. Cowell applies the term to the land or water itself of which the use is common to this or that town, &c. And hence, no doubt, the popular meaning of *common*, as a waste or unenclosed ground; that having been the kind of ground originally subject to the right. 2 *Steph. Com.* 4. See 10 *Mod.* 185.

COMMON OF PASTURE. [L. Lat. *communia pasturæ;* L. Fr. *commune de pasture.*] The right of feeding one's beasts on another's land, in common with the owner, or with other persons.* 2 *Bl. Com.* 32. 2 *Steph. Com.* 4. Savage, C. J. 10 *Wendell's R.* 647. Called, in Scotch law, "common pasturage." *Bell's Dict.* It is of four sorts, *appendant*, *appurtenant*, *because of vicinage*, and *in gross.* 2 *Bl. Com.* 32. *Co. Litt.* 122 a.

COMMON APPENDANT. [L. Lat. *communia pertinens.*] A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. Savage, C. J. 10 *Wendell's R.* 648. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 1 *Crabb's Real Prop.* 258, § 269. This kind of common arises from the connexion of tenure, and is of common right; it must have existed from time immemorial and cannot now be created; it is regularly appendant to arable land only, and can be claimed for no beasts but such as are commonable, that is, beasts of the plough, such as horses or oxen, or such as manure the ground, as kine or sheep. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258—264, §§ 268—276. *Roscoe's Real Act.* 367. 3 *Kent's Com.* 404. Savage, C. J. 10 *Wendell's R.* 648.

COMMON APPURTENANT. A right of feeding one's beasts on the land of another, [in common with the owner or with others,] which is founded on a grant, or a prescription which supposes a grant. 1 *Crabb's Real Prop.* 264, § 277. This kind of common arises from no connexion of tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 *Bl. Com.* 33. *Co. Litt.* 121 b, 122 a. 4 *Co.* 37, 38. *Cro. Car.* 482. 1 *Crabb's Real Prop.* 254—268, §§ 277—283. *Roscoe's Real Act.*

368. 3 *Kent's Com.* 404. Savage, C. J. 10 *Wendell's R.* 648. See 25 *Penn. St. R.* 161.

COMMON BECAUSE OF VICINAGE, or NEIGHBORHOOD [L. Fr. *comon pur cause de vicinage;* L. Lat. *communia ex causa vicinitatis,*] Is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may enclose and bar out the other, though they have intercommoned time out of mind. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. *Bract.* fol. 222. This kind of common can be only for cattle *levant et couchant* upon the lands to which it is annexed, (7 *Co.* 5; but see 5 *Taunt.* 244); and it must be used with commonable cattle. 7 *Co.* 5. 1 *Crabb's Real Prop.* 271—273, §§ 290—292. *Roscoe's Real Act.* 369.

Dr. Wooddesson observes that Blackstone's account of common *pur cause de vicinage* is not properly a definition, but rather a descriptive example or illustration, there being other occasions when the excuse for trespass may be used. 2 *Wooddes. Lect.* 50.

COMMON OF SHACK. A species of common by vicinage, prevailing in the counties of Norfolk, Lincoln and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in that field. 2 *Steph. Com.* 6. 7 *Co.* 5, 65. 1 *B. & Ald.* 710. 1 *Crabb's Real Prop.* 273, § 293.

COMMON IN GROSS, or AT LARGE. A species of common which is neither appendant nor appurtenant to *land*, but is annexed to a man's *person*, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 *Bl. Com.* 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 *Steph. Com.* 6. 1 *Crabb's Real Prop.* 268, § 284. *Roscoe's Real Act.* 369.

COMMON SANS NOMBRE. L. Fr. [L. Lat. *communia sine numero.*] Common without number; that is, without *limit* as to the *number* of cattle which may be turned on; otherwise called, common *without stint. Bract.* fol. 53 b, 222 b. 2 *Steph. Com.* 6, 7. 2 *Bl. Com.* 34. 3 *Id.* 238, 239. 2 *Wils.* 274. 2 *Wooddes. Lect.* 49.

It has been denied in some of the cases in England, that this kind of common can now exist. *Willes*, 232. 1 *Saund.* 346. The better opinion seems, however, to be, that it may exist as a species of common in gross, if granted to an individual, but that a corporation cannot prescribe for it. This is the opinion of Mr. Crabb and Mr. Stephen. 1 *Crabb's Real Prop.* 269, 270, § 287. 2 *Steph. Com.* 7, and note (*b*). Dr. Wooddesson remarks upon the phrase *common without stint*, as loosely used by Blackstone. 2 *Bl. Com.* 34. 2 *Wooddes. Lect.* 49. It is, however, more clearly explained by the same author in another place. 3 *Bl. Com.* 238, 239.

COMMON OF PISCARY, or FISHERY. [Lat. *communia piscariæ.*] The right or liberty of fishing in another man's water, [in common with the owner or with other persons]. 2 *Bl. Com.* 34. Dallas, J. 8 *Taunt.* 187. 1 *Crabb's Real Prop.* 280, § 304. *Schultes' Aquatic Rights*, 25. —A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 *Kent's Com.* 409. It is quite different from a common fishery, (*communis piscaria,*) with which, however, it is frequently confounded by the text writers. 8 *Taunt.* 183. *Schultes' Aquatic Rights*, 60, *et seq.* See *Common fishery.*

COMMON OF TURBARY. [L. Lat. *communia turbariæ.*] A liberty of digging turf upon another man's ground, [in common with the owner, or with other persons]. 2 *Chitty's Bl. Com.* 34, *and note. Co. Litt.* 122. 2 *Steph. Com.* 9. It may be either by grant or prescription, and may be either appurtenant or in gross, but it is usually claimed as appurtenant and by prescription. *Id. ibid.* 9, 10. It cannot, however, be claimed as appurtenant to land, but only to a house. 4 *Co.* 37 a. And it authorizes not the taking of turf, except for the purpose of using it as fuel in the particular house to which the right is annexed. *Noy*, 145. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 278, § 300, *et seq.* See *Turbary.*

COMMON OF ESTOVERS. A liberty of taking necessary wood for the use or furniture of a house or farm, from off another's

estate, [in common with the owner or with others]. 2 *Bl. Com.* 35. It may be claimed, like common of pasture, either by grant or prescription. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 274, § 29, *et seq.* 3 *Kent's Com.* 404. 10 *Wendell's R.* 639.

This right is not to be confounded (although it sometimes is) with the right of a tenant or lessee to take estovers from off the land let or demised to him. 2 *Steph. Com.* 10. 2 *Chitty's Bl. Com.* 35, note. See *Estovers.*

COMMON ASSURANCES. The several modes or instruments of conveyance established or authorized by the law of England. Called *common*, because thereby *every man's* estate is assured to him. 2 *Bl. Com.* 294. See *Assurance.* Sheppard's celebrated treatise on the law of conveyance is called the "Touchstone of common assurances."

COMMON BAIL. In practice. A species of bail intended only to express the appearance of a defendant in cases where special bail is not required. See *Bail, Common.*

COMMON BAR. In pleading. A plea in an action of trespass, otherwise called *blank bar.* See *Blank bar.*

COMMON BARRETOR. In criminal law. One who frequently excites and stirs up suits and quarrels, either at law or otherwise. See *Barretor, Barretry.*

COMMON BENCH. [L. Lat. *communis bancus;* L. Fr. *le commun banke.*] The former title of the English court of Common Pleas, and still sometimes used in the reports. Its original title seems to have been simply "The Bench;" the epithet "*common*" being added probably to distinguish it from the King's or Queen's Bench, as being originally established for the trial of *common* causes, (*communia placita,*) or controversies between *common* persons, that is, between subject and subject. 1 *Reeves' Hist. Eng. Law*, 57, 58. 3 *Bl. Com.* 37—40. *Camd. Brit.* 113. 8 *Co.* pref. Called also the court of "the Bench at Westminster." 3 *M. & S.* 166. From the language of Magna Charta, (c. 11,) it is generally supposed to have been a stationary court, held permanently at Westminster. But this was not uniformly the case, at least as early as the reign of Edward III. In a case in Michaelmas Term, (*Yearb.* 7 Edw. III. 47,) it is said, "The C. B. is not in a certain place, but in divers places at the will of the king." So in H. 8 Edw. III. 47, it is said, "the C. B. is not in a certain place, but sometimes here, (*un foits icy,*) at other times at London, changing at the will of the king." See *Bench, Bancus, Common Pleas, Court of.*

COMMON CARRIER. A person who *carries* the goods of others for hire. One who undertakes for hire, to carry for any who choose to employ him. 1 *Smith's Leading Cases*, (Am. ed.) 104. 4 *N. Hamp. R.* 304. 1 *Pick. R.* 50. Common carriers are of two kinds; by *land*, as owners of stages, stage-wagons, rail-road cars, teamsters, cartmen, draymen and porters; and by *water*, as owners of ships, steamboats, barges, ferrymen, lightermen, and canal boatmen. 2 *Kent's Com.* 589, *et seq.* 1 *Smith's L. Cas. ub. sup.*

The term *common*, as applied to a carrier, would seem, *ex vi termini*, to imply the carrying to be a *common* or public employment, or one undertaken as a *business*, in contradistinction to carrying on a particular occasion, or for particular persons. *Story on Bailm.* § 495. See 2 *Kelly's* (Geo.) *R.* 349. The rule of law, however, seems to be settled, that *any one* who undertakes, though only *pro hac vice*, to carry for hire, without a special contract, assumes the character and thereby incurs the responsibility of a common carrier. 1 *Smith's Lead. Cas.* 104. 1 *Watts' & Serg. R.* 285, there cited. 2 *Kent's Com.* 597, and note. See *Angell on Carriers.*

COMMON CHASE. [L. Fr. *comon chace.*] In old English law. A place where the right of hunting wild animals, (*touts beasts chaceables,*) was common to all, (*à toutz gents*). *Yearb.* P. 10 Edw. III. 28.

COMMON COUNCIL. [L. Lat. *commune concilium.*] The representative body of a corporation, in which is vested the power of making its laws and administering its affairs.* According to Lord Holt, a common council is incident to all corporations of common right, unless it be otherwise provided by the patent of creation. 1 *Ld. Raym.* 226. One of the ancient names of the English parliament was "the common council of the realm," (*commune concilium regni*). 1 *Bl. Com.* 148.

COMMON COUNTS. In pleading. Counts of invariable form, framed upon certain general principles of statement, and therefore *common* in their application to a great variety of actions; as distinguished from *special* counts, which are adapted to the special circumstances of each particular

case, and are peculiar to the individual actions in which they are employed.* In other words, they are general forms of pecuniary demand, founded on express or implied promises, to pay money in consideration of a precedent or existing debt. 1 *Chitt. Pl.* 273. Their principal use is to sustain the plaintiff on the trial of a cause, in the event of a failure to prove his case as stated in the special counts of his declaration. *Steph. Pl.* 287, (Am. ed. 1824.) 1 *Burr. Pr.* 130, note. They are most frequently employed in claims for goods sold, work done, money lent, money paid, money had and received, and money due on an account stated, (which last are commonly called the *money counts*,) and sometimes without any special counts. See *Indebitatus assumpsit, Quantum meruit, Quantum valebant, Insimul computassent.* In England, since the Pleading Rules of Hil. T. 2 Will. IV. the importance of these counts has been considerably diminished, and in some cases they can no longer be resorted to. 1 *Chitt. Pl.* 339—359, (Perkins' ed. 1847).

COMMON DAY. [L. Lat. *dies communis.*] In old English practice. An ordinary day in court. *Stat.* 13 *Ric.* II. st. 1, c. 17. Such as *Octabis Michælis*, (the octave of St. Michael,) *Quindena Paschæ*, (the Quinzime of Easter,) &c. *Stat.* 51 *Hen.* III. st. 2 & 3. *Cowell. Termes de la Ley.* See *Dies communis.*

COMMON DEBTOR. In Scotch law. A debtor whose effects have been arrested by several creditors. In regard to these creditors, he is their common debtor, and by this term is distinguished in the proceedings that take place in the competition. *Bell's Dict.*

COMMON ERROR. [Lat. *communis error*, q. v.] An error for which there are many precedents. "Common error goeth for a law." *Finch's Law*, b. 1, c. 3, num. 54.

COMMON FINE. [L. Lat. *finis communis.*] In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called head silver, cert money, (q. v.) or *certum letæ. Termes de la Ley. Cowell.*—A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. *Bailey's Dict.* See *Leet.*

A fine or amercement imposed upon a county at large. *Bract.* fol. 36 b. *Stat. Westm.* 1, c. 18. *Fleta*, lib. 3, c. 14, § 9. 2 *Inst.* 197.

COMMON FISHERY. [L. Lat. *communis piscaria.*] A right of fishing common to all, as a fishery in the sea, or in a navigable river. 1 *Crabb's Real Prop.* 114, § 108. This is sometimes confounded with *common of* fishery, and *free* fishery, from both of which, however, it is clearly distinguishable. *Id. ibid.* 3 *Kent's Com.* 409—411. Dallas, J. 8 *Taunt.* 187. See *Common of fishery, Fishery, Free fishery.*

COMMON INFORMER. One who habitually gives, or makes a business of giving information of the violation of any penal statute, with a view to the prosecution of the offender, and to whom the whole or a part of the forfeiture is given.* 3 *Bl. Com.* 160. *Crabb's Hist. Eng. Law*, 509. See *Informer.*

COMMON INTENDMENT. Common meaning or understanding; the understanding of a thing according to the subject-matter, without straining it to any extraordinary or foreign sense. *Co. Litt.* 78, 303. *Termes de la Ley. Cowell. Blount.* See *Intendment.*

COMMON JURY. In practice. The ordinary kind of jury by which issues of fact are generally tried, as distinguished from a *special jury*, (q. v.)

COMMON LAW. [L. Lat. *Lex communis, Jus commune;* L. Fr. *comen ley, comon droit.*] The whole body of the law of England, as distinguished from the civil and canon laws; called also *Lex Angliæ* and *Lex terræ*, to distinguish it from systems of foreign origin. *Termes de la Ley.* 1 *Wooddes. Lect. Introd.* lxxxi. *Hale's Hist. Com. Law*, ch. 3. In this sense, it comprehends statute law, (*Co. Litt.* 115 b,) and is termed by Spelman *jus civile Anglorum*, (the civil law of the English.) *Spelman*, voc. *Jus commune.* See *Civil law.* Lord Coke calls *Magna Charta*, the *Charta de Foresta*, the ancient statutes of Merton, Marlbridge, Westminster the first, *De bigamis*, Glocester, Westminster the second, *Articuli super Chartas, Articuli Cleri*, the statute of York, *Prærogativa Regis*, and some few others, together with the original writs in the Register, "the very body, and, as it were, the very text of the common law of England," of which the year books and records are but commentaries and expositions. 8 *Co.* pref. Magna Charta is called the common law, in the *Confirmatio Chartarum*, 25 Edw. I.

That branch of the law of England which does not owe its origin to parliamentary enactment; otherwise called, with reference

to its origin, *lex non scripta*, (the unwritten law,) as distinguished from statute law, or the *lex scripta:* being a collection of customs, rules and maxims, which have acquired the force of law by immemorial usage, recognized and declared by judicial decisions, and the best evidence of which is to be found in the reports of such decisions, and in the standard treatises and abridgments.* 1 *Bl. Com.* 67—73. 1 *Steph. Com.* 10, 45, 49, 52. 1 *Wooddes. Lect. Introd.* lxxxi. Lord Bacon places the common law, in point of worthiness, above the statute law. *Works*, iv. 326. See *Lex non scripta, Consuetudo Anglicana.*

The general customs of the kingdom, as distinguished from the local customs of particular places. 1 *Bl. Com.* 67, 74. 1 *Wooddes. Lect. ub. sup.* See *Fleta*, lib. 2, c. 2, § 13.

That system of law which is administered in the common law courts, as distinguished from the rules prevailing in courts of equity and admiralty. 1 *Wooddes. Lect. ibid.*

In American jurisprudence, the term "*common law*" is chiefly used in the second and last of the foregoing senses; that is, in contradistinction, on the one hand, to the statute law, and on the other, to equity and admiralty and maritime jurisprudence. Story, J. 6 *Peters' R.* 102, 110. 1 *Kent's Com.* 471. Story, J. 3 *Peters' R.* 446, 447. It is, however, occasionally used to denote statute law also, as where it is said that the English statutes passed before the emigration of our ancestors, being applicable to our situation, and in amendment of the law, constitute a part of our common law. Story, J. 5 *Peters' R.* 232, 241.

The common law is the common jurisprudence of the people of the United States, and was brought with them as colonists from England, and established here, so far as it was adapted to our institutions and circumstances. 1 *Kent's Com.* 342, 343. Story, J. 2 *Peters' R.* 137, 144. To that extent, it has been recognized and adopted as one entire system, by the constitutions of some of the states; and it has been assumed by the courts, or declared by statute, with the like modifications, as the law of the land in every state. 1 *Kent's Com.* 472. Thus it is said that, in the absence of all proof to the contrary, the English common law, when consistent with our institutions, will be presumed to be the rule of decision in a sister state. 6 *Alabama R.* 631. 25 *Id.* 540. 4 *Blackford's R.* 89. 15 *Illinois R.* 263. But to what extent the common law has been adopted in the *federal* jurisprudence of the United States, does not seem to be settled. It has indeed been expressly held, that there can be no common law of the United States, and that the common law of England is not in force in the United States as a federal government. McLean, J. 8 *Peters' R.* 658. Blackford, J. 1 *Blackf. R.* 205. According to other authority, the constitution and laws of the United States are predicated upon the existence of the common law, and that law is appealed to by the constitution, for the construction and interpretation of its powers. Story, J. 1 *Gallison's R.* 488, 489, 520. See 3 *Wheaton's R.* 223. 1 *Gallison's R.* 20. 1 *Kent's Com.* 338, 339. *United States Digest*, Common Law.

*** The Latin *jus commune*, which may be rendered "common law," occurs in the Roman law, at the very commencement of the Institutes and Digests. *Inst.* 1. 2. 1. *Dig.* 1. 1. 9. But it is obviously used in the sense of *natural* law, *common* to all men. The κοινὸς νόμος of the Greeks had the same signification. *Arist. Rhet.* I. 14. *Tayl. Civ. Law*, 100. The expression κοινὸς νόμος occurs in the seventy-ninth Novel, c. 2, in the more limited sense of "a common law" or rule for the whole empire. But the term "*Common law*," as used in English jurisprudence, is generally agreed to be of English origin, being by some writers supposed to be a translation of the Saxon *folcright*, or *folcrihte*, (q. v.) mentioned in the laws of King Edward the Elder, expressing the same *equal right*, law or justice due to persons of *all* degrees. 1 *Wooddes. Lect.* lxxxi. *Lambard, apud Spelman*, voc. *Jus Commune.* 1 *Bl. Com.* 65, 67. Lord Mansfield, C. J. 4 *Burr.* 2343. Spelman, however, considers it as applied, for the first time, to that body of laws compiled by King Edward the Confessor, (or St. Edward, as he is otherwise styled,) from the three systems which had previously prevailed in different districts of England, viz. the Mercen lage, West Saxon lage, and Dane lage; denoting, by way of distinction from these, a *law common to all the realm. Spelman*, voc. *Lex Anglorum. Ranulph. Cestriens.* lib. 1, c. 50, cited *ibid.* 1 *Bl. Com.* 67. Sir Matthew Hale adopts the opinion that it is called the *common* law, because it is the common municipal law or rule of justice

in the kingdom. *Hale's Hist. Com. Law*, ch. 3. Lord Coke observes that the common law is sometimes called *right*, (as in *Magna Charta*,) sometimes *common right*, and sometimes *common justice*. *Co. Litt.* 142 a.

The term *common law* has also been applied to the judicial systems of other nations, such as the Lombards and the Romans of the lower ages. *Spelman*, voc. *Jus commune*. The *land's lagh* of Sweden has been considered of nearly equivalent meaning. 1 *Bl. Com.* 66. The Spanish *fuero*, (q. v.) was a kind of common law. The term *common law* is used in Germany, to denote the subsidiary law common to the several German states, in opposition to the laws of the individual states. Its constituent parts are the German law, the Roman law, the Canon law, and the Lombard feudal law. 1 *Mackeld. Civ. Law*, 83, § 94, Kaufmann's note. In Scotland, the term *common law* is used by many writers, and in some acts of parliament, to signify the Roman law. But, in its proper acceptation, it refers to the ancient usages of the kingdom, founded on the feudal customs and the unwritten laws. *Bell's Dict.* The civil law is sometimes called the common law (*derecho comun*) of Spain. *White's New Recop.* b. 2, tit. 13, ch. 1, § 5.

As to the origin of the common law itself, various opinions have been entertained by the best writers. Sir William Blackstone, following Lord Coke and Sir Matthew Hale, treats it as being essentially of Saxon origin, its ultimate sources having existed (though not now distinguishable,) in the various local customs and usages which prevailed among the aboriginal Britons, or were introduced by the invading Romans, Saxons and Danes, while they successively bore sway or maintained a footing on the island. 1 *Bl. Com.* 64—67. Mr. Stephen is of opinion that the ancient law of Normandy has a claim to be considered another parent of the common law, and one from which it has inherited some of its most remarkable features. 1 *Steph. Com.* 44. And see *Bacon's Works*, iv. 365. Mr. Hallam inclines to ascribe the present common law to a date not much antecedent to the publication of Glanville, though he admits some features of it to have been distinguishable in Saxon times. 2 *Hallam's Mid. Ages*, 466—468. Mr. Spence descends still lower, and fixes the origin of the common law about the period of the composition of the works of Glanville and Bracton, and the treatises of Britton, Fleta and Thornton, founded upon them, strongly advocating the opinion that it was made up, to a very great extent, of materials derived from the *Roman law*. 1 *Spence's Chancery*, 119—127. A principal argument relied on in support of this view, is the peculiar character of the important work of Bracton; Mr. Spence contending not only that that writer borrowed more largely from the *Corpus Juris* than his direct references appear to indicate, but also that what he did adopt was used not for the mere purpose of illustration, but because it was considered to be *the law* of the time. *Id.* 123—127, 132. This whole view, however, together with the arguments in its support, seems to have been long since met and refuted by Selden. *Diss. ad Fletam*, ch. 7, sect. 7. *Id.* ch. 8, sect. 1. *Id.* ch. 9, sect. 1. Indeed, the observation of Bracton himself, on the first page of his work, that the law of England, which he proposed to illustrate, was an *unwritten* law, composed, in a great degree, of *customs*, which *differed* in *different places*, while it tends to support the opinion of Blackstone and the older writers before alluded to, seems wholly at variance with Mr. Spence's idea that the old local and customary laws had then been abrogated, and a new system introduced. 1 *Spence's Chancery*, 125, 122. As an evidence of the extent to which the last named writer has carried his theory, it may be observed, that among the doctrines and regulations of the common law referred by him to a Roman original, are the doctrine of entails, the modes of conveyance by fine and recovery, the formality of livery of seisin, the proceeding by inquest of office, the terms and vacations of the courts, imparlances and essoins in actions, several of the old real actions, together with much of the system of special pleading; and even the feudal system is traced to the Roman relation of patron and client. *Id.* 21, 36, 139, 142, 143, 178, 225, 229, 235, 280, note (*e*).

COMMON LAWYER. A lawyer learned in the common law. 1 *Rep. in Ch.* pref. "Doubtless a good common lawyer is the best expositor of such clauses." *Hale's Hist. Com. Law*, 91.

COMMON LEARNING. [L. Fr. *comon erudicion.*] Familiar law or doctrine. *Dyer*, 27 b, 33.

COMMON NUISANCE. [L. Lat. *commune nocumentum.*] A nuisance affecting

the public, being an annoyance to the whole community in general; as distinguished from a private nuisance, which is confined in its effects to particular individuals.* 3 *Bl. Com.* 215. *Id.* 5. 4 *Id.* 167. 4 *Steph. Com.* 294. The obstructing of highways, bridges and public rivers, and the carrying on of offensive or dangerous trades or manufactures, are examples of common nuisances. See *Nuisance.*

COMMON PLACE. Common pleas. The English court of Common Pleas is sometimes so called in the old books. *Litt.* sect. 94. *Termes de la Ley*, voc. *Common law. Finch's Law*, b. 4, ch. 1, pp. 238, 240.

COMMON PLEAS. [L. Lat. *communia placita;* L. Fr. *communes plees.*] Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*, (q. v.) 3 *Bl. Com.* 38, 40. *Britt.* fol. 2 b. *Gilb. C. Pleas*, 1. *Common pleas* shall not follow our court, but shall be held in some certain place. *Mag. Cart.* 9 Hen. III. c. 11. See *Communia placita, Placitum.*

The singular "common plea" is sometimes used in the old books. *Nul* common plee *ne soit desormes tenus a leschequer. Artic. sup. Chart.* c. 4.

COMMON PLEAS, *Court of.* [L. Lat. *bancus, bancus communis, communia placita.*] One of the superior courts of common law in England, consisting of a chief justice and four puisne judges; supposed by some writers to have been first established as a permanent court by Magna Charta, and now constantly held in Westminster Hall; called also anciently, and still sometimes technically, the court of *Common Bench*, (q. v.) 3 *Bl. Com.* 37—40. 3 *Steph. Com.* 402. *Termes de la Ley. Gilb. C. Pleas, Introd.* 31. Lord Coke supposes it to have existed before Magna Charta, and quotes, in support of this opinion, not only Glanville, but the twelfth and thirteenth chapters of Magna Charta itself, where mention is made of the justices of *the bench*, (*de banco,*) [the ancient title of this court,] as of a court already established. *Glanv.* lib. 2, c. 6. 2 *Inst.* 22. 1 *Reeves' Hist. Eng. Law*, 57, 58. 8 *Co.* pref. *Id.* 289. See *Bancus, Bench.* The title of "Common Pleas" (*communia placita,*) may, however, have been derived from the eleventh chapter of the Charter.

This court has always exercised an exclusive jurisdiction over real actions, and has been considered as the principal seat of the learning relative to ordinary actions between man and man, (or *common pleas*, as they were anciently denominated). Hence it is styled by Lord Coke "the lock and key of the common law." 4 *Inst.* 99. 3 *Bl. Com.* 40. 3 *Steph. Com.* 402. Its practice seems to have been, from a very ancient period, monopolized by a class of advocates termed *serjeant counters*, or counters of the bench, (*banci narratores*, qq. v.); and the same exclusive privilege has been enjoyed by the modern serjeants at law, during term time, down to the year 1834, when the court was suddenly opened to the whole profession by royal warrant, the validity of which, however, was, after an acquiescence of five years, successfully impeached by the serjeants, and in 1840 the court was closed. Recently, however, this privilege has been abolished by statute, and the court permanently thrown open to the English bar generally. 3 *Man. Gr. & Scott*, 537.

COMMON RECOVERY. In conveyancing. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England, but recently abolished by statute 3 & 4 Will. IV. c. 74. 2 *Bl. Com.* 357. 1 *Steph. Com.* 530. It was in the nature and form of an action at law, carried regularly through, [in which respect it differed from a *fine*, which was in the form of a suit *compromised*,] and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee simple in the recoveror. 2 *Bl. Com.* 357. 1 *Steph. Com.* 524. It was called a *common* recovery, to distinguish it from a real adjudication. *Id. ibid.* 5 *Cruise Dig.* 269.

*** Common or feigned recoveries were first invented or introduced by the clergy, in order to evade the statute of mortmain. 2 *Bl. Com.* 271. 2 *Reeves' Hist. Eng. Law*, 155. See *Mortmain.* To effect this purpose, the religious houses used to set up a fictitious title to the land which it was intended they should have, and brought an action to recover it against the tenant, who by fraud and collusion made no defence, and thereby judgment was given for the religious house, which then recovered the land by sentence of law upon a supposed prior title. 2 *Bl. Com.* 271. These common recoveries were afterwards em-

ployed as a contrivance to elude the statute *De Donis*, and as a means of barring estates tail, and becoming on this account more and more general, they were finally recognized as a regular mode of conveyance; retaining at the same time, however, all the forms of a judicial proceeding as they had when they were real actions. *Crabb's Hist. Eng. Law*, 390, 541. 2 *Bl. Com.* 117. 1 *Steph. Com.* 235. 4 *Kent's Com.* 13, 497.

Common recoveries were formerly in use in some of the United States, but have generally become obsolete, where they have not been expressly abolished. They were abolished by statute in New-Jersey in 1799, and in New-York by the Revised Statutes. 2 *R. S.* [343,] 265, § 24. See *United States Digest*, Common Recovery.

COMMON SCHOOLS. Schools for the elementary instruction of children of all classes; schools for general elementary education. Otherwise termed *public* schools, and *free* schools. 2 *Kent's Com.* 195—202, and notes.

COMMON SCOLD. [L. Lat. *communis rixatrix.*] A quarrelsome woman, whose conduct is a public nuisance to her neighborhood. 4 *Bl. Com.* 168. In England, common scolds may be indicted, and were formerly punishable by being placed in the trebucket, castigatory, or cucking stool, (q. v.) *Id. ibid.* 169. In American law, common scolds are nuisances, and may be punished as such. *Wharton's Am. Crim. Law*, 505.

COMMON SEAL. The seal of a corporation, by which alone, at common law, it could speak and act. *Davies' R.* 121. *Dyer*, 81 a. The rule requiring a seal to bind a corporation has, however, been considerably relaxed in England, and is, in a great degree, done away in the jurisprudence of the United States. 2 *Kent's Com.* 288—291, and notes.

COMMON SERJEANT. A judicial officer attached to the corporation of the city of London, who assists the recorder in disposing of the criminal business at the old Bailey sessions, or Central Criminal Court. *Holthouse. Centr. Crim. C. Rep. passim.*

COMMON VOUCHEE. The vouchee in common recoveries; the person vouched to warranty, or called on to defend the title of the tenant in those proceedings; called *common*, because the same person, (viz. the crier of the court,) acted as vouchee in them all. 2 *Bl. Com.* 358, 359. See *Vouchee.*

COMMON WEAL. The common good; the public welfare. The law favoureth things **for the common weal.** *Finch's Law*, b. 1, ch. 3, num. 53. As, in time of war, to make bulwarks in another man's soil, without his license; to raze one's house on fire, in safeguard of the neighbors' houses. *Id. ibid.*

COMMONAGE. In old conveyancing. The right of common. See *Common.*

COMMONABLE. Entitled to common. Commonable beasts are either beasts of the plough, as horses and oxen; or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats, and the like. *Co. Litt.* 122 a. 2 *Bl. Com.* 33.

COMMONALTY, *Communalty, Comminalty.* [Lat. *populus, plebs, communitas.*] In English law. The commoners or people of England, as distinguished from the nobility. 1 *Bl. Com.* 403. *Stat. Westm.* 1, pr.

The middle classes in England; the better and more influential sort of commoners. *Cowell*, voc. *Comminalty. Holthouse.*

COMMONALTY. One of the component parts of an incorporated company, which usually consists, in England, of the master, wardens and commonalty; the two first being the chief officers or members, and the latter those who are usually called *of the livery.* 2 *Leon.* 165. *Whishaw. Holthouse.* See *Livery.*

In American law, it is similarly used to designate one branch or division of the members of a municipal corporation; as "the mayor, aldermen and *commonalty*" of a city.

COMMONERS. In English law. Persons having a right of *common.* So called because they have a right to pasture on the waste, in common with the lord. Rooke, J. 2 *H. Bl.* 386, 389.

Sometimes improperly used in the sense of tenants in common. *Id. ibid.*

Sometimes applied, in the United States, to cattle. Horses are called "free commoners." 2 *Michigan R.* 264.

COMMONS. The commoners or people of England, as distinguished from the nobility.* Holt, C. J. 2 *Ld. Raym.* 950. The commons consist of all such men of property in the kingdom, as have not seats in the house of lords. 1 *Bl. Com.* 158.

The popular branch of the English par-

liament; the house of commons. *Id.* 160.

COMMONTY. In Scotch law. Land possessed in common by different proprietors, or by those having acquired rights of servitude. *Bell's Dict.* 36 *Eng. Law & Eq. R.* 20.

COMMORANCY. [L. Lat. *commorantia*, from *commorari*, to stay, or sojourn.] The dwelling in any place as an inhabitant; which consists in usually lying there. 4 *Bl. Com.* 273. In American law, it is used to denote a mere temporary residence. Shaw, C. J. 19 *Pick. R.* 247, 248.

COMMORANT. Staying or abiding; dwelling, or usually lying in a place. 4 *Bl. Com.* 273. See *Commorancy.*

COMMORIENTES. Lat. [from *commorire*, to die together.] In the civil law. Persons dying together, in the same place, or from the same cause. *Hubback's Evid. of Succession*, 187. *Dig.* 34. 5. 8. 9. 16, 22, 23. 2 *Kent's Com.* 435, 436, note. 8 *Metcalf's R.* 371. 1 *Barbour's Ch. R.* 264. Called *pariter mortui. Dig.* 34. 5. 16.

COMMOTE. [L. Lat. *commotum*, from Brit. *cymbod ; cym*, together, *bod*, being or dwelling; or from *cwmmwd*, a province.] Half of a cantred or hundred in Wales, containing properly fifty villages. *Stat. Walliæ*, 12 *Edw.* I. 21 *Hen.* VIII. c. 26. *Spelman*, voc. *Commotum.* The fourth part of a hundred, according to Mr. Barrington, who cites *Girald. Camb.* c. 2. *Obs. Stat.* 125, note [*h*].

A great seigniory or lordship, including one or more manors. *Co. Litt.* 5 a. Part of a seigniory. *Thel. Dig.* lib. 8, c. 2, ¶ 18.

COMMOTUM. L. Lat. In old English law. A commote, (q. v.) *Spelman. Stat. Walliæ*, 12 Edw. I. cited *ibid.*

COMMUNANCE. In old English law. The commoners, or tenants and inhabitants, who had the right of common, or commoning in open fields or woods. *Cowell.*

COMMUNARE. L. Lat. In old English law. To common; to enjoy the right of common. *Cowell*, voc. *Communance.*

COMMUNAUTE. L. Fr. In old English law. Commonalty. *E as countes, e barouns, e a toute* communaute *de la terre ;* and to the earls and barons, and to all the commonalty of the land. *Conf. Chartar.* 25 Edw. I.

COMMUNE. L. Fr. In old English law. Comminalty; people. *La grant chartre des franchises de Engleterre grantee a tote la* commune *d' Engleterre ;* the great charter of liberties of England, granted to all the people of England. *Artic. sup. Chart.*

COMMUNE. Fr. In old French law. A municipal corporation. *Steph. Lect.* 116.

COMMUNE CONCILIUM REGNI. Lat. The common council of the realm. One of the names of the English parliament. 1 *Bl. Com.* 148. *Fleta*, lib. 2, c. 66, § 6.

COMMUNE FORUM. Lat. The common place of justice. The seat of the principal courts, especially those that are fixed. Lord Brougham, 7 *Bell's Appeal Cases*, 169.

COMMUNE PLACITUM. L. Lat. In old English law. A common plea or action, such as an action of debt. *Fleta*, lib. 2, c. 61, § 18.

COMMUNE VINCULUM. Lat. A common or mutual bond. Applied to the common stock of consanguinity, and to the feodal bond of fealty, as the common bond of union between lord and tenant. 2 *Bl. Com.* 250. 3 *Id.* 230.

COMMUNI DIVIDUNDO. Lat. In the civil law. The name of an action brought for *dividing* a *common* property. *Inst.* 4. 17. 5. *Dig.* 10. 3. *Cod.* 3. 37, 38. *Story on Partn.* § 352. Mentioned in Bracton and Fleta. *Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

COMMUNIA. L. Lat. [from *communis*, common, or according to Bracton, from *cum*, with, and *una*, together; *una cum aliis*]. In old English law. Common. *Bract.* fol. 222, *Communia pasturæ;* common of pasture. *Id. ibid. Fleta*, lib. 4, c. 19. *Reg. Orig.* 155 b, 156, *Communia turbariæ;* common of turbary. *Id. Communia piscariæ ;* common of piscary. *Id.*

COMMUNIA, [plur. of *communis*, q. v.] Lat. In old English law. Common things, (*res communes*). Such as running water, the air, the sea and sea shores. *Bract.* fol. 7 b.

COMMUNIA, or COMMUNIÆ. Lat. In old European law. Communities. Towns enfranchised by the crown, in most of the feudal kingdoms of Europe, about the twelfth century, and formed into free corporations, by what were termed charters of community. 1 *Robertson's Charles* V. 24—29, and notes in Appendix.

COMMUNIA PLACITA. L. Lat. In old English law. Common pleas or actions; those between common persons, i. e. between one subject and another, as distinguished from *placita coronæ*, pleas of the crown, or criminal actions. *Reg. Orig.* 187 b. *Bract.* fol. 115 b. Communia placita *non sequantur curiam nostram, sed teneantur in aliquo loco certo.* Common pleas shall not follow our court, but shall be held in some certain place. *Mag. Charta*, 9 Hen. III. c. 11. *Id. Joh.* c. 17. *F. N. B.* 24 D, note. In the original articles of Magna Charta, (c. 8,) the passage reads: *Ut* communia placita *non sequantur curiam domini regis, sed assignentur in aliquo certo loco.* This provision is generally considered as fixing the origin of the English court of Common Pleas. But, according to Lord Hale, it rather fixed the distinction between the King's Bench and the Common Bench, as to the point of *communia placita.* For before this, common pleas were frequently held in the King's Bench. *Hale's Hist. Com. Law*, ch. 7. *Communia placita inter subditos, ex jure nostro, quod* commune *vocant, in hoc disceptantur:* Common pleas between subjects are determined in this [court], according to our law which they call common. *Camd. Brit.* 113. See *Common Pleas, Common Bench.*

COMMUNIBUS ANNIS. Lat. In ordinary years; one year with another; on the annual average. 2 *Bl. Com.* 322. See *Hardr.* 329. 10 *East*, 219.

COMMUNICARE. L. Lat. In old English law. To common. *Bract.* fol. 229 b. *Communicantes;* commoners. *Id. ibid. Jus communicandi;* the right of commoning. *Fleta*, lib. 4, c. 19, § 4.

COMMUNICATION. [Lat. *communicatio*, from *communicare*, to talk together, to impart or share.] A talking or conferring with, where there is only a discourse between two or more, without any perfect agreement. *Cowell.* Conference, as distinguished from actual agreement.

The act of imparting information to another.

Information imparted by one person to another. See *Privileged communication.*

Intercourse; connection.

COMMUNIO BONORUM. Lat. Communion or community of goods, (qq. v.)

COMMUNION OF GOODS. In Scotch law. The right enjoyed by married persons in the moveable goods belonging to them. *Bell's Dict.*

COMMUNIS. Lat. Common. See *infra.*

COMMUNIS ERROR. Lat. A common error; an opinion or practice which has commonly been held or observed, though originally perhaps without adequate foundation in law.* See *Common error, Communis opinio.*

Communis error facit jus. Common error makes law. 4 *Inst.* 240. *Noy's Max.* 32, max. 27. Common error goeth for a law. *Finch's Law*, b. 1, c. 3, num. 54. Common error sometimes passes current as law *Broom's Max.* 99, 100, [104]. A common error may, in some cases, pass current as law. Thus, a practice which has been generally observed in a state for a great length of time, without objection or question, though it possibly might have originally been impeached, will be upheld in law, if the public good require it. This maxim is frequently applied to modes of conveyance which have been long in use. *Plowd.* 33 b. *Shep. Touch.* 40. Story, J. 5 *Mason's R.* 67, 69. 4 *N. Hamp. R.* 458. 2 *Hilliard's Real Prop.* 268. But so far as the maxim applies to common opinion, (*communis opinio*, q. v.) it is to be received and applied with great caution. See the observations of Lord Ellenborough, 3 *M. & S.* 396, 397. 6 *Cl. & Fin.* 199. And see **Multitudo errantium**, &c.

COMMUNIS OPINIO. Lat. Common opinion; general professional opinion. According to Lord Coke, (who places it on the footing of observance or usage,) common opinion is good authority in law. *Co. Litt.* 186 a. See **A communi observantia non est recedendum.** But this rule has in modern times been questioned, or much qualified. "*Communis opinio*," said Lord Ellenborough, "is evidence of what the law is,—not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the ground-work and *substratum* of practice." 3 *M. & S.* 396, 397. Lord Denman, C. J. *O'Connell* v. *Reg.* (Leahy's ed. 28.) Gibson, C. J. 4 *Penn. St. R.* 13, 28.

COMMUNIS PARIES. Lat. In the civil law. A common or party wall. *Dig.* 8. 2. 8, 13.

COMMUNIS RIXATRIX. L. Lat. In old English law. A common scold, (q. v.) 4 *Bl. Com.* 168.

COMMUNIS SCRIPTURA. L. Lat. In old English law. A common writing; a writing common to both parties; a chirograph. *Glanv.* lib. 8, c. 1.

COMMUNIS STIPES. Lat. In old English law. A common stock; the common stock or root of descent; a common ancestor. *Blackst. Law Tr.* 6.

COMMUNIS STRATA. L. Lat. In old English law. A, or the common street or road. *Stat. Marlbr.* c. 15. 1 *Stra.* 44. Argued to be synonymous with *regia via*, (q. v.) 10 *Mod.* 382.

COMMUNITAS. Lat. [from *communis.*] In old English law. A community, company or society. *Towns. Pl.* 18.

COMMUNITAS REGNI ANGLIÆ. Lat. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 *Bl. Com.* 148. According to Cowell, it signified the barons and tenants *in capite* of the kingdom. But in the statute *Cart. Conf.* 49 Hen. III. it is used in the sense of commonalty, as distinguished from the prelates, earls and barons, (*prelatorum, comitum, baronum et* communitatis *regni*). And see *Communaute.*

COMMUNITY. [Fr. *communauté.*] In French law. Common or joint possession or enjoyment; common or joint interest or participation. A species of partnership which a man and woman contract where they are lawfully married to each other. See 2 *Kent's Com.* 183—187, and notes.

COMMUTATION. [Lat. *commutatio*, from *commutare*, to change or exchange.] In criminal law. Change; substitution. The substitution of one punishment for another, after conviction of the party subject to it. The change of a punishment from a greater to a less; as from hanging to imprisonment.

COMMUTATIVE CONTRACT. [from *commutare*, to change or exchange.] In the civil law. A contract in which each of the contracting parties receives as much as he gives, or an equivalent for what he gives. *Pothier, Contr. of Sale*, part 1, sect. 1. *Poth. Obl.* part 1, ch. 1, sect. 1, art. 1.

COMON. L. Fr. Common. *Comon erudic';* common learning; familiar law. *Dyer*, 27 b. (Fr. ed.)

COMORTHA. Welsh and L. Fr. In old English law. An assemblage. *Stat.* 4 Hen. IV. c. 27. Properly *cymortha* or *cymmorthau. Barringt. Obs. Stat.* 360, note [*y*].

COMPACT. [from Lat. *con*, together, and *pactum*, a promise.] An agreement or contract, usually of the more formal or solemn kind. A contract or engagement between nations, or states, or the individuals of a community. See 1 *Kent's Com.* 419.

COMPANAGE. [L. Lat. *companagium*, from *cum*, with, and *panis*, bread.] In old English law. Any meat, or other edibles, to be eaten with bread. *Cowell. Quicquid cibi* cum pane *sumitur. Spelman*, voc. *Companagium.*

COMPANAGIUM. L. Lat. Companage, (q. v.) *Spelman.*

COMPANY. An association of persons in a common interest, for the purpose of carrying on some commercial or industrial undertaking, or other legitimate business.

COMPARE. Sc. To compound. Lord Hardwicke, *Ambl.* 185.

COMPARENTIA. L. Lat. [from *comparere*, q. v.] In old practice. Appearance. 1 *Leon.* 90.

COMPARERE. Lat. [L. Fr. *comparer, compoir.*] In old English practice. To appear; closely rendered in the Scotch law, to *compear. Comparet;* (he) appears. *Bract.* fol. 334 b. *Comperuit;* (he) appeared. See *Comperuit ad diem. Comparebit;* (he) shall appear. *Reg. Orig.* 291 b. *Comparere* is used in *Clerke's Prax. Cur. Adm.* tit. 1. *Comparuerit. Bract.* fol. 365. *Comparuisset. Reg. Jud.* 5. *Comparentibus;* appearing. *Bract.* fol. 183 b, 372 b. *Cum partes in judicio* comparuerint; when the parties have appeared in court. *Id.* fol. 296 b.

COMPARATIO LITERARUM. Lat. In the civil law. Comparison of writings, or handwritings. A mode of proof allowed in certain cases. *Cod.* 4. 21. 20. *Nov.* 49, c. 2. *Bell's Dict.* 2 *Alison's Crim. Pr.* 603. *Bell's Contr. of Sale*, 69. See *Collatio signorum, Comparison of hands.*

COMPARISON OF HANDS. In the law of evidence. A mode of proving a handwriting or signature, by comparing it with another, in order to ascertain whether both were written by the same person.* In England, this species of evidence is, in general, not admissible. 5 *Ad. & Ell.* 703. *Best on Presumptions*, 221—234, §§ 162—171. In some of the United States, as in New-York, this rule is followed. 5 *Hill's R.* 182. 1 *Denio's R.* 343. In others, a different rule has been established. 1 *Greenleaf on Evid.* §§ 579—581, and notes. In Kentucky, the weight of authority is against the admission of handwritings for the purpose of comparison, even by the jury. 13 *B. Monroe's R.* 258. The rule seems to be the same in North Carolina. See 1 *Jones' Law R.* 150. But in Georgia,

the court or jury may compare two documents together, when properly in evidence, and from that comparison form a judgment upon the genuineness of the handwriting or the identity of the writers. 16 *Georgia R.* 521.

COMPARITIO. L. Lat. [from *comparere*, q. v.] In old practice. Appearance. *Clerke's Prax. Cur. Adm.* tit. 5.

COMPASCUUM. Lat. [from *compasci*, to feed together.] Belonging to commonage. *Jus compascuum;* the right of common of pasture. See *Common.*

COMPATERNITAS. Lat. In the canon law. A kind of spiritual relationship (*cognatio spiritualis*) contracted by baptism. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 161, note. *Bract.* fol. 298 b. One of the grounds of divorce. *Id. ibid.*

COMPEAR, *Compeir.* In Scotch law. To appear. 1 *Forbes' Inst.* part 4, b. 2, ch. 2, tit. 2. Very literally formed from the L. Lat. *comparere*, (q. v.)

COMPEARANCE. In Scotch practice. Appearance; an appearance made for a defendant; an appearance by counsel. *Bell's Dict.* 2 *Alison's Crim. Pr.* 343. Skene writes it *compeirance. De Verb. Sign.* voc. *Iter.*

COMPELLATIVUM. L. Lat. [from *compellare*, to accuse.] In old records. An accuser or adversary. *Whishaw.*

COMPENDIUM. Lat. An abridgment. *Compendia sunt dispendia;* abridgments are losses or wastes [of labor or time]. *Co. Litt.* 305 b. "And therefore it is ever good to rely upon the book at large." *Id. ibid.*

COMPENSATIO. Lat. In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim, on the part of the defendant, to have an amount due to him from the plaintiff deducted from his demand. *Dig.* 16. 2. *Inst.* 4. 6. 30, 39. *Cod.* 4. 31. 3 *Bl. Com.* 305. 1 *Kames' Equity*, 395. Called in the Digests, *debiti et crediti inter se contributio. Dig.* 16. 2. 1.

COMPENSATIO CRIMINIS. Lat. (Set-off of crime or guilt.) In practice. The plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offence with which he or she charges the defendant. *Shelford, Marr. & Div.* 440. 2 *Kent's Com.* 100. See *Recrimination.*

COMPENSATION. [from Lat. *compensatio*, q. v.] In the civil and Scotch law. Set-off. The meeting of two debts due by two parties, where the debtor in the one debt is the creditor in the other, that is to say, where one person is both debtor and creditor to another, and, therefore, to the extent of what is due to him, claims allowance out of the sum that he is due. *Bell's Dict.* 1 *Kames' Equity*, 395, 396. 2 *Id.* 101.—The extinction of debts of which two persons are reciprocally debtors, by the credits of which they are reciprocally creditors. *Poth. Oblig.* part 3, ch. 4. See *Schmidt's Civ. Law*, 124.

COMPERENDINATIO. Lat. In the Roman law. The adjournment of a cause, in order to hear the parties or their advocates a second time; a second hearing of the parties to a cause. *Calv. Lex. Brissonius.*

COMPERER. L. Fr. To appear. *Rot. Parl.* 4 Hen. IV.

COMPERIT. O. Sc. Compeared; appeared. 1 *Pitc. Crim. Trials*, part 1, p. 2.

COMPERTORIUM. L. Lat. [from *comperire*, to discover.] In old English law. A judicial inquest made by delegates or commissioners, to find out and relate the truth of a cause. *Kennett's Par. Ant.* 575. *Cowell.*

COMPERUIT AD DIEM. L. Lat. (He appeared at the day.) In practice. A plea in an action of debt on a bail bond, that the defendant appeared at the day required, by putting in bail, according to the condition of the bond. 1 *Tidd's Pr.* 310, 318. *Comperuerunt ad diem;* they appeared at the day. 6 *Taunt.* 167.

COMPESTER. [L. Lat. *compostare.*] To manure. *Co. Litt.* 122 a.

COMPETENCY. Capability; admissibility. Applied to witnesses, to signify legal ability to be received and examined on the trial of a cause. 3 *Bl. Com.* 369.

Propriety or sufficiency as a legal remedy. See *Competere.*

COMPETENT. [Lat. *competens*, from *competere*, q. v.] Capable; legally qualified; having legal capacity, as a *competent* witness. See *Competency.*

COMPETENT AND OMITTED. In Scotch practice. A term applied to a plea which might have been urged by a party during the dependence of a cause, but which had been omitted. *Bell's Dict.*

COMPETERE. Lat. In the civil and common law. To be proper, as a legal remedy; to lie, as an action. *Actio ei competit;* an action lies for [may be maintained

by] him. *Inst.* 4. 1, 13. *Bract.* fol. 103 b. *Competit assisa;* an assise lies. *Id.* fol. 25. *Competunt hæredi duo remedia;* the heir has two remedies. *Id.* fol. 219. Hence the modern phrase, *competency of actions. Supra.*

To be proper or available; as a pleading. *Competit exceptio—replicatio,* &c. *Bract.* fol. 25, 26.

COMPETITION. In Scotch practice. The contest among creditors claiming on their respective diligences, or creditors claiming on their securities. *Bell's Dict.*

COMPILATION. [Lat. *compilatio,* from *compilare,* to plunder.] A collection of certain parts of a book or books into a separate work.* *Webster.* A literary composition made up from the works of others.

COMPLAIN. [Lat. *queri.*] In practice. To represent facts constituting a supposed injury or offence, to a court or officer having jurisdiction; to charge a person with the commission of some injury or offence. In a declaration at common law, the plaintiff (or *complaining party*) "complains" of the defendant, &c.

COMPLAINANT. [Lat. *querens.*] In practice. One who *complains* of another, by instituting legal proceedings against him. The *actor,* or party suing in equity, answering to the *plaintiff* (which has the same sense) at common law. The term *plaintiff,* however, is also frequently used in equity proceedings.*

COMPLAINT. [Lat. *querela.*] In practice. Representation of facts constituting a supposed injury or offence, to a court or officer having jurisdiction. An accusation or charge against a person as having committed an alleged injury or offence.

In New-York practice. The name of the first pleading on the part of the plaintiff in an action. *Code,* § 141, [119].

COMPLEMENTUM JUSTITIÆ. L. Lat. In old practice. Fullness of justice; full justice. *Reg. Orig.* 88, 89.

"COMPLETED" construed. 3 *Jones' Law R.* 517.

COMPOS MENTIS. [plur. *compotes mentis.*] Lat. In possession of one's mind, or mental faculties; of sound mind. 4 *Bl. Com.* 25. 2 *Kent's Com.* 451.

COMPOS SUI. Lat. Having power of one's self; having the use of one's limbs, or the power of bodily motion. *Si fuit ita* compos sui *quod itinerare potuit de loco in locum;* if he had so far the use of his limbs, as to be able to travel from place to place. *Bract.* fol. 14 b.

COMPOSITIO. Lat. [from *componere,* to put together, or frame.] A putting together, or making up; an agreement, composition or satisfaction.* See *Composition.*

A statute or ordinance. See *infra.*

COMPOSITIO MENSURARUM. Lat. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 *Hen.* VIII. c. 4; establishing a standard of measures. 1 *Bl. Com.* 275. Spelman quotes it as the statute 51 Hen. III. *Gloss.* voc. *Galo.*

COMPOSITIO ULNARUM ET PERTICARUM. Lat. The statute of ells and perches. The title of an English statute establishing a standard of measures. 1 *Bl. Com.* 275.

COMPOSITION. An agreement between debtor and creditor, by which the latter agrees to discharge the former on payment of a certain sum.* See *United States Digest,* Composition.

In English ecclesiastical law. An agreement, (otherwise called a *real* composition,) made between the owner of lands, and a parson or vicar, with the consent of the ordinary and the patron, that such lands shall, for the future, be discharged from payment of tithes by reason of some land, or other real recompense given to the parson, in lieu and satisfaction thereof. 2 *Bl. Com.* 28. *Reg. Orig.* 38 b. 2 *Inst.* 490. 2 *Wooddes. Lect.* 67, 68. 3 *Steph. Com.* 129.

COMPOSITION. In old European law. A sum of money paid, among the early barbarous nations of Europe, as satisfaction for an injury, either to the person offended, when capable of receiving it, or to his relatives; and so called because originally made by mutual *agreement* of the parties. 1 *Robertson's Charles* V. Appendix, Note xxiii. *Esprit des Lois,* liv. 30, c. 19. It might be paid in cattle, corn, moveables, or lands, instead of money. *Id. ibid.*

COMPOSITION. In patent law. A compounding or putting together; mixture. *Act of Congress,* July 4, 1836, sect. 6.

COMPOTARIUS. [L. Lat. from *computus,* q. v.] In old English law. A party accounting. *Fleta,* lib. 2, c. 71, § 17.

COMPOTUS. L. Lat. In old English law. An account. *Stat. Marlbr.* c. 22. *Stat. Westm.* 2, c. 11. *Compotum reddere;* to render an account. *Fleta,* lib. 2, c. 14, § 1. *Id.* c. 30. *De* compoto *reddendo;* of rendering an account. *Id.* c. 70. A more modern form was *computus,* (q. v.)

A statement of account; a book of accounts. The household book of a religious house, containing the items of its expenditure and income, was styled the *compotus*.

COMPOUNDING A FELONY. In criminal law. The offence of taking a reward for forbearing to prosecute a felony. As where a party robbed takes his goods again, or other amends, upon an agreement not to prosecute. 4 *Chitty's Bl. Com.* 133 and notes. 4 *Steph. Com.* 259. *Steph. Crim. Law*, 66. It is a misdemeanor at common law, and by statute, and punishable by imprisonment. *Id. ibid. Lewis' U. S. Crim. Law*, 200—203.

COMPRA Y VENTA. Span. In Spanish law. Purchase and sale. *White's New Recop.* b. 2, tit. 13.

COMPRINT. In old English law. Literally, to print together. The surreptitious printing by one bookseller of another's copy, to make gain thereby, and which is not only contrary to the common law, but is also forbidden by several English statutes. *Stat.* 14. *Car.* II. c. 33; 16 *Car.* II. c. 6; 16 & 17 *Car.* II. c. 7; 17 *Car.* II. c. 4. *Cowell.*

COMPRIVIGNI. Lat. In the civil law. Children by a former marriage, (individually called *privigni*, or *privignæ*,) considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. *Inst.* 1. 10. 8. See *Privignus*, *Privigna*.

COMPROMISE. [Lat. *compromissum*, q. v.] A mutual agreement between two or more persons at difference, to put an end to such difference upon certain terms agreed upon. *Whishaw.*

A mutual agreement to submit matters in dispute to the decision of arbitrators.* *Termes de la Ley. Cowell.* This was formerly the ordinary meaning of the term, derived from the *compromissum* of the civil law, (q. v.)

Any adjustment of matters in dispute, by mutual concession without resort to the law. *Tomlins.* Smith, J. 2 *Wisconsin R.* 1, 6, 7.

COMPROMISSARIUS. Lat. [from *compromissum*, q. v.] In the civil law. Relating to a *compromissum* or submission to arbitration. A term applied to an arbiter or arbitrator. *Dig.* 4. 9. 41. Otherwise termed *arbiter ex compromisso. Id.* 4. 8. 33.

COMPROMISSUM. Lat. [quasi *con-promissum*, a mutual promise.] In the civil and canon law. A submission to arbitrators. *Dig.* 4. 8. 4 *Reeves' Hist. Eng. Law*, 13, and note (*p*). Hence the modern term *compromise*, (q. v.)

COMPROMITTERE. Lat. [from *con*, together, and *promittere*, to promise.] In the civil law. To submit to arbitration. *Dig.* 4. 8. 27. 2.

COMPTER. The name of a prison in London. 1 *Show.* 162. See *Counter.*

COMPTER. In Scotch law. An accounting party. *Skene de Verb. Sign.* vocc. *Ballivus*, *Scaccarium.*

COMPTROLLER. Properly CONTROLLER. See *Controller.*

COMPURGATOR. Lat. [from *con*, together, and *purgare*, to purge or clear.] In old European law. One who *purged* another from an accusation or charge, by swearing *with*, or after him, that he believed his oath of his own innocence.* In the old mode of trial by wager of law, the defendant first himself swore that he did not owe the plaintiff any thing, and then produced (usually) eleven *compurgators*, who swore after him that they believed in their consciences that he spoke the truth. 3 *Bl. Com.* 342, 343. 3 *Steph. Com.* 525. *Co. Litt.* 295. *Bract.* fol. 410. See *Law*, *Wager of law.*

*** The trial by compurgators seems to have been equally known to the British, Saxon and Norman laws, as well as to the laws of the barbarous nations of the continent. *Spelman*, voc. *Assath. Crabb's Hist. Eng. Law*, 30. *Grand Coustum.* c. 85, [26.] *Esprit des Lois*, liv. 28, c. 13. It was anciently confined to charges of *crime*, and was conducted by the compurgators laying their hands on the gospels, or some relics, and the party accused laying his hand over all the rest, and swearing by God and all the hands under him, that he was not guilty of the crime laid to his charge. The compurgators were supposed, by this act, to declare upon their oaths, that they believed he had sworn the truth, and the party himself was said to *swear by any given number of hands*, according to the number of persons joining in the oath. *Ducange*, voc. *Juramentum.* Hence the phrase *jurare duodecima manu*, and the name of *compurgators*, as *contributing* by their oaths *to purge* the party of the crime laid to his charge. *Crabb's Hist. ub. sup.* In the feudal law, compurgators were used, under the name of *sacramentales*, in prov-

ing the investiture of fiefs, where the fact was disputed. *Feud. Lib.* 1, tit. 4, § 3. *Id.* titt. 10, 26, 28. *Lib.* 2, tit. 33, § 2. They were also termed *consacramentales* and *conjuratores*. *Spelman*, voc. *Lex*, *Legem vadiare*.

COMPUTATION. [Lat. *computatio*.] The account and construction of time by rule of law, as distinguished from any arbitrary construction of parties; as, of how many days a month shall consist; on what day a lease shall be said to commence and end; what days shall be included or not in the times of notices, rules of court, &c.; that fractions of a day shall not be reckoned, and the like.* *Cowell. Termes de la Ley.* 2 *Chitt. Bl. Com.* 140, note. The rule in regard to the computation of time is, that where the computation is to be made from an act done, the day on which the act was done must be included; but where the computation is to be made from the day itself, the day on which the act was done must be excluded. 13 *B. Monroe's R.* 460. 4 *Kent's Com.* 95, note. See *Time*, *Day*, *Month*, *Year*.

COMPUTO. See *Computus*.

COMPUTUS, (sometimes written COMPOTUS.) L. Lat. [from *computare*, to count, or account.] An account. The old writ of account was called a writ *de computo*, from the words used, *quod juste et sine dilatione, reddat rationabile* computum *suum;* (that justly and without delay, he render his reasonable account). *Reg. Orig.* 135.

COMTE. Fr. [Lat. *comes*.] Count. A title of office in the ancient law of France, denoting a governor of a particular territory or district, who united the characters of a military leader and a judge. As a judge, he had an equal jurisdiction with the *missus dominicus*, or king's commissary. *Esprit des Lois*, liv. 28, c. 28; liv. 30, c. 18. As a military officer, he commanded the freemen, and led them to the field. *Id.* liv. 30, c. 17, 18. Montesquieu says he was at the head of all the freemen of the monarchy. *Id.* liv. 31, c. 23. See also *Id.* liv. 30, c. 18; liv. 31, c. 1. The *comte* was subordinate to the *duc* (duke). *Guyot, Inst. Feod.* ch 1, sect. 8. See *Comes*, *Count*.

In later times, a title of nobility. *Boulainvilliers Etat de la France*, iii. 56. *Barringt. Obs. Stat.* 31.

COMUNE. L. Fr. Common. *Comune laroun, ou* comune *robour*; a common thief or a common robber. *Yearb.* M. 3 Edw. II. 55.

COMUNEMENT. L. Fr. Commonly. *Il est* comunement *dit. Litt.* sect. 288. "That is," says Lord Coke, "it is the common opinion." *Co. Litt.* 186 a. See *Litt.* sect. 697.

COMYN. L. Fr. Common. *Kelham.*

CON BUENA FE. Span. In Spanish law. With good faith; in good faith; *bonâ fide*. *White's New Recop.* b. 2, tit. 2, ch. 8.

CONCEALMENT. [L. Lat. *concelamentum*.] The suppression or keeping back of a fact or circumstance privately known to one of the parties to a contract, either through inadvertence or mistake, or intentionally, in order to draw the other into a bargain from his ignorance of such fact, and his believing the contrary.* Lord Mansfield, 3 *Burr.* 1905. 2 *Kent's Com.* 482—485. 3 *Id.* 282. Thus, where the insured keeps back from, or neglects to communicate to the underwriter, any material circumstance in his knowledge, in consequence of which the latter is led into a belief that the circumstance does not exist, and is induced to estimate the risk as if it did not exist, such concealment renders the policy void.* 3 *Burr. ub. sup.* *Concealment*, however, is distinguished by Lord Mansfield from an innocent *silence* as to grounds open to both parties to exercise their judgment upon. *Aliud est* celare, *aliud* tacere; *neque enim id est* celare *quicquid* reticeas; *sed cum quod tu scias, id ignorare emolumenti tui causa velis eos, quorum intersit id scire.* (It is one thing to conceal, another thing to be silent; for mere silence does not always amount to concealment, but only when it is coupled with a desire that those whose interest it is to know a fact known to yourself, should remain ignorant of it, with a view to your own advantage.) *Id. ibid.* See 2 *Duer on Ins.* Lect. xiii.

CONCEALERS. [L. Lat. *concelatores;* from *concelando*, says Cowell, by antiphrasis; because they did the reverse of concealing.] In old English law. Detectors or discoverers of concealed lands. Persons appointed by letters patent, (termed letters of concealment,) to discover lands, which, in the reigns of Elizabeth and James, were suspected of being concealed, that is, secretly kept or withheld from the crown. *Termes de la Ley. Cowell.* They are called by Lord Coke, *turbidum hominum genus*,

(a troublesome, disturbant sort of men). 3 *Inst.* 188.

CONCEDERE. Lat. To grant. **Cuicunque aliquid conceditur, conceditur et id sine quo res ipsa non esse potuit.** To whomsoever any thing is granted, that also is granted without which the thing itself could not exist. When any thing is granted, all the means to attain it, and all the fruits and effects of it are granted also; and shall pass inclusive, together with the thing, by the grant of the thing itself, without the words *cum pertinentiis*, or any such like words. *Shep. Touch.* 89. Thus, if a man conveys a piece of ground in the midst of his estate, a right of way to come to it, over the land not conveyed, will pass to the grantee. 1 *Steph. Com.* 464. *Co. Litt.* 56 a. *Finch's Law*, b. 1, c. 4, num. 86. *Broom's Max.* 198, [362]. This is one of the fundamental maxims of construction of deeds. 1 *Steph. Com.* 462, 463. Its phraseology is sometimes varied thus: **Cuicunque aliquis quid concedit, concedere videtur et id sine quo res ipsa esse non potuit.** To whomsoever any one grants a thing, he is supposed [seems] to grant that also without which the thing itself could not exist, [the grant itself would be of no effect]. 11 *Co.* 52. *Broom's Max.* 198, [362]. Thus, "if I grant you my trees in my wood, you may come with carts over my land to carry the wood." 11 *Co. ub. sup.*

Another form of this maxim is the following (q. v.): **Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest, [or id per quod devenitur ad illud.]** When the law grants any thing to any one, it is supposed [it seems] to grant that also without which the thing itself could not exist, [the means of attaining it].

CONCEDO. Lat. I grant. An emphatic word in Anglo-Saxon grants of land. *Heming*, 158, 215, 228.

A word used in old statutes-merchant. *Fleta*, lib. 2, c. 64, § 3.

CONCELARE. L. Lat. In old English law. To conceal. *Concelata;* concealed. *Bract.* fol. 70 b. *Concelamentum;* concealment. *Stat. Westm.* 2, c. 39. *Fleta*, lib. 1, c. 48, § 2.

CONCEPTUM. Lat. (Found.) In the civil law. A theft (*furtum*) was called *conceptum*, when the thing stolen was searched for, and found upon some person in the presence of witnesses. *Inst.* 3. 1. 4.

Actio concepti; an action which lay against the possessor of a thing stolen, although he did not commit the theft. *Id. ibid.*

CONCESSI, CONCESSIT. Lat. (I have granted—he has granted; from *concedere*, to grant.) Words anciently of frequent use in conveyances, being the emphatic and essential words in *grants*, properly so called; and formerly held to amount to a covenant in law. *Co. Litt.* 384 a. See *Concessio, Dedi et concessi, Grant.* Bracton, in commenting on the word *concessi*, says it imports consent, (*quod donationi* consensum *præbuit, quia non multum differt dicere* concessi, *quam dicere* consensi); there being not much difference between saying *concessi* and *consensi*, (I have consented). *Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5.

Concessimus (we have granted) is prominently used in the commencement of *Magna Charta*, c. 1.

CONCESSIO. Lat. [from *concedere*, to grant.] In old English law. A grant. One of the old common assurances, or forms of conveyance, being properly of things incorporeal, which cannot pass without deed. *Co. Litt.* 9 b. 2 *Bl. Com.* 317. See *Grant.*

Concessio versus concedentem latam interpretationem habere debet. A grant ought to have a broad interpretation [to be liberally interpreted] against the grantor. *Jenk. Cent.* 279.

CONCESSIT, (pl. CONCESSERUNT.) In old practice. Granted; allowed; agreed; concurred. A common term in the old reports. "Whitlock, J. *concessit.*" *Latch.* 144. "*Quod* Crew, C. J. and Jones, J. *concesserunt.*" *Id.* 149.

CONCESSOR. Lat. [from *concedere*, to grant.] In old English law. A grantor. *Towns. Pl.* 35.

CONCESSUS. Lat. [from *concedere*, to grant.] In old English law. A grantee. *Towns. Pl.* 35. *Concessus per literas patentes;* a patentee. *Id.* 40.

CONCESSUM. Lat. [from *concedere*, to grant.] Granted, or allowed. A term of frequent occurrence in the old reports, denoting the assent of the court to a doctrine or position laid down on the argument of a cause. *Quod fuit* concessum *per totam curiam;* which was granted by the whole court. See the reports *passim.* Lord Coke observes that "an *il est dit*, (it is said,) with Littleton, is as good as a *concessum* in a book case." *Co. Litt.* 328 b. The same meaning is sometimes expressed by the

phrases *non fuit negatum*, and *non fuit dedictum*, (was not denied). *Latch*, 149. *Dyer*, 14.

CONCILIABULUM. Lat. [from *concilium.*] A council house. *Towns. Pl.* 184.

CONCILIUM. Lat. In old English law. A council. *Concilium regis privatum;* the king's privy council; called also *concilium continuum*, (perpetual council,) and *concilium secretum regis*, (the king's secret council.) *Crabb's Hist. Eng. Law*, 227.

Magnum concilium regis; the king's great council. *Id.* 228. One of the ancient names of the English parliament. 1 *Reeves' Hist. Eng. Law*, 62. 8 *Co.* 39. 1 *Bl. Com.* 148.

Legale concilium; the king's council at law; the king's council of advice in matters of law. *Hale's Anal.* sect. iii.

Concilium militare; the king's council in time of war or public hostility. *Id.*

CONCILIUM, CONSILIUM. L. Lat. In English practice. Argument; or the sitting of a court to hear argument. *Dies concilii;* a day to hear the counsel of both parties in court. *Ulterius concilium;* further argument. 2 *Stra.* 802. 2 *Wils.* 125. A motion for a *concilium*, or day for the argument of a cause, was formerly moved for upon reading the record in court, but now it is a motion of course. 2 *Tidd's Pr.* 737—739.

The counsel in a cause or matter. *Concilium non dedit advisamentum;* the counsel did not give the advice. *Cro. Eliz.* 9.

CONCIO. Lat. A discourse or sermon. *Towns. Pl.* 212.

CONCIONATOR. L. Lat. In old records. A common council man; a freeman called to a [legislative] hall or assembly. *Cowell.*

CONCIPERE. Lat. In old practice. To conceive; to express in words; to frame or draw a legal instrument. *Clerke's Prax. Cur. Adm.* tit. 6.

CONCLUDE. [Lat. *concludere*, from *con*, together, and *claudere*, to shut.] To determine, finish, shut up, [or close]. *Co. Litt.* 37 a.

To estop or bar a man to plead or claim any other thing. *Id. ibid.* To bar or shut out; to shut up a party to a position which he has taken.* Thus, where a sheriff has returned a *capias* that he has taken the defendant, he is *concluded* by such return, i. e. barred, shut out or estopped from questioning the return itself, or avoiding its legal effect in making him liable to the plaintiff.* *Termes de la Ley. Cowell.*

CONCLUSION. [Lat. *conclusio*, from *concludere*, to conclude.] An estoppel or bar, arising from some previous act or admission of a party. See *Conclude.*

An inference or deduction of law.

An end or close, as of a pleading.

CONCLUSION TO THE COUNTRY. In pleading. The tender of an issue to be tried by jury. *Steph. Plead.* 230. The peculiar conclusion of pleadings by way of traverse or denial; expressed on the part of the defendant, by the clause,—"*And of this he puts himself upon the country;*" (*et de hoc ponit se super patriam;*) and on the part of the plaintiff, by the clause,—"*And this he prays may be inquired of by the country;*" (*et hoc petit quod inquiratur per patriam;*) being the offer of the pleading party to refer the issue raised upon such pleading to the decision of a jury. *Steph. Plead.* 73, 78, 230.

CONCLUSIVE. [from Lat. *concludere*, to shut together, or shut up.] Shutting up a matter; shutting out all further evidence; not admitting of explanation or contradiction; putting an end to inquiry; final; decisive. See *infra.*

CONCLUSIVE EVIDENCE. Evidence which, in its nature, does not admit of explanation or contradiction; such as what is called *certain circumstantial* evidence. *Burr. Circ. Evid.* 89.

Evidence which, of itself, whether contradicted or uncontradicted, explained or unexplained, is sufficient to determine the matter at issue. 6 *Lond. Law Mag.* 373. And see 1 *Stark. Evid.* 453.

CONCLUSIVE PRESUMPTION. A species of presumption of law, which cannot be disputed or rebutted; otherwise called a *præsumptio juris et de jure*, (q. v.) It is rather a rule of law, than a presumption in the proper sense. *Vinnius, Jurispr. Contr.* lib. 4, tit. 36. "Conclusive presumptions are rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise." 1 *Greenl. Evid.* § 15. Of this class, is the presumption that a sane man contemplates and intends the natural and probable consequences of his own acts. *Id.* § 18. Lord Ellenborough 3 *M. & S.* 11, 15. *Burr. Circ. Evid.* 46, 47.

CONCORD. [Lat. *concordia;* L. Fr.

peez.] In old practice. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. *Plowd.* 5, 6, 8. The more modern term is *accord.* See *Accord and satisfaction.*

An agreement between the parties to a fine of lands, how and in what manner the land should pass. *Termes de la Ley.* Called in the statute *Modus levandi fines,* "the peace." 2 *Inst.* 510. It was one of the necessary parts of a fine, and indeed the foundation and substance of it, being an acknowledgment that the lands in question were the right of the complainant.* 2 *Bl. Com.* 350. 1 *Steph. Com.* 517. See *Fine, Cognizance, Peace.* Hence fines themselves were anciently called *concords,* and *final concords. Crabb's Hist. Eng. Law,* 94, 178.

CONCORDAT. An agreement made by a temporal sovereign with the pope, relative to ecclesiastical matters. *Webster.*

CONCORDES. Lat. [plur. of *concors,* q. v.] In old practice. Agreed, as a jury upon their verdict. *In dicendo veredictum suum, aut omnes* concordes *sunt, aut quidam* concordes *et quidam discordes;* in delivering their verdict, they are either all agreed, or some are agreed, and some not. *Bract.* fol. 292. *Donec unanimes fuerint et concordes;* until they shall be unanimous and agreed. *Fleta,* lib. 4, c. 9, § 2.

Agreed or unanimous. Said of the plaintiff's *secta. Fleta,* lib. 2, c. 47, § 5.

CONCORDIA. Lat. In old English law. An agreement, or concord. *Fleta,* lib. 5, c. 3, § 5. See *Concord.*

The agreement or unanimity of a jury. *Compellere ad concordiam. Fleta,* lib. 4, c. 9, § 2.

CONCORDIA DISCORDANTIUM CANONUM. Lat. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A. D. 1151; more commonly known by the name of *Decretum Gratiani,* (q. v.) 1 *Bl. Com.* 82. See *Canon law.*

CONCUBINE. [Lat. *concubina,* from *concumbere,* to lie together.] A woman with whom a man cohabits without marriage, as distinguished from a lawful wife.* Where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the woman before marriage was called *concubina,* and afterwards *mulier. Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 248.

CONCUBINE. In the civil law. A woman taken to cohabit in the manner, and under the character of a wife, but without being authorized thereto by a legal marriage. *Shelford, Marr. & Div.* 10, and note. See *Tayl. Civ. Law,* 273.

CONCUBINAGE. [Lat. *concubinatus.*] The cohabitation of a man with a woman to whom he is not united by marriage.*

A plea or exception in the old action of dower, that the claimant was not lawfully married to the party from whose lands she sought to be endowed, but only his concubine.* *Bract.* fol. 302. *Britt.* c. 107.

CONCUBINAGE. In the civil law. A species of marriage, or rather a half, or semi-marriage, (Lat. *semi-matrimonium;* Gr. ἡμιγαμος,) authorized by law. *Shelford, Marr. & Div.* 10. *Cooper's Justin. Inst.* Notes,* 420. See *Tayl. Civ. Law,* 273.

CONCULCARE. Lat. In old English law. To trample down, or tread under foot. *Conculcavit et consumpsit;* (he) trod down and consumed. *Reg. Orig.* 94.

CONCUR. [from Lat. *concurrere,* to run together.] To meet; to unite. Formerly applied to things, as to titles. "When two titles concur, the best is preferred." *Finch's Law,* b. 1, ch. 4, num. 82.

To claim jointly with others; to claim at the same time; to claim adversely. See *Concursus.* Not in use.

CONCURATOR. Lat. In the civil law. A co-curator, or co-guardian. *Inst.* 1. 24. 1.

CONCURRENCE. [Lat. *concursus,* q. v.] In the civil law. A term applied to actions where two or more meet in, or may be brought by one and the same person, on the same ground of action. 1 *Mackeld. Civ. Law,* 195, § 198. It has not been adopted in the common law, though the participle "concurrent" is constantly used in expressing the same idea. See *Concurrere. Concourse* is the term used in Scotch law. See *Concourse of actions.*

CONCURRERE. Lat. [from *con,* together, and *currere,* to run.] In the civil law. To run together; to meet; to be equally available for attaining a certain object; to concur.* *Traditum est, duas lucrativas causas in eundem hominem, et eandem rem* concurrere *non posse;* it is a maxim that two lucrative actions cannot concur, or meet in the same person, and for the same thing. *Inst.* 2. 20. 6. See *Dig.* 17. 43. 1. *Ubi duæ actiones de eadem re* concurrunt; where two actions concur for the same thing. *Bract.* fol. 114. The verb *concur* (q. v.) is not now used in

English in this sense, being exclusively applied to persons.

Concurrens, concurrentes; concurrent. *Cum quis plures habeat actiones* concurrentes *de eadem re;* where one has several concurrent actions in respect of the same matter. *Bract.* fol. 114. The corresponding English phrases "*concurrent actions*," "*concurrent remedies*," are in constant use.

CONCURSUS. Lat. [from *concurrere*, q. v.] In the civil law. A running together; a meeting or concurrence. *Concursus actionum;* concurrence or concourse of actions. *Inst.* 4. 7. 5. *Id.* 4. 3. 11. See *Concurrence.*

A running together; collision or conflict. *Concursus creditorum;* the conflict or conflicting rights of creditors, in relation to their liens, privileges and priorities, in cases of insolvency and other cases. *Story's Confl. Laws*, § 325 c, § 433 a.

CONCUSS. [from Lat. *concutere*, q. v.] In Scotch law. To coerce. *Shaw's R.* 322.

CONCUSSIO. Lat. [from *concutere*, q. v.] In the civil law. The offence of extortion by threats of violence. *Dig.* 47. 13.

CONCUTERE. Lat. [from *con*, together, and *quatere*, to shake.] In the civil law. To coerce by threats of violence; to extort from the fears of a person. *Dig.* 1. 18. 6. 3. *Brissonius.*

CONDEMN. [Lat. *condemnare.*] To find or adjudge guilty. "If one be *condemned* in an action upon the case." 3 *Leon.* 68, case 103.

In international law. To declare a vessel legally captured. See *Condemnation.*

In maritime law. To pronounce worthless; to declare a vessel unfit for service.

CONDEMNATION. In international law. The sentence of a court of competent jurisdiction, that a ship or vessel taken on the high seas was liable to capture, and was legally captured. *Chitty's Law of Nations*, 99. *Holthouse.* This sentence is, in all cases, essential to change the property. 1 *Kent's Com.* 102, 103.

CONDEMNATION MONEY. In practice. The damages which the party failing in an action is adjudged or *condemned* to pay; sometimes simply called the *condemnation.* 3 *Bl. Com.* 291. It answers to the *judicatum* of the civil law. *Id.* 291, 292.

CONDEMPNARE. L. Lat. An old form of *condemnare*, to condemn. *Bract.* fol. 128.

CONDERE. Lat. To make or establish. *Testamentum* condere; to make a will. *Bract.* fol. 60 b. *Condidit;* he made (a will). The name of a plea in the English ecclesiastical courts.

CONDICTIO. Lat. [from *condicere*, to summon; *denuntiare.*] In the civil law. A personal action; an action against the person, in which the plaintiff complains that something ought to be given to him; (*dicimus* condictionem *actionem* in personam *esse, quâ actor intendit dari sibi oportere.*) *Inst.* 4. 6. 15. Sometimes called *condictitia actio;* an action of condiction. *Inst.* 3. 15. 1. This sense of the word is admitted in the Institutes to be an abuse (*abusivè dicimus condictionem*) of its original meaning, which was a denunciation or summoning, the word being derived from *condicere*, which, in the old language, signified to denounce, or summon a party to appear on a certain day to receive judgment. *Inst.* 4. 6. 15. *Theoph. in loco. Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1145. *Hallifax, Anal.* b. 3, ch. 1, nu. 5.

CONDICTIO CERTI. Lat. In the civil law. An action which lies upon a promise to do a thing, where such promise or stipulation is certain, (*si certa sit stipulatio.*) *Inst.* 3. 16. pr. *Id.* 3. 15. pr. *Dig.* 12. 1. *Bract.* fol. 103 b. *Fleta*, lib. 2, c. 60, § 23.

CONDICTIO EX LEGE. Lat. In the civil law. A personal action, arising from a particular law. This had place when an obligation had been introduced by a new law, and no particular action had been expressed by which that obligation might be enforced. *Dig.* 13. 2. *Cod.* 4. 9. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1155. *Hallifax, Anal.* b. 3, ch. 1, num. 16.

CONDICTIO INDEBITI. Lat. In the civil law. An action to recover back money paid by mistake, as *not* being *due* (*indebitum*) to the party who received it. *Inst.* 3. 15. 1. *Dig.* 12. 6. 1. *Cod.* 4. 5. *Fleta*, lib. 2, c. 60, § 1. It approaches very nearly to our action for money had and received. *Cooper's Notes*, (*594,) *on Inst. ub. supra.* 1 *Kames' Equity*, 307. *Heinecc. El. Jur. Civ.* lib. 3, tit. 28, § 991. *Bell's Dict.*

CONDICTIO REI FURTIVÆ. Lat. In the civil law. An action which lay to recover a thing stolen, against the thief himself, or his heir. *Inst.* 4. 1. 19. *Dig.*

13. 1. *Cod.* 4. 8. *Heinecc. El. Jur. Civ.* lib. 4, tit. 1, § 1062. *Bract.* fol. 103 b.

CONDICTIO SINE CAUSA. Lat. In the civil law. An action which lay in favor of a person who had given or promised a thing without consideration (*causa*). *Dig.* 12. 7. *Cod.* 4. 9.

CONDITIO. Lat. A condition. *Bract.* fol. 19, 47, *et passim.* See *Condition.*

Conditio beneficialis quæ statum construit, benigne, secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte, secundum verborum proprietatem est accipienda. A beneficial condition which creates an estate is to be construed favorably, according to the intention of the words; but an odious condition which destroys an estate, is to be taken strictly, according to the precise meaning of the words. 8 *Co.* 90. *Shep. Touch.* 134.

Conditio dicitur, cum quid in casum incertum, qui potest tendere ad esse aut non esse, confertur. A condition is said to be where any thing is annexed having reference to an uncertain event, which may tend to create or destroy it. *Co. Litt.* 201.

Conditio (præcedens) adimpleri debet priusquam sequatur effectus. A condition precedent ought to be fulfilled before the effect can follow. *Co. Litt.* 201.

CONDITION. [Lat. *conditio.*] A restraint annexed to a thing, so that, by the non-performance of it, the party to the condition shall receive prejudice and loss, and by the performance, commodity and advantage.* *West's Symb.* par. 1, lib. 2, sect. 156. *Termes de la Ley. Cowell.*

A *modus*, quality or qualification annexed to an estate, interest or right, whereby it may be created, enlarged or defeated upon an uncertain event.* *Co. Litt.* 201 a. 2 *Crabb's Real Prop.* 792, § 2127. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. 4 *Kent's Com.* 121.

The definition of Lord Coke, from which the above is slightly modified, is in these words: "Condition—*est modus*, is a quality annexed by him that hath estate, interest or right to the same, whereby an estate, &c. may either be defeated, or enlarged or created, upon an uncertain event." *Co. Litt. ub. sup.* Strictly, *modus* and *conditio* are not, in all cases, convertible terms. The difference between them is shown in Bracton. *Bract.* fol. 18 b, 19. See *Modus.*

The most express words of condition, as given by Littleton, are the following:

Upon condition, (*sub conditione*). *Litt.* sect. 328. *Co. Litt.* 203 a.

Provided always, (*proviso semper*). *Litt.* sect. 329.

So that, (*ita quod*). *Id. ibid.*

That if it happen, (*quod si contingat*). *Id.* 330.

The use of any of these words in a deed (except the last, *Litt.* sect. 331, *Co. Litt.* 204 a;) makes an estate upon condition. See *Estate upon condition.* There are other words which sometimes amount to a condition, and sometimes not; such as *if*, (*si*); *for*, (*pro*); *by reason*, (*causâ*). *Co. Litt.* 204 a. *Si* (if) was the great characteristic word of a condition in the old law. *Fleta*, lib. 3, c. 9, § 4. The word *that*, (*ut*), was the proper word to express a *modus*, and *because*, (*quia*), to express a consideration. *Id. ibid. Co. Litt. ub. sup.* The words *to do*, or *that he shall do*, (*ad faciendum*,) and *doing*, or *on his doing*, (*faciendo*); *to pay* (*ad solvendum*); *with that intention*, (*eâ intentione*); *to the effect*, (*ad effectum*); *for the purpose*, (*ad propositum*); make a condition in a will, but not in a deed. *Co. Litt.* 204. 2 *Crabb's Real Prop.* 802, § 2143; 803, § 2145. 4 *Metcalf's R.* 525, 526. 2 *Hilliard's Real Prop.* 357, 358.

CONDITION EXPRESSED, or CONDITION IN DEED. A condition expressed in the deed by which it is created, (*conditio expressa*). 2 *Crabb's Real Prop.* 792, § 2127. *Bract.* fol. 47. A condition annexed by express words, to any feoffment, lease or grant. *Termes de la Ley.* As where a feoffment or lease is made, reserving a rent payable at a certain day, with a proviso, that if it is not paid on that day, the feoffor or lessor may enter, this is a condition expressed, or condition in deed. *Id.* 2 *Crabb's Real Prop. ub. sup. Litt.* sect. 325. 4 *Kent's Com.* 123. Called also, formerly, an *actual* condition. *Termes de la Ley.*

CONDITION IN DEED, or CONDITION IN FACT. [Fr. *condition en fait.*] A condition expressed in a deed, (as a feoffment, lease, or grant,) in plain words, or legal terms of law. *Cowell. Co. Litt.* 201 a. See *Condition expressed.*

CONDITION IMPLIED, or CONDITION IN LAW. A condition not expressed in words, but implied by law; a tacit condition, (*conditio tacita*). *Bract.* fol. 47. As if a grant be made to a man of an office generally, without adding other

words, the law tacitly annexes hereto a secret condition, that the grantee shall duly execute his office. *Litt.* sect. 328, 378. 2 *Bl. Com.* 152. 2 *Crabb's Real Prop.* 804, § 2146. *Termes de la Ley.* Anciently also called a condition *covert*. *Id.* So it was a tacit condition annexed to every tenancy, that the tenant should not do any act to the prejudice of the reversion. 4 *Kent's Com.* 122.

CONDITION IN LAW. [L. Fr. *condition en ley.*] A condition tacitly created [or annexed to a grant,] by law, without any words used by the party. *Co. Litt.* 201 a, 234 b. See *Condition implied.* A limitation is called by Littleton a condition in law. *Litt.* sect. 380. 2 *Bl. Com.* 155. See *Limitation.*

CONDITION PRECEDENT. A condition preceding an estate.* A condition which must happen, or be performed, *before* the estate to which it is annexed can vest or be enlarged. As if a man grant to his lessee for years, that, upon payment of a certain sum within the time, he shall have the fee, this is a condition precedent, [that is, the condition *precedes* the estate in fee,] and the fee does not pass until the money be paid. 2 *Bl. Com.* 154. *Co. Litt.* 217. *Termes de la Ley.* 1 *Steph. Com.* 277—281. 2 *Wooddes. Lect.* 86. 2 *Crabb's Real Prop.* 792, § 2128. 4 *Kent's Com.* 125. 2 *Dallas' R.* 317. Conditions precedent must be strictly performed. See 1 *Kernan's R.* 25.

CONDITION PRECEDENT. In the law of contracts. A condition preceding the accruing of a right or liability.* An act essential to be performed by one party, prior to any obligation attaching upon another party, to do or perform another given act. *Holthouse. Chitty on Contracts*, 738.

CONDITION SUBSEQUENT. A condition following an estate.* A condition annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated.* *Co. Litt.* 201. 2 *Bl. Com.* 154. As if a man grant an estate in fee simple, reserving to himself and his heirs a certain rent, and that if the rent be not paid at the times limited, it shall be lawful for him and his heirs to re-enter and avoid the estate; this is a condition subsequent, the estate of the grantee being defeasible, if the condition be not performed.* *Litt.* sect. 325. 2 *Bl. Com.* 154. 1 *Steph. Com.* 278. 4 *Kent's Com.* 125. *United States Digest*, Condition I. (c). Whether a condition be precedent or subsequent, does not depend upon any precise form of words, or their place in the deed, but must be determined by the whole instrument. 1 *Wisconsin R.* 527. 2 *Selden's R.* 74, 80. The precedency of conditions must depend on the order of time in which the intent of the transaction requires their performance. *Id. ibid.* Conditions subsequent in deeds are not favored. 15 *Georgia R.* 103.

CONDITION INHERENT. A condition annexed to the rent reserved out of the land whereof the estate is made; [or rather to the estate in the land, in respect of rent, &c.] *Shep. Touch.* (by Preston), 118.

CONDITION COLLATERAL. A condition where the act to be done is a collateral act. *Shep. Touch.* 118.

CONDITION AFFIRMATIVE. A condition which consists in doing a thing; as, provided that the lessee shall pay rent, &c. *Shep. Touch.* 118.

CONDITION NEGATIVE. A condition which consists in not doing a thing; as, provided that the lessee shall not alien, &c. *Shep. Touch.* 118.

CONDITION RESTRICTIVE. A condition for not doing a thing; as that the lessee shall not alien or do waste, or the like. *Shep. Touch.* 118.

CONDITION COMPULSORY. A condition expressly requiring a thing to be done;* as that a lessee shall pay 10*l.* such a day, or his lease shall be void. *Shep. Touch.* 118.

CONDITION SINGLE. A condition to do one thing only. *Shep. Touch.* 118.

CONDITION COPULATIVE. A condition to do divers things. *Shep. Touch.* 118.

CONDITION DISJUNCTIVE. A condition requiring one of several things to be done. *Shep. Touch.* 118.

CONDITIONAL CREDITOR. In the civil law. A creditor having a future right of action, or having a right of action in expectancy. *Dig.* 50. 16. 54.

CONDITIONAL FEE. A fee restrained, in its form of donation, to some particular heirs, exclusive of others; as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral heirs, or to the heirs male of his body, in exclusion both of collaterals and

lineal females also. 2 *Bl. Com.* 110. 1 *Steph. Com.* 226. It was called a *conditional* fee, by reason of the *condition* expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. 2 *Bl. Com.* 110. It was a fee simple, on condition that the donee had issue, [or the prescribed heirs]. *Id. ibid.* 4 *Kent's Com.* 11, 12. Under the statute *De donis*, conditional fees were changed into estates tail. *Id.* 11, *et seq.* 444. In the United States, conditional fees have generally partaken of the fate of estates tail, and have not been revived. In South Carolina, however, they still exist. *Id.* 16, 17. 1 *Hilliard's Real Prop.* 97, 98.

CONDITIONAL LIMITATION. A species of limitation of an estate, partaking of the nature of a condition. 4 *Kent's Com.* 127. As if a condition subsequent be followed by a limitation over to a third person, in case the condition be not fulfilled, or there be a breach of it, that is termed a conditional limitation. *Id.* 126. Sometimes considered as the same with a remainder. *Id.* 128, notes. *Id.* 249, 250.

This term is used in other senses than the foregoing. Thus it is said, that a conditional limitation is where an estate is so expressly defined, and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 *Steph. Com.* 278. And to this class are referred all base fees, and fees simple conditional at the common law. *Id. ibid.*

CONDITIONAL STIPULATION. In the civil law. A stipulation to do a thing upon condition, as the happening of any event. *Sub* conditione stipulatio *fit, cum in aliquem casum differtur obligatio. Inst.* 3. 16. 4.

CONDITIONES. Lat. Conditions. **Conditiones quælibet odiosæ; maxime autem contra matrimonium et commercium.** Any conditions are odious, but especially those which are against [in restraint of] marriage and commerce. *Lofft's R.* Appendix, 644.

CONDITIONS OF SALE. The terms upon which sales are made at auction; usually written or printed and exposed in the auction room at the time of sale. See *Babington on Auctions*, 233—243.

CONDONARE. Lat. In old English law. To forgive; to remit. *Omnes fines qui injuste et contra legem terræ facti sunt nobiscum,—omnino condonentur;* all fines which have been made with us unjustly and against the law of the land, shall be wholly remitted. *Mag. Cart. Johan.* c. 55.

CONDONATION. [Lat. *condonatio*, from *condonare*, to forgive.] In ecclesiastical law. Forgiveness. The forgiveness, by a husband or wife, of a breach of marital duties on the part of the other, as of acts of adultery or cruelty. *Shelford, Marr. & Div.* 436, 445. It is either express or implied; express, when signified by words or writing, and implied from the conduct of the parties, as where, for instance, the injured party, after reasonable knowledge of the infidelity of the other, continues to live with him or her, in a state of matrimonial connection, or renews such connection when it has been suspended.* *Id.* 445. *Sanchez de Divortio*, lib. 10. disp. 5, cited *ibid.* 1 *Haggard's Eccl. Rep.* 130. 2 *Kent's Com.* 101, and notes. It is called a conditional forgiveness, being accompanied by an implied condition that the injury shall not be repeated. 3 *Hagg. R.* 629, 351. *Id.* 733, 752. 4 *Paige's R.* 460.

CONDUCERE. Lat. In the civil law. To hire. *Dig.* 19. 2. 6, 8, 60, 61, 62.

CONDUCT. See *Safe conduct.*

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpœnaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. *Lush's Pract.* 460. *Archb. New Pr.* 639.

CONDUCTI ACTIO. Lat. In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator*). *Inst.* 3. 25, pr. 2. Otherwise called *ex conducto actio. Dig.* 19. 2. 15. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 929. See *Conductio.*

CONDUCTIO. Lat. [from *conducere*, to hire.] In the civil law. A hiring. Used generally in connexion with the term *locatio*, a letting. *Locatio et conductio*, (sometimes united as a compound word, *locatio-conductio*); a letting and hiring. *Inst.* 3. 25. *Dig.* 19. 2. 1, 2. *Bract.* fol. 62, c. 28. *Story on Bailments*, §§ 8, 368. See *Locatio.*

CONDUCTOR. Lat. [from *conducere*, to hire.] In the civil law. A hirer. *Inst.* 3. 25. pr. & 5, 6. *Dig.* 19. 2. 11, 15. *Fleta*, lib. 2, c. 59, § 1. 2 *Kent's Com.* 586, note. *Conductor militum;* a presser of soldiers. *Cro. Car.* 71.

CONDUCTUS. Lat. [from *conducere*,

to hire.] Hired. *Res conducta; conductum;* a thing hired. *Bract.* fol. 62.

CONE AND KEY. [*Cone* or *colne*, Sax. an account.] A phrase (partly Saxon, or early English,) used by Bracton in describing the privileges which a certain age gave a female in his time. *Femina in tali ætate*, (i. e. 14 *vel* 15 *annorum*,) *potest disponere domui suæ, et habere* Cone et Keye. *Bract.* fol. 86 b. A woman at such an age, (14 or 15,) may take charge of her house, and have *cone and key;* (that is, keep the *accounts* and *keys*). *Spelman.* A somewhat similar qualification in the son of a burgess is mentioned by Glanville, (lib. 7, c. 9); and also by Bracton in another passage. *Bract.* fol. 86 b, ¶ 2. See *Fleta*, lib. 1, c. 11, § 7. Some copies read *cover et keye*, as to which Spelman expresses a doubt. His own MS. copy of Bracton had *cone aut keye.* According to Lord Coke, "*cover et keye*" is the true reading, that is, *cofer and keye;* meaning that a woman at the age mentioned was able to discern what things were in a household, fit to be kept *in cofer*, under lock and *key.* 2 *Inst.* 203. See 1 *Reeves' Hist. Eng. Law*, 284, note. See *Key.*

CONFECCION, *Confexion*, *Confectioun.* L. Fr. In old English law. A, or the making or execution of a written instrument. *Britt.* c. 28. *Confeccion d'la chartr';* the making of the charter. *Id.* c. 93. *Confectioun. Yearb.* P. 1 Edw. II. 5.

CONFECTIO. L. Lat. [from *conficere*, to make; L. Fr. *confeccion.*] In old English law. A, or the making or execution of a charter, deed or other written instrument. *Bract.* fol. 39 b, 398. *Fleta*, lib. 2, c. 61, § 16. *Plowd.* 108 a. *A confectione;* from the making. 5 *Co.* 1. 1 *Ld. Raym.* 480.

CONFEDERACY. [L. Lat. *confederatio*, a leaguing together; from *con*, and *federatio* from *fœdus*, a league.] A combination between two or more persons to do any hurt or damage to another, or to do any unlawful thing.* *Termes de la Ley.* In criminal law, usually termed *conspiracy*, (q. v.)

In equity pleading, the charge of a *confederacy* between the defendant and other persons to injure the complainant, is one of the formal parts of a bill. *Story's Eq. Pl.* § 29.

CONFEDERATION. [L. Lat. *confederatio;* see *confederacy.*] Union by league or mutual contract; federal compact. See *Articles of confederation.*

CONFESSIO. Lat. A confession. *Confessio in judicio;* a confession made in, or before a court.

Confessio facta in judicio omni probatione major est. A confession made in court is of greater effect than any proof. *Jenk. Cent.* 102.

Confessus pro judicato est, qui quodammodo sua sententia damnatur. One who confesses is held as adjudged, who is in a manner condemned by his own sentence, [being, in a manner, self-condemned.] *Dig.* 42. 2. 1. More briefly expressed, **Confessos in jure pro judicatis haberi placet.** *Cod.* 7. 59. This maxim of the civil law is adopted by Lord Coke, in the following words: **Confessus in judicio pro judicato habetur, et quodammodo sua sententia damnatur.** One who makes a confession in court is considered as having judgment passed upon him, and is, in a manner, condemned by his own sentence. 11 *Co.* 30. The peculiar meaning of the words *in judicio* seems to have been misapprehended in most of the translations of these maxims. See *In judicio*, *Judicium.*

CONFESSION AND AVOIDANCE. In pleading. The *admission* of the truth of a statement of fact contained in the pleading of the opposite party, coupled with the allegation of a new fact, which obviates or repels its legal effect, and thus *avoids* it.* A pleading framed upon this principle is called a pleading *in confession and avoidance*, or *by way of confession and avoidance. Steph. Plead.* 52, 198, 200. 3 *Bl. Com.* 310. Thus, where a release is pleaded in bar to a declaration, the plaintiff may reply, admitting the execution of the release, but avoiding the legal effect of that fact, by stating a new fact, viz. that it was obtained by fraud or the like.* The admission, however, in these cases is never made in express terms, though it must always be distinctly implied in, or inferable from the matter of the pleading. *Steph. Pl.* 200.

CONFESSION. [Lat. *confessio*, from *confiteri.*] In criminal evidence. Acknowledgment of guilt or agency. See 1 *Greenl. Evid.* § 213, *et seq. United States Digest*, Evidence in criminal cases. *Burr. Circ. Ev.* 495.

CONFESSO. See *Pro confesso.*

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude. 1 *Mackeld. Civ. Law*, 352, § 321. *Heinecc. El. Jur. Civ.* lib. 4, tit. 6, § 1135. See *Actio confessoria.*

CONFESSUS. Lat. One who has confessed. See *Confessio.*

CONFICERE. Lat. [from *con*, together, and *facere*, to make.] In civil and old English law. To make or execute, as a deed or other written instrument. *Dig.* 27. 1. 45. 3. *Conficiendus;* to be made. *Towns. Pl.* 97. *Confectus;* made. *Profert chartam tali die* confectam; he produces a deed made on such a day. *Bract.* fol. 57 b.

CONFIDENTIAL COMMUNICATION. See *Privileged communication.*

CONFIRM. See *Confirmare, Confirmation.*

CONFIRMARE. Lat. [from *con*, together, and *firmare*, to strengthen.] In old English law and conveyancing. To confirm; to make firm, or strong, (*firmum facere; Litt.* sect. 520); to give additional strength or validity.

Confirmare was used as an ordinary word in deeds of gift, in the time of Bracton. *Dedi et concessi, et hac præsenti chartâ mea* confirmavi; I have given and granted, and by this my present charter have confirmed. *Bract.* fol. 34 b. In this application, it merely signified to give additional strength to what was *already* strong, and to give it at the *same time*, that is, by the same instrument; thus strictly preserving the etymology of the word; (*con*, together, or *simul.*) *Est* confirmare *id quod* prius firmum *fuit* simul firmare. *Id. ibid.* It is used in the same sense in *Magna Charta*, (c. 1). *Concessimus Deo, et hac præsenti charta nostra* confirmavimus.

Confirmare was afterwards used as the effective word in deeds of confirmation, properly so called. See *Confirmation. Noverint universi*, &c. *me A. de B. ratificasse, approbasse et* confirmasse, &c. Know all men, &c. that I, A. of B. have ratified, approved and confirmed. *Litt.* sect. 515. In this latter application, *confirmare* signified to make strong that which before was weak or defective. As early as the time of Fleta, the definition given by Bracton (*supra*) was modified so as to read, *Confirmare est id quod prius* infirmum *fuit simul firmare. Fleta*, lib. 3, c. 14, § 5. And this is quoted by Lord Coke. *Co. Litt.* 295.

Confirmare nemo potest prius quam jus ei acciderit. No one can confirm before the right accrues to him. 10 *Co.* 48.

Confirmat usum qui tollit abusum. He confirms the use [of a thing] who removes the abuse [of it]. *Moor*, 764.

CONFIRMATIO. Lat. [from *confirmare*, q. v.] In old English law. A confirmation. Confirmatio *est prioris juris et dominii adepti firmatio, cum prima firmitate donationis; nihil enim novi attribuit, sed jus vetus consolidat et confirmat.* A confirmation is a making firm of a former right and ownership already obtained, with the first strength of the gift, [i. e. with all the strength it could have had from the original gift]; for it confers nothing new, but consolidates and confirms the old right. *Bract.* fol. 58.

Confirmatio est nulla, ubi donum præcedens est invalidum. A confirmation is null, where the preceding gift is invalid; that is, it has no effect to strengthen a void estate. *Co. Litt.* 295 b. See *Confirmation.*

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit. A confirmation supplies all defects, although that which has been done was not originally valid. *Co. Litt.* 295 b. In Fleta, the maxim is given in fewer words: **Confirmatio omnem supplet defectum.** Confirmation supplies all defect. *Fleta*, lib. 3, c. 3, § 7. *Confirmatio supplevit defectum. Bract.* fol. 271.

CONFIRMATIO PERFICIENS. L. Lat. In old English law. A perfecting confirmation. A confirmation which tends and serves to confirm and make good a wrongful and defeasible estate, [by adding the right to the possession, or defeasible seisin,] or to make a conditional estate absolute, [by discharging the condition]. *Shep. Touch.* (by Preston), 311.

CONFIRMATIO CRESCENS. L. Lat. In old English law. An increasing or enlarging confirmation. A confirmation which tends and serves to increase and enlarge a rightful estate, and so to pass an interest, [viz. an estate]. *Shep. Touch.* 311.

CONFIRMATIO DIMINUENS. L. Lat. In old English law. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, [operating as a release of part of the services]. *Shep. Touch.* 311.

CONFIRMATIO (or CONFIRMATIONES) CHARTARUM. Lat. Confirmation of the charters. The title of a statute passed 25 Edw. I. confirming *Magna Charta*, and the Charter of the Forest, and by which the former is directed to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral

churches, and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word, deed or counsel, act contrary thereto, or in any degree infringe it. 1 *Bl. Com.* 128. It is in the form of a charter or letters patent. *Crabb's Hist. Eng. Law*, 173. 2 *Reeves' Hist.* 101, 102. *Barringt. Obs. Stat.* 173.

CONFIRMATION. [Lat. *confirmatio*, q. v.] In conveyancing. A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased [and enlarged]. *Co. Litt.* 295 b. *Litt.* sect. 515, 516. 2 *Bl. Com.* 325. 1 *Steph. Com.* 482. *Shep. Touch.* 311. *Termes de la Ley.* An approbation of, or assent to an estate already created, by which the confirmor strengthens and gives validity to it, as far as it is in his power. *Gilb. Tenures*, 75. *Butler's Co. Litt.* lib. 3, note 253. The most common and proper words of making it are "have ratified, approved and confirmed," (*ratificasse, æpprobasse et confirmasse.*) *Litt.* sect. 515. *Shep. Touch.* 311. These are the operative words, although it is usual to insert the words "*given and granted*," also. *Watkins on Conv.* 221.

A confirmation belongs to that class of conveyances termed *secondary* or derivative, and is nearly allied to a release. 2 *Bl. Com.* 324, 325. How it differs from a release, see *Watkins on Conv.* 219. *Litt.* sect. 516, *et seq.* There are implied as well as express confirmations, the former being made by construction of law. *Co. Litt.* 295 b. *Shep. Touch.* 311. The party making a confirmation is sometimes called the *confirmor*, and he to whom it is made the *confirmee. Id. ibid.*

CONFIRMAVI. Lat. I have confirmed. The emphatic word in the ancient deeds of confirmation. *Fleta*, lib. 3, c. 14, § 5.

CONFISCARE. Lat. [from *con*, with, and *fiscus*, treasury; properly used only in the passive, *confiscari.*] In civil and old English law. To confiscate; to claim for, or bring into the fisc, or treasury, (*fiscó vendicare*). *Bract.* fol. 150. In the civil law, goods are said to be confiscated (*confiscari*,) which are gathered into the treasury, (*quæ in fiscum coguntur*). *Brissonius*, citing *Dig.* 48. 21. 8. Money was said to be *confiscated*, when it was actually deposited in the coffers (*in loculis*) of the treasury. *Id.* citing *Suet. Aug.* c. 101.

CONFISCATE. [Lat. *confiscatum*, *confiscata.*] Confiscated; forfeited to the treasury or exchequer of the king or state; seized as forfeited. *Termes de la Ley. Staundf. Pl. Cor.* lib. 3, c. 24. *Cowell.* 1 *Bl. Com.* 299. See *To confiscate*, *Bona confiscata.*

To CONFISCATE. [Lat. *confiscare*, from *con*, with, and *fiscus*, a treasury.] To adjudge to be forfeited to the public treasury; to condemn private forfeited property to public use. *Webster.*—To convert or appropriate private property to the use of the state, as being forfeited; to transfer private property to the *fisc*, or public treasury, on the ground of its being forfeited.* See 1 *Kent's Com.* 56, 59. Debts are sometimes said to be confiscated. *Id.* 62. See *Confiscation. Confisk*, (q. v.) is an obsolete form of this word.

*** "*To confiscate*" and "*to forfeit*" have been called synonymous terms, and have been so used. *Blount.* Chase, J. 3 *Dallas' R.* 199. This is on the authority of Lord Coke, who observes that *confiscare* and *forisfacere* are *synonyma.* 3 *Inst.* 227. As used in modern law, however, there seems to be a clear distinction between them; *to forfeit* being properly applied to the act of the individual, and the consequent condition of his property; *to confiscate*, to the action of the state thereon. The individual *forfeits;* the property itself is *forfeited;* the state *confiscates* it as forfeited. Property cannot be confiscated without being legally forfeited, but it may be forfeited without being confiscated, as where a forfeiture is not taken advantage of. Where property is forfeited, it does not vest in the government, until after a seizure, which then relates back to the time of the forfeiture. 1 *Story's R.* 109. The term "confiscate" is derived from the Roman law, in which it imported actual deposit in the treasury. See *Confiscare.*

CONFISCATION. The act of condemning and adjudging to the public treasury. *Webster.*—The appropriation (usually by formal sentence of condemnation,) of private property to the use of the state; as being legally forfeited; the seizure and transfer of forfeited private property to the *fiscus* or public treasury.* See *Confiscare.*

This term is sometimes used as the synonyme of *forfeiture. Blount*, voc. *Confiscate.* But it is rather the consequence of forfeiture, or forfeiture taken advantage of, and acted upon. It is founded upon for-

feiture, and cannot exist without it, and therefore perhaps properly includes it; but a forfeiture may take place without confiscation following, as where it is waived or remitted.* See *To confiscate.*

CONFISK. An old form of *confiscate.* "Goods *confisked*, that is to say, which the thief attainted for stealing *another* thing, (for if it be for stealing the *same* goods, they are said to be *forfeit* and not *confisked*,) disclaimeth to have any property in." *Finch's Law*, b. 3, c. 17.

CONFLICT OF LAWS. [Lat. *conflictus legum.*] In international law. The opposition between the municipal laws of different countries or states, in the case of an individual who may have acquired rights, or become subject to duties within the limits of more than one state. *Brande.* 2 *Kent's Com.* 110, *et seq.* *Story's Conflict of Laws, passim.* The *conflictus legum* is the most perplexing and difficult title of any in the jurisprudence of public law. 2 *Kent's Com.* 110.

CONFRAIRE. Fr. In old English law. A fraternity, brotherhood or society. *Cowell.*

CONFRERES. [Lat. *confratres.*] In old English law. Brethren in a religious house; fellows of one and the same society. *Stat.* 32 *Hen.* VIII. c. 24. *Cowell.*

CONFUSIO. Lat. [from *confundere*, to pour together.] In the civil law. Confusion; a pouring or fusing together; a mixture of liquids or metals. *Inst.* 2. 1. 27. One of the modes of acquiring property in goods, and distinguished from *commixtio*, which properly was the intermingling of dry substances, as corn. *Inst.* 2. 1. 27, 28. *Bract.* fol. 10. *Fleta*, lib. 3, c. 2, § 15. There might be two sorts of *confusio*, viz. of similar substances, as of the wine of one man with the wine of another, or the gold of one with the gold of another; or of dissimilar substances, as wine with honey, or gold with silver. In either case, if the materials were mingled by mutual consent, or fortuitously without the consent of the owners, the whole mass as mingled was common to both. *Inst.* 2. 1. 27. See *Commixtio, Confusion.*

CONFUSION. In the common law. The intermixture of the goods of two persons, so that the several portions can be no longer distinguished. 2 *Bl. Com.* 405. The term and, in a great degree, the doctrine, are borrowed from the *confusio* of the civil law. The meaning of the former, however, has been so far modified as to include not only the intermixture or interfusion of liquids and metals, (the *confusio* proper of the civil law,) but also that of dry articles, (properly expressed in the same law by the term *commixtio*). The doctrines also of the two systems so far differ, that while the civil law allows a party who wilfully intermixes his property with that of another, without his approbation or consent, a satisfaction for what he has so improvidently lost, the common law allows him nothing, but gives the entire property to the other party. 2 *Bl. Com.* 405. *Inst.* 2. 1. 28. 2 *Steph. Com.* 85. 2 *Kent's Com.* 364. *United States Digest*, Confusion. See *Confusio, Commixtio.*

CONFUSION. In the civil and common law. The blending or union of the characters of debtor and creditor in the same person; the union of the obligation of the debtor with the right of the creditor, which dissolves or extinguishes the former. *Heinecc. Elem. Jur. Civ.* b. 3, tit. 30, § 1006. *Ersk. Inst.* lib. 3, tit. 4, § 23. Thus, where a woman obligee marries the obligor, the debt is extinguished. 1 *Salk.* 306.

CONGÉ, *Counge, Congy.* Fr. and L. Fr. In old English law. Leave; liberty or permission. *Par* congé *ou sauns* congé; by leave or without leave. *Britt.* c. 48. *Sauns coungé. Id.* c. 12. *Fet Assaver*, § 42.

In French maritime law. The passport of a vessel. *Jacobsen's Sea Laws*, 71.

A commission, or permission to navigate, equip or arm a vessel. *Ord. Mar.* liv. 1, tit. 1, art. 3.

CONGÉ D'ACCORDER. L. Fr. [Lat. *licentia concordandi.*] In old English practice. Leave to accord, or agree. One of the formalities anciently observed in levying a fine. When the original writ was delivered in presence of the parties, before the justices, a countor, or pleader, said, "Sir Justice, *congé d'accorder;*" which was praying for leave to agree. *Stat. Modus levandi fines*, 18 Edw. I. stat. 4. 2 *Reeves' Hist. Eng. Law*, 224. *Crabb's Hist. Eng. Law*, 178. *Termes de la Ley. Cowell. Blount.* 2 *Bl. Com.* 350. See *Licentia concordandi, Fine.*

Congé d'accorder is mentioned by Britton as a proceeding in ordinary actions. *Volons que parties pledauntz priauntz* congé de accorder *en nostre court eyent a ceo congé, forsque en cas de felonies;* we will that parties pleading praying *leave* to *agree* in our

court, shall have leave for that purpose, except in cases of felonies. *Britt.* c. 74.

CONGÉ D'EMPARLER. L. Fr. [L. Lat. *licentia loquendi.*] In old English practice. Leave to imparl (or emparl). *Yearb.* M. 11 Hen. VI. 6.

CONGÉ D'ESLIRE, (or D'ELIRE.) L. Fr. [Lat. *venia eligendi.*] In English law. Leave to elect. The royal license or permission, sent to a dean and chapter, when any bishopric becomes vacant, empowering them to proceed to the election of a new bishop. *Termes de la Ley. Cowell. Blount.* 1 *Bl. Com.* 379, 382. 3 *Steph. Com.* 61, 67.

CONGEABLE. Fr. [from *congé*, leave, or permission.] In old English law. That which is done with leave; lawfully done; lawful. *L'entry est congeable;* the entry is lawful. *Litt.* sect. 693—695. *Cro. Jac.* 31. So long as a disseisee maintained his entry by continual claim, his entry was said to be *congeable. Crabb's Hist. Eng. Law*, 403. *Litt.* sect. 422. This term was first introduced in the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 22.

CONGILDONES. L. Lat. In Saxon law. Fellow members of a gild. *Spelman*, voc. *Geldum.* See *Gild.*

CONGIUS. Lat. An ancient measure containing about a gallon and a pint. *Cowell. Blount. Cart. Edmundi Regis*, A. D. 946, cited *ibid.*

CONGRESS. [Lat. *congressus*, from *congredi*, to come together.] An assembly of persons; an assembly of envoys, commissioners or deputies. An assembly of representatives from different governments, to concert measures for their common good, or to adjust their mutual concerns.* *Webster.*

In American law. The national legislature of the United States, consisting of the Senate and House of Representatives. 1 *Kent's Com.* 221, *et seq.*

CONINGERIA. L. Lat. In old records. A rabbit-warren. *Inquis.* 47 *Hen.* III. n. 32. *Cowell.*

CONJECTIO. Lat. [from *conjicere*, to throw together.] In the civil law of evidence. A throwing together. Presumption; the putting of things together, with the inference drawn therefrom. *Matth. de Prob.* c. 1, n. 43.

CONJECTIO CAUSÆ. Lat. In the Roman law. The throwing together of a cause. A brief, summary statement of a cause, made to the judge by the advocates for the respective parties, as introductory to the argument of it at length. *Dig.* 50. 17. 1. *Aul. Gell. Noct. Att.* lib. 5, c. 10, § 9. *Calv. Lex.* Answering somewhat to the modern term "opening."

CONJECTURA. Lat. [from *conjicere*, to throw together.] In the civil law of evidence. A presumption. Conjectura *ducta ab eo quod ut plurimum fit;* a conjecture or supposition, drawn from what commonly happens. *Heinecc. ad Pand.* pars 4, sect. 124. *Præsumptiones sunt* conjecturæ *ex signo verisimili ad probandum assumptæ;* presumptions are conjectures drawn from probable evidence, for the purpose of proof. *J. Voet. ad Pand.* lib. 22, tit. 3, n. 14. Literally, a throwing or putting together; a putting of one fact with another, so as to show their relation, and indicate the consequence or inference. "Put this and that together," is a common expression to indicate an inference. See *Burr. Circ. Evid.* 27, note (*c*).

A conjecture or surmise. A slight degree of credence, arising from evidence too weak or too remote to produce belief. *Best on Presumptions*, 13, note. *Rationabile vestigium latentis veritatis unde nascitur opinio sapientis;* a reasonable trace of latent truth, from which the opinion of a prudent person may take its rise. *Mascard. de Prob.* vol. 1, qu. 14, nu. 14, cited *ibid.* It is weaker than *suspicio.*

CONJECTURE. [Lat. *conjectura*, q. v.] Supposition or surmise. The idea of a fact, suggested by another fact, as a possible cause, concomitant or result. *Burr. Circ. Evid.* 27. The lowest degree of presumption. *Domat's Civ. Law*, part 1, b. 3, tit. 6, sect. 4, art. 2.

CONJICERE. Lat. [from *con*, together, and *jacere*, to throw or cast.] To throw together; to put together. See *Conjectio.*

CONJUDEX. L. Lat. [from *con*, together, and *judex*, a judge.] In old English law. An associate judge. *Rex tali et* conjudicibus *suis salutem;* the king to such a judge and his associates, greeting. *Bract.* fol. 403.

CONJUGAL RIGHTS. See *Restitution of conjugal rights.*

CONJUGIUM. Lat. [from *con*, together, and *jugum*, a yoke.] One of the names of marriage, among the Romans. *Taylor's Civ. Law*, 284.

CONJUNCT. [from Lat. *conjunctus.*] In Scotch law. Joint. *Ersk. Inst.* b. 3, tit.

8, § 34, *et seq.* Applied to rights. *Bell's Dict.*

Connected. Applied to persons. *Id.* voc. *Conjunct person.*

CONJUNCTA. Lat. [from *conjungere*, to join together.] In the civil law. Things joined together or united; as distinguished from *disjuncta*, things disjoined or separated. *Dig.* 50. 16. 53.

CONJUNCTIM. Lat. In old English law. Jointly. *Inst.* 2. 20. 8. *Bract.* fol. 19. More closely rendered by the Scotch *conjunctly.* 2 *Kames' Equity*, 292. *Conjunctim tenens;* a joint tenant. *Reg. Jud.* 12 b. *Conjunctim et pro indiviso;* jointly and individually. 2 *Mod.* 63.

CONJUNCTIM ET DIVISIM. L. Lat. In old English law. Jointly and severally. *Bract.* fol. 19. *Dyer*, 62 a. *Yelverton*, 203. 2 *Crabb's Real Prop.* 692, § 1974. In the civil law, the phrases *conjunctim et disjunctim*, and *conjunctim et separatim* were used. *Brissonius.*

CONJUNCTIO. Lat. [from *conjungere*, to join together.] In the civil law. Conjunction; connection of words in a sentence. See *Dig.* 50. 16, 29, 142.

CONJURARE. Lat. [from *con*, together, and *jurare*, to swear.] To swear together; to combine or confederate under oath.

CONJURATIO. Lat. [from *conjurare*, q. v.] In old English law. A swearing together; an oath administered to several together; a combination or confederacy under oath. *Cowell. Blount. Tomlins.*

In old European law. A compact of the inhabitants of a commune, or municipality, confirmed by their oaths to each other, and which was the basis of the commune. *Steph. Lect.* 119.

CONJURATION. [Lat. *conjuratio.*] In old English law. A plot or compact made by persons combining by oath to do any public harm. *Cowell.*

The offence of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. *Stat.* 5 *Eliz.* c. 16. *Cowell.* Classed by Blackstone with witchcraft, enchantment and sorcery, but distinguished from each of these by other writers. 4 *Bl. Com.* 60. *Cowell.*

CONJURATOR, CONJURATUS. Lat. [from *conjurare*, q. v.] In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; (L. Fr. *conjurour*). *Fleta*, lib. 2, c. 47, § 6. *Britt.* cc. 27, 120.

CONNIVANCE. [from Lat. *connivere*, to wink the eye.] Literally, a winking at; intentional forbearance to see a fault or other act; generally implying consent to it. *Webster.*

CONNOISSEMENT. Fr. [Lat. *literæ recognitionis.*] In French maritime law. A bill of lading. *Ord. Mar.* liv. 3, tit. 2. *Emerig. des Ass.* ch. 11. Otherwise called *police de chargement. Ord. Mar. ub. sup.*

CONNUBIUM. Lat. [from *con*, together, and *nubere*, to marry.] In the civil law. Marriage; a mutual submission to the marriage ceremony. *Cooper's Justin. Inst.* Notes, *420. One of the names of lawful marriage between citizens, among the Romans. *Adam's Rom. Ant.* 50, 502. *Taylor's Civ. Law*, 284.

CONOCIAMENTO. Span. In Spanish law. A recognizance. *White's New Recop.* b. 3, tit. 7, ch. 5, § 3.

CONPOSSESSIO. Lat. In modern civil law. A joint possession. *Mackeldey's Civ. Law*, 245, § 236.

CONQUÆRERE. L. Lat. [from *con*, together, and *quærere*, to seek or gain.] To acquire. In classical Latin, *conquirere*, which originally signified to seek diligently; afterwards, to acquire. *Calv. Lex.*

CONQUÆSTOR. L. Lat. [from *conquærere*, q. v.] Conqueror. The title of William I. of England. 2 *Bl. Com.* 243. See *Conqueror, Conquest.*

CONQUÆSTUS, *Conquestus.* L. Lat. [from *conquærere*, q. v.] In feudal law. Acquisition or purchase; any means of acquiring an estate out of the course of inheritance; conquest. *Craig*, lib. 1, tit. 10, § 18. 2 *Bl. Com.* 242. *Id.* 48. See *Conquest.*

The conquest of England by William I. *A* conquestu *Angliæ. Bract.* fol. 90, 209, 382. *Ante* conquestum, *in* conquestu *et post;* before the conquest, at the conquest, and after. *Id.* fol. 7.

CONQUERER. L. Fr. In old English law. To acquire; to gain; to get possession of. *Et son seigniour* conquerra *la terre la mere par son p'pre intrusion;* and his lord shall acquire the land of the mother by his own intrusion. *Britt.* c. 31. *Puis que son patron avera* conquis *son droit del presentment;* after his patron shall have acquired his right of presentment. *Id.* c. 94. *Ne purra rien conquere;* shall gain nothing. *Id.* c. 96. *Que il ad* conquis *par sa propre force;* which he hath acquired by his own wrong. *Id.* c. 100. *L'eyne nequedent* con-

querra *p' brefe de droit;* the eldest nevertheless shall recover by writ of right. *Id.* c. 119.

CONQUEREUR. L. Fr. [from *conquerer*, q. v.] In Norman and old English law. The first purchaser of an estate; he who first brought an estate into his family. *Grand. Coust. Gloss.* c. 25, p. 40. 2 *Bl. Com.* 243. *Id.* 48. *Le primer* conquereur *des treis kantrefs de la tere de Breckenoch estoit Bernard de Nefmarche, Norman;* the first purchaser of the three cantrefs of the land of Brecknock was Bernard of Newmarch, a Norman. 1 *Mon. Angl.* 319 b. *Blount.*

CONQUEROR. [L. Fr. *conquereur;* L. Lat. *conquæstor, conquestor, conquisitor,* qq. v.] In old English and Scotch law. The first purchaser of an estate; he who brought it into the family owning it. 2 *Bl. Com.* 242, 243. "If conquest lands, after the decease of the *conquerour*, do ascend to any person," &c. *Skene de Verb. Sign.* voc. *Conquestus.* Clearly formed from the L. Fr. *conquereur*, (q. v.) According to Blackstone, William the Norman was called "The Conqueror," to denote that he was the *first* of his family who *acquired* the crown of England. 2 *Bl. Com. ub. sup.* Spelman more explicitly says that he was called *Conquestor*, (Conqueror,) because he conquered, that is, acquired or *purchased* England, not because he subdued it, (*non quod subegit*). *Gloss.* voc. *Conquestus.* And, in another passage, that he was called "Conqueror," because he succeeded to the crown of England, not by hereditary right, but under the will of Edward the Confessor, that is, (according to the old French idiom,) *by quest and conquest*, commonly called *purchase. Id.* voc. *Questus.* See *Conquest.*

CONQUEROR. Lat. In old pleading. I complain. Conqueror *quod talis mihi injuste detinet—talem rem;* I complain that such a one unjustly detains from me such a thing. An old form of declaring. *Bract.* fol. 102 b. *Si tenens* conqueratur; if the tenant complain. *Id.* fol. 156 b.

Conquerentes; plaintiffs, parties complaining. *Stat. Marlbr.* c. 30. *Fleta*, lib. 2, c. 3, § 1.

CONQUEST. [L. Lat. *conquæstas, conquestus, conquisitio, conquisitium*, from *conquirere*, or *conquærere*, to get together, as by the labor of several, to get together by one's own labor or diligence, (*con*, together, and *quærere*, to seek.) *Spelman*, voc. *Questus.*] In feudal and Scotch law. Purchase or acquisition; any means of acquiring an estate out of the common course of inheritance. *Craig de Jur. Feod.* lib. 1, tit. 10, § 18. *Dalrymple, Feuds*, 210. 1 *Kames' Equity*, 210. *Ersk. Inst.* b. 3, tit. 8, § 14. 2 *Bl. Com.* 242. *Id.* 48. In Scotch law, *conquest* has always been distinguished from *heritage* or *succession. Bell's Dict.* voc. *Succession.*

An estate itself, so purchased or acquired. Otherwise termed *acquest.* 1 *Reeves' Hist. Eng. Law.* 29.—That which we possess, not by transmission from ancestors, but as *acquired* by labor, money or economy. *Spelman*, voc. *Conquestus.* And see *Skene de Verb. Sign.* voc. *Conquestus.* In Scotch law, property acquired by a man during marriage was called *conquest*, in contradistinction to property which he succeeded to as heir to an ancestor, or executor to a person deceased. *Ersk. Inst.* b. 3, tit. 8, § 43. The term was used in the same sense, in the capitularies of the old French kings, and other records of the same early period. Conquests are acquisitions of goods made during marriage, (*acquisitions de biens faictes durant le mariage*). *Lindenbrog. in Capit. Carol.* lib. 4, c. 74. Conquest is called by another old writer, acquest made by any one, with his money, labor, industry and means, without the tenure of succession from ancestors. *Nicod. in Dict.* Spelman (voc. *Questus,*) calls this "the ancient and genuine signification of the word."

*** According to Sir William Blackstone, (who is followed by Mr. Stephen,) the term *conqueror* was originally applied to William I. and *conquest* to his mode of acquiring the crown of England, in the proper feudal sense of those terms, (as already explained, *supra,*) rather than with reference to the success of his *arms.* 2 *Bl. Com. ub. sup.* 1 *Steph. Com.* 355. This interpretation has been construed by some later writers into an unwillingness, on the part of the commentator, to acknowledge that the English or Saxons were actually *conquered*, in the modern and ordinary acceptation of the word; and some pains have been taken to prove this to have been the fact. 1 *Chitt. Bl. Com.* 48, note. Mr. Wharton, in his recently published Law Lexicon, speaks of "the attempt to give to the word *conquest* the meaning of *acquisition* in a feudal sense," as a "mere idle ingenuity," and goes into a historical argument to show that "as applied to the Norman establishment," it "means, and literally

was warlike subjugation by force of superior military tactics." *Wharton's Lex.* voc. *Tenure.* But, whatever may be said of the historical fact, the etymology of the term itself, and its acknowledged use in feudal, Norman and early English law, demonstrate its original meaning to have been *acquisition*, without reference to the exercise of superior military force. The opinion of Blackstone is sustained by the high authority of Sir Henry Spelman, who has conclusively shown that "victory" and "military subjugation" are comparatively modern senses, which the word has illegitimately (*ceu per adulterium,*) acquired. *Gloss.* vocc. *Conquestus, Questus.*

From what cause, and by what process the term *conquest* came to lose its original, and acquire its modern sense, or, in other words, how and when it came to be disused in English law, and exclusively adopted as a word in ordinary language, cannot now be easily explained. Spelman adopts the opinion that, as the enforcement of the Conqueror's acquired right to the crown was accomplished by means of the signal *victory* obtained over Harold and the Saxons, the ideas of *victory* and *subjugation* become so strongly attached to his peculiar title of *Conquestor* as gradually to obscure, and finally to supplant its original and proper meaning. That *conqueror* continued to be used after the Norman invasion in its technical sense, appears from the passage already quoted under that word, from the *Monasticon Anglicanum.* That the verb *conquerer* was used in the same sense as late as the time of Edward I. will appear from the passages given from Britton, under that word. As a general head of law, however, the same writer expresses the idea of acquisition by the act of the party, by the word *purchas*, the English form of which is still retained in modern law, in the same sense. *Britt.* cc. 33, 35, 36, 38. *Conquest* is used in the sense of subjugation, by King Henry IV. in his declaration of thanks on being made king. 1 *How. St. Trials*, 154. Lord Bacon appears to use the word in both senses, in the following passage: "When any king obtaineth by war any country whereunto he hath right by birth, he is ever in upon his ancient right, not upon his *purchase by conquest.*" Arg. Case of the Postnati of Scotland, *Works*, iv. 356. In the Scotch law, the word *conquest* has come down to modern times, in its full original sense as a term of jurisprudence. See *supra.* An "heir of conquest" is said to be so called "because his right of succession is confined to the subjects which the ancestor himself had *acquired* or *conquished* by some singular title." *Ersk. Inst.* b. 3, tit. 8, § 14. See *Heir of conquest.*

CONQUESTOR. Lat. [from *conquærere*, q. v.] In old English law. Conqueror. The title of William I. *Spelman*, voc. *Conquestus.*

CONQUISITIO. L. Lat. [from *conquærere*, q. v.] In feudal and old English law. Acquisition. *Spelman*, voc. *Conquestus.* 2 *Bl. Com.* 242. See *Conquæstus, Conquest.*

CONQUISITOR. L. Lat. [from *conquærere*, q. v.] In feudal law. A purchaser, acquirer or conqueror. 2 *Bl. Com.* 242, 243.

CONSANGUINEUS. Lat. [from *con*, together, and *sanguis*, blood.] In civil and old English law. Connected by blood, (*sanguine connexus*). *Dig.* 38. 16. 1. 10. Sprung from the same blood, (*eodem sanguine natus ;*) of kin. *Co. Litt.* 157 a. Distinguished from *affinis*, (connected by marriage). 2 *Steph. Com.* 285. *Ad propinquiorem* consanguineum; to the next of kin. *Bract.* fol. 91.

A cousin, in the general sense of blood relative. *Reg. Orig.* 226. See *Cousin. Breve de consanguineo ;* a writ of cousinage. *Id.* See *Cousenage.*

CONSANGUINEUS FRATER. Lat. In feudal law. A brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. 2 *Bl. Com.* 231.

CONSANGUINITY. [Lat. *consanguinitas*, from *consanguineus*, (q. v.); *cognatio*, from *con*, together, and *natus*, born.] Connexion of blood.* Kindred or alliance in blood. 2 *Bl. Com.* 202. Relation by blood, as affinity is relation by marriage. 1 *Bl. Com.* 434. *Co. Litt.* 157 a.

The connection or relation of persons descended from the same stock or common ancestor, (*vinculum personarum ab eodem stipite descendentium*). 2 *Bl. Com.* 202. It is of two kinds; lineal and collateral. See *Lineal consanguinity, Collateral consanguinity.*

CONSCIENCE, COURTS OF. Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise, and more commonly called *Courts of Requests.* 3 *Steph. Com.* 451. See *Requests.*

CONSEILL. L. Fr. In old French law. Counsel. *Assiz. de Jerus.* c. ix. xxvii.

CONSEILLER. Fr. and L. Fr. In old English and French law. A counsellor. *Ord. Mar.* liv. 1, tit. 3. *Conseillers ou countours;* counsellors or countors. *Britt.* c. 52.

CONSENSUAL CONTRACT. In civil law. A contract formed by the mere consent (*consensus,*) of the contracting parties; such as marriage. *Pothier, Contr. of Sale,* part 1, sect. 1. *Poth. Obl.* part 1, ch. 1, sect. 1, art. 2. *Hallifax, Anal.* b. 2, ch. 18. *Broom's Max.* 214.

CONSENSUS. Lat. [from *consentire,* to think together, to be of the same mind.] Consent. *Bract.* fol. 15 b, 16.

Consensus est voluntas multorum ad quos res pertinet, simul juncta. Consent is the united will of many to whom a thing belongs. *Dav. R.* 48. The words *simul juncta,* in this sentence, are treated and translated in Branch's Principia and Wharton's Lexicon, as referring to *res,* instead of *voluntas,* which has led in the latter work to the following singular translation:—"Consent is the will of the many, to whom *the thing joined at the same time* belongs."

Consensus non concubitus facit matrimonium [nuptias.] Consent, not lying together, constitutes marriage. 6 *Co.* 22. *Co. Litt.* 33 a. The consent of the contracting parties, [that is, their mutual agreement to live together as husband and wife], and not carnal intercourse, forms the essence of the marriage contract. *Shelf. Marr. & Div.* 7. A contract to marry *per verba de præsenti,* though not followed by cohabitation, amounts to a valid marriage. 2 *Kent's Com.* 87. 1 *Dow's P. Rep.* 148. 7 *Wendell's R.* 47. *Broom's Max.* 213, [379]. More briefly expressed, **Consensus facit matrimonium.**

This maxim is, in substance, and almost in words, the same with that of the civil law. **Nuptias non concubitus, sed consensus facit.** *Dig.* 50. 17. 30. *Id.* 35. 1. 15.

Consensus tollit errorem. Consent removes error, [i. e. obviates its effect]. *Co. Litt.* 126 a. 2 *Inst.* 123. The acquiescence of a party who might take advantage of an error, obviates its effect. *Broom's Max.* 58, [100]. Thus, though a venue be wrongly laid, or a writ erroneously directed, if it be done or followed by the consent of the parties, and so entered of record, it shall stand; and no objection can afterwards be taken to it. *Cro. Eliz.* 664. *Co. Litt.* 126 a, and *Hargr.* note. 1 *Bing. N. C.* 68. On this maxim rests the doctrine of *waiver.* See *Waiver.* Consent, however, will not confer jurisdiction. 3 *Comstock's R.* 9.

Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit. A person [under duress,] does not seem [is not considered,] to have retained his consent, though he may have made some change in the terms imposed on him by the party threatening.* Although choice and election be a badge of consent, yet, if the first ground of the act be duress, the law will not construe that the duress doth determine, if the party duressed do make any motion or offer. *Bacon's Max.* 89, *regula* 22. Therefore, if a party menace me, except I make unto him a bond of 40*l.* and I tell him that I will not do it, but I will make unto him a bond of 20*l.* the law shall not expound this bond to be voluntary, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion, notwithstanding, into the lesser. But if I will draw any consideration to myself, as if I had said, I will enter into your bond of 40*l.* if you will deliver me that piece of plate, now the duress is discharged; and yet, if it had been moved from the duressor, who had said at the first, you shall take this piece of plate and make me a bond of 40*l.* now the gift of the plate had been good, and yet the bond shall be avoided by duress. *Id. ibid.*

The meaning of this maxim is made perfectly clear by the exposition of Lord Bacon. Its fundamental idea obviously is *variation* by the party duressed *from the terms imposed* by the duressor, which is wholly lost sight of in the following translations: "He does not appear to have consented, who changed any thing through the menaces of a party threatening." *Branch's Princ.* "He does not appear to have retained consent, if he have changed any thing through the menaces of a party threatening." *Wharton's Lex.*

CONSENT. [Lat. *consensus,* from *consentire,* to think together.] A concurrence of wills.* *Pothier, Contr. of Sale,* part 2, sect. 1, art. 3. See *Consensus.* An agreement to something to be done or proposed to be done, as to marriage. Distinguished in this respect from *assent* and *approbation.*

Ambl. 256, 258. See *Assent.* Consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good or evil on each side. 1 *Story's Equity Jurisp.* § 222. The consent of parties, which is of the essence of the contract of sale, consists in a concurrence of the will of the seller to sell a particular thing to the buyer for a particular price, and of the buyer to buy of him the same thing for the same price. *Pothier, ub. sup.* See *Consensus*, and the maxims *ibid.*

CONSENTIRE. Lat. [from *con*, together, and *sentire*, to think.] To consent; to think with another; to have, or be of the same mind; to agree to, or with.*

Non consentit qui errat. He who errs does not consent. *Bract.* fol. 44. Consent given under the influence of error is not valid.* If consent be obtained by meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. 1 *Story's Eq. Jurisp.* § 222. See **Non videntur qui errant consentire.**

Consentire matrimonio non possunt infra [ante] annos nubiles. Parties cannot consent to marriage within the years of marriage, [before the age of consent]. 6 *Co.* 22.

Consentientes et agentes pari pœna plectentur. They who consent to an act and they who do it, shall be visited with equal punishment. 5 *Co.* 80.

CONSENT RULE. In practice. A stipulation in the form of a rule, which a defendant in an action of ejectment enters into, at the time he enters an appearance, in which he specifies for what premises he intends to defend, and also undertakes to confess upon the trial, not only the fictitious lease, entry, and ouster mentioned in the declaration, but that he (if he defend as tenant, or if he defend as landlord, then that his tenant,) was at the time of the service of the declaration in the possession of such premises; and that if, upon the trial, the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the defendant, then no costs shall be allowed for not further prosecuting the same, but the defendant shall pay the taxed costs to the plaintiff. This is the present form of the rule in England. *Chitt. Archb. Prac.* 750. *Archb. New Prac.* 323. 3 *Steph. Com.* 673.

CONSEQUENTIAL DAMAGES. Damages following an act, but not the direct and immediate result of it.* 3 *Bl. Com.* 153. 3 *Steph. Com.* 462.

CONSEQUENTS. In Scotch law. Things which follow, usually by implication of law.* A commission being given to execute any work, every power necessary to carry it on is implied. 1 *Kames' Equity*, 242.

CONSERVATOR. Lat. and Eng. [from *conservare*, to preserve.] A protector, preserver or maintainer. "Conservator of rivers and fish in rivers." *Hale de Jur. Mar.* pars 1, c. 5. See *infra.*

An arbitrator, or umpire. *Kennett's Par. Ant.* 513. *Cowell.*

In Connecticut, a guardian is so called. 5 *Conn. R.* 280. 12 *Id.* 376. 19 *Id.* 591.

CONSERVATOR OF THE PEACE. [Lat. *conservator* vel *custos pacis.*] A preserver or keeper of the public peace.

*** There were formerly, in England, two kinds of conservators of the peace; (1,) those who had this power annexed to other offices which they held, and (2,) those who had it merely by itself, and were thence named *custodes* or *conservatores pacis.* Those that were so *virtute officii* still continue, such as judges, sheriffs, coroners and constables, within their respective jurisdictions. Those that were, without any office, simply and merely conservators of the peace, either claimed that power by prescription, or were bound to exercise it by the tenure of their lands, or lastly, were chosen by the freeholders in full county court before the sheriff. The election of these officers was taken from the people, and given to the king in the reign of Edward III.; but they continued to be called *conservators*, wardens, or keepers of the peace, till the statute 34 Edw. III. c. 1, gave them the power of trying felonies, when they acquired the more honorable appellation of *justices.** *Lambard. Eirenarch.* 12—23. 1 *Bl. Com.* 349—351. 3 *Steph. Com.* 38, 39. *Bacon's Use of the Law*, 11, 12. See *Justices of the peace.*

CONSERVATOR OF TRUCES AND SAFE-CONDUCTS. [L. Lat. *conservator induciarum et salvorum regis conductuum.*] An officer anciently appointed in every port in England, whose duty was to inquire of all offences done against the king's truce and safe-conducts, (such as the breaking of truces and safe-conducts, and abetting and receiving the truce breakers, which were declared to be treasons. *Stat.* 2 *Hen.* V.

st. 1, c. 6. 4 *Bl. Com.* 69.) *Termes de la Ley. Cowell.* These offences, when committed at sea, they were empowered to hear and determine according to the ancient marine law, then practised in the admiral's court; when committed within the body of a county, to determine, with two men learned in the law of the land, according to that law. 4 *Bl. Com.* 69. Their powers were afterwards given by statute 29 Hen. VI. c. 2, to the lord chancellor, associated with either of the chief justices. And see *Stat.* 31 *Hen.* VI. c. 4, which is still in force. 4 *Bl. Com.* 70. 4 *Steph. Com.* 245.

CONSIDERARE. L. Lat. In old English law. To consider; to declare, as the result of deliberation; to adjudge; to give judgment. *Considerabitur pro querente;* judgment shall be given for the plaintiff. *Fleta*, lib. 2, c. 53, § 2. See *Consideratum est.*

CONSIDERATIO CURIÆ. Lat. The consideration of the court; that is, the judgment of the court, implying deliberation and study. A phrase often used in the old books, statutes and pleadings. *Stat. Marlbr.* c. 1. *Ad audiendum* considerationem curiæ; to hear the judgment of the court. *Bract.* fol. 383 b. *Fleta*, lib. 2, c. 3, § 9.

CONSIDERATION. [L. Lat. *consideratio;* Lat. *causa;* Fr. *causé.*] In the law of contracts. The material cause of a contract, without which no contract is binding. *Termes de la Ley. Cowell. Dyer*, 336 b. *Plowd.* 309. *Dig.* 2. 14. 7. 1, 2. *Code Civil*, liv. 3, tit. 3, sect. 4, § 1131. *Smith on Contracts*, 88, note. 2 *Ad. & Ell. N. S.* 851. Called in Scotch law, (after the civil law,) "cause." *Bell's Dict.* Otherwise defined or described as follows:

The reason which moves the contracting party to enter into the contract. 2 *Bl. Com.* 443.

The thing given in exchange for the benefit which is to be derived from a contract; the compensation, *quid pro quo*, or equivalent, answering to the *permutatio* of the civil law, or more closely perhaps to the Gr. συνάλλαγμα; something mutually or reciprocally interchanged, though not necessarily of equal value.* 2 *Bl. Com.* 444. 2 *Steph. Com.* 112. *Gravina*, lib. 2, § 12. *Cowell.* 2 *Kent's Com.* 463.

The price or motive of the contract. 2 *Bl. Com.* 443, 444. 1 *Archb. Nisi Prius*, 3.

The inducement to the contract. 2 *Kent's Com.* 463.

Any benefit accruing to him who makes the promise, or any loss, trouble or disadvantage undergone by, or charge imposed upon him to whom it is made. *Smith on Contracts*, 87, 88. 2 *Kent's Com.* 465. 1 *Archb. N. Prius*, 14, 15. *Broom's Max.* 341. See *Good consideration, Valuable consideration, Express consideration, Implied consideration, Executed consideration, Executory consideration.*

CONSIDERATUM EST. Lat. (It is considered.) In practice. The style of judgments in actions at law, [or the emphatic words in which they were entered on record,] implying that the judgment is not that of the court, but the act of the law, pronounced and declared by the court, after due deliberation and inquiry. 3 *Bl. Com.* 396. *Co. Litt.* 39 a. 1 *Ld. Raym.* 147, 148. *Consideratum fuit;* it was considered. *Bract.* fol. 85. *Fleta*, lib. 2, c. 3, § 9. *Consideratum est per curiam;* it is considered by the court. The proper words of judgment at common law. *Latch*, 83. *Id.* 189.

CONSIDERATUR. L. Lat. It is considered. Held to mean the same with *consideratum est.* 2 *Stra.* 874.

CONSIGN. [from Lat. *consignare*, to seal.] In mercantile law. To send or transmit goods to a merchant or factor for sale.* The radical meaning of the word seems to be, to deliver or transfer, as a charge or trust. *Webster.*

CONSIGNARE. Lat. In the civil law. To seal; to seal up, as money in a bag, in order to be deposited. *Consignato atque deposito. Cod.* 8. 14. 20. *Si pecunia in sacculo signato deposita sit;* if money be deposited in a sealed bag. *Dig.* 16. 3. 1. 36.

CONSIGNATION. [from *consignare*, to seal up.] In Scotch law. The payment of money into the hands of a third party, when the creditor refuses to accept of it. The person to whom the money is given is termed the *consignatory. Bell's Dict.*

In French law. A deposit which a debtor makes of the thing that he owes into the hands of a third person, and under the authority of a court of justice. It is not properly a payment, but it is equivalent to a payment, and extinguishes the debt no less than if an actual payment had been made. This is in accordance with the rule of the Code: *Obsignatione totius debitæ pecuniæ solemniter facta, liberationem contingere, manifestum est. Cod.* 8. 43. 9. *Poth. Obl.* part 3, ch. 1, art. 8.

CONSIGNEE. In mercantile law. The person to whom goods are consigned, shipped or otherwise transmitted for sale.* 2 *Kent's Com.* 540. 3 *Id.* 207, 215, 221. *Tomlins.*

CONSIGNMENT. In mercantile law. The transmission of goods to a consignee for sale. 3 *Kent's Com.* 216. In mercantile usage, the goods themselves.*

CONSIGNOR. In mercantile law. The person by whom goods or merchandise are consigned or shipped; the shipper.* 2 *Kent's Com.* 543. 3 *Id.* 207, 215. *Abbott on Ship.* [326,] 403.

CONSILE, *Conseil.* See *Counseil.*

CONSILIARIUS. Lat. [from *consilium*, advice.] In the Roman law. An adviser of a judge or magistrate; one who sat with him (*assessor*, q. v.) and assisted him with advice in the decision of causes. *Cod.* 1. 51. 14. He was distinguished from an *advocate*, and disqualified from acting as such. *Id. ibid.* See *Dig.* 1. 22. 5.

CONSILIARIUS. Lat. [from *consilium*, q. v.] In old English law. A counsellor or councillor. *Consiliarius vel advocatus;* counsellor or advocate. *Bract.* fol. 185. *Consiliarius et peritus in lege;* counsellor and learned in the law. *Cro. Jac.* 90. *Consiliarius et in lege eruditus.* 3 *Leon.* 237. *Consiliarius vel narrator;* counsellor or countor. *Bract.* fol. 412.

Consiliarii; counsel. *Auditis consiliariis;* counsel having been heard. *Dyer*, 140 b, (Fr. ed).

CONSILIUM. Lat. Counsel; advice. *Pro consilio impendendo;* for counsel to be given. *Dyer*, 162 a. *Pro consilio impenso;* for counsel given. *Id.* 65 a. *Consilia multorum requiruntur in magnis;* the counsels of many are required in important matters. 4 *Inst.* 1.

The act of an accessory in advising another to commit a crime. *De forcia, consilio, præcepto, auxilio vel receptamento;* of force, counsel, commandment, aid or receipt. *Fleta*, lib. 1, c. 31, § 8.

Counsel; (an advocate). 5 *Co.* 20.

In old practice. An imparlance. 4 *Bl. Com.* 355, note (*z*).

CONSIMILI CASU. L. Lat. (In a like case.) In old English practice. The name of a writ of entry which lay where a tenant by the curtesy, or tenant for life, aliened in fee, or in tail, or for another's life. It was brought by him in the reversion against the party to whom such tenant so aliened to his prejudice, and in the tenant's lifetime. *Termes de la Ley. F. N. B.* 206. *Roscoe's Real Act.* 95. *Cowell.* It derived its name from the circumstance of being framed under the authority of the statute of Westminster 2, c. 24, which provided that "as often as it shall happen in chancery that in one case a writ is found, and *in a like case*, (*in consimili casu*,) falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the chancery shall agree in making a writ," &c. 3 *Bl. Com.* 50. *Steph. Pl.* 7.

CONSISTORIUM. Lat. The state council of the Roman emperors. 1 *Mackeld. Civ. Law*, 39, § 49.

A consistory, (q. v.)

CONSISTORY. [Lat. *consistorium.*] A session, assembly or council of ecclesiastical persons. *Blount.*

The highest council of state in the papal government. *Encycl. Amer.*

A spiritual court; otherwise called the consistory court, (q. v.)

CONSISTORY COURT. In English ecclesiastical law. A court held by every diocesan bishop in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses; and also, until recently, for granting probates and administrations. 3 *Bl. Com.* 64. 3 *Steph. Com.* 430, 431. 1 *Wooddes. Lect.* 86. It is held before the bishop's chancellor, or his commissary. *Hallifax Anal.* b. 3, ch. 10, nu. 12.

CONSOBRINI, *Consobrinæ.* Lat. In the civil law. Cousins german, in general; brothers' and sisters' children, considered in their relation to each other. *Consobrinus;* a male cousin. *Consobrina;* a female cousin. *Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes, in loc.*

In a stricter sense, cousins who are the children of two sisters, *quasi consororini;* (*qui ex duabus* sororibus *progenerantur*). *Inst.* 3. 6. 2. *Dig.* 38. 10. 1. 6. Cousins, when they are the sons of brothers, are also called *fratres patrueles;* when the daughters, *sorores patrueles. Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes, in loc. Dig.* 38. 10. 10. 15.

CONSOLATO DEL MARE. Ital. [Fr. *consulat de la mer.*] The consulate of the sea. The title of a collection of European sea-laws, now generally considered the most ancient extant. See 12 *East*, 639, arg. As to its origin, different opinions have been entertained by the most learned jurists; some, with Grotius and Emerigon,

ascribing it to the ancient kings of Arragon; others contending, with Azuni, that it was framed at Pisa, in Italy. The precise date of its compilation is not known, but it seems to be certain that it was completed and in force as early as the eleventh century, and that during a succession of the ages that followed, it was received and obeyed as law by all the nations of Southern Europe. It has formed the basis of most of the subsequent collections of maritime laws, and is supposed to have still the force of law in the tribunals of Italy. 1 *Duer on Ins.* Introd. Discourse, lect. ii. 3 *Kent's Com.* 10—12. Story, J. 3 *Story's R.* 465, 479.

CONSOLIDATED FUND. The great public fund of the United Kingdom of Great Britain and Ireland, comprising the produce of customs, excise, stamps, and several other taxes, added to some small receipts from the royal hereditary revenue; and constituting almost the whole of the public income of the united kingdom.* 2 *Steph. Com.* 590. There were formerly three capital funds in existence; the aggregate fund, the general fund, and the South Sea fund. The *consolidation* of these into one, in the year 1787, on the new arrangement of the public accounts, gave the name to the new fund. *Id.*

CONSOLIDATION. [Lat. *consolidatio.*] In ecclesiastical law. The combination and union of two benefices in one. *Stat.* 37 *Hen.* VIII. c. 21. *Cowell*, voc. *Union.*

In the civil law. The union in the same person of the possession or profit (*usus fructus*) of lands, with the property (*proprietas*). *Termes de la Ley. Cowell.* See *Unity of possession.*

In Scotch law. The junction of the property and superiority of an estate, where they have been disjoined. *Bell's Dict.*

CONSOLIDATION. In practice. The combination of several actions into one; or of several causes of action of the same nature in one declaration.* If two or more actions at law be brought by the same plaintiff, at the same time, against the same defendant, for causes of action which may be joined, the court, on the motion of the defendant, will order them to be *consolidated.* 2 *Arch. Pr.* 198. 1 *Tidd's Pr.* 614. 1 *Burr. Pr.* 411.

CONSOLIDATION RULE. In practice. A rule made, on application of the defendants, and with the consent of the plaintiff, where several actions are brought on the same policy of insurance, by which the plaintiff's proceedings are stayed in all the actions except one, upon the defendants' undertaking to be bound by the verdict in that action, and to pay the amount of their several subscriptions and costs, in case a verdict shall be given therein for the plaintiff. 1 *Tidd's Pr.* 614. *Chitt. Arch. Pr.* 966.

CONSORTIUM. Lat. [from *consors*, a partner, from *con*, together, and *sors*, a lot.] In the civil law. A union of fortunes; one of the names of lawful marriage, among the Romans. *Dig.* 23. 2. 1. *Tayl. Civ. Law*, 284. *Cooper's Justin. Inst.* Notes, *420.

A union of several persons as parties in an action. 1 *Mackeld. Civ. Law*, 197, Kaufmann's Note.

In old English law. Company; society. *Moor*, 817.

In pleading. The company or society of a wife. See *Per quod consortium amisit.*

CONSPIRACY. [Lat. *conspiratio.*] In criminal law. An agreement or combination between two or more persons, falsely to indict, or procure the indictment of another. This is the meaning of the term as used in the statute 33 Edw. I. st. 2; and still retained as descriptive of one species of the offence. 4 *Bl. Com.* 136. 4 *Steph. Com.* 265. 2 *N. Y. Rev. St.* [691,] 577, § 8, subd. 2.

In a more general sense, any confederacy of two or more persons to injure an individual, or do any other unlawful act or acts prejudicial to the community. *Steph. Crim. Law*, 70.—A combination or agreement between several persons, to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large. 4 *Steph. Com.* 265, and note. 4 *Chitty's Bl. Com.* 136, notes. 2 *N. Y. Rev. St. ub. sup.*

To constitute an indictable conspiracy, there must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means. 4 *Metcalf's R.* 111. But see 4 *Steph. Com. ub. sup.* The conspiracy itself constitutes the offence, though the purpose of it be not effected. *Wharton's Amer. Crim. Law*, 486. *Lewis' U. S. Crim. Law*, 206. *United States Digest*, Conspiracy.

CONSPIRATIONE. See *De Conspiratione.*

CONSPIRATORS. Persons guilty of the offence of conspiracy. Defined by the statute 33 *Edw.* I. st. 2. 2 *Reeves' Hist. Eng. Law*, 242. See *Conspiracy.*

CONSTABLE. [Fr. *connestable;* L. Lat. *constabularius, constabulus, conestabulus,* q. v.] A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 *Bl. Com.* 356. See *infra.* Constables are of two kinds, high and petty.

High constables, (*capitales constabularii,*) in England, are officers appointed in every hundred or franchise, whose proper duty seems to be, to keep the king's peace within their respective hundreds. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47. *Willcock, Off. Constable,* 1, 23. They are also, by various statutes, charged with other duties, such as that of serving precepts and warrants on certain occasions, and the returning of lists of jurors. 3 *Steph. Com.* 47.

Petty constables, (*subconstabularii*) are inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47, 48.

The high constable has the same duties to discharge in all parts of his hundred, as well within as out of the precincts of petty constables, as each petty constable has within his precinct. *Willcock, Off. Constable,* 23.

In the United States, constables are town and city officers, with powers similar to those of the constables of Great Britain. Besides their general common law office of conservators of the peace, they have other duties specially assigned them by statute, such as the execution of the process of justices' courts, and, in some cases, of process issued by other judicial officers; attending the sittings of courts, keeping juries, &c. High constables are also appointed in cities as chiefs of the constabulary force, and in some cases, also, with a certain rank and duty as executive officers of the corporation.* See *United States Digest,* Constable.

*** Few terms of the English law have undergone a greater change in signification, since their first introduction, than *constable,* which is generally supposed to be derived, (through the Fr. *connestable,* Lat. *constabularius,*) from *comes stabuli,* the title of an officer of the Roman empire, corresponding with that of the modern *master of the horse.* 1 *Bl. Com.* 355. See *Constabularius.* It was introduced into England by the Normans, who applied it first to that high officer of state created after the conquest, under the title of *Constable of England,* (q. v.) It was afterwards applied to various subordinate officers, uniting civil with military duties, such as the keepers of castles, &c.; and finally, to those officers of the peace in hundreds and tithings, which are considered the origin of the modern high and petty constables. The statute of Winchester, 13 Edw. I. (now repealed by 7 & 8 Geo. IV. c. 27,) after requiring every man "to have in his house *harness for to keep the peace,*" and specifying the kind of armour, proceeds to ordain (c. 6,) that "in every hundred and franchise *two constables* shall be elected, to make the view of armour." This statute is considered by Blackstone and Spelman, as having first created the office of constables of hundreds, or high constables, as they are now generally termed. 1 *Bl. Com.* 355, 356. *Spelman,* voc. *Constabularius.* See 4 *Inst.* 267. Petty constables are considered by the same authors as having been first instituted about the reign of Edward III. These opinions, however, have been disputed, and the constable of the hundred has been held to have been an officer at the common law, before the statute of Winchester. Powell, J. 1 *Ld. Raym.* 1192, 1193. Holt, C. J. *Id.* 1195. 1 *Salk.* 175. The same has been held as to the petty constable. 4 *Inst.* 267. See *Bacon's Works,* iv. 309. Constables, indeed, are expressly mentioned in Magna Charta, and by Bracton, in connection with the sheriff, coroner and other royal bailiffs. *Magna Charta,* 9 Hen. III. c. 17. *Id. Johan.* c. 24. *Bract.* fol. 337. But these are supposed to have been constables of castles. 2 *Inst.* 31. So, the constable is mentioned in the statute of Westminster 1, c. 15; though Britton, whose work was written about the same time, in enumerating the county officers under the sheriff, viz. hundredors, serjeants and bedels, says nothing of the constable. *Britt.* fol. 2. It is the opinion of a late writer on this subject, that there was a series of officers, appointed under the title of *constable,* soon after the

Norman Conquest, with a regular gradation of rank, from the lord high constable to the constable of the smallest franchise, uniting military with civil powers; and that they were, in each case, commanders of the levies of their particular districts, in case of domestic tumults, or the incursions of robbers. *Willcock's Office of Constable*, Introd. On the whole, there seems little doubt that the office of constable, though partaking of many of the characteristics of the ancient Saxon peace officers, (the tithing man being little distinguishable from the petty constable,) is essentially of Norman origin. The military or half military character which has always belonged to it in England, (a decidedly Norman feature, as well as the name itself,) makes strongly in aid of this opinion. Under the statute of Winchester, it seems to have differed little from that of a modern militia inspector, and it is worthy of remark that the enrolment of the militia, providing them with quarters when called out, &c., form to this day in England part of the duties of a constable. *Stat.* 52 *Geo.* III. c. 38. See 12 *Mod.* 254. 5 *Id.* 427. *Willcock's Off. Constable*, 76, 78, 80. Dr. Wooddesson concurs in the opinion of Blackstone, that the officers now called constables derived that appellation at or after the statute of Winchester; although it is his conclusion that the office itself, in substance and effect, subsisted from immemorial antiquity in the English laws. 1 *Wooddes. Lect.* 152, 153. The opinion of Sir William Blackstone, that the modern office unites in itself those of the Saxon tithingman, and Norman constable, (properly so called,) is the one which perhaps best reconciles the different views which have been taken on this point of origin. 1 *Bl. Com.* 356. See *Tithingman.*

CONSTABLE OF ENGLAND. [L. Lat. *constabularius Angliæ;* L. Fr. *constable d'Angleterre.*] Called, also, LORD HIGH CONSTABLE. A high officer of state, established in England on the Norman Conquest, whose duties partook both of a military and civil character. He was at the same time commander-in-chief of the forces of the kingdom, and keeper of the peace of the nation. *Crabb's Hist. Eng. Law*, 101. *Cowell. Lambard*, cited *ibid.* He had judicial cognizance of all contracts touching deeds or feats of arms, (*facta armorum,*) and of war out of the realm, and of all matters pertaining to arms or war within the realm, which could not be determined by the common law. *Spelman*, voc. *Constabularius.* He had also the power of trying for high treason, and the especial right of regulating all trials by combat, tilts, tournaments, and other feats of chivalry. *Id.* 1 *Bl. Com.* 355. He was one of the great officers of state who sat in the *Aula Regis;* and, together with the lord mareschal, held also a separate court called the court of chivalry. 3 *Bl. Com.* 68. 4 *Inst.* 123. See *Keilw.* 170 b.

The office of the Saxon *heretoch*, as a chief military leader, corresponded, in some respects, with this of constable; and the barbarous epithet *stallarius* was, according to Spelman, given to it in imitation of the continental term *constabularius*, being made up from a similar derivation, (Sax. *stall*, *stabulum*). There is no doubt, however, that the office of constable of England was introduced by the Normans, being immediately derived from the similar office of constable of France, which was of high antiquity in that kingdom. *Spelman*, voc. *Constabularius. LL. Edw. Conf.* c. 35, cited *ibid.* It has been disused in England, except only upon great and solemn occasions, as the king's coronation and the like, ever since the attainder of Stafford, duke of Buckingham, under Henry VIII. 1 *Bl. Com.* 355.

CONSTABLE OF SCOTLAND. This officer is mentioned in the introduction to King John's Magna Charta. *Alani de Galweya, constabularii Scottiæ.* The office seems to have been one of great antiquity, and to have carried with it a certain share of criminal jurisdiction. *Bell's Dict.*

CONSTABLE OF THE EXCHEQUER. An officer mentioned in Fleta, lib. 2, c. 31.

CONSTABLE OF A CASTLE. [L. Lat. *constabularius castelli* or *castri; castellarius.*] In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a castellain. *Spelman*, voc. *Constabularius. Bract.* fol. 69 b. *Crabb's Hist. Eng. Law*, 150. See *Castellain. Constabularius castri de Dover, et quinque portuum. Co. Litt.* 234 b. *Mag. Cart.* 9 Hen. III. cc. 19, 20. *Id. Johan.* c. 29. *Constabularius castri Dovorr, et custos quinque portuum;* Constable of Dover castle, and Warden of the Cinque Ports. *Reg. Orig.* 185 b. *Mem. in Scacc.* P. 20 Edw. I. This is still an official title. Bracton mentions the con-

stable of the tower of London. *Bract.* fol. 360 b, 361.

CONSTABLEWICK. In English law. The territorial jurisdiction of a constable; as bailiwick is of a bailiff or sheriff. 5 *Nev. & Man.* 261.

CONSTABULARIUS, CONSTABULUS, (called also *Constaulus, Conestabularius, Conestabulus, Conestablius, Conostabilus, Contostaulus, Conestalus, Comistabilis, Comestabulus.*) L. Lat. A master of the horse; (*præfectus stabuli*). *Spelman.* A commander-in-chief of horse; (*præfectus equitum*). *Id.*

A commander of any troop of horse; (*omni turmæ equestris præfectus*). *Id.*

A commander of foot; (*turmæ pedestris;*) a centurion or captain; (*capitaneus*). *Id.*

A naval commander; (*officialis marinus*). *Id.* and voc. *Admiralius.*

An officer having charge of military affairs; (*qui rem militarem curabat*). *Id.* See *Reg. Orig.* 88.

An officer assigned to guard or keep any place, (*qui loco alicui præsidio dabatur,*) as a castle or town, &c. *Spelman. Bract.* fol. 69 b. *Nullus* constabularius, *vel ejus ballivus, capiat blada vel alia catalla alicujus qui non sit de villa ubi castrum situm est;* no constable nor his bailiff shall take the corn or other chattels of any one who is not of the vill where the castle is situated. *Mag. Cart.* 9 Hen. III. c. 19. *Nullus* constabularius *distringat aliquem militem ad dandum denarios pro custodia castri, si,* &c.; no constable shall distrain any knight to give moneys for the guard of his castle, if, &c. *Id.* c. 20. *Id. Johan.* c. 29.

An officer whose military duties were connected with, or exercised in subservience to, the preservation of the public peace. Hence, (the military character being dropped,) the office of the modern constable.* See *Constable.*

*** This word is derived by Spelman, through the Fr. *conestable*, Ital. *conestabile*, from the Lat. *comes stabuli*, an officer in the Roman empire, who had the charge of the imperial stable; the master of the horse; (*præfectus stabuli* vel *equorum;*) originally called *tribunus stabuli. Spelman*, voc. *Constabularius. Ammianus Marcellinus*, cited *ibid.* This latter title is supposed to have become changed into that of *comes stabuli*, soon after the time of Constantine, and the union of these two words into one to have taken place about the tenth century. *Constabulus* is used by Regino, an Italian writer at the beginning of the eleventh century, with the express admission of its being a corruption of *comes stabuli. Regino Chron.* lib. 2, *apud Spelman. Comestabulus* and *conestabulus* may have been previous forms of the word, but *constabularius* finally became the prevailing one. *Contostaulus, conestalus,* and *constaulus*, appear to be from the lower Greek κοντοσταυλος, κονεσταυλος and κονσταυλος.

The changes which the meaning of this word successively underwent, from the time of its first formation, may be seen in the definitions already given. Its prevailing sense, on the continent, was that of *military commander*, or leader, with which was blended, on its introduction into England, that of custodian or *keeper of the peace.* A trace of the original office of the *comes stabuli* long survived in that of the Lord High Constable of England, as supervisor of all feats of arms performed on *horseback*, and judge in the court of *chivalry.* See *Constable of England.*

CONSTAT. Lat. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat;* it does not appear. *Constat de persona;* there is certainty as to the person; there is no doubt about the person. *Inst.* 2. 20. 29. 4 *Bl. Com.* 323. **Nihil facit error nominis cum de corpore constat.** An error in the name amounts to nothing, when there is certainty as to the person. 6 *Co.* 65 b. 11 *Id.* 21. See **Quod constat,** &c. Sometimes used as a substantive. "With respect to the *constat* of property in the present case." Sir W. Scott, The Aurora, 3 *Rob. Adm. R.* 137. And see *infra.*

CONSTAT. L. Lat. In English law. A certificate which the clerk of the pipe and auditors of the exchequer make, at the request of any person who intends to plead or move in that court for the discharge of any thing; and the purport of it is to certify what *appears* (*constat*) on record, concerning the matter in question. *Stat.* 3 & 4 *Edw.* VI. c. 4. 13 *Eliz.* c. 6.

An exemplification under the great seal of the enrolment of letters patent; so called from its initial word. 5 *Co.* 54. *Co. Litt.* 225 b.

CONSTITUCION. L. Fr. The constitution or appointment of an attorney. *Britt.* c. 126.

CONSTITUENT. [L. Lat. *constituens.*] One who appoints or constitutes. The per-

son appointing an attorney in fact is called his constituent. See *Reg. Orig.* 20, 21.

CONSTITUERE. Lat. In old English law. To constitute or appoint. *Constituimus* (we have constituted, or appointed,) was the emphatic word in the ancient commissions of the judges in England. *Bract.* fol. 109—111.

To put in one's place; to constitute or appoint an attorney. *Attornavi et in loco meo* constitui *C. de D.;* I have attorned and put in my place C. of D. *Reg. Orig.* 172. *Constitute* is still an emphatic word in letters of attorney.

To put or place; to make an appearance. *Partibus in judicio constitutis;* the parties being placed (or having appeared) in court. *Bract.* fol. 257.

To establish or ordain. See *Constitutio.*

To undertake or engage to pay a debt. *Inst.* 4. 6. 9. *Dig.* 13. 5. See *Constitutum.*

CONSTITUTA PECUNIA. See *Constitutum.*

CONSTITUTIO. Lat. [from *constituere*, to establish; Gr. διάταξις.] In the civil law. An imperial ordinance or constitution, distinguished from *Lex*, *Senatus-consultum*, and other kinds of law, and having its effect from the sole will of the emperor. *Quod principi placuit legis habet vigorem. Quodcunque ergo imperator per epistolam* constituit, *vel cognoscens decrevit, vel edicto præcepit, legem esse constat. Hæc sunt quæ* constitutiones *appellantur.* That which has pleased the sovereign has the force of law. Whatever, therefore, the emperor has ordained by rescript, or decreed upon the hearing of any matter, or commanded by edict, is evidently law. These are what are called *constitutions. Inst.* 1. 2. 6. (This passage is taken from *Dig.* 1. 4. 1, with some verbal alteration.) *Cooper's Notes, in loc. Heinecc. Elem. Jur. Civ.* lib. 1, tit. 2, § 51.

CONSTITUTIO. Lat. In old English law. An act, ordinance or statute; an establishment. *Stat. Marlbr.* c. 11. *Stat. Westm.* 1, pr. *Stat. de Bigamis*, pr. *Fleta*, lib. 1, c. 38, § 26. *Id.* lib. 2, c. 47, § 4. Bracton calls the statute of Merton, *constitutio de Merton. Bract.* fol. 227. Fleta applies the same term to Magna Charta, and to the statutes of Merton, Marlbridge, Oxford and Westminster. *Fleta*, lib. 2, c. 52, § 1; c. 57, § 7. *Id.* lib. 5, c. 24, § 4. *Id.* lib. 2, c. 47, § 13. *Id.* lib. 4, c. 29. *Id.* lib. 1, c. 18, § 2. *Id.* lib. 2, c. 67, § 19. *Id.* lib. 4, c. 5, § 11.

A provision of a statute. *Fleta*, lib. 2, c. 44, § 5. *Id.* lib. 3, c. 5, § 8.

Establishment; creation. *Constitutio dotis;* establishment of dower. *Fleta*, lib. 5, c. 23.

CONSTITUTION. [Lat. *constitutio.*] Establishment; appointment. See *Constituere.*

An established form of government. 1 *Bl. Com.* 50. 1 *Steph. Com.* 32. A system of fundamental rules, principles and ordinances for the government of a state or nation. *Webster.* The fundamental law of a state or nation.

In English law. A public act or ordinance, especially such as related to ecclesiastical matters. *Crabb's Hist. Eng. Law*, 248. 2 *Reeves' Hist. Eng. Law*, 78. See *Clarendon, Provincial constitutions, Legatine constitutions.*

CONSTITUTIONAL. Consistent with the constitution; not in conflict with the fundamental law of the state.

CONSTITUTUM. Lat. [from *constituere*, to undertake or engage.] In the civil law. A promise or undertaking, (called *pactum prætorium,*) without any preceding stipulation, to pay money due either by the promissor or another for whom he became surety. *Dig.* 13. 5. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1158. The action which lay upon such a promise was called *actio de pecunia constituta. Id. Inst.* 4. 6. 9.

CONSTRAINT. See *Duress.*

CONSTRUCTIO. Lat. Construction, (q. v.)

Constructio legis non facit injuriam. The construction of the law [a construction made by the law] works no injury. *Co. Litt.* 183. *Broom's Max.* 259. [464]. The law will make such a construction of an instrument as not to injure a party.

CONSTRUCTION. [Lat. *constructio*, from *construere*, to frame or put together.] Literally, a putting together. A putting together of the words of an instrument; an arrangement or marshalling of words or clauses, so as to extract, by a process of inference, the meaning or intent;* exposition; interpretation. The court give construction to language used in a written instrument; the jury determine the meaning of words used orally between the parties. 36 *Maine R.* 376.

This word is often used in the same sense with *interpretation;* and has indeed been defined by that word. See 1 *Kent's Com.* 460. *Sedgwick on Stat. and Const.*

Law, 225, chap. 6. *Webster.* A distinction, however, is sometimes made between the terms; *interpretation* being confined to the sense of the mere explanation of words as they stand, without reference to other considerations. The term *conjectura*, used by Grotius, has been considered by Mr. Duer as expressing the true idea of construction. *Grot. de Jur. Bell.* lib. 2, c. 16. 1 *Duer on Ins.* 215. But that Grotius himself used the term *interpretation* in a comprehensive sense, appears from the title of the chapter of his work referred to—*De Interpretatione.*

For the rules regulating the construction of statutes, see 1 *Kent's Com.* 460—469, and notes. *Sedgwick on Stat. and Const. Law*, chap. 6. *United States Digest*, Statutes. For the rules respecting the construction of contracts, see 2 *Kent's Com.* 554, *et seq.* For the rules respecting the construction of wills, see 4 *Kent's Com.* 534, *et seq. United States Digest*, Devise. And see 2 *Bl. Com.* 379—381.

CONSTRUCTIVE. Made out or deduced by construction; implied, inferred, construed or interpreted by law; as *constructive* fraud, *constructive* notice, &c. The opposite of formal, actual, positive or expressed.

CONSTRUCTIVE BREAKING *into a house.* A breaking made out by construction of law. As where a burglar gains an entry into a house by threats, fraud or conspiracy. 1 *Russell on Crimes*, 792—794.

CONSTRUCTIVE FRAUD. Fraud inferred by law, as distinguished from positive, actual or intentional fraud; fraud in law, as distinguished from fraud in fact.* 2 *Kent's Com.* 515, *et seq.* See *Fraud.*

By *constructive frauds* are meant such acts or contracts, as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upou other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with positive fraud; and therefore are prohibited by law, as within the same reason and mischief as acts and contracts done *malo animo.* 1 *Story's Eq. Jurisp.* § 258. See 4 *Sandford's* (N. Y. Superior Court) *R.* 287. *Burrill on Assignments*, 426, 427, (2d ed).

CONSTRUCTIVE LARCENY. Larceny made out by construction, or inferred from the acts of a party, where the taking itself was not apparently felonious; as where he obtained the delivery of the goods *animo furandi.* See *Larceny.*

CONSTRUCTIVE NOTICE. Notice inferred by law, as distinguished from actual or formal notice; notice in law; that which is held by law to amount to notice. See 6 *Ohio St. R.* 585. Actual notice to a party's attorney is constructive notice to the party himself. See *Notice.*

CONSTRUCTIVE TRUST. A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust; a trust implied or inferred from circumstances; otherwise called an *implied* trust, and sometimes a *resulting* trust, (qq. v.) Thus, if an estate be purchased in the name of one person, and the consideration money belong to, or be paid by another, the land purchased will be subject to a trust for the person to whom the money belonged. 1 *Sand. Us.* 212. 1 *Steph. Com.* 346. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property, cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment. *Hill on Trustees*, 116. 1 *Spence's Chancery*, 511.

CONSTRUE. [from Lat. *construere.*] To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See *To Marshal.*

CONSUETUDINARIUS. L. Lat. [from *consuetudo*, q. v.] In old English law. A ritual or book, containing the rites and form of divine offices, or the customs of abbies and monasteries. *Whishaw.*

CONSUETUDINARY LAW. Customary law. Law derived by oral tradition from a remote antiquity. *Bell's Dict.*

CONSUETUDINES. Lat. [pl. of *consuetudo*, q. v.] In old English law. Customs. *Magna Charta*, c. 29. See *Hale de Jur. Mar.* pars 3, c. 4.

CONSUETUDINES ET ASSISA FORESTÆ. L. Lat. The customs and Assise of the Forest. The title of a statute of uncertain date, commented on by Mr. Barrington. *Obs. Stat.* 217.

CONSUETUDINES FEUDORUM. L. Lat. (The customs or customary laws of fiefs.) A title sometimes given to the

Feudorum Libri, (Books of Fiefs,) usually annexed to the *Corpus Juris Civilis*. 3 *Kent's Com.* 496.

CONSUETUDINIBUS ET SERVITIIS. See *De consuetudinibus et servitiis.*

CONSUETUDO. Lat. In the civil law. Custom; long established usage or practice. *Inveterata* consuetudo *pro lege non immerito custoditur;* inveterate custom is not undeservedly observed as law. *Dig.* 1. 3. 32. 1. See *Taylor's Civ. Law*, 241—246.

In feudal law. Custom. Called *consuetudo feudi*, (the custom of the fief); *usus*, (usage) and *mores*, (habits, practices). Recognized as a principal source of law in the Books of Fiefs. *Lib.* 2, tit. 1.

CONSUETUDO. Lat. In old English law. A custom or usage; a customary law; a law originating from usage; a law not written. *Bract.* fol. 1, 2. Lord Coke enumerates the following as different significations of this word:

The common law, (*consuetudo Angliæ*). 2 *Inst.* 58.

Statute law. *Id. ibid.*

A particular custom, as gavelkind, borough English and the like. *Id. ibid.*

A rent or service due by tenure. *Id. ibid.*

A custom, tribute, imposition, toll, tax or charge. *Id. ibid. Co. Litt.* 58 b. See 2 *State Trials*, 1112. But the proper Latin for this is *custuma*, (q. v.)

A subsidy granted by parliament. 2 *Inst.* 58. *Consuetudo* is one of the main triangles of the laws of England. *Co. Litt.* 110 b.

Consuetudo est altera lex. Custom is another law. 4 *Co.* 21. *Consuetudo quandoque pro lege observatur, in partibus ubi fuerit more utentium approbata, et vicem legis obtinet.* Custom is sometimes observed as law, in parts where it has been habitually approved, and takes the place of law. *Bract.* fol. 2. **Consuetudo regni Angliæ est lex Angliæ.** The custom of the kingdom of England is the law of England. *Jenk. Cent.* 119.

Consuetudo est optimus interpres legum. Custom is the best interpreter of laws. 2 *Inst.* 18. The maxim is obviously derived from that of the civil law, the order of the words only being changed: **Optima est legum interpres consuetudo**, (q. v.) *Dig.* 1. 3. 37.

Consuetudo loci est observanda. The custom of a place is to be observed. *Litt.* sect. 169. 4 *Co.* 28 b. 10 *Id.* 140. *Broom's Max.* 416, [713]. A custom which has long prevailed at a particular place, obtains the force of law. *Id. ibid.*

Consuetudo debet esse certa, nam incerta pro nullis habentur. A custom ought to be certain, for uncertain things are held as nothing. *Davies' R.* 33.

Consuetudo tollit [vincit] [privat] communem legem. Custom takes away [overcomes] [supersedes] the common law. By the custom of gavelkind in England, a widow is entitled to a moiety of her husband's estate so long as she continues chaste and unmarried; and this custom she cannot waive, and resort to her third part at common law. 1 *Roper on Husb. & Wife*, 351. *Co. Litt.* 33 b.

Consuetudo ex certa causa rationabili usitata privat communem legem. A custom, grounded on a certain and reasonable cause, supersedes the common law. *Litt.* sect. 169. *Co. Litt.* 113. *Broom's Max.* 417, [714].

Consuetudo præscripta et legitima vincit legem. A prescriptive and lawful custom overcomes the law. *Co. Litt.* 113. 4 *Co.* 21.

Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet. A custom introduced against reason ought rather to be called a usurpation than a custom. *Co. Litt.* 113.

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati. A custom, though it be of great authority, should never prejudice manifest truth. 4 *Co.* 18.

Consuetudo semel reprobata non potest amplius induci. A custom once disallowed cannot be again brought forward, [or relied on]. *Dav.* 33.

Consuetudo neque injuria oriri neque tolli potest. A custom can neither arise [be established] nor be abolished contrary to law. *Lofft's R.* Appendix, 340.

Consuetudo volentes ducit, lex nolentes trahit. Custom leads the willing, law compels [drags] the unwilling. *Jenk. Cent.* 274.

CONSUETUDO ANGLICANA. L. Lat. The custom of England; the ancient common law, as distinguished from *lex*, the Roman or civil law. *Convenit lex cum consuetudine Anglicana;* the Roman law agrees with the custom of England. *Bract.* fol. 30 b.

CONSUETUDO CURIÆ. L. Lat. The custom or practice of a court. *Hardr.* 141.

CONSUETUDO MERCATORUM. Lat. The custom of merchants, the same with *lex mercatoria*, (q. v.) the law merchant. *Nisi sit aliter ex* consuetudine mercatorum, *quorum* consuetudo *est secundum legem mercatoriam;* unless it be otherwise by the custom of merchants, whose custom is according to the law merchant. *Fleta*, lib. 2, c. 58, § 5. See *Id.* c. 63, § 12. Holt, C. J. 1 *Show.* 5, case 8.

CONSUL. The name of a chief magistrate among the Romans, two of whom were annually created, and who, during the republic, exercised supreme authority. So called *à consulendo*, from their custom of consulting the senate. The office continued to exist under the emperors, but with only a shadow of power. See *Nov.* 105. *Nov. Const. Imp. Leonis*, 94.

CONSUL. Lat. [from *consulere*, to consult.] In old English law. An ancient title of an earl. Comites—*qui etiam dici possunt* consules, *à* consulendo, *reges enim tales sibi associant* ad consulendum. Earls —who may also be called *consuls*, from *consulendo*, for kings associate such persons with them for the purposes of *consultation*. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

*** The word *consul* was used by the authors of the middle ages for *comes*, (count, or earl,) and the derivative word *consulatus* for *comitatus;* (the office or district of a *comes;* a county). *Spelman.* It is mentioned in the laws of Edward the Confessor, (c. 12,) that what was then called *comitatus* was, among the Britons in the time of the Romans, called *consulatus*, and that those who were then called *vice comites*, were at the same early period called *vice consules;* their office being to supply the place of the *consul* in his absence. Mr. Hargrave is disposed to doubt this. *Harg. Co. Litt.* lib. 3, Note 20. The use of the term, however, as applied to the highest nobility in England, seems beyond question. Bracton mentions it as an appropriate (if not an ordinary) title in his day, and dwells upon its meaning as peculiarly expressive. *Bract. ub. sup.*

CONSUL. In commercial and international law. A public agent, appointed by a government to reside in a foreign country, (and usually in sea-ports,) to watch over its own commercial rights and privileges, and the commercial interests of its citizens or subjects.* 1 *Kent's Com.* 41. A consul is not such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. *Id.* 44. 1 *Chitty's Com. Law*, 48, 49, *et seq. Wheaton's Intern. Law*, 293. See *United States Digest*, Consul.

Consuls are an institution of comparatively modern date. It was observed by Lord Ellenborough, in 3 *M. & S.* 292, 293, that the word "consul" is neither in Grotius nor Molloy. It is conspicuously used, however, in the Ordonnance of the Marine of Louis XIV. liv. 1, tit. 9.

CONSULTA. L. Lat. [L. Fr. *counseille.*] In old English law. Provided for. Applied to a church that was full. *Cowell.*

CONSULTATION. In English practice. A writ, in the nature of a *procedendo*, whereby a cause, being removed by prohibition out of the ecclesiastical court to the king's court, [i. e. to one of the superior courts of law,] is returned thither again to be there determined. *Termes de la Ley.* 3 *Bl. Com.* 114. 1 *Wooddes. Lect.* 93. 2 *Tidd's Pr.* 948. A similar writ has been used on prohibition in some courts in the United States. 2 *Burr. Pr.* 184. See *Prohibition, Procedendo.*

*** This writ is said by Blackstone to be so called because, upon deliberation and *consultation* had upon the matter removed by the prohibition, the judges find it to be ill founded, and therefore, by this writ, they return the cause to its original jurisdiction, to be there determined in the inferior court. 3 *Bl. Com.* 114. A more satisfactory explanation, however, of the origin of this writ, may be derived from a reference to the ancient practice as laid down by Bracton. Anciently, where a prohibition was issued to a spiritual court, if the judges to whom it was directed thought it well founded, they would decree a *supersedeas* of the proceeding. If they were in doubt whether to proceed in the cause or not, they usually *consulted* the king's justices, (*solent judices aliquando justiciarios* consulere *utrum procedere possent*) by what were termed *literæ consultationis*, to which the justices replied by writs of various forms, according to the case. *Bract.* 405 b, 406. 1 *Reeves' Hist. Eng. Law*, 456. Bracton gives several of these forms, which are rather in the nature of opinions than compulsory processes, and belong probably to a much earlier period than those given in the Register, (fol. 44—58). It is not difficult to see how these obtained the name of writs of *consultation*,

or upon consultation; the consultation itself being, as is clearly shown, not among the justices of the superior court, but between the judges of the two courts, in the nature of a conference. The term *consultation* itself is taken from the Roman law. *Cod.* 7. 62.

CONSULTO. Lat. In the civil law. Designedly; intentionally. *Dig.* 28. 41.

CONSUMMATE. Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 *Bl. Com.* 126, 128. *Co. Litt.* 30 a.

CONT. An abbreviation of *contra*. *Rep. in Ch. passim.*

CONTE. Fr. [L. Lat. *narratio.*] In old pleading. A narrative or statement, in pleading. In the Norman law, it was used to signify any allegation of fact in a cause. *Steph. Pl.* Appendix, Note (56). Hence the word *count*, (q. v.)

CONTE. L. Fr. [L. Lat. *comes.*] In old English law. Earl. *Humfrey de Bohun*, conte *de Hereford*. *Roger Bygod*, conte *de Norff*. *Stat.* 25 *Edw.* I. m. 38. *Prelatz*, contes *et barouns*. *Artic. sup. Chart. Conte Mareschall. Mem. in Scacc.* 25 Edw. I.

CONTE. L. Fr. [L. Lat. *comitatus.*] In old English law. A county. *LL. Gul. Conq.* l. 42.

A, or the county court. *Id. ibid. En plein conte;* in full county court. *Art. sup. Chart.*

An account. *Kelham.*

CONTEK. L. Fr. A contest, dispute, disturbance, opposition. *Britt.* c. 42. *Kelham. Conteckours;* brawlers; disturbers of the peace. *Britt.* c. 29.

CONTEMPLATION. [Lat. *contemplatio.*] A having in view; the act of looking at or towards a thing with attention; deliberate consideration; consideration of an act or course of conduct, with the intention of doing or adopting it.

CONTEMPLATION OF BANKRUPTCY. Contemplation of an act of bankruptcy, or of an application by the debtor to be decreed a bankrupt. Curtis, J. 13 *Howard's R.* 151, 167. It has, however, been said, that by "contemplation of bankruptcy" the law does not mean a contemplation of applying for the benefit of the bankrupt law, or of proceedings in a court of bankruptcy; but a contemplation of the breaking up of one's business, or an inability to continue it. Randall, J. *Crabbe's R.* 529, 532.

CONTEMPORANEA EXPOSITIO. Lat. Contemporaneous exposition, or construction; a construction drawn from the *time* when, and the circumstances under which the subject matter to be construed, as a statute or custom, originated.

Contemporanea expositio est optima et fortissima in lege. Contemporaneous exposition is the best and strongest in the law. 2 *Inst.* 11. A statute is best explained by following the construction put upon it by judges who lived at the *time* it was made, or soon after.* *Id. ibid.* and 136, 181. 10 *Co.* 70. 1 *Wooddes. Lect.* xxxi. xxxii. *Broom's Max.* 300, [532]. A contemporaneous exposition even of the constitution of the United States, practised and acquiesced in for a period of years, fixes the construction. 1 *Cranch's R.* 299. 1 *Kent's Com.* 464, 465. Construction may also be by acts as well as formal exposition, and hence the rule that ancient instruments may be construed by ancient usage, as constituting the best evidence of the intention of the parties. Lord Hardwicke, C. 2 *Atk.* 577. *Broom's Max.* 300, [532]. 2 *Smith's Lead. Cas.* 295. "*Contemporanea interpretatio*, whether it be of statute or scripture, or author whatsoever, is of greatest credit." *Bacon's Arg.* Jurisdiction of Marches, *Works*, iv. 269.

CONTEMPT. [Lat. *contemptus.*] Disobedience or disregard of authority.* A disobedience to the rules, orders or process of a court of justice, or a disturbance or interruption of its proceedings.* 4 *Bl. Com.* 285. Contempts are either direct, which openly insult or resist the powers of the court, or the persons of the judges who preside there; or consequential, which (without such gross insolence or direct opposition,) plainly tend to create an universal disregard of their authority. *Id.* 283, 284. Or they may be divided into such as are committed in the face of the court, (*in facie curiæ*,) which are punishable by commitment and fine, and such as are committed out of court, which are punishable by attachment. 1 *Tidd's Pract.* 479, 480. 4 *Bl. Com.* 285, 286. 4 *Steph. Com.* 348—353. See 1 *Kent's Com.* 300, note. 1 *Hill's* (N. Y.) *Rep.* 154. *United States Digest*, Contempt. A party disobeying a

rule or process of court is said to be *in contempt*. 4 *Steph. Com.* 19. See *Attachment, Commitment.*

Disregard or disobedience of the rules of a legislative body.

CONTEMPTIBILITER. L. Lat. Contemptuously. *Fleta*, lib. 2, c. 60, § 35.

CONTEMPTUS. Lat. In old English law. Contempt; contempts. *Fleta*, lib. 2, c. 60, § 35.

CONTENEMENT. See *Contenementum.*

CONTENEMENTUM. L. Lat. [from *con*, together, and *tenementum*, a tenement, or thing holden; L. Fr. *contenance.*] In old English law. A contenement; that which is *held together with* another thing; that which is connected *with a tenement* or thing holden; countenance; appearance; credit or reputation.* See *infra.*

The precise meaning of this word is uncertain. It occurs in the following passage of Magna Charta: *Liber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti: et pro magno delicto secundum magnitudinem delicti, salvo sibi* contenemento *suo; et mercator eodem modo, salva mercandisa; et villanus—salvo wainagio suo.* A freeman shall not be amerced for a small offence, but after the manner of the offence; and for a great offence, according to the magnitude of the offence, saving to him his *contenement;* and a merchant in the same way, saving his merchandise; and a villein—saving his wainage. *Magna Charta*, c. 14. *Spelman. Termes de la Ley. Cowell.* See *Liber homo.* The word occurs in the same form in Glanville and Bracton. *Glanv.* lib. 9, c. 8. *Bract.* fol. 116 b. Fleta calls it *continentia. Fleta*, lib. 1, c. 48, § 2. The French form is *contenance*, though *contenement* is used in the French statute of Westminster 1, c. 6.

The author of the *Termes de la Ley* defines *contenement* to be "the freehold land that lies to [that is, adjoining] the tenement or dwelling-house that is in one's own occupation." Sir Henry Spelman translates *contenementum* by the word *countenance*, on the analogy of the similarly formed word *manutenementum*, the Latin for *maintenance;* and, without any particular reference to land, defines it to be "the reputation or standing which a man has in the state," or "the outward appearance of his condition," (*æstimatio et conditionis forma, quâ quis in republica subsistit*). Lord Coke defines it to be "a man's countenance, [credit or reputation,] which he has together with [*con*] and by reason of his freehold," [*tenementum*]. 2 *Inst.* 28. *Blount.* And see *Barringt. Obs. Stat.* 12.

The most reasonable opinion to be deduced from the whole language of the provision of Magna Charta above quoted, seems to be, that this *contenementum*, mentioned as the characteristic property of the *freeman*, was a certain quantity of *land* exempted from amercement, on the ground of being necessary for its owner's support, like the wares of a merchant, or the wains of an agricultural bondman; land being in those days as essential to the creditable subsistence or countenance in society of the freeholder, (*liber homo,*) as the other kinds of property named were to the subsistence of their respective owners. See 4 *Bl. Com.* 379. As to the particular description and quantity of land so exempted, the definition first above given seems to convey the most satisfactory interpretation, viz. that it was limited to the *freehold land adjoining to*, and necessary to the reputable enjoyment of the party's *dwelling.*

CONTENTIOUS JURISDICTION. In English ecclesisiastical law. That branch of the jurisdiction of the ecclesiastical courts, which is exercised upon matters in *controversy* between parties, as brought before the court by action, or other judicial process; in contradistinction to *voluntary* jurisdiction, which is exercised upon matters not opposed, or controverted, such as the granting of probate of wills, letters of administration, and the like.* 3 *Bl. Com.* 66. See *Hale's Anal.* sect. vi. This term is derived from the civil law. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 17, § 1323.

"CONTENTS UNKNOWN." Words sometimes annexed to a bill of lading of goods in cases. Their meaning is that the master only means to acknowledge the shipment in good order, of the cases, as to their external condition. 12 *Howard's R.* 273.

CONTENTUS. L. Lat. [from *continere*, to contain.] Contained. A barbarous participle of frequent occurrence in the old books. *Ad diem in brevi contentum;* at the day contained in the writ. *Fleta*, lib. 2, c. 64, § 11. *Contentarum in carta nostra. Mag. Cart.* 9 Hen. III. c. 37. *In hac carta contentæ. Id.*

CONTER. L. Fr. Against. 1 *And.* 49.

CONTERFET. L. Fr. Counterfeit. *Clypt ou* conterfet *money. Mem. in Scacc.* T. 20 Edw. I.

CONTERMINOUS. [from *con*, together, and *terminus*, a boundary.] Adjacent or adjoining; having common boundaries. *Hale's Hist. Com. Law*, 98.

CONTERROLLE. L. Fr. In old English law. A counter-roll. *Stat. Westm.* I. c. 10. See *Counter-roll.*

To CONTEST. [Lat. *contestari*, to call to witness.] To defend a suit or other judicial proceeding; to dispute, oppose or resist a claim by course of law; to litigate, on the part of a defendant.*

This word has entirely lost the original sense of its Latin form *contestari*, which, in the old Roman law, was applied primarily to the proceedings on the part of the *plaintiff*. When the plaintiff opened the proceedings before the prætor, by stating his cause of action, it was the custom for him to call upon the by-standers to act as *witnesses*, which act was called *antestari*, or *contestari*. *Festus de Verb. Signif.* voc. *Contestari.* Therefore it was always said of the plaintiff, *actor litem contestatur*, (the plaintiff contests the suit). *Dig.* 46. 2. 28. See *Contestatio litis.*

CONTESTATIO LITIS. Lat. In the civil law. Contestation of suit. A narrative of the controversy made by both the parties to a suit before the prætor, including the plaintiff's statement of his claim, and the defendant's answer thereto. So called, because originally conducted before witnesses, (*testes*). *Hallifax, Anal.* b. 3, ch. 9, num. 20. *Nov.* 96, c. 1. 1 *Mackeld. Civ. Law*, 205, § 203. This application of the term is retained in the canon law. *Id. ibid.* Kaufmann's note.

The legal quality which a suit assumed through the plaintiff's statement of his case, and the defendant's answer thereto. *Id. ibid.*

In early English law. The process of coming to an issue in pleading; the attainment of an issue, or the development of the point in controversy, by the alternate and contradictory statements of the respective parties; the issue itself, so attained or produced.* *Steph. Pl.* Appendix, Note (39). *Fortescue de LL. Angl.* c. 20. *Crabb's Hist. Eng. Law*, 216. More commonly termed *litis contestatio*, (q. v.) *Fleta*, lib. 6, c. 15, § 3.

The meaning of this term in the civil law seems to have been misapprehended by Blackstone, who makes it synonymous with *defence* in common law pleading. 3 *Bl. Com.* 296. *Steph. Pl.* Appendix, Note (39). In the practice of the ecclesiastical courts, however, (which he may have had in view,) contestation of suit has this signification of defence. *Hallifax, Anal.* b. 3, ch. 11, num. 9. And *litis contestatio* has the same meaning in Germany. 1 *Mack. Civ. Law*, 205, Kaufmann's note.

Contestatio litis eget terminos contradictarios. An issue requires terms of contradiction. *Jenk. Cent.* 117. To constitute an issue, there must be an affirmative on one side and a negative on the other. See *Issue.* A misapprehension of the meaning of *contestatio litis*, in this maxim, has led to some absurd translations. See *Branch's Princ. Wharton's Lex.*

CONTINENCIA. Span. In Spanish law. Continency or unity of the proceedings in a cause. *White's New Recop.* b. 3, tit. 6, ch. 1.

CONTINENS. [from *continere*, to hold together.] In the civil law. Continued; continuous; holding together; joined together. Buildings in the suburbs of Rome were said to be *continentia*, and *in continentibus. Dig.* 50. 16. 2. pr. *Id.* 50. 16. 139. *Id.* 50. 16. 173. 1. See *Abesse.*

CONTINENTIA. L. Lat. [from *continere*, to hold together.] In old English practice. Continuance or connexion. Applied to the proceedings in a cause. *Bract.* fol. 362 b.

Countenance. *Fleta*, lib. 1, c. 48, § 2. See *Contenementum.*

CONTINGENCY. [from Lat. *contingere*, to happen.] An event that may or may not happen; a possibility.

CONTINGENCY WITH A DOUBLE ASPECT. A contingent remainder, (q. v.) limited in substitution for another contingent remainder in fee simple. As if land be given to A. for life, and, if he have a son, then to that son in fee; and if he have no son, then to B. in fee. 1 *Steph. Com.* 302.

CONTINGENT ESTATE. An estate which depends, for its effect, upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 *Crabb's Real Prop.* 4, § 946.

CONTINGENT LEGACY. A legacy given to a person at a future uncertain time, that may or may not arrive; as "at his age of twenty-one," or "if," or "when he attains twenty-one." 2 *Bl. Com.* 513. 2

Steph. Com. 259. *Ward on Legacies*, 172.

CONTINGENT REMAINDER. A remainder limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, (and by which no present interest passes,) so that the particular estate may chance to be determined, and the remainder never take effect.* 2 *Bl. Com.* 169.—A remainder limited either to an uncertain person, or upon an uncertain event; that is, to a person not *in esse*, or not ascertained, or upon an event which may not happen at all, or not happen until after the particular estate is determined. 1 *Steph. Com.* 301.—A remainder limited so as to depend on an event or condition which may never happen, or be performed; or which may not happen or be performed till after the determination of the preceding estate. *Fearne on Contingent Remainders*, 3. See 2 *Crabb's Real Prop.* 965, § 2330. 4 *Kent's Com.* 206, 208, note. 1 *Hilliard's Real Prop.* 496. See *Remainder.*

CONTINGENT USE. A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B. after a marriage shall be had between them. 2 *Bl. Com.* 334. Otherwise called a *future* use, and sometimes, though inaccurately, a springing use. *Gilbert on Uses*, (by Sugden,) cited 2 *Chitty's Bl. Com.* 334, note. These are properly uses to take effect as remainders. *Id. ibid.* See 1 *Co.* 120; *Chudleigh's case.* 1 *Anderson*, 309. 4 *Kent's Com.* 237—247. 1 *Hilliard's Real Prop.* 523. See *Scintilla juris.*

CONTINGERE. Lat. In old English law. To touch; to be connected with, or akin to. *Qui sese non* contingunt; who are not of kin to each other. *Bract.* fol. 28 b.

CONTINUAL CLAIM. [L. Lat. *continuum clameum.*] In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called *continual*, because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and when made in due form, had the same effect with, and in all respects amounted to a legal entry. *Litt.* sect. 419—423. *Co. Litt.* 250 a. 3 *Bl. Com.* 175. Lord Coke calls it an entry in law, and says that it is as strong as an entry in deed. *Co. Litt.* 256 b. It has been lately abolished in England, by stat. 3 & 4 Will. IV. c. 27, § 11. 1 *Steph. Com.* 472.

CONTINUANCE. [L. Lat. *continuatio.*] In ancient practice. The adjournment of the proceedings in a cause from one day or one term to another.

The entry of such adjournment on the record, expressing the ground of the adjournment, and appointing the parties to re-appear at the given day. *Steph. Pl.* 31, 81, (Am. ed. 1824).

In modern practice. The postponement of the proceedings in a cause, as putting off a trial, &c. *United States Digest*, Continuance and Adjournment.

An entry made upon the record of a cause, for the purpose of formally continuing it in court; or rather, for the purpose of properly connecting the proceedings on the record.* Before declaration, the continuance is by *dies datus*, (q. v.); after declaration, and before issue joined, the proceedings are continued by *imparlance*, (q. v.); after issue joined, and before verdict, by *vicecomes non misit breve* (q. v.); and after verdict or demurrer, by *curia advisari vult*, (q. v.) *Hardr.* 365, 366. 1 *Tidd's Pr.* 678. But some of these continuances are now disused, and in England they are entirely abolished. *Rules Hil. T.* 4 *Will.* IV.

*** The adjournments under the old practice were always *actually* made in each cause, by express direction of the court; and the entries of them upon record were made *in court at the time* of their being so directed, such entries being the only evidence the court would admit, of the manner in which the cause was disposed of. In order to estimate the peculiar propriety of these entries, we must refer to the two fundamental principles of the ancient practice; the first of which was, that the action must be under the *immediate supervision* of the court, throughout its *whole course*, from beginning to end, and that no act could be done by the parties except when in court. Under this rule, the proceedings could not be suspended, and the parties dismissed even temporarily, without leave, nor could the parties come again into court, and the proceedings be resumed, without similar leave, by having a *day* previously *given* to them for that purpose. The second principle was, that the record must *follow the*

action, keeping pace with every step of it, and accounting for every thing that was done during its progress, so as to show the proper reason for it, viz. the direction of the court. A compliance with these two principles was facilitated by the circumstances of the parties personally appearing and pleading in open court, and of the record being a contemporaneous minute of the proceedings. See *Record.*

CONTINUANDO. L. Lat. (By continuing.) In old pleading. A word formerly used in a special declaration of trespass, where the plaintiff would recover damages for several trespasses in the same action. *Termes de la Ley.* Thus, in trespasses of a permanent nature, where the injury was continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle,) the declaration might allege the injury to have been committed *by continuation* from one given day to another, (which was called laying the action with a *continuando*,) instead of compelling the plaintiff to bring separate actions for every day's separate offence. 3 *Bl. Com.* 212. 1 *Ld. Raym.* 240, 824. The form of words was this: continuando *transgressionem prædictam, &c. à prædicto die, &c. usque talem diem;* (by continuing the aforesaid trespass, &c. from the day aforesaid, &c. to such a day;) and so including the last trespass. *Termes de la Ley.* It has now, however, become obsolete. 3 *Chitt. Bl. Com.* 212, note.

CONTRA. Lat. [L. Fr. *contre, conter.*] Against; in opposition to; contrary to; on the opposite side; the contrary. A term constantly used in the reports, to denote the opposition of counsel in a cause; the disallowance by the court of a point in argument, (*curia contra*); and the opposition of cases cited as establishing opposite doctrines. *E contra*, (q. v.) is sometimes used in the same sense.

In some of the older books, *contra* is used instead of *versus*, in the titles of causes, like the old Scotch "*contrair.*" See *Reports in Chanc.* per tot.

CONTRA BONOS MORES. Lat. Against good morals. *Hob.* 167. This phrase occurs in the Roman law. *Cod.* 8. 39. 4.

CONTRA FORMAM FEOFFAMENTI. L. Lat. (Contrary to the form of the feoffment.) In old English law. A writ that formerly lay for a tenant, or his heir, enfeoffed of certain lands or tenements by charter of feoffment from a lord to do certain services, and especially suits to his court, who was afterwards distrained for more services than were mentioned in the charter. *Cowell. Termes de la Ley. Reg. Orig.* 176.

CONTRA FORMAM STATUTI. L. Lat. (Against the form of the statute.) In old pleading. A phrase used at the conclusion of indictments laid on an offence created by statute, and of declarations on penal statutes, and held to be essential. 1 *Ld. Raym.* 150, 342, 343. 4 *Steph. Com.* 377. *Contra formam statuti in tali casu editi et provisi;* against the form of the statute in such case made and provided. *Towns. Pl.* 164. The use of the corresponding English phrase is still generally held to be essential, though the strictness of the rule on this point has been sometimes relaxed. 1 *Chitt. Pl.* 372, 373. 4 *Steph. Com. ub. sup.* 1 *Penn. St. R.* 154. 1 *Gilman's* (Ill.) *R.* 333, 440. 10 *Richardson's Law R.* 152. *Lewis' U. S. Crim. Law*, 644—686.

CONTRA INHIBITIONEM NOVI OPERIS. Lat. Contrary to the prohibition of a new work; contrary to the law prohibiting the erection of a new building. A phrase supposed to be derived from the title *De novi operis nuntiatione* in the civil law, (*Dig.* 39. 1,) and made use of by Blackstone to show, by the total misapprehension of its meaning, the gross ignorance of the terms of the civil law formerly manifested by the judges and counsel in the common law courts. 1 *Bl. Com.* 22, note (*o*).

CONTRA JUS BELLI. Lat. Against the law of war. *Grotius*, lib. 3, c. 11, § 15. 1 *Kent's Com.* 6.

CONTRA JUS COMMUNE. Lat. Against common right or law; contrary to the rule of the common law. *Bract.* fol. 48 b.

CONTRA LEGEM. Lat. Against the law. *Contra legem facit, qui id facit quod lex prohibet;* he acts against the law, who does that which the law forbids. *Dig.* 1. 3. 29.

CONTRA LEGEM TERRÆ. Lat. Against the law of the land. *Mag. Cart. Johan.* c. 55.

Contra negantem principia non est disputandum. There is no disputing against one who denies first principles. *Co. Litt.* 343.

Contra non valentem agere nulla currit præscriptio. Against one who is unable to

act, no prescription runs. Statutes of limitations do not run against parties under disability. *Broom's Max.* 398, 399, [700]. See 6 *Texas R.* 223.

CONTRA OMNES GENTES. Lat. Against all people. Formal words in old covenants of warranty. *Fleta*, lib. 3, c. 14, § 11.

CONTRA PACEM. Lat. Against the peace. *Contra pacem domini regis;* against the peace of the lord the king. Phrases used in indictments, and in civil actions of trespass, to signify that the acts complained of are committed against the peace of the king, or public peace. 1 *Chitt. Pl.* 388. "Against the peace of the people," or "commonwealth," is the phrase used in American law. *Lewis' U. S. Crim. Law*, 644—686.

By the ancient law, in all peculiar jurisdictions, offences were said to be done *against his peace* in whose court they were tried; in a court leet, *contra pacem domini* (against the peace of the lord); in the court of a corporation, *contra pacem ballivorum* (against the peace of the bailiffs); in the sheriff's court or tourn, *contra pacem vice comitis*, (against the peace of the sheriff). 1 *Bl. Com.* 117. *Bract.* fol. 145 b. *Fleta*, lib. 2, c. 53, § 1. See *Pax, Peace.*

CONTRA TABULAS. Lat. In the civil law. Against the will (testament). *Dig.* 37. 4.

CONTRA VADIUM ET PLEGIUM. L. Lat. In old English law. Against gage and pledge. *Bract.* fol. 15 b. *Fleta*, lib. 1, c. 42, § 2.

Contra veritatem lex nunquam aliquid permittit. The law never suffers any thing contrary to truth. 2 *Inst.* 252.

CONTRABAND. [from Lat. *contra*, against, and L. Lat. *bannum*, Ital. *bando*, an edict or proclamation; Fr. *contrebande.*] Against law or treaty; prohibited.* Goods exported from, or imported into a country against its laws. *Brande.*—Articles, the importation or exportation of which is prohibited by law. *P. Cyclopædia.* See *Contrebande.*

CONTRABAND OF WAR. In international law. Goods which neutrals are prohibited from carrying during war to the belligerent parties; or which a belligerent has, by the law of nations, the right of preventing a neutral from furnishing to an enemy; and which, while *in transitu*, are liable to seizure and confiscation; such as arms and warlike stores, or what are termed *munitions of war.* 1 *Kent's Com.* 135, *et seq. Brande.* Provisions and other articles are sometimes contraband and sometimes not, according to circumstances. 1 *Kent's Com.* 138—142. It is the *usus bellici* [warlike purposes] which determine an article to be contraband. *Id.* 141. See *Wheaton's Intern. Law*, 509—529.

CONTRACT. [Lat. *contractus*, from *contrahere*, to draw together.] An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 *Bl. Com.* 442. Otherwise variously defined as follows:

An agreement of two or more persons, upon sufficient consideration, to do or not to do a particular thing. 2 *Kent's Com.* 449.

An agreement in which a party undertakes to do, or not to do a particular thing. Marshall, C. J. 4 *Wheaton's R.* 122, 197. A compact between two or more parties. *Id.* 6 *Cranch's R.* 87, 136.

An agreement between two or more persons, to do or not to do a particular thing. Taney, C. J. 11 *Peters' R.* 420, 572.

A covenant or agreement between two parties, with a lawful consideration or cause. *West's Symbol.* part 1, lib. 1, § 10. *Cowell. Blount.*

A deliberate engagement between competent parties, upon a legal consideration, to do, or to abstain from doing some act. *Story on Contracts*, § 1.

An agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises. *Encyclop. Amer. Webster.*

A mutual promise, upon lawful consideration or cause, which binds the parties to a performance. *Webster.*

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation. *Id.* This last is a distinct signification of the term. See 2 *Hill's* (N. Y.) *R.* 551.

An act of the legislature may be a contract. A grant of lands, with a perpetual exemption from state taxes, is a *contract*, "the obligation" of which cannot be "impaired" by a subsequent act of the legislature levying a state tax on such lands. 5 *Ohio St. R.* 361. So, a charter is a contract, within the meaning of the constitution of the United States, between the state granting the charter and the corpora-

tion created by it, the obligation of which the state legislature cannot impair. 27 *Mississippi R.* 517.

*** Mr. Stephen objects to the definition of Blackstone (*supra*,) 1, that the word *agreement* itself requires definition as much as contract; 2, that the existence of a *consideration*, though essential to the validity of a parol contract, forms properly no part of the idea; and 3, that the definition takes no sufficient notice of the *mutuality* which properly distinguishes a contract from a promise. 2 *Steph. Com.* 109, note. His own words of definition are: "A contract or agreement is where a promise is made on one side, and assented to on the other; or where two or more persons enter into engagement with each other, by a promise on either side." *Id.* 108, 109. As to the word *agreement*, it may be observed that some word of the kind seems essential to constitute the basis of any definition of contract that can be attempted. *Agreement* appears to be the translation of *conventio* in the civil law definition of the term, but falls short of the original (a coming together) in expressiveness, besides being liable to the objection of being a synonyme (or nearly so,) of the word which it is selected to define. Its use, however, has the support of the highest authority in ancient and modern law.—As to the idea of a *consideration*, it will be seen that it has been admitted into the best definitions of contract, both ancient and modern, (except that of Chief Justice Marshall,) that have been framed; and its materiality to complete the idea of a contract is forcibly shown by the circumstance, that in that class of contracts (those by specialty or under seal) in which no consideration in fact is required, one is *always presumed* by law, the form of the instrument being held to *import* a consideration. See 2 *Kent's Com.* 450, note.—The third objection of Mr. Stephen to the definition of Blackstone, that it takes no sufficient notice of the *mutuality* of a contract, has apparently more weight; although, from Blackstone's own analysis of his definition, it would seem that he intended the idea of mutuality to be conveyed by, and implied in the word *agreement* itself, which, in another passage, he describes as "a mutual bargain or convention." 2 *Bl. Com.* 442. On the whole, notwithstanding these objections, the correctness of the definition of Blackstone remains essentially unimpeached, and it certainly enjoys the preference of the best authority. 2 *Kent's Com.* 499, 450. *Story on Contracts*, *ubi supra*.

The modern use of the word *contract*, as a generic term for all sorts of obligations, (including those created by record and by specialty,) though established on high authority, seems to be an undue extension of the proper meaning of the term, and has thrown much difficulty in the way of accurate definition. *Contract* is obviously derived (through *contractus*, a term of the civil law,) from *contrahere*, to draw together; importing the same radical idea with *agreement*, but with a stronger expression of *mutuality* in the use of the particle *con*. See *Agreement*. *Mutuality*, indeed, is of its very essence; not only mutuality of *assent*, implying free and deliberate action of the parties in coming into the contract, but mutuality of *act* also,—mutuality in the things agreed to be done by the contract; each party engaging to do, or not to do certain things. There is, in Lord Coke's phrase, (though not in the etymological sense in which he used it,) act against act, (*actus contra actum*). 2 *Co.* 15. 7 *Man. & Gr.* 998, arg. and note. Thus, in the contracts of sale, bailment and for the performance of work, there are acts to be done by *both* parties; the one engaging to deliver the article or perform the work, and the other to pay the price, to use the article carefully, &c. So, in the contracts of partnership and marriage, the engagements are mutual. Engagements of this description, and no others, seem to come properly under the denomination of *contracts*. In a bond, on the other hand, there is none of this kind of mutuality; there is no act to be done by the obligee to make the instrument binding; the obligation is all upon the side of the obligor. In a judgment, there is not only no mutuality of act, but not even mutuality of assent; the obligation being fastened upon the party by the law, whether he wills it or not; *judicium redditur in invitum*. Hence, judgments have very properly been denied to be contracts, notwithstanding the doctrine of Blackstone, that a contract is, in such cases, implied. Lord Mansfield, 3 *Burr.* 1545. 1 *Cowen's R.* 316. Story, J. 1 *Mason's R.* 288. The impropriety of applying the term *contract* to bonds and judgments seems to be virtually admitted by Mr. Chitty, who uses *obligation* as an alternative word of description, in regard to both. *Chitty on Contracts*, 2, 4. See *Obligation*.

CONTRACT, *Obligation of.* See *Obligation of Contract.*

CONTRACT OF SALE. A contract by which one of the contracting parties, called the seller, enters into an obligation to the other, to cause him to have freely by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the buyer, on his part obliges himself to pay. *Pothier, Contr. of Sale,* Prel. art.

CONTRACTATIO. See *Contrectatio.*

CONTRACTION. The shortening or drawing together of a word by the omission of one or more letters, and sometimes of a syllable. This was a peculiar feature of the ancient *court hand* (q. v.) in which records were written in England; and was adopted in the earliest printed law books in Latin and French, such as Bracton, The Register, Britton, the Year Books, and others. A very common kind of contraction was by the omission of the letters *m* and *n* when they followed a vowel, the omission being denoted by a horizontal mark or dash over the latter. Various other arbitrary marks over and through the letters retained were employed, which cannot be represented without types cast expressly for the purpose. The following is a list of the principal contractions, as taken from the works above mentioned:

a for *am;* as *ta* for *tam.*
a for *an;* as *ate* for *ante.*
e for *em;* as *ide* for *idem.*
e for *en;* as *metio* for *mentio.*
e for *æ;* as *hec* for *hæc.*
i for *im;* as *eni* for *enim.*
i for *in;* as *iter* for *inter.*
o for *om;* as *oni* for *omni.*
o for *omn;* as *oes* for *omnes.*
o for *on;* as *cotra* for *contra.*
u for *um;* as *du* for *dum.*
u for *un;* as *nuc* for *nunc.*
b' for *bus;* as *hæredib'* for *hæredibus.*
d' for *dus;* as *secund'* for *secundus.*
g' for *gis;* as *reg'* for *regis.*
i' or *j'* for *ius* or *jus;* as *cui'* for *cujus.*
l' for *lus;* as *mascul'* for *masculus.*
m' for *mus;* as *præcipim'* for *præcipimus.*
n' for *nus;* as *man'* for *manus.*
n for *omin;* *dno* for *domino.*
p for *per;* as *pactis* for *peractis.*
p for *præ;* as *pdictus* for *prædictus.*
p for *pro;* as *ppter* for *propter.*
p' for *pus;* as *corp'* for *corpus.*
q and *qd* for *quod.*
q for *quam;* *qvis* for *quamvis.*
r' for *ris;* as *tutor'* for *tutoris.*
r for *rev;* as *bre* for *breve.*
r for *rum;* as *alior* for *aliorum.*
r for *rat;* as *gria* for *gratia.*
t' for *tis;* as *dot'* for *dotis.*
t' for *tus;* as *rect'* for *rectus.*

The following are examples of double or more complex contractions:

ateq for *antequam.* *Bract.* fol. 204 b.
attatæ for *atterminatæ.* *Fleta,* lib. 2, c. 3, § 4.
coem for *communem.* *Reg. Orig.* 11.
coia for *communiam.* *Yearb.* M. 9 H. VI. 8.
coponit' for *componitur.* *Bract.* fol. 222.
cro for *crastino.* 1 *Inst. Cler.* 9.
danu for *damnum.* *Bract.* fol. 221.
dcm for *dictum.* *Mem. in Scacc.* P. 20 Ed. I.
epi, epo for *episcopi,* &c. *Bract.* fol. 249.
heo for *habeo.* *Yearb.* M. 9 H. VI. 8.
hmi for *hujusmodi.* *Bract.* fol. 180.
hoi for *homini.* M. 9 H. VI. 8.
huit for *habuit.* M. 20 H. VI. 10.
ibm for *ibidem.* *Reg. Orig.* 97 b.
moledinu for *molendinum.* *Bract.* fol. 221.
noia for *nomina.* *Id.* fol. 212 b.
nrm for *nostrum.* *Id.* fol. 249.
oia for *omnia.* M. 9 H. VI. 8.
oibs for *omnibus.* *Towns. Pl.* 21.
oibus fribus for *omnibus fratribus.* M. 9 H. VI. 8.
oim scorum for *omnium sanctorum.* M. 19 H. VI. 15.
ostededu for *ostendendum.* *Reg. Orig.* 70.
pat for *paratus.* P. 18 H. VI. 9.
pd for *prædictus.* *Reg. Orig.* 10 b.
pedete for *pendente.* *Id.* 77 b.
phibic for *prohibitionem.* *Id.* 67 b.
racoe for *ratione.* M. 7 Ed. III. 74.
sacraetu for *sacramentum.* M. 9 H. VI. 13.
sccio for *scaccario.* *Mem. in Sc.* H. 18 E. I.
scdm for *secundum.* *Reg. Oriy.* 11, 76, 117.
tatu for *tantum.* *Bract.* fol. 206.
uu for *unum.* M. 9 H. VI. 8. And see 1 *Inst. Cler.* 3—14.

The following are some of the principal contractions in French:

aps for *apres.* *Dyer,* 31, (Fr. ed).
ava for *avera.*
auc for *auncestre.*
bre for *brefe.*
c for *ceo.*
chre for *chartre.* M. 3 H. VI. 31.
cotple for *conterple.* M. 10 H. VI. 56.
do for *done.*
e for *en.*

ee for *etre.*
exon for *excepcion.* H. 2 E. II. 30.
frakteeet for *franktenement.* M. 19 H. VI. 16.
getz for *gentz.*
Lodr for *Londres.*
muiets for *muniments.* M. 19 H. VI. 23.
nre for *nostre.*
p for *per, par.*
p'c'q' for *pur ceo que.*
pole for *parole.*
sauk for *saunk.*
s, so for *son.*
tent for *tenement.*
teps for *temps.*
tme for *terme. Dyer*, 31.
vs for *vers.* And see *Britt. passim.*

Even English words were sometimes expressed in the same way:

sigle woa for *single woman.* M. 10 H. VI. 70.

CONTRACTUS. Lat. [from *contrahere*, q. v.] Contract; a contract; contracts. See *Contract.*

Contractus ex turpi causa, vel contra bonos mores, nullus est. A contract founded on a base consideration, or against good morals, is null. *Hob.* 167. This is the same in substance with the maxim of the civil law: **Pacta quæ turpem causam continent non sunt observanda.** Agreements upon a base consideration are not to be kept, or enforced. *Dig.* 2. 14. 27. 4.

Contractus legem ex conventione accipiunt. Contracts take their law from the agreement of the parties. *Dig.* 16. 3. 1. 6.

CONTRADICERE. Lat. In old English law. To oppose; to refuse; to contradict. *Reddere contradicit;* refuses to return. *Reg. Orig.* 92 b. 4 *Mod.* 153.

CONTRAFACERE, *Conterfacere.* L. Lat. [L. Fr. *contrefaire.*] In old English law. To counterfeit, or imitate. 2 *Ld. Raym.* 1469. *Freem.* 429. Usually written *controfacere*, (q. v.)

To devise. 2 *Mod.* 98.

CONTRAFACTIO. L. Lat. In old English law. A counterfeiting. *Cowell. Blount.* Properly *controfactio.* See *Controfacere, Controfactura.*

CONTRAHERE. Lat. [from *con*, together, and *trahere*, to draw.] To contract, to draw together; to engage or assume a liability to or with another.* **Qui cum alio contrahit vel est, vel esse debet, non ignarus conditionis ejus.** He who contracts with another either is, or ought to be, not ignorant of his condition. *Dig.* 50. 17. 19. **Furiosus nullum negotium contrahere potest.** A madman can contract nothing, (can enter into no contract). *Id.* 50. 17. 5. *Ita* contrahitur *donatio;* so the gift is contracted, i. e. completed between the parties. *Bract.* fol. 16 b. *Contrahitur obligatio;* obligation is contracted. *Fleta*, lib. 2, c. 56, § 4.

CONTRALIGATIO. L. Lat. In old English law. Counter obligation. Literally, counter-binding. *Est enim obligatio quasi contraligatio. Fleta*, lib. 2, c. 56, § 1.

CONTRAMANDARE. L. Lat. [from *contra*, against, and *mandare*, to command.] In old English law. To command against; to make an order contrary to a former order; to countermand.* *Si dies placiti sit contramandatus;* if the day of the plea or day to plead be countermanded. *LL. Hen.* I. c. 59.

CONTRAMANDATIO. L. Lat. [from *contramandare*, q. v.] A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, [by countermanding the day fixed for him to plead, and appointing a new day]; a sort of imparlance. *Cowell.*

CONTRAPLACITUM. L. Lat. In old English law. A counter plea. *Towns. Pl.* 61. See *Counterplea.*

CONTRAPOSITIO. L. Lat. In old English law. A plea or answer. *Blount.* A counter-position.

CONTRAROTULATOR. L. Lat. In old English law. A controller. *Reg. Orig.* 192. *Contrarotulator custumarum;* controller of the customs. *Id. ibid. Contrarotulator hospitii domini regis;* controller of the king's household. *Towns. Pl.* 209. *Fleta*, lib. 2, c. 14, § 2. *Contrarotulator pipæ;* controller of the pipe. *Cowell.* See *Controller.*

CONTRAROTULUS. L. Lat. In old English law. A counter roll. *Fleta*, lib. 1, c. 18, § 1. *Id.* lib. 2, c. 27, § 3.

CONTRATALLIA. L. Lat. In old English law. A counter-tally. A term used in the exchequer. *Mem. in Scacc.* M. 26 Edw. I.

CONTRATENERE. L. Lat. To hold against; to withhold. *Whishaw.*

CONTRAVENIRE. Lat. In old English law. To contravene; to go against; to violate. *Bonâ fide observare, et in nullo contravenire;* to observe in good faith, and in nought to contravene. Sometimes the

component parts of this word are separated by an intervening word, as *contra prædicta venire. Cart. Confirm.* 49 Hen. III.

CONTRAVENTION. In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court. 1 *Kames' Equity*, Pref.

The action founded on the breach of law burrows. *Ersk. Inst.* b. 4, tit. 1, § 16.

CONTREBANDE. Fr. [from *contre*, against, and *bande*, a proclamation.] In French marine law. Contraband. *Ord. Mar.* liv. 1, tit. 5, art. 5. The contravention of a *bande*, *ban*, or public proclamation. *Emerig. Tr. des Ass.* ch. 12, sec. 51.

CONTRECTARE. Lat. In the civil law. To handle; to take hold of; to meddle with.

In old English law. To treat. *Vel malè contrectet;* or shall ill treat. *Fleta*, lib. 1, c. 17, § 4.

CONTRECTATIO. Lat. A handling or meddling with; the improper or unauthorized use of a thing. This term is employed in the civil law in the definition of theft, (*furtum*). *Inst.* 4. 1. 1, 6, 8. *Dig.* 47. 2. 52. 19. *Tayl. Civ. Law*, 467. See *Furtum.* Bracton has borrowed it from this source, but in many copies of that author it is misprinted *contractatio*, (fol. 150 b); which has sometimes occasioned difficulty in interpreting the passage in which it occurs. Dunlap, arg. 5 *Mason's R.* 540. The misprint is copied in Fleta, lib. 1, c. 38.

CONTREFAIRE. L. Fr. To imitate; to counterfeit. *Kelham.*

CONTRE-MAITRE. Fr. In French marine law. The chief officer of a vessel, who, in case of the sickness or absence of the master, commanded in his place. Literally, the counter-master. *Ord. Mar.* liv. 2, tit. 5. Otherwise called *nocher. Id.*

CONTREMAUNT, *Contremount.* L. Fr. Ascending; uppermost. *Kelham.*

CONTRESTEANT. L. Fr. Withstanding; opposing. *Nient* contresteant *la guarantie;* notwithstanding the warranty. *Yearb.* H. 6 Edw. III. 16.

CONTREVAL. L. Fr. Downwards. *Kelham.*

CONTRIBUTIO. Lat. [from *contribuere*, to contribute, to make up jointly.] In the civil law. Contribution. *Lege Rhodia cavetur, ut, si levandæ navis gratiâ jactus mercium factus est, omnium* contributione *sarciatur quod pro omnibus datum est;* by the Rhodian law it is provided that if a jettison of goods is made, for the sake of lightening the vessel, that which is given up for the good of all shall be made good by the contribution of all. *Dig.* 14. 2. 1.

In modern law. Average; otherwise called *tributum* and *collatio. Loccen. de J. Mar.* lib. 2, c. 8.

CONTRIBUTION. [Lat. *contributio*, q. v.] The making up, by several parties jointly interested or indebted, to one of their number, of a loss sustained, or payment made by him for the benefit of them all.* Thus, where one of several sureties has been compelled to pay the whole of the money for which they all became bound, he is entitled to receive *contribution* from all the others, for what he has done in relieving them from a common burden. 1 *Story's Eq. Jurispr.* § 492, and notes. 1 *Smith's Lead. Cas.* 71, note. 1 *White's Eq. Cases*, 60. 3 *Co.* 11. 1 *Arch. Pr.* 291.

So, in maritime law, where the property of one of several parties interested in a vessel and cargo has been voluntarily sacrificed for the common safety, (as by throwing goods overboard to lighten the vessel,) such loss must be made good by the contribution of the others, which is termed *general average.* 3 *Kent's Com.* 232—244. 1 *Story's Eq. Jurisp.* § 490. See *General average.*

CONTRIBUTIONE FACIENDA. See *De contributione facienda.*

CONTROFACERE. L. Lat. In old English law. To counterfeit. *Reg. Orig.* 42. *Sigillum controfecisset;* (he) had counterfeited the seal. *Id. ibid. Controfacta. Id. ibid.*

CONTROFACTURA. L. Lat. In old English law. A counterfeiting. *Towns. Pl.* 61.

CONTROLLER, erroneously written COMPTROLLER. [L. Lat. *contrarotulator;* L. Fr. *contrerouleur.*] In old English law. An officer who took notes of any other officer's accounts or receipts, to the intent to discover him if he dealt amiss. *Fleta*, lib. 1, c. 18. *Cowell. Stat.* 12 *Edw.* III. c. 3. One who kept a *roll* for this purpose, called a *counter-roll,** or *check-roll. Finch's Law*, b. 4, ch. 1, p. 245. See *infra.*

In modern law. An officer who has the inspection, examination or controlling of the accounts of other officers; one who keeps a counter-register of accounts. *Jacob. Whishaw. Webster.* The office of

the Roman *antigraphus* (q. v.) was of a similar character; *cui id muneris injunctum erat, ut observet pecuniam, quam in usum principis vel civitatis collegerunt exactores.* *Budæus*, cited in *Cowell.*

*** This word is frequently written, and sometimes defined, as though it were derived from the Fr. *compte*, or old English *accompt*, an account. The error of this derivation, however, is easily seen on reference to the L. Lat. and L. Fr. forms, (*contrarotulator*, *contrerouleur*, from the latter of which the English *controller* is undoubtedly taken,) which show it to be compounded of *contra*, or *contre*, against, and *rotulator*, *rouleur*, an enroller; making its true signification to be the keeper of a *counter-roll*, i. e. a roll intended as a check upon another officer's roll or account. See the definition *supra.* The correctness of this etymology is strikingly confirmed by the composition of the word *antigraphus;* (Gr. ἀντὶ, against, and γράφειν, to write,) the title of an officer who was charged with a similar duty in the Roman law. See *supra.* *Controller of the pipe* is defined by Cowell, to be an officer who "keeps a *contra-rollment* [or *controlment*] of the pipe." So, by the Stat. 3 Edw. I. c. 10, sheriffs are directed to have or keep *counter-rolls* with the coroners, &c. *Termes de la Ley*, voc. *Counter-rolls.* And in Britton, the sheriff is expressly declared to be the coroner's *controller* in all his office; (*son* contrerouleur *en tout son office*). *Britt.* c. 1. This was so, however, at an earlier period. *Bract.* fol. 121 b, 140 b. See *Counter-roll*, *Roll.*

CONTROLMENT. In old English law. The controlling or checking of another officer's account; the keeping of a counter-roll. "The receit, controlment or paiment of the king's money." *Stat.* 5 *Edw.* VI. c. 16. Sometimes called *contra-rollment.* See *Controller.*

CONTROVER. [L. Fr. *controuveur.*] In old English law. An inventor or deviser of false news. 2 *Inst.* 227.

CONTROVER. L. Fr. To contrive. *Controvee;* contrived. *Kelham.*

CONTROVERSY. [L. Lat. *controversia*, from *contra*, against, and *vertere*, to turn.] A dispute; a suit at law or in equity; a civil action or proceeding. *Story on Const.* § 1674, and note.

CONTROVERT. [L. Lat. *controvertere.*] To dispute; to deny; to oppose or contest; to take issue on.

CONTUBERNIUM. Lat. In the Roman law. The marriage of slaves; a permitted cohabitation. *Cooper's Justin. Inst.* Notes,* 420. *Adam's Rom. Ant.* 50. *Taylor's Civ. Law*, 287.

CONTUMACE CAPIENDO. See *De contumace capiendo.*

CONTUMACY. [Lat. *contumacia*, *contumatia.*] In practice. Disobedience to the rules or orders of a court, especially a refusal to appear in court when legally summoned. *Wharton's Lex.* Used as a synonyme of *contempt*, although it seems properly to have a stronger meaning, as of open contempt, or contempt wilfully and stubbornly persisted in.* *Reg. Orig.* 65. *Bract.* fol. 127 b.

CONTUMAX. Lat. A contumacious person; a person guilty of contumacy, (q. v.)

CONTUTOR. Lat. In the civil law. A co-tutor, or co-guardian. *Inst.* 1. 24. 1.

CONUS. L. Fr. Known. See *Lieu conus.*

CONUSANCE. In English law. Cognizance or jurisdiction. Conusance of pleas. *Termes de la Ley.* See *Cognizance.*

CONUSANS. L. Fr. Acknowledgment. *Litt.* sect. 499. *Conusant;* knowing; understanding; privy to.

CONUSOR. See *Cognizor.*

CONUSTRE. L. Fr. To acknowledge. *Litt.* sect. 499.

CONVALESCERE. Lat. In civil and old English law. To gain or acquire strength, force or validity; to become valid. *Ex postfacto non convalescet;* it shall not acquire validity from a subsequent act. *Dig.* 30. 41. 2. *Convalescit donatio facta à furioso;* a gift made by a lunatic becomes valid, &c. *Bract.* fol. 11 b. *Ex ratihabitione convalescit;* it acquires validity from the ratification. *Id.* fol. 40. *Ex charta de confirmatione subsequente* convalescit *prima charta de donatione quæ ab initio fuit invalida;* the first deed of gift, which was originally of no effect, acquires validity from the subsequent deed of confirmation. *Id.* fol. 389.

Quod ab initio non valet, tractu temporis non convalescet. That which is not valid at the beginning, shall not acquire validity by course of time. *Co. Litt.* 35 a. This maxim is almost in the same words with that of the civil law: **Quod ab initio vitiosum est, non potest tractu temporis convalescere.** *Dig.* 50. 17. 29.

CONVEER. L. Fr. To convey. *Kelham.*

CONVENABLE, *Covenable.* L. Fr. and Eng. In old English law. Suitable; agreeable; convenient; fitting. *Litt.* sect. 103. *Stat.* 27 *Edw.* III. st. 2, c. 21. *Stat.* 2 *Hen.* VI. c. 2. *Cowell.*

CONVENCIO. L. Lat. A covenant or agreement. An old form of *conventio*, (q. v.) See *Dyer*, 57.

CONVENIENT. [Lat. *conveniens.*] Proper; just; suitable. 7 *Man. & Gr.* 41, arg.

CONVENIRE. Lat. In the civil and old English law. To sue; to prosecute. *Conveniri;* to be sued. *Dig.* 5. 1. *Inst.* 4. 9. pr. *Id.* 4. 8. 3. *Id.* 4. 11. pr. 2. *Conveniendi sunt;* they are to be proceeded against. *Fleta*, lib. 2, c. 66, § 21. Hence the Scotch *convene* and *convener.*

To agree. *Dig.* 2. 14. 2, 4.

CONVENIRE. L. Lat. In old English law. To covenant. *Convenit, promisit et agreavit;* (he) covenanted, promised and agreed. *Hob.* 34 b.

CONVENIT. Lat. In civil and old English law. It is agreed; it was agreed. **Hoc servabitur quod initio convenit.** That shall be observed which was originally agreed to. *Dig.* 50. 17. 23. *Scias quod* convenit *inter A. petentem et B. tenentem;* know that it is agreed between A. demandant, and B. tenant. *Bract.* fol. 73 b.

CONVENT. [Lat. *conventus*, from *convenire*, to assemble together.] The fraternity of a religious house, as of an abbey or priory. *Bract.* fol. 16, 347. Frequently written *covent. Litt.* sect. 133. *Co. Litt.* 94 a, b.

CONVENTICLE. [Lat. *conventiculum*, dim. of *conventus;* a little assembly.] A private assembly or meeting for religious worship. First applied, as a term of reproach, to the religious assemblies of Wickliffe, in the reigns of Edw. III. and Richard II. Now usually applied, in England, to a meeting of dissenters from the established church. *Cowell. Blount. Wharton's Lex.* In strict propriety, the term denotes an *unlawful* assembly.

CONVENTIO. Lat. [from *convenire*, to come together.] In the civil law. A coming together of parties; a convention; an agreement. This was a term of the most general description, applying to all subjects upon which parties might come together for the purpose of entering into any engagement or transacting any business. *Conventionis verbum generale est ad omnia pertinens de quibus, negotii contrahendi transigendique causâ, consentiunt qui inter se agunt. Dig.* 2. 14. 1. 3. It included the two leading divisions of contracts (*contractus*) and pacts (*pacta*). *Heinecc. El. Jur. Civ.* lib. 3, tit. 14, § 784.

CONVENTIO, *Convencio.* L. Lat. In old English law. A covenant; an agreement. *Breve de conventione;* a writ of covenant. *Reg. Orig.* 165, 166. *Si quis a* conventione *recedat, succurritur alteri parti per actionem de conventione;* if any one draws back from his covenant, the other party has a remedy by an action of covenant. *Bract.* fol. 34. And see *Id.* fol. 18 b. *Conventio duplicata;* an agreement executed in duplicate, or in two parts. *Id.* fol. 169.

Conventio vincit legem. The express agreement of parties overcomes [prevails against] the law. 6 *Taunt.* 430. *Story on Agency*, § 368. As where it is agreed that a lien shall not be lost by a transfer of possession. *Id. ibid.* **Conventio legi derogat.** Agreement derogates from law. *Fleta*, lib. 4, c. 20, § 5. See **Modus et conventio vincunt legem.** These maxims are qualified by the following:

Conventio privatorum non potest publico juri derogare. The agreement of private persons cannot derogate from public right; i. e. cannot prevent the application of general rules of law, or render valid any contravention of law. *Co. Litt.* 166 a. *Wingate's Max.* 746, max. 201. *Broom's Max.* 308. This is also a maxim of the civil law. **Privatorum conventio juri publico non derogat.** *Dig.* 50. 17. 45. 1.

CONVENTION. In English law. An assembled parliament, before any act is passed, or bill signed. *Jacob.*

More properly, an extraordinary assembly of both houses, without being convoked by the sovereign.* The parliament which restored king Charles II. was called the *convention* parliament. 1 *Bl. Com.* 151.

CONVENTIONAL. [from Lat. *conventio*, q. v.] That which is produced by, or depends upon the agreement or mutual arrangement of parties.* *Conventional estates* are those estates for life, which are expressly created by the act of the parties; as distinguished from *legal* estates, or those which are created by construction and operation of law. 2 *Bl. Com.* 120.

CONVENTUS. Lat. [from *convenire*, to come together.] In old English law. An assembly. Conventus *magnatum vel procerum;* an assembly of the great men

or nobles. One of the ancient names of the English parliament. 1 *Bl. Com.* 148.

A convent. *Bract.* fol. 16, 347.

CONVENTUS JURIDICUS. In the Roman law. A court of sessions held in the Roman provinces, by the president of the province, assisted by a certain number of councillors and assessors, at fixed periods, to hear and determine suits, and to provide for the civil administration of the province. *Schmidt's Civ. Law*, Introd. 17.

CONVERSANTES. L. Lat. In old English law. Conversant or dwelling; commorant. *Stat. Marlbr.* c. 10. 2 *Inst.* 122.

CONVERSION. [Lat. *conversio*, from *convertere*, to turn towards.] An appropriation of property; one of the grounds of the action of trover. 3 *Bl. Com.* 152. 3 *Steph. Com.* 525. See *Trover*. "Conversion" and "carrying away" are not synonymous nor convertible terms. There may be a conversion without any carrying away. Rice, J. 26 *Alabama R.* 101.

CONVEY. [from L. Fr. *conveier*, *conveer*; L. Lat. *convehere*.] To pass or transmit from one to another; to transfer property, or the title to property, by an instrument in writing.

In a stricter sense, to transfer by deed or instrument under seal. See *Conveyance*.

"CONVEY." To carry or conduct, as water in pipes. 27 *Penn. St. R.* 26.

CONVEYANCE. An instrument in writing, by which property or the title to property is transferred from one person to another.

In a stricter sense, an instrument in writing under seal, (anciently termed an *assurance*,) by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, &c. 2 *Bl. Com.* 293, 295, 309. See *Assurance*, *Deed*. In Scotch law, it appears to be synonymous with *deed*, being defined "a deed executed according to all the forms required by law, and by which a right is either created or transferred or discharged." *Bell's Dict.*

This term is generally restricted, in its application, to transfers *inter vivos* (between living parties), though, in a large sense, it includes wills also. *Id.* 294. *Bacon's Use of the Law*, 66. The Revised Statutes of New-York have defined it to embrace "every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the sale or purchase of lands." 1 *Rev. Stat.* [762], 752, § 38. See 3 *Mass. R.* 487.

CONVEYANCE. In pleading. Introduction or inducement. 3 *Wooddes. Lect.* 22. See *Inducement*.

CONVEYANCERS. Members of the legal profession, who employ themselves (sometimes, as in England, solely,) in the drawing and preparation of deeds or assurances of property. *Wharton's Lex.* 1 *Wooddes. Lect.* xci. See *Conveyancing*.

CONVEYANCING. The business or practice of preparing conveyances, especially of real estate; including the investigation of titles, the preparation of abstracts, &c. Conveyancing may be considered as both a science and an art; a science, as it embraces an acquaintance with the law of property, and particularly of the principles of alienation; an art, as it applies those principles to practice, in the framing of appropriate instruments or conveyances.* In England and Scotland, it is a highly artificial system of rules and practice, which maintains its own separate body of practitioners and professors. 1 *Steph. Com.* 466. *Warren's Law Studies*, 319, *et seq.* (Am. ed). See *Bell's Dict.*

CONVEYER, *Conveier*. L. Fr. In old English law. To derive title; to derive by descent. *Litt.* sect. 703, 705, 706.

To show in pleading. *Dyer*, 79 b, (Fr. ed).

CONVICIUM. Lat. In the civil law. An injury done by words. A species of injury (*injuria*,) which consisted in charging a person with some act *adversus bonos mores*, (against good morals). It was defined by the Prætors' Edict, *Dig.* 47. 10. 15. 2. Ulpian, in his commentary on the Edict, derives the word from *con*, together and *vox*, a word, quasi *convocium*; being a collection of words, (*à collatione vocum*). *Id.* 47. 10. 15. 4.

To CONVICT. [L. Lat. *convincere*.] In practice. To condemn; to find guilty of an offence, [usually] by the verdict of a jury.* 4 *Bl. Com.* 362.

To find against the defendant in *civil* cases. "Whereof the said defendant is *convicted*, as appears of record," &c.

CONVICT. [L. Lat. *convictus*.] In practice. One who is found guilty of an offence by the verdict of a jury, or other legal de-

cision. *Staundf. Pl. Cor.* 186. *Termes de la Ley. Cowell. Wharton's Lex. Convict recusant*, in English law, was a person who had been legally prosecuted, indicted, and convicted for refusing to come to church to hear the common prayer, according to several statutes of Elizabeth and James. *Termes de la Ley.*

CONVICTION. [L. Lat. *convictio.*] In practice. The finding of a person guilty of an offence with which he has been charged, either by the verdict of a jury, [the decision of any other competent tribunal,] or on his own confession. 4 *Bl. Com.* 362.

A finding against a defendant in a civil action. See *To Convict.*

A record of the proceedings by which an offender has been convicted and sentenced. *Holthouse.* It is not sufficient that such a record contains the finding of the jury, unless it includes also the judgment of the court. 7 *Man. & Gr.* 498, arg. 15 *East*, 570. See *United States Digest*, Conviction.

CONVINCERE. L. Lat. In old English law. To convict; to condemn in a civil action. *Et si debitor* convincatur, *considerabitur quod querens recuperet debitum cum dampnis ;* and if the debtor be convicted, it shall be considered [the judgment shall be] that the plaintiff recover the debt with damages. *Fleta*, lib. 2, c. 62, § 4.

To convict; to find guilty. *Convictus de perjurio ;* convicted of perjury. *Id.* lib. 4, c. 8, § 2.

CONVOCATION. [Lat. *convocatio*, from *convocare*, to call together.] In English law. An assembly of all the clergy, for the purpose of consulting on ecclesiastical matters. *Termes de la Ley. Cowell.* 2 *Steph. Com.* 541. It is in the nature of a parliament, being, in the province of Canterbury, composed of two houses, of which the archbishop and bishops form the upper house, and the lower consists of deans, arch-deacons, the proctors for the chapters, and the proctors for the parochial clergy. In York, it consists of one house only. 2 *Steph. Com.* 542. The convocation has always met in time of parliament, and although it has been long the course to summon it *pro forma* only, it is still, in fact, summoned before the meeting of every new parliament, and adjourns immediately afterwards, without even proceeding to the despatch of business. *Id. ibid.*

CONVOY. [from Fr. *convoyer*, to escort; Lat. *convehere*, to convey or conduct safely.] In commercial and international law. A naval force under the command of an officer appointed by the government of a country, or under its authority, for the purpose of sailing with, and protecting its merchant vessels, and usually in time of war.* *Park on Insurance*, ch. 18. 1 *Marshall on Ins.* 360. *Smith's Merc. Law*, 227. *Abbott on Ship.* [352], 432. 2 *Archb. N. Prius*, 175. "By *convoy*, is meant certain ships of force appointed by government in time of war, to sail with merchantmen from their port of discharge to the place of their destination." *Postlethwaite's Dict.* tit. *Convoy*, cited 1 *Show.* 320, note.

CO-OBLIGOR. A joint obligor; one who is jointly bound with another, in a bond or obligation.

COOLING-TIME. In the law of homicide. Time for passion to subside and for reason to interpose, after provocation. See *Wharton's Am. Law of Homicide*, 179, chap. 9.

CO-OPERTIO. L. Lat. [from *co-operire*, to cover.] In old English law. A covering, or exterior coat, as the bark of a tree. *Cowell. Quercus discooperta ;* an oak stripped of its bark, or debarked. *Id.*

CO-OPERTORIUM. L. Lat. In old records. A covering. *Cowell.* See *Co-opertio.*

CO-OPERTUM. L. Lat. [from *co-operire*, to cover.] In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. *Cart. de Foresta*, c. 12. *Reg. Orig.* 258. *Spelman. Extra* co-opertum *forestæ ;* without the covert of the forest. *Fleta*, lib. 2, c. 41, § 2.

CO-OPERTURA. L. Lat. [L. Fr. *co-operture.*] In forest law. A thicket, or covert of wood. *Blount.* See *Co-opertum.*

CO-OPERTUS, *Co-operta.* L. Lat. [from *co-operire*, to cover.] In old English law. Covered. *Aquâ co-opert' ;* covered with water. 2 *P. Wms.* 128.

Covert. *Femina viro co-operta ;* a feme covert. 3 *Leon.* 81, case 122. *Fuit* co-operta *et adhuc est* co-operta *de R. W. ;* was covert and still is covert of R. W. *Yearb.* P. 18 Hen. VI. 2. See *Covert.*

COPABLE. L. Fr. Guilty. *Kelham.*

COPARCENARY. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises, in England, either by common law, or particular custom. By common law, as where a person seised in fee simple or fee tail, dies, and his next heirs

are two or more females, his daughters, sisters, aunts, cousins, or their representatives; in this case they all inherit, and these coheirs are then called *coparceners*, or, for brevity, *parceners* only. *Litt.* sect. 241, 242. 2 *Bl. Com.* 187. By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, &c. *Id. ibid. Litt.* sect. 265. *Co. Litt.* 163 b. 1 *Steph. Com.* 319. 2 *Crabb's Real Prop.* 931, 932, § 2296. It resembles, in some respects, an estate in joint tenancy, but in others they materially differ. 1 *Steph. Com.* 319. In the United States, it is not distinguishable from tenancy in common. 4 *Kent's Com.* 367.

Lord Coke observes that this tenancy is called in the ancient books *adæquatio*, and sometimes *familia herciscunda*, an estate to be divided. *Co. Litt.* 164 b. Both these terms, however, (the former in the feudal, the latter in the civil law,) seem to denote a process for dividing an estate, rather than the estate itself. See *Adæquatio*, *Familia herciscunda*.

COPARCENERS. [L. Lat. *cohæredes participes*, *coparticipes*.] Persons holding an estate in coparcenary. See *Coparcenary*. Persons to whom an estate of inheritance descends jointly, and by whom it is held as one estate.* 2 *Bl. Com.* 187. *Bract.* fol. 71 b, 75. See *Parceners*. This word was anciently applied to males as well as females, but is now usually confined to the latter. In Virginia, however, the statute of descents still applies it to both male and female heirs. 4 *Kent's Com.* 367.

COPARE, *Colpare*. L. Lat. [L. Fr. *copper*.] In old records. To fell, cut, or chop; as wood. *Spelman*.

COPARTICEPS. L. Lat. In old English law. A coparcener. *Co. Entr.* 377, 711.

COPARTNER. See *Partner*.

COPARTNERSHIP. See *Partnership*.

COPARTNERY. In Scotch law. The contract of copartnership. A contract by which the several partners agree concerning the communication of loss or gain, arising from the subject of the contract. *Bell's Dict.*

COPE, *Coppe*. Sax. A hill. *Co. Litt.* 4 b. The top or summit of a thing, as of a house. *Cowell*.

A tribute paid out of lead mines in England. *Blount*.

COPIA. Lat. In civil and old English law. Opportunity or means of access. *Copiam præstare;* to grant opportunity. *Cod.* 4. 21. 21. *Copiam facere;* to grant opportunity of access. *Sui copiam facere;* to put one's self within another's reach; to grant the means of access; to appear in court. *Bract.* fol. 20 b, 364 b. *Fleta*, lib. 3, c. 9, § 24. *Sui* copiam *non facere;* to fail to appear to an action. *Inst.* 1. 26. 9. *Fleta*, lib. 6, c. 14, § 1.

Copiam scripturæ facere; to grant an opportunity of knowing the contents of a writing, as by showing it. *Bract.* fol. 34. *Fleta*, lib. 3, c. 14, § 3. *Copiam habere;* to have access, or the means of inspection. *Bract.* fol. 389 b. See *Copy*.

COPIA. L. Lat. [L. Fr. *copie*.] In old English law. A copy. *Clerke's Prax. Cur. Adm.* tit. 48. *Copia libelli;* the copy of a libel. *Reg. Orig.* 58. *Breve de* copia *libelli deliberanda;* a writ to deliver the copy of a libel. *Id. ibid. Co. Litt.* 57 b. Lord Coke says it is a Latin word made from the Fr. *copie*, and refers to the writ in the Register, to show its antiquity. But from the manner in which it is used by Bracton, it seems rather to be the legitimate Latin word *copia*, (*supra*,) applied in a peculiar sense. See *Copy*.

COPIA VERA. L. Lat. In Scotch practice. A true copy. Words written at the top of copies of instruments. 3 *How. St. Trials*, 427, 430, 432.

COPIE. Fr. and L. Fr. In French and old English law. Copy; a copy. *Ord. Mar.* liv. 1, tit. 9, art. 8, 22. *Guyot, Inst. Feod.* ch. 2, art. 6. *Yearb.* H. 9 Hen. VI. 21. *Litt.* sect. 73, 75.

A multitude; a great number. *Kelham*.

COPPIRE. L. Lat. [from Sax. *coppe*, the top.] In old records. To cover. *Coppire domum;* to cope a house, or to lay on the roof and covering on the top of it. *Par. Antiq.* 575. The word "coping" is still used in nearly the same sense.

Copulatio verborum indicat acceptationem in eodem sensu. Coupling of words together shows that they are to be understood in the same sense. *Bacon's Works*, vol. iv. p. 26. *Broom's Max.* 294, [450].

COPY. [L. Lat. *copia*, *transcriptus;* Fr. *copie;* Lat. *exemplum*.] The transcript or double of an original writing, as a charter, roll, patent, deed, writ, pleading, affidavit, &c.* *Termes de la Ley. Cowell.* Copies are of two kinds; under seal, and not under seal.

Copies under seal are called exemplifications, and are either under the great seal, or under the seal of the court in which the originals are filed or deposited.* 2 *Tidd's*

Pr. 800. Copies *not* under seal are also, in England, of two kinds; sworn copies and office copies. A *sworn* or *examined copy* is a copy sworn (by the party intending to use it) to have been examined with the original record or paper, being first prepared by the officer having custody of it. An *office copy* is a copy made out by the officer in whose hands the original is, without being examined. *Archb. N. Pract.* 357. A *certified copy*, in the United States, is a copy certified to be such by the officer having the custody of the original, (being previously compared by him with such original,) and usually under seal, unless where the original is filed with the clerk of a court, and the copy is to be used in the same court. Sworn copies are not generally in use.

*** The word *copy* seems obviously derived from the Latin *copia;* the change from the classical (leave, liberty, opportunity,) to the law sense, (a transcript,) being very significantly shown in the use made of it by Bracton. Speaking of that description of deeds then called *chartæ communes*, (i. e. those in which both parties had a *common* interest, as involving a mutuality of obligation,) this author observes that where such a deed remained in the possession of the grantee, the grantor might, in a case where his interest was concerned, demand *to have it shown* to him; (*donator, eo quod sua interest, petat a donatorio* exhibitionem;) and that where there was a dispute or doubt between the parties as to the right of either, the grantee was bound *to exhibit* the instrument, (*exhibeat instrumentum,*) or he could have no action, &c. *Bract.* fol. 34. So, in case of a dispute between the grantor of a manor and the tenant or holder of it, the same author observes that the latter was bound to show his deed, (ostendere *debet tenens* chartam,) to make good his plea. *Id. ibid.* And he then proceeds to lay down the general rule, that whenever a party wished to make use of a private writing for his own benefit, in a judicial proceeding, he must allow his adversary to *inspect and use it* against him, (copiam faciet *adversario suo contra se*); but that a demandant had no right to require that instruments in the hands of the tenant should be shown him for the purpose of enabling him to count or declare, since a party was not bound to arm his adversary against himself, unless the instruments were common, (i. e. of the kind above described). *Copiam facere*, in this last quotation, is obviously the common classical expression signifying to impart a thing, to allow a privilege in, or respecting it. See *Copia. Copiam facere scripturæ* is to grant a party the privilege or opportunity of acquainting himself with the contents of a writing, which was done, as clearly appears from the context, by *showing* it to him. See *Bract.* fol. 389 b. Convenience, no doubt, suggested the practice, in most cases, of delivering a *transcript* instead of showing the original; and when the privilege (*copia*) came to assume this shape, it is easy to see how the word itself would gradually acquire a new and technical meaning, attaching, as a name of description, to the particular transcript so made use of. Hence, probably, was formed the Fr. *copie*, from which is obviously derived the English *copy*. See *Transcript.* So that, by this process, the classical *facere copiam* would ultimately become (as it did) good Law Latin, signifying *to make a copy. Copiam concedere et liberare*, (to grant and deliver a copy,) is the language of the old writ *de copia libelli deliberanda. Reg. Orig.* 58. And that this technical application of the word *copia* was by a very easy transition, will appear from a comparison of the *copia libelli* of this writ with the *libri copia* of Aulus Gellius in the following passage: *Catonis verba huic prorsus commentario indidissem, si* libri copia *fuisset id temporis cum, &c. A. Gell. Noct. Att.* i. 23. The sense, it will be seen, is the same, whether the words "*si libri copia fuisset*" be translated "if I had had the means of consulting the book," or in the modern phrase, "if I had had *a copy* of the book." And see *Traslado.*

COPYHOLD, *Copihold.* [L. Lat. *tenura per copiam rotuli curiæ;* Fr. *tenure per copie de court rol.*] A tenure or *holding* by *copy* of court-roll. A species of estate at will, or customary estate in England, the only visible title to which consists of the *copies* of the *court-rolls*, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. 2 *Bl. Com.* 94, 95, 147. *Co. Litt.* 58 a. *Litt.* sect. 75. It is an estate at the *will* of the lord, yet such a will as is agreeable to the *custom* of the manor, which customs are preserved and evidenced by the *rolls* of the several courts baron, in which they are entered. 2 *Bl. Com.* 95. It is a base tenure, founded upon immemorial custom.* 2 *Steph. Com.* 43, 44. See 7 *East*, 299.

In a larger sense, *copyhold* is said to import every *customary* tenure, (that is, every tenure depending on the particular custom of a manor,) as opposed to free socage, or *freehold*, which may now (since the abolition of knight-service) be considered as the general or common law tenure of the country. 1 *Steph. Com.* 210. See 1 *Crabb's Real Prop.* 606, § 765, *et seq.* *Burton's Real Prop.* ch. vii. *Watkins* and *Scriven on Copyholds.*

*** Copyhold is lineally descended from the ancient tenure of pure villenage, the will of the lord by which the villein held having become, in the course of time, so far modified and controlled by custom, as to allow the tenant to hold his lands, on performance of the required services, in spite of any determination of the lord's will. 2 *Bl. Com.* 95. 1 *Steph. Com.* 201, 210. 1 *Reeves' Hist. Eng. Law*, 39. Copyhold is, in other words, villenage divested of all its slavish incidents. *Crabb's Hist. Eng. Law*, 536. Villeins appears to have been called *custumarii tenentes* (customary tenants) in the fourth year of Edw. I.; *tenants per roll solonque le volunt seigneur*, (tenants by roll according to the will of the lord,) in 42 Edw. III. 35; tenants *per le verge*, (by the verge,) in 14 Hen. IV. 34; and *copyholders* in 1 Hen. V. 11. *Co. Litt.* 58. 3 *Reeves' Hist. Eng. Law*, 312, 313.

COPYHOLDER, *Copiholder.* [L. Fr. *tenant per copie de court rol.*] In English law. A tenant by copyhold; so called from the *copy* of the court *roll* delivered to him by the steward of the manor, as the evidence of his title. *Co. Litt.* 58 a. *Litt.* sect. 75. 2 *Bl. Com.* 95. Otherwise called *copy-tenants.* *Brownl.* part 2, 77.

COPYRIGHT, formerly termed COPY. The exclusive right which the law allows an author, (or a person purchasing from an author,) of printing, publishing and selling a written composition during a certain period of time.* 2 *Chitty's Bl. Com.* 405—408, and notes. 2 *Steph. Com.* 94—99. 2 *Kent's Com.* 373—384. *Curtis on Copyright*, ch. 1. The exclusive right of multiplying copies of an original work or composition, and consequently preventing others from so doing. 14 *Mees. & W.* 316. Called by Mr. Stephen "an incorporeal chattel." 2 *Steph. Com.* 72, 94. Lord Mansfield, in Millar *v.* Taylor, defined "copy" to be "an incorporeal right to the sole printing and publishing of somewhat intellectual communicated by letters," and observed that this was the technical sense in which the term had been used for ages. 4 *Burr.* 2303, 2396.

A copyright may be had in maps, charts, prints, cuts, engravings and musical compositions, as well as in books. 2 *Kent's Com.* 373. The copyright of a map is an exclusive right to the multiplication of copies for the benefit of the author or his assigns, disconnected from the plate, or any other physical existence. It is an incorporeal right to print and publish the map, or, as said by Lord Mansfield, in Millar *v.* Taylor, "a property in notion, and has no corporeal, tangible substance." Nelson, J. 14 *Howard's R.* 530. See *Curtis on Copyright.* *United States Digest*, Copyright.

COQUA. L. Lat. In old records. A raft; a cock-boat. *Spelman.*

COR, *Core.* L. Fr. Heart. *Kelham.*

CORAAGE. See *Coraagium.*

CORAAGIUM. L. Lat. [from *corus*, a measure of corn.] In old English law. A species of common tribute or prestation, mentioned by Bracton, as arising on certain necessary and unusual occasions, and in that respect distinguished from ordinary services and customs. It is classed with hidage and carvage, and is supposed to have been a contribution of certain measures of corn. *Bract.* fol. 37, 35. *Cowell.* *Termes de la Ley.*

CORAM. Lat. Before; in presence of. Applied to persons only. *Towns. Pl.* 22. *Brevia* coram *rege*, *vel* coram *justitiariis de banco*, *vel* coram *justitiariis itinerantibus*; writs before the king, or before the justices of the bench, or before the justices itinerant. *Stat. Marlbr.* c. 5. See *Before.*

In the civil law, this word imported intelligence or understanding in the person before whom the act was done; *nisi intelligat—non videtur* coram *eo fecisse.* *Dig.* 50. 16. 209.

CORAM IPSO REGE. Lat. Before the king himself. The style of the court of King's Bench, it having been originally held before the sovereign in person. 3 *Bl. Com.* 41. *Bract.* fol. 362.

CORAM NOBIS. Lat. (Before us.) In English practice. The name given to writs of error on judgments of the court of King's (or Queen's) Bench, so called from that clause in the old forms which described the record and process as remaining "before us," (*quæ* coram nobis

resident); that being the style of the court. 1 *Arch. Pr.* 234, 276. 2 *Tidd's Pr.* 1136. See *Coram ipso rege.*

Writs of error to correct the judgments of other courts, (such as the Common Pleas,) are said to be *coram vobis;* the record and process being stated to remain "before you," (*quæ* coram vobis *resident*,) that is, before the justices of the court. *Id.* 1137. This description seems to express more accurately the distinction between writs *coram nobis* and *coram vobis* than that which represents the former as lying to the *same* court in which the judgment was given; and as lying for errors *in fact;* neither of which features seem to be peculiar to it. *Id.* 1136, 1137. 2 *Impey's Pr.* K. B. 811. 1 *Arch. Pr.* 234, 276. 2 *Saund.* 100, 101 a, note. See *Coram vobis.* But see 3 *Maryland R.* 325. 1 *Hempstead's R.* 62.

CORAM NON JUDICE. L. Lat. Before one who is not a judge, or who has not jurisdiction. 3 *Bl. Com.* 111. 10 *Co.* 76. 1 *Kent's Com.* 317. Where an action is brought in a court whereof the judges have not any jurisdiction, it is said to be *coram non judice. Cro. Eliz.* 530. *Cro. Jack.* 531. *Termes de la Ley. Broom's Max.* [69.] It is also sometimes applied to proceedings even in a court having jurisdiction, where they become void by irregularity. *W. Jon.* 170. **Sententia a non judice lata nemini debet nocere.** A sentence passed [judgment given] by one who is not a judge, ought to harm no one. *Fleta*, lib. 6, c. 6, § 7.

CORAM PARIBUS. L. Lat. Before the peers or freeholders. *Feud. Lib.* 2, titt. 32, 39, 46. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus.* 2 *Bl. Com.* 307. *Coram paribus de vicineto;* before the peers or freeholders of the neighborhood. *Id.* 315. See *Pares, Peers.*

CORAM SECTATORIBUS. L. Lat. Before the suitors. *Cro. Jac.* 582.

CORAM VOBIS. Lat. (Before you.) In English practice. A name given to writs of error on judgments of other courts than the King's (or Queen's) Bench; especially the court of Common Pleas. See *Coram nobis.* A writ of this kind lies to the Common Pleas to correct its own judgments; as for errors in fact. 2 *Tidd's Pr.* 1137, 1142, 1143.

CORAUNT. L. Fr. Passing; running; current. *Kelham.*

CORETES. L. Lat. In old records. Pools; ponds; fish-ponds. *Cowell.*

CORN. In English law. Grain; including wheat, rye, oats and barley. In the common memorandum in policies of insurance, it includes malt, peas and beans, but not rice. 2 *Arnould on Ins.* 853.

CORN RENTS. Rents reserved in corn, that is, in wheat or malt. Proportions of rents on college leases, [being one-third,] directed by the statute 18 Eliz. c. 6, to be reserved in wheat or malt. 3 *Steph. Com.* 141, 142. 2 *Bl. Com.* 322.

CORNAGE. [L. Lat. *cornagium*, from *cornu*, a horn.] In old English law. Service of the horn. A kind of tenure in grand serjeanty, the service of which was to *blow a horn*, when any invasion of the northern enemy [the Scots,] was perceived, [in order to alarm the country]. *Termes de la Ley.* This was a common tenure in the marches of Scotland. *Litt.* sect. 156. *Co. Litt.* 107 a. 2 *Bl. Com.* 74. *Camd. Brit.* 609. *Cowell.* See 3 *How. St. Trials*, 866.

CORNARE. L. Lat. [from *cornu*, a horn.] In old English law. To wind or blow a horn. *Spelman. Faciat* cornari, *ne videatur furtivé hoc facere;* he shall cause a horn to be blown, that he may not seem to do this by stealth. *Cart. de For.* c. 11.

CORNER. In American land law. An angle made by two boundary lines; the common end of two boundary lines, which run at an angle with each other. See *Lines and corners, Butts and bounds, Abuttals.*

CORNERUM. L. Lat. In old English law. A corner or angle. *Et sic usque* cornerum *del Parkeres Breche de Beckele. Rot. Peramb. Forest.* 29 Edw. I. m. 8.

CORNUB'. An abbreviation of *Cornubia*, Cornwall, in old English pleadings and records. *Towns. Pl.* 147. *Cowell*, Appendix. 1 *Inst. Cler.* 28.

CORODIUM, *Corrodium, Corredium.* L. Lat. In old English law. A corody. *Spelman.* 2 *Inst.* 630. See *Corody.*

CORODY, *Corrody.* [L. Lat. *corodium, corrodium, corredium.*] In old English law. A right of sustenance; or a right to receive certain allotments of victual and provision for one's maintenance. 2 *Bl. Com.* 40. Otherwise called a pension. 1 *Id.* 283. "A partition for one's sustenance." *Finch's Law*, b. 2, c. 12.—An allowance of food, and sometimes of other necessaries, which a person was entitled to, for life, years or in fee, and usually from a religious house. It belonged to the found-

ers of these houses of common right, (unless the foundation was in frankalmoign,) and in this way became frequently due to the king.* *Spelman. Termes de la Ley.* See *Barringt. Obs. Stat.* 80, note [*y*]. It was a species of incorporeal hereditament, but is now obsolete. 2 *Bl. Com.* 40. 1 *Id.* 283. 2 *Inst.* 630. 1 *Crabb's Real Prop.* 252, § 259. *Crabb's Hist. Eng. Law*, 252.

CORODIO HABENDO. See *De Corodio habendo.*

CORONA. Lat. [Fr. *corone.*] The crown. *Placita coronæ;* pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor. See *Pleas of the crown.*

CORONARE. L. Lat. [from *corona*, a crown.] In old records. To give the tonsure, which was done on the crown, or in the form of a crown; to make a man a priest. *Cowell.*

CORONATOR. L. Lat. [from *corona*, q. v.] A coroner. *Reg. Orig.* 177. *Spelman.* 2 *Inst.* 31. *Bract.* fol. 121, 122. *Nullus vice-comes, constabularius*, coronatores *vel alii ballivi nostri teneant placita coronæ nostræ;* no sheriff, constable, coroners or other our bailiffs, shall hold pleas of our crown. *Mag. Cart. Johan.* c. 24. *Id.* 1 *Hen.* III. c. 19. *Id.* 9 *Hen.* III. c. 17. *Ut nullus vicecomes intromittat se de placitis ad coronam pertinentibus sine coronatoribus. Artic. Mag. Cart. Reg. Joh.* c. 14.

CORONATORE ELIGENDO. See *De coronatore eligendo.*

CORONATORE EXONERANDO. See *De coronatore exonerando.*

CORONER. [L. Lat. *coronator*, from *corona*, the crown; Sc. *crowner.* See *infra.*] A county officer of great antiquity at the common law, whose powers and duties are both judicial and ministerial, but principally the former. It has always been his peculiar office to inquire into the causes of violent or sudden deaths, by a jury of proper persons, upon view of the dead body, (*super visum corporis*). *Bract.* fol. 121. *Stat.* 4 *Edw.* I. *De officio Coronatoris.* 1 *Bl. Com.* 346, 348. 3 *Steph. Com.* 33—36. Another branch of his judicial office is to inquire concerning *shipwrecks*, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning *treasure trove*, who were the finders and where it is, and whether any one be suspected of having found and concealed a treasure. *Bract.* fol. 121, 122. 1 *Bl. Com.* 349. The *ministerial* office of the coroner is only as the sheriff's substitute in executing process. 3 *Steph. Com.* 37. This was part of his duty as early as the time of Bracton. *Bract.* fol. 75. Coroners are also, by virtue of their office, conservators of the public peace. *Britt.* c. 1. 1 *Bl. Com.* 347. See *Conservator of the peace.* All these duties continue to be attached to the office of coroner, in the United States. 2 *N. Y. Rev. St.* [742,] 622, § 1, *et seq.* 1 *Id.* [690], 688, § 2. *Id.* [380—382, §§ 78—86;] 373, 374, §§ 89—97. See *United States Digest*, Coroner.

*** The name *coroner* seems clearly derived from the important part which the officer bearing it originally took in the prosecution of those offences which concerned the *crown*, (L. Fr. *corone;* Lat. *corona*). 2 *Reeves' Hist. Eng. Law*, 12. The coroner (*coronator*) is first mentioned by name in Magna Charta, (c. 17, see *coronator*); although allusion is made to the office in the *capitula* of Henry II. and in those given in the reign of Richard I. to the justices in eyre, wherein they were commissioned to choose three knights and one clerk in every county to be *custodes placitorum coronæ. Crabb's Hist. Eng. Law*, 150. According to the Mirror, (c. 1, § 3,) the office was established by the Saxon kings, but it is most probable that it was created soon after the conquest; the coroner being appointed, together with the sheriff, to keep the peace, when the earls gave up the wardship of the county. *Crabb's Hist.* 149, 150. 1 *Bl. Com.* 347. This word itself seems to be essentially French, being constantly used by Britton in his first chapter, which is entitled "*De Coroners.*"

The office of coroner has, in modern times, retained but a trace of its ancient dignity and importance. Coroners are declared in Britton to be, in every county, the principal keepers of the peace, to bear record of pleas of the crown. Their duties (which are minutely described in the first chapter of this author, and in the second tract of the third book of Bracton, entitled "*De corona,*") embraced not only the modern duty of holding inquests over the bodies of persons *slain* or suddenly deceased, but the examination of the bodies of *living* persons who had been wounded or otherwise corporally injured, the taking of criminal appeals, abjurations of the realm, &c. An important feature of their ancient

office was the keeping of *rolls* or records of every thing done before them, which rolls were sometimes received as conclusive evidence. *Bract.* fol. 140 b, lib. 3, tr. 2, c. 20. See *Counter-roll.*

CORPORAL. [Lat. *corporalis, corporale*, from *corpus*, q. v.] Bodily; personal.

CORPORAL OATH. [Lat. *corporale sacramentum.*] An oath taken by laying hand on the gospels, as by actual contact of the *person.* 3 *Inst.* c. 74. *Cowell*, voc. *Oath. Tacto* per se *sancto evangelio;* having personally touched the holy gospel. *Cro. Eliz.* 105. The oath of proctors and advocates, in the English consistory courts, is in the following words: *Ego, A. B. ad ista sancta Dei evangelia* per me corporaliter tacta *juro, quod, &c.;* I, A. B., on these holy gospels of God, by me *corporally touched*, do swear, that, &c. *Hallifax, Anal.* Appendix, No. vi.

In the case of Jackson *v.* The State, (1 *Indiana, Carter's, R.* 184,) it was decided that the term "corporal oath" did not necessarily import an oath taken *on the gospels*, but that it was merely a synonyme of "solemn oath;" and that an oath taken with the uplifted hand might be properly described by either term. The court considered the objection that an oath taken in the latter form was not a corporal oath, to be hypercritical, and observed that "however it may have been in somewhat olden time in Europe, we think that now, at least in our state, *corporal* oath and *solemn* oath are used synonymously." *Id.* 184. The court refer to and adopt the definition of corporal oath given by Webster:—"a solemn oath, so called from the ancient usage of touching the *corporale* or cloth that covered the consecrated elements."

It may have been that oaths were sometimes, as in ecclesiastical cases, taken by touching the *corporale*, as described in the definition just quoted. But the true judicial oath appears to have been, from the earliest Christian period, uniformly taken by either holding or touching the holy gospels or evangelists; and the authorities clearly show that it was from this corporal touch, or actual contact of the body (*corpus*) of the person swearing with the book sworn by, that the oath derived its distinctive name. As early as the 8th Novel of Justinian, the form of an official oath, as prescribed by law, was in these words: "I swear by Almighty God, &c. and the four gospels which I hold in my hands, (ἃ ἐν ταῖς χερσί μου κρατῶ,) that I will," &c. *Nov.* 8, ad fin. To this appears to have succeeded the form of *touching*, which is still in use. In *Nov.* 124, c. 1, prescribing an oath to be taken by parties to actions, it is declared that they shall swear by touching the holy evangelists, ἁπτομένους τῶν ἁγίων εὐαγγελίων. And in the Feudorum Libri, oaths were required to be made, *tactis sacrosanctis scripturis*, by touching the Holy Scriptures. *Feud. Lib.* 2, tit. 2.

The actual *corporal* touch or physical contact of the *body*, appears to have always been indispensable to give validity to an oath taken on the Scriptures, as it uniformly is at the present day, even in this country. And an oath taken in any other form, although in every sense a solemn oath, can hardly be denominated a "corporal" oath, without departing from the radical and distinctive sense of the term.

CORPORALE SACRAMENTUM. L. Lat. In old English law. A corporal oath. *Reg. Orig.* 95 b. *Bract.* fol. 74.

CORPORALIS, *Corporale.* Lat. [from *corpus*, a body.] In old English law. Having a body or material substance; corporeal. *Corporales res;* corporeal things; things which may be touched and seen; such as land, garments, gold and silver, &c., comprising both moveables and immoveables. *Bract.* fol. 7 b, 10 b, 13 b.

Relating to, or affecting the body; bodily; personal. **Corporalis injuria non recipit æstimationem de futuro.** A personal injury does not receive satisfaction from a future course of proceeding, [is not left for its satisfaction to a future course of proceeding]. *Bacon's Max.* 34, regula 6, quoted in 3 *How. St. Trials*, 71. The law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience; but if it be a question of *personal pain*, the law will not compel him to sustain it and expect remedy, because it holdeth no damage a sufficient recompense for a wrong which is corporal. *Id. ibid. Broom's Max.* [208.] This maxim seems to embody the general principle of law which allows to personal injuries the speediest course of remedy.

CORPORATE. [Lat. *corporatus, corporatum.*] Belonging to a corporation; as a corporate name.

Incorporated; as a corporate body. The

term *corporatus* occurs in the Code of Justinian. *Cod.* 11. 1. 8. *Id.* 11. 14.

CORPORATION. [L. Lat. *corporatio, corpus corporatum, villa corporata.*] An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a corporation *sole*,) or of a collection of several individuals, (which is termed a corporation *aggregate*). 3 *Steph. Com.* 166. 1 *Bl. Com.* 467, 469. Marshall, C. J. 4 *Wheaton's R.* 518, 636. Thompson, J. 14 *Peters' R.* 122, 129.—An artificial being, invisible, intangible, and existing only in contemplation of law. Marshall, C. J. 4 *Wheaton's R.* 636.—A franchise possessed by one or more individuals, who subsist as a body politic, under a special denomination, and are vested by the policy of the law, with the capacity of perpetual succession, and of acting in several respects, however numerous the association may be, as a single individual. 2 *Kent's Com.* 267. And see *Kyd on Corp.* Introd. 13. *Grant on Corp.* 4, 5. Otherwise denominated a *body corporate* and a *body politic;* sometimes a civil being, (*ens civile*,) and by the civilians, a *juridical*, moral or fictitious *person.* 2 *Bl. Com.* 37. 2 *Kent's Com.* 267. Washington, J. 4 *Wheaton's R.* 518, 657. *Angell & Ames on Corp.* Introd. 3 *Salk.* 102. 1 *Mackeld. Civ. Law*, 145, § 141. See *Body corporate, Body politic, Ecclesiastical corporation, Lay corporation, Eleemosynary corporation, Civil corporation, Public corporation, Private corporation.*

A corporation has been declared to be not only a *person*, (12 *Grattan's R.* 655,) but to be capable of being considered an *inhabitant* of a state, and even of being treated as a *citizen*, for all purposes of suing and being sued. 2 *Howard's R.* 497. 1 *Kent's Com.* 347, note. As to the distinction between corporations and partnerships, see *Wordsworth on Joint Stock Companies*, 4.

In New-York, the term "corporation" includes all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. *Const. of New-York*, art. viii. § 3. And see 3 *Comstock's R.* 479. 3 *Selden's R.* 328.

CORPORATION AGGREGATE. A collection of several individuals united into one body, under a special denomination, and having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual. *Shelford on Mortmain*, 22. 1 *Kyd. on Corp.* 13. 2 *Kent's Com.* 267. Story J. 4 *Wheaton's R.* 518, 561.—A collection of individuals united in one body, under such a grant of privileges as secures a succession of members without changing the identity of the body, and constitutes the members, for the time being, one artificial person or legal being, capable of transacting some kind of business, like a natural person. Bronson, J. 1 *Hill's* (N. Y.) *R.* 616, 620. Of this description are the mayor and commonalty of a city, the head and fellows of a college, and in England the dean and chapter of a cathedral church. 3 *Steph. Com.* 168. This kind of corporation is called by the civilians, *collegium* and *universitas*, (qq. v.) *Dig.* 3. 4. See *Municipal corporation, Public corporation.*

CORPORATION SOLE. A corporation consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 *Steph. Com.* 168, 169. 2 *Kent's Com.* 273.

In the United States, a minister seised of parsonage lands, in right of the parish, is held to be a sole corporation for this purpose. 7 *Mass. R.* 445. But, in general, corporations of this kind are of rare occurrence.

CORPORATION ACT. In English law. The statute 13 Car. II. st. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town, that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person, so elected, was also required to take the oaths of allegiance and supremacy. 3 *Steph. Com.* 103, 104. 4 *Bl. Com.* 58. This statute is now repealed. 4 *Steph. Com.* 511.

CORPORATOR. A member of a corporation.

CORPORE ET ANIMO. Lat. By the body, and by the mind; by the physical act, and by the mental intent. *Dig.* 41. 2. 3.

CORPOREAL. [Lat. *corporalis.*] That

which can be touched and seen; material. *Co. Litt.* 9 a.

CORPOREAL HEREDITAMENTS. Such hereditaments as are of a material and tangible nature, and may be perceived by the senses, consisting wholly of substantial and permanent objects, all which may be comprehended under the general denomination of *land* only.* 2 *Bl. Com.* 17, 18. 1 *Steph. Com.* 159. 3 *Kent's Com.* 401, 402.

CORPUS. Lat. A body; a human body. **Corpus humanum non recipit æstimationem.** The human body does not admit of valuation. *Hob.* 59.

An artificial body created by law, as a corporation, (Gr. σωματεῖον, συστῆμα.) *Neque societas, neque collegium, neque hujusmodi* corpus; neither a partnership, nor a corporation, nor any body of the kind. *Dig.* 3. 4. 1. See *Cod.* 6. 48. *Nov.* 136, pr. *In collegiis et capitulis semper idem* corpus *manet, quamvis successive omnes moriantur;* in corporations and chapters the body remains always the same, although all [the individuals composing it] die in succession. *Bract.* fol. 374 b. See *Id.* fol. 78 b.

A body or collection of laws. See *Corpus juris.*

A material substance; something visible and tangible, as the subject of a right; (*corpus cui jus inest*). *Bract.* fol. 236. *Id.* fol. 16. Something having local position, as distinguished from an incorporeal right. Thus, the *corpus* of land is sometimes distinguished from the estate or interest in it. 2 *Powell on Devises*, 412. 2 *Kames' Equity*, 342, 343. So in the Scotch law, a specific article of property is called *corpus*, as distinguished from its mere equivalent in money or other form. *Id.* 71, 167. 4 *Rob. Adm. R.* 56. So the *corpus* (capital) of an estate is distinguished from the income of it. 6 *Bell's Appeal Cases*, 222. Phelan, J. 21 *Alabama R.* 307. 6 *Florida R.* 450.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offence) is the fact of its having been actually committed. *Best on Presumptions*, 269—279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing; whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense, in the civil law. 1 *Mackeld. Civ. Law*, 284, § 240. *Bract.* fol. 38 b, 39 b, 45 b. See *Corpore et animo.*

CORPUS COMITATUS. L. Lat. In old English law. The body of a county. *Molloy de Jur. Mar.* 231. *Cro. Jac.* 514. 5 *Howard's R.* 452, 453, 462. 5 *Mason's R.* 290. The county at large, as distinguished from any particular locality within it. See *De corpore comitatus.*

CORPUS CORPORATUM. Lat. A corporation; a corporate body, other than municipal. *Burr. Sett. Cas.* 143.

CORPUS CUM CAUSA. L. Lat. (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. *Cowell. Blount.* Applied also to a writ of *habeas corpus* for the removal of a cause.* See *Habeas corpus.*

CORPUS DELICTI. Lat. In the law of evidence. The body, substance or foundation of an offence. The substantial and fundamental fact of its having been committed. Lord Stowell, 1 *Haggard's C. R.* 105. Lord Kenyon, 1 *East*, 306. *Best on Presumptions*, 269, § 201, *et seq.* The body or substance of a crime, as distinguished from the particular *form* given to it by its connection with the party accused.

The subject of a crime, or its visible effect, such as a body slain, a house burned, or their remains; *corpus* being used in its ordinary sense of a material substance. See *How. St. Trials*, 1229, 1230. *Burr. Circ. Evid.* 119, note (*b*). *Id.* 677.

CORPUS JURIS. L. Lat. A body of law. A term introduced in the middle ages, to signify a book comprehending several collections of law. There are two principal collections to which that appellation is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*, (qq. v.)

CORPUS JURIS CANONICI. L. Lat. The body of the canon law. 1 *Bl. Com.* 82. See *Canon law, Jus canonicum.*

CORPUS JURIS CIVILIS. Lat. The body of the civil law, as composed of the Institutes, Pandects, Code and Novels. 1 *Bl. Com.* 81. Sometimes simply termed *Corpus Juris.*

This name was not given to this collection by Justinian, nor by any of the glossators. According to Savigny, it was in use as

early as the 12th century. Dionysius Gothofredus, however, was the first who applied it as a title embracing all the collections of Justinian in one work, (A. D. 1604). 1 *Mackeldey's Civ. Law*, 89, § 98, note. See Am. ed. note to 1 *P. Wms.* 52.

CORPUS PRO CORPORE. Lat. In old records. Body for body. A phrase expressing the liability of manucaptors. 3 *How. St. Trials*, 110.

CORREDIUM. L. Lat. In old records. A corody. *Spelman.* See *Corodium.*

CORREI. (pl. of *correus.*) Lat. In the civil law. Co-stipulators; joint stipulators. *Heinecc. El. Jur. Civ.* lib. 3, tit. 17. *Hallifax Anal.* b. 2, ch. 16. See *Reus.*

CORREI CREDENDI. Lat. In the civil and Scotch law. Joint creditors; creditors *in solido. Poth. Oblig.* part 2, ch. 4, art. 3, § 11.

CORREI DEBENDI. L. Lat. In civil and Scotch law. Debtors in *solido. Poth. Obl.* part 2, ch. 3, art. 8, sect. 1. Two or more persons bound as principal debtors to another. *Ersk. Inst.* b. 3, tit. 3, § 74.—Joint obligants. *Bell's Dict.*

CORREIE DE BATEL. L. Fr. Arrayed for battel. *Yearb.* M. 4 Edw. III. 12.

CORRELATIVE. [from Lat. *con*, together, and *relativus.*] Having a mutual or reciprocal relation. *Father* and *son* are correlative terms. *Son* is the correlative of *father. Right* and *duty* are correlative terms.

CORRODIUM. L. Lat. In old English law. A corody. 2 *Inst.* 630. *Spelman.*

CORRUMPERE. Lat. In the civil law. To corrupt; to spoil; to make worse, (*deteriorem facere*). Applied to the offence of tampering with another's slave. *Dig.* 11. 3. *Brissonius.*

CORRUPTIO. Lat. In old English law. Corruption; violation or defilement of the person. *Fleta*, lib. 1, c. 34, § 4.

CORRUPTION OF BLOOD. In English criminal law. The extinguishment of the inheritable quality of a person's blood in consequence of attainder for treason or other felony, so that he can neither inherit any estate, nor transmit it to others by descent.* 2 *Bl. Com.* 251, 256. 1 *Steph. Com.* 408—411. *Litt.* sect. 747. The law on this subject has been considerably modified by the statutes 54 Geo. III. c. 145; 3 & 4 Will. IV. c. 106; and 4 & 5 Will. IV. c. 23. 1 *Steph. Com.* 413. In the United States, corruption of blood is abolished. 2 *Kent's Com.* 386.

CORRUPTIVE. L. Lat. In old pleading. Corruptly. *Cro. Jac.* 104.

CORS, *Corse.* L. Fr. Body. *Britt.* cc. 4, 11, 26, 68. *Cors pur cors;* body for body. *Id.* c. 125.

CORSEPRESENT. In English law. A mortuary or customary gift, due to the minister of a parish on the *death* of a parishioner, was anciently so called from its being brought to church along with the *corpse*, when it came to be buried. 2 *Bl. Com.* 425, 426. 3 *Steph. Com.* 148. See *MS.* cited in *Blount.*

CORSNED. [from Sax. *cors*, a curse, and *sned*, a cake or piece of bread.] In Saxon law. The morsel of execration; (*panis conjuratus; offa execrata*, or *judicialis*). A species of ordeal in use among the Saxons, performed by eating a piece of barley bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but if it stuck in his throat, it was considered as a proof of his guilt. *Crabb's Hist. Eng. Law*, 30. 1 *Reeves' Hist.* 21. 4 *Bl. Com.* 345. *Spelman.*

CORT, *Court.* L. Fr. Short; limited. *Kelham.*

CORTEX. Lat. In old English law. Bark; the bark of trees. *Ad buscam, meremium*, corticem *vel carbonem emendum;* to buy brush-wood, timber, bark or coal. *Cart. de Forest.* c. 14.

The outer covering of any thing, as distinguished from the inner substance. The letter of an instrument, as distinguished from the spirit. See **Qui hæret in litera**, &c.

CORTIS. L. Lat. In old records. A court or hall. *Spelman.* See *Curtis.*

CORTULARIUM. L. Lat. In old records. A yard or court adjoining to a country farm; a curtilage. *Cowell.*

CORVÉE. Fr. In old French and Canadian law. An obligation, on the part of a tenant, to perform involuntary labor at the requirement of the lord. *Dunkin's Address*, 42. *Guyot, Inst. Feod.* ch. 19.—The duty (incumbent on a roturier, or ignoble vassal of the king,) of performing manual labor on the public roads and works of the seigneurie, during a certain number of days in each year. *Steph. Lect.* 351. Corvees originated under the Romans, to promote the culture of unprofitable imperial domains. *Id.* 19.

COSA JUZGADA. Span. In Spanish law. A cause or matter adjudged, (*res judicata*). *White's New Recop.* b. 3, tit. 8, note. *Id.* b. 3, tit. 9, c. 1.

COSCEZ, *Coscet.* A term applied in Domesday, to an inferior class of tenants. Supposed by Spelman, to have the same meaning with *cotmannus* and *cotarius*, (qq. v.)

COSE. L. Fr. A corrupt form of *chose*, (q. v.)

COSEN, *Cozen.* In old English law. To cheat. "A cosening knave." 3 *Leon.* 171.

COSENAGE. See *Cosinage.*

COSENING. In old English law. An offence, mentioned in the old books, where any thing was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. *West's Symbol.* part 2, tit. Indictments, sect. 68. The same as the *stellionatus* of the civil law. *Cowell.*

COSHERING. In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. *Cowell.*

COSIN, *Cosyn, Cosen.* L. Fr. [L. Lat. *consanguineus.*] In old English law. A collateral relative by blood, as a brother, sister, uncle, &c. *Litt.* sect. 389, 660.

Any relative in the ascending line, above a great grandfather, (*besayle*). *Theloall's Dig.* lib. 9, c. 5, ¶ 28. *Stat. Glocest.* c. 2. *Britt.* c. 89. See *Cosinage.*

COSINAGE, *Cosenage.* L. Fr. [L. Lat. *consanguinitas.*] In old English law and practice. Collateral relationship or kindred by blood; consanguinity. *Co. Litt.* 160 a.

The name of a writ (*breve de consanguineo,*) that anciently lay where a man's great great grandfather, (or *tresayle*, as he was termed,) or collateral relative, beyond certain degrees, (to both of whom the title *cosin* was applied,) was seised of lands, &c., in fee on the day of his death, and afterwards a stranger entered and abated, and so kept out the heir. *F. N. B.* 221. *Reg. Orig.* 226. *Roscoe's Real Act.* 127. 3 *Bl. Com.* 186. But see *Blackst. Law Tracts*, 24.

COST, (*C'o'st*). L. Fr. This is. *Kelham.* A contraction of *ceo est.*

COSTAGES, *Custages.* L. Fr. In old English law. Costs. *Stat. Westm.* 1, c. 1. *Stat. Glocest.* c. 1. *Britt.* c. 17. *Yearb.* M. 8 Edw. III. 35. Lord Coke derives this word from the verb *conster*, and that again from the verb *constare;* "for these *costages* must *constare* (appear) to the court to be legal costs and expenses." 2 *Inst.* 288.

COSTE, *Côte.* Fr. and L. Fr. A, or the side. *De coste;* from, or on the side; collateral. *Britt.* c. 89, 119.

COSTERA. L. Lat. [from Fr. *costier;* Lat. *costa*, a side.] In old English law. A coast; sea coast or shore; sea side; (*litus; regionis pars mari finitima*). *Spelman. Towns. Pl.* 224. *Per* costeram *maris;* by the sea-shore. *Magna Charta*, 9 Hen. III. c. 23.

COSTES. L. Fr. Costs. *Les costes. Keilw.* 48. 1. *Al costes;* at the costs. *Dyer*, 55 b. (Fr. ed.)

COSTS. [L. Lat. *custus, misæ;* Lat. *expensæ litis;* L. Fr. *costages, costes;* Sc. *coists.*] In practice. The expenses which are incurred either in the prosecution or defence of an action, or in any other proceeding at law, or in equity; consisting of the fees of attorneys, solicitors and other officers of court, and such disbursements as are allowed by law.* *Stat. Glocest.* 6 *Edw.* I. c. 1. 2 *Inst.* 288. *Beames' Costs*, 4. 2 *Tidd's Pr.* 945, *et seq. United States Digest*, Costs.

Costs between attorney and client are those which are payable in every case to the attorney or solicitor, by his client, whether he ultimately succeed or not. *Costs between party and party* are those which the defeated party pays to the successful one. *Holthouse. Wharton.* Costs are also either final or interlocutory. See *Final costs, Interlocutory costs.*

COSTS DE INCREMENTO. L. Lat. In practice. Costs of increase. See *De Incremento, Increase.*

COSTS OF THE DAY. In practice. Costs which are incurred in preparing for the trial of a cause on a specified *day*, consisting of witnesses' fees, and other fees of attendance. *Archb. N. Prac.* 281. *Holthouse.*

COSTUMBRE. Span. In Spanish law. Custom; an unwritten law established by usage, during a long space of time. *Las Partidas*, part 1, tit. 2, l. 4.

COSTUS. L. Lat. In old English law. Cost. *Stat. Westm.* 2, c. 46.

COTA, *Chota.* L. Lat. [Sax. *cote.*] In old English law. A cot or hut, (*tugurium*). *Spelman. Blount.*

COTAGIUM, *Cottagium.* L. Lat. [from *cota*, q. v.] In old English law. A cottage; a small house or cot. *Spelman.*

Shep. Touch. 10. *Co. Litt.* 56 b. See *Cottage.*

COTARIUS. L. Lat. [from *cota*, q. v.] In old English law. A cottager, or cotter. *Spelman. Domesday.*

COTELLUS. L. Lat. In old records. A small cottage. *Consuet. Domusde Farendon*, MS. *Cowell.*

COTERELLUS. L. Lat. In old English law. A cottager. Considered by Spelman and others, the same with *cotarius. Spelman. Co. Litt.* 56 b. But Cowell makes the distinction that the *cotarius* had a free socage tenure, and paid a stated firm (rent,) in provisions or money, with some occasional customary service; whereas the *coterellus* seemed to have held in mere villenage, and had his person and issue and goods disposed at the pleasure of his lord. *Cowell*, voc. *Coterellus.*

COTERIA. L. Lat. In old records. A cot, house or home-stall. *Regist. Eccl. Christi Cant.* MS. *Cowell.*

COTLAND, *Cotsethland.* In old English law. Land held by a cottager, whether in socage or villenage. *Paroch. Antiq. Cowell.*

COTMANNUS. L. Lat. In old English law. A cotman, or cotter. *Domesday. Spelman.*

COTSETUS, *Cotsethus.* L. Lat. [Sax. *cotsete;* the inhabitant of a cottage.] In old English law. A cottager who, by servile tenure, was bound to work for the lord. *Cowell. LL. Hen.* I. c. 30. *Spelman*, vocc. *Cota, Cotarius.* See *Coscez.*

COTSETHLAND. [from Sax. *cote*, a cottage, *set*, or *seth*, a seat, and *land.*] In old English law. The seat of a cottage, including any land belonging to it. *Spelman.*

COTTAGE. [L. Lat. *cottagium, cotagium*, qq. v.] A little dwelling-house, without land. *Shep. Touch.* 94. *Co. Litt.* 56 b. 1 *Crabb's Real Prop.* 68, 69, § 87. *Cowell*, voc. *Cotage.* Properly, however, a cottage seems to have always had a small portion of land attached to it, (*fundi ascriptam portiunculam,*) as appears also from the terms cot*land*, cotseth*land*, *supra. Spelman.* And now, according to good authority, by the grant of a cottage, a curtilage or garden will pass as included. 2 *Ld. Raym.* 1015. 6 *Mod.* 114. 4 *Vin. Abr.* 582. *Shep. Touch.* (by Preston,) 94. See *Cottagium.*

COTTAGIUM. L. Lat. In old English law. A cottage. It must have had four acres of land laid to it. See 2 *Show.* 279.

COTTIDIE. Lat. An old form of *Quotidie. Cottidianus* for *Quotidianus. Brissonius.*

COTURE. L. Fr. An enclosure. *Britt.* c. 71.

COUCHANT, *Chochaunt.* L. Fr. [from *coucher*, to lie down; Lat. *cubans, cubantes.*] In old English law. Lying down.

Couchant et levant; lying down and rising up. *Yearb.* T. 7 Edw. III. 50. M. 10 Edw. III. 54. This seems to have been the original phrase, instead of *levant et couchant*, (q. v.)

COUNGE, *Conge.* L. Fr. Leave; permission. *Herle pria* counge *à departer de soun breve, et habuit;* Herle prayed leave to depart from his writ, and he had it. *Yearb.* P. 2 Edw. II. 39.

COUNSAILE. L. Fr. Advice and direction in law. *Artic. sup. Chart.* c. 11.

The counsel of a party in a cause. *Dyer*, 47 b, (Fr. ed.)

COUNSEL. [L. Fr. *conseil, conseill, consail, counsaile, councel.*] In practice. An advocate; a counsellor or pleader. 3 *Bl. Com.* 26. 1 *Kent's Com.* 307. One who assists his client with advice, and pleads for him in open court. Sometimes written in the old books, *conncel* and *council.* See *Advocate, Counsellor, Pleader.*

*** This word has no plural, and is used to denote either one or more counsel. It is by some supposed to be an abbreviation of *counsellor*, but rather seems to be derived from the Norman Fr. *conseil*, which occurs as a distinct word, at an early period, in the sense of *pleader. Assizes de Jerusalem*, ch. ix. *Id.* ch. xxvii. *Counsel* is not used as a title of office, like *barrister* and *serjeant* in England, and *counsellor* in the United States, but as a general professional designation; and is particularly applied to a client's professional adviser or advocate (one or more) in a particular matter or suit, e. g. in the expressions *a party's counsel*, and *the counsel in a cause;* in which the use of the term *counsellor* would in strictness be improper. To a certain extent, however, the terms are synonymous. See *Counsellor.* "A counsel" —"a counsellor at law." 6 *Mod.* 137. "The counsellor should give his counsel to him with [for] whom he is of counsel." 5 *Co.* 20. See *Of Counsel.*

COUNSELER. L. Fr. To counsel; to advise. *Yearb.* T. 10 Edw. III. 23.

COUNSELL. L. Fr. Advice. *Per* counsell *les serjants.* *Yearb.* M. 3 Edw. III. 40.

COUNSELL. O. Eng. A court. "Ne to apere before the *counsell* of any lord." *Stat.* 15 *Ric.* II. c 12. *Stat.* 16 *Ric.* II. c. 2.

COUNSELLOR, COUNSELLOR AT LAW. [L. Lat. *consiliarius, consiliarius in lege;* L. Fr. *conseiller.*] In practice. A person whose occupation and office are to give *counsel* or advice as to the management of suits and other legal business, to conduct the trial or argument of causes in court, (in which sense the word is synonymous with *advocate,*) and to do any other acts requiring a personal presence there.* Counsellors are officers of the respective courts in which they are licensed to practice; and the term itself is exclusively an official or professional title, the use of which is now rare in England, although very common in the United States. 1 *Leon.* 103. 1 *Rep. Ch.* Appendix, 23, 26. 6 *Mod.* 137. 1 *Ld. Raym.* 594, 595. See *Counsel, Consiliarius.*

COUNT, *Counte, Countee, Conte.* L. Fr. or Anglo-Norm. [Fr. *comte;* L. Lat. *comes.*] In old English law. An officer who anciently was the chief or governor (*præfectus* vel *præpositus,*) of a shire in England, which was hence called a *county,* (*comitatus*); an earl. 1 *Bl. Com.* 398. 9 *Co.* 49. 3 *Lev.* 72. See *Comes, Comte.*

*** This term (*countee* being obviously an Anglicised form of the Fr. *comte,*) was introduced on the Norman Conquest, as a title not only of office, but of honor, being the most eminent dignity in the kingdom. *Termes de la Ley.* It was after a time, however, superseded by the English *earl,* which still continues as a title of honor, although the earl has now nothing to do with the government of the county, which is devolved on the sheriff or viscount, as he was anciently called, (*vice comes,* the vice count, or earl's deputy). 1 *Bl. Com.* 398, 116. The term still survives in *countess,* an earl's wife, and *viscount,* the next dignity below an earl. See *Earl, Comes, County, Viscount.*

COUNT. L. Fr. and Eng. [L. Lat. *narratio.*] In pleading. A statement of a plaintiff's case in court, being the first in the series of the pleadings in an action;* a declaration, particularly in a real action. 2 *Reeves' Hist. Eng. Law.* 265, 267. *Co. Litt.* 17 a, 303 a. 3 *Bl. Com.* 293. Finch calls it "a large declaration of the substance of the original writ." *Law,* b. 4, ch. 27. *En* count *countant;* in his count counting. *Litt.* sect. 10. The use of this term was anciently confined, for the most part, to real actions, though not exclusively. *Termes de la Ley. F. N. B.* 16, 60. D. N. *Steph. Pl.* Second Appendix, Note (3).

A part, section or division of a declaration, embracing a distinct statement of a cause of action. A declaration now usually consists of several of these counts; being either statements of different causes of action; or of the same cause in different forms. *Steph. Pl.* 267, Appendix, Note (56). *Id.* Second Appendix, Note (3). *Gould's Pleading,* ch. vi. § 2.

In criminal pleading. A particular charge in an indictment. *Wharton's Prec. of Indictments,* 12, note; ch. 2.

*** *Count* is from the Fr. *conte,* a narrative or *tale,* as it was at one time called in England. 3 *Bl. Com.* 293. *Steph. Pl.* Appendix, Note (56). An ancient book of forms was styled the *novæ narrationes,* or *new talys* (tales). 3 *Bl. Com.* 297. *Narratio,* the Latin word, has survived in the abbreviation *narr.,* a common term for a declaration. See *Narratio, Narr.* The old word *conte* signified any allegation of fact in a cause. *Steph. Pl. ub. sup. Count* is still, in strictness, the proper term for a declaration in a real action, although its constant use as a *part* of that pleading, has, in a great degree, superseded the original sense. *Id. ibid.* 3 *Steph. Com.* 659. By the new Pleading Rules of the English courts, the use of several counts in the same declaration is prohibited, unless a distinct subject matter of complaint is intended to be established in respect of each. 1 *Chitt. Pl.* 414.

To COUNT. [L. Fr. *counter;* L. Lat. *narrare.*] In old pleading. To state or relate a plaintiff's case, especially the demandant's claim or count in a real action;* to declare. 2 *Reeves' Hist. Eng. Law,* 265, 267. 3 *Steph. Com.* 659.

To plead orally; to argue a matter in court; to read or recite there; to recite a count; the peculiar province of a serjeant in the English Court of Common Pleas. Hence the titles of *countor* and *serjeant-countor,* (qq. v.) Passing a recovery at the bar of the Common Pleas was formerly termed *counting at bar. Bootes' Suit at Law,* 68, note.

*** This term is frequently applied, in the older English reports, to one of the ceremonies performed in open court, on

taking the degree of serjeant at law. Lord Raymond, describing a call of serjeants to the bar, observes that after being sworn, "they came to Gray's Inn Hall, where they *rehearsed their counts*, and were coifed, and then they walked to Westminster, and *counted* at the Common Pleas, according to custom," &c. 1 *Ld. Raym.* 604. So, on another occasion, he says of the serjeants, that being robed, "they were brought to the bar and *counted*," &c. 2 *Id.* 769. See *T. Raym.* 430, 478. Sir George Croke, describing the same ceremony, observes of the serjeants, that "every of them, after they came to the bar, had several writs and *counts*, which *counts* they *recited*, and after their counts recited and writs read by the prothonotary, one of the ancient serjeants imparled thereto," &c. *Cro. Jac.* 2. The same reporter, describing Sir Edward Coke's creation as a serjeant, on his being made Chief Justice of the Common Pleas, has recorded that "he was sworn in chancery as serjeant, and afterwards went presently into the treasury of the Common Pleas, and there, by Popham, Chief Justice, his party robes were put on, and he forthwith, the same day, was brought to the bar as serjeant; and presently after his writ read and *count made*, he was created Chief Justice," &c. *Cro. Jac.* 125. But the most minute description of this and other ceremonies attending the creation of serjeants, is given by the same reporter in the introduction to the third volume of his reports. *Cro. Car.* Introd. See *T. Jon.* 42. This characteristic ceremony of *counting* is still retained in the Court of Common Pleas, in cases where serjeants are created by writ issued in term. 18 *C. B.* (9 *J. Scott*,) 402. Trin. T. 1856. See *Serjeant at law.*

COUNTE. L. Fr. In old English law. A count or earl. *Britt.* fol. 1. *Conf. Chart.* 25 Edw. I.

A county. *Britt.* fol. 2.

A county court. *Mirr.* c. 1, sect. 15. *LL. Gul. Conq.* l. 3.

COUNTEE. L. Fr. An earl. *Litt. R.* 61, 181, 335. See *Count.*

COUNTENANCE. [L. Lat. *contenementum.*] In old English law. Credit or estimation. *Cowell.* 2 *Inst.* 28. See *Contenementum.*

COUNTER. L. Fr. [L. Lat. *narrare.*] In old English law. To count; to plead. *Ne soit oye en la court le roy a* counter *pur nulluy;* shall not be heard to plead in the king's court for any man. *Stat. Westm.* 1, c. 29. *Le mester de* counter; the mystery or art of pleading. *Britt.* c. 22. *Le pl' counta;* the plaintiff counted. *Yearb.* M. 8 Hen. VI. 26. *Countera;* shall count. *Fet Assaver*, § 30.

COUNTER. [L. Lat. *narrator.*] A pleader. See *Countor.*

COUNTER. [L. Lat. *computatorium.*] The name of two prisons formerly existing in London, the Poultry Counter, (q. v.) and Wood-street Counter, for the use of the city, to confine debtors, peace-breakers, &c. *Cowell. Whishaw. Tomlins.* Sometimes called *compter*, (q. v.)

COUNTER AFFIDAVIT. In practice. An affidavit in opposition, or contradictory to another affidavit; an affidavit made by a party against whom a motion or application is made to a court or judge on affidavit, for the purpose of defeating such motion or application. 1 *Tidd's Pr.* 189. 1 *Burr. Pr.* 344.

COUNTER BOND. In old practice. A bond of indemnity. 2 *Leon.* 90.

COUNTERFEIT. [L. Fr. *contrefait, conterfet*, from *contre*, against, and *fait*, made; L. Lat. *controfactum, contra*, against, and *factum*, made.] That which is *made* in imitation of something, but without lawful authority, or *contrary* to law; and with a view to defraud, by passing the false for the true.* *Wharton's Lex.* Anciently applied to the forging of the great or privy seal. 4 *Bl. Com.* 83.

COUNTERFEITING. See *Forgery.*

COUNTER LETTER. In the civil law. An instrument in writing, executed by the lender of money to whom property has been conveyed by an absolute deed as security, by which he agrees, on payment of a certain sum, to re-convey the same property to the borrower. 11 *Peters' R.* 351, 354, arg. Wayne, J. *Id.* 386. Both instruments constitute, by the law of Louisiana, that kind of contract denominated an *antichresis*, (q. v.) *Id.* 388.

COUNTERMAND. [L. Lat. *contramandatum*, from *contramandare*, q. v.] In practice. A new or opposite direction; an *order* made *contrary* to a former one, for the purpose of avoiding or suspending it; the revocation of a thing before done, or directed to be done. Thus, a notice of trial or other intended proceeding in a cause, and a writ issued to a sheriff, may be *countermanded* by the attorney who gave or issued it, by a new notice to that effect.

This term was formerly applied to wills, leases, &c. in the sense of revocation. *Termes de la Ley.* 4 *Co.* 60, 61. *Cowell.*

COUNTERPART. In conveyancing. The corresponding part of an instrument; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the original, and the rest are *counterparts;* although where all the parties execute every part, this renders them all originals. 2 *Bl. Com.* 296. *Shep. Touch.* (by Preston,) 50. See *Duplicate.*

The term *counterpart* seems derived from the ancient practice of executing indentures and chirographs, by writing them twice on the same sheet of parchment, beginning from a space in the middle, (where it was afterwards divided by cutting through); the parts, when thus written, lying opposite or *counter* to each other. See *Chirograph, Indenture.*

COUNTERPLEA. [L. Lat. *contraplacitum.*] In pleading. A plea of an incidental kind, and now of rare occurrence, diverging from the main series of the allegations in a cause. As where a party demands oyer, if his adversary has any matter of fact to allege as a ground why the oyer cannot be demanded, he may plead such matter, and the allegation is called a counterplea to the oyer. *Steph. Pl.* 72. Counterpleas in the old actions were a kind of replication, and were used particularly as answers to aid prayer. *Termes de la Ley. Reg. Plac.* 118. *Cro. Car.* 263. See *Pleading.*

COUNTER-ROLL. [L. Fr. *contreroule, conterrolle;* L. Lat. *contra rotulus.*] In old English law and practice. A roll kept by an officer as a check upon another officer's roll.* Sheriffs and coroners were anciently required to keep rolls or records of what was done before them. *Bract.* fol. 121 b, 140 b. *Britt.* c. 1. *Le vicont eit* conterrolles *ove les coroners auxybien des appeals come des enquests,* &c.; the sheriff shall have *counter-rolls* with the coroners, as well of appeals as of inquests, &c. *Stat. Westm.* 1, c. 10.

COUNTEZ. L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them; and which Blackstone says was given, in his time, in good English, "*count these.*" 4 *Bl. Com.* 340, note (*n*).

COUNTIE. L. Fr. Earl. *Yearb.* T. 5 Edw. III. 28.

COUNTOR, *Counter, Countour.* L. Fr. and Eng. [L. Fr. *contour*, from *counter* or *conter*, to relate, recite or state orally; L. Lat. *narrator.*] In old English practice. An advocate or professional pleader; one who *counted* for his client, that is, related his case, recited his count, or orally pleaded his cause.* See *To count.* A term applied in the old books to serjeants at law, who are sometimes termed *serjeant countors.* 2 *Inst.* 214. 2 *Reeves' Hist. Eng. Law,* 284, 285. 1 *Bl. Com.* 24, note (*t*). Countors *sont serjeants sachents la ley del royalme, que servent al common del people à pronouncier et defendre les actions en jugement;* countors are serjeants learned in the law of the realm, who serve the common people to prosecute and defend actions in court. *Mirr.* c. 2, sect. 5. 9 *Co.* pref. *Stat. Mod. Lev. Fines. Conseillers ou countors. Britt.* c. 52. See *Narrator.*

*** The *banci narratores* (countors of the bench) mentioned by Matthew Paris (*Hist.* p. 1077,) appear to have been serjeants of the Common Pleas; serjeants having always had the exclusive privilege of practising in that court, which was anciently termed "the Bench." *Steph. Pl.* Appendix, Note (8). 1 *Bl. Com. ub. sup.* See *Bench, Bancus, Serjeant at law, Narrator.* That *counting* was the peculiar province of serjeants, is shown by the fact of its having so long survived as one of the ceremonies observed on taking that degree. See *To count.*

The word *countour* occurs in Chaucer's description of the Frankelein:—

> A shereve hadde he ben, and a *countour,*
> Was no wher swiche a worthy vavasour.

Some copies, according to Selden, have *coronour* in this passage instead of *countour,* and *coronour* is preferred by the author of the note on 2 *Bl. Com.* 347, for the singular reason that the office of an *accountant* was inconsistent with the character.

COUNTRE. L. Fr. [Lat. *contra.*] Against; in opposition to. *Countre lez pointz des chartres. Conf. Chart.* 25 Edw. I.

COUNTREFAIRE. L. Fr. To counterfeit. *Britt.* c. 4.

COUNTREROULER. L. Fr. A controller. *Britt.* c. 1.

COUNTREVAL. L. Fr. Descending. *Kelham.*

COUNTRY. [L. Lat. *patria;* L. Fr.

pais.] In pleading and practice. The inhabitants of a district from which a jury is summoned in a cause.* "To make a certain jury of the *country*," were words of the old writ of *venire facias.*

A jury, summoned, or to be summoned. In pleading, a defendant "puts himself upon the country," (*ponit se super patriam,*) i. e. refers the trial of his cause to a jury. A "conclusion to the *country*" is an offer of trial by jury. 3 *Bl. Com.* 315. 3 *Steph. Com.* 589. *Steph. Pl.* 73, 78, 230, 237.

COUNTY. [L. Fr. *counte;* L. Lat. *comitatus.*] A civil division of a state or kingdom, for political and judicial purposes, formerly governed in England by the earl or *count*, from whom it derived its name. *Termes de la Ley.* 1 *Bl. Com.* 113, 116. *Crabb's Hist. Eng. Law*, 16. *Co. Litt.* 109 b. It is the same with *shire*, (*scyre,*) which was the corresponding term in Saxon. 1 *Bl. Com.* 116. The county court was sometimes anciently termed the *county. Termes de la Ley. Mirr.* c. 1, sect. 15. 9 *Co.* pref. See *United States Digest*, County.

COUNTY CORPORATE. A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county: such as London, York, Bristol, Norwich, and other cities in England. 1 *Bl. Com.* 120.

COUNTY COURT. [L. Lat. *curia comitatûs*, or *comitatus;* L. Fr. *counte.*] A court of high antiquity in England, incident to the jurisdiction of the sheriff. 2 *Bl. Com.* 35. 3 *Steph. Com.* 395. 4 *Co.* 33. 1 *Reeves' Hist. Eng. Law*, 7. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. 3 *Bl. Com.* 35. The freeholders of the county (anciently termed the *suitors* of the court) are the real judges in this court, and the sheriff is the ministerial officer. *Id.* 36. 1 *Reeves' Hist.* 7. This was formerly a court of great dignity and splendor, but is now fallen to an inferior rank; and even as an ordinary court, the resort to it, owing probably to the introduction of courts of request, is not very frequent.* 3 *Steph. Com.* 396. See *Com. Dig.* County courts, B. 3. *Bac. Abr.* County court.

In the United States, county courts are courts of record of inferior jurisdiction, and held by judges expressly appointed or chosen for the purpose. *Encyc. Americ.* See *United States Digest*, Courts.

COUNTY PALATINE. [L. Lat. *comitatus palatinus;* L. Fr. *county paleis* or *palais.*] A county in England distinguished by peculiar privileges; and so called from *palatium*, (a palace,) because its owner, whether duke or earl, had in such county royal prerogatives, (*jura regalia,*) as fully as the king had in his palace. 4 *Inst.* 205, 211, 216. There were originally three of these, Chester, Durham and Lancaster, but they are all now in the hands of the crown. *Id. ibid.* 1 *Bl. Com.* 116—119. 1 *Steph. Com.* 120, 121. *Sewell's Law of Sheriff*, 1. 1 *Crabb's Real Prop.* 489, § 630.

COUNTY SESSIONS, in England, are the general quarter sessions of the peace for each county, which are held four times a year. *Wharton's Lex. Warren's Law Studies*, 367.

COUPE. L. Fr. Fault; blame. *Britt.* c. 28, 100. *Coupable;* guilty. *Kelham. L. Fr. Dict.*

COUPER. L. Fr. To cut. *Coupes;* cut. *Dyer*, 35 b, (Fr. ed.) *Coupamus;* we cut. *Yearb.* M. 8 Edw. III. 2. *Coupastes;* you cut. *Id. ibid.*

COURE, *Courree, Courge.* L. Fr. To run. *Kelham. Courge;* runs. *Courge la distresse;* the distress runs or goes. *Britt.* c. 88.

COURS. L. Fr. Course; practice. (Lat. *cursus.*) *Ceo est un common* cours *quand*, &c. *Yearb.* H. 8 Hen. VI. 21.

COURT. L. Fr. and Eng. [L. Lat. *curia, curtis, placitum, judicium.*] A tribunal established for the public administration of justice, (*forum judiciale vel juridicum*); and composed of one or more judges, who sit for that purpose at certain fixed times and places, attended by proper officers.* *Spelman*, voc. *Curia.* See *infra.*

A place where justice is judicially administered. *Co. Litt.* 58. 3 *Bl. Com.* 23. —The place or tribunal wherein judges exercise their power.* *Hale's Anal.* sect. xi. —The place where judges are set to do justice.* *Finch's Law*, b. 4, ch. 1.

The persons of the judges so sitting for the administration of justice.* *Finch's Law, ub. sup.*

*** The definition of Lord Coke, which makes a court to be merely a *place* of justice, though sufficiently expressive of the original meaning of the term, (see *infra,*) fails obviously to convey its full modern signification. A *place* of meeting, indeed, is of the essence of a court, but *persons* also enter largely into its composition. Accordingly, it is well observed by Sir

William Blackstone, that in every court there must be at least three constituent parts, the *actor*, *reus*, and *judex;* the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judex*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appears to have been done, to ascertain and by its officers to apply the remedy. 3 *Bl. Com.* 25. A court may be more particularly described as an organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this its proper business, by its proper officers, viz. attorneys and counsel, to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings.* See *Skene de Verb. Signif.* voc. *Curia.*

The term *court* is obviously of Norman origin, being borrowed without change from the French of the middle ages. *Spelman*, voc. *Curia. Le haute* court; the high or supreme court. *Assises de Jerusalem*, c. ix. It seems to be derived from the L. Latin *curtis* of an earlier period, which, like *curia*, (the ordinary Latin form of the word,) denoted primarily the hall or palace of a sovereign or lord; and derivatively, (as that was the usual *place* of administering justice,) a court, in the modern sense. See *Curia*, *Curtis.*

COURT. [Lat. *curia.*] A legislative assembly. Parliament is called in the old books a court of the king, nobility and commons assembled. *Finch's Law*, b. 4, ch. 1, p. 233. *Fleta*, lib. 2, c. 2.

The term has been applied in the same sense to legislative bodies in the United States, as in Massachusetts.

COURT OF ADMIRALTY. See *Admiralty.*

COURT OF ARCHES. See *Arches.*

COURTS OF ASSIZE AND NISI PRIUS. Courts in England, composed of two or more commissioners, called judges of assize, (or of assize and *nisi prius*,) who are twice in every year sent by the queen's special commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are then under dispute in the courts of Westminster Hall. 3 *Steph. Com.* 421, 422. 3 *Bl. Com.* 57. See *Assize, Nisi Prius, Justices of assize.*

COURT OF ATTACHMENTS. See *Attachments.*

COURT BARON. [L. Lat. *curia baronis.*] An inferior court of civil jurisdiction in England, attached to a manor, being an inseparable incident thereto, and holden by the steward within the manor. 3 *Bl. Com.* 33. 1 *Reeves' Hist. Eng. Law*, 7. 9 *Co.* pref. See *Manor.* It is of two natures; the *court baron* proper, and *customary court.* The former is a court of common law, not of record, and is held before the freeholders who owe suit and service to the manor, such suitors being the judges of the court, the steward acting rather as registrar. 3 *Bl. Com.* 33. 3 *Steph. Com.* 393. 1 *Crabb's Real Prop.* 490, 491, § 631. The most important business of this court formerly was to determine, by writ of right, all controversies relating to the right of lands within the manor; and it may still hold plea of any personal actions of debt, trespass on the case, or the like, where the debt or damages do not amount to forty shillings. 3 *Bl. Com.* 33. 1 *Crabb's Real Prop.* 491—493, §§ 631—634. 3 *Steph. Com.* 393. This court, however, is now fallen into almost entire disuse. *Id.* 394.

The *customary court* is that which appertains entirely to the *copyholders*, in which their estates are transferred by surrender and admittance, and other matters transacted relative to these tenures only. 3 *Bl. Com.* 33. *Co. Litt.* 58 a. The steward is the judge of this court, the suitors acting merely as his assistants. The copyholders attending to their fealty at this court are called the *homage.* 1 *Crabb's Real Prop.* 494, § 635. See *Homage.*

The court baron is supposed by some to be so called, as being the *court* of the *barons*, (*curia baronum*,) or freeholders; *baron* having formerly had the sense of freeholder or freeman. *Co. Litt.* 58 a. 3 *Bl. Com.* 33. Fleta expressly calls it by that name. Lib. 2, c. 53. *Id.* c. 65, § 9. But the more obvious explanation seems to be that it is the *court* of the *baron* (*curia baronis*,) or lord of the manor, manors being formerly called *baronies*, and their lords *barons.* 4 *Inst.* 268. 2 *Bl. Com.* 90. *Cowell.* The expression *curia dominorum*, used by Fleta, seems to indicate this. Lib. 2, c. 53, § 4.

The old manors in the province of New-

York had their courts baron and courts leet. See Charters in *Bolton's Hist. of Westchester.*

COURT OF CHANCERY. See *Chancery.*

COURT OF CHIVALRY. A court formerly held before the lord high constable and earl marshal of England jointly, and afterwards before the latter only, having cognizance of contracts and other matters touching deeds of arms and war, as well out of the realm as within it. 4 *Inst.* 123. 3 *Bl. Com.* 68, 103, 105. It has grown out of use. *Id. ibid.* 4 *Steph. Com.* 329.

COURTS CHRISTIAN. [L. Lat. *curiæ christianitatis.*] The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 *Bl. Com.* 83. 3 *Id.* 64. 3 *Steph. Com.* 430. 2 *Inst.* 488. *Cowell.* See *Ecclesiastical courts.*

COURTS OF CONSCIENCE. See *Conscience.*

COURT OF COMMON PLEAS. See *Common Pleas.*

COURT OF COMMISSIONERS OF SEWERS. See *Commissioners of sewers.*

COURT OF DELEGATES. The great court of appeal in England in all ecclesiastical causes, consisting of delegates (*judices delegati,*) appointed by the king's commission, under his great seal, and issuing out of chancery, to represent his royal person, and hear all appeals to him made by virtue of the statute 25 Henry VIII. c. 19. 3 *Bl. Com.* 66. The judicial committee of the privy council is now substituted for this court. *Stat.* 2 & 3 *Will.* IV. c. 92; 3 & 4 *Will.* IV. c. 41, s. 3; 6 & 7 *Vict.* c. 38. 3 *Steph. Com.* 432, 434.

COURT FOR DIVORCE AND MATRIMONIAL CAUSES. The name of a new court established in England by statute 20 & 21 Vict. c. 85, (Aug. 28, 1857,) and to which has been transferred all the jurisdiction of the ecclesiastical courts in respect of divorces *à mensa et thoro*, suits of nullity of marriage, suits for restitution of conjugal rights, and in all causes and matters matrimonial. § 6. The judges of this court are the Lord Chancellor, the judges of the courts of Queen's Bench, Common Pleas and Exchequer, and the judge of the Court of Probate, (q. v.) who is called judge ordinary. § 9.

COURT OF THE DUCHY OF LANCASTER. A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446.

COURTS ECCLESIASTICAL. See *Ecclesiastical courts.*

COURT OF EQUITY. See *Equity, Chancery.*

COURT OF EXCHEQUER. See *Exchequer.*

COURT HAND. In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II. Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability. Sir James Burrow, speaking of the statute 4 Geo. II. c. 26, thus forcibly contrasts this style of writing with that by which it was superseded: "A statute now took place for converting them [common law pleadings] from a fixed dead language to a fluctuating living one; and for altering the strong, solid, compact hand, (calculated to last for ages,) wherein they were used to be written, into a species of handwriting so weak, flimsy and diffuse, that many a modern record will hardly outlive its writer, and few perhaps will survive much above a century." 1 *Burr.* pref. iv. Sir William Blackstone mentions another disadvantage attending the disuse of the old hand, "whereby the reading of any record that is fifty years old is now become the object of science, and calls for the help of an antiquarian." 3 *Bl. Com.* 323.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of *clerkship*, as it was called. Two sizes of it were employed, a large and a small hand; the former, called *great court hand*, being used for initial words or clauses, the *placita* of records, &c. *Towns. Pl. passim. Instr. Cler. passim.* See *Record.*

COURT OF HUSTINGS. The county court of London, held before the mayor, recorder and sheriff, but of which the recorder is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 *Steph. Com.* 449, note (*l*). See *Hustings.*

COURT OF JUSTICIARY. In Scotch law. The supreme criminal tribunal of Scotland. 2 *Alison's Crim. Pract.* 1.

COURT OF KING'S BENCH. See *King's Bench.*

COURT LEET. [L. Lat. *curia letæ;* the court of the leet.] A court of record in England, held once or twice in every year within a particular hundred, lordship, or manor, before the steward of the leet, for the preservation of the peace, and the punishment of all trivial misdemeanors. Its original intent was to *view the frank-pledges*, that is, the freemen of the liberty who anciently were all mutually pledges for the good behavior of each other; and hence it was called, by the Anglo-Normans, the view of frank pledge, (*visus franci plegii*). 4 *Bl. Com.* 273. *Spelman*, voc. *Leta.* 4 *Inst.* 261. *Mirr.* c. 1, § 10. 2 *Hawk. P. C.* 72. 1 *Crabb's Real Prop.* 495, § 637, *et seq. Tomlins.* It has, however, latterly fallen into almost total desuetude, its business having, for the most part, gradually devolved upon the quarter sessions. 4 *Steph. Com.* 340. See *Leet, Frank pledge, View of frank pledge.*

COURT OF MARSHALSEA. See *Marshalsea.*

COURT MARTIAL. A court held in the military and naval service, for the trial and punishment of offences against the regulations of the service.* 1 *Bl. Com.* 415. *Crabb's Hist. Eng. Law*, 553. The court of the constable and marshal was the earliest military or martial court in England, but courts martial, in their present form, do not appear to have been introduced before the reign of James II. *Id. ibid. Hale's Hist. Com. Law*, ch. 2.

COURT OF PECULIARS. A spiritual court in England, being a branch of, and annexed to the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions, are originally cognizable by this court, from which an appeal lies to the Court of Arches. 3 *Steph. Com.* 431. 4 *Reeves' Hist. Eng. Law*, 104.

COURT OF PIEDPOUDRE, PIE-POWDERS, or PYPOWDERS. [L. Lat. *curia pedis pulverizati.*] A court of record in England, incident to every fair and market, of which the steward of him who owns or has the toll of the market, is the judge. 6 *Co.* 12. 9 *Id.* pref. Its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined within the compass of one and the same day, unless the fair continues longer. It has cognizance of all matters of contract that can possibly arise within the precincts of that fair or market, and from it a writ of error lies, in the nature of an appeal to the courts at Westminster. 3 *Bl. Com.* 32, 33. It is the lowest, and at the same time the most expeditious court of justice known to the law of England, but has fallen into disuse, and is now in a manner forgotten. *Id. ibid.* 3 *Steph. Com.* 438. These courts do not seem to have been exclusively peculiar to fairs and markets, as they might be held by custom in cities, boroughs, and vills, for the collection of debts, &c. *Cro. Jac.* 313. *Cro. Car.* 46. 2 *Salk.* 604.

*** The derivation of the word *piedpoudre*, (from Fr. *pied*, a foot, and *poudre*, dust,) seems obvious enough, though, as to the reason of its application to this kind of court, there are different opinions. By some it is supposed to have been so called from the *dusty feet* of the suitors, the court being most usually held in summer. *Cowell. Blount.* By others, from the expedition of its proceedings, justice being done as speedily as *dust* can fall from the *foot.* 4 *Inst.* 272. Others have supposed it to mean the court of petty chapmen, (from O. Fr. *pied puldreaux*, Lat. *pede pulverosus*, a pedlar, or travelling merchant,) who usually resorted to fairs or markets. 3 *Bl. Com.* 32. *Barrington on the Statutes*, 337, [423.] *Skene de Verb. Signif.* voc. *Pede pulverosus.* This last supposition seems confirmed by Bracton's use of the term *pepoudrous* to denote that kind of speedy justice which persons of this description were entitled to; (*quibus exhibitur justitia* pepoudrous). *Bract.* fol. 334. Blount considers this to have been the same with that kind of court called, among the Saxons, *ceaping gemot.* See *Piedpoudre, Farandman, Pede pulverosus.*

COURT OF POLICIES OF ASSURANCE. A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. *Crabb's Hist. Eng. Law*, 503.

COURT OF PROBATE. The name of a new court established in England, by statute 20 & 21 Vict. c. 77, §§ 3, 4, (Aug. 25, 1857); and to which the testamentary jurisdiction of ecclesiastical and other courts has been transferred.

COURT OF QUEEN'S BENCH. See *Queen's Bench.*

COURT OF RECORD. A court where the acts and judicial proceedings are enrolled in parchment [or paper] for a perpetual memorial and testimony; and which has power to fine and imprison for contempt of its authority.* 3 *Steph. Com.* 383. 3 *Bl. Com.* 24. 1 *Wooddes. Lect.* 59, 60. Called in law French, *court que porte record;* a court which bears record. *Britt.* c. 68. See *Record.*

Courts *not of record* are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 *Steph. Com.* 384.

COURT OF REGARDS. One of the forest courts, held every third year for the lawing or expeditation of dogs. 3 *Bl. Com.* 72. *Crabb's Hist. Eng. Law*, 155. See *Expeditation.*

COURT OF REQUESTS. A court, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts. The ordinary constitution of these courts, which are generally for causes of debt to the amount of 40*s.* only, but often to the amount of 5*l.*, is to examine in a summary way, and without jury, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience. 3 *Steph. Com.* 451, and statutes there cited. 3 *Bl. Com.* 81, 82.

COURT OF STAR CHAMBER. [L. Lat. *curia cameræ stellatæ.*] A court of very ancient original in England, but new modelled by statutes 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20; having jurisdiction over riots, perjuries, misbehaviour of sheriffs, and other notorious misdemeanours, which were tried without the intervention of a jury. After having greatly abused its powers, it was abolished by statute 16 Car. I. c. 10. 4 *Bl. Com.* 266, 267. *Lamb. Archaion.* 158. 4 *Reeves' Hist. Eng. Law*, 146. See *Star Chamber.*

COURT OF THE STEWARD AND MARSHAL. A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the *verge. Crabb's Hist. Eng. Law*, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 *Reeves' Hist. Eng. Law*, 235, 247. This court had the same origin with the King's Bench, being like it an emanation from the *curia regis*, and obliged to attend the king *ubicunque fuerit in Anglia. Crabb's Hist.* 415. The steward was the judge of this court, and the marshal the ministerial officer.* *Id.* 185. 2 *Reeves' Hist.* 235, 247, 249, 420.

COURT OF WARDS AND LIVERIES. A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by stat. 32 Hen. VIII. c. 46, called *the court of the King's Wards.* To this was annexed, by stat. 33 Hen. VIII. c. 22, *the court of Liveries;* so that it then became the court of *Wards and Liveries.* 4 *Reeves' Hist. Eng. Law*, 258. This court was not only for the management of *wards*, properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. *Id.* 259. It was abolished by statute 12 Car. II. c. 24. *Crabb's Hist. Eng. Law*, 468. *Blount*, voc. *Wards and Liveries.*

COURT LANDS. [L. Lat. *curtiles terræ.*] In English law. Demains, or lands kept in demesne, i. e. in the lord's own hands, to serve his family. A term derived from the feudal law in which *terræ curtiles*, or *intra curtem*, signified lands appropriate to the court (*curtis,*) or house of the lord. *Spelman, Feuds*, c. 5. The same with what was called by the Saxons *inland*, being that which lay most convenient for the lord's mansion house, and therefore kept by the lords in their own hands, for the support of their family and for hospitality. The Normans called these lands *terræ dominicales*, the demains, or lord's lands. *Cowell*, vocc. *Court lands, Curtiles terræ.* See *Court, Curtis, Demesne.*

COUSIN. [Fr. *cosin;* L. Lat. *consanguineus.*] A kinsman or blood relation. Applied in the old books to a brother, sister, or uncle. *Litt.* sect. 108, 123, 389. *Co. Litt.* 80 b, 81 b. Cousin and heir (abbreviated *cous. et hær.*) is an expression

of frequent occurrence. *Dyer*, 79 a. *Hubback's Evid. of Success.* 586. In Devonshire, the word is still used to signify a nephew. 1 *Vesey, Jr.* 73. *Hubback*, 427, note.

COUSINAGE. See *Cosinage.*

COUST. L. Fr. Cost; charge. *Kelham.*

COUSTOUMIER, *Coustumier*, *Coutumier.* Fr. A collection of customs, usages and forms of proceeding in the old law of France. The most celebrated of these were the *Coutumier* of France, called the *Grand Coutumier*, and the *Coutumier de Normandie*, or *Grand Coustumier de Normandie.* *Crabb's Hist. Eng. Law*, 69. *Butler's* Note, 77, lib. 3, *Co. Litt.* *Butler's Hor. Jur.* 89—92. See *Grand Coustumier.*

COUSTUM, *Coutum.* L. Fr. [from *coust*, price, charge.] Toll or tribute. 1 *Bl. Com.* 314, note.

COUTHUTLAUGH. Sax. [from *couth*, knowing, and *utlaugh*, an outlaw.] In Saxon and early English law. A person who willingly and *knowingly* received an *outlaw*, and cherished or concealed him; for which offence he was anciently subject to the same punishment as the outlaw himself. *Bract.* fol. 128 b. *Spelman.*

COUVREFEU. L. Fr. Curfew. *Kelham.* See *Curfew.*

COVENABLE. L. Fr. and Eng. [Lat. *rationabilis.*] Convenient; becoming; fit or suitable. *Stat. Westm.* 1, pr. *Stat.* 4 *Hen.* VIII. c. 12. Also written *convenable.* *Stat.* 27 *Edw.* III. st. 2, c. 17. *Cowell.*

COVENANT. [from L. Fr. *convenant*, from *convenir*, to agree; L. Lat. *conventio.*] In conveyancing. The agreement or consent of two or more by deed in writing, sealed and delivered, whereby either or one of the parties promises to the other that something is done, or shall be done. *Shep. Touch.* 160. *Termes de la Ley.* *Plowd.* 308.—A promise by deed. 2 *Steph. Com.* 108.—A species of express contract contained in a deed, to do a direct act, or to omit one. 3 *Bl. Com.* 155.

This term is not usually employed as descriptive of any particular kind of deed, but is applied to those clauses of agreement contained in any instrument under seal, as a deed, lease, &c., whereby either party stipulates for the truth of certain facts, or binds himself to perform or give something to the other.* 2 *Bl. Com.* 304. As a covenant by a grantor that he has a right to convey, that the grantee shall have quiet possession; and by a lessee that he will pay the rent, keep the premises in repair, &c. *Id. ibid.* 2 *Hilliard's Real Prop.* 372, *et seq.*

COVENANT IN LAW, or *Implied covenant.* A covenant implied by law from certain words in a deed which do not express it. 1 *Archb. Nisi Prius*, 350. Thus, from the words *concessi* (have granted) or *demisi* (have demised) in a lease, a covenant for quiet enjoyment may be implied. *Spencer's case*, 5 *Co.* 16. *Shep. Touch.* 160. *Termes de la Ley.* 1 *Man. & Gr.* 195. 1 *Steph. Com.* 455, note (*q*). So, from the word *grant* in an assignment, the like covenant may be implied. *Carth.* 98. 9 *Ad. & El.* 532. In New-York, no covenant can be implied in any conveyance of real estate, whether such conveyance contain special covenants or not. 1 *Rev. St.* [738,] 731, § 140. And see 2 *Hilliard's Real Prop.* 365—367.

COVENANT IN DEED, called also *Covenant in fact*, (Fr. *covenant en fait*), and *covenant expressed.* A covenant expressed in words, or inserted in a deed in specific terms.* *Termes de la Ley.* *Shep. Touch.* 160. There is no set form of words necessary to constitute a covenant; the usual form is, that the covenantor, "for himself, his heirs, executors and administrators, covenants, promises and agrees to and with [the covenantee,] his heirs, executors, administrators and assigns, that," &c. 1 *Archb. Nisi Prius*, 250. *United States Digest*, Covenant. The formal word "*covenant*" itself is not absolutely essential for this purpose. *Bouvier*, voc. *Covenant*, pl. 10, and cases there cited. *Hilliard's Real Prop.* 364.

COVENANT INHERENT. A covenant which is conversant about the land, and knit to the estate in the land; as that the thing demised shall be quietly enjoyed, shall be kept in reparations, shall not be aliened, &c. *Shep. Touch.* (by Preston,) 161.

COVENANT COLLATERAL. A covenant which is conversant about some collateral thing that doth nothing at all, or not so immediately concern the thing granted; as to pay a sum of money in gross, &c. *Shep. Touch.* 161.

COVENANT REAL. A covenant in a deed binding the heirs of the covenantor, and passing to assignees, or to the purchaser. 2 *Bl. Com.* 304. 4 *Kent's Com.* 471, 472. A covenant which runs in the

realty so with the land, that he that hath the one, hath or is subject to the other. *Shep. Touch.* 161. It is thus distinguished from a *personal* covenant, which affects only the covenantor, and the assets in the hands of his representatives after his death. 4 *Kent's Com.* 470. The covenants in a deed that the grantor is lawfully seised, and has good right to convey, and that the land is free from incumbrance, are personal covenants, not running with the land; the covenant for quiet enjoyment, and the covenant of warranty, are in the nature of real covenants. 4 *Id.* 471. But see *Id.* 472, and notes. 1 *Sumner's R.* 263.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. *Termes de la Ley.* 3 *Bl. Com.* 156.

COVENANT RUNNING WITH LAND. A covenant which goes with the land, [conveyed by the deed in which it is expressed,] as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 *Kent's Com.* 472, note.—A covenant is said to run with the land, when not only the original parties [to the deed of conveyance] or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable, (as the case may be,) to its obligation. 1 *Steph. Com.* 455, and note (*r*). *Burton's Real Prop.* 157. Or, in other words, it is so called when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land. 1 *Smith's Leading Cases*, 27, note. *Spencer's case*, 5 *Co.* 16 a. 4 *Kent's Com.* 470—473. See 17 *Wendell's R.* 136. *United States Digest*, Covenant.

A covenant to pay rent, to produce title deeds, or for renewal, are covenants which run with the land. All covenants concerning title run with the land, with the exception of those that are broken before the land passes. 4 *Kent's Com.* 473.

COVENANT TO STAND SEISED TO USES. A species of conveyance by which a man seised of lands covenants, in consideration of blood or marriage, that he will *stand seised* to the use of his child, wife, or kinsman, for life, in tail or in fee. 2 *Chitty's Bl. Com.* 338, and notes. On executing this conveyance, the other party becomes seised of the use of the land, and the statute of uses immediately operates, and annexes the possession to the use. See *Use, Seisin to a use.* This conveyance has the same force and effect as a common deed of bargain and sale; but the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 4 *Kent's Com.* 492, 493. It is said to be no longer in use in England. 1 *Steph. Com.* 491, 492. *Id.* 333. But it is not unknown in practice in this country. 16 *Johns. R.* 515. 3 *New-Hamp. R.* 239. See 2 *Hilliard's Real Prop.* 312, *et seq.*

COVENANT. In practice. The name of a writ, or action (L. Lat. *breve de conventione*,) that anciently lay for non-performance of any covenant in writing. *Reg. Orig.* 165—167. *F. N. B.* 145. It might be brought for the recovery of land, or any thing issuing out of lands, or of moveables. *Crabb's Hist. Eng. Law*, 214, 290. According to Mr. Reeves, it was first given by the statute of Wales, (*statutum Walliæ*,) and he says that no forms of it are mentioned by Bracton or Fleta. 2 *Reeves' Hist. Eng. Law*, 262. Such a writ, however, is clearly mentioned by Bracton in more than one passage. *Si quis a conventione recedat, succurritur alteri parti per* actionem de conventione; if any one withdraw from [refuse to perform] his covenant, the other party has a remedy by an *action of covenant. Bract.* fol. 34. *Per* breve de conventione. *Id.* fol. 220. *Crabb's Hist. Eng. Law*, 214, 290. 3 *Bl. Com.* 156.

COVENANT. In practice. The name of one of the modern forms of actions *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. 1 *Archb. Nisi Prius*, 250. *Browne on Actions*, 352. 1 *Chitt. Pl.* 115.

COVENANTOR. The party who makes a covenant. *Shep. Touch.* 160.

COVENANTEE. The party to whom a covenant is made. *Shep. Touch.* 160.

COVENANTS DEPENDENT and INDEPENDENT. See *Dependent covenants*, *Independent covenants.*

COVENT. Used in the old books for *convent. Litt.* sect. 133. *Co. Litt.* 94 a, b. *Dyer*, 73, (Fr. ed.) *Cowell.* The omission of the letter *n* after the vowel *o*, was a very common mode of contraction both in Latin and French; as *coventus* for *conventus; covenable* for *convenable.* Hence the English word *covenant* for the Fr. *convenant.* See *Contraction.*

COVENTRY ACT. The English statute 22 & 23 Car. II. c. 1, enacted for the punishment of the offence of cutting off or disabling a limb or member, with intent to maim or disfigure. It was so called from being occasioned by an assault on Sir John Coventry in the street. 4 *Bl. Com.* 207. *Crabb's Hist. Eng. Law*, 528. This, with other statutes on the same subject, is now repealed by 7 & 8 Geo. IV. c. 27, and 9 Geo. IV. c. 31, which latter act is itself repealed, as far as its provisions relate to this subject, by 7 Will. IV. and 1 Vict. c. 85. 4 *Steph. Com.* 126, note.

COVERT. Fr. and Eng. [Fr. *couvert*, from *couvrir*, to cover; L. Lat. *co-opertus*.] Covered; protected; sheltered. A *pound covert* is one that is close or covered over, as distinguished from *pound overt*, which is open overhead. *Co. Litt.* 47 b. 3 *Bl. Com.* 12. A thicket or other shelter (*latibulum*) for wild animals in a forest, is called a *covert*, (*co-opertum*, q. v.) *Spelman.* 16 *M. & W.* 569. A *feme covert* is so called, as being under the wing, protection or *cover* of her husband. 1 *Bl. Com.* 442. *Covert d'un A.;* covert of one A. *Yearb.* H. 5 Edw. III. 37. See *Feme covert*, *Overt.* In the old colony laws of New Plymouth, children are said to be "under the covert" of their parents. *Laws of Col. N. Plymouth*, Nov. 15, 1636.

COVERT BARON, or COVERT DE BARON. L. Fr. [L. Lat. *viro co-operta*.] Under the protection of a husband; married. 1 *Bl. Com.* 442. *La feme que est* covert de baron; the woman which is covert of a husband. *Litt.* sect. 670. See *Baron*, *Baron & Feme.*

COVERTURE. [from *covert*, q. v.] A covering; a state of being covered or protected; or, according to Lord Coke, a state of subjection or dependence. *Co. Litt.* 112 a. The condition of a woman during marriage is so called. 1 *Bl. Com.* 442. 2 *Steph. Com.* 298. *Cowell.*

COVIN. [L. Lat. *covina*.] A secret assent or agreement determined in the hearts of two or more, to the prejudice of another. Mountague, C. J. *Plowd.* 54. *Termes de la Ley. Co. Litt.* 357 b. *Finch's Law*, b. 1, c. 3, num. 64.

COVINOUS. Deceitful; fraudulent.

CRAIERA. L. Lat. In old records. A vessel of lading or burden; a hoy or smack. *Pat.* 2 *Ric.* II. *Cowell.* See *Crayer.*

CRAIRE. See *Creier.*

CRANAGE. [L. Lat. *cranagium*.] In English law. A liberty to use a crane for drawing up wares or goods out of any vessel at any creek or wharf, and to make profit of it. *Termes de la Ley. Hale de Jur. Mar.* pars 2, c. 6. *Cowell.*

The money taken for such work. *Id.*

CRAPPA. L. Lat. In old English law. A crop. *Fleta*, lib. 2, c. 82, § 2. See *Croppa.*

CRASPICE. See *Crassus.*

CRASSUS, *Crassa.* Lat. [Fr. *grosse*.] Large; gross. *Crassus piscis;* (*craspice;*) large fish. *Bract.* fol. 55 b. Called in another place, *grossus piscis; sicut balæna, sturgio et alii pisces regales;* (the whale, sturgeon and other royal fish). *Id.* fol. 14, 120. These were called *royal* fish, as belonging to the king, when either thrown ashore, or caught near the coast. 1 *Bl. Com.* 290.

Gross; excessive; extreme. *Crassa ignorantia;* gross ignorance. *Fleta*, lib. 5, c. 22, § 18. Lord Ellenborough, 8 *East*, 348. *Crassa negligentia;* gross negligence. 4 *Bell's Appeal Cases*, 57, 58. Called by Lord Brougham, "crass negligence." *Id.* 58.

CRASTINUM. Lat. [from *cras*, tomorrow.] The morrow; the day after. See *Crastino.*

CRASTINO. L. Lat. In old English practice. On the morrow. A title formerly given to the return days of writs, days in bank, or appearance days in the courts at Westminster. 3 *Bl. Com.* 277. 2 *Reeves' Hist. Eng. Law*, 56, 57.

Crastino animarum; (on the morrow of All Souls;) one of the return days in Michaelmas Term, and the first day of the term. *Crastino purificationis beatæ Mariæ virginis;* (on the morrow of the purification of the blessed virgin Mary;) one of the return days in Hilary term. *Crastino ascencionis Domini;* (on the morrow of the Ascension;) one of the return days in Easter term. *Crastino sanctæ Trinitatis;* (on the morrow of the holy Trinity;) one of the return days in Trinity term; and the first day of the term. 2 *Reeves' Hist. ub. sup.* 1 *Tidd's Pract.* 106. See *Fleta*, lib. 2, c. 35.

CRAVEN, *Cravent*, *Cravant.* [from Sax. *crafian*, to crave, beg or implore.] In old English law. A word of obloquy and disgrace, in the ancient trial by battel, on the uttering of which by either champion, he was considered as yielding the victory to

his opponent, and was condemned, as a recreant, *amittere liberam legem*, [to lose his frank-law,] that is, to become infamous, and not to be accounted a free and lawful man, (*liber et legalis homo*,) being supposed by the court to be proved forsworn, and therefore never to be put on a jury or admitted as a witness in any cause. 3 *Bl. Com.* 340. 4 *Id.* 348. 4 *Steph. Com.* 415. Called *verbum recreantisæ*, the word of recreancy. *Fleta*, lib. 1, c. 38, § 18. The word is still popularly used in the same dishonorable sense. See *Battel*, *Champion*, *Recreant*.

CRAYER. In old English law. A kind of small sea-vessel or ship. *Stat.* 14 *Car.* II. c. 27. *Cowell.*

CREAMUS. Lat. [from *creare*, to create.] We create. One of the words by which a corporation in England was formerly created by the king. 1 *Bl. Com.* 473.

CREANCE. L. Fr. [from *creier*, to believe.] Belief; persuasion; trust; credit; faith. *L. Fr. Dict.*

CREANCER, *Creansor*, *Creaunsour*. L. Fr. [from *creance*, q. v.] One who trusts or gives credit; a creditor. *Britt.* c. 28, 78.

CREARE. Lat. In the civil law. To create; to constitute or appoint, as a guardian, (Gr. χειροτονεῖν.) *Dig.* 26. 5. 21.

CRECA, *Creccum*. L. Lat. In old English law. A creek or landing place. *Towns. Pl.* 62. *Cowell. Plowd.* 1. See *Creek*.

CREDENTIALS. Papers which give a title or claim to confidence; as the letters of commendation and power given by a government to an ambassador or envoy, which give him credit at a foreign court.

CREDERE. Lat. To believe; to put faith in; to confide; to trust; to entrust with. See *Dig.* 12. 1. *Mercatores et alii creditores qui bona et catalla sua diversis debitoribus crediderint;* merchants and other creditors who may have trusted their goods and chattels to divers debtors. *Fleta*, lib. 2, c. 64, § 1.

CREDIBILITY. [from *credible*, q. v.] In the law of evidence. Worthiness of belief; that quality in a witness which renders his evidence worthy of belief. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. 1 *Burr.* 414, 417. 3 *Bl. Com.* 369.

CREDIBLE. [Lat. *credibilis*, from *credere*, to believe, or trust.] In the law of evidence. To be believed; entitled to credit; worthy of belief. A term applied to a witness after his evidence is given. This term is never used as synonymous to *competent*. When applied to testimony, it presupposes the evidence given. Lord Mansfield, 1 *Burr.* 414, 417. 1 *W. Bl.* 98.

CREDIT. [Lat. *creditum*, from *credere*, q. v.] Belief; trust; confidence.

Payment of money, in confidence of future re-payment. Transfer of property sold, in confidence of future payment of the purchase money.

Capacity of being trusted; ability to borrow; the reputation of solvency or probity which entitles a man to be trusted. Credit is neither money, goods nor a chose in action. McCoun, J. 4 *Comstock's R.* 472.

CREDITOR. Lat. and Eng. [from *credere*, to trust.] One who gives or has given credit to another; one who trusts another; one to whom a debt is due.* The correlative of *debtor*.

In a large sense, one to whom any obligation is due. *Creditorum appellatione non hi tantum accipiuntur qui* pecuniam *crediderunt, sed omnes quibus ex qualibet causâ debetur.* *Dig.* 50. 16. 11.

CREDITUS. Lat. In old English law. Believed; trusted. *Male creditus;* ill thought of; in bad repute or credit. *Bract.* fol. 116.

CREEK. [L. Lat. *creca*, *creccum;* O. Eng. and L. Fr. *cryke*.] In English law. A small inlet of the sea.* A corner of the sea, let into the land farther than ordinary. *Callis on Sewers*, [58,] 72. An inlet of sea, cornered into the main land. *Id.* [56,] 69.—A narrow little passage, having shore on either side. *Hale de Jur. Mar.* pars 2, c. 2. A part of a haven where any thing is landed from the sea. *Cowell.*—A landing place; a small landing place, or "arrival." *Blount. Stat.* 4 *Hen.* IV. c. 20, cited *ibid.* Lord Hale makes a distinction between creeks of the sea and creeks of ports. *Hale de Jur. Mar. ub. sup.*

In American law. A small stream, less than a river. A small river. 12 *Pick. R.* 184. 1 *Comstock's R.* 107.

CREIER, *Creyer*, *Crere*, *Crier*, *Craire*, *Crayer*. L. Fr. To believe; to give credit to; to confide in; to trust; to entrust with. *Kelham. L. Fr. Dict. Britt.* c. 4.

CREMENTUM COMITATUS. L. Lat. In old English law. The increase of the county. The sheriffs of counties anciently answered, in their accounts, for the *im-*

provement of the king's rents above the ancient vicontiel rents, under this title. *Hale's Sheriffs' Accounts*, 86. *Wharton's Lex.*

CREPARE OCULUM. L. Lat. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it. *Wharton's Lex.*

CREPIDO. Lat. In old pleading. A creek. *Towns. Pl.* 195.

CREPUSCULUM. Lat. In old English law. Daylight or twilight; the light which continues after the setting, or precedes the rising of the sun.* 4 *Bl. Com.* 224. 4 *Steph. Com.* 147. *Fleta*, lib. 5, c. 5, § 31.

CRETA. Lat. Chalk. *Fleta*, lib. 4, c. 19, § 6.

CRETIFODINA. Lat. [from *creta*, and *fodire*, to dig.] In the civil law. A chalk-pit. *Dig.* 7. 1. 9. 2. *Id.* 7. 1. 13. 5. *Id.* 8. 3. 5.

CRETINUS. L. Lat. [L. Fr. *cretine, cretain.*] In old records. A sudden stream or torrent; a rising or inundation. *Cowell. Hist. Croyl. Contin.* 485.

CRETIO. Lat. In the civil law. A certain number of days allowed an heir to deliberate whether he would take the inheritance or not. *Calv. Lex.*

CREW. In maritime law. A ship's company, embracing all the officers, as well as the common seamen. Story, J. 3 *Sumner's R.* 209, 213, 214. This is the ordinary sense of the word. *Id.* 216.

In a stricter sense, the officers and common seamen of a vessel, excluding the master. *Id.* 214.

In the strictest sense, the common seamen only, excluding the master and officers. *Id. ibid.* See *Id.* 216.

CREW LIST. In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of Congress, and sometimes by treaties. *Act of Congress*, March 3, 1813. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. *Jacobsen's Sea Laws*, 66, 69, note.

CRI. L. Fr. Cry; hue and cry. *LL. Gul. Conq.* ll. 5, 48.

CRIE. L. Fr. A proclamation. *Britt.* c. 2.

A cry, or outcry. *Crie de pays;* the cry of the country; hue and cry. *Stat. Westm.* 1, c. 9. See *Cry de pais.*

CRIER. L. Fr. To proclaim; to make proclamation. *Kelham.*

To read or recite aloud. See *Criez la peez.*

CRIER. [L. Fr. *crioyr;* Lat. *præco.*] In practice. An officer of a court, whose duty is to make proclamation of the opening and adjournment of the court; to call parties, jurors and witnesses in causes; to assist in the administration of oaths; to impose silence during the proceedings, and to perform other incidental services. See *Bacon's Works*, iv. 316.

An auctioneer. See *Cryer.*

CRIEZ LA PEEZ. L. Fr. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared, directed the serjeant or countor in attendance to recite or *read aloud* the *concord* or agreement between the parties, as to the lands intended to be conveyed. *Stat. Modus Levandi Fines*, 18 *Edw.* I. st. 4. 2 *Inst.* 510. 2 *Reeves' Hist. Eng. Law*, 224, 225. *Crabb's Hist.* 179. See *Concord, Countor, Fine.*

CRIM. CON. An abbreviation of *Criminal conversation*, (q. v.)

CRIME. [Lat. *crimen.*] An act committed or omitted, in violation of a public law, either forbidding or commanding it. 4 *Bl. Com.* 5.—A breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity; as distinguished from a civil injury.* *Id. ibid.* See *Civil injury.*—The violation of a right when considered in reference to the evil tendency of such violation, as regards the community at large. 4 *Steph. Com.* 55. 1 *Id.* 127, 128. In this sense, crimes include misdemeanours.

In a narrower sense, a crime is distinguished from a misdemeanour, as being an offence of a deeper and more atrocious dye, [and usually amounting to a felony]. 4 *Bl. Com.* 5. See *Felony, Misdemeanour.*

In New-York, the terms "crime" and "offence," have been declared to mean "any offence for which any criminal punishment may by law be inflicted." 2 *Rev. Stat.* [702, § 32,] 587, § 33. This definition has been adopted by Mr. Warren. *Law Studies*, 355, (Am. ed.)

CRIMEN. Lat. (plur. *crimina.*) A crime. See *Crime.*

In the civil law. An accusation or charge. *Inst.* 1. 26, pr. *Cooper's Notes in loc. Heinecc. El. Jur. Civ.* lib. 1, tit. 26,

§ 302. It has also sometimes this sense in English law. *Crimen felonicæ imposuit* has often been translated, "imposed the crime of felony," but perhaps its more appropriate signification is—"preferred a charge of felony." Abbott, J. 6 *M. & S.* 33.

CRIMEN FALSI. Lat. In the civil law. The crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; or by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. *Dig.* 48. 10. *Hallifax, Anal.* b. 3, ch. 12, num. 56—59. See *Falsum.*

In the common law, this term is also used, but in no precise or determinate sense. In the ancient law of England, it was employed to denote the making of false charters, false measures, false money, and other falsifications. 1 *Reeves' Hist. Eng. Law*, 200. 2 *Id.* 8, 9. *Glanv.* lib. 14, c. 7. More particularly it was used to signify the two crimes of counterfeiting or falsifying the king's *seal*, and of making false *money*, (including the reduction of the value of genuine coin, as by clipping.) *Bract.* fol. 104 b, 119 b. *Fleta*, lib. 1, c. 22. In Scotch law, it has been defined, "a fraudulent imitation or suppression of truth, to the prejudice of another." *Ersk. Inst.* b. 4, tit. 4, § 66.

In modern law, its predominant signification is *forgery;* though it includes also perjury and offences of a kindred character. 4 *Bl. Com.* 89, 247. 4 *Steph. Com.* 89, 247. But it appears never to have been employed in the extensive sense given to it by the civil law. 1 *Greenleaf on Ev.* § 373, and note. Wilde, J. 11 *Metcalf's R.* 302.

CRIMEN INCENDII. L. Lat. In old criminal law. The crime of burning, (Sax. *bernet,*) which included not only the modern crime of arson, (or burning of a house,) but also the burning of a man, beast or other chattel. *Britt.* c. 9. *Mirr.* c. 1, sect. 8. *Crabb's Hist. Eng. Law*, 308. See *Arson.*

CRIMEN LÆSÆ MAJESTATIS. Lat. In criminal law. The crime of injuring majesty, or violating the majesty of the prince; high treason. *Glanv.* lib. 1, c. 2. *Bract.* fol. 118, 119. 4 *Bl. Com.* 75. 2 *How. St. Trials*, 167. A term used by the ancient writers on English law, to denote any offence affecting the king's person or dignity. *Crabb's Hist. Eng. Law*, 302. 2 *Reeves' Hist.* 6. Called also *lese-majesty*, and sometimes simple *majestie.*

It is borrowed from the civil law, in which *crimen majestatis* signified the undertaking of any enterprise against the emperor or the republic. *Inst.* 4. 18. 3. *Dig.* 48. 4. 1. 1. See *Lese-majesty.*

CRIMINAL. [Lat. *criminalis*, from *crimen*, crime.] Relating to crime; as criminal law, criminal evidence.

Having the character of crime, as a criminal act.

CRIMINAL CONVERSATION. Adultery; unlawful intercourse with a married woman.

CRIMINAL INFORMATION. In English criminal law. A proceeding at the suit of the king, without a previous indictment or presentment by a grand jury. 4 *Bl. Com.* 398. *Cole on Criminal Informations.*

CRIMINAL LAW. That branch or division of law which treats of crimes and their punishments.

CRIMINAL LETTERS. In Scotch practice. A writ summoning a party accused of crime, to appear and stand trial on a day named. 2 *Alison's Pr.* 217.

CRIMINALIS. Lat. [from *crimen*, q. v.] In old English law. Criminal. *Placitorum aliud est* criminale, *aliud civile. Glanv.* lib. 1, c. 1. *Placitorum alia* criminalia, *et alia civilia;* of actions some are criminal and others civil. *Bract.* fol. 101 b. *Actiones criminales. Fleta*, lib. 1, c. 16, § 3.

In criminalibus sufficit generalis malitia intentionis, cum facto paris gradus. In criminal cases, general malice of intention is sufficient, if followed by an act of equal or corresponding degree. *Bacon's Max.* 65, regula 15. "All crimes have their conception in a corrupt *intent*, and have their consummation and issuing in some particular *fact*, which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature. *Id. ibid.* Therefore, if an impoisoned apple be laid in a place to poison J. S., and J. D. cometh by chance and eateth it, this is murther in the principal that is actor; and yet the malice *in individuo* was not against J. D." *Id. ibid.*

CRIMINALITER. Lat. [from *crimi-*

nalis.] Criminally. *Inst.* 4. 4. 10. *Bract.* fol. 101 b, 102.

CRIMINATE. To expose a person to a criminal charge. A witness cannot be compelled to answer any question which has a tendency to criminate him. See 1 *Stark. Ev.* 144.

CR'M. A contraction of *crastinum*, (q. v.) in old pleadings. 1 *Inst. Cler.* 9.

CR'O. A contraction of *crastino*, (q. v.) *Fleta*, lib. 2, c. 32, § 2.

CRO, *Croo, Croy.* In old Scotch law. A composition, satisfaction or assythment, (q. v.) for the slaughter of a man. *Reg. Majest.* lib. 4, c. 24. *Spelman. Act. Ja.* I. p. 6, c. 93. *Skene de Verb. Sign.* The same with the Saxon *weregild.*

CROCKARDS, *Crocards.* A foreign coin of base metal, prohibited by statute 27 Edw. I. st. 3, from being brought into the realm. 4 *Bl. Com.* 98. *Crabb's Hist. Eng. Law*, 176.

CROFT. [L. Lat. *croftum, croftus, crofta, cruftum, crufta.*] In old English conveyancing. A small piece of ground adjoining a dwelling-house, and enclosed for pasture or arable, or any particular use; a close. *Cowell. Spelman. Blount.* 11 *East*, 58. The same with what was formerly called a *pightel*, (q. v.) Spelman describes it as lying behind a farm-house, and fenced off from the larger fields for the purpose of keeping farm animals for sudden uses, (*ut animalia rustica subitis usibus exhibeat*). Derived by some from Sax. *creaft*, skill, from the skill laid out in cultivating it. *Termes de la Ley. Cowell.* But by Spelman, through the Lat. *crypta*, from Gr. κρύπτω, to conceal, as being a secret or separate place. See *Close.*

CROIRE. L. Fr. To believe. *Kelham.* See *Creier.*

CROISES, *Croyses.* L. Fr. [L. Lat. *cruce signati.*] Pilgrims; so called as wearing the sign of the *cross* on their upper garments. *Britt.* c. 122. The knights of the order of St. John of Jerusalem, created for the defence of the pilgrims. *Cowell. Blount.* See *Cruce signati.*

CROPPA, *Croppus.* L. Lat. In old records. A crop; the product of a harvest. *Registr. Cant. Ecclesiæ MS. Cowell.*

CROSS ACTION. In practice. An action brought by a party sued against the party who has sued him, upon the same subject matter, as upon the same contract.* This is necessary whenever the subject matter of the action cannot be used as a defence to the first action. 10 *Ad. & Ell.* 643. 2 *Smith's Leading Cases*, 1, notes, 14. See *Circuity of action.*

CROSS BILL. In equity pleading. A bill filed by a defendant in a suit in equity, against the plaintiff or complainant, in order to obtain some relief against him. 3 *Bl. Com.* 448. A defendant cannot pray any thing in his answer but to be dismissed the court; if he has any relief to pray against the plaintiff, he must do it by an original bill of his own, which is called a *cross bill. Id. ibid.* A cross bill is a bill brought by a defendant against a plaintiff or other parties in a former bill depending, touching the matter in question in that bill. *Mitford's Eq. Pl.* 80, 81, (98, and note, Moulton's ed. 1849). It is treated as a mere auxiliary suit, or as a dependency upon the original suit. *Story's Eq. Pl.* § 399. It is generally considered and used as a matter of defence; the original and the cross bill constituting but one cause. 7 *Johns. Ch. R.* 252. A cross bill answers to the *re-conventio* of the civil law. *Gilb. Forum Rom.* ch. 4.

CROSS EXAMINATION. In practice. The examination of a witness by the party opposed to the party who has first examined him, in order to test the truth of such first or direct examination, which is also called examination in chief.* Cross examination is usually by the party who did not call the witness; but the courts frequently permit an adverse witness to be cross examined by the party who calls him. 1 *Starkie on Evidence*, [132,] 187, 188.

CROSS REMAINDER. A species of remainder created out of a tenancy in common. When lands are given to two or more, as tenants in common, it frequently happens that a particular estate is limited to each of the grantees in his share, with remainder over to the other or others of them,—as if a man give lands to his two children as tenants in common in tail, and direct that upon failure of the issue of one of them, his share shall go over to the other in tail, and *vice versa.* Such ulterior estates as these are called *cross remainders*, because each of the grantees has reciprocally a remainder in the share of the other; and it is a rule respecting them that in a *deed* they can be given only by express limitation, and shall never be implied; though it is otherwise with respect to *wills*, which are expounded more liberally, with a view to the presumable intent of the donor; for in

these, cross remainders may be raised not only by actual limitation, but by any expression from which the design to create them can reasonably be inferred. 1 *Steph. Com.* 326, 327. So, where a devise is of Black-acre to A., and of White-acre to B., in tail, and if they both die without issue, then to C. in fee; here A. and B. have *cross remainders* by implication, and on the failure of either's issue, the other or his issue shall take the whole. 2 *Bl. Com.* 381. See 2 *Crabb's Real Prop.* 972, § 2339, *et seq.* 1 *Preston on Est.* 94, 115. 2 *Powell on Devises*, 604, ch. xxxi. 4 *Kent's Com.* 210. 1 *Hilliard's Real Prop.* 650.

CROWN. [Lat. *corona;* Fr. *corone.*] The sovereign power in a monarchy, especially in relation to the punishment of crimes. "Felony is an offence of the crown." *Finch's Law*, b. 1, ch. 16.

CROWNER, *Crouner.* In old Scotch law. Coroner; a coroner. 1 *Pitc. Crim. Trials*, part 2, p. 82. *Skene de Verb. Sign.* voc. *Coroner.*

CROWN LAW. Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 *Bl. Com.* 2. See *Pleas of the Crown.*

CROWN OFFICE. A department belonging to the court of Queen's Bench, commonly called the *crown side* of the court, in which it takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanour or breach of the peace. 4 *Bl. Com.* 265. 4 *Steph. Com.* 326. In this office, informations are filed by the attorney-general, and master of the crown office. *Id.* 379. 4 *Bl. Com.* 308. *Cole on Crim. Inform.* ch. i. ii. and *Addenda.*

CROWN SIDE. The criminal department of the court of Queen's Bench; the civil department or branch being called the *plea side.* 4 *Bl. Com.* 265. 3 *Id.* 42. See *Crown office.*

CRUCE SIGNATI. L. Lat. [Fr. *croises, croyses.*] In old English law. Signed or marked with the cross. Pilgrims to the holy land [or crusaders]; so called because they wore the sign of the cross upon their garments. *Spelman*, voc. *Cruciferi. Bract.* fol. 20. *Id.* fol. 338 b, 444. *Mag. Cart. Johan.* c. 57.

CRUCIS JUDICIUM. Lat. In old European law. The trial or judgment of the cross. One of the modes of trial by which crimes were formerly attempted to be discovered or purged. *Spelman.*

CRUELTY. [Lat. *sævitia.*] In the law of divorce. Such conduct on the part of a husband towards his wife as affords a reasonable apprehension of bodily hurt. 1 *Hagg. Cons. R.* 35. See 2 *Kent's Com.* 125, 126. 19 *Connecticut R.* 189. 6 *Texas R.* 18.

CRUISE. A voyage for the purpose of making captures *jure belli.* Story, J. 2 *Gallison's R.* 526, 538, 539.

CRUX. Lat. In old English law. A cross; the cross. The badge of the old crusaders, and of the Templars and Hospitallers. *Fleta*, lib. 2, c. 50, §§ 16, 18.

CRY (or CRIE) DE PAIS. L. Fr. In old English law. The cry of the country. The hue and cry after offenders, as raised by the country, [i. e. the inhabitants,] in the absence of the constable to whom that duty properly belonged. 2 *Hale's P. C.* 100. See *Hue and cry.*

To CRY. To call out aloud; to proclaim; to publish; to sell at auction. "To cry a tract of land." 1 *Wash.* (Va.) *R.* [260,] 335. "Cries it out to C. as the highest bidder." *Id.* See 9 *Grattan's R.* 541. 11 *Id.* 99. See *Outcry.*

CRYER, *Crier.* An auctioneer. Lyons, J. 1 *Wash.* (Va.) *R.* [262,] 337. One who calls out aloud; one who publishes or proclaims. See *Crier.*

CUCKING STOOL. In old English law. An ancient engine for the punishment of scolds, delinquent brewers and bakers, called also *tumbrel, trebucket,* and *castigatory,* (qq. v.) It seems to have been anciently written *goging stole,* and corrupted into *ducking stool* from the immersion in water which was a part of the punishment. 4 *Bl. Com.* 169. *Blount.*

CUCURBITARE. L. Lat. In feudal law. To cuckold; to make a cuckold. *Feud. Lib.* 1, tit. 5. *Lib.* 2, tit. 38.

CUENS, *Quens.* L. Fr. Count or earl. *Kelham.*

CUI. Lat. To whom. See *Per et Cui.*

CUI ANTE DIVORTIUM. L. Lat. (Whom before divorce.) In old English practice. A writ of entry which lay for a woman divorced from her husband, to recover her lands, &c., from him to whom her husband had alienated them during the marriage. It was so called from the words of the writ,—cui *ipsa* ante divortium *inter eos celebratum, contradicere non potuit,* &c., (whom she, before the divorce between

them, could not gainsay). *Reg. Orig.* 233. *F. N. B.* 204, F. 3 *Bl. Com.* 183, note. *Termes de la Ley. Crabb's Hist. Eng. Law*, 287. See 3 *Reeves' Hist.* 38. *Roscoe's Real Act.* 97.

CUI BONO. Lat. For whose good; for whose use or benefit. "*Cui bono* is ever of great weight in all agreements." Parker, C. J. 10 *Mod.* 135. Sometimes translated—for what good, for what useful purpose.

CUI IN VITA. L. Lat. (Whom in the life.) In old English practice. A writ of entry which lay for a woman against him to whom her husband aliened her lands or tenements in his lifetime. So called from the words of the writ,—cui *ipsa* in vita *sua contradicere non potuit*, &c.; (whom she, in his lifetime, could not gainsay, &c.) *Reg. Orig.* 232 b. *F. N. B.* 193. *Bract.* fol. 202, 321 b. 2 *Bl. Com.* 183, note. *Stat. Westm.* 2, c. 3. *Litt.* sect. 594. 3 *Reeves' Hist.* 36. *Roscoe's Real Act.* 96.

Cui jurisdictio data est, ea quoque concessa esse videntur, sine quibus jurisdictio explicari non potest. To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. *Dig.* 2. 1. 2. 1 *Wooddes. Lect.* Introd. lxxi. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 *Kent's Com.* 339.

Cui jus est donandi, eidem et vendendi et concedendi jus est. He who has the right of giving has also the right of selling and granting. *Dig.* 50. 17. 163.

Cui licet quod majus, non debet quod minus est non licere. He who is allowed to do the greater, ought not to be prohibited from doing the less. He who has authority to do the more important act, ought not to be debarred from doing what is of less importance. 4 *Co.* 23. One who has power to grant in fee simple may grant for life or for years; for an estate in fee simple includes all. *Id. ibid.* A man having a power to do a thing, may do less than such power enables him to do. *Broom's Maxims*, 76, [130.] A doctrine frequently applied in the law of principal and agent. More briefly expressed in the civil law, **Non debet, cui plus licet, quod minus est non licere.** It ought not to be that he who is allowed to do the greater, should not be allowed to do the less. *Dig.* 50. 17. 21.

Cuicunque aliquis quid concedit, concedere videtur et id sine quo res ipsa esse non potuit. See *Concedere.*

Cuilibet in arte sua perito est credendum. Any person skilled in his peculiar art or profession, is to be believed, [i. e. when he speaks of matters connected with such art.] *Co. Litt.* 125 a. *Shelford, Marr. & Div.* 206. Credence should be given to one skilled in his peculiar profession. *Broom's Max.* [720.] Applied to witnesses who are persons of *skill*, (*periti*, or *experts*, as they are frequently called) in any particular science, trade or occupation, implying that their statements on such subjects are to be *believed*, or received as evidence. *Id. ibid.* 421. The authority of mercantile usage, which is proved by merchants, rests on this maxim. 1 *Bl. Com.* 75.

The following translations have been given of this maxim: "Every man is to be considered skilful in his own profession." *Branch's Princ.* "Every one is considered skilful in his own art." *Wharton's Lex.* Both these are not only grammatically incorrect, (the peculiar sense of *credendum* being also overlooked,) but convey a very different meaning from that intended by the original, which it will be seen embraces two ideas; *skill* in a party offered as a witness, and *belief* or credit founded thereon. So far from *presuming* skill in such cases, the law generally requires that fact to be established by preliminary examination. See *Broom's Max.* 424, [724,] and the case there cited. When the witness is shown to be *peritus*, and not before, the emphatic word *credendum* applies in its full force, and his statements are entitled *to be believed*, or received as evidence.

The important word *perito* is sometimes entirely omitted in citing this maxim; as in 1 *Bl. Com.* 75.

Cui pater est populus, non habet ille patrem.
Cui pater est populus, pater est sibi nullus et omnis.

He whose father is the people, has no father. He whose father is the people has no father and every one for a father. These two lines are referred to in the Year Book II. 8 Edw. III. 42, as the *Ley civile que dit*, &c.

Cujus est commodum, ejus debet esse incommodum. See *Commodum.*

Cujus est dare, ejus est disponere. Whose it is to give, his it is to dispose, [i. e. to regulate.] 2 *Co.* 71 b. *Wingate's Max.* 53, max. 22. The bestower of a gift has a right to regulate its disposal. *Broom's Max.* 304, [346.] Thus, the bargainor of an estate may annex such conditions as he pleases to the estate bargained, provided

they are not illegal, repugnant or impossible. *Id. ibid.* So, the founder of an eleemosynary corporation has, on this principle, the right of visitation, that is, the right of inspecting the management of the institution. 2 *Kent's Com.* 302.

Cujus est divisio, alterius est electio. Whichever [of two parties] has the division [of an estate], the choice [of the shares] is the other's. *Co. Litt.* 166 b. In partition between coparceners, where the division is made by the eldest, the rule in English law is, that she shall choose her share last. *Id. ibid.* 2 *Bl. Com.* 189. 1 *Steph. Com.* 323. The reason of the rule Lord Coke declares to be "for avoiding of partiality, which might apparently follow if the eldest might both divide and choose."

The form of this maxim, (which in its terms obviously contemplates but *two* parties,—one dividing and the *other* choosing,) seems hardly to convey the full meaning usually given it, which would be more exactly expressed by reading *cujus est divisio*, ejus est ultima *electio.* This may have led to the use of the word *ulterius* for *alterius*, in some of the editions of Blackstone.

Cujus est instituere, ejus est abrogare. Whose right it is to institute, his right it is to abrogate. *Sydney's Disc.* 15, cited *Broom's Max.* [681,] notes.

Cujus est solum, ejus est usque ad cœlum. Whose is the soil, his it is up to the sky. *Co. Litt.* 4 a. He who owns the soil, or surface of the ground, owns, or has an exclusive right to every thing which is upon or above it, to an indefinite height. 9 *Co.* 54. *Shep. Touch.* 90. 2 *Bl. Com.* 18. 3 *Id.* 217. *Broom's Max.* 172, [289.]

Cujus est solum, ejus est usque ad cœlum et ad inferos. He who owns the soil owns it to the sky and to the centre of the earth; owns every thing above and below it, to an indefinite extent. Land, in its legal signification, has an indefinite extent upwards as well as downwards; upwards, therefore, no man may erect any building or the like, to overhang another's land; and downwards, whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface. So that the word "land" includes not only the face of the earth, but any thing under it or over it. 2 *Bl. Com.* 18. See *Land.*

Cujus juris [i. e. jurisdictionis] est principale, ejusdem juris erit accessorium. He who has jurisdiction of the principal, has also jurisdiction of the accessory. *Bract.* 481 a. 2 *Inst.* 493.

Cujus per errorem dati repetitio est, ejus consulto dati donatio est. He who gives a thing by mistake, has a right to recover it back; but if he gives designedly, it is a gift. *Dig.* 50. 17. 53.

Cujusque rei potissima pars est principium. The chiefest part of every thing is the beginning. *Dig.* 1. 2. 1. 10 *Co.* 49 a. See **Causa et origo est materia negotii.** The word *principium* is translated in Branch and Wharton, *principle.*

CUL. An abbreviation of *culpabilis*, guilty. "If he be *cul.* of making, writing and composing," &c. Lord Holt, *Comb.* 359. *Non cul.* not guilty. *Id.* 393. *Nient cul.* not guilty. 4 *Bl. Com.* 339, 340.

CULAGIUM. L. Lat. In old records. The laying up a ship in a dock, in order to be repaired. *Cowell. Blount.*

CULP, *Coulp.* Abbreviations of Fr. *culpable*, or *coulpable;* guilty. *Year Books, passim.*

CULPA. Lat. In the civil and common law. Neglect; negligence; omission; carelessness; fault;—the opposite of *diligentia*, (q. v.) A term frequently used in the law of bailments, expressing a mean between accident (*casus*) on the one side, and fraud (*dolus*) on the other. *Jones on Bailm.* 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 784. Three degrees of *culpa* are recognised by the civilians, as well as in the common law of bailments; *lata culpa, levis culpa* and *levissima culpa. Id. ibid.* § 787. *Jones on Bailm.* 21, 22. *Story on Bailm.* § 18.

Lata culpa; gross fault or neglect; the omission of that care which even inattentive or thoughtless men never fail to take of their own property. *Jones on Bailm.* 21, 22. Duncan, J. 14 *Serg. & Rawle*, 275. Otherwise expressed by Sir William Jones, as the want of that care which every man of common sense, however inattentive, takes of his own property. *Jones on Bailm.* 8, 118. 2 *Kent's Com.* 560. See *Story on Bailm.* § 16. Called in the Digests, *nimia negligentia, id est, non intelligere quod omnes intelligunt;* (extreme negligence, that is, not to understand what all understand). *Dig.* 50. 16. 213. 2. *Qui ne eâ quidem diligentiâ quâ omnes, etiam dissoluti homines uti solent, utuntur*, latam [culpam] *committere dicuntur;* they who do not observe even that care which all men, even the careless, are in the habit of observing, are said to com-

mit [or be guilty of] gross fault, or neglect. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

Levis culpa; ordinary fault or neglect; the want of that diligence which the generality of mankind use in their own concerns, that is, of ordinary care. *Jones on Bailm.* 22. The omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Id.* 118. *Qui omittunt diligentiam a frugi patrefamilias adhiberi solitam,* levem [culpam *committere dicuntur;*] they who omit that care which is usually taken by a careful head of a family, [are said to be guilty of] ordinary [fault or neglect.] *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

Levissima culpa; slight fault or neglect; the omission of that care which very attentive and vigilant persons take of their own goods, or, in other words, of very exact diligence. *Jones on Bailm.* 22. The omission of that diligence which very circumspect and thoughtful persons use in securing their own goods and chattels. *Id.* 118. *Qui eam non adhibent diligentiam quam solent patresfamilias ad rem attentissimi,* culpam levissimam [*committere dicuntur;*] they who do not observe that care which the most attentive heads of families usually exercise, [are said to be guilty of] slight neglect. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

Lata culpa plane dolo comparabitur. Gross neglect may clearly be put on a level with fraud, [is clearly equivalent to fraud]. *Dig.* 11. 6. 1. Otherwise expressed, **Lata culpa dolo æquiparatur.**

Magna negligentia culpa est; magna culpa dolus est. Gross negligence is fault; gross fault is fraud. *Dig.* 50. 16. 226.

The doctrine embodied in these maxims, in the literal sense given to them, is adopted by Sir William Jones in his Essay on the Law of Bailments, and seems to have been formerly recognised to nearly the same extent in the common law. The modern doctrine, however, is, that gross negligence, though it may be evidence of fraud, is not the same thing; or, in other words, it may in certain cases amount to fraud, but it is not fraud by inference of law, but matter of fact for a jury. Parker, C. J. 17 *Mass. R.* 500. Lord Tindal, C. J. 2 *Man. & Gr.* 852. Lord Denman, C. J. 4 *Ad. & Ell.* 876. *Story on Bailm.* § 19. 2 *Kent's Com.* 560, and note.

The true interpretation of the civil law maxims depends obviously on the construction to be given to the emphatic terms *culpa* and *dolus*, both of which have been made the subjects of much discussion by civilians and jurists. The exact meaning of *culpa*, indeed, does not seem to have been entirely settled in the Roman law. It is usually translated *negligence*, and is expressly used by Justinian as a synonyme of that word, (*negligentia,*) and also of *desidia*, (remissness). *Inst.* 3. 26. 9. But the language of the rule in the Digests already quoted,—*Magna* negligentia culpa *est, magna culpa dolus est,*—obviously makes it to be something more than mere negligence, being a high degree of negligence, just as fraud was a high degree of *culpa;* and the same idea is very significantly conveyed by that common expression in modern law,—*culpable negligence,*—which clearly implies that *all* negligence is not culpable. It will be seen, moreover, that the maxim last quoted fixes *culpa* as a mean between *negligentia* on the one side, and *dolus* on the other. Sir William Jones attributes this want of uniformity or precision, in the use of the word *culpa*, to the intrinsic poverty of the Latin language, as compared with the Greek, and the want of proper words to express the various shades of fault. *Jones on Bailm.* 33. Heineccius defines *culpa*, from the Digests, to be *factum inconsultum quo alter injuria læditur*, vel *quod quum a diligente provideri potuerit, non sit provisum;* an act done without purpose, (or settled design,) by which another is injured; or an injurious act which no care was taken to foresee and prevent, when it might have been foreseen and prevented by a careful person. *Heinecc. El. Jur. Civ.* lib. 3, tit. 14, § 784. And see *Ayliffe Pand.* b. 2, tit. 13, cited in *Story on Bailm.* § 20 b, note. As to the meaning of the important word *dolus*, see *Dolus.*

CULPA. Lat. In the civil and common law. Fault; blame; misconduct; culpable conduct; conduct for which a party may be punished, or held to answer in damages or a penalty. Lord Cottenham, C. 6 *Bell's Appeal Cases*, 120. Lord Brougham. *Id. ibid.*

Culpa caret qui scit sed prohibere non potest. He is clear of blame, who knows but cannot prevent. *Dig.* 50. 17. 50.

Culpa est immiscere se rei ad se non pertinenti. It is culpable conduct for a man

to meddle with a thing not belonging to, or concerning him. *Dig.* 50. 17. 36. 2 *Inst.* 208.

Culpa tenet [teneat] suos auctores. Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. *Ersk. Inst.* b. 4, tit. 1, § 14. *Id.* b. 4, tit. 4, § 103. Lord Campbell, 6 *Bell's Appeal Cases*, 539.

Culpæ pœna par esto. Let the punishment be proportioned to the offence. *Branch's Princ.*

CULPABILIS. Lat. In old English law. Guilty. *Culpabilis de intrusione;* guilty of intrusion. *Fleta*, lib. 4, c. 30, § 11.

CULPABLE HOMICIDE, described as a crime varying from the very lowest culpability, up to the very verge of murder. Lord Moncrieff, *Arkley's R.* 72.

CULPRIT. A word made up of two distinct words or abbreviations of words, (*cul.* abbrev. of *culpabilis*, guilty, and *prit* or *prest*, ready, i. e. to prove it,) used anciently on the arraignment of a prisoner at the bar, and employed, in the course of time, to denote a prisoner so arraigned. It has not now any technical meaning, but is popularly used to denote any criminal, especially one found or confessed to be guilty.

*** Anciently, when a prisoner had pleaded "not guilty," (L. Lat. *non culpabilis;* L. Fr. *nient culpable*, or, as it was abbreviated on the minutes, "*non* or *nient cul.*") the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner *was* guilty, (*cul,*) and that he was *ready*, (*prit,*) to prove him so. 4 *Bl. Com.* 339. In the course of time, it became the practice for the officer of the court to read aloud these words, without regard to their real meaning, (which was beginning to be forgotten, owing to the disuse of Law French,) and to apply them as an appellation of the prisoner himself; for when a prisoner pleaded not guilty, the officer used to say, "*cul. prit*,—how wilt thou be tried?" to which the prisoner usually replied, "by God and the country," meaning *by a jury.* 4 *Steph. Com.* 408, note. Mr. Christian gives a different explanation, and supposes *prit* to have been a corruption of *pnt*, written for *ponit*, as a minute that issue was joined, or *ponit se super patriam*, (he puts himself upon the country,) or *pnt se* might be converted into *prist* or *prest*, as it was sometimes written. 4 *Chitt. Bl. Com.* 340, note. As a confirmation of this conjecture, it is said that the clerk of the arraigns in the English courts, at this day, immediately after the arraignment, writes upon the indictment, over the name of the prisoner, *pnts. Id. ibid.* However this may be, there is little doubt that the explanation of Blackstone is the true one. That *prist* (pronounced *prit*) or *prest* was the technical word appropriated to express a joinder in issue, or rather a *readiness to prove* an issue joined, appears from the use constantly made of it in civil cases, throughout the Year Books. See *Prest, Prist.* That it was not a corruption of a Latin word or words, seems clear, not only from such phrases as *prest averrer*, (*Yearb.* M. 1 Hen. VI. 21. *Id.* M. 12 Hen. VI. 13, corresponding accurately with the L. Lat. *paratus verificare*,) but from the general fact that the language of the oral pleadings in which it occurs, was exclusively Law French, the Latin being the (record) language of the *written* pleadings of a subsequent period. *Prist* and *prest* were constantly used as terms of issue, by both parties, as in the following entry: *Ne unques seisi; Prist, &c. Seisi; Prist, &c.* (Never seised; Ready, &c. Seised, Ready, &c.) P. 6 Edw. III. 68. But the following extracts are more apposite to the present head, as showing the use of *prist* and *prest* in immediate connection with *culp. A q' le pl' dit q', &c. et issint nient culp. A q' le def' dit q'* culp. Prest *averrer.* To which the plaintiff says that, &c. and so not guilty. To which the defendant says, guilty. Ready to verify. M. 1 Hen. VI. 21. *De rien culp. Prist*, &c. Not guilty. Ready, &c. P. 3. Edw. III. 34. *Rien culp. Culp. Prest.* M. 19 Hen. VI. 73. *Rien coulp. Prest. Coulp*, &c. *Prest.* Add. after T. 20 Hen. VI. 24. A striking instance of the use of the phrase "*Cul. prit.* How wilt thou be tried?" occurs in 7 *How. St. Trials*, 80, 160.

CULRACH. In old Scotch law. A species of pledge or cautioner, (Scotticé *back borgh*,) used in cases of the replevin of persons from one man's court to another's. *Skene de Verb. Signif.*

CULTURA. L. Lat. In old records. A parcel of arable land. *Blount.* Called a "wong." *Id.*

CULVERTAGE. In feudal law. Confiscation, or forfeiture of lands and goods. *Cowell.*

CUM. Lat. (prep.) With. See *infra.*

CUM, *Quum.* Lat. (adv.) When; whereas. *Fleta*, lib. 2, c. 64. *Quod cum;* that whereas. *Reg. Orig. passim.* See *infra*, and *Quum.*

CUM ONERE. Lat. With the burden or charge; subject to a charge or incumbrance. 2 *Powell on Devises*, 673, 674. *Transit terra cum onere;* the land passes with the burden or incumbrance. *Co. Litt.* 231 a. *Res transit cum suo onere;* the thing passes with its burden or charge. *Bract.* fol. 47 b, 48. "The captor took *cum onere.*" Sir Wm. Scott, 4 *Rob. Adm. R.* 317. *Id.* 347.

CUM PERA ET LOCULO. Lat. With satchel and purse. A phrase in old Scotch law. 1 *Pitcairn's Crim. Trials*, part 2, p. 47.

CUM PERTINENTIIS. L. Lat. With the appurtenances. *Bract.* fol. 73 b. *Fleta*, lib. 3, c. 8. *Id.* c. 14, §§ 10, 11. *Cum eorum et cujuslibet eorum pertinentiis;* with their and every of their appurtenances. *Towns. Pl.* 20. Formal words in conveyances, when written in Latin. "The incident, accessory, appendant and regardant shall, in most cases, pass by the grant of the principal, without the words *cum pertinentiis*, but not *è converso.*" *Shep. Touch.* 89. Gibson, C. J. 7 *Penn. St. R.* 488, 491.

CUM TESTAMENTO ANNEXO. L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. 2 *Bl. Com.* 503, 504. See *Administration cum testamento annexo.*

Cum adsunt testimonia rerum, quid opus est verbis. When the proofs of facts are present, what need is there of words. 2 *Bulstr.* 53.

Cum confitente sponte mitius est agendum. A party making a voluntary confession is to be more mercifully dealt with. 4 *Inst.* 66. The word *confitente* in this maxim is sometimes written *confidente*, leading to the erroneous translation: "The behavior ought to be kind to one *confiding* willingly." *Branch's Princ.*

Cum [quum] de lucro duorum quæritur, melior est causa possidentis. When the question is as to the gain of two persons, the cause of him who is in possession is the better. *Dig.* 50. 17. 126.

Cum duo inter se pugnantia reperiuntur in testamento, ultimum ratum est. Where two things repugnant to each other are found in a will, the last shall stand. *Co. Litt.* 112 b. *Shep. Touch.* 451. It is an established rule in the construction of wills, that where two clauses or dispositions are totally irreconcilable, so that they cannot possibly stand together, the clause or disposition which is posterior in a local position shall prevail; it being considered that the subsequent words indicate a subsequent intention. 1 *Powell on Devises*, 358—360, note. 2 *Atk.* 372. See the contrary rule **Ubi pugnantia**, &c.

Cum duo jura concurrunt in una persona æquum est ac si essent in duobus. When two rights meet in one person, it is the same as if they were in two. *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 330. "When two rights do meet in one person, there is no confusion of them, but they remain still, in the eye of the law, distinct, as if they were in several persons." *Id.* 337.

Lord Bacon observes of this maxim that it is "a rule, the words whereof are taken from the civil law, but the matter of it is received in all laws; being a very line or rule of reason, to avoid confusion." *Id. ibid.* Another form is **Quando duo jura**, &c. (q. v.)

Cum [quum] par delictum est duorum, semper oneratur petitor, et melior habetur possessoris causa. Where the fault of two parties is equal, the claimant always has the burden, and the party in possession is deemed to have the better case. *Dig.* 50. 17. 154. See **In pari delicto potior est conditio possidentis.**

Cum quod ago non valet ut ago, valeat quantum valere potest. When that which I do is of no effect as I do it, it shall have as much effect as it can; [i. e. in some other way]. 4 *Kent's Com.* 493. Thus, if the form of a conveyance be an inadequate mode of giving effect to the intention of the party executing it, according to the letter of the instrument, it is to be construed under the assumption of another character, so as to give it effect. *Id. ibid.* In other words, when a deed cannot take effect according to the letter, it will be construed so as it may take some effect or other. *Shep. Touch.* (by Preston,) 87. *Id.* 84. Hence the doctrine of *cy pres*, (q. v.)

CUMBR'. An abbreviation of *Cum-*

bria, Cumberland, in old English pleadings and records. *Towns. Pl.* 147. 1 *Instr. Cler.* 28. *Cowell*, Appendix.

CUNA. L. Lat. In old English law. A tub or vat for brewing. *Spelman. Domesd.* tit. *Cestria*, cited *ibid.* This is said, in Cowell, to be a mis-reading for *cuva*, Angl. *keeve, keever.* Blount, however, admits the word, and says, a brewing vessel is still called in Cheshire, a *cump.*

CUNA. L. Lat. In old English law. Coin. *Co. Litt.* 207. *Cunagium;* coinage. *Towns. Pl.* 62, 260.

CUNADES. Span. In Spanish law. Affinity; alliance; relation by marriage. *Las Partidas*, part 4, tit. 6, l. 5.

CUNEARE. L. Lat. In old English law. To coin. *Spelman*, voc. *Cuneus. Cuneatus;* coined. *Towns. Pl.* 180.

Cuneator; a coiner. *Id.* 260.

CUNEUS. L. Lat. In old English law. The iron die with which metallic money is coined. *Spelman.*

The money itself, so coined; coin. *Id. Towns. Pl.* 260.

The place of coinage; a mint. *Spelman. Cowell. Blount.*

CUR. A common abbreviation of CURIA. 1 *Instr. Cler.* 9.

CUR. ADV. VULT. An abbreviation of *curia advisari vult*, frequent in the reports. See *Curia advisari vult.*

CURA. Lat. Care; charge; oversight; guardianship.

In the civil law. A species of guardianship which commenced at the age of puberty, (when the guardianship called *tutela* expired,) and continued to the completion of the twenty-fifth year. *Inst.* 1. 23. pr. *Id.* 1. 25. pr. *Hallifax, Anal.* b. 1, c. 9. *Brissonius.* Called also *curatio*, (q. v.)

CURA ANIMARUM. L. Lat. In ecclesiastical law. Care of souls, or *cure* of souls, (q. v.) as it is frequently rendered.

CURARE. Lat. [from *cura*, q. v.] In the civil law. To take care of; to have charge of; to attend to. *Brissonius.*

To cure or heal. *Id.*

CURATE. [from *cura*, q. v.] In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure. Brande.*—An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence, or as his assistant, as the case may be. 1 *Bl. Com.* 393. 3 *Steph. Com.* 88. It is the lowest degree in the church. *Id.*

CURATIO. Lat. [from *curare*, to take care.] In the civil law. Guardianship; the office of a *curator*, (q. v.) *Brissonius.* The power of taking charge of, and managing the property and affairs of those who are unable or incompetent to do it themselves. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23, § 266. *Bract.* fol. 28 b. *Brissonius.* See *Cura.*

CURATOR. Lat. [from *curare*, to take care, which from *cura*, q. v.] In the civil law. One who is appointed to take care of any thing for another; one who is appointed to administer the estate of any person who is not legally competent to manage it himself; a guardian. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23. In a general sense, the office of a *curator* is not distinguishable from that of a *procurator. Id.* §§ 265, 266.

A species of guardian, (Latino-Gr. κουρατωρ,) appointed for minors from puberty to the age of twenty-five. *Inst.* 1. 23. pr. *Dig.* 26. 3, 5, 6. Lunatics, spendthrifts, idiots, deaf and dumb and incurably sick persons, were also put under the charge of a *curator. Inst.* 1. 23. 3, 4. See *Tutor.* Bracton uses this term indifferently with *custos. Bract.* fol 28 a, b. In Scotch law, it is used in the general sense of guardian. *Bell's Dict.* In the Roman law, it was applied to a variety of public officers, such as *curator civitatis*, and *reipublicæ; curatores corporum, operum, viarum*, &c. See *Brissonius.*

A person appointed to take care of the estate of an absentee. *Civ. Code of Louisiana*, Art. 50.

CURATOR AD HOC. Lat. In the civil law. A guardian for this [purpose]; a special guardian. *Civ. Code of Lou.* Art. 57, 372.

CURATOR BONIS. Lat. In the civil law. A guardian or trustee appointed to take care of property in certain cases; as for the benefit of creditors. *Dig.* 42. 7.

In Scotch law, the term is applied to guardians for minors, lunatics, &c. *Bell's Dict.* "*Curator bonis* appears to have considerably more authority by the law of Scotland, than the committee of the estate of a lunatic has in England." Lord Campbell, 6 *Bell's Appeal Cases*, 240.

CURATOR IN (or AD) LITEM. Lat. In the civil law. A guardian for the purpose of a suit; or one appointed to prose-

cute or defend a suit for another. *Inst.* 1. 23. 2. Hence the modern phrase *guardian ad litem*, (q. v.)

CURATORY. In Scotch law. Guardianship. *Bell's Dict.*

CURATRIX. Lat. A female guardian. *Bract.* fol. 28 b. Still used. 4 *Grattan's R.* 257.

CURE OF SOULS. [Lat. *cura animarum.*] In English ecclesiastical law. The spiritual charge of a parish, including the ordinary and regular duties of an officiating clergyman. Sometimes abbreviated to "cure." Ecclesiastical benefices are either "with *cure*," as parsonages, vicarages," &c. or "without *cure*," as prebends, &c. *Hale's Anal.* sect. xxv.

CUREE. L. Fr. Charged with; having charge or care of. *Une benefice* curee *des almes. Yearb.* T. 9 Edw. III. 14.

CURFEW, *Curfeu.* [L. Fr. *couvre feu*; from *couvrir*, to cover, and *feu*, fire; L. Lat. *ignitegium.*] In old English law. A bell which rang at eight o'clock in the evening, in the time of William the Conqueror, by which every person was commanded to rake up, or *cover* his *fire*, and put out his light. *Termes de la Ley. Cowell. Spelman.* 4 *Bl. Com.* 420. *Tomlins.* This was abolished by Henry I., but the term was long applied in England to the ringing of any bell customarily towards bed-time. *Stow's Annals. Cowell.* See *Ignitegium.* In Scotland, (where it was called *curphour*,) in the time of James I. this bell was to be rung in boroughs at nine in the evening, which hour, in the time of James VI., was changed to ten. *Barringt. Obs. Stat.* 153, 154.

CURGE. L. Fr. Runs. *Litt.* sect. 120.

CURIA. Lat. In the Roman law. A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. *Dionys. Hal.* ii. 23. *Spelman.*

The place or building in which each *curia* assembled to offer sacred rites. *Varro de Ling. Lat.* iv. 32. *Spelman.*

The place of meeting of the Roman senate; the senate house. *Id.*

The senate house of a province; the place where the *decuriones* assembled. *Cod.* 10. 31. 2. See *Decurio.*

CURIA. L. Lat. In old European law. A court; the palace of a sovereign, (*regia seu palatium principis*). *Spelman.*

A sovereign's household, (*familia*) or court. *Id.*

A judicial tribunal, (*forum juridicum*) or court, held in the sovereign's palace. *Id.*

Any judicial tribunal; a court of justice. *Id.*

The court of a feudal superior or lord. *Feud. Lib.* 2, titt. 1, 2, 22.

The civil or secular power, as distinguished from the church. *Spelman.*

The residence of a noble; a manor, or chief manse; the hall of a manor. *Id.*

The court of a manor. *Fleta*, lib. 2, c. 72, § 1. A lord's court, as being held in his manor. *Cowell.* See *Curia baronis.*

The persons, or feudatory and other tenants, who did suit and service at the lord's court. *Cowell.*

The governing body of a municipality or city. *Steph. Lect.* 108.

A piece of ground, or area attached to a house, or within which a house is built; a yard, court or court-yard, (*atrium seu area cujusvis habitaculi*). *Spelman. LL. Edw. Conf.* c. 6. *Bract.* fol. 76, 222 b, 335 b, 356 b, 358. See *Curia claudenda.*

A parsonage house or manse. *Cowell. Kennett's Par. Ant.* 205.

*** *Curia* is derived by Spelman from the Gr. κυρία, which, among other significations, had those of a meeting, or place of meeting (*concio et concionis locus*,) for public business, whether of a judicial character or otherwise; the sovereign power, &c. According to the same writer, it was not used in the sense of a judicial tribunal among the Germans, Franks, Anglo-Saxons and other northern nations of Europe, before the tenth century; the received words being *mallum*, *placitum*, *gemotum*, &c. Afterwards, however, it came into general use, and constantly occurs in the old books, and in reports down to the present day, in the sense of *court.* Bracton frequently uses *curia* and *judicium* to signify the same thing. *Dies in curia. Bract.* fol. 342 b. *Dies in judicio. Id.* fol. 362 b. *Cum in* judicio *comparuerint. Id.* fol. 296 b. *Antequam in* curia *comparuerit. Id.* fol. 365. Strictly, however, *curia* signifies the place where the court is held; *judicium*, the proceedings there. See *Judicium.*

CURIA. L. Lat. In old practice. Court; the court. A word often used in the older reports, (and not yet wholly obsolete,) as introductory to the statement of the opinion or judgment of the court.

Latch, 133. So, in the phrases *per curiam*, and *curia contra*, (qq. v.)

CURIA ADMIRALITATIS. L. Lat. The court of admiralty. *Clerke's Prax. Cur. Adm.* 2.

CURIA ADVISARI VULT. L. Lat. The court will be advised, i. e. take time to deliberate. A phrase used in the reports (and commonly abbreviated to *cur. adv. vult*,) to denote the suspension of judgment by the court, after hearing argument, for the purpose of further deliberation; as where the point to be determined was one of novelty or difficulty. It was equivalent to an adjournment of the cause, and the terms *adjournatur*, *et adjournatur*, *sed adjournatur*, are employed in the older reports to signify the same thing. See *Adjournatur*. Its meaning is very clearly shown in the following passages from the old books: *Le court disoit q'il voul'* estre avis *sur le matter;* the court said that it would be advised upon the matter. *Yearb.* H. 3 Hen. VI. 34. *Nous volons* estre avises; we will be advised. H. 4 Hen. VI. 6. M. 19 Hen. VI. 44. *Id.* 31. "The court took time *to be advised.*" 1 *Leon.* 187. "The court took time to consider." 10 *Mod.* 441.

The name of an entry made in the record of a cause by way of continuance, where judgment was not given at the same term in which the cause was argued. See *Continuance.*

CURIA BARONIS or BARONUM. L. Lat. In old English law. A court baron. *Fleta*, lib. 2, c. 53. See *Court baron.*

CURIA CHRISTIANITATIS. L. Lat. In old English and Scotch law. A court christian; an ecclesiastical court. *Fleta*, lib. 5, c. 28, § 8. *Reg. Maj.* lib. 2, c. debet autem, 37; lib. 1, c. placitum, 17. *Skene de Verb. Signif.*

CURIA CLAUDENDA. See *De curia claudenda.*

CURIA COMITATUS. L. Lat. In old English law. The court of the county; the county court, or court of the shire, (Sax. *scyregemot*,) in the Saxon times. See *County court*, *Comitatus.*

CURIA DOMINI. L. Lat. In old English law. The lord's court, house or hall, where all the tenants met at the time of keeping court. *Cowell.*

CURIA LEGITIME AFFIRMATA. L. Lat. In old Scotch practice. Court lawfully opened, or opened in due form. A formal phrase used in the captions of records. 3 *How. St. Trials*, 654. 1 *Pitc. Crim. Trials*, part 1, p. 143. See *Affirmare.*

CURIA MAGNA. L. Lat. In old English law. The great court; one of the ancient names of parliament. *Bract.* fol. 1 b. 9 *Co.* pref. 1 *Bl. Com.* 148.

The king's court, or *aula regis*. *Crabb's Hist. Eng. Law*, 144.

CURIA MAJORIS. L. Lat. In old English law. The Mayor's court. *Calthrop's R.* 152.

CURIA MILITUM. L. Lat. A court so called, anciently held at Carisbrook Castle in the Isle of Wight. *Cowell.*

CURIA PALATII. L. Lat. In English law. The Palace Court.

CURIA PENTICIARUM. L. Lat. In old English law. A court held by the sheriff of Chester, in a place there commonly called the *Pendice*. *Cowell.*

CURIA PERSONÆ. L. Lat. In old records. A parsonage-house, or manse. *Kennett's Par. Ant.* 205. *Cowell.*

CURIA PEDIS PULVERIZATI. L. Lat. In old English law. The court of *piedpoudre* or *piepouders*, (q. v.) 3 *Bl. Com.* 32.

CURIA REGIS. L. Lat. In old English law. The king's court; the supreme court of the kingdom, established by the Norman princes. *Crabb's Hist. Eng. Law*, 57. Otherwise called *curia magna*, and *aula regis*. *Id.* 144. The *aula regis*, the *bancus*, (afterwards the common bench,) and the *iter* or *eyre*, are all called by Bracton *curiæ regis*, the king's courts; though the first of these was so in a peculiar sense, being held before the sovereign in person, (*coram ipso rege*). *Bract.* fol. 105 b, 361 b, 362.

An ancient name of parliament. *Stat. Mert.* pr. *Bract.* fol. 227 b. The king's council, composed of the earls and barons. *Fleta*, lib. 1, c. 17, § 9.

CURIALITAS. L. Lat. In old Scotch law. Curtesy; curiality; the estate of tenancy by the curtesy. *Skene de Verb. Signif. Crag. de Jur. Feud.* lib. 2, c. 19, § 4. 2 *Bl. Com.* 126. 2 *Wooddes. Lect.* 14. See *Curtesy.*

Curiosa et captiosa interpretatio in lege reprobatur. A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 *Bulstr.* 6.

CURNOCK. In old English law. A measure containing four bushels or half a quarter of corn. *Cowell. Blount.*

CURRERE. Lat. In old English law. To run; to elapse, as time, with the effect of limitation. *Nullum tempus* currit *donationi regis vel contra eum in hoc casu;* no time runs against the king's gift, or against him in this case. *Bract.* fol. 56. *Id.* fol. 103.

Currit tempus contra desides et sui juris contemptores. Time runs against the slothful and those who neglect their rights. *Id.* fol. 100 b, 101. *Fleta*, lib. 2, c. 60, § 8. *Id.* lib. 4, c. 5, § 12.

To have course or effect. Currat *lex communis sicut prius* currere *consuevit;* the common law shall have course, as it hath heretofore usually had. *Stat. Marlbr.* c. 7, 9. *Fleta*, lib. 1, c. 12, § 7. *Id.* lib. 2, c. 66, § 11. *Currat lex;* let the law take its course; the law must take its course. 12 *Mod.* 218. Writs are said to run (*currere*).

To run, as a stream. 1 *Show.* 350. See **Aqua currit**, &c.

CURRIT QUATUOR PEDIBUS. L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A phrase used in arguments to signify the entire and exact application of a case quoted. "It does not follow that they run *quatuor pedibus.*" 1 *W. Bl.* 145.

CURRUS. Lat. In old English law. A chariot or carriage. *Bract.* fol. 168. Distinguished from *carecta*, and *carrum.*

CURSITOR. L. Lat. and Eng. [*clericus de cursu.*] In English practice. An officer or clerk belonging to the court of chancery; whose business is to make out all original writs. These officers are of very ancient institution, and were formerly termed *clerici de secunda forma*, (clerks of the second grade,) and in the statute 18 Edw. III. st. 5, are called clerks of course. *Crabb's Hist. Eng. Law*, 547. The name is derived from the writs *de cursu*, (that is, those original writs which issued in ordinary cases, and *of course*,) which it was their office to make out. *Hob.* 118. See *De cursu, Original writ.*

CURSO. L. Lat. In old records. A ridge. *Cursones terræ;* ridges of land. *Cowell.*

CURSUS. Lat. [from *currere*, to run.] In old English law. A course or running, as of water, (*cursus aquæ*). *Cursus carbonum;* a seam of coals. *Towns. Pl.* 43.

A course or practice. *Cursus curiæ;* the practice of a court.

Cursus curiæ est lex curiæ. The practice of a court is the law of the court; [i. e. it is to be uniformly followed]. 3 *Bulstr.* 53. *Broom's Max.* 57, [98—100]. "The course of every court is the law of the court." Lord Brougham, 7 *Bell's Appeal Cases*, 166.

CURT. L. Fr. Court. *LL. Gul. Conq.* ll. 6, 28.

CURTESY, or CURTESY OF ENGLAND. [L. Lat. *curialitas, curialitas Anglicana; lex Angliæ; curtesia:* L. Fr. *curtesie Dengleterre, ley d'Engleterre.*] An estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised during the marriage in fee simple or fee tail, provided he had issue by her, born alive during the marriage, and capable of inheriting her estate. 1 *Steph. Com.* 246. In this case he shall, on the death of his wife, hold the lands for his life, as *tenant by the curtesy of England. Id. ibid.* 2 *Bl. Com.* 126. *Bract.* fol. 438. *Litt.* sect. 35. *Co. Litt.* 29 b. It is a species of freehold estate, not of inheritance, and equally known to English, Scotch and American law. 4 *Kent's Com.* 27, 28. *Ersk. Inst.* b. 2, tit. 9, § 52. 1 *Hilliard's Real Prop.* 110, *et seq.* *United States Digest*, Dower and Curtesy.

*** The early writers on English law agree in considering this kind of estate as peculiar to the law of *England*, and hence it is frequently called by them, and in old statutes and records, a tenancy *per legem Angliæ, par la ley Dengleterre*, (by the law of England,) or, as expressed by Britton, *title de fraunktenement en le heritage sa femme, par reason d'* la ley Dengleterre. *Glanv.* lib. 7, c. 18. *Bract.* fol. 437 b, 438. *Britt.* c. 51, fol. 132. *Id.* c. 66, fol. 167 b. *Fleta*, lib. 6, c. 55. *Litt.* sect. 35. *Stat. Westm.* 2, c. 3. *Finch's Law*, b. 2, c. 3, ad fin. 1 *Steph. Com.* 246, note (o). In the Year Books, it is described both as tenancy *par la curtesie d'Engleterre*, and *par la ley D'Engleterre.* P. 2 Edw. III. 5. T. 3 Edw. III. 14. M. 4 Edw. III. 58. T. 8 Edw. III. 7. M. 9 Edw. III. 29. It has been shown by modern writers, that this peculiarity did not, in fact, exist; a similar kind of estate being found to have prevailed in Normandy, as well as among the ancient Germans, and even in the Roman law. *Grand Coustum.* c. 119. *Lindenbrog. LL. Alam.* tit. 92. *Cod.* 6. 60. 1. 2 *Bl. Com.* 126. *Crag. de Jur. Feud.* lib. 2, c. 19, sect. 4. *Wright on Tenures*, 193, 194. *Bisset on Estates*, 36. 4 *Kent's Com.* 28. Its actual derivation from these

sources, however, not having been made out, the correctness of the ancient opinion as to its local origin in England, seems to be not materially affected. 2 *Wooddes. Lect.* 13.

As to the meaning of the term *curtesy* itself, it is by some writers understood in its ordinary sense of *favor*, (*gratia*,) the estate being enjoyed rather by favor of law, (*ex gratia legis*,) than as a matter of right. *Spelman*, voc. *Jus curialitatis. Skene de Verb. Sign.* voc. *Curialitas.* 2 *Wooddes. Lect.* 13. Sir J. Jekyll, 2 *P. Wms.* 703. Others trace it to *curtis* or *curia*, (a court,) as denoting an attendance by the husband on the lord's court, in capacity of his vassal or tenant, in respect of his wife's land. 2 *Bl. Com.* 126. *Bisset on Estates*, 37. Others, adopting the same etymology, give it a different application, considering tenant *by curtesy* as signifying as much as tenant *by the courts* of England. *Crabb's Hist. Eng. Law*, 86. 2 *Chitt. Bl. Com.* 126, note. But this last seems a strained derivation.

CURTILAGE. L. Fr. and Eng. [L. Lat. *curtilagium ;* from *curtis*, a dwelling, or *curtillum*, the enclosed area around it, and *agere*, to do; as being the place where the business of the house is done: or from *curtis*, or *curtillum*, solely: or from Fr. *cour*, court, and Sax. *leagh*, place.] A yard, court-yard, or piece of ground lying near to a dwelling-house, and included within the same fence.* Defined by Spelman, as the space included within the enclosure of a court, (*quicquid spatii intra septum curtis seu curtilli clauditur*) and distinguished from ground lying in open fields, (*quod discinctum jacet in campania, hoc est, in campis*). *Gloss.* voc. *Curtilagium. Lib. Rames.* sect. 271, cited *ibid.* This ancient sense of the word is still retained. 1 *Crabb's Real Prop.* 76. In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon, which is usually enclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house; but it may be large enough for cattle to be levant and couchant therein. 1 *Chitt. Gen. Pract.* 175.

A garden; a kitchen-garden, (*hortus olitorius*). *Lindewode Prov.* tit. *De decimis*, c. *Sancta*, § *Omnibus. Spelman. Thel. Dig.* lib. 8, c. 1, ¶ 6. *Shep. Touch.* 94. Spelman denies this to be the proper meaning of the term, and cites an old record showing *garden* to be distinct from *curtilage.* Blount cites an old statute to the same effect, and is followed by Jacob. It certainly is not the modern meaning. 1 *Chitt. Gen. Pr. ub. sup.* Cowell confounds the two meanings.

*** The radical signification of this term, as clearly shown by Spelman, is an *enclosed* space about a house, an area actually *fenced in*, (*intra septum*). Fleta uses the terms *curia* (court,) and *curtilagium*, in such connection as to show that their meaning was similar, applying both to the arrangement of ground about a farm-house. *Fleta*, lib. 4, c. 20, § 6. Neither Cowell, Blount nor Jacob, however, admit the idea of enclosure into their definitions. And see *Shep. Touch.* 94.

In the late case of The People *v.* Taylor, (2 *Michigan*, (*Gibbs*) *R.* 250,) the signification of the term "curtilage" was made the subject of very particular consideration. The court (Wing, J.) seemed disposed to depart from the strict idea of an actual enclosure, as maintained in England, and held, on this point, the following language: "It is perhaps unfortunate that this term, which is found in the English statutes, and which is descriptive of the common arrangement of dwellings and the yards surrounding them in England, should have been perpetuated in our statutes. It is not strictly applicable to the common disposition of enclosures and buildings constituting the homestead of the inhabitants of this country, and particularly of farmers. In England, the dwellings and out-houses of all kinds are usually surrounded by a fence or stone wall, enclosing a small piece of land, embracing the yards and out-buildings near the house, constituting what is called the court. This wall is so constructed as to add greatly to the security of the property within it; but, as such precautionary arrangements have not been considered necessary in this country, they have not been adopted. Hence the difficulty, in this case, of giving a correct interpretation to the statute, and of judging whether the barn, as described by the witness, was within what was understood by the legislature as the *curtilage* of the house." The real question in the case seems to have been, whether a curtilage was necessarily a *single* enclosure, and whether it might not include *more than one yard* near the dwelling-house. The court inclined to think it might. The

barn in reference to which the question in the case arose, stood eighty feet from the dwelling-house, and nearly in range with it east and west; it stood in a yard or lane, with which there was a communication from the house by a pair of bars. The space of ground occupied by both buildings, and the buildings, were such as are usually included in one enclosure in England. The court held the barn to be within the curtilage. 2 *Michigan R.* 251—253. See 1 *Carr. & K.* 84, cited *ibid.*

In a recent case in Massachusetts, the English idea of a *curtilage* as a space actually enclosed, was more strictly adhered to. The court defined the word to mean, in law, a fence or enclosure of a small piece of land around a dwelling-house, usually including the buildings occupied in connection with the house; and held that this enclosure may consist wholly of a fence, or partly of a fence and partly of the exterior side of buildings so within the enclosure. Commonwealth *v.* Barney, 10 *Cushing's R.* 480.

CURTILAGIUM. L. Lat. In old English law. Curtilage; a, or the curtilage. *Spelman.* See *Curtilage.*

CURTILES TERRÆ. L. Lat. In old English law. Court lands. *Cowell.* See *Court lands.*

CURTILLUM. L. Lat. [from *curtis*, q. v.] In old English law. An area or space lying within the enclosure of a dwelling-house, (*infra* curtis, *seu habitaculi sepimentum*). *Spelman. LL. Inœ*, c. 40, cited *ibid.* Spelman prefers the derivation from the Fr. *courtil*, a space behind a house, as a green-house or garden, (*area sub aversa ædium parte; viridarium, hortus*); answering to the Sax. *weorth.*

CURTINER. L. Fr. To improve; to cultivate; to fence in. *Britt.* c. 55.

CURTIS, *Curta, Curtus.* L. Lat. [from Gr. κυρτίς, κυρτός, Lat. *cors, cohors*, a cage, enclosure, or enclosed space.] In old European law. A space or area about a house, (*area circa ædes*). *Spelman. Leo Marsic. Casin.* lib. 1, c. 36, cited *ibid.*

A garden. *Id.* See *Curtilage.*

An enclosure or pound for securing animals. *LL. Burgund.* tit. 23, § 1.

A house or dwelling; a country house, (*casa, vel habitaculum rusticum*); a court. *Spelman. Si mulier foras* curte *sua exierit;* if a woman shall go out of her house. *LL. Burgund. Add.* 1, tit. 5, § 2. *Si quis ad battalia* curte *sua exierit;* if any one go out of his court to battle. 3 *Bl. Com.* 320, note (*m*). *Canem custodem domûs sive* curtis. *L. Salic.* tit. 6, § 3.

A dwelling-house, with land adjoining, or belonging to it; a manse or manor. *Spelman. Lindewode Prov. Angl.* lib. 3, tit. *De decim.* c. *Sancta*, § *Omnibus.*

The palace, household or *court* of a sovereign. *Spelman. Jornandes de Reb. Geticis*, c. 34, cited *ibid.*

The seat or residence of a nobleman. *Spelman.*

A village or town, as distinguished by the residence of a noble. *Spelman.*

A judicial tribunal; a *court* of justice; anciently called *placitum.* See *Court.* Curtis *regia;* the royal court. *LL. Longob.* lib. 1, tit. 2, l. 9. Judicial tribunals were called *courts*, because originally held in the *courts*, (*in curtibus, id est, ædibus,*) that is, the palaces and residences of kings and nobles. *Spelman.* The vassals who sat as judges in these courts of their lord were called peers of the court, (*pares curtis*, q. v.) *Id. Feud. Lib.* 1, titt. 2, 3, 4, *et passim. Curia*, however, was the Latin word generally used to denote a court. See *Curia.*

CUSTA. L. Lat. In old English law. Cost or costs. *Spelman*, voc. *Custagium.*

CUSTAGIUM, [pl. CUSTAGIA; from Fr. *coust, coustange.*] L. Lat. In old English law. Cost or costs; expenses of judicial proceedings. *Spelman. Fleta*, lib. 2, c. 64, § 21. Sometimes translated *costages.*

CUSTANTIA. L. Lat. [Fr. *coustange.*] Costs. See *Custagium.*

CUSTODE ADMITTENDO. L. Lat. See *De custode admittendo.*

CUSTODE AMOVENDO. L. Lat. See *De custode amovendo.*

CUSTODES, [pl. of *Custos.*] Lat. In the Roman law. Guardians; observers; inspectors. Persons who acted as inspectors of elections, and who counted the votes given. *Tayl. Civ. Law*, 193.

CUSTODES, [pl. of CUSTOS.] Lat. In old English law. Keepers; guardians. *Custodes pacis;* conservators of the peace. 1 *Bl. Com.* 349, 350. *Custodes placitorum coronæ;* keepers of the pleas of the crown. Supposed to be the same with *coroners. Crabb's Hist. Eng. Law*, 150. *Custodes libertatis Angliæ authoritate parliamenti;* keepers of the liberty of England, by the authority of parliament. The style in which writs and other judicial proceedings were made out in England during the grand re-

bellion, from the execution of King Charles I. till Oliver Cromwell was declared protector. *Termes de la Ley. Wharton's Lex. Whishaw.*

CUSTODIA. Lat. In the civil law. Custody; confinement; confinement in a public prison. *Dig.* 50. 16. 224.

CUSTODIA. Lat. [from *custos*, a keeper or guardian; L. Fr. *gard*, *garde*.] In old English law and practice. Keeping; custody. *In arcta et salva custodia;* in close and safe custody. 3 *Bl. Com.* 415.

Ward, or guard; the duty of keeping guard. 1 *Bl. Com.* 356. *Custodia castri;* castle-guard. *Mag. Cart.* 9 Hen. III. c. 20.

Wardship or guardianship; (*custodia pupillorum*). *Reg. Orig.* 161, *et seq. Spelman. Bract.* fol. 87. *Co. Litt.* 76 a. *Custodia comitatus;* the wardship of a county. 3 *Salk.* 322.

A ward of a city or town. *Spelman.*

CUSTODIRE. Lat. In old English law. To keep. *Tam negligenter et improvide* custodivit *ignem suum, quod domus combusta fuit;* so negligently and carelessly kept his fire, that the house was burnt. 5 *Co.* 14.

CUSTODY. [from Lat. *custodia*, q. v.] Care; keeping.

Detainer under arrest; confinement; imprisonment.

CUSTOM. [L. Fr. *coutume*, *custome;* Lat. *consuetudo.*] A law, not written, established by long usage, and the consent of our ancestors. *Termes de la Ley. Cowell. Bract.* fol. 2. If it be universal, it is common law; if particular to this or that place, it is then properly *custom.* Holt, C. J. 1 *Show.* 5, case 8. 3 *Salk.* 112. The requisites to make a particular custom valid are, (1) it must have been used so *long* that the memory of man runneth not to the contrary; (2) it must have been *continued;* (3) *peaceable;* (4) *reasonable;* (5) *certain;* and (6) *compulsory*, that is, not left to the option of any man whether he will use it or not. (7) Customs must also be *consistent* with each other. 1 *Steph. Com.* 56—58. 1 *Bl. Com.* 76—78. *Co. Litt.* 110 b. 3 *Ad. & Ell.* 554. See 2 *Hilliard's Real Prop.* 153. *Broom's Max.* [712]. *United States Digest*, Custom and usage. The distinction between custom and prescription is, that the former is common to many; the latter peculiar to an individual. *Termes de la Ley.* In other words, custom is local; prescription is personal. 4 *Co.* 32. 2 *Bl. Com.* 263. See *Consuetudo.*

Custom also signifies a toll or tribute, and the service of a tenant to his lord, but in these senses it usually occurs in the plural. See *Customs.*

Custome serra prise stricte. Custom shall be taken [is to be construed] strictly. *Jenk. Cent.* 83.

CUSTOM OF MERCHANTS. [L. Lat. *consuetudo mercatorum.*] A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters, and which, under the name of *lex mercatoria*, or *law merchant*, has been engrafted into, and made a part of the common law. 1 *Bl. Com.* 75. 1 *Steph. Com.* 54. 2 *Burr.* 1226, 1228. According to Mr. Stephen, this branch of the law is distinguished by a separate name, only because it applies to the particular subjects in question, principles different from those which the common law ordinarily recognises, and because these principles were engrafted into the municipal system of England by gradual adoption from the *lex mercatoria*, or general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54.

Lord Holt said, in Cranlington *v.* Evans, (1 *Show.* 5, case 8,) that he knew no distinction between *lex mercatoria* and *consuetudo mercatorum.* "The custom of merchants is the law merchant." Foster, J. 1 *W. Bl.* 299. The custom or usage of trade is the law of that trade; and to make it obligatory, it must be ancient,—sufficiently so, at least, to be generally known,—certain, uniform and reasonable. *United States Digest*, Custom and usage, and cases there cited.

CUSTOMARY ESTATES. In English law. Such estates as owe their origin to the customs of different manors, and belong to such persons as hold their lands by copy of court roll, or tenures of the like kind. 2 *Crabb's Real Prop.* 985, § 2354.

CUSTOMARY FREEHOLD. In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 *Steph. Com.* 212, 213, and note. 2 *Bl. Com.* 100, 149. 1 *Crabb's Real Prop.* 700—712, §§ 920—923. 1 *Man. Gr. & Scott*, 940.

CUSTOMARY SERVICE. In English

law. A service due by custom from one person to another; as the service of doing suit to another's mill, where the persons resident in a particular place, by usage time out of mind, have been accustomed to grind their corn at a certain mill. 3 *Steph. Com.* 509. 3 *Bl. Com.* 235.

CUSTOMARY TENANTS. [L. Lat. *custumarii tenentes.*] In English law. Such tenants as hold by the custom of the manor, as their special evidence. *Termes de la Ley.* Copyholders belong to this class. 2 *Bl. Com.* 147, 148. See *Copyholder.*

CUSTOMS. [L. Lat. *custuma, custumæ, custumiæ;* from Fr. *coustum; consuetudines.*] The duties, toll, tribute or tariff payable upon merchandise exported and imported, and forming a part of the public revenue. 1 *Bl. Com.* 313, 314, note, 315. 2 *Steph. Com.* 575, *et seq.*

These imposts seem to have been called *customs* from having been paid from time immemorial. 1 *Chitt. Bl. Com.* 314, note. According to Lord Coke, customs or duties were called in old legal Latin, *custumæ* and *consuetudines* indiscriminately. 2 *Inst.* 58. 4 *Inst.* 29, 30. See *Duties.* But according to Blackstone, *consuetudines,* whenever it occurs, means usages. 1 *Bl. Com.* 314. See 2 *How. St. Trials,* 412, 413.

CUSTOMS OF LONDON. Particular customs within the city of London, with regard to trade, apprentices, widows, orphans and a variety of other matters. 1 *Bl. Com.* 75. 1 *Steph. Com.* 54, 55.

CUSTOMS AND SERVICES. [L. Lat. *consuetudines et servitia.*] In old English law. Services which the tenants of lands, under the feudal law, owed to their lords, and which, if withheld, the lord might resort to the writ of customs and services (*breve de consuetudinibus et servitiis,*) to compel them. *Tomlins.* See *De consuetudinibus et servitiis.*

CUSTOS. Lat. In old English law. A keeper, or protector. See *infra.*

A guardian. *Mag. Cart.* c. 4. *Bract.* fol. 87, 161. *Co. Litt.* 76 a.

A magistrate; the warden of a city. *Fleta,* lib. 2, c. 64, § 2. The *capitalis custos* or *custos major,* (chief warden,) seems to have answered to the mayor. *Id. ibid.*

CUSTOS BREVIUM. L. Lat. In English practice. Keeper of the writs. A principal clerk belonging to the courts of King's Bench and Common Pleas, whose office was to receive and *keep* all the *writs,* returned into the court, and also all records of *nisi prius. Termes de la Ley. Cowell. Blount.* 1 *Tidd's Pr.* 43, 44. 1 *Archb. Pr.* 11. His title in the Common Pleas, was *custos brevium domini regis de banco. Towns. Pl.* 211. This office was abolished by statute 7 Will. IV. and 1 Vict. c. 30.

CUSTOS FERARUM. Lat. A gamekeeper. *Towns. Pl.* 265.

CUSTOS HORREI REGII. L. Lat. Protector of the royal granary. 2 *Bl. Com.* 394.

CUSTOS MARIS. L. Lat. In old English law. Warden of the sea. The title of a high naval officer among the Saxons, and after the Conquest, corresponding with *admiral. Rot. Pat.* 6 *Johan.* m. 8. *Rot. Pat.* 8 *Hen.* III. p. 1, m. 3, 4. *Cl.* 9 *Hen.* III. m. 15, &c. *Rot. Pat.* 48 *Hen.* III. p. 1, m. 3. *Hale's Hist. Com. Law,* 36, note. See *Admiral, Capitaneus.*

Warden of the fleet. 2 *Mod.* 221.

CUSTOS PLACITORUM CORONÆ. L. Lat. In old English law. Keeper of the pleas of the crown. *Bract.* fol. 14 b. Cowell supposes this office to have been the same with the *custos rotulorum.* But it seems rather to have been another name for *coroner. Crabb's Hist. Eng. Law,* 150. *Bract.* fol. 136 b. The title itself indicates a criminal, rather than a civil jurisdiction. See *Corona, Placita coronæ.* In the writ *de odio et atia,* these officers are mentioned as sitting with the sheriff in the county court. *Reg. Orig.* 133 b.

CUSTOS ROTULORUM. L. Lat. Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the country where appointed, and is the principal civil officer in the county. 1 *Bl. Com.* 349. 4 *Id.* 272. *Lamb. Eiren.* lib. 4, c. 3, p. 373. *Bacon's Works,* iv. 316. 3 *Steph. Com.* 37. 4 *Id.* 337. *Cowell.*

CUSTOS SPIRITUALIUM. L. Lat. In English ecclesiastical law. Keeper of the spiritualities. He who exercises the spiritual jurisdiction of a diocese, during the vacancy of the see. *Cowell.*

CUSTOS TEMPORALIUM. L. Lat. In English ecclesiastical law. Keeper of the temporalities. He to whose custody a vacant see or abbey was committed by

the king, as supreme lord; who, as a steward of the goods and profits, was to give account to the escheator, and he into the exchequer. *Cowell.*

CUSTOS TERRÆ. L. Lat. In old English law. Guardian, warden or keeper of the land. *Mag. Cart. Johan.* c. 4. *Id.* 9 Hen. III. c. 4.

CUSTUMA. L. Lat. [from Fr. *coustum*, toll or tribute.] In old English law. Customs, duties or imposts. 1 *Bl. Com.* 314. *Crabb's Hist. Eng. Law*, 255. According to Spelman, who is supported by the Register, the proper word is *custumæ*. *Reg. Orig.* 138.

CUSTUMA ANTIQUA SIVE MAGNA. L. Lat. Ancient or great customs. Duties formerly payable in England under the statute of *Confirmatio Chartarum*, by every merchant, as well native as foreign, on wool, sheepskins or woolfels, and leather exported. 1 *Chitt. Bl. Com.* 314, and note. 4 *Inst.* 29. *Stat. Confirmatio Chartarum*, c. 11, [7.] 3 *Salk.* 339. *Hale de Jur. Mar.* pars 3, c. 5.

CUSTUMA PARVA ET NOVA. L. Lat. Small and new customs. Imposts of 3*d.* in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the alien's duty, and was first granted in 31 Edw. I. 1 *Bl. Com.* 314. 4 *Inst.* 29.

CUSTUS. L. Lat. In old English law. Cost; charge; expense; costs; charges. *Glanv.* lib. 1, c. 32. *Ad* custum *tuum;* at your cost. *Reg. Orig.* 2 b. *Ad* custum *ejus. Bract.* fol. 234. *Ad custus proprios;* at her own charges. *Fleta*, lib. 1, c. 15, § 3. *Primi custus;* the first costs. *Id.* lib. 2, c. 73, § 3.

CUTH, *Couth.* Sax. Known; knowing. *Uncuth;* unknown. See *Couthutlaugh, Uncuth.*

CUTPURSE. [L. Lat. *bursarum scissor;* L. Fr. *cynsour de burse*, q. v.] In old criminal law. An offender answering to the modern pickpocket. *Fleta*, lib. 1, c. 36, § 11.

CY. L. Fr. Here. *W. et A. sa feme, que* cy *sont;* W. and A. his wife, who are here. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510. *Cy apres;* hereafter. *Cy avant;* heretofore. *Kelham.*

CY, *Cye, Ci, Si, Sy.* L. Fr. So; as. Cy *languishant ou* cy *decrepyte que il ne poit*, &c.; so sick or so feeble that he cannot, &c. *Litt.* sect. 434. *Ne soies* cye *clere;* do not be so clear (confident). *Dyer*, 31, (Fr. ed.) *Cy bien;* as well. *Cy court;* so speedily. *Cy que;* so that. *Kelham.*

CY PRES. L. Fr. So near; as near; as near as possible. *Donques doit le feoffee, per la ley, faire estate a la feme,* cy pres *le condition, et auxi* cy pres *l'entent de le condition que il poit faire*, &c. Then ought the feoffee, by the law, to make an estate to the wife, *as near* the condition, and also *as near* the intent of the condition, as he can make it, &c. *Litt.* sect. 352. "With an intention of going there if it should be possible, if not, of going *cy pres.*" 1 *Campb.* 537.

CY PRES, DOCTRINE OF. The doctrine of construing written instruments *as near* to the intention of the parties as possible. *Shep. Touch.* (by Preston,) 83, 84. It is most commonly applied to the construction of wills, and is only another name for the general principle, (sometimes called the rule of *approximation,*) of carrying into effect the testator's intention *as nearly as may be* according to the rules of law. *Lewis on Perpetuity*, 427. 2 *Story's Eq. Jur.* § 1169. This doctrine has been made a part of the statute law of the state of New-York. 1 *Rev. St.* [748,] 740, § 2. Savage, C. J. 14 *Wendell's R.* 308.

The doctrine of *cy pres* may be more particularly stated thus: that where there is a general and also a particular intention apparent on a will, and the particular intention cannot take effect, the words shall be so construed as to give effect to the general intention. *Broom's Maxims*, 244, [434.] *Lewis on Perpetuity*, 426. 2 *Smith's Lead. Cas.* 294. Thus, in case of a donation for charitable purposes, if it be incapable of being literally acted upon, or if its literal performance would be unreasonable, a decree will be made for its execution *cy pres*, that is, in some method conformable to the general object, as closely as possible to the specific design of the donor. 3 *Steph. Com.* 230. 2 *Story's Eq. Jur.* § 1169, *et seq.* 2 *Kent's Com.* 288. So, where limitations are made by way of remainder to the children of unborn persons, which are generally void for remoteness, there are cases in which the courts in England have so moulded, or put such construction upon the limitations, as that the unborn parent may take an estate tail, and the property vest in his issue by descent, by which all objection of remoteness is obviated. *Lewis on Perpetuity*, 426. It is this last descrip-

tion of cases which most commonly calls forth the application of the doctrine of *cy pres*. *Fearne on Contingent Remainders*, 204. *Butler's note ibid. Lewis on Perpetuity*, 426—454. 4 *Kent's Com.* 508, notes. Coster *v.* Lorrillard, 14 *Wendell's* 265.

CYEINS. L. Fr. Here; in; within. *Yearb.* M. 19 Hen. VI. 35.

CYMETER. L. Fr. A burial place; a cemetery. *Britt.* c. 43.

CYMMORTH, (pl. *Cymmorthau.*) Brit. In old English law. An assembly for the purpose of assistance. *Stat.* 4 *Hen.* IV. c. 27. *Barringt. Obs. Stat.* 360.

CYNEBOTE. Sax. [from *cyn*, kin, or relationship, and *bot*, a satisfaction.] In Saxon law. A pecuniary composition for killing a relative; the same with *cenegild*, (q. v.) *Spelman*, voc. *Cenegild.*

CYNK. L. Fr. An old form of writing *cinque*. *Reg. Orig.* 72, *regula.*

CYNSOUR DE BURSE. L. Fr. A cutpurse; (*celuy que la burse coupe*). *Britt.* c. 15.

CYRICBRYCE. Sax. [from *cyric*, church, and *bryce*, a breaking, or breach.] In Saxon law. The act or crime of breaking into a church, [church breach]. *LL. Eccl. Canut. Regis. Blount.*

CYRICSCEAT. Sax. [from *cyric*, church, and *sceat*, a tribute.] In Saxon law. A tribute or payment due to the church. *Cowell. Spelman*, voc. *Circset.*

CYROGRAFFE. L. Fr. A chirograph, (q. v.) *Britt.* c. 21.

CYROGRAPHARIUS. L. Lat. In old English law. A cyrographer; an officer of the *Bancus*, or court of Common Bench. *Fleta*, lib. 2, c. 36.

CYROGRAPHER OF FINES. See *Chirographer of fines.*

CYROGRAPHUM. L. Lat. In Saxon and old English law. The name of a deed or charter among the Saxons. 1 *Reeves' Hist. Eng. Law*, 10. See *Chirographum.*

A charter, written in two parts, with the word *cyrographum*, in capital letters between, through which it was divided by cutting. *Id.* Called also *charta cyrographata. Bract.* fol. 34.

One of the parts of a fine. *Finis et cyrographum. Bract.* fol. 50, 59, 194. See *Chirograph.*

CYTE. L. Fr. Cited. 1 *And.* 229.

CYTEE. L. Fr. City; a city. *A toutes noz cyteez;* to all our cities. *Conf. Chartar.* 25 *Edw.* I.

D.

D. The initial letter of the word *Digesta*, or *Digestum*, used by some civilians, in citing the Digests. *Taylor's Civ. Law*, 24.

D is sometimes used, in the old books, instead of T, at the end of Latin words; as *capud*, for *caput.*

D. E. R. I. C. An abbreviation used for *De ea re ita censuere* (concerning that matter have so decreed,) in recording the decrees of the Roman senate. *Tayl. Civ. Law*, 564, 566.

DA, *Dea.* L. Fr. Yes. *Kelham.*

DABIS? DABO. Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. *Inst.* 3. 16. 1. *Bract.* fol. 15 b.

DACRUM, *Dakrum*, *Dacra.* L. Lat. In old English and Scotch law. A daker, or dakir; a measure of certain commodities. A daker of hides (*coriorum*,) consisted of ten skins; a daker of gloves consisted of ten pairs; a daker of horse-shoes (*ferrorum equorum*,) consisted of twenty shoes. *Fleta*, lib. 2, c. 12, § 3. *Unius dacre corii firmiti;* of one daker of tanned hides. 1 *Pitc. Crim. Trials*, part 2, p. 21.

DAERIA. L. Lat. In old English law. A dairy. *Fleta*, lib. 2, c. 87.

DAGGE. A kind of gun. 1 *How. St. Trials*, 1124, 1125.

DALE and SALE. Fictitious names of places, used in the English books, as examples. *Perk.* ch. 2, sect. 152. "The manor of *Dale* and the manor of *Sale*, lying both in Vale." *Bacon's Arg.* Case of Revocation of Uses. See *Perk.* ch. 3, sect. 230. "Overdale and Netherdale." *Keilw.* 167.

DALUS. *Dailus*, *Dayla.* L. Lat. In old English law. A dale, valley or low place. 1 *Mon. Angl.* 680. 2 *Id.* 211.

A balk, or narrow slip of pasture left between the ploughed furrows in arable land. *Cowell.*

DAMAGE. L. Fr. and Eng. [L. Lat. *damnum*, q. v.] A loss, hurt, or hindrance sustained by a party in his estate or person.* *Cowell. En son damage;* in his damage; doing him damage. *Britt.* c. 27.

DAMAGE CLEER. L. Fr. and Eng. [q. d. *damage de cler;* clerk's compensation; L. Lat. *damna clericorum.*] In old English practice. A sum of money or fee which a plaintiff recovering damages in the courts of King's Bench and Common Pleas

anciently had to pay to the prothonotary, or chief officer of the court, before he could have execution. It was abolished by statute 17 Car. II. c. 6. *Termes de la Ley. Cowell.*

DAMAGE FEASANT (or FAISANT). L. Fr. [L. Lat. *damnum facientes.*] Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, &c. 3 *Bl. Com.* 7, 211. *Tomlins.* The phrase seems to have been introduced in the reign of Edward III. in place of the older expression *en son damage*, (*in damno suo*). *Crabb's Hist. Eng. Law*, 292. See *Damage.*

DAMAGER. L. Fr. To injure; to oppress. *Kelham.*

DAMAGES. L. Fr. and Eng. [L. Lat. *damna*, q. v.] In general practice. A pecuniary compensation or satisfaction for an injury, given usually at law, but sometimes in equity.

In pleading. A sum of money claimed by the plaintiff in a personal or mixed action, as a compensation for the injury complained of.* 1 *Chitt. Pl.* 395. 1 *Tidd's Pr.* 440. See *To lay damages.* The word, as actually used in declarations, is always in the singular, (damage, *damnum*,) the clause in which the sum is claimed beginning—"To the damage," &c. 1 *Tidd's Pr.* 446. See *Ad damnum.*

In practice. A sum of money assessed by a jury, on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party.* 2 *Bl. Com.* 438. *Co. Litt.* 257 a. 2 *Tidd's Pr.* 869, 870. See *General damages, Special damages, Double damages, Treble damages, Liquidated damages, Excessive damages, Punitive damages, Measure of damages.*

The word *damages* was formerly used and understood in two senses; one, called by Lord Coke the proper and general signification, which included costs of suit; the other, called the strict or relative sense, which was exclusive of costs. 10 *Co.* 116, 117. *Litt.* sect. 431. *Co. Litt.* 257 a. Lord Ellenborough, 9 *East*, 299. The latter is the modern meaning.

DAMAIOUSE. L. Fr. [L. Lat. *damnosus.*] In old English law. Causing damage or loss, as distinguished from *torcenouse*, wrongful. *Britt.* c. 61.

There is no equivalent for this word in English, although a single word of the kind is much needed to express with precision the idea or quality of mere *damage*, as distinguished from *wrong* or injury.

DAMNA. L. Lat. [plur. of *damnum*, q. v.] In old English law and practice. Damages, inclusive of costs of suit. 10 *Co.* 116 b. *Co. Litt.* 257 a.

Damages, exclusive of costs. 10 *Co. ub. sup. Damna in duplo;* double damages. *Stat. Westm.* 2, c. 26.

DAMNARE, *Dampnare.* Lat. In old English law. To condemn. See *Damnatus.*

To damage; to injure. *Fleta*, lib. 3, c. 16, § 36.

DAMNATUS. Lat. [from *damnare*, to condemn.] In old English law. Condemned; prohibited by law; unlawful. *Damnatus coitus;* an unlawful connection. *Bract.* fol. 5. **Qui ex damnato coitu nascuntur inter liberos non computantur.** They who are born of an unlawful connection are not reckoned among children. *Id. ibid. Co. Litt.* 8. 2 *Bl. Com.* 247.

DAMNER, *Dampner.* L. Fr. To condemn. *Dampner a la mort;* to condemn to death. *Britt.* c. 5.

DAMNI INJURIÆ ACTIO. Lat. In the civil law. An action for injurious damage. An action given by the Aquilian law against one who injuriously (i. e. intentionally, without right, or from carelessness,) killed the slave or beast of another. *Inst.* 4. 3. pr. 2, 3. *Id.* 4. 8. 4.

DAMNOSA HÆREDITAS. Lat. In the civil law. A losing inheritance; an inheritance that was a charge, instead of a benefit. *Dig.* 50. 16. 119. A term sometimes applied to the property of a bankrupt. Lord Ellenborough, 7 *East*, 335.

DAMNOSUS, *Dampnosus.* L. Lat. [from *damnum*, q. v.] In old English law. That which produces loss, as distinguished from *injuriosus*, or that which works a wrong. *Bract.* fol. 231 b. *Fleta*, lib. 4, c. 26, § 2.

DAMNUM, *Dampnum.* Lat. In pleading and old English law. Damage; loss. *Ad damnum* (q. v.); to the damage. *Ad grave dampnum;* to the grievous damage. *Fleta*, lib. 2, c. 48, § 2. *Damnum facientes;* doing damage. *Reg. Jud.* 27. *Pro* damno *facto;* for damage done. *Bract.* fol. 156. *Dicere poterit captor quod juste cepit averia sua, quia illa invenit in* damno *suo;* the taker may say that he justly took his beasts, because he found them *in his damage*, (i. e. doing him dam-

age.) *Id.* fol. 158. *Fleta*, lib. 2, c. 47, § 25.

The word *damnum*, in this last application, is understood in some of the old dictionaries in the sense of an *enclosure;* but the corresponding phrase of Britton, *en son damage*, conclusively shows the true meaning. See *Damage*. *Esse in damno;* to be in loss; to be a loser. *Bract.* fol. 23 b.

DAMNUM. Lat. In the civil law. Damage; the loss or diminution of what is a man's own, either by fraud, carelessness or accident. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 784. *Hallifax, Anal.* b. 2, c. 24. See *Dig.* 50. 17. 151.

DAMNUM ABSQUE INJURIA. Lat. A loss without a wrong; that kind of damage for which an action will not lie.

Non omne damnum inducit injuriam. It is not every loss that produces an injury. *Bract.* fol. 45 b. If a man commence a business, sets up a trade, or opens a school in a particular place, another may do the same thing in the same place, though he draw away the business or the scholars from the other; for though it be a loss (*damnum*) to the latter, it is not coupled with such an injury (*injuria*) as to give a right of action. Holt, C. J. 3 *Salk.* 10. 3 *Bl. Com.* 219, 125, 224. 3 *Steph. Com.* 465. 1 *Smith's Lead. Cas.* 131. *Broom's Max.* 93, [150—152]. *Bract.* fol. 235. See *Injuria*. The kind of loss for which an action lies is called by Bracton *damnum injuriosum*, (*injurious* damage). *Bract.* fol. 221, 231 b.

DAMNUM FATALE. Lat. In the civil law. Fatal damage; damage from fate; loss happening from a cause beyond human control, (*quod ex* fato *contingit,*) and for which bailees are not liable; such as shipwreck, lightning and the like. *Dig.* 4. 9. 3. 1. *Story on Bailm.* § 465. Story, J. 3 *Story's R.* 349, 357. See *Fatum*.

DAMNUM INFECTUM. Lat. In the civil law. Damage not yet done; apprehended damage, (*damnum nondum factum, quod futurum veremur.*) *Dig.* 39. 2. 2.

DAMNUM REI AMISSÆ. Lat. In the civil law. A loss arising from a payment made by a party in consequence of an error of law. 1 *Mackeld. Civ. Law*, 164, § 165.

DAMPNUM. L. Lat. The old form of writing *damnum*. *Stat. Marlbr.* c. 1. *Bract.* fol. 98 b. *Fleta*, lib. 2, cc. 47, 48. So in the derivatives and compounds, *dampnificare, condempnare, indempnis;* and in the Fr. *dampner, solempnitie*, and other words.

DANEGELD, *Danegelt, Danigeld.* [L. Lat. *Danigeldum, Danegeldus;* from *Dane*, and Sax. *geld*, money or tribute.] In old English law. The Danish tax or tribute; money for the Danes, (*tributum Danicum*). *Spelman.* A tax of one shilling, and afterwards two shillings, upon every hide of land in England, first imposed upon the Saxons in the reign of king Ethelred, for the purpose of bribing the Danes to desist from their depredations, and afterwards made permanent for the purpose of maintaining an armed force to defend the coast from *any* invading enemies; thus becoming one of the chief branches of the royal revenue. *Spelman*, voc. *Danigeldum. Crabb's Hist. Eng. Law*, 61. *Termes de la Ley. Hale's Hist. Com. Law*, 162, note, (Runnington's ed.)

ΔΑΝΕΙΟΝ, Δανειον. Gr. In the civil law. Interest; debt. *Nov.* 106.

ΔΑΝΕΙΣΜΑ, Δάνεισμα. Gr. In the civil law. A thing loaned; a debt. *Nov.* 4, c. 1.

ΔΑΝΕΙΣΤΗΣ, Δανειστης. Gr. In the civil law. A creditor. *Nov.* 4, c. 1. *Id.* c. 3, § 1.

DANELAGE, *Denelage.* [L. Fr. *Danelae;* L. Lat. *Danelaga, Denelaga;* from *Dane*, and Sax. *lage*, law.] Dane law; the Danish law. A system of laws introduced by the Danes on their invasion and conquest of England, and which was principally maintained in some of the midland counties, and also on the eastern coast. 1 *Bl. Com.* 65. 4 *Id.* 411. 1 *Steph. Com.* 42. According to Spelman, it was the prevailing law from the time of King Edgar to that of Edward the Confessor, and was preferred by William the Conqueror to all the other systems which he found in England, so that he came very near imposing it upon the whole kingdom, (*parum abfuit ne toti Angliæ impossuisset,*) and this partiality was owing to the fact of the Normans being descended from the same stock with the Danes. *Spelman*, voc. *Lex Danorum.*

DANGERIA. L. Lat. In old English law. A payment in money made by forest tenants to the lord, that they might have leave to plough and sow in time of pannage or mast feeding. *Cowell.* Called, in some places, *lyef-geld, lyef-silver*, and *lef-silver. Id.*

DANGERS OF THE SEA. See *Perils of the Sea.* The phrases "the dangers of the seas," "the dangers of navigation,"

and "the perils of the seas" employed in bills of lading, are convertible terms. 1 *Abbotts' Adm. R.* 348.

DANO. Span. In Spanish law. Damage; the deterioration, injury or destruction, which a man suffers with respect to his person or his property, by the fault (*culpa*) of another. *White's New Recop.* b. 2, tit. 19, c. 3, § 1. See *Id.* b. 2, tit. 10, c. 12.

DANS. L. Fr. In; within. See *Deins.*

DANUM, *Danu.* Contractions of DAMNUM. See *Contraction.*

DAPIFER. Lat. [from *daps*, a feast, and *ferre*, to carry.] In old European law. A steward, either of a king or lord; a seneschal. Originally, a domestic who waited on the table. Called also *domesticus, megadomesticus, oeconomus, major domûs, senescallus, scalcus, gastaldus. Spelman.*

DARE. Lat. To give; to cause a thing to be effectually his who receives it; (*rem accipientis facere cum effectu*). *Bract.* fol. 11, 38 b. *Fleta*, lib. 3, c. 3, § 2. See *Do, Give.*

DAREIGNER. See *Deraigner.*

DAREYNE. See *Darrein.*

DARREIN, *Darreine, Darreyne, Dareyne, Darrain, Darraigne.* L. Fr. Last. *Dareyne volunte;* last will. *Britt.* c. 28.

DARREIN CONTINUANCE. L. Fr. In practice. The last continuance. See *Continuance, Puis darrein continuance.*

DARREIN PRESENTMENT. L. Fr. In old English law. The last presentment. See *Assise of darrein presentment.*

DASH. In old pleading. A small horizontal line or mark made or drawn *over* certain letters, to denote a contraction. In some instances, it was drawn *through* the letters. The letters *b*, *h*, and *l*, were dashed through the top; the letter *p*, through the bottom. 1 *Inst. Cler.* 2, 6, 15. See 8 *Mod.* 327.

DAT. An abbreviation of *Data* or *Datum*, in the clause at the end of the constitutions of the Roman emperors, showing the day and month when it was *given*, and in whose consulship. In other words, the date of the constitution. See the *Code of Justinian, passim*, and see *infra, Date.*

DAT'. An abbreviation of *Data*, or *Datum*, (qq. v.) in old instruments. The Magna Charta of 9 Hen. III. concludes thus: DAT' *apud Westmon' undecimo die Februarii, anno regni nostri nono;* GIVEN at Westminster, on the eleventh day of February, in the ninth year of our reign. Private instruments concluded in the same way. *Dat' London, tali die, anno supradicto. Fleta*, lib. 2, c. 64, § 3. See *Litt.* sect. 371.

DATA. L. Lat. [from *dare*, to give.] In old practice and conveyancing. The date of a deed or charter; the time when it was *given*, that is, executed. The Magna Charta of King John concludes thus: DATA *per manum nostram, in prato quod vocatur Runingmed' inter Windelesorum et Stanes, quinto decimo die Junii, anno regni nostri septimo decimo.* GIVEN by our hand, in the meadow which is called Runingmede, between Windsor and Stanes, the fifteenth day of June, in the seventeenth year of our reign. Data *apud Saleford;* given at Saleford. 2 *Bl. Com.* Appendix, No. I. See *Date, Given.*

The date of a writ; the time when it was *given*, that is, granted or issued. *Bract.* fol. 176. *Britt.* c. 48. *Reg. Orig.* 26, note. *Tempus datæ;* the time of the date. *Fleta*, lib. 4, c. 22, § 10. See *Id.* c. 10, §§ 3, 5. *Item videndum erit si tempore* datæ *aliqua fuerit causa impetrandi vel nulla, et ideo respicienda erit* data, *si forte deleta fuerit vel in aliquo mutata;* also, it must be seen if, at the time of the date, there were any cause of [ground for] obtaining it or none; and therefore the date must be looked to, if perchance it have been erased, or altered in any respect. *Bract.* fol. 188. In modern practice, this clause is called the *teste*, (q. v.)

DATE. L. Fr. Given. *Dyer*, 115.

DATE. L. Fr. and Eng. [from Lat. *data, datum*, or *datus*, qq. v.] In conveyancing. That part of a deed or writing which expresses the day of the month and year in which it was made or *given.* 2 *Bl. Com.* 304. 2 *Hilliard's Real Prop.* 333. 1 *Ld. Raym.* 84. *Tomlins.*

*** The formation of this now ordinary word may be clearly traced to the emphatic word of the clause by which the *time* and *place of execution* of an instrument were anciently expressed, usually at the conclusion:—DATA (or DATUM) *apud—tali die*, &c. (GIVEN at — on such a day, &c.; or, in French, DONE *à* — &c.) This practice, again, may be further traced as far back as the constitutions of the Roman emperors, which, as they appear in the Code of Justinian, usually conclude with a similar clause, giving the day and month, some-

times the place, and the names of the consuls for the year, thus: DATA. *V. Kal. April. Lampadio et Oreste VV. CC. Conss.* DAT. *XIII. Kal. Decemb. CP. Justino et Opilione Conss.* DAT. *Idib. Aug. Constantinop. Constantio II. et Constante Conss.* See *Cod. passim.* The Novels were *dated* in a similar manner. The abbreviation DAT. was sometimes still further abbreviated to D. From this emphatic Latin word DATA (or *datum*,) the L. Fr. word *date* seems to have been immediately formed as a name for the whole clause, and afterwards adopted as an English word of more general application. That the earliest use of *date* was as a French word, appears from the following passages of Britton: *Et pur ceo est bone cautele pur ceux que fount faire chartre, que* date *soit mys del jour, et del lieu, et del an;* and therefore it is a good precaution for those who are about to make a charter, [deed,] that the *date* be put of the day, and of the place and of the year. *Britt.* c. 39. *Par defaute de* date *est le brefe abatable et vicious;* by defect of the *date* is the writ abatable and faulty. *Id.* c. 48. The first of these passages is also important as showing the time when dates in deeds began to come into use.

The use of this *datum* clause, or *date*, was common to a great variety of instruments, public as well as private. See the date of Magna Charta, under *Dat'* and *Data.* And see *Done, Donees.* The style of the literal translation "Given," &c. is still preserved in public instruments requiring greater formality of style, such as proclamations of state: "Dated," &c. being appropriated to private writings. See *Datum, Done.*

DATIO. Lat. [from *dare*, to give.] In the civil law. A giving, or act of giving. *Datio in solutum;* a giving in payment; a species of accord and satisfaction. Called in modern law, *dation. Bouvier.*

Appointment or assignment. *Datio judicis;* appointment of a *judex* to hear and determine a cause. *Hallifax, Anal.* b. 3, c. 9, num. 19. See *Do, Dico, Addico. Datio tutoris;* the appointment of a tutor or guardian by the prætor or a magistrate, where none had been provided by will or by law. *Inst.* 1. 20. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 20.

DATIVE. [L. Lat. *dativus;* L. Fr. *datif.*] In old English law. In one's gift; that may be given and disposed of at will and pleasure. Applied to an officer in the sense of *removeable*, as distinguished from *perpetual. Stat.* 9 *Ric.* II. c. 4. *Stat.* 45 *Edw.* III. cc. 9, 10. *Cowell.*

In the civil law. That which is given by the magistrate, as distinguished from that which is cast upon a party by the law or by a testator. *Bouvier.* A *dative executor* (Fr. *executor datif*,) answers to the administrator of the common law. *Code of Louis.* Art. 1671, 1672.

DATUM. L. Lat. [from *dare*, to give.] In old conveyancing. Given; dated. *Co. Litt.* 6 a. *Datum apud London;* given at London. *Perk.* ch. 2, s. 153 B.

A date. *Cujus* datum *est in Dom. Capitulari;* the date of which is in the Chapter House. *Dyer*, 26 b. See *Date.*

Datur digniori. It is given to the more worthy. 2 *Ventr.* 268. *Broom's Max.* [49.]

DATUS. Lat. [from *dare*, to give.] In old conveyancing. Date or giving. *Dies datûs;* the day of the date. 2 *Salk.* 413. Translated "giving," by Holt, C. J. 12 *Mod.* 194. *Cujus datus*, the giving of which was. *Id.*

DAY. [Lat. *dies;* Fr. *jour.*] A period of time consisting of twenty-four hours, and including the solar day and the night. *Co. Litt.* 135 a. *Bract.* fol. 264. An artificial period of time, computed from one fixed point to another, without any reference to the natural distinction between day and night; and hence very expressively termed by Bracton an *artificial day.** *Efficitur dies qui dicitur* artificialis, *ex die precedente et nocte subsequente. Bract. ub. sup. Britt.* c. 80. *Fleta*, lib. 5, c. 5, § 31. A day, in contemplation of law, usually comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. 2 *Bl. Com.* 141. 1 *Steph. Com.* 265. This is otherwise called, as among the Romans, a *civil* day. *Adam's Rom. Ant.* 358. See *Dies, Dies juridicus, Sunday.*

A period of time of variable length, beginning at day-break and ending with twilight, as distinguished from night.* See *Night.* This has been termed by some of the old writers, an artificial day. *Termes de la Ley. Cowell. Bell's Dict.* But the epithet *artificial* rather belongs to the civil day (*supra*,) than this, which is a natural period, being merely the solar day (*infra*)

extended to its utmost limits. A *solar* day, according to Lord Coke, begins at sunrise and ends at sunset. *Co. Litt.* 135 a. This is the same with the *natural* day of the Romans. In modern science, the term *solar day* has quite a different meaning, denoting the interval between two noons. *Brande.*

DAY. [Lat. *dies.*] In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, &c. See *Days in bank*, *Dies datus*, *Return day.* It was only by means of *days* thus *given*, that a suit anciently could be continued in court; and where a day was not given, it was equivalent to a discontinuance, and the suit came to an end. A defendant was said to go without day, (*sine die*) when he was finally dismissed from court. See *Continuance*, *Sine die*, *Without day.*

DAYBREAK. [L. Lat. *lux diei ortus.*] *Cro. Jac.* 106.

DAYLIGHT. [L. Lat. *diurnum lumen*, *crepusculum.*] That portion of time before sunrise, and after sunset, which is accounted part of the day (as distinguished from *night*,) in defining the offence of burglary. 4 *Bl. Com.* 224. *Cro. Jac.* 106. See *Burglary*, *Night.*

DAY RULE. In English practice. A rule granted (or rather a certificate of the Court of Queen's Bench having granted a rule) to a prisoner, permitting him to go beyond the *rules*, (that is, the limits) of the prison for the purpose of transacting his business. So called, because granted only for a *day;* the prisoner being required to return to the prison at or before nine o'clock of the evening of the day for which the rule was granted. 2 *Archb. Pr.* 131. *Archb. New Pract.* 529. 1 *Tidd's Pr.* 374. *Sewell's Law of Sheriff*, 69.

DAYS IN BANK. [L. Lat. *dies in banco.*] In practice. Certain stated days in term appointed for the appearance of parties, the return of process, &c., originally peculiar to the Court of Common Bench, or Bench (bank) as it was anciently called. *Fleta*, lib. 2, c. 35. 3 *Bl. Com.* 277. See *Bank*, *Bench*, *Dies communes in banco.*

DAYS OF GRACE. In mercantile law. Days (usually three in number,) allowed by the custom of merchants, for the payment of bills of exchange and promissory notes, (except such as are payable on demand, or where no time of payment is expressed,) beyond the day expressed for payment on the face of them; the bill or note not actually becoming payable until the third day of grace. 3 *Kent's Com.* 100, 104, and notes. 2 *Steph. Com.* 164. *Chitty on Bills*, 374. *Story on Bills*, §§ 333—343.

DAYS OF GRACE. [L. Lat. *dies gratiæ*, or *amoris.*] In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the *quarto die post.* 3 *Bl. Com.* 278. See *Quarto die post.* This practice has been traced, through the feudal law, to the customs of the ancient Germans. *Id. ibid.* See *Dies gratiæ.*

DAYSMAN. [from *day*, judgment, according to some.] An arbitrator, umpire or elected judge. *Cowell.*

DAYWERE. In old English law. A term applied to land, and signifying as much arable ground as could be ploughed up in one day's work. *Cowell.*

D'C'US. A contraction of DICTUS. *D'c'um*, of *Dictum.* 1 *Inst. Cler.* 9.

DE. Lat. and L. Lat. Of; about, concerning, respecting. *De donis*, (q. v.) of gifts. *De mercatoribus*, (q. v.) of merchants. *De homicidio.* *Bract.* fol. 120 b. *De terra.* *Id.* 112. *De actionibus.* *Id.* 98 b.

Of; affecting. *Si quis appellatus est* de *vita et membris;* if one is appealed [accused] of a matter affecting life and limbs. *Bract.* fol. 112 b.

Of; about, against. De *quo queritur;* of whom complaint is made. *Id.* fol. 182.

Of; by, arising from. De *gratia, magis quam* de *jure;* of favor or grace, rather than of right. *Id.* fol. 118 b. De *necessitate.* *Id.* fol. 144 b. De *consuetudine.* *Id.* fol. 161 b.

Of; from, out of. De *quolibet burgo;* out of every borough. *Id.* fol. 109 b. *Disseysina* de *libero tenemento;* disseisin of freehold. *Id.* fol. 121 b.

Of; for, to. *Plegii* de *prosequendo;* pledges for prosecuting, pledges to prosecute. *Fleta*, lib. 1, c. 21, § 1. *Plegii* de *parendo juri;* pledges to obey the law. *Id.* lib. 2, c. 60, § 36.

Of; among, from. *Quilibet* de *populo;* any one of the people. *Bract.* fol. 118 b.

Of; in consequence of. *Obiit* de *plaga;* he died of the wound. *Id.* fol. 138.

Of; out of, issuing or derived from.

Redditus de *tenemento;* rent of a tenement. *Id.* fol. 184. *De corpore;* of the body. 7 *Co.* 41 b.

Of; from, under. *Tenere de rege;* to hold of the king. *Bract.* fol. 106.

Of; by, upon. *Felonia* de *se;* felony of himself. *Id.* fol. 150.

Of; out of, with. *Fiat messuagium* de *bosco communi;* a messuage shall be built of common wood. *Id.* fol. 97 b.

Of; as to, in regard to. De *hoc. Id.* fol. 113, *et passim. Si* de *hoc constare possit;* if it can be made to appear in regard to this. *Id.* fol. 131.

Of; in. *De termino;* of the term. *Id. passim. De itinere. Id. De placito,* (q. v.)

Of; on. *De materia;* on the subject. *Id.* fol. 130, *et passim.*

Of; in the sense of the genitive case. *Aliquo tempore* de *die vel* de *nocte;* at any time of the day or night. *Id.* fol. 119. *Seysina* de *hæreditate;* seisin of the inheritance. *Id.* fol. 130. *Hominibus* de *Iernemewe, et ballivis* de *Donewiz;* to the men of Yarmouth, and the bailiffs of Dunwich. *Id.* fol. 118.

Of; in the sense of part or portion. *Nihil restituetur ei* de *precio quod solvit;* no part of the price that he paid shall be restored to him. *Id.* fol. 151.

Of; in the sense of criminal participation. *Indictari* de *latrocino;* to be indicted of larceny. *Id.* fol. 132. *Culpabiles* de *homicidio;* guilty of homicide. *Id.* fol. 121. De *crimine convictus;* convicted of crime. *Id.* fol. 123 b.

From. De *loco in locum;* from place to place. *Id.* fol. 115 b. De *verbo in verbum;* from word to word. *Id.* fol. 111, 146.

For. *Ad respondendum* de *pretio;* to answer for the price. *Id.* fol. 121 b. *De debito;* for the debt. *Fleta,* lib. 2, c. 63, § 6.

For; in respect of. De *bono et malo;* for good and ill. *Bract.* fol. 143 b.

For; about. De *re agere;* to sue for a thing; to go to law about it. *Id.* fol. 113 b.

By; according to. De *jure gentium;* by the law of nations. *Id.* fol. 102 b. De *jure naturali;* by the law of nature. *Id.* fol. 120.

By; with. De *consilio curiæ;* by the advice or direction of the court. *Id.* fol. 185 b. De *consensu partium;* by consent of parties. *Id.* fol. 206 b.

By; during. De *nocte vel* de *die;* by night or by day. *Id.* fol. 184. De *clara die;* by daylight. *Id.* fol. 137 b.

In. De *æquitate;* in equity. *Id.* fol. 96 b. De *facto,* (q. v.); in fact.

With. De *denariis suis emptum;* bought with his moneys. *Id.* fol. 198 b.

*** The foregoing are the most important of the numerous senses in which this very common particle occurs in the language of the old law, and in technical phrases still in use. In the titles of the old English statutes, and of writs original and judicial, as well as in the ordinary formulæ of the courts, its prevailing sense is *of,* that is, *about, concerning* or *respecting.* Another very common use of it, (as of the law French *de,*) is to express the genitive case, either where the words employed do not admit of the necessary inflection for that purpose, or where it was supposed to convey the meaning with greater aptness and precision. The examples of the different significations are taken, it will be seen, almost without exception, from Bracton, whose style may be considered as exhibiting the purest specimen of legal Latinity to be met with among the ancient writers on the law of England.

DE. L. Fr. Of; about, concerning. *De homicides. Britt.* c. 5. *De attornes. Id.* c. 126.

Of; out of, by. *Plus* d'*grace q'*d'*droit;* more of favor than of right. *Id.* c. 69.

Of; out of, composed of. *Que est fait* del *jour et* de *la nuyt suaunte;* which is made up of the day and the following night. *Id.* c. 80.

Of; from, under. *Que il tiendra de luy;* which he shall hold of him. *Id.* c. 68.

Of; in the sense of the genitive case. *Brefe* de *droit;* writ of right. *Id. passim. En roule* de *coroner;* in the roll of the coroner. *Id.* c. 24, 25.

Of; in the sense of connection or relation. *De son saunk;* of his blood. *Id.* c. 23.

Of; in the sense of criminal participation. *Coupables* de *felonie;* guilty of felony. *Id.* c. 24.

Of; in the sense of character or quality. *De fraunk estate;* of free estate. *Id.* c. 49.

Of; in the sense of attainment. *De age. Id.* c. 74. *De pleyn age;* of full age. *Id. ibid.*

Of; in the sense of possession. *Seisine* de *son heritage;* seisin of his inheritance. *Id. ibid.*

Of; out of; in the sense of dispossession. *Engette* de *son fraunk tenement;* ejected of his freehold. *Id.* c. 42.

Of; in the sense of privation. *Delayer* de *lour droit;* to delay of their right. *Id.* c. 84.

To; (with the infinitive). *Plegges* de *suer;* pledges to prosecute. *Id.* c. 24. *Plegges* de *respondre et* de *retorner;* pledges to answer and to return. *Id.* c. 28. *Somouns* de *estre;* summoned to be. *Id. ibid. Destreintz* de *vener;* distrained to appear. *Id. ibid. Jugement* de *estre treyne et pendu;* judgment to be drawn and hanged. *Id.* c. 23.

From; (in time). *De ceo jour en avaunt;* from this day forward. *Id.* c. 68. *De jour en jour. Id.* c. 78.

From; (in place). *Exyl de nostre royalme;* banishment from our realm. *Id.* c. 16.

From; in the sense of origin or derivation. *Descent* de *un cep;* descent from one stock. *Id.* c. 70.

For; in return for. *Dues* de *ma porcion;* due for my portion. *Id.* c. 68.

By. *De un baron a une femme;* by a husband to a wife. *Id.* c. 102.

By; according to. *De ley;* according to law. *Yearb.* T. 5 Edw. III. 6.

In. *De play* [or *plee*] *de terre;* of (in) a plea of land. *Britt.* c. 123. *De fee. Id. passim.*

On. *De coste;* on the side. *Id.* c. 119. *De part piere, come* de *part le mere;* on the side of the father, as on the side of the mother. *Id.* c. 89.

With. *De dirs enkes;* with different inks. *Id.* c. 48.

With; by. *De la consente;* with the consent. *Id.* c. 24.

DE ACQUIRENDO RERUM DOMINIO. Lat. Of (about) acquiring the ownership of things. *Dig.* 41. 1. *Bract.* lib. 2, fol. 8 b.

DE ADMENSURATIONE DOTIS, *Breve.* L. Lat. Writ of admeasurement of dower. A writ which lies where a widow has assigned to her, by the heir or his guardian, more land as dower than rightly belongs to her; commanding the sheriff to cause the dower to be admeasured. *Reg. Orig.* 171. *F. N. B.* 148, F. G. 3 *Bl. Com.* 383. 1 *Steph. Com.* 254. See *Admeasurement of dower.*

DE ADMENSURATIONE PASTURÆ. See *Admeasurement of pasture.*

DE ADVISAMENTO CONSILII NOSTRI. L. Lat. With, or by, the advice of our council. A phrase used in the old writs of summons to parliament. *Reg. Jud.* Appendix, 7, 8. *Crabb's Hist. Eng. Law,* 240.

DE ÆQUITATE. L. Lat. In equity. *De jure stricto, nihil possum vendicare,* de æquitate *tamen, nullo modo hoc obtinet;* in strict law, I can claim nothing, but in equity this by no means obtains. *Fleta,* lib. 3, c. 2, § 10.

DE ÆTATE PROBANDA, *Breve.* L. Lat. Writ of (about) proving age. An old writ which lay to the escheator or sheriff of a county, to summon a jury to inquire whether the heir of a tenant *in capite,* claiming his estate on the ground of full age, was, in fact, of age or not.* *Reg. Orig.* 294. *F. N. B.* 257.

DE ALEATORIBUS. Lat. About gamesters. *Dig.* 11. 5.

DE ALLOCATIONE FACIENDA, *Breve.* L. Lat. Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs,) in their accounts, certain payments made by them.* *Reg. Orig.* 192.

DE ALTO ET BASSO. L. Lat. [L. Fr. *de haut et de bass.*] Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. *Cowell,* voc. *Alto et basso. Stat. Walliæ,* 12 *Edw.* 1. 2 *Reeves' Hist. Eng. Law,* 96. See *De haut et de bass.*

DE AMBITU. Lat. Concerning bribery. *Ambitus* (bribery) was the subject of several of the Roman laws; as the *Lex Aufidia,* the *Lex Pompeia,* the *Lex Tullia,* and others. See *Ambitus.*

DE AMPLIORI GRATIA. L. Lat. Of more abundant or especial grace. *Towns. Pl.* 18.

DE ANNO BISSEXTILI. Of the bissextile or leap year. The title of a statute passed in the 21st year of Henry III. which in fact, however, is nothing more than a sort of writ or direction to the justices of the Bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essoin *de malo lecti,* and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 *Reeves' Hist. Eng. Law,* 266. See *Bissextile.*

DE ANNUA PENSIONE, *Breve.* L. Lat. Writ of annual pension. An ancient writ by which the king having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. *Reg. Orig.* 265 b, 307. *F. N. B.* 231 G. *Termes de la Ley.*

DE ANNUO REDDITU, *Breve.* L. Lat. [L. Fr. *brefe d'annuitie.*] A writ of annuity. A writ for recovering an annuity whether payable in money or goods. *Reg. Orig.* 158 b. *Fleta*, lib. 2, c. 63, § 3. *F. N. B.* 152 A. 2 *Reeves' Hist. Eng. Law*, 258.

DE APOSTATA CAPIENDO, *Breve.* L. Lat. Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him, and deliver him again to his abbot or prior. *Reg. Orig.* 71 b, 267. *F. N. B.* 233, 234.

DE APPELLATIONIBUS. Lat. About appeals. *Dig.* 49. 1.

DE ARBORIBUS CÆDENDIS. Lat. About cutting trees. *Dig.* 43. 27.

DE ARRESTANDIS BONIS NE DISSIPENTUR, *Breve.* L. Lat. An old writ which lay *to seize goods* in the hands of a party during the pendency of a suit, to *prevent their being made away with. Reg. Orig.* 126 b.

DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT, *Breve.* L. Lat. An old writ which lay *for the apprehension of one who had taken* the king's prest *money* to serve in the war, and hid himself when he should go. *Reg. Orig.* 24 b. *Blount.*

DE ARTE ET PARTE. L. Lat. Of art and part. A phrase in old Scotch law. 1 *Pitcairn's Crim. Trials*, part 2, p. 55. See *Art and part.*

DE ASPORTATIS RELIGIOSORUM. L. Lat. Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 *Reeves' Hist. Eng. Law*, 157. 2 *Inst.* 580.

DE ASSISA CONTINUANDA, *Breve.* See *De continuando assisam.*

DE ASSISA PROROGANDA, *Breve.* L. Lat. Writ for proroguing an assise. A writ anciently directed to the justices assigned to take assizes, commanding them to prorogue or postpone an assize to a certain day; where one of the parties could not attend, in consequence of being employed in the king's service. *Reg. Orig.* 207 b, 221 b.

DE ATTORNATO RECIPIENDO, *Breve.* L. Lat. Writ for receiving an attorney. A writ which anciently lay to the judges of a court, requiring them to receive and admit an attorney for a party. *Reg. Orig.* 26 b, 172, *et passim. F. N. B.* 156 D.

DE AUDIENDO ET TERMINANDO. L. Lat. [L. Fr. *d' oyer et terminer.*] For hearing and determining; to hear and determine. The name of a writ, or rather commission, granted to certain justices, to hear and determine cases of heinous misdemeanour, trespass, riotous breach of the peace, &c. *Reg. Orig.* 123, *et seq. F. N. B.* 110 B. See *Oyer and Terminer.*

DE AUXILIO. L. Lat. Of aid. *Fleta*, lib. 1, c. 33, § 8.

DE AVERIIS CAPTIS IN WITHERNAMIUM, *Breve.* L. Lat. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a *pluries* writ of replevin, that the cattle or goods, &c., were eloined, &c.; by which he was commanded to take the cattle of the defendant in withernam, and detain them until he could replevy the other cattle. *Reg. Orig.* 32. *F. N. B.* 73, E. F. See *Withernam.*

DE AVERIIS REPLEGIANDIS, *Breve.* L. Lat. Writ for replevying beasts. A writ directed to the sheriff, commanding him to cause to be replevied for a party his beasts or chattels, &c., which another had taken and unjustly detained. *Reg. Orig.* 81. Otherwise called a writ *de replegiare de averiis. F. N. B.* 68 E. The old writ of replevin. See *Replegiari facias, Replevin.*

DE AVERIIS RETORNANDIS. L. Lat. For returning the cattle. A term applied to pledges given in the old action of replevin. 2 *Reeves' Hist. Eng. Law*, 177.

DE AVO, *Breve.* L. Lat. Writ of aiel or ayle. *Reg. Orig.* 226.

DE BANCO. L. Lat. Of the Bench. A term formerly applied in England to the justices of the Court of Common Pleas, or *Bench*, as it was originally styled. *Rex justitiariis suis* de banco, *salutem;* the king to his justices of the Bench, greeting.

Reg. Orig. 19 *et passim. Coram justitiariis nostris* de banco; before our justices of the Bench. *Id.* 168, *et passim.* A distinction was made between the phrases *curia nostra* de banco, (our court of the bench,) and *curia* de banco *nostro*, (the court of our bench); the former being held to signify the Common Bench or Common Pleas, the latter the King's Bench. 1 *Stra.* 302.

DE BENE ESSE. L. Lat. [L. Fr. *del bien estre.*] In old practice and conveyancing. Of well being; of form; of mere form; of necessary, sufficient or advisable form; of good precaution; of contingent or possible utility or necessity; of conditional or permissive validity. To pass as a matter of form; to be advisable in point of form; to be allowed as of present formal sufficiency, with reference to something future. See *infra.*

In modern practice. Of well being; of present or temporary formal sufficiency; of conditional validity; conditionally. To be good or valid for the present, subject, however, to some future and further proceeding.—A term applied to such acts or proceedings as are done or permitted to take place in an action, but the validity or effect of which depends upon some subsequent act, fact, matter or proceeding. Thus, to declare *de bene esse* in a bailable action, is to declare *on condition* that bail is duly put in, which is expressed by the endorsement of the words "*de bene esse*" on the declaration itself. When bail is put in, the declaration becomes absolute, as in other cases. 1 *Archb. Pr.* 121. 1 *Tidd's Pr.* 419. To examine a witness *de bene esse* is to examine him out of court before the trial, *subject to the contingency* of his being able to attend court at the trial. If he be unable to attend, such examination is good, and the deposition may be read in evidence on the trial. But if he be able to attend, the examination is of no validity, and he must be examined again at the trial in the usual way. *Grah. Pr.* 584. 1 *Burr. Pr.* 212, 447. The common practice of allowing a jury to find a verdict subject to the opinion of the court, is properly a proceeding *de bene esse*, and was anciently so called, as it still is, occasionally. *Dyer*, 55 b, 120. And see 1 *Leon.* 5.

*** The precise literal meaning of this very old, but still common technical expression, (the practical import of which is well enough understood,) seems to have been a matter of uncertainty and difficulty ever since the time of Cowell, who observes that "*de bene esse* are common Latin words, but their meaning something more dark." This obscurity has doubtless principally arisen from the peculiar structure of the phrase itself, which has rendered a literal translation into English a matter of so much difficulty, that most interpreters, following Cowell's example, have contented themselves with expressing the sense in terms of as close approximation as was supposed practicable. From this circumstance, in connection with the apparent absence of words expressive of the idea of *condition*, now inseparable from its meaning, it has sometimes been supposed to be a fragment of a longer phrase or sentence, which supplied the words (now lost) necessary to complete the sense. A reference to its origin, however, will tend, it is believed, to show that it is not only perfect in itself, and as well constructed as many other phrases in the same technical dialect, but that the material idea of *condition* is still inherent in its emphatic word *bene*, though in a great degree obscured by the more modern application of it. The phrase itself, it may be observed, appears to have been not originally a Latin one, but a very literal translation of the law French *del bien estre*, of which more will be said presently. This, at least, may be assumed from the circumstance that it is not to be found in Bracton,—the great source of most of the technical Latin of the English law,—while in the law French of Britton it not only occurs in form, but its component words are constantly used in connections which throw an important light upon its meaning. Thus, in the chapter *De chartres*, in explaining the forms of the charters or deeds of the time, and what words were advisable or necessary to be used in them, it is said by this author, of certain words, "*Car teles paroles sount plus* del bien estre *que de la substaunce de la besoigne, nequedent tout soient teles p'oles mys en escritz, eles ne grevent nient;*" which may be literally rendered, "for such words are more of form (more *de bene esse*) than of necessary substance; nevertheless, if they are put in writings, they do no harm." *Britt.* c. 39. The context here plainly shows the meaning of *del bien estre* to be, *of form*,—literally, *of well being*,—which may be considered the original sense; *bien*,

the emphatic word, (like the Latin *bene*,) being continually used by the same author to denote *form*, with the modifications of *mere* or indifferent form, (as in the passage quoted,) *sufficient* form, *necessary* form, and *advisable* form, according to its various applications. Thus, a writ is said to be *mye* bien *conceu*, not well conceived, that is, insufficient in form, or not framed according to a necessary prescribed form. *Britt.* c. 48. So, it is said of certain defendants in a writ,—*ils se mittent* bien *en Dieu, et en la graund assise;* they put themselves well (that is, in solemn form) on God, and on the grand assise. *Id. ibid.* The corresponding English word "*well*" is constantly used in the old reports, in precisely the same sense; the phrase of the court being,—where a writ or count is objected to as insufficient in form, and held to be good—"the writ (or count) is *well.*"

Another modification of this radical idea of *form* expressed by the word *bien*, (and the most important one for the purpose of the present illustration,) is that of *advisable* form. Thus, where the insertion of a word or clause in an instrument is recommended as advisable or prudent, the language of the author already quoted is,—*fait* bien *a especifier;* it is well to specify, (or *bon est de especifier*, it is good to specify; *est bone cautele*, it is a good precaution,) as distinguished from "*coviendra*," or "*necessarie*," which are the words used where a form is directed as necessary. *Britt.* c. 39. So, in regard to miscellaneous matters of practice, it is constantly said,—*fait* bien *a prendre gages*, it is well to take pledges or security; *fait* bien *examiner le verdit*, it is well to examine the verdict; and the like. *Id.* cc. 51, 97. It is from this ancient sense of *bien* or *bene*,—(still accurately expressed by the English "*well*,")—the radical idea of which is, *form observed with reference to future, rather than present use or effect*,—that the phrase *de bene esse* appears to have derived the sense of *conditional validity*, now inseparable from its meaning in practice, and which has already been sufficiently explained.

From the first quotation above given from Britton, it will be seen that *del bien estre* was employed at the remote age of that author, as a phrase in the law of *conveyancing.* As early as the time of Dyer, however, it (or its Latin equivalent, *de bene esse*) seems to have become more exclusively used as a technical term of practice, and in nearly or quite the sense which the latter phrase now bears. This will appear from the following passages taken from the original law French of Dyer's Reports, which are moreover important as showing about what time the French became exchanged for the Latin form, which has ever since been used. *Al peril de plaintife*, de bene esse, *le verdict fuit pris;* at the peril of the plaintiff, *de bene esse*, the verdict was taken. *Dyer*, 55 b. *Le jurie fuyt charge* de bene esse *de inquirend' des dammages*, &c.; the jury was charged *de bene esse* to inquire of the damages. *Id.* 120 a. *Et auxi charge*, de bien esse, *si le plaintife fuit*, &c.; and also charged, *de bien esse*, if the plaintiff was, &c. *Id.* 120 b. *Et le jurie charge al request del accessory*, de bien esse, *d'enquirer de les abettors*, &c.; and the jury was charged at the request of the accessory, *de bien esse*, to inquire of the abettors, &c. *Id. ibid.*

As to the peculiar structure of the phrase *de bene esse* in a grammatical point of view, it will be sufficient to observe that *esse* and its compounds are constantly employed in law Latin as substantives, in connection with prepositions, adjectives and other parts of speech. *In esse* (in being) will occur as a very common example of this kind of construction, which, though uncouth and barbarous, seems to be necessary in order to express the intended idea with brevity, and at the same time with entire precision. The style of the infinitive, however, is still sometimes observed in translation, as will be seen from the definitions already given. See *Esse.*

DE BIEN ESTRE. See *De bene esse, Del bien estre.*

DE BIEN ET DE MAL. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury; indicating his entire submission to their verdict. *Stat. Glocest.* c. 9. 2 *Reeves' Hist. Eng. Law*, 153. See *De bono et malo.*

DE BIENS LE MORT. L. Fr. Of the goods of the deceased. *Dyer*, 32.

DE BIGAMIS. L. Lat. Concerning men twice married. The title of the statute 4 Edw. I. st. 3; so called from the initial words of the fifth chapter. 2 *Inst.* 272. 2 *Reeves' Hist.* 142. It contains only six chapters, and from certain peculiarities in the mode of its passage, it was at one time doubted whether it was properly an act of parliament; but it has

always been received as one. *Id. ibid.* See *Bigamus, Bigamy.*

DE BONE MEMORIE. L. Fr. Of good memory; of sound mind. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510.

DE BONIS ASPORTATIS. L. Lat. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called trespass *de bonis asportatis.* 1 *Tidd's Pr.* 5. *Browne on Actions*, 402.

DE BONIS NON. An abbreviation of *De bonis non administratis*, (q. v.) 1 *Stra.* 34.

DE BONIS NON ADMINISTRATIS. L. Lat. Of the goods not administered. Where the administration of the estate of an intestate is left unfinished, in consequence of the death, removal, &c., of the administrator, and a new administrator is appointed, the latter is termed an administrator *de bonis non;* i. e. *of the goods* of the deceased *not* administered by the former administrator. 2 *Steph. Com.* 243. An administrator of this kind is also sometimes appointed to succeed an executor. *Id. ibid.*

DE BONIS NON AMOVENDIS, *Breve.* L. Lat. Writ for not removing goods. A writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his *goods* and chattels were safely kept *without being removed*, while the error remained undetermined, so that execution might be had of them, &c. *Reg. Orig.* 131 b. *Termes de la Ley.* This seems to have been a local writ.

DE BONIS PROPRIIS. L. Lat. [L. Fr. *de biens propres.*] Of his own goods; of the proper goods of a defendant. A term applied to a judgment rendered against an executor or administrator, awarding execution against his individual property. 2 *Archb. Pr.* 148, 149. 1 *Stra.* 20. 8 *Wheaton's R.* 675.

DE BONIS TESTATORIS, or INTESTATI. L. Lat. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 *Archb. Pr.* 148, 149. 8 *Wheaton's R.* 675.

DE BONIS TESTATORIS SI, &c., ET SI NON, &c., DE BONIS PROPRIIS. L. Lat. Of the goods of the testator, [in the hands of an executor defendant,] if, [he have so much thereof in his hands to be administered,] and if not, [then the costs to be levied,] of the defendant's own goods. One of the forms of judgment in an action against an executor. 2 *Archb. Pr.* 148. 18 *Johns. R.* 502. 19 *Id.* 266.

DE BONO ET MALO. L. Lat. For good and evil. A phrase in old pleadings, by which a party accused or appealed put himself upon a jury. *Et quod inde culpabilis non sit, ponit se super patriam* de bono et malo; and that he is not guilty thereof, he puts himself upon the country for good and evil. *Bract.* fol. 138 b. See *Fleta*, lib. 1, c. 34, § 34. *Ponit se super linguas vestras de hoc*, de bono et malo. *Bract.* fol. 143 b. The same as the Fr. *de bien et de mal*, (q. v.) · 4 *Mod.* 289.

The name of a special writ of gaol delivery. Instead of the general commission of gaol delivery under which the judges in England now act on the assizes, it was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo.* 2 *Inst.* 43. 4 *Bl. Com.* 270.

DE BONO GESTU. L. Lat. For good behaviour.

DE CÆTERO, DE CETERO. L. Lat. [L. Fr. *desormes.*] Henceforth, henceforward; hereafter, in future. *Magna Charta*, 9 Hen. III. cc. 23, 24, 26, 32, 35, 36. *Quod voluntas donatoris* de cetero *observetur;* that the will of the donor be henceforward observed. *Stat. De Donis*, 13 *Edw.* I. c. 1. De cætero *non recedant querentes à curia domini regis, pro eo quod tenementum transfertur de uno in alium;* hereafter plaintiffs shall not go [i. e. as unsuccessful in their actions] from the king's court, because the tenement is transferred from one to another. *Stat. Westm.* 2, c. 24. *Nulla riparia defendatur* de cetero; no river shall hereafter be enclosed. *Magna Charta*, 9 Hen. III. c. 16. See *Id.* c. 28.

DE CALCETO REPARANDO, *Breve.* L. Lat. Writ for repairing a causeway. An old writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, &c. *Reg. Orig.* 154.

DE CAPITALIBUS DOMINIS FEODI. L. Lat. Of the chief lords of the fee. A phrase in ancient charters, denoting the tenure by which the estate granted was to

be held. 2 *Bl. Com.* 298, 299. See *Chief Lord.*

DE CAPITE MINUTIS. Lat. Of those who have lost their *status*, or civil condition. *Dig.* 4. 5. See *Capitis deminutio.*

DE CARTIS [or CHARTIS] REDDENDIS, *Breve.* Writ for rendering or re-delivering charters, or deeds. A writ of detinue of charters. *Reg. Orig.* 159 b. *F. N. B.* 138. See *De catallis reddendis.*

DE CATALLIS REDDENDIS, *Breve.* L. Lat. Writ for rendering chattels. A writ to compel the specific delivery of chattels detained from the owner. *Reg. Orig.* 139 b. *O. N. B.* 63. A writ of detinue. *F. N. B.* 138. *Cowell.*

DE CAUTIONE ADMITTENDA, *Breve.* Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (*idoneam cautionem*) to obey the commands of the church; commanding him to take such security and release the prisoner. *Reg. Orig.* 66. *F. N. B.* 63, C.

DE CERTIFICANDO, *Breve.* L. Lat. A writ for certifying, or requiring a thing to be certified. A species of *certiorari. Reg. Orig.* 151, 152 b.

DE CERTIORANDO, *Breve.* L. Lat. A writ for certifying. A writ directed to the sheriff, requiring him to certify to a particular fact. *Reg. Orig.* 24.

DE CETERO. L. Lat. Henceforth; hereafter. See *De cætero.*

DE CHAMPERTIA, *Breve.* L. Lat. Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors. Reg. Orig.* 183. *F. N. B.* 172. See *Champerty.*

DE CHAR ET DE SANK. L. Fr. Of flesh and blood. *Affaire rechat de char et de sank.* Words used in claiming a person to be a villein, in the time of Edward II. *Yearb.* P. 1 Edw. II. p. 4.

DE CHIMINO, *Breve.* L. Lat. Writ of way. A writ for the enforcement of a right of way, (*chiminum*). A species of *quod permittat. Reg. Orig.* 155. See *Quod permittat.*

DE CIBARIIS UTENDIS. L. Lat. Of victuals to be used. The title of a sumptuary statute passed 10 Edw. III. st. 3, to restrain the expense of entertainments. *Barringt. Obs. Stat.* 240.

DE CLAMIA ADMITTENDA IN ITINERE PER ATTORNATUM, *Breve.* L. Lat. An ancient writ by which the king commanded the justices *in eyre, to admit a person's claim by attorney*, who was employed in the king's service, and could not come in his own person. *Reg. Orig.* 19 b.

DE CLAMIO HABENDO. L. Lat. For having a claim. *Fleta*, lib. 5, c. 41, § 3.

DE CLARO DIE. L. Lat. By daylight. *Fleta*, lib. 2, c. 76, § 8.

DE CLAUSO FRACTO. L. Lat. Of close broken; of breach of close. See *Clausum fregit.*

DE CLERICO ADMITTENDO, *Breve.* L. Lat. Writ for admitting a clerk. The writ of execution in a *quare impedit*, directed to the bishop, and commanding him to admit the plaintiff's clerk. Otherwise called a writ *ad admittendum clericum.* 3 *Chitt. Bl. Com.* 413, and note. 3 *Steph. Com.* 665, and note.

DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO, *Breve.* L. Lat. Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. *Reg. Orig.* 147 b. See *Clericus.*

DE CLERICO CONVICTO DELIBERANDO, &c., *Breve.* See *Ad deliberandum clericum, Reg. Orig.* 69.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM, *Breve.* L. Lat. A writ directed to bailiffs, or others who had thrust a bailiwick or beadleship upon one in holy orders, commanding them to release him, or to desist from their attempts to compel him to discharge the office. *Reg. Orig.* 187 b.

DE CLERO. L. Lat. Concerning the clergy. The title of the statute 25 Edw. III. st. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 *Reeves' Hist. Eng. Law*, 378. *Crabb's Hist.* 270.

DE COMBUSTIONE DOMORUM. L. Lat. Of house-burning. One of the kinds of appeal formerly in use in England. *Bract.* fol. 146 b. 2 *Reeves' Hist.* 38.

DE COMMUNI CONSILIO REGNI. L. Lat. By the common council, (or par-

liament) of the kingdom. A phrase anciently used in reciting the passage of statutes. *Reg. Orig.* 16. See *Commune concilium.*

De communi consilio, *super negotiis quibusdam arduis et urgentibus regem, statum, defensionem regni Angliæ et ecclesiæ Anglicanæ concernentibus ;* [to consult together] in parliament, upon certain difficult and urgent matters affecting the king and the state and defence of the realm and church of England. 1 *Bl. Com.* 159.

DE COMMUNI DIVIDUNDO. Lat. For dividing a thing held in common. The name of an action given by the civil law. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. *Bract.* fol. 443 b. *Fleta*, lib. 5, c. 9, § 1. See *Communi dividundo.*

DE COMON DROIT. L. Fr. Of common right, that is, by the common law. *Co. Litt.* 142 a. See *Common law.*

DE COMPUTO, *Breve.* L. Lat. Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. *Reg. Orig.* 135—138. *F. N. B.* 117 E. The foundation of the modern action of account. See *Account, Computus.*

DE CONFLICTU LEGUM. Lat. Concerning the conflict of laws. The title of several works written on that subject. 2 *Kent's Com.* 455.

DE CONJUNCTIM FEOFFATIS. L. Lat. Concerning persons jointly enfeoffed, or seised. The title of the statute 34 Edward I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seised jointly with them. 2 *Reeves' Hist. Eng. Law*, 243.

DE CONSANGUINEO, *Breve.* L. Lat. Writ of cosinage. *Reg. Orig.* 226. *F. N. B.* 221 K. See *Consanguineus, Cosin, Cosinage.*

DE CONSANGUINITATE, *Breve.* L. Lat. Writ of cosinage. *Co Litt.* 160 a. 1 *Reeves' Hist.* 363.

DE CONSILIO. L. Lat. In old practice. Of counsel. James Dyer *treit le scire facias, et fuit* de consilio *petentis in materia;* James Dyer drew the scire facias, and was of counsel for the plaintiff in the matter. *Dyer*, 34 b, (Fr. ed.) See *De counsel, A consiliis.*

DE CONSILIO. L. Lat. In old criminal law. Of counsel; concerning counsel or advice to commit a crime. *Fleta*, lib. 1, c. 31, § 8.

DE CONSILIO CURIÆ. L. Lat. By the advice or direction of the court. *Bract.* fol. 345 b.

DE CONSPIRATIONE, *Breve.* L. Lat. Writ of conspiracy. A writ which lay where two or more persons maliciously and covinously conspired to indict a person falsely, and afterwards he who was indicted was acquitted. *Reg. Orig.* 134. *F. N. B.* 114 D, 115 G. 2 *Reeves' Hist.* 328. 3 *Bl. Com.* 126. See *Conspiracy.*

DE CONSTITUTA PECUNIA. See *Actio de pecunia constituta.*

DE CONSUETUDINIBUS ET SERVITIIS, *Breve.* L. Lat. Writ of customs and services. A writ which lay for a lord against his tenant, who withheld from him, or deforced him of the rents and services due by custom or tenure for his land. *Reg. Orig.* 159. *F. N. B.* 151. *Bract.* fol. 83. 3 *Bl. Com.* 232. *Roscoe's Real Act.* 32. See *Customs.*

DE CONTINUANDO ASSISAM, *Breve.* L. Lat. Writ to continue an assise. *Reg. Orig.* 217 b.

DE CONTRIBUTIONE FACIENDA, *Breve.* L. Lat. Writ for making contribution. A writ founded on the statute of Marlbridge, (c. 9,) to compel co-parceners, or tenants in common, to aid the eldest in performing the services due by them; or to make contribution, where the services had been already performed. *Reg. Orig.* 176 b. *F. N. B.* 162 B. C. 2 *Reeves' Hist.* 327. 3 *Id.* 55. *Crabb's Hist.* 212.

DE CONTUMACE CAPIENDO, *Breve.* L. Lat. Writ for taking a contumacious person. A writ which issues out of the English Court of Chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. *Shelford, Marr. & Div.* 494—496, and notes. It is a commitment for contempt. *Id.* 504, 505. 5 *Ad. & Ell.* N. S. 335.

DE CONVENTIONE, *Breve.* L. Lat. Writ of covenant. *Reg. Orig.* 165—167. *F. N. B.* 145. See *Covenant.*

DE COPIA LIBELLI DELIBERANDA, *Breve.* L. Lat. Writ for delivering the copy of a libel. An ancient writ directed to the judge of a spiritual court, commanding him to *deliver* to a defendant a *copy* of the libel filed against him in such court. *Reg. Orig.* 58. The writ in the Register is directed to the Dean of Arches, and his commissary. *Id.* See *Copia.*

DE CORNES ET DE BOUCHE. L.

Fr. With horns and with mouth or voice. Words used in describing the ancient hue and cry. *Britt.* c. 12.

DE CORONATORE ELIGENDO, *Breve.* L. Lat. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, (*in pleno comitatu,*) the freeholders being the electors. *Reg. Orig.* 177. *Reg. Jud.* Appendix, 19. 1 *Bl. Com.* 347. 3 *Steph. Com.* 31. *Sewell's Law of Sheriff*, 372. A writ of this kind was issued as late as May, 1852. See 35 *Eng. Law & Eq. R.* 136.

DE CORONATORE EXONERANDO, *Breve.* L. Lat. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed from office for some cause therein assigned. *F. N. B.* 163, 164. 1 *Bl. Com.* 348. *Sewell's Law of Sheriff*, 373.

DE CORPORE. Lat. Of the body. *Bract.* fol. 37 b. See 7 *Co.* 41 b. 1 *P. Wms.* 73, 79. *De corpore suo;* from or of his own body. *Bract.* fol. 22 b.

DE CORPORE COMITATUS. L. Lat. From the body of the county at large, as distinguished from a particular neighborhood, (*de vicineto*). 3 *Bl. Com.* 360.

DE CORPORE DELICTI. L. Lat. As to the *corpus delicti*, or substantial fact of a crime having been committed. *De* corpore delicti *constare oportebat;* i. e. *non tam fuisse aliquem in territorio isto mortuum inventum, quam vulneratum et cæsum. Potest enim homo etiam ex alia causa subito mori.* It ought to be clear as to the *corpus delicti;* i. e. not only that one was found dead in that neighborhood, but that he was wounded and slain. For a man may die suddenly from another cause. *Stiernhook de Jur. Gothor.* b. 3, c. 4. 3 *Bl. Com.* 348, note (*t*).

DE CORRODIO HABENDO, *Breve.* L. Lat. Writ for having a corody. A writ to exact a corody from a religious house. *Reg. Orig.* 264. *F. N. B.* 230. See *Corody.*

DE COSTE. L. Fr. From, or on the side, (*à latere*); collateral. *Britt.* c. 119.

DE COUNSEL. L. Fr. Of counsel. *De counsel ove le defendant;* of counsel with (for) the defendant. *Dyer*, 38, (Fr. ed.)

DE CURIA CLAUDENDA, *Breve.* L. Lat. Writ for closing a court. A writ, now disused, to compel a party to close or enclose his court, (*curia,*) or land about his house, where it was left open, to the nuisance of his neighbor's freehold, (*ad nocumentum liberi tenementi*). *Reg. Orig.* 155. *F. N. B.* 127 G. 1 *Crabb's Real Prop.* 314, § 350. See *Curia.*

DE CURSU. L. Lat. Of course. *Fleta*, lib. 2, c. 13, § 2. *Reg. Orig.* 29 b, regula. Sir Wm. Scott, (The Fortuna,) 4 *Rob. Adm. R.* 282.

DE CUSTODIA TERRÆ ET HÆREDIS, *Breve.* L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the *wardship of the land and heir. Reg. Orig.* 161 b. *F. N. B.* 139 B. 3 *Bl. Com.* 141.

DE CUSTODE ADMITTENDO, *Breve.* L. Lat. Writ for admitting a guardian. *Reg. Orig.* 93 b, 198.

DE CUSTODE AMOVENDO, *Breve.* L. Lat. Writ for removing a guardian. *Reg. Orig.* 198.

DE CY EN AVANT. L. Fr. From now henceforth. *Artic. sup. Chart.* c. 1.

DE DEBITO, *Breve.* L. Lat. Writ of debt. *Reg. Orig.* 139. *F. N. B.* 119, C —121.

DE DEBITORE IN PARTES SECANDO. Lat. Of cutting a debtor in pieces. The title of a law in the Twelve Tables, the meaning of which has been differently interpreted; some writers contending for the literal signification, while others have supposed it to be only a figurative expression, denoting a division of the debtor's *estate.* The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius and Taylor. *Esprit des Lois*, liv. 29, c. 2. *Bynk. Obs. Jur. Rom.* l. 1, c. 1. *Heinecc. Ant. Rom.* lib. 3, tit. 30, § 4. *Tayl. Comment. in Leg. Decemv.* The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (*semoto omni cruciatu*) in the Roman code itself. *Aul. Gel. Noctes Atticæ*, lib. 20, c. 1. *Code*, 7. 7. 8. This is also the opinion of Gibbon, Gravina, Pothier, Hugo and Niebuhr. *Gibbon's Rom. Emp.* vol. 3, p. 183, (Am. ed.) *Gravina de Jur. Nat. Gent. et XII. Tab.* sec. 72. *Pothier, Introd. Pand. Hugo, Hist. du Droit Rom.* tom. i. p. 233, sec. 149. *Niebuhr, Hist. Rom.* vol. ii. p. 597. 1 *Kent's Com.* 523, note.

DE DECEPTIONE, *Breve.* L. Lat.

Writ of deceit, or disceit. A writ which properly lay where one did any thing in the name of another, by which the other was damnified and deceived. *Reg. Orig.* 112. *F. N. B.* 95, E. *Reg. Jud.* 9 b, 10.

DE DIE. L. Lat. By day. *Fleta*, lib. 2, c. 76, § 8. *De die claro;* by clear day; by daylight. *Id. ibid. Id.* lib. 1, c. 24. § 4.

DE DIE IN DIEM. L. Lat. From day to day. *Bract.* fol. 205 b. Holt, C. J. 6 *Mod.* 252.

DE DIVERSIS LIBERTATIBUS CLERO CONCESSIS. L. Lat. Of divers privileges granted to the clergy. The title of a statute passed 9 Edw II. A. D. 1315. Denied by some to have been an act of parliament. Mr. Barrington terms it a "capitulary." *Barr. Obs. Stat.* 195.

DE DIVERSIS REGULIS JURIS ANTIQUI. Lat. Of divers rules of the ancient law. A celebrated title of the Digests, and the last in that collection. It consists of two hundred and eleven rules or maxims. *Dig.* 50. 17.

DE DOLO MALO. Lat. Of, or founded upon fraud. *Dig.* 4. 3. See *Actio de dolo malo.*

DE DOMO REPARANDA, *Breve.* L. Lat. Writ for repairing a house. A writ which anciently lay to compel a man to repair his house, when it threatened to fall (*minatur ruinam*) to the nuisance of another's freehold, &c. *Reg. Orig.* 153 b.

DE DONATIONIBUS. Lat. Of gifts. *Dig.* 39. 5.

DE DONIS CONDITIONALIBUS. L. Lat. Concerning conditional gifts. The title of the first chapter of the statute of Westminster 2, (13 Edw. I.) commonly called the *Statute de Donis*, by which fees simple conditional were converted into fees tail. 2 *Reeves' Hist. Eng. Law*, 164, 165; where its contents are given. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 4 *Kent's Com.* 12, 13. *Burton's Real Prop.* 201, ch. ii. *Lewis on Perpetuity*, 27. See *Conditional fee, Fee tail.*

DE DOTE ASSIGNANDA, *Breve.* L. Lat. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite*, commanding the king's escheator to cause her dower to be assigned to her. *Reg. Orig.* 297. *F. N. B.* 263, C.

DE DOTE UNDE NIL HABET, *Breve.* L. Lat. Writ of dower, whereof she has nothing. A writ, now much disused, which lies for a widow entitled to dower of her husband's land, *where no part of it* has been assigned her, commanding the tenant, or person deforcing her, to assign her reasonable dower. *Reg. Orig.* 170. *F. N. B.* 147, E. 148, A. This is a writ of right in its nature. *Roscoe's Real Act.* 39. It must be brought by the widow as demandant, against the tenant of the freehold, that is, the heir or his alienee, and its effect is to enable the former to recover from the latter the seisin of a third part of the tenements in demand, to be set forth to her in severalty by metes and bounds, together with damages and costs. 3 *Steph. Com.* 494.

DE DROIT. L. Fr. [L. Lat. *de jure.*] Of right. *Britt.* c. 107.

DE EJECTIONE CUSTODIÆ, *Breve.* L. Lat. [L. Fr. *ejectment de gard.*] Writ of ejectment of ward. A writ which lay where a guardian had been forcibly ejected from his wardship. *Reg. Orig.* 162.

DE EJECTIONE FIRMÆ, *Breve.* L. Lat. Writ of ejectment or ejection of farm. A writ which lay where lands or tenements were let for a term of years, (*firma*, firm or farm,) and afterwards the lessor, reversioner, remainder-man or any stranger ejected or ousted the lessee of his term. It was originally merely a writ of trespass for the recovery of damages for such ejection, but was afterwards used as a remedy for the recovery of the term itself, and became in this way the foundation of the modern action of *ejectment. Reg. Orig.* 227 b. *F. N. B.* 220. 3 *Bl. Com.* 199—201. *Bract.* fol. 220. *Crabb's Hist.* 290. *Roscoe's Real Act.* 481. See *Ejectment, Firma.*

DE ESCÆTA, *Breve.* L. Lat. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. *Reg. Orig.* 164 b. *F. N. B.* 143, 144, E.

DE ESCAMBIO MONETÆ, *Breve.* L. Lat. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange (*literas cambitorias facere*). *Reg. Orig.* 194.

DE ESSE IN PEREGRINATIONE. L. Lat. Of being on a journey. A species of essoin. 1 *Reeves' Hist.* 119.

DE ESSENDO QUIETUM DE THEOLONIO, *Breve.* L. Lat. Writ of being quit of toll. A writ which lay for citizens and burgesses of any city or borough [and other persons] who by charter or prescrip-

tion were exempted from toll, [to enforce such exemption]. *Reg. Orig.* 258 b—261. *F. N. B.* 226, I. An action was brought on such a writ as late as 29 George III. London *v.* Lynn, 1 *H. Bl.* 206.

DE ESSONIO DE MALO LECTI, *Breve.* L. Lat. Writ of essoin of *malum lecti.* A writ which issued upon an essoin of *malum lecti* being cast, to examine whether the party was in fact sick, or not. *Reg. Orig.* 8 b. See *De malo lecti.*

DE ESTOVERIIS HABENDIS, *Breve.* L. Lat. Writ for having estovers. A writ which lay for a wife divorced *a mensa et thoro*, to recover her alimony or estovers. 1 *Bl. Com.* 441. 1 *Lev.* 6.

DE ESTREPAMENTO, *Breve.* L. Lat. Writ of estrepement. A writ to prevent or stop the commission of waste in lands by a tenant, during the pendency of a suit against him for their recovery.* *Reg. Orig.* 76 b. *F. N. B.* 60. 3 *Bl. Com.* 225, 226. Abolished by statute 3 & 4 Will. IV. c. 27. See *Estrepement.*

DE ET SUPER PRÆMISSIS. L. Lat. Of and upon the premises. *Cro. Car.* 216, 217.

DE EU ET TRENE. L. Fr. Of water and whip of three cords. A term applied to a neife, that is, a bond woman or female villein, as employed in servile work and subject to corporal punishment. *Co. Litt.* 25 b. But see *De eve et de treve, infra.*

DE EVE ET DE TREVE. L. Fr. From grandfather and great grandfather's great grandfather, (Lat. *de avo et de tritavo*). A phrase used in the Year Books, in cases where a party was claimed by another as his villein, as descriptive of the ancestral rights of lords in such cases. *Nous vous disoins qil est villein R.* de eve et de treve, *et ses auncestres ael et besayel*, &c. We tell you that he is the villein of R. *de eve et de treve*, and his ancestors, grandfather and great grandfather, &c. *Yearb.* P. 1 Edw. II. 4. It seems also to have been used as descriptive of the ancestral rights of freemen. Kelham gives this sense to *ove et de trove*, another form of the same phrase. It may perhaps be the same with *de eu et trene*, (*supra*) applied by Lord Coke to the condition of a villein, but with a very different signification.

DE EXCOMMUNICATO CAPIENDO, *Breve.* L. Lat. Writ for taking an excommunicated person. A writ by which the sheriff was commanded to take an excommunicated person, and imprison him in the county gaol, until he was reconciled to the church. *Reg. Orig.* 65. 3 *Bl. Com.* 102. Otherwise called, from its initial word, a *significavit. Id.* Now superseded by the writ *de contumace capiendo. Stat.* 54 *Geo.* III. c. 127. *Shelford, Marr. & Div.* 494—496, and notes.

DE EXCOMMUNICATO DELIBERANDO, *Breve.* L. Lat. Writ for delivering an excommunicated person from prison, where he had made satisfaction to the church.* *Reg. Orig.* 65 b. *F. N. B.* 63 a. 3 *Bl. Com.* 102.

DE EXCOMMUNICATO RECAPIENDO, *Breve.* L. Lat. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. *Reg. Orig.* 67.

DE EXCUSATIONIBUS. Lat. Of excuses. The first title of the twenty-seventh book of the Digests is so denominated, as treating of the circumstances which would *excuse* persons from serving in the offices of *tutor* and *curator.* It is made up, in a great degree, of extracts from the Greek work of Herennius Modestinus on the subject.

DE EXECUTIONE FACIENDA IN WITHERNAMIUM, *Breve:* L. Lat. Writ for making execution in withernam. *Reg. Orig.* 82 b. A species of *capias in withernam.*

DE EXECUTIONE JUDICII, *Breve.* L. Lat. Writ of execution of judgment. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. *Reg. Orig.* 18. *F. N. B.* 20. 3 *Reeves' Hist. Eng. Law*, 56.

DE EXEMPLIFICATIONE, *Breve.* L. Lat. Writ of exemplification. A writ granted for the exemplification of an original. *Reg. Orig.* 290 b.

DE EXONERATIONE SECTÆ, *Breve.* L. Lat. Writ of exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court, hundred, leet, or court baron, during the time of his wardship. *F. N. B.* 158. *New N. B.* 352.

DE EXPENSIS MILITUM LEVANDIS, *Breve.* L. Lat. Writ for levying the expenses of knights. A writ directed to the sheriff, for levying the allowance for knights of the shire in parliament. *Reg. Orig.* 191 b, 192.

DE EXPENSIS MILITUM NON LEVANDIS, *Breve.* L. Lat. Writ to ab-

stain from levying the expenses of knights. A writ prohibiting the sheriff from levying any allowance for knights of the shire upon those that held in ancient demesne, and others. *Reg. Orig.* 261.

DE FACTO. L. Lat. [L. Fr. *de fait, de fet.*] Of fact; from, arising out of, or founded on fact; in fact, in deed; in point of fact; actually, really. An ancient phrase still constantly used in law, in contradistinction to *de jure*, (of, or founded on right; by right); and most commonly applied to persons whose titles or claims rest upon *mere fact*, without any reference to *right*, or in actual opposition to right or law. Thus, a king *de facto* is said to be a king in possession, without any respect to his title; an usurper being thus distinguished from a king *de jure*, or rightful heir of the crown, who has never had plenary possession of the throne. 4 *Bl. Com.* 77, 78. See 1 *Id.* 204. Forms of government, established by revolution, are characterized, and often recognized by other nations, as governments *de facto*. See 1 *Kent's Com.* 40, 167. So, any public officer, who acts under color of office, by an election or appointment not strictly legal, or without having duly qualified himself, or by holding over after the expiration of his term, is called an officer *de facto*, as distinguished from the rightful claimant.* 2 *Stra.* 1090, 1091. 2 *Kent's Com.* 295, and note. 5 *Wendell's R.* 231. 1 *Gilman's* (Ill.) *R.* 529. See 10 *Paige's R.* 223. An officer *de facto* is one who performs the duty of an office with apparent right, and under claim and color of an appointment, but without being actually qualified in law so to act. 37 *Maine* (2 *Heath,*) *R.* 423. So, a wife *de facto*, whose marriage is voidable by decree, is distinguished from a wife *de jure*, or lawful wife. 4 *Kent's Com.* 36. This last application is of great antiquity. *Uxor de jure—uxores* de facto. *Bract.* fol. 303. *Femme de droit—femmes* de fait *et a tort. Britt.* c. 107. Bracton applies the term to convictions for felony, and to titles to land; using it in the latter sense as synonymous with *ex facto*, (q. v.) *Bract.* fol. 30 b, 172, 172 b. A blockade is said to be *de facto*, where it is actually maintained by a blockading squadron. See 1 *Kent's Com.* 144, 147.

DE FACTO. L. Lat. Of fact or act; respecting the principal act of a murder, which was technically called *factum*, (q. v.) *Fleta*, lib. 1, c. 27, § 18.

DE FAIT. L. Fr. Of, or in fact; by wrong, as distinguished from *de droit*, of or by right. *Britt.* c. 107. See *De facto.*

DE FALSO JUDICIO, *Breve.* L. Lat. Writ of false judgment. *Reg. Orig.* 15. *F. N. B.* 18. See *False judgment.*

DE FALSO MONETA. L. Lat. Of false money. The title of the statute 27 Edward I. ordaining that persons importing certain coins, called pollards, and crokards, should forfeit their lives and goods, and every thing they could forfeit. 2 *Reeves' Hist.* 228, 229.

DE FEODO. L. Lat. Of fee; in fee. See *In feodo, In dominico suo ut de feodo.*

This phrase is applied, in old statutes, to officers. *Forestarius de feodo;* forester of fee. *Cart. de Forest.* c. 14. *Marescallus de feodo;* marshal of fee. *Stat. Westm.* 2, c. 42. *Qui officium habeant de feodo;* who have their offices in fee. Lord Coke observes that these words are not only meant of those who have a fee simple in their offices, but such as have any fixed estate, either in tail or for life.. 2 *Inst.* 462, 463. According to some, it meant such officers as had fees due and belonging to them. *Id. ibid.*

De feodo suo; of his fee; belonging to his fee. *Fleta*, lib. 2, c. 47, § 15.

DE FET. L. Fr. Of fact; in fact; (*de facto*). *Yearb.* P. 2 Edw. II. 36.

De fide et officio judicis non recipitur quæstio, sed de scientia, sive sit error juris, sive facti. Concerning the fidelity and official conduct of a judge, no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. *Bacon's Max.* 68, reg. 17. The *bona fides* and honesty of purpose of a judge cannot be questioned, but his decision may be impugned for error either of law or fact. *Broom's Max.* [61.] The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office*, and in wilful abuse of the same; but only in ignorance and mistaking either of the law, or of the case and matter of fact. *Bacon's Max. ub. sup.* Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. *F. N. B.* 20, 21. *Bacon's Max. ub. sup. Hardr.* 127, arg. And see 1 *Comstock's R.* 45.

DE FIDEI LÆSIONE. Lat. Of breach of faith or fidelity. 4 *Reeves' Hist.* 99. See *Pro læsione fidei.*

DE FINE CAPIENDO PRO TERRIS, *Breve.* L. Lat. A writ which lay for a juror who had been attainted for giving a false verdict, to obtain the release of his person, lands and goods, on payment of a certain fine to the king. *Reg. Orig.* 232. See *Attaint.*

DE FINE FORCE. L. Fr. Of necessity; of pure necessity. *Dyer*, 41, (Fr. ed.) See *Fine force.*

DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO, *Breve.* L. Lat. A writ prohibiting the taking of fines for beau pleader. *Reg. Orig.* 179. See *Beau pleader.*

DE FINE PRO REDISSEISINA CAPIENDO, *Breve.* L. Lat. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine. *Reg. Orig.* 222 b.

DE FINIBUS LEVATIS. L. Lat. Concerning fines levied. The title of the statute 27 Edward I., requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 *Inst.* 521. *Barringt. Obs. Stat.* 176.

DE FORISFACTURA MARITAGII, *Breve.* L. Lat. Writ of forfeiture of marriage. *Reg. Orig.* 163, 164.

DE FRANGENTIBUS PRISONAM. Lat. Concerning those that break prison. The title of the statute 1 Edward II. ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 *Reeves' Hist.* 290. 2 *Inst.* 589.

DE FUGITIVIS. Lat. Of fugitives. *Dig.* 11. 4.

DE FURTO. Lat. Of theft. One of the kinds of criminal appeal formerly in use in England. 2 *Reeves' Hist.* 40. See *Appeal.*

DE GESTU ET FAMA. L. Lat. Of behaviour and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached. *Lamb. Eiren.* lib. 4, c. 14.

DE GRATIA. Lat. Of grace or favor; by favor. *Fleta*, lib. 2, c. 57, § 11. *De speciali gratia;* of special grace or favor. *Id. ibid.*

DE GRATIA SPECIALI, EX CERTA SCIENTIA, ET MERO MOTU. L. Lat. Of special grace, certain knowledge and mere motion. Formal words used in royal grants and patents; *de gratia speciali*, showing the favor and bounty of the sovereign to the patentee; *ex certa scientia*, implying a full knowledge and understanding of the matter; and *ex mero motu*, testifying that there was not any suit nor suggestion of the patentee, but that the first motion, and all that followed from it to the perfection of the patent, proceeded from the sovereign himself. *Plowd.* 330. 1 *Co.* 51 b. 2 *Bl. Com.* 347.

DE HÆREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRÆ, *Breve.* L. Lat. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another, to deliver him to the person whose ward he was by reason of his land. *Reg. Orig.* 161.

DE HÆREDE RAPTO ET ABDUCTO, *Breve.* L. Lat. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who having by right the wardship of his tenant under age, could not obtain his body, the same being carried away by another person. *Reg. Orig.* 163. *O. N. B.* 93.

DE HÆRETICO COMBURENDO, *Breve.* L. Lat. Writ for burning a heretic. A writ which lay against a heretic who having been convicted of heresy by the bishop, and abjured it, afterwards fell into the same again, or some other, and was thereupon delivered over to the secular power. *F. N. B.* 269, B. This writ has been said to be as ancient as the common law itself. 1 *Hale's P. C.* 392. 4 *Bl. Com.* 46. See an instance of its use in 1 *How. St. Trials*, 173, 174. It was abolished by statute 29 *Car.* II. c. 9. *Id.* 49. 3 *Steph. Com.* 99, 101.

DE HAUT ET DE BAS. L. Fr. Of high and low. A term used to express the unlimited power of taxation which a lord had over his villein. 3 *How. St. Trials*, 871. *Affaire rechat de char et de sank, et de euz tailler haut et bas;* to make ransom of flesh and of blood, and to tax them high and low. *Yearb.* P. 1 Edw. II. 4.

DE HECHO. Span. By deed. *White's New Recop.* b. 2, tit. 19, c. 3, § 2.

DE HOMAGIO RESPECTUANDO, *Breve.* L. Lat. Writ for respiting or postponing homage. *F. N. B.* 269, A.

DE HOMINE CAPTO [CAPIENDO] IN WITHERNAMIUM, *Breve.* L. Lat. Writ for taking a man in withernam. A writ that anciently lay to take in withernam him that had taken any bondman or woman, and led him or her out of the county, so that he or she could not be replevied according to law. *Reg. Orig.* 79, 80. A species of *capias in withernam.* 3 *Bl. Com.* 129. See *Withernam.*

DE HOMINE REPLEGIANDO, *Breve.* L. Lat. Writ for replevying a man. A writ to replevy a man out of prison, or out of the custody of any private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. *Reg. Orig.* 77 b, 78. *F. N. B.* 66, E. 3 *Bl. Com.* 129. 2 *Reeves' Hist.* 83. This writ, though obsolete in England, is still in use in some of the United States. In New-York, it is allowed to one who is claimed by another as a fugitive from another state, and bound to serve him, notwithstanding a *habeas corpus* may have been previously issued or served. 2 *Rev. St.* [561,] 464, § 15. See 3 *Rev. St.* (5th ed.) 878. 2 *Paine's R.* 348. 1 *Kent's Com.* 404, note.

DE IDEMPTITATE (or IDENTITATE) NOMINIS, *Breve.* L. Lat. A writ respecting identity of name. A writ which anciently lay for one who was taken and arrested in any personal action, and committed to prison for another of the same name. *Reg. Orig.* 194—196. *Reg. Jud.* 17. *F. N. B.* 267, E. 268.

DE IDIOTA INQUIRENDO, *Breve.* L. Lat. A writ to inquire whether a man be an idiot or not. *Reg. Orig.* 266. *F. N. B.* 232, A. 1 *Bl. Com.* 303.

DE IIS QUI PONENDI SUNT IN ASSISIS. L. Lat. Of those who are to be put on assises. The title of a statute passed 21 Edward I. defining the qualifications of jurors. *Crabb's Hist. Eng. Law*, 167, 189. 2 *Reeves' Hist.* 184.

DE IN REM VERSO. See *Actio de in rem verso.*

DE INCREMENTO. L. Lat. Of increase; in addition; additional. Costs *de incremento*, or costs of increase, are the costs adjudged by the court in civil actions, *in addition* to the damages and nominal costs found by the jury. *Gilb. C. Pleas*, 260. See 13 *Howard's R.* 372, Grier, J.

Wages *de incremento.* Lord Ellenborough, C. J. 4 *M. & S.* 316.

DE INFIRMITATE. Lat. Of infirmity. The principal essoin in the time of Glanville; afterwards called *de malo.* 1 *Reeves' Hist.* 115. See *De malo, Essoin.*

DE INGRESSU, *Breve.* L. Lat. Writ of entry. *Bract.* fol. 318, 319. *Reg. Orig.* 227 b.—231, 235—237. *Cowell*, voc. *Ingressu.* See *Entry.*

DE INJURIA. See *infra.*

DE INJURIA SUA PROPRIA, ABSQUE TALI CAUSA. L. Lat. [L. Fr. *de son tort demesne sans tiel cause.*] Of his own wrong, without such cause. Formal words of traverse, used in replications in actions of trespass, and more compendiously called the traverse *de injuria.* Where the defendant, in an action of trespass for assault and battery, pleads *son assault demesne* (that the plaintiff first made an assault upon him, and that he acted in self-defence,) the plaintiff may reply that he committed the trespass *of his own wrong*, and *without such cause* or excuse as he alleges. This kind of traverse always tenders issue, but differs from the common form of a traverse by denying in general and summary terms, and not in the words of the allegation traversed. *Steph. Pl.* 163. Crogate's case, 8 *Co.* 66. 1 *Smith's Lead. Cas.* 53, 55. 1 *Chitt. Pl.* 605—611. It is in general proper where the plea consists of matter of excuse only, and its effect is to put the whole plea in issue, and compel the defendant to prove it. 1 *Archb. N. Prius*, 148, 387.

Where a part of the plea is admitted, the foregoing replication is termed *de injuria absque residuo causæ.* 1 *Chitt. Pl.* 606.

DE INOFFICIOSO TESTAMENTO. Lat. Concerning an inofficious, or undutiful will. A title of the civil law. *Dig.* 5. 2. *Inst.* 2. 18. See *Inofficiosum.*

DE INTEGRO. Lat. Anew; a second time. 1 *Vern.* 223, 232.

As it was before. Lord Ellenborough, 5 *M. & S.* 222.

DE INTRUSIONE, *Breve.* L. Lat. Writ of intrusion. A writ which lay for a reversioner, where tenant for life, or in dower, or by the curtesy, died seised of such estate for life, and after their death a stranger intruded upon the land. *Reg. Orig.* 233 b. *F. N. B.* 203, E.

DE ITINERE. Lat. Of way; of the right of way or path. *Dig.* 43. 19. See *Iter.*

DE JACTIS IN MARE LEVANDÆ NAVIS CAUSA. Lat. Concerning things

thrown into the sea, for the purpose of lightening a ship. A title of the civil law. *Inst.* 2. 1. 47.

DE JACTURA EVITANDA. L. Lat. For avoiding a loss. A phrase applied to a defendant, as *de lucro captando* is to a plaintiff. 1 *Littell's R.* 51.

DE JUDAISMO. Lat. Concerning Judaism. The title of a statute passed 18 (or according to Prynne, 4) Edw. I. prohibiting usury. *Crabb's Hist. Eng. Law*, 167. See *Judaismus.* Mr. Barrington calls it *incerti temporis. Obs. Stat.* 222.

DE JUDICIO SISTI. L. Lat. For appearing in court. A term applied in Scotch and admiralty law, to bail for a defendant's appearance. *Clerke's Prax. Cur. Adm.* tit. 11.

DE JUDICATO SOLVENDO. L. Lat. For payment of the amount adjudged. A term applied in Scotch and admiralty law, to bail to the action, or special bail. *Clerke's Prax.* tit. 11. See *Special bail, Judicatum solvere.*

DE JUDICIIS. Lat. Of judicial proceedings. The title of the second part of the Digests or Pandects, including the fifth, sixth, seventh, eighth, ninth, tenth and eleventh books. See *Dig.* procem. § 3.

DE JURE. Lat. Of right; by right or law; growing out of right; rightfully; rightful; lawful. 4 *Bl. Com.* 77. *Magna Charta*, c. 15. *Bract.* fol. 45. A king *de jure.* A wife *de jure.* The opposite of *de facto*, (q. v.)

Of right; as distinguished from *de gratia*, (q. v.) of grace.

By or at law, according to law; as distinguished from *de æquitate*, (q. v.)

Founded upon law. *Hale's Hist. Com. Law*, 49.

Of or concerning law, or the law. *Inst.* 1. 1, 2. *Dig.* 1. 1. A component part of numerous titles in the Digests.

DE LA PLUIS BEALE (or BELLE.) L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. *Litt.* sect. 48. This was abolished with the military tenures. 2 *Bl. Com.* 132. 1 *Steph. Com.* 252.

DE LATERE. Lat. From the side; on the side, collaterally; of collaterals. *Cod.* 5. 5. 6.

DE LEGATIS ET FIDEI COMMISSIS. Lat. Of legacies and trusts. *Dig.* 30.

DE LEGE RHODIA DE JACTU. Lat. Of the Rhodian law of jettison. A title of the Pandects, in which the Rhodian law of jettison is adopted. *Dig.* 14. 2. 1. 3 *Kent's Com.* 233.

DE LEPROSO AMOVENDO, *Breve.* L. Lat. Writ for removing a leper. A writ to remove a leper who thrust himself into the company of his neighbors in any parish, in public or private places, to their annoyance. *Reg. Orig.* 267. *F. N. B.* 234, E. *New N. B.* 521.

DE LIBERA FALDA, *Breve.* L. Lat. Writ of free fold. A species of *quod permittat. Reg. Orig.* 155.

DE LIBERA PISCARIA, *Breve.* L. Lat. Writ of free fishery. A species of *quod permittat. Reg. Orig.* 155.

DE LIBERO PASSAGIO, *Breve.* L. Lat. Writ of free passage. A species of *quod permittat. Reg. Orig.* 155.

DE LIBERATE ALLOCANDA, *Breve.* See *Liberate.*

DE LIBERTATE PROBANDA, *Breve.* L. Lat. Writ for proving property. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free. *Reg. Orig.* 87 b. *F. N. B.* 77, F.

DE LIBERTATIBUS ALLOCANDIS, *Breve.* L. Lat. Writ for allowing liberties. A writ which lay for a citizen or burgess entitled to certain liberties, to have them allowed him. *Reg. Orig.* 262. There were various writs of this kind. *Id.* 263 b. *F. N. B.* 229.

DE LIBERTATIBUS PERQUIRENDIS, *Ordinatio.* L. Lat. The title of a statute passed 27 Edw. I. st. 2. *Crabb's Hist. Eng. Law*, 167.

DE LICENTIA TRANSFRETANDI, *Breve.* L. Lat. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other seaport in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. *Reg. Orig.* 193 b.

DE LUNATICO INQUIRENDO. L. Lat. For inquiring about a lunatic or lunacy. The name of a commission, in the nature of a writ, issued in cases of alleged lunacy, to inquire whether the party be a lunatic or not; otherwise called a commission of lunacy. *Stock on Non Compotes Mentis*, 86—92. *Reg. Jud. Appendix*, 19. 2 *Steph. Com.* 531. See *Commission of Lunacy.*

DE MAGNA ASSISA ELIGENDA, *Breve.* L. Lat. Writ of, or for choosing

the grand assise. A writ directed to the sheriff to summon four lawful knights, before the justices of assise, there, upon their oaths, to choose twelve knights of the vicinage to be joined with them; which sixteen knights constituted the grand assise, or great jury, which was to try the matter of right in a writ of right. *Reg. Orig.* 8. *F. N. B.* 4, F. 3 *Bl. Com.* 351. Abolished by statute 3 & 4 Will. IV. c. 27. See *Grand assise.*

DE MALE FAME. L. Fr. Of bad reputation. *Stat. Westm.* 1, c. 12.

DE MALO. L. Lat. Of illness. See *infra.*

DE MALO LECTI. L. Lat. [L. Fr. *de mal de lyt.*] Of infirmity or illness of [in] bed. Closely rendered, in old Scotch law, *bed-evil*, (*bedde-evill*). A species of essoin or excuse for non-appearance in court, formerly allowed a defendant in England, and more anciently called *de infirmitate de reseantisa;* the excuse being that the defendant was confined to his house in bed, (*lectus,*) by infirmity or indisposition, (*malum*). *Glanv.* lib. 1, c. 18, 19. *Bract.* fol. 337, 344 b. *Britt.* c. 122, 123. *Fleta*, lib. 6, c. 10. 1 *Reeves' Hist. Eng. Law*, 115, 412. *Skene de Verb. Sign.* voc. *Reseantisa.* See *Malum lecti.* This essoin commonly followed immediately upon that *de malo veniendi*, (*infra*) ; for where a person, having been detained on the road by sickness, and having cast the essoin *de malo veniendi*, had found himself obliged to return home, the order of essoins, conformably with what was likely to be the real fact, led to the essoin *de malo lecti.* 1 *Reeves' Hist.* 412. *Bract.* fol. 344 b.

DE MALO VENIENDI. L. Lat. [L. Fr. *de mal de venue.*] Of infirmity or misfortune in coming. A species of essoin or excuse for non-appearance in court, formerly allowed a defendant in England, and more anciently called the essoin *de infirmitate veniendi;* the excuse being that while on the way (*in veniendo*, or *in itinere*,) from his house to the court, such an infirmity befel him, (*talis infirmitas ei devenit*, or *ita infirmatus fuerit*,) that he could not attend. *Bract.* fol. 337, 338. *Britt.* c. 122, 123, 125. *Fleta*, lib. 6, c. 9. 1 *Reeves' Hist.* 115, 406. According to Spelman, (who gives it also the name of *malum viæ*,) it lay where the party either could not attend on account of actual impossibility, or dared not, on account of apprehended danger, or could not reach court in season on account of the length of the journey. *Spelman*, voc. *Essoniare.* It was called the common essoin. *Id. Bract.* fol. 337, 337 b. See *Malum viæ.*

DE MALO VILLÆ. L. Lat. Of illness in a town. A species of essoin, where a party had appeared in court, but was afterwards, before any answer to the suit, taken *ill in the town* where the court sat, and was unable to attend. *Bract.* fol. 363 b. 1 *Reeves' Hist.* 417. This is not mentioned by Spelman, and Bracton calls it anomalous. *Bract. ub. sup.* See *Fleta*, lib. 6, c. 13.

DE MANUCAPTIONE, *Breve.* L. Lat. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpernors or bail. *Reg. Orig.* 268 b. *F. N. B.* 249, G.

DE MANUTENENDO, *Breve.* L. Lat. Writ of maintenance. A writ which lay against a person for the offence of maintenance. *Reg. Orig.* 189, 182 b.

DE MEDIETATE LINGUÆ. L. Lat. Of half-tongue; i. e. half of one tongue or language, and half of another. A term applied to that particular description of jury in England, where one-half consisted of denizens or natives, and the other half of aliens, and which was allowed both in civil and criminal actions where one of the parties was an alien. *Staundf. Pl. Cor.* lib. 3, c. 7. 3 *Bl. Com.* 360. 4 *Id.* 352. See *Bilinguis, Half-tongue, Medietas linguæ.* It was first introduced in favor of foreign merchants, by the statute of the staple, 27 Edw. III. st. 2, c. 8, and was extended to criminal cases by stat. 28 Edw. III. c. 13. 2 *Reeves' Hist.* 395, 461. It is still allowed in trials for felony or misdemeanour, but no longer in a civil action. *Stat.* 6 *Geo.* IV. c. 50, ss. 3, 47. 3 *Steph. Com.* 596, note. 4 *Id.* 422. It was formerly in use in the state of New-York, but is now abolished, as it generally is throughout the United States. 2 *Johns. R.* 381. 1 *N. Y. R. L.* (1813), 334, § 24. 2 *N. Y. Rev. St.* [419], 339, § 53. *Id.* [734], 614, § 7. 6 *Dane's Abr.* c. 182.

DE MEDIO, *Breve.* L. Lat. Writ of mesne. A writ in the nature of a writ of right, which lay for an under-tenant against the mesne or middle lord, where, upon a subinfeudation, the *mesne*, or middle lord, suffered his under-tenant, or tenant para-

vail, to be distrained upon by the lord paramount for the rent due to him from the mesne lord. 3 *Bl. Com.* 234. *Co. Litt.* 100 a. *Reg. Orig.* 160. *F. N. B.* 135, M. N. *Bract.* fol. 21 b. *Roscoe's Real Act.* 38. See *Mesne, Paramount, Paravail.*

DE MELIORIBUS DAMNIS. L. Lat. Of, or for the better damages. A term used in practice, to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately,) he will take judgment. 1 *Arch. Pr.* 219. 8 *Cowen's R.* 111.

DE MERCATORIBUS. Lat. Of merchants. There were two English statutes passed under this title; the first, in the eleventh year of Edward I. otherwise called the statute of *Acton Burnel*, (q. v.); the second in the thirteenth year of the same reign. By this statute, all the lands of a debtor, where the debt was contracted in trade, might be delivered to the creditor to hold in pledge until the debt was levied, when the land was to be restored. *Stat. de Merc.* 13 *Edw.* I. st. 3. 2 *Bl. Com.* 161. The recognizance introduced by this statute was called a statute-merchant. *Id.* 160. 2 *Reeves' Hist.* 160—162. See *Barringt. Obs. Stat.* 116—119.

DE MILITIBUS. Lat. Of, or concerning knights. The title of a statute passed in the 1st year of Edw. II. the object of which was to abate that part of the feudal system, which required every one possessed of a knight's fee (*feudum militare,*) to take upon him the order of knighthood, (*suscipere arma militaria*). *Crabb's Hist.* 201, 2. 2 *Reeves' Hist.* 288. 2 *Inst.* 593. This is said to have been not properly a legislative act, but a writ granted by the king in time of parliament, and entered by his direction on the record. *Id. ibid.* See *Barringt. Obs. Stat.* 192.

De minimis non curat lex. The law does not care for, or take notice of very small or trifling matters. The law does not concern itself about trifles. *Broom's Max.* [105]. Thus, error in calculation of a fractional part of a penny will not be regarded. *Hob.* 88. *Cro. Eliz.* 353. So, the law will not, in general, notice the fraction of a day. *Broom's Max.* 333. See *Id.* 156, [266.] Nor the imperceptible gain of land from the sea by alluvion. 2 *Bl. Com.* 262. This maxim is sometimes applied to matters of conduct. See 2 *Littell's R.* 218. But it is never applied to cases of positive and wrongful invasion of right, however trifling may be the injury actually sustained. See 5 *Hill's* (N. Y.) *R.* 170.

DE MINIS, *Breve.* Lat. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. *Reg. Orig.* 88 b, 89. *F. N. B.* 79, G. 80.

DE MITTENDO TENOREM RECORDI, &c. *Breve.* L. Lat. Writ to send the tenor of a record, or to exemplify it under the great seal. *Reg. Orig.* 220 b.

DE MODERATA MISERICORDIA CAPIENDA, *Breve.* Writ for taking a moderate amercement. A writ, founded on Magna Charta, (c. 14,) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him *to take a moderate amercement* of the party. *Reg. Orig.* 80 b. *F. N. B.* 75, 76.

DE MODO DECIMANDI. L. Lat. Of a modus of tithing. A term applied, in English ecclesiastical law, to a prescription to have a special manner of tithing. 2 *Bl. Com.* 29. 3 *Steph. Com.* 130.

DE MONETA. L. Lat. Concerning money. The title of three statutes passed in the 20th year of Edward I., viz: the statute *De moneta*, 20 Edw. I. st. 4; the statute *De moneta, parvum*, 20 Edw. I. st. 5, and the *Articuli de moneta*, 20 Edw. I. st. 6. These were particularly directed against the importation of clipped and counterfeit money. 2 *Reeves' Hist.* 228.

De morte hominis nulla est cunctatio longa. Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. *Co. Litt.* 134. Rokeby, J. *Com.* 17. This is a slight alteration of a line of Juvenal:

> Nulla unquam de morte hominis cunctatio longa est.
>
> *Sat.* vi. 221.

DE MOT EN MOT. L. Fr. From word to word; word for word. *Britt.* c. 22.

DE NATIVO HABENDO, *Breve.* L. Lat. [L. Fr. *briefe de naifte.*] Writ for having one's villein. A writ which lay for a lord whose villein had fled from him, (*fugitivo,*) directed to the sheriff, commanding him to apprehend the villein, and restore him, with all his chattels, to the lord. *Reg. Orig.* 87. *F. N. B.* 77. *Roscoe's Real Act.* 34.

DE NAUTICO FŒNORE. Lat. Of maritime interest. A title of the civil law.

Dig. 22. 2. *Cod.* 4. 33. 3 *Kent's Com.* 354, note.

De non apparentibus et non existentibus eadem est ratio. Things which do not appear are treated in law the same as if they did not exist. See *Apparens, Apparere.*

DE NON DECIMANDO. L. Lat. Of not paying tithes. A term applied, in English ecclesiastical law, to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 *Bl. Com.* 31.

DE NON PROCEDENDO AD ASSISAM, *Breve.* Writ for not proceeding to take an assise. A writ, directed to the justices assigned to hold assises, commanding them not to proceed to take an assise in a particular case. *Reg. Orig.* 221.

DE NON SANE MEMORIE. L. Fr. Of unsound memory or mind; a phrase synonymous with *non compos mentis. Litt.* sect. 405. *Plowd.* 368. *Stock on Non Compotes Mentis*, 1. See *Memory, Non Compos Mentis.*

DE NOVEL. L. Fr. Anew; newly. *Ad* de novel *graunt;* hath granted anew. *Artic. sup. Chart.*

DE NOVI OPERIS NUNCIATIONE. Lat. Concerning the prohibition of a new work. A title of the civil law. *Dig.* 30. 1. See *Nuntiatio.*

DE NOVO. Lat. [L. Fr. *de novel.*] Anew; (of new,) a second time. In Scotch law, literally rendered "of new." 2 *How. St. Trials*, 721.

DE ODIO ET ATIA, *Breve.* L. Lat. Writ of hatred and malice. A writ which anciently lay for a person committed to prison on a charge of homicide, and who otherwise could not be bailed. It was directed to the sheriff, commanding him to make inquisition by the oaths of lawful men, whether the party in prison was charged through malice, (*utrum rettatus de* odio et atia,) or upon just cause of suspicion. If it was found that he was accused *odio et atia*, and that he was not guilty; or if he committed the deed *se defendendo*, or *per infortunium*, then a writ of *tradas in ballium* might issue, commanding the sheriff, if the prisoner could find twelve good and lawful men of the county, who would be mainpernors for him, then he should *deliver* him to them *in bail. Reg. Orig.* 133 b. *Bract.* fol. 123. 3 *Bl. Com.* 128. 1 *Reeves' Hist. Eng. Law*, 252. 2 *Id.* 14. *Crabb's Hist.* 148. *Mag. Chart.* c. 26. *Stat. Westm.* 2, c. 29. This writ was one of the great securities of personal liberty in England, resembling in its objects the writ of *habeas corpus*, by which it is now superseded. 1 *Reeves' Hist.* 252. It is first mentioned by name in Magna Charta, (as *breve inquisitionis,*) which ordained that it should issue in future gratis, and should never be denied; but Mr. Crabb supposes it was not introduced by statute, but existed at common law. *Crabb's Hist.* 148. It was abolished by statute 28 Edw. III. c. 9. But Lord Coke considered it to have been revived by the stat. 42 Edw. III. c. 1. 3 *Bl. Com.* 129. See *Atia.*

DE OFFICE. L. Fr. Of office; in virtue of office; officially; in the discharge of ordinary duty. *Le court* d'office *est tenu;* the court is bound, in virtue of its office. *Yearb.* H. 4 Hen. VI. 16.

This phrase corresponds with the Lat. *ex officio*, or, more nearly with *virtute officii.*

DE OFFICIO CORONATORIS. L. Lat. Concerning the office of coroner. The title of the statute 4 Edward I., enumerating the duties of the office of coroner. 2 *Reeves' Hist.* 140.

DE ONERANDO PRO RATA PORTIONE, *Breve.* L. Lat. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distrained for more rent than his proportion of the land came to. *Reg. Orig.* 182. *F. N. B.* 234, H. This writ is called by Fitzherbert, *De deonerando pro rata portione*, and in the Register, *De onerando secundum ratum portionis.*

DE PACE ET LEGALITATE TUENDA. L. Lat. For keeping the peace, and for good behaviour. *Tradat fidejussores de pace et legalitate tuenda;* he shall deliver or find sureties for keeping the peace and good behaviour. *LL. Edw. Conf.* c. 18. 4 *Bl. Com.* 252, 254. *Spelman*, voc. *Legalitas.* See *Legalitas.*

DE PACE ET PLAGIS. L. Lat. Of peace [breach of peace] and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding and breach of the peace. *Bract.* fol. 144. 2 *Reeves' Hist.* 33. See *Appeal.*

DE PACE ET ROBERIA. L. Lat. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace. *Bract.* fol. 146. 2 *Reeves' Hist.* 37. See *Appeal.*

DE PACE ET IMPRISONAMENTO.

L. Lat. Of [breach of] peace and imprisonment. The title of an appeal formerly in use in England, in cases of imprisonment and breach of the peace. *Bract.* fol. 145 b. 2 *Reeves' Hist.* 35. See *Appeal.*

DE PACE INFRACTO. L. Lat. Of peace broken; of breach of the peace.

DE PALABRA. Span. By word; by parol. *White's New Recop.* b. 2, tit. 19, c. 3, § 2.

DE PARCO FRACTO, *Breve.* L. Lat. Writ of pound breach. A writ which lay against him who violently broke a pound, and took out beasts from thence, which were lawfully impounded. *Reg. Orig.* 116 b. *F. N. B.* 100, E. F. *Co. Litt.* 47 b. 3 *Bl. Com.* 146.

DE PARENDO JURI. L. Lat. Of, or for obeying the law; to obey the law; or the mandate of a writ. *Fleta*, lib. 2, c. 62, § 4.

DE PARTITIONE FACIENDA, *Breve.* L. Lat. Writ for making partition. A writ which lay to make partition of lands or tenements held by several *pro indiviso* as coparceners, &c. *Reg. Orig.* 76. *F. N. B.* 61, R. *O. N. B.* 142. 2 *Bl. Com.* 189. 3 *Reeves' Hist.* 55.

DE PECULIO ACTIO. See *Actio de peculio.*

DE PASSAGIO. L. Lat. Of passage. *De passagio simplici;* of simple passage. *Fleta*, lib. 2, c. 8, § 1. One of the essoins of *ultra mare.* See *De ultra mare.*

DE PERAMBULATIONE FACIENDA, *Breve.* L. Lat. Writ for making perambulation. A writ which lay to ascertain the boundaries of lands, where parties were in doubt of the bounds of their lordships or of their towns; and which was done by *walking* about, *through* or between them. It was directed to the sheriff, commanding him to go with twelve knights of his county to the land in question, and by their oath to cause a *perambulation* to be made between them, according to their respective metes and bounds, (*per terras, metas et divisas.*) *Reg. Orig.* 157 b. *F. N. B.* 133, D. See *Perambulation.*

DE PEREGRINATIONE. L. Lat. Of pilgrimage. *De peregrinatione et passagio generali;* of pilgrimage and general passage. *Fleta*, lib. 6, c. 8, § 1. One of the essoins of *ultra mare.*

DE PIGNORE SURREPTO FURTI, ACTIO. Lat. In the civil law. An action to recover a pledge stolen. *Inst.* 4. 1. 14.

DE PIPA VINI CARIANDA, *Breve.* L. Lat. A writ of trespass *for carrying a pipe of wine* so carelessly that it was stove, and the contents lost. *Reg. Orig.* 110. Alluded to by Sir William Jones, in his remarks on the case of Coggs *v.* Barnard. *Jones on Bailm.* 59.

DE PLACITO. L. Lat. Of a plea; of, or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought. *De placito debiti;* of a plea of debt. *De placito conventionis fractæ;* of a plea of breach of covenant. *De placito transgressionis;* of a plea of trespass. *De placito transgressionis super casum;* of a plea of trespass on the case. *Towns. Pl.* 162—165. See the older forms in *Fleta*, lib. 2, c. 65, § 12. See *Placitum.*

DE PLAGIS ET MAHEMIO. L. Lat. Of wounds and maihem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. *Bract.* fol. 144 b. 2 *Reeves' Hist.* 34. See *Appeal.*

DE PLAIN. L. Fr. In a summary way. *Kelham.* See *De plano.*

DE PLANO. Lat. and L. Lat. In the civil law. Without form; in a summary manner. The prætor was said to administer justice in this way, (*de plano cognoscere,*) when he did so standing on the ground, or on the same level with the suitors, instead of occupying a *tribunal*, (*pro tribunali,*) elevated seat, or *bench*, as it was termed in the English law. See *Bench.* The Fr. *de plain* (q. v.) is derived from this.

In the common law. Clearly; manifestly. The phrase is used in this classical sense in the statute *De Bigamis*, 4 Edw. I.

By covin, or collusion. *Stat. Westm.* 2, c. 4. This did not mean by default. *Id. ibid.* 2 *Inst.* 349. See 2 *Reeves' Hist.* 191. 4 *Id.* 23, 34, 36.

In Scotch practice. Forthwith. 2 *Alison's Crim. Pr.* 650.

DE PLEGIIS ACQUIETANDIS, *Breve.* L. Lat. Writ for acquitting or releasing pledges. A writ that lay for a surety, against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. *Reg. Orig.* 158. *F. N. B.* 137, C. 3 *Reeves' Hist.* 65.

DE PLEINE AGE. L. Fr. Of full age. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510.

DE PONE, *Breve.* L. Lat. Writ of pone. *Fleta*, lib. 2, c. 44, § 3. See *Pone.*

DE PONENDO SIGILLUM AD EXCEPTIONEM, *Breve.* L. Lat. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. *Reg. Orig.* 182.

DE POST DISSEISINA, *Breve.* L. Lat. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *præcipe quod reddat*, on default or reddition, was again disseised by the former disseisor. *Reg. Orig.* 208. *F. N. B.* 190.

DE PRÆROGATIVA REGIS. L. Lat. Of the king's prerogative. The title of the statute 17 Edward II. st. 1, defining the prerogatives of the crown on certain subjects, partly of a feudal and partly of a political or general nature. *Crabb's Hist. Eng. Law*, 204, *et seq. Barringt. Obs. Stat.* 202. *Hale's Hist. Com. Law*, ch. 8.

DE PRÆSENTI. L. Lat. Of the present; in the present tense. See *Per verba de præsenti.*

DE PROCEDENDO IN ASSISA, *Breve.* L. Lat. Writ for proceeding in an assise. A writ by which the justices of assise were commanded to proceed in an assise, where the proceedings had been stayed. *Reg. Orig.* 220.

DE PROSEQUENDO. L. Lat. Of, or for prosecuting; to prosecute. *Fleta*, lib. 2, c. 60, § 33. *Id.* lib. 4, c. 5, § 2.

DE PROPRIETATE PROBANDA, *Breve.* L. Lat. Writ for proving property. A writ directed to the sheriff, to inquire of the property of goods distrained, where the defendant in an action of replevin claims the property. 3 *Bl. Com.* 148. *Reg. Orig.* 85 b.

DE PROTECTIONIBUS. Lat. Of or concerning protections. The title of a statute passed in the 33d year of Edward I. to prevent some of the evil consequences attending the privileges given by writs of protection. 2 *Reeves' Hist.* 242.

DE PROTECTIONE, *Breve.* Lat. Writ of protection. *Reg. Orig.* 25, 26. See *Protection.*

DE QES EN CA, *De kes en sea.* L. Fr. From which time until now. *Kelham.*

DE QUO, & DE QUIBUS. Lat. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the *quo*," or "in the *quibus*." 3 *Reeves' Hist.* 33. *Præcipe A. quod—reddat B. tantum terræ*—de quo *idem A. disseisivit prædictum B.*, &c.; command A. that—he render to B. so much land—of which the said A. disseised the aforesaid B., &c. *Reg. Orig.* 229.

DE RAPTU VIRGINUM. Lat. Of the ravishment of maids. The name of an appeal formerly in use in England, in cases of rape. *Bract.* fol. 147. 2 *Reeves' Hist.* 38. See *Appeal.*

DE RATIONABILIBUS DIVISIS, *Breve.* L. Lat. Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment. *Reg. Orig.* 157 b. *F. N. B.* 128, M. *Roscoe's Real Act.* 31. 3 *Reeves' Hist.* 48.

DE RATIONABILI PARTE BONORUM, *Breve.* L. Lat. A writ which lay for the wife and children of a deceased person against his executors, to recover their reasonable part or share of his goods. 2 *Bl. Com.* 492. *F. N. B.* 122, L. See *Reasonable part.*

DE REBUS. Lat. Of things. The title of the third part of the Digests or Pandects, comprising the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth books.

DE REBUS DUBIIS. Lat. Of doubtful things or matters. *Dig.* 34. 5.

DE RECEPTAMENTO. L. Lat. Of receipt; of harbouring. *Bract.* fol. 152 b. A term of old criminal law. See *Receptamentum.*

DE RECORDO ET PROCESSU MITTENDIS, *Breve.* L. Lat. Writ to send the record and process of a cause to a superior court; a species of writ of error. *Reg. Orig.* 209.

DE RECTO, *Breve.* L. Lat. Writ of right. *Reg. Orig.* 1, 2. *Bract.* fol. 327 b. See *Writ of Right.*

DE RECTO DEFICERE. L. Lat. To fail of right; to fail in doing justice. A term applied to an inferior court in the old books. *Glanv.* lib. 12, c. 1. *Bract.* fol. 105, 313 b, 329 b. 1 *Reeves' Hist.* 171.

In the ancient law of France, the appeal of default of justice, (*de defaute de droit,*) was a proceeding when the court of a particular lord deferred, evaded, or refused to do justice to the parties. *Esprit des Lois*, liv. 28, c. 28.

DE RECTO PATENS, *Breve.* L. Lat. Writ of right patent. *Reg. Orig.* 1. See

Patent. Called the highest writ in law. *F. N. B.* 1.

DE RECTO DE DOTE, *Breve.* L. Lat. Writ of right of dower. *Reg. Orig.* 3. *F. N. B.* 7, E. *Bract.* fol. 313. See *Dower, Writ of Right.*

DE RECTO DE RATIONABILI PARTE, *Breve.* L. Lat. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee simple, where one was deprived of his or her share by another. *Reg. Orig.* 3 b. *F. N. B.* 9, B. *Roscoe's Real Act.* 25. Abolished by statute 3 & 4 Will. IV. c. 27.

DE RECTO DE ADVOCATIONE, *Breve.* L. Lat. Writ of right of advowson. *Reg. Orig.* 29 b. A writ which lay for one who had an estate in an advowson to him and his heirs in fee simple, if he were disturbed to present. *F. N. B.* 30, B. *Roscoe's Real Act.* 26. Abolished by statute 3 & 4 Wil. IV. c. 27.

DE REDISSEISINA, *Breve.* L. Lat. Writ of re-disseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent or common, by him by whom he was disseised before. *Reg. Orig.* 206 b. *F. N. B.* 188, B.

DE REPLEGIARE, (or REPLEGIARI) *Breve.* L. Lat. Writ of replevin. *Fleta,* lib. 2, c. 43, § 3. *Reg. Orig.* 81. *F. N. B.* 68, D. See *Replegiare, Replevin.*

DE RESCUSSU, *Breve.* L. Lat. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them. *Reg. Orig.* 117, 118. *F. N. B.* 101, C. G.

DE RETORNO HABENDO. L. Lat. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 2 *Tidd's Pr.* 993, 1038. 3 *Bl. Com.* 149. Applied also to the sureties given by the plaintiff, on commencing the action. *Id.* 147.

DE RIEN CULPABLE. L. Fr. Guilty of nothing; not guilty. *Yearb.* H. 7 Edw. II. 224. *Keilw.* 3 b.

DE RIGORE JURIS. Lat. In strictness of law. "*De rigore juris,* they ought to bring him in before; but, *per gratiam curiæ,* it is well enough at any time before the *sci. fa.* is awarded." Jones, J. *Latch,* 150.

DE RIVIS. Lat. Of water-courses. *Dig.* 43. 21.

DE SALVA GARDIA, *Breve.* L. Lat. Writ of safeguard. A writ in the nature of a protection, which was allowed to strangers seeking their right by course of law in England, and apprehending violence or injury to their persons or property from others. *Reg. Orig.* 26. See *Safeguard.*

DE SALVO CONDUCTU, *Breve.* L. Lat. Writ of safe conduct. *Reg. Orig.* 25 b, 26. See *Safe conduct.*

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from *pur autre vie,* for another's life. *Litt.* sect. 35, 36. *Crabb's Hist.* 383.

DE SCACCARIO. L. Lat. Of, or concerning the exchequer. The title of a statute passed in the 51st year of Henry III. 2 *Reeves' Hist.* 61.

DE SCUTAGIO HABENDO, *Breve.* L. Lat. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes, or to pay escuage, that is, a sum of money. *F. N. B.* 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage. *Reg. Orig.* 88. *F. N. B.* 83, D. F.

DE SE BENE GERENDO. L. Lat. For behaving himself well; for his good behaviour. *Yelv.* 90, 154.

DE SECTA AD MOLENDINUM, *Breve.* L. Lat. Writ of suit at mill. A writ for compelling suit to a mill. *Reg. Orig.* 153. *F. N. B.* 122, M. 3 *Bl. Com.* 235. See *Secta ad molendinum.* Abolished by statute 3 & 4 Will. IV. c. 27.

DE SECUNDA SUPERONERATIONE, *Breve.* L. Lat. Writ of second surcharge. A writ which lay where admeasurement of pasture had been made, and he that first surcharged the common, did it a second time, notwithstanding the admeasurement. *Reg. Orig.* 157. *F. N. B.* 126, E. 3 *Bl. Com.* 239. 2 *Reeves' Hist.* 198.

DE SERVITIO REGIS. L. Lat. [L. Fr. *de service le roy.*] Of the king's service. A species of essoin, or excuse for a defendant's non-appearance in court, the ground of which was that he was neces-

sarily detained in the king's service. *Glanv.* lib. 1, c. 27. *Bract.* fol. 338 b. *Spelman*, voc. *Essoniare.* 1 *Reeves' Hist.* 118.

De similibus ad similia eadem ratione procedendum est. From like things to like things we are to proceed by the same rule or reason; [i. e. we are allowed to argue from the analogy of cases]. *Branch's Princ.*

De similibus idem est judicandum. Of [respecting] like things, [in like cases,] the judgment is to be the same. 7 *Co.* 18.

Both these maxims seem to be embraced in, if not derived from, the following passage of Bracton, in which that author, at the commencement of his work, lays down a fundamental principle of the common law: *Si* similia *evenerint*, per simile judicentur, *cum bona sit occasio* a similibus procedere ad similia; if like cases have occurred, they [the new cases] are to be judged by the like rule, since it is a good occasion [or proper course] to proceed from like things to like. *Bract.* fol. 1 b.

DE SON COUNSEL (or COUNSAIL). L. Fr. Of his counsel. *Yearb.* M. 5 Edw. III. 75.

DE SON DONE. L. Fr. Of his gift. See *Sur cognizance, &c.*

DE SON GREÉ. L. Fr. Of his own accord. *Keilw.* 2, pl. 4.

DE SON TORT. L. Fr. Of his [own] wrong. A stranger who takes upon him to act as an executor without any just authority, is called an executor of his own wrong, (*de son tort*). 2 *Bl. Com.* 507. 2 *Steph. Com.* 244.

DE SON TORT DEMESNE. L. Fr. Of his own wrong. *De son tort demesne, sans tiel cause;* of his own wrong, without such cause. See *De injuria sua propria, &c.*

DE STAPULIS. L. Lat. Of staples. The title of a statute passed 27 Edw. III. st. 2; containing a complete code of laws for the regulation of the merchants who attended the *staples* of wool, after their transfer from Flanders to England. *Barringt. Obs. Stat.* 282.

DE STATUTO, *Brevia.* L. Lat. Writs founded upon statute. *Reg. Orig.* 173—188.

DE STATUTO MERCATORIO, *Breve.* L. Lat. Writ of statute-merchant. A writ which lay for imprisoning him who had forfeited a statute-merchant bond, until the debt was satisfied. *Reg. Orig.* 146 b. There are several writs under this head. *Id.* 148. *Reg. Jud.* 8. See *Statute-merchant.*

DE STATUTO STAPULÆ, *Breve.* L. Lat. Writ of statute staple. A writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute staple. *Reg. Orig.* 151. See *Statute staple.*

DE SUPERONERATIONE PASTURÆ, *Breve.* L. Lat. Writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster. *Reg. Jud.* 36 b.

DE SUPERSEDENDO, *Breve.* L. Lat. Writ of supersedeas. *Reg. Orig.* 274—278. See *Supersedeas.*

DE SYLVA CÆDUA, *Breve.* L. Lat. Writ concerning coppice wood. *Reg. Orig.* 44. See *Sylva cædua.*

DE TABULIS EXHIBENDIS. Lat. Of showing the tablets of a will. *Dig.* 43. 5.

DE TALLAGIO NON CONCEDENDO. L. Lat. Of not granting tallage. The title of a statute passed in the 34th year of Edward I. st. 4, declaring that no tallage or aid should be imposed or levied by the king, or his heirs, without the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the commons of the realm. It contained also important general declarations in favor of liberties claimed by the subject. 2 *Inst.* 532. 2 *Reeves' Hist.* 104, 105. See *Blackst. Magna Charta*, Introd. xcvi.—c.

DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT. L. Lat. From time whereof the memory of men does not exist to the contrary. *Litt.* sect. 170. See *infra.*

DE TEMPS DONT MEMORIE NE COURT. L. Fr. From time whereof memory runneth not; time out of memory of man. *Litt.* sect. 143, 145, 170. *Dyer*, 70.

DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA. L. Lat. From time to time, and at all times. *Towns. Pl.* 17.

DE TERMINO. L. Lat. Of the term. *Hardr.* 1.

DE TERRA SANCTA. Lat. Of the Holy land. A species of essoin, the ground of which was that the party had gone to

the Holy land. *Glanv.* lib. 1, c. 29. *Bract.* fol. 339. *Spelman*, voc. *Essoniare.* See *Essoin.*

DE TESTAMENTIS. Lat. Of testaments. The title of the fifth part of the Digests or Pandects; comprising the twenty-eighth to the thirty-sixth books, both inclusive.

DE THEOLONIO, *Breve.* L. Lat. Writ of toll. A writ of trespass which lay where a person was prevented from taking toll. *Reg. Orig.* 103.

DE TRANSCRIPTO PEDIS FINIS LEVATI MITTENDO, *Breve.* L. Lat. A writ for sending the transcript of the foot of a fine levied. *Reg. Orig.* 169.

DE TRANSGRESSIONE, *Breve.* L. Lat. Writ of trespass. *Reg. Orig.* 92—111. See *Trespass.*

DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM, *Breve.* L. Lat. The name of a writ or commission for hearing and determining any outrage or misdemeanor. 2 *Reeves' Hist.* 170. See *Ad audiendum et terminandum, Oyer and Terminer.*

DE ULTRA MARE, [or DE TRANS MARE; L. Fr. *de outre la meer.*] L. Lat. Of beyond sea. A species of essoin, the ground of which was that the party was detained in parts beyond the seas. *Glanv.* lib. 1, c. 25. *Bract.* fol. 339. *Fleta*, lib. 6, c. 8. *Spelman*, voc. *Essoniare.* 1 *Reeves' Hist.* 118, 406. See *Essoin.*

DE UXORE RAPTA ET ABDUCTA, *Breve.* L. Lat. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. *Reg. Orig.* 97. *F. N. B.* 89, O. 3 *Bl. Com.* 139.

DE VASTO, *Breve.* L. Lat. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed *waste* in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison (*ad exhæredationem*) of the plaintiff. *Reg. Orig.* 72—75. *Reg. Jud.* 17 b. *F. N. B.* 55, C. 3 *Bl. Com.* 227, 228. Abolished by statute 3 & 4 Will. IV. c. 27. 3 *Steph. Com.* 506.

DE VENTRE INSPICIENDO, *Breve.* L. Lat. Writ of (or for) inspecting the belly. A writ which a presumptive heir may have in England, to examine a widow suspected of feigning herself pregnant, (with a view to produce a supposititious heir to the estate,) in order to ascertain whether she be with child or not. 1 *Bl. Com.* 456. 2 *Steph. Com.* 318. *Reg. Orig.* 227. *Bract.* fol. 69 b. *Fleta*, lib. 1, c. 15. This writ seems to have been derived from the civil law. See *Dig.* 25. 4, *De inspiciendo ventre*, &c.

A writ of the same nature might be issued in cases where a woman sentenced to be executed, pleaded pregnancy. See 4 *Bl. Com.* 495. A writ of this kind was issued in the early American case of Bathsheba Spooner, who was convicted of the murder of her husband, at Brookfield, Mass. in 1778. 2 *Chandler's Am. Crim. Trials*, 381.

DE VERBO IN VERBUM. L. Lat. Word for word. *Bract.* fol. 138 b. Literally, from word to word. (L. Fr. *de mot en mot.*) Fleta uses the phrase *de verbo ad verbum.* Lib. 1, c. 21, § 3.

DE VERBORUM SIGNIFICATIONE. Of the signification of words. An important title of the Digests or Pandects, (*Dig.* 50. 16,) consisting entirely of definitions of words and phrases used in the Roman law, compiled from the writings of the best jurists, such as Ulpian, Paulus, Pomponius, Gaius, Scævola, Javolenus, Celsus, Alfenus, Florentinus, Callistratus and others.

DE VICINETO. L. Lat. From the neighborhood, or vicinage. 3 *Bl. Com.* 360. A term applied to a jury. See *Vicinetum.*

DE VI LAICA AMOVENDA, *Breve.* L. Lat. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of *laymen*, and held out the other *vi et armis;* then he that was holden out had this writ directed to the sheriff, that he remove the force. *Reg. Orig.* 59. *F. N. B.* 54, D.

DE VIRIDARIO ELIGENDO, *Breve.* L. Lat. Writ to elect a verderor. *Reg. Orig.* 177 b. *F. N. B.* 164, C.

DE VIRIDI ET VENATIONE. L. Lat. Of vert and venison. Of, or relating to the green-sward of the king's forests, and the king's deer. *Cart. de Forest.* 9 *Hen.* III. 4 *Inst.* 289. 2 *Bl. Com.* 71, 72. A term of the old forest law. See *Vert & Venison.*

DE VISINETU. L. Lat. Of the vicinage. *Reg. Orig.* 32 b. *Reg. Jud.* 4. *De*

visneto. *Fleta*, lib. 2, c. 62, § 3. See *De vicineto.*

DE WARRANTIA CHARTÆ, *Breve.* L. Lat. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty, [in the charter of feoffment,] and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel them to warrant the land unto him. *Reg. Orig.* 157 b. *F. N. B.* 134, D. *Termes de la Ley*, voc. *Warrantia chartæ. Cowell. Blount.* 3 *Reeves' Hist.* 55. Abolished by statute 3 & 4 Will. IV. c. 27.

DE WARRANTIA DIEI, *Breve.* L. Lat. Writ of warranty of day; or of warranty of default for a day. An ancient writ which lay where one having a day assigned personally to appear in court to an action, was, in the mean time, employed in the king's service, so that he could not come at the day appointed. It was directed to the justices, commanding them not to put the party in default for his absence on that day, because, as to that matter, the king *warranted* to him that *day.* *Reg. Orig.* 18, 19. *F. N. B.* 17.

DEACON. [Lat. *diaconus*, from Gr. διακόνος.] In ecclesiastical law. A minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the lowest order in the church of England. *Wharton's Lex. Brande.*

DEAD-BORN. See *Mortuus exitus.*

DEAD-FREIGHT. In maritime law. A kind of freight payable by the charterer of a vessel, when the cargo in respect of which it is payable, or some part of it, has, from some cause, on the part of the charterer, not been conveyed as provided. *Jacobsen's Sea Laws*, 287—292. 3 *Campb.* 428.

DEAD LETTERS. See Acts of Congress, March 3, 1825, sess. 2, ch. 64, sec. 26, and July 2, 1836, sess. 1, ch. 270.

DEADLY FEUD. [Lat. *faida mortalis* or *mortifera.*] A profession of irreconcilable hatred against an enemy, until revenge were obtained even by his death. This was allowed by the ancient Saxon laws, where a man had been killed, and no pecuniary satisfaction had been made to his kindred. *Spelman*, voc. *Faida.* The term was also applied to the predatory warfare carried on in the northern borders of England. *Stat.* 43 *Eliz.* c. 13. 4 *Bl. Com.* 244. See *Faida.*

DEAD MAN'S PART, or DEATH'S PART. In English law. That portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II. c. 17, declared that the same should be subject to the statute of distributions. 2 *Bl. Com.* 518. 2 *Steph. Com.* 254. 4 *Reeves' Hist. Eng. Law*, 83. A similar portion in Scotch law is called *dead's part*, (q. v.)

DEADPLEDGE. [L. Lat. *mortuum vadium.*] A mortgage. See *Mortgage, Mortuum vadium.*

DEAD'S PART. In Scotch law. That portion of the property of a deceased person which remained over the *jus relictæ* (share of the widow), and the children's *legitim*, (lawful portion); and so called because the deceased had full power over it, and might give it to whom he pleased. *Ersk. Inst.* b. 3, tit. 9, §§ 15, 18.

DEADVOCARE. L. Lat. [from *de* priv. and *advocare*, to advocate or acknowledge.] In old English law. To abandon a cause, (*causam deserere,*) or give up its advocacy. *Spelman.*

To disavow, or disclaim; to refuse to acknowledge. *Id.* To refuse to acknowledge a lord or superior; to disclaim to hold of him. *Bract.* fol. 82, 203 b. *Fleta*, lib. 2, c. 44, § 6. To disown a child. *Bract.* fol. 278.

DE-AFFOREST. [L. Lat. *deafforestare, deforestare.*] In English law. To discharge from being a forest; to release or exempt from the forest law. *Stat.* 17 *Car.* I. c. 16. *Reg. Jud.* 83 b. See *Disafforest.*

DEAFFORESTARE. L. Lat. In old English law. To de-afforest or disafforest. *Omnes forestæ quæ aforestatæ sunt tempore nostro, statim deafforestentur;* all forests which have been afforested in our time shall be forthwith disafforested. *Mag. Cart. Johan.* c. 47.

DEALBARE. L. Lat. [from *albus*, white.] In old English law. To whiten or make white. *Dealbare firmam;* to whiten rent or farm; that is, to convert the base money in which rent (*firma*) was paid, into silver (*white* money) or its value: to

reduce it to the fineness of standard silver by melting it down in the exchequer, or make it equal to silver by paying the difference in value. *Cowell*, voc. *Blanche Firmes*. *Spelman. Lib. Niger Scacc.* cited *ibid.* *Mem. in Scacc.* H. 12 *Edw.* I. An obsolete term of the exchequer. See *Alba firma.*

DEALINGS. Transactions in the course of trade or business. Held to include payments to a bankrupt. *Mood. & M.* 137. 3 *Carr. & P.* 85.

DEAN. [Lat. *decanus;* Gr. δεκανος, from δεκα, ten.] In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend *ten* canons or prebendaries. 1 *Bl. Com.* 382. *Co. Litt.* 95. *Spelman*, voc. *Decanus.* See *Decanus.*

DEAN AND CHAPTER. [L. Lat. *decanus et capitulum.*] In English ecclesiastical law. A spiritual corporation constituting the council of a bishop, to assist him with their advice in affairs of religion; and also in the temporal concerns of his see. 1 *Bl. Com.* 382. 3 *Co.* 74, 75. *Co. Litt.* 103, 400. 3 *Steph. Com.* 67. 1 *Wooddes. Lect.* 182. *Spelman*, voc. *Decanus. Wharton.* Dean and chapter now supply the place of prior and convent. 3 *Co.* 74.

DEAN OF THE ARCHES. The presiding judge of the Court of Arches in England. See *Arches Court.*

By the act of 3 & 4 Vict. c. 65, the Dean of Arches is made an assistant judge of the court of admiralty. 3 *Steph. Com.* 727. 1 *Kent's Com.* 371, and note.

DEATH BED. In Scotch law. A state of sickness which ends in death. *Ersk. Inst.* b. 3, tit. 8, § 95.

DEATHBED DEED. In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards died. *Ersk. Inst.* lib. 3, tit. 8, § 96. A deed is understood to be in death bed, if, before signing and delivery thereof, the grantor was sick, and never convalesced thereafter. 1 *Forbes' Inst.* part 3, b. 2, c. 4, tit. 1, sec. 1. But it is not necessary that he should be actually confined to his bed at the time of making the deed. *Bell's Dict.*

DEB'A. A contraction of *Debita.* 1 *Instr. Cler.* 9.

DEBAS, *Debase.* L. Fr. Below; under; beneath. *Kelham.*

DEBASSA. L. Fr. Downwards. *Kelham.*

DEBATUM. L. Lat. [from Fr. *debatre.*] In old European law. A dispute or controversy. *Spelman.*

DEBENT. Lat. [from *debere*, to owe.] In old English law. They owe; they ought. *Sicut esse* debent *et solent;* as they ought to be, and use to be. *Fleta*, lib. 5, c. 41, § 1.

DEBENTURE. [from Lat. *debere*, to owe.] A custom-house certificate, entitling the exporter of imported goods to a drawback of duties paid on their importation. *Act of Congress*, March 2, 1799, s. 80. *Stat.* 3 & 4 *Will.* IV. c. 52, § 86. See *Drawback.*

An instrument in use in some government departments, by which government is charged to pay to a creditor or his assigns, the sum found due on auditing his accounts. *Brande. Blount.*

DEBET. Lat. [from *debere*, to owe.] He owes; owes. *Nil debet*, (q. v.) he owes nothing. See *infra.*

He ought; it ought; there ought; one ought; ought. See the maxims *infra.*

DEBET ET DETINET. L. Lat. He owes and detains. Words anciently used in the original writ, (and now, in English, in the plaintiff's declaration,) in an action of debt, where it was brought by one of the *original* contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his *heirs*, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, &c. The declaration in such cases states that the defendant "*owes* to," as well as "*detains* from" the plaintiff the debt or thing in question; and hence the action is said to be "in the *debet et detinet.*" *F. N. B.* 119, G. 3 *Bl. Com.* 155. Where the declaration merely states that the defendant *detains* the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "in the *detinet*" alone. *Id. ibid. Tomlins.* See *Detinet.*

DEBET ET SOLET. L. Lat. He owes and is used, [or has been used to do]. Words anciently used in writs, showing both a *right* and a *custom* as the ground of the claim; as in the writs *De secta ad molendinum, De molendino, domo, et ponte reparanda*, &c. *Reg. Orig.* 153.

Where a person sued to recover any right whereof his *ancestor* was disseised by

the tenant or his ancestor, he used only the word *debet* in his writ, *solet* not being proper because his ancestor was disseised and the estate discontinued. But if he sued for any thing that was for the *first time* denied him, he used both the words *debet et solet*, because his ancestor before him, as well as he himself had *usually enjoyed* the thing for which he sued, until the present refusal of the tenant. *Termes de la Ley. Old N. B.* 98. *F. N. B.* 122, M. 123. See *Debent.*

Debet esse finis litium. There ought to be an end of suits; there should be some period put to litigation. *Jenk. Cent.* 61. See **Interest reipublicæ ut sit finis litium.**

Debet quis juri subjacere ubi delinquit. One [every one] ought to be subject to the law [of the place] where he offends. 3 *Inst.* 34. This maxim is taken from Bracton. *Bract.* fol. 154 b.

DEB'I. A contraction of *Debiti.* 1 *Inst. Cler.* 9.

Debile fundamentum fallit opus. A weak foundation frustrates [or renders vain] the work [built upon it]. *Shep. Touch.* 60. *Noy's Max.* 5, max. 12. *Finch's Law*, b. 1, ch. 3. When the foundation fails, all goes to the ground; as where the cause of action fails, the action itself must of necessity fail. *Wingate's Max.* 113, 114, max. 40. *Broom's Max.* 80, [135].

DEBITA. Lat. [pl. of DEBITUM, q. v.] Debts.

DEBITA FUNDI. L. Lat. In Scotch law. Debts secured upon land. *Ersk. Inst.* b. 4, tit. 1, § 11.

DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts were anciently so called. *Crabb's Hist. Eng. Law*, 107.

Debita sequuntur personam debitoris. Debts follow the person of the debtor; that is, they have no locality, and may be collected wherever the debtor can be found. 2 *Kent's Com.* 429. *Story's Confl. Laws*, § 362.

DEBITO MODO. Lat. In due manner; duly. *Debito modo electus;* duly elected. 7 *East*, 345. *Debito aut legitimo modo;* in a due or lawful manner.

DEBITOR. Lat. [from *debere*, to owe.] In civil and old English law. A debtor. *Fleta*, lib. 2, c. 64. *Debitor intelligatur is à quo invito exigi pecunia potest;* a debtor may be understood to be one from whom money may be exacted against his will. *Dig.* 50. 16. 108. *Capitalis debitor;* a principal debtor. *Magna Charta*, c. 8.

Debitor non præsumitur donare. A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 *Kames' Equity*, 212. See 1 *P. Wms.* 279. Where a debtor gives money or goods, or grants bond to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. *Ersk. Inst.* b. 3, tit. 3, § 93.

DEBITRIX. Lat. [from *debere*, to owe.] In the civil law. A female debtor. *Dig.* 16. 1. 24, pr. *Id.* 49. 14. 47, pr. *Creditrix;* a female creditor. *Cod.* 8. 46. 2.

DEBITUM. Lat. [from *debere*, to owe.] In old English law. A thing due or owing; a debt. *Inst.* 3. 15. 1. *Stat. Westm.* 2, c. 18. *Ad debitum reddendum;* to pay the debt. *Mag. Cart.* 9 *Hen.* III. c. 8. See *Debitor.*

Debitum et contractus sunt nullius loci. Debt and contract are of [belong to] no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought any where. 2 *Inst.* 231. *Story's Confl. Laws*, § 362. 1 *Smith's Lead. Cas.* 340, 363. *Broom's Max.* 414, note. Verbal contracts are, for the purpose of jurisdiction, *nullius*, or rather *uniuscujusque loci.* 7 *Man. & Gr.* 1019, note.

DEBITUM FUNDI. Lat. In Scotch law. A debt of the ground; a debt which is a charge upon real estate. *Bell's Dict.*

DEBITUM IN PRÆSENTI, SOLVENDUM IN FUTURO. L. Lat. A debt due at present, to be paid in future. A term applied to obligations which are absolute or perfect when contracted, though not payable before a certain future day, as bonds and notes. *Co. Litt.* 292 b. 1 *Burr.* 228. 2 *M. & S.* 149.—The right of the government to duties on imported goods accrues, in the fiscal sense of the term, on the arrival of the goods in the proper port of entry; yet it is but a *debitum in præsenti, solvendum in futuro*, according to the requisition of the revenue collection act of March 2, 1799, ch. 128; and, therefore, if a deposit of the goods is made by the importer, or a bond is given by him for the duties, pursuant to the provisions of that act, the importer is entitled to the full credit allowed by that act. Story, J. 13 *Peters' R.* 494. Rent, before the appoint-

ed day of payment is not *debitum in præsenti, solvendum in futuro;* but is a contingent claim liable to be wholly defeated by many intervening acts or events. 11 *Mass.* 493. *Co. Litt.* 292 b.

DEB'O. A contraction of *Debito.* 1 *Inst. Cler.* 9.

DEBOTER. L. Fr. To hinder. *Debote;* hindered. *Britt.* c. 40.

DEBRUSER. L. Fr. To break. *Ceux queux ount* debruse *la prison;* those who have broken the prison. *Stat. Westm.* 1, c. 15. *Britt.* c. 11.

To break down, as a hedge. *Ses haies debruseront. Yearb.* T. 1 Edw. II. 8.

To break to pieces. *L. Fr. Dict.*

DEBRUSURE. L. Fr. [from *debruser*, q. v.] A breaking. *Britt.* c. 1.

DEBT. [Lat. *debitum;* L. Fr. *det, dett, dette.*] A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 *Bl. Com.* 154. Debt is otherwise described by Sir William Blackstone, as a species of *contract*, whereby a chose in action, or right to a certain sum of money is mutually acquired and lost. 2 *Bl. Com.* 464. See *Smith's Merc. Law*, 319. This, however, as Mr. Stephen observes, conveys no accurate idea of the meaning of the term; a debt not being a contract, but the *result* of a contract. 2 *Steph. Com.* 187, note. *Id.* 186.

The word "debt" is of large import, including not only debts of record, or judgments, and debts by specialty, but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. Hubbard, J. 3 *Metcalf's R.* 522, 526. See 1 *Bell's Appeal Cases*, 295, arg.

DEBT. [L. Lat. *breve*, seu *actio de debito.*] In practice. The name of an action which lies at law to recover a certain specific sum of money; or a sum that can readily be reduced to a certainty. 3 *Bl. Com.* 154. 3 *Steph. Com.* 461. 1 *Tidd's Pr.* 3. 1 *Archb. N. Prius*, 200. *Browne on Actions*, 333. *Smith on Contracts*, 297.

DEBT OF RECORD. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 *Bl. Com.* 465.

DEBT BY SPECIALTY, or *special contract.* A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 *Bl. Com.* 465. See *Specialty.*

DEBT BY SIMPLE CONTRACT. A debt or obligation arising upon a contract which is ascertained by mere oral evidence; or upon some written agreement or contract not under seal.* 2 *Bl. Com.* 465. See *Simple contract.*

DEBT EX MUTUO. L. Lat. A species of debt or obligation mentioned by Glanville and Bracton, and which arose *ex mutuo*, out of a certain kind of loan. *Glanv.* lib. 10, c. 3. *Bract.* fol. 99. See *Mutuum, Ex mutuo.*

DEBTEE. [L. Fr. *dettee.*] A person to whom a debt is due; a creditor. 3 *Bl. Com.* 18. *Plowd.* 543. Not used.

DEBTOR. [Lat. *debitor;* L. Fr. *dettour.*] A person who owes a sum of money, or is indebted to another.

DEBTOR IN SOLIDO. See *In solido.*

DEBUIT. Lat. [from *debere*, to owe.] He owed. Held, in the civil law, to include every species of action (*omnem omnino actionem comprehendere intelligitur*). *Dig.* 50. 16. 178. 3.

DECA, *Decea, Decha.* L. Fr. On this side; from this; hence. *Decea la meer;* on this side of the sea. *Britt.* c. 123.

DECANATUS. L. Lat. [from *decanus*, q. v.] A deanery. *Spelman.*

A company of ten persons. *Calvin, Lex. Jurid.*

DECANIA. L. Lat. [from *decanus*, q. v.] The office, jurisdiction, territory or command of a *decanus*, or dean. *Spelman.* See *Decanus.*

DECANUS. Lat. In the Roman law. An officer who had the command of ten soldiers, the number assigned to each tent in an encampment; otherwise called *contubernium*, answering nearly to the modern *mess. Adam's Rom. Ant.* 403.

An officer at Constantinople, who had charge of the burial of the dead. See *Nov.* 59, c. 2.

Decani and the *corpus decanorum* are mentioned in the twenty-seventh title of the twelfth book of the Code of Justinian, but the nature of the office is not described.

DECANUS. Lat. [from Gr. δεκανος, from δεκὰς, ten.] In civil, ecclesiastical, and old European law. An officer having supervision over *ten;* a dean. A term applied

not only to ecclesiastical, but to civil and military officers. *Spelman.*

Decanus monasticus; a monastic dean, or dean of a monastery; an officer over ten monks. *Spelman. Calvin, Lex. Jurid.*

Decanus in majori ecclesia; dean of a cathedral church, presiding over ten prebendaries. *Spelman.* See *Dean.*

Decanus episcopi; a bishop's or rural dean; presiding over ten clerks or parishes. *Spelman. Lyndewode Prov.* lib. 1, tit. *de constit.* c. 1, verb. *Decanos rurales.* See *Rural deans.*

Decanus friborgi; dean of a friborg. An officer among the Saxons, who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a tithing man, or borsholder, (Lat. *decurio, capitalis friborgus, friborgi caput,* qq. v.) *Spelman. LL. Edw. Conf.* cited *ibid.* See *Friborg.*

Decanus militaris; a military officer, having command of ten soldiers. *Spelman. Vegetius,* lib. 2, c. 13. *Calv. Lex. Jurid.* See *Decanus, supra.*

DECEASE. [from L. Fr. *deces, decees;* Lat. *decessus,* qq. v.] Death; departure from life.

To DECEASE. To die; to depart life, or from life. This has always been a common term in Scotch law. "Gif ane man *deceasis.*" *Skene de Verb. Sign.* voc. *Eneya.*

DECEDENS. Lat. [from *decedere,* q. v.] In old English law. Dying; a person dying; a deceased or defunct person; a decedent. *Cum post mortem alicujus* decedentis *intestati;* when after the death of a person dying intestate. *Stat. Westm.* 2, c. 19. *Fleta,* lib. 2, c. 62, § 13.

DECEDENT. Deceased; properly, deceasing; a deceased or dead person.

This term, which is becoming a common one in our jurisprudence, is closely formed from the Latin participle *decedens,* (q. v.) and like that, strictly signifies "deceasing." The form of the *present* participle given to this word may be traced to the Greek of the Novels of Justinian, in which τελευτῶν was the term used to signify a person who had died or was dead. See *Nov.* 39, pr. *Nov.* 1, c. 1, §§ 3, 4. *Nov.* 48, pr. *Nov.* 59, pr. It will be seen, however, that it was not adopted in the Latin, being uniformly translated by the *past* or passive participle *defunctus,* which was the proper word in the Roman law, to signify a dead person. *Dig.* 40. 15. *Cod.* 7. 21. *Defunctus,* and not *decedens,* was also the term adopted in old English law. *Fleta,* lib. 2, c. 57, *passim,* See *Defunctus.* Hence the Scotch "defunct," which is still used. *Decedens* seems to have always been confined to its proper grammatical sense of a present participle.

DECEDER. L. Fr. To die. See *Deces.*

DECEDERE. Lat. [from *de,* from, and *cedere,* to go.] In the civil law. To depart, (that is, from life, *vita*); to die. *Intestatus decedit;* a man dies intestate. *Inst.* 3. 1, pr. *Si decesserit;* if he die. *Dig.* 2. 8. 4. See *Id.* 4. 8. 26. *Decessit;* (he) died. *Id.* 40. 15. 1. 1. *Vitâ* was sometimes expressed, and Brissonius observes that this was a favorite form with Papinian. *Vitâ decessit;* departed life; died. *Dig.* 31. 75. 1. *Si Titius ante ipsam vitâ decessisset;* if Titius should die before her. *Id.* 39. 6. 42, pr. *Vitâ decessit. Cod.* 2. 51. See *Id.* 7. 21.

In old English law. To die; to decease. *Si liber homo intestatus decesserit;* if a freeman die intestate. *Fleta,* lib. 2, c. 57, § 10. *Si debitor intestatus decedat. Id.* c. 62, § 12.

DECEES. L. Fr. Decease; death. *Yearb.* H. 3 Edw. II. 70.

DECEIT. [L. Fr. *disceit;* Lat. *deceptio.*] In old English law. A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than *deceit* to distinguish the offence. *West's Symbol.* part 2, tit. Indictments, § 68. *Cowell. Jacob.*

DECEIT, *Disceit.* [L. Lat. *breve de deceptione.*] In old practice. The name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. *Roscoe's Real Act.* 136. 3 *Bl. Com.* 166. *Reg. Jud.* 18. See *Reg. Orig.* 113. Abolished by statute 3 & 4 Will. IV. c. 27.

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully,* either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs); or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. 3 *Bl. Com.* 166. *Reg. Orig.* 112—116. *F. N. B.* 95, E. 98. This has,

in modern times, given place to an action on the case in the nature of deceit. *Bull. N. P.* 30. 1 *Archb. N. Prius*, 440. 2 *Kent's Com.* 483, note.

DECEM TALES. L. Lat. (Ten such; or ten tales [jurors].) In practice. The name of a writ which issues in England, where, on a trial at bar, *ten* jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 *Bl. Com.* 364. *Reg. Jud.* 30 b. 3 *Steph. Com.* 602.

DECEMVIRI LITIBUS JUDICANDIS. Lat. In the Roman law. Ten persons (five senators and five *equites*) who acted as the council or assistants of the prætor, when he decided on matters of law. *Hallifax, Anal.* b. 3, c. 8. According to others, they were themselves judges. *Calv. Lex.*

DECENNA. L. Lat. [from *decem*, ten.] In old English law. A tithing or decennary; the precinct of a frank-pledge; consisting of ten freeholders with their families, the head of which was called chief-pledge. *Spelman. Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, § 5. 2 *Inst.* 73. 1 *Bl. Com.* 114. See *Decennary, Tithing, Frank-pledge, Friborg.*

DECENNARIUS, *Decinarius.* L. Lat. A deciner; one of the ten freeholders composing a decennary; otherwise called a handborowe. *Spelman. Id.* voc. *Handborowe.* See *Deciner, Frank-pledge.*

DECENNARY. [L. Lat. *decenna.*] A tithing, composed of ten neighboring families. 1 *Reeves' Hist.* 13. 1 *Bl. Com.* 114.

DECENNIER. See *Deciner.*

DECEPTIO. Lat. Deceit. See *Deceit.*

DECERN. [from Lat. *decernere*, q. v.] In Scotch law. To decree. "Decernit and ordainit." 1 *How. St. Trials*, 927. "Decerns." *Shaw's R.* 16.

DECERNERE. Lat. In civil and old English law. To decree; to decide. *Dig.* 1. 4. 1. 1. *Rex decernit;* the king decrees. *Artic. Cleri*, c. 7.

DECES. L. Fr. Decease; death. *Britt.* c. 93.

DECESSUS. Lat. [from *decedere*, to depart.] In the civil law. Decease; death. *Dig.* 33. 2. 34. Rarely used.

In old English law. Decease; death. *Post meum decessum;* after my decease. *Fleta*, lib. 3, c. 9, § 5; c. 17, § 1.

Departure. 3 *Salk.* 123. See *Departure.*

DECET. Lat. It is becoming; it is proper. *Decet tamen principem servare leges quibus ipse solutus est;* yet it is becoming for the prince to observe the laws from which he himself is released. 1 *Bl. Com.* 239. Blackstone quotes this as the language of Paulus, *Dig.* 32. 23. The passage referred to runs thus: *Decet enim tantæ majestati eas servare leges, quibus ipse solutus esse videtur;* for it is becoming even to majesty to observe those laws from which it seems to be itself released.

DECIDERE. Lat. In the civil law. To decide; to determine judicially. *Cod.* 3. 26. 5.

In old English law. To decide; to determine, or put an end to. *Bract.* fol. 1 b.

To fall, or fall to; to remain to; to escheat. *Bract.* fol. 84 b. *Stat. Quia Emptores*, c. 2.

DECIENS. L. Fr. Since. *Kelham.*

DECIES TANTUM. L. Lat. (Ten times as much.) In English practice. The name of a writ given by the statute 38 Edw. III. c. 12, 13; (or, according to Mr. Reeves, by 34 Edw. III. c. 8;) which lay against a juror who had taken money of either party for giving his verdict, to recover *ten times as much* as the sum taken. It also lay against embraceors for intermeddling with a jury. *Reg. Orig.* 188 b. 3 *Reeves' Hist.* 56. *F. N. B.* 171. *Termes de la Ley.* It was a species of popular action. *Id.* See *Plowd.* 85. The statutes upon which it was founded were repealed by statute 6 Geo. IV. c. 50, § 62. *Wharton's Lex.*

DECILLER LES YEULX. L. Fr. To open the eyes. *Kelham.*

DECIMA. L. Lat. A word used in old records for *decenna*, (q. v.) *LL. Inæ*, cited in *Spelman*, voc. *Decanus.*

DECIMÆ. L. Lat. [from *decem*, ten; L. Fr. *dismes.*] In ecclesiastical law. Tenths. The tenth part of the annual profit of livings, or ecclesiastical benefices, formerly claimed of the English clergy by the papal see, and afterwards made a part of the royal revenue. 1 *Bl. Com.* 284, 285. Tenths now form a part of the fund called Queen Anne's bounty. *Id.* 286. 2 *Steph. Com.* 548, 550.

Tithes. *Ecclesia decimas non solvit ecclesiæ;* the church does not pay tithes to the church. A vicar pays no tithes to the rector, nor the rector to the vicar. *Cro. Eliz.* 479, 511. 2 *Bl. Com.* 31. See *Tithes.*

DECIMEUR. L. Fr. The owner of the tithes of a parish. *Kelham.*

DECINER, *Desiner, Desnier, Dezyner.* Anglo-Norm. [from. Fr. *dismier;* L. Lat.

decennarius.] In old English law. One of a decennary, or tithing; a hand-borow. *Spelman. Termes de la Ley.* See *Decennary, Friborg, Dezyner.*

DECISIVE (or DECISORY) OATH. [L. Lat. *sacramentum decisionis;* Fr. *serment decisoire.*] A mode of trial in the civil law, where one of the parties to the suit, not being able to prove his charge, offered to refer the *decision* of the cause to the *oath* of his adversary. *Cod.* 4. 1. 2. 3 *Bl. Com.* 342. *Hallifax, Anal.* b. 3, c. 9, num. 36—38.—An oath which one of the parties defers or refers back to the other, for the decision of the cause. *Poth. Oblig.* part 4, c. 3, sect. 4, art. 1.—An oath made by a party to a suit, which has the effect of deciding the case. *Meredith's Emerigon on Ins.* 26, note. See *Sacramentum decisionis.*

DECLAMATIO. L. Lat. In old English law. Proclamation. *Bract.* fol. 355 b.

DECLARATION. [L. Lat. *narratio;* and formerly *intentio, petitio;* L. Fr. *counte, entente.*] In pleading. A plaintiff's statement in writing, or legal specification on record, of the circumstances which constitute his cause of action; called, in real actions, *count*, and anciently *tale.* It is the first of the pleadings in an action at law, and is usually divided into several sections or paragraphs, termed *counts.* It consists of the following formal parts: the title, the venue, the commencement, the statement of the causes of action, the several counts, and the conclusion. 1 *Chitt. Pl.* 240, 262, *et seq. Steph. Pl.* 29. 3 *Bl. Com.* 293. 3 *Steph. Com.* 573. See *Count.*

DECLARATION. In Scotch practice. The statement of a criminal or prisoner, taken before a magistrate. 2 *Alison's Crim. Pract.* 555.

DECLARATION OF INTENTION. The act by which an alien declares, before a court of record, that he intends to become a citizen of the United States. See 2 *Kent's Com.* 64, 65.

DECLARATION OF TRUST. The creation or acknowledgment of a trust. A declaration by a party who has made a conveyance to another, that the subject conveyed is to be held in trust; specification of the trusts upon which the subject is conveyed. An admission by an individual that a property, the title of which he holds, is held by him as trustee for another.

The instrument or writing by which such declaration or acknowledgment is made, whether in regular form or otherwise, as by letter. 2 *Crabb's Real Prop.* 547, § 1764. 1 *Hilliard's Real Prop.* 303.

DECLARATOR. In Scotch law. An action whereby a party prays something to be *declared* in his favor. *Scotch Dict.*

DECLARATORY ACTION. In Scotch law. An action in which some right is sought to be *declared* in favor of the pursuer, (or plaintiff,) but nothing is demanded to be paid or performed by the defender, (defendant). *Bell's Dict. Ersk. Inst.* b. 5, tit. 1, § 46. Otherwise called an action of declarator. *Id. ibid.*

DECLARATORY STATUTE. A statute declaratory of the common law. A statute which, instead of introducing a *new* law, only *declares* what is the existing law; and the object of which is to remove doubts which have arisen on the subject. 1 *Chitt. Bl. Com.* 86, and note.

It seems to be settled as the sense of the courts of justice in this country, that the legislature cannot pass any *declaratory* law, or act declaratory of what the law was before its passage, so as to give it any binding weight with the courts. 1 *Kent's Com.* 456, note.

DECLARE. In pleading. To state a plaintiff's cause of action at law, according to the rules of pleading, and the practice of the court. *Declaring* includes not only the preparation of the plaintiff's declaration in proper form, but the exhibition of it to the court by filing, and to the opposite party by service. See *Declaration, Filing, Service.*

DECLARE. To state solemnly before witnesses. In New-York, in order to render the execution of a will or codicil valid, the testator must, at the time of subscribing his name or acknowledging his subscription, *declare* it to be his last will and testament, or a codicil to his last will, &c. in the presence of each of the two subscribing witnesses. 2 *Rev. Stat.* [63,] 7, § 40. 1 *Hoffman's Ch. R.* 1. 2 *Selden's R.* 120. See 4 *Kent's Com.* 515, and notes.

DECLINATORY PLEA. In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 *Hale's P. C.* 236. 4 *Bl. Com.* 333. Now abolished. 4 *Steph. Com.* 400, note. *Id.* 436, note.

DECLINATURE. In Scotch practice. An objection to the jurisdiction of a judge. *Bell's Dict.*

DECLINE. In Scotch practice. To

object to. *Declined;* objected to. A judge may be *declined* as incompetent to decide a cause. *Bell's Dict.*

DECOCTOR. Lat. [from *decoquere*, to waste, break or lose.] In the Roman law. A bankrupt; a spendthrift; one who squandered the public money. *Cod.* 10. 31. 40. *Calv. Lex. Brissonius.* See 1 *P. Wms.* 249, in rec.

DECOLE. L. Fr. Beheaded. *Kelham.*

DECOLLATIO. Lat. [from *de*, off, and *collum*, neck.] In old English and Scotch law. Decollation; the punishment of beheading. *Fleta*, lib. 1, c. 21, § 6. *Decollat';* beheaded. 1 *Pitc. Crim. Trials*, part 1, p. 10.

DECORIES. L. Fr. Skinned; pulled off. *Kelham.*

DECOUPER. L. Fr. To cut down; to cut off. *Dyer*, 36. *L. Fr. Dict.*

DECREE. [Lat. *decretum.*] In practice. The judgment of a court of equity or admiralty, answering to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the suit, according to equity and good conscience. 2 *Daniell's Chanc. Pr.* 1192.

In the canon law. The first of the two great divisions of the *Corpus Juris Canonici;* more commonly known as Gratian's decree, (*decretum Gratiani*, q. v.) By the *decrees* of the popes, are meant their decrees in the councils held by them in Italy. *Butler's Hor. Jurid.* 105.

In the civil and Scotch law. The final sentence of a court. See *Decretum, Decreet.*

DECREE OF CONSTITUTION. In Scotch practice. A decree by which a debt is ascertained. *Bell's Dict.*

In technical language, a decree which is requisite to found a title in the person of the creditor, whether that necessity arise from the death of the debtor or of the creditor. *Id.*

DECREE OF FORTHCOMING. In Scotch law. The adjudication of the court, after process of arrestment, which entitles the creditor to demand the sum arrested, to be applied for payment of the debt upon which the arrestment and forthcoming proceeded. 2 *Kames' Equity*, 177, 148. *Id.* 182, 194. See *Arrestment, Forthcoming.*

DECREET. [from Lat. *decretum.*] In Scotch law. The decree, judgment or sentence of a court. 1 *Brown's R.* 506. See *infra.*

DECREET ABSOLVITOR. In Scotch law. A decree dismissing a claim, or acquitting a defendant. 2 *Kames' Equity*, 367. 1 *Forbes' Inst.* part 4, b. 1, c. 2, tit. 1, sect. 3.

DECREET ARBITRAL. In Scotch law. An award of arbitrators. 1 *Kames' Equity*, 312, 313. 2 *Id.* 367. *Ersk. Inst.* b. 4, tit. 3, § 29. Lord Brougham, 2 *Bell's Appeal Cases*, 49.

DECREET IN ABSENCE. In Scotch law. A decreet or sentence, at pronouncing whereof either party is absent. 1 *Forbes' Inst.* part 4, b. 1, c. 2, tit. 1, sect. 3.

DECREMENTUM MARIS. Lat. In old English law. Decrease of the sea; the receding of the sea from the land. *Callis on Sewers*, [53,] 65. See *Reliction.*

DECRES. L. Fr. Decrease. *Kelham.*

DECRETAL ORDER. In chancery practice. An order, in the nature of a decree, made by the court of chancery upon a motion or petition. 2 *Daniell's Ch. Pr.* 637.

DECRETALES. L. Lat. In ecclesiastical law. Decretals; the title of the second of the two great divisions of the *Corpus Juris Canonici;* consisting of the *Decretales Gregorii Noni*, the *Decretales Bonifacii Octavi*, the *Clementinæ*, and the *Extravagantes*, (qq. v.) 1 *Mackeld. Civ. Law*, 81, 83, Kaufmann's note. *Hallifax, Anal.* b. 1, c. 1. See *Butler's Hor. Jurid.* 105.

DECRETALES GREGORII NONI. L. Lat. Decretals of Gregory the Ninth. A collection of canon law, published by Pope Gregory IX. A. D. 1234, consisting of five books, each of which is subdivided into titles, and each title into chapters. These decretals contain the papal decrees from the time of Pope Alexander III. and are cited by the name of the title, and the number of the chapter, with the addition of the word *Extra*, or the capital letter X. 1 *Mackeld. Civ. Law*, 83, note. *Hallifax, Anal.* b. 1, c. 1. *Butler's Hor. Jur.* 115. See *Decretals.*

DECRETALES BONIFACII OCTAVI. L. Lat. Decretals of Boniface the Eighth. A collection of canon law, more commonly known as the *Liber Sextus Decretalium*, or *Sextus Decretalium.* See *Sextus Decretalium.*

DECRETALS. [L. Lat. *decretales.*] The title of the second of the two great divisions of the canon law, the first being called the *Decree*, (*decretum*). See *Decretales, Decretum.*

Decretals are the answers of the popes to questions proposed to them on religious subjects. *Butler's Hor. Jur.* 105.

DECRETO. Span. In Spanish colonial law. An order emanating from some superior tribunal, promulgated in the name and by the authority of the sovereign, in relation to ecclesiastical matters. *Schmidt's Civ. Law*, 93, note.

DECRETUM. Lat. [from *decernere*, to decree.] In the civil law. A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause, (*quod imperator cognoscens decrevit*). *Inst.* 1. 2. 6. Cooper's Notes, *in loc.* *Dig.* 1. 4. 1. 1. 1 *Mackeld. Civ. Law*, 41, § 50. For other senses, see *Calvin's Lex. Jurid.* *Brissonius.*

DECRETUM. Lat. In the canon law. An ecclesiastical law, in contradistinction to a secular law, (*lex*). 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note.

The title of the first of the two great divisions of the *Corpus Juris Canonici;* more commonly known as *Decretum Gratiani*, (q. v.)

DECRETUM GRATIANI. Lat. Gratian's decree, or *decretum.* A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 *Bl. Com.* 82. 1 *Reeves' Hist. Eng. Law*, 67. 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note. *Butler's Hor. Jur.* 113.

DECRY. To cry down; to discredit. "The king may at any time decry, or cry down any coin of the kingdom, and make it no longer current." 1 *Bl. Com.* 278. 1 *Hale's P. C.* 197.

DECURIA. L. Lat. In Saxon law. A tithing or decennary, otherwise called *decenna*, *decania* and *decima*, (qq. v.) *Spelman*, vocc. *Decanus*, *Friborga.*

DECURIÆ. L. Lat. In old European law. Marks or incisions made on trees for the purpose of designating boundaries. *LL. Wisegoth.* lib. 8, tit. 6, l. 1. *Spelman.*

DECURIO. Lat. In the Roman law. A kind of provincial senator. The *decuriones* were members of a council or senate established in all the great towns in the Roman provinces, constituting a kind of municipal corporation, and having the whole administration of the internal affairs of the places in which they resided. 1 *Spence's Chancery*, 54. *Cooper's Justin. Inst.* Notes, *439. *Dig.* 50. 2. *Cod.* 10. 31. *Nov.* 38. *Calv. Lex.*

DECURIONATUS. Lat. In the Roman law. The office of a decurio. *Calv. Lex.* *Phillimore on Domicil*, 3.

DEDEINS, *Dedeinz*, *Dedeynz*, *Dedinz*, *Dedenz*, *Dedens*, *Dedaynes.* L. Fr. Within; in. *Dedeins la vierge;* within the verge. *Artic. Sup. Chart.* c. 3.

Clos dedens *meson*, *ou* dedens *parkes;* shut up in a house, or in pounds. *Britt.* c. 27. *Dedens age;* within age. *Id.* c. 34. *Dedeynz age.* *Fet Assaver*, § 48.

DEDENTRE. L. Fr. Within; between. *Kelham.*

DEDI. Lat. [from *dare*, to give.] I have given. The operative and proper word of conveyance in ancient charters of feoffment, and deeds of gift and grant. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 316. *Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5. The present *do* (I give) was also used, and may have been the more ancient form. Bracton employs this frequently in his illustrations. *Bract.* fol. 17, *et passim.* The future *dabo* (I will give) was used in the Anglo-Saxon grants. 1 *Spence's Chancery*, 44.

Dedi and its English equivalent were formerly held to imply a warranty of the title to the land or estate conveyed. *Co. Litt.* 384. 2 *Bl. Com.* 300. 4 *Co.* 81. 5 *Co.* 17. *Perkins*, c. 2. But the law on this point has, in England, been recently altered by statute. See *Give*, *Gift*, *Deed.*

DEDI ET CONCESSI. L. Lat. (I) have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English "*given and granted*" being still the most proper, though not the essential words by which such conveyances were made. 2 *Bl. Com.* 53, 316, 317. 1 *Steph. Com.* 164, 177, 473, 474. *Co. Litt.* 301 b, 384. *Shep. Touch.* 232, and notes.

*** The clause of which *dedi et concessi* were the emphatic words, was that with which deeds or charters anciently commenced, the form being as follows:— *Sciant præsentes et futuri, quod ego, talis,* dedi et concessi *et hac præsenti chartâ meâ confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa, &c.:* Know [all] men present and to come, that I, (such a one) *have given and granted*, and by this my present charter have confirmed to (such a one) for his homage and

service, so much land, with the appurtenances, in such a town, &c. *Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5. Nearly the same form is given by Littleton. *Litt.* sect. 372. 2 *Bl. Com.* Appendix, No. 1. Sometimes the infinitives *dedisse et concessisse* were used, the meaning in English being the same. In indentures, properly so called the third person, *dedit et concessit*, (has given and granted) was used instead of the first. See *Dedit et concessit*. *Dedi* and *concessi* were sometimes held to have the same effect in substance, and to enure to the same intent as *confirmavi*. *Litt.* sect. 531. *Co. Litt.* 301 b. The three words, however, were usually employed together. See *supra*. And see *Dedimus et concessimus*.

DEDICATION. Appropriation to a certain use or uses. Appropriation of private property to public uses; either by a formal or express act on the part of the owner, or by acts from which an appropriation may be legally presumed.* Appropriation of lands or easements for the uses of a public highway, street, square, landing, or other place for public use and enjoyment. Cowen, J. 20 *Wendell's R.* 119—137. Crawford, J. 2 *Wisconsin R.* 193.—The deliberate appropriation of land by its owner, for any general and public uses, reserving to himself no other rights than such as are perfectly compatible with the full exercise and enjoyment of the public uses to which he has devoted his property. Verplanck, Senator, 22 *Wendell's R.* 472. Approved by the court, (Crawford J.) 2 *Wisconsin R.* 153, 187.

No particular form is necessary to make a dedication. It may be made by parol and proved by parol. 12 *Georgia R.* 239. 19 *Barbour's R.* 428. 15 *Illinois R.* 236. But to render it effective it must be accepted. 2 *Selden's R.* 257. 2 *Douglas* (Mich.) *R.* 256. A dedication may be established from user alone. 19 *Barbour's R.* 179. As to presumptions of dedication, see 17 *Howard's R.* 426, 435. And see generally, 6 *Hill's* (N. Y.) *R.* 407. 14 *Barbour's R.* 511. 12 *Wheaton's R.* 582. 6 *Peters' R.* 431. 10 *Id.* 662. 12 *Illinois R.* 29. 2 *Wisconsin R.* 153, and cases cited *ibid.* 9 *Howard's R.* 10. 3 *Kent's Com.* 450—452, and notes. *United States Digest*, Dedication.

DEDICERE. L. Lat. [L. Fr. *dedire.*] In old pleading and practice. To deny. *Fleta*, lib. 2, c. 47, § 21. *Cro. Jac.* 343. *Aut* dedicit *aut cognoscit;* he either denies or acknowledges. *Bract.* fol. 214. *Si petens hoc* dedicere *non possit;* if the demandant cannot deny this. *Id.* fol. 320 b. See *Stat. Westm.* 2, c. 9. *Dedicta;* denied. *Fleta*, lib. 2, c. 63, § 12.

DEDICTUM. L. Lat. [from *dedicere*, to deny.] In old practice. Denied. *Quod non fuit* dedictum *per curiam;* which was not denied by the court. *Dyer*, 14.

DEDIMUS ET CONCESSIMUS. Lat. We have given and granted. The plural of *Dedi et concessi*, (q. v.)

Emphatic words in the commencement of Magna Charta. *Sciatis quod nos* dedimus et concessimus *archiepiscopis, episcopis, abbatibus, prioribus, comitibus, baronibus, et omnibus de regno nostro, has libertates subscriptas.* Know ye, that we have given and granted to the archbishops, bishops, abbots, priors, earls, barons and all of our realm, these liberties underwritten. *Mag. Cart.* 9 *Hen.* III. pr.

DEDIMUS POTESTATEM. L. Lat. (We have given power.) In English practice. A writ of commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, &c. 3 *Bl. Com.* 447. 1 *Id.* 352. Cowell defines it to be "a writ whereby a commission is given to a private man for the speeding of some act appertaining to a judge;" and says the civilians call it *delegatio*. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, &c. *Reg. Orig. tabula.* 2 *Bl. Com.* 351.

In the United States, a commission to take testimony is sometimes termed a *dedimus potestatem.* 3 *Cranch's R.* 293. 4 *Wheaton's R.* 508. 3 *Jones' Law R.* 118.

DEDIMUS POTESTATEM DE ATTORNATO RECIPIENDO. L. Lat. (We have given the power of receiving an attorney.) In old English practice. The name of a writ or commission from the crown, directed to the judges of a court, authorizing them to receive or admit the attorney of a party; or, in other words, to permit him to appear by attorney. *Reg. Orig.* 22, 123 b, 140 b, 151. These instruments were otherwise termed *letters patent*, and without them a party could not, before the statute of Westminster 2, (cap. 10,) appear in court by attorney. *Gilb. C. Pleas*, 32.

DEDIRE. L. Fr. To deny. *Britt.* c. 15. *Dedit, deditz;* denied. *L. Fr. Dict. Kelham.*

DEDISSE. Lat. To have given. *Dedisse intelligendus est etiam is qui permutavit, vel compensavit.* He is understood to have given, who has exchanged or compensated. *Dig.* 50. 16. 76.

DEDISSE ET CONCESSISSE. L. Lat. To have given and granted, or [that I] have given and granted. Operative words in ancient charters of feoffment and deeds of grant, the whole commencement running thus:—*Omnibus Christi fidelibus ad quos præsentes literæ indentatæ pervenerint, A. de B. salutem in Domino sempiternam. Sciatis me* dedisse, concessisse, *et hac præsenti carta mea indentata* confirmasse *C. de D. talem terram, &c.* To all christian people [the faithful of Christ] to whom these presents indented shall come, A. of B. sends greeting in our Lord everlasting. Know ye me to *have given* [that I have given] *granted*, and by this, my present deed indented, *confirmed* to C. of D. such lands, &c. *Litt.* sect. 372. This seems to have been a more frequent construction than that with *quod* and *dedi*, in the first person preterite. 1 *Reeves' Hist.* 91. See *Dedi et concessi.*

DEDIT ET CONCESSIT. L. Lat. Hath given and granted. Operative words in ancient charters of feoffment and deeds of grant, where the conveyance was by indenture, the whole running thus: *Hæc indentura, facta inter R. de P. ex una parte, et V. de D. ex altera parte, testatur quod prædictus R. de P.* dedit et concessit, *et hac præsenti carta indentata* confirmavit *præfato V. de D. talem terram, &c.* This indenture, made between R. of P. of the one part, and V. of D. of the other part, witnesseth, that the aforesaid R. of P. *hath given and granted*, and by this present deed indented hath confirmed to the aforesaid V. of D. such land, &c. *Litt.* sect. 371.

DEDITITII. Lat. An inferior kind of freedmen (*libertinorum*) at one time recognized by the Roman law, being introduced by the *Lex Ælia Sentia*, but long disused in the time of Justinian, and expressly abolished by him. *Inst.* 1. 5. 3. *Id.* 3. 8. 4. *Cod.* 7. 5. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 5, § 109. *Calv. Lex. Jurid.*

DEDUC. L. Fr. Brought; alleged; determined. *Kelham.*

DEDUCERE. Lat. In old English law. To bring. *Deducere rem in judicium;* to bring a thing into court; to make it the subject of judicial investigation. *Bract.* fol. 283 b, 376, 431. This expression is taken from the civil law. *Calv. Lex. Oportet quod certa res* deducatur *in stipulationem;* it is necessary that a certain thing should be made the subject of stipulation. *Fleta*, lib. 2, c. 60, § 24.

To deduct. *Deducto ære alieno;* deducting debts. *Fleta*, lib. 2, c. 57, § 6.

DEDURE, *Deduire.* L. Fr. [from Lat. *deducere*, q. v.] To bring. *Dedust, deduist;* brought. *Kelham. Deduces;* brought. *Britt.* fol. 2 b.

DE'E. L. Fr. To be. *Kelham.*

DEED. Called by Lord Brougham, "a word of flexible import;" sometimes meaning a *fact* or *act;* sometimes an *instrument;* and sometimes (in Scotch law,) a feudal delinquency, and an act of service. 3 *Bell's Appeal Cases*, 123.

DEED. [L. Lat. *factum, charta;* L. Fr. *fait.*] A writing sealed and delivered by the parties. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446.—A writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement of the party whose deed it is, to the things contained in the deed. *Termes de la Ley. Shep. Touch.* 50.—An instrument on parchment or paper comprehending a contract or bargain between party and party, and consisting of three things; writing, sealing and delivery. *Co. Litt.* 171 b. *Blount. Wharton's Lex.*—A writing [on parchment or paper and under seal,] containing a conveyance, bargain, contract, covenants, or matter of agreement between two or more. *Shep. Touch.* 50. *Whishaw.* —An instrument in writing upon paper or parchment, between parties able to contract, and duly sealed and delivered. 4 *Kent's Com.* 452. See 2 *Cushing's R.* 497. 35 *Maine R.* 260. Anciently called a charter, (*charta*, or *carta*, q. v.) and termed a *deed*, κατ' ἐξοχην, because it is the most solemn and authentic *act* that a man can possibly perform with relation to the disposal of his property. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *United States Digest*, Deed. See *Factum, Fait, Scriptum, Writing.*

A deed is said to consist of three principal points, (without which it is no perfect deed to bind the parties,) namely, writing, sealing and delivery. *Termes de la Ley.* Of these, *sealing* constitutes the principal distinction between a deed and any other

contract. *Smith on Contracts*, 6, 7. *Shep. Touch.* (by Preston,) 56. *Perkins*, ch. 2, s. 130, D. Hence the rule that every agreement put in writing, *sealed*, and delivered becomes a deed. *Shep. Touch. ub. sup.* See 35 *Maine R.* 260. Hence, also, in pleading, a bond is denominated a deed. The term, however, is usually confined in its application to conveyances of *real estate*, or of some *interest* therein, such as feoffments, gifts, grants, bargains and sales, leases, releases and confirmations, &c. *Shep. Touch.* 51. 1 *Steph. Com.* 446, 466. Other instruments under seal are properly only *quasi* deeds. *Shep. Touch.* (by Preston,) *ub. sup.* A mortgage is properly a deed, although in practice it is considered a distinct species of conveyance. See 4 *Howard's R.* 37. Whether it is essential that a deed be *signed* as well as *sealed*, seems to be still a question in English law. According to Sir William Blackstone, signing seems to be now as necessary as sealing. 2 *Bl. Com.* 305, 306. Mansfield, C. J. 4 *Taunt.* 123. But signing is not one of the necessary incidents to a deed enumerated by Lord Coke, and Mr. Preston and other modern writers hold it clear that no signature is necessary. *Co. Litt.* 35 b. *Shep. Touch.* (by Preston,) 56. *Sugden on Powers*, 304. See 2 *Chitty's Bl. Com.* 305, 306, notes. The question recently arose in England but was not determined. 2 *Q. B.* 580. *Smith on Contracts*, 5, note. Mr. Smith observes that "it is probable that the signature of deeds will be ultimately held requisite, whenever their subject matter falls within statutes which expressly require it; but that in other cases sealing and delivery are alone essential." *Id. ibid.* In American law, it appears to be the prevailing doctrine that a deed must be *signed* as well as sealed. 4 *Kent's Com.* 450, *et seq.* 2 *Hilliard's Real Prop.* 279. In New-York, every grant in fee or of a freehold estate is required to be subscribed *and sealed* by the grantor or his lawful agent. 1 *Rev. St.* [738,] 731, § 137.

DEED INDENTED, or INDENTURE. [L. Lat. *carta indentata*, or *indentura*; L. Fr. *fait endent.*] In conveyancing. A deed executed or purporting to be executed in *parts, between two* or more parties, and distinguished by having the edge of the paper or parchment on which it is written, *indented* or *cut* at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth (*dentes*) of a saw; a formality derived from the ancient practice of dividing chirographs, (or deeds in parts); but the cutting is now made either in a waving line, or more commonly by notching or scalloping the paper at the edge. 2 *Bl. Com.* 295, 296. *Litt.* sect. 370. *Smith on Contracts*, 12. This formality of *indenting* is, however, very frequently omitted, although the term *indenture* itself is retained in daily use. See *Indenture.*

DEED POLL. [L. Lat. *charta de una parte, factum simplex*; L. Fr. *fait polle.*] In conveyancing. A deed of one part, or executed by one party only, (instead of between parties, and in two or more parts) and distinguished from an indenture by having the edge of the parchment or paper on which it is written, *cut even* (or *polled*, as it was anciently termed,) that is, in a straight line, or plain, without being indented. *Litt.* sect. 370. *Co. Litt.* 229 a. *Shep. Touch.* 50. This distinction, however, though once peculiar and essential, has in modern times become of comparative insignificance, in consequence of the disuse of the formality of *indenting* the other description of deeds. See *Deed indented.*

A deed poll properly is made in the first person, and commences with that formula of address to all mankind so common in ancient written instruments: "Know all men, &c., that I, &c., have given," &c. The forms given in Bracton, Britton and Fleta, as examples of charters (as deeds were once called) are of this description. *Sciant præsentes et futuri, quod ego, &c. Bract.* fol. 34 b. *Fleta*, lib. 3, c. 14, § 5. *Sachent a touts ceux, &c., que jeo, &c. Britt.* c. 39. But a deed poll might be made in the third person. *Shep. Touch.* 51. And on the other hand an indenture might be made in the first. *Litt.* sect. 372. In some of the United States, the ordinary mode of conveyance is by deed poll.

A *deed poll* is considered in England as a deed made between the party or parties who executed it on the one side, and all the world on the other, or rather as a declaration, addressed to all mankind, of what the party executing it has done, so that any person may take a right of action on a covenant contained in a deed poll. But an *indenture* is made only between the persons named as parties to it, so that an indenture between A., B. and C. containing a covenant by A. with D., would not

[formerly] give a right of action to D. So, a stranger to an indenture could not take a release under it, or an estate unless by way of remainder or through the statute of uses. Now, a stranger may take immediately under an indenture, and a deed may have the effect of an indenture without being actually indented. 1 *Spence's Chancery*, 160.

A deed poll is held to be the deed of the party making it, and concludes him only; but an indenture is the deed of both parties, and concludes both. *Finch's Law*, b. 2, c. 2, p. 109. 2 *Hill's* (S. C.) *R.* 439. And see 2 *Hilliard's Real Prop.* 265, *et seq.*

DEEDS TO LEAD AND DECLARE USES. In old conveyancing. A species of deed incident to the conveyances by fine and recovery, by which the latter were directed to operate to certain particular uses. If these deeds were made previous to the fine or recovery, they were called deeds to *lead* the uses; if subsequent, deeds to *declare* them. 2 *Bl. Com.* 363. 1 *Steph. Com.* 529. *Lee on Abstracts*, 302.

DEEMSTER, *Demster.* [from Sax. *dema*, a judge, or *dom*, judgment.] A kind of judges, [two judges, according to Spelman,] in the Isle of Man, who decided all controversies without process, writings or any charge. *Cowell. Blount. Spelman.* This must not be confounded with the *dempster* of the old Scotch courts. See *Dempster.*

DEFAILLE. L. Fr. Deficiency. *Kelman.*

DEFAIRE, *Defere.* L. Fr. To undo; to reverse or set aside; to defeat; [Lat. *infectum reddere.*] *Kelham. L. Fr. Dict.*

DEFALCATIO. L. Lat. [from *de*, off, and *falcare*, to cut.] In old English law. Deduction; abatement. *Fleta*, lib. 2, c. 57, § 11. Literally, a cutting off.

DEFALCATION. [from *defalcatio*, q. v.] Deduction; reduction; abatement.

DEFALKER. L. Fr. To mow. *Dyer*, 70 b, (Fr. ed.)

DEFALTA. L. Lat. In old English practice. Default. *Bract.* lib. 5, tr. 3. *De defaltis;* fol. 364 b. *Procedatur contra ipsum ad* defaltam; proceedings shall be had against him to default. *Id.* fol. 330. *Compensari debeat* defalta *cum* defalta; default ought to be set off against default. *Id. ibid. Capiatur assisa per* defaltam; the assise shall be taken by default. *Id.* fol. 255. *Stat. Marlbr.* c. 13. *Defaltam facere;* to make default. *Bract.* fol. 360 b, 363, 386 b. *Defaltam sanare;* to cure a default. *Id.* fol. 299 b, 367 b, 386 b.

DEFAMATION. [L. Lat. *defamatio, diffamatio;* from *de*, from, and *fama*, reputation.] The taking from one's reputation. The offence of injuring a person's character, fame or reputation, either by writing or by words. Written defamation is otherwise termed libel, and oral defamation, *slander. Cooke's Law of Defamation*, 1. See *Libel, Slander.*

DEFAMATOR. L. Lat. In old English law. A defamer. *Famosus defamator;* a libeller. 5 *Co.* 126.

DEFAMES. L. Fr. Infamous. *Britt.* c. 15.

DEFAUDER. L. Fr. To make default. *Kelham.*

DEFAULT. [L. Lat. *defalta, defectus;* L. Fr. *defaut, defaute.*] In practice. Omission; neglect or failure. When a defendant in an action of law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to *make default*, and the judgment entered in the former case is technically called a judgment *by default.* 3 *Bl. Com.* 296, 396. 1 *Tidd's Pr.* 562. See *Defalta.*

Omission or non-performance of duty. See 2 *B. & A.* 516.

DEFAUTE, *Defaut.* L. Fr. Default. *Si il face* defaute, *si soit il et ses plegges de suer, en la mercy;* if he make default, he and his pledges to prosecute shall be in mercy. *Britt.* c. 46.

DEFEASANCE, *Defeazance.* [L. Lat. *defeisantia;* from Fr. *defaire*, to undo or defeat.] In conveyancing. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone. 2 *Bl. Com.* 327. *Co. Litt.* 236, 237. In this manner, mortgages were, in former times, usually made; the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void, on repayment of the money borrowed at a certain day. 2 *Bl. Com.* 327. But this method was discountenanced and condemned as early as the time of Lord Chancellor Talbot. *Cas. temp. Talb.* 64. Defeasances are now of rare occurrence, the practice in modern times being to include in the same deed, [the mort-

gage] both the conveyance of the land to the alienee, and the conditions, if any, to which it is to be subject, and by which its effect may be defeated. 1 *Steph. Com.* 487. See 4 *Kent's Com.* 141, 142, and notes.

An instrument accompanying a bond, recognizance or judgment, containing a condition which, when performed, *defeats* or undoes it. 2 *Bl. Com.* 342. *Co. Litt.* 236, 237. A defeasance may also be *endorsed* on a bond, but the modern practice is to make the condition a part of the bond itself. See *Bond.*

DEFECT. [Lat. *defectus.*] The want or absence of some legal requisite; deficiency; imperfection; insufficiency. See *Defectus.*

DEFECTUS. Lat. [from *deficere*, to fail, to want, to be deficient.] In old practice. Defect, deficiency, imperfection; failure, default; want. *Defectus exitûs;* default of issue. *Towns. Pl.* 23. *Propter defectum;* on account of deficiency; for want of certain qualifications. See *Propter defectum.*

DEFENCE. [L. Lat. *defensio;* L. Fr. *defence, defense,* from *defendre*, to deny.] In pleading. A denial, by the defendant in an action at law, of the truth or validity of the plaintiff's complaint. 3 *Bl. Com.* 296. A formula by which pleas were anciently, in almost all actions, required to be prefaced. It was of two kinds, full defence and half defence. The latter is still retained, and is in these words: "And the said defendant, by — his attorney, *comes and defends* the wrong (or force) and injury when, &c." *Steph. Pl.* (Am. ed. 1824,) ch. ii. sect. vii. rule v. 3 *Reeves' Hist. Eng. Law*, 428. *Termes de la Ley.* See *Defend, Full defence, Half defence.* The late pleading rules of the English courts have dispensed with this ancient formula, although they have not expressly prohibited its use.

DEFENCE, *Defense.* L. Fr. In old statutes. Prohibition; denial or refusal. *Enconter le* defence *et le commandement le roy;* against the prohibition and commandment of the king. *Stat. Westm.* 1, c. 1. See *Fence month, Defensum.*

A state of severalty, or of several or exclusive occupancy; a state of enclosure, [L. Lat. *defensum.*] See *Defensum, In defenso.*

DEFENCE, in modern practice, includes all the proceedings on the part of a defendant, to embarrass, delay, or defeat a plaintiff's action.

In a stricter sense, defence is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law, or answer in equity. This is the meaning of the term in Scotch law. *Ersk. Inst.* b. 4, tit. 1, § 66.

DEFEND. [L. Fr. *defendre;* L. Lat. *defendere.*] In pleading. To deny. The words "comes and *defends*," (*venit et defendit,*) have formed a part of a defendant's plea in an action at law from the earliest times, occurring in the forms used in the reign of King John. *Plac. Abbrev.* 27 Leic. rot. ii. temp. Johan. cited in *Steph. Pl.* Appendix, Note (79), Am. ed. 1824. See *Comes, Defence.* The effect of the expression "defends" is merely that the defendant *denies* the right of the plaintiff, or the force or wrong charged. *Steph. Pl.* ch. ii. sect. vii. rule v.

DEFEND. In modern practice. To oppose or resist a claim at law; to contest a suit.

DEFEND. [L. Fr. *defendre, defender.*] In old statutes and treatises. To prohibit or forbid. *LL. Edw. Conf.* c. 37. *Stat. Westm.* 1, c. 1, 5. *Stat.* 5 *Ric.* II. c. 7. "It is *defended* [forbidden] by law to distrain in the highway." *Co. Litt.* 161. *Cowell.*

Chaucer uses this word in the same sense:

> Where can you say in any manner age,
> That ever God *defended* marriage?
>
> *Prol. Wife of Bath.*

To prohibit or exclude from use; to appropriate. See *Defendere.*

DEFEND is used in conveyancing in its popular sense; viz. in clauses of warranty at the conclusion of deeds,—"shall and will warrant, and forever *defend.*" See *Defendemus.*

DEFENDANT, *Defendaunt.* L. Fr. and Eng. [L. Lat. *defendens*, and sometimes *defensor;* L. Fr. *defendour*, from *defendre*, to deny or defend.] In pleading and practice. The party against whom an action at law or in equity is brought; the party *denying*, (in the ancient sense,) opposing, resisting or contesting the action. See *Defend.* Called, in Scotch practice, the *defender.* Defendant, strictly, is the proper title of the party sued in a *personal* action; such party in a *real* action being termed the *tenant. Termes de la Ley.* In modern practice, however, this distinction is, in a great degree, disregarded. See *Tenant.*

DEFENDAUNT. L. Fr. In old practice. Defending; a defending party; the party against whom an action, whether civil or criminal, was instituted. The party accused in the old criminal proceeding by appeal, was called *defendaunt* and *defendour*. *Et quant al* defense, *se purra le* defendaunt *puis apres* defendre *en cestre manere;* and as to the defence, the defendant may afterwards defend himself in this manner. *Britt.* c. 22.

DEFENDEMUS. L. Lat. [from *defendere*, q. v.] (We will defend.) In old conveyancing. An ordinary word anciently used in feoffments or gifts, by which the donor and his heirs were bound to *defend* the donee against any attempt to lay an incumbrance or servitude on the thing granted, other than what was contained in the deed or donation. *Bract.* fol. 37 b. *Termes de la Ley.* It was used in connection with *warrantizabimus*, (*Id. ibid.*) and the same two words in English are still retained in connection in the clause with which a warranty deed terminates;—"shall and will *warrant* and forever *defend*." *Defendemus*, however, had not itself the effect of a warranty. *Litt.* sect. 733.

DEFENDENDO. See *Se defendendo.*

DEFENDER. In Scotch law and practice. A defendant.

DEFENDER, *Defendre.* L. Fr. In old pleading. To deny. *Perez que cy est* defend *toutes felonies;* Peter, who is here, defends all felonies. *Britt.* c. 22.

To defend; to offer or conduct the defence in a suit; to appear for a defendant. Sad. *Def' & dist que*, &c. *Yearb.* H. 4 Edw. III. 7. Shard. *Defenda & challenga le count;* defends and challenges the count. P. 5 Edw. III. 18.

In old statutes. To prohibit or forbid. *Et le roy* defende *et commande;* and the king forbids and commands. *Stat. Westm.* 1, c. 1. *Cy* defende *le roy;* the king hereby commands. *Id.* c. 5. *Defendons;* we enjoin or command. *Britt.* fol. 3.

To prevent. *A* defender *le ewe de surrounder;* to prevent the water from overflowing. *Dyer*, 33, (Fr. ed.)

To defend; to keep or protect. *Il le tua en* defendant *nostre pees;* he killed him in keeping our peace. *Britt.* c. 24. *Soy defendaunt;* in self defence. *Id. ibid.*

DEFENDERE. L. Lat. In old pleading. To defend or deny. *Petrus venit et* defendit *cartam, quod nunquam facta fuit per Petrum de Goldington;* Peter comes and defends [denies] the charter, that it was never made by Peter de Goldington. *Placit. Abbrev.* cited *Steph. Pl.* (Am. ed. 1824,) Appendix, Note (79). *Venit et* defendit *omnem feloniam;* comes and defends all the felony. *Bract.* fol. 138 b. *Veniunt et* defendunt *vim et injuriam;* come and defend the force and injury. *Id.* fol. 57 b. *Si negaverit et crimen* defenderit; if he deny and defend the crime or accusation. *Id.* fol. 137. *Si dicat*, defendo *donum et chartam, tunc oportet tenentem probare utrumque;* if he say "I defend the gift and the charter," then the tenant must prove both. *Id.* fol. 214 b.

To defend, in the modern sense. Defendere *se per corpus suum;* to defend himself by his own body; to offer the duel or combat as a legal trial. *Bract.* fol. 133 b. *Se* defendat *per corpus, vel per patriam;* may defend himself by his body, or by the country. *Id. ibid.* See *Id.* fol. 146, 151.

In the following passage of Fleta, the word seems to be used in both senses: Defendere *se debet in primis sic, omnem feloniam* defendit; he ought to defend himself in the first place, thus; he defends all the felony. *Fleta*, lib. 1, c. 21, § 3.

DEFENDERE. L. Lat. In old statutes. To prohibit or forbid. *Hoc ne amodo sit omnino defendo;* I wholly forbid this from being done in future. *Chart. Hen.* I. A. D. 1100.

To prohibit from use; to appropriate to one's exclusive use; to fence in or enclose; to fence out or exclude others. *Nulla ripparia de cætero* defendatur *nisi illa quæ fuerunt in* defenso *tempore regis Henrici*, &c.; no river shall be defended from henceforth, but such as were in defence in the time of King Henry, &c. *Magna Charta*, 9 Hen. III. c. 16. That is, no owner of the banks of rivers shall so appropriate or keep the rivers several to him, to defend or bar others either to have passage or fish there, &c. 3 *Inst.* 30. See *Defensum.*

DEFENDIT VIM ET INJURIAM. L. Lat. (He) defends the force and injury. *Fleta*, lib. 5, c. 39, § 1.

DEFENDOUR. L. Fr. A defender or defendant; the party accused in an appeal. *Britt.* c. 22.

DEFENDRE, *Defender.* L. Fr. To defend or protect. *Garraunter, acquiter et* defendre *son tenaunt;* to warrant, acquit and defend his tenant. *Britt.* c. 68. See

Id. c. 75. *Et quant al* defense, *se purra le* defendaunt *puis apres* defendre *en ceste manere;* and as to the defence, the defendant may afterwards defend himself in this manner. *Britt.* c. 22. *Pursuer* et defendre; to prosecute and defend. *Id.* c. 21. See *Defender.*

DEFENSA. L. Lat. In old English law. A park or place fenced in for deer, and defended as a property, and peculiar for that use and service. *Cowell.*

DEFENSABLE. L. Fr. In old pleading. Expressive of defence; in form of defence. *Se defendent par motz* defensables; defend themselves by words of defence. *Britt.* c. 59.

DEFENSE, *Defens.* L. Fr. Defence. *Britt.* c. 22.

DEFENSIO, *Defentio.* L. Lat. In old English law. Defence. *Feoffatus habebit* defensionem *suum in manu sua;* the feoffee will have his own defence in his own hand. *Bract.* fol. 21 b. Defensio *contra sectam;* defence against the suit. *Id.* fol. 290 b. *Defensiones;* defences. *Id.* fol. 258 b.

In old statutes. Prohibition. *Statutum de* defensione *portandi arma,* &c.; the statute of prohibition of bearing arms, &c. (7 Edw. I.) *Cowell. Defensio ripariæ;* prohibition to use a river; exclusive appropriation to the use of the king. *Hale de Jur. Mar.* pars 1, c. 2.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defence. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. *Hallifax, Anal.* b. 3, c. 11, num. 21.

DEFENSIVE WAR. In the law of nations. A war commenced or carried on in defence or for the protection of national rights.* A war may be *defensive* in its principles, though *offensive* in its operations. 1 *Kent's Com.* 50, note.

DEFENSO. See *Defensum, In defenso.*

DEFENSOR. Lat. [from *defendere,* q. v.] In the civil law. A defender; one who defends another in court. One who undertook the defence of another's cause, and assumed his responsibilities. *Qui alium defendit satisdare cogitur; nemo enim alienæ litis idoneus* defensor *sine satisdatione intelligitur. Dig.* 3. 3. 46. 2. *Id.* 3. 3. 51. 1.

One who acted as the advocate of a defendant, especially in a criminal matter. *Calv. Lex.* This was a generic term, including *patronus, advocatus, procurator* and *cognitor. Asconius in Divin. in Cæcil.* 4.

One who was chosen to prosecute or defend a certain cause, (*ad certam causam agendam vel defendendam*). *Dig.* 50. 4. 18. 13.

A municipal magistrate, having certain judicial powers. See *Defensor civitatis.*

A guardian, (*tutor, vel curator*). *Calv. Lex. Jurid.*

In early European law. A protector or guardian. *LL. Longobard.* lib. 1, tit. 30, l. 13. *Spelman.*

In old English law. The party accused in an appeal; the defender or defendant. *Bract.* fol. 141 b.

The party warranting another's title in a real action; otherwise called *warantus. Id.* fol. 257 b.

In the canon law. The protector or advocate of a church, (*defensor ecclesiæ*). *Spelman.* See *Advocatus.*

A provincial officer having charge of the patrimony of the church. *Spelman.*

An officer having charge of the temporalities of a parish church. Hence churchwarden, (*gardianus ecclesiæ*). *Id.*

DEFENSOR CIVITATIS. Lat. Defender or protector of a city or municipality. An officer under the Roman empire, whose duty it was to protect the people against the injustice of the magistrates, the insolence of the subaltern officers, and the rapacity of the money-lenders. *Schmidt's Civ. Law,* Introd. 16. *Cod.* 1. 55. 4. He had the powers of a judge, with jurisdiction of pecuniary causes to a limited amount, and the lighter species of offences. *Cod.* 1. 55. 1. *Nov.* 15, c. 3, § 2; c. 6, § 1. He had also the care of the public records, and powers similar to those of a notary in regard to the execution of wills and conveyances. See *Nov.* 15, *per tot.*

DEFENSUM. L. Lat. In old English law. An enclosure, or any fenced ground. 2 *Mon. Angl.* 114. 3 *Id.* 306. *Inclusum et positum in defensum;* enclosed and put in defence or fence. *Bract.* fol. 228. *Rationabilia defensa;* reasonable defences. *Fleta,* lib. 4, c. 19, § 7.

A part of an open field, appropriated to a particular use, as for hay, which was hence said to be *in defenso. Cowell.*

A state of several occupancy or appropriation. *Magna Charta*, c. 16.

Defence, in the old sense of prohibition; a state of prohibition, or in which the use of a thing is prohibited by law. *Stat. Westm.* 2, c. 47. See *In defenso.*

DEFERE. L. Fr. To undo; to defeat; to set aside or reverse. *Kelham.*

DEFINIRE. Lat. [from *de*, and *finire*, from *finis*, a bound or limit.] In the civil law. To define; to explain a thing, (*quid res sit explicare*). *Calv. Lex. Jurid.*

To lay down a rule, (*pro regula aliquid statuere*). *Id. Dig.* 34, 7. 1, pr.

DEFINITIO. Lat. [from *definire*, q. v.] In the civil law. Definition; explanation; exposition; the explanation of a thing, including, as within a circumscribed line or limit, (*finis*,) everything pertaining to it.* *Calv. Lex. Jurid.*

The establishment or laying down of a general rule. *Id.* **Omnis definitio in jure civili periculosa est.** All definition in the civil law is hazardous. *Dig.* 50. 17. 202. This maxim, otherwise expressed, **Omnis definitio in lege periculosa,** is frequently cited as illustrative of the difficulties attending *definition* in its ordinary modern acceptation, viz. the explanation of the meaning of words. *Swinburne on Wills*, part 1, sect. 3. But according to Calvin, it is not so difficult to define a thing exactly, as it is rare to be able to lay down a rule of law in terms at once so comprehensive and precise as to be proof against criticism. *Neque tam est difficile rem aliquam in jure civili exacte* definire, *quam est rarum* regulam ex legibus colligere *quæ nulla in parte infirmari queat. Calv. ub. sup.* See *Swinburne, ub. sup. in notis.*

A general rule or canon of law. *Calv. Lex. Jurid.*

DEFINITION. See *Definitio.*

DEFINITIVE SENTENCE. [L. Lat. *diffinitiva sententia.*] The final judgment, decree or sentence of an ecclesiastical court; the sentence by which a principal cause is determined, as distinguished from an interlocutory sentence, which is on some incident question arising from the principal cause. 3 *Bl. Com.* 101. *Hallifax, Anal.* b. 3, c. 9, num. 40. *Bract.* fol. 405 b.

DEFONTAINES. The oldest writer on the law of France. *Esprit des Lois*, liv. 28, c. 38. Pierre Desfontaines published, about the year 1253, a work on the French law of custom, comparing it with the Roman law. 1 *Mackeld. Civ. Law*, 70, § 85. This work, which the author called his *Conseil*, contains in particular an account of the customs of the country of Vermandois. 1 *Robertson's Charles V.* Appendix, Note xxx. *Esprit des Lois, ub. sup.*

DEFORCE. [L. Lat. *deforciare;* L. Fr. *deforcer.*] In English law. To withhold wrongfully the possession of lands; to keep another wrongfully out of possession of a freehold.* 3 *Bl. Com.* 172. See *Deforcement.*

In Scotch law. To resist the execution of the law; to oppose by force a public officer in the execution of his duty. *Bell's Dict.* voc. *Deforcement.*

DEFORCEMENT. [L. Lat. *deforciamentum.*] In English law. A keeping out by force or wrong; a wrongful withholding of lands or tenements to which another has a right; a species of ouster, or privation of the freehold.* *Termes de la Ley*, voc. *Deforcer.* 3 *Bl. Com.* 172.

In its most extensive sense, this is *nomen generalissimum*, signifying the withholding of any lands or tenements to which another has a right, and includes as well an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong whatsoever, whereby he that has right to the freehold is kept out of possession. *Co. Litt.* 277 b. 3 *Bl. Com. ub. sup.* But, as contradistinguished from these injuries, it is only such a detainer of the freehold from him that has a right of property, but never had any possession under that right, as falls within none of them. *Id.* 172, 173. 3 *Steph. Com.* 483. 2 *Crabb's Real Prop.* 1064, 1065, § 2457. See *Ouster, Abatement, Disseisin, Intrusion.*

DEFORCEMENT. In Scotch law. The opposition or resistance made to messengers or other public officers, while they are actually engaged in the exercise of their offices. *Ersk. Inst.* b. 4, tit. 4, § 32. *Bell's Dict.* 2 *Brown's R.* 495.

DEFORCEOR. [L. Fr. *deforceour;* L. Lat. *deforciator, deforcians.*] In English law. One who deforces another, or keeps him out of his freehold. *Termes de la Ley.* See *Deforce, Deforcement.*

DEFORCER. L. Fr. To deforce. *Litt.* sect. 614.

DEFORCIANS, *Defortians.* L. Lat. [from *deforciare*, q. v.] In old English law. A deforciant. *Reg. Orig.* 171. *Reg. Jud.* 6. *Fleta*, lib. 5, c. 13, § 1.

DEFORCIANT. [L. Lat. *deforcians, defortians.*] In English law and practice.

One who deforces another; a deforceor, (q. v.)

The person against whom the fictitious action of fine was brought. 3 *Bl. Com.* 174. The defendant in the assise of darrein presentment. *Bract.* fol. 238, 239, 240.

DEFORCIARE, *Defortiare, Deforceare.* L. Lat. In old English practice. To deforce; to withhold lands or tenements from the right owner. *Bract.* fol. 238, *et seq. Fleta*, lib. 5, c. 11. Said by Lord Coke to be a word of art, which cannot be expressed by any other word. *Co. Litt.* 331 b.

Deforciat, Deforceat; he deforces. *Quod ei deforceat;* that he deforces him or her. *Reg. Orig.* 170. *Bract.* fol. 372 b. *Quam talis ei deforciat;* of which such a one deforces him. *Id.* fol. 328.

Deforciator; a deforcer. *Stat. Marlbr.* c. 7.

DEFORCIATIO. L. Lat. In old English law. A distress, distraint, or seizure of goods for satisfaction of a lawful debt. *Kennett's Par. Ant.* 293. *Cowell.*

DEFORE. L. Fr. To oppose or obstruct. *Kelham.*

DEFUER. L. Fr. To flee from; to run away; to elope. *Kelham. Defuiaunt;* running away. *Id. Defuont;* run away. *Id. Apres ceo que el avera* defuy *son baron;* after she shall have eloped from her husband. *Britt.* c. 42.

DEFUNCT. [from Lat. *defunctus*, q. v.] Deceased; a deceased person. A common term in Scotch law.

DEFUNCTUS. Lat. In the civil law. Deceased; a deceased person. *Dig.* 40. 15. *Cod.* 7. 21. So called *quia vitâ defunctus est.* See *Dig.* 29. 1. 40, pr.

In old English law. Defunct; deceased; a deceased person; the deceased. *Si pueros habuerit defunctus:* if the deceased have had children. *Fleta*, lib. 2, c. 57, § 10. *Omnia catalla cedant defuncto;* all the chattels shall go to the deceased. *Id.* c. 62, § 11. And see *Mag. Chart.* 9 Hen. III. c. 18. *Id. Johan.* c. 26.

DEFUSTARE. L. Lat. In old records. To beat with a club or stick; (*fustigare*). *Spelman.*

DEGAGER. L. Fr. To give security; to deliver on gage or security. *L. Fr. Dict. Kelham.*

DEGASTER. L. Fr. To waste. *Degast, degaste, degata;* wasted, destroyed. *L. Fr. Dict. Kelham.*

DEGAYNE. L. Fr. Untilled. *Barringt. Obs. Stat.* 58, note [*g*].

DEGRADATION. [Lat. *degradatio*, from *de* priv. and *gradus*, rank.] In English law. Deprivation of dignity or rank; the depriving a peer of his nobility, or a clergyman of his holy orders and ecclesiastical distinctions. 1 *Bl. Com.* 402. *Selden's Tit. of Honor*, 787. *Staundf. Pl. Cor.* 130, 138. Anciently, the peculiar punishment of a clerk (*clericus,*) convicted of a crime. *Bract.* fol. 123 b. Called, also, *disgrading. Cowell. Blount.*

DEGREE, *Degre.* L. Fr. and Eng. [Lat. *gradus;* Gr. βαθμος.] A step. A term employed in the law of descent to denote the distance from one person to another in the lines of consanguinity, the nearest relatives being always separated from each other by one degree.* *Gradus est distantia cognatorum. Heinecc. El. Jur. Civ.* lib. 1, tit. 10, § 153. A person added to a person in the line of consanguinity makes a *degree.* Take the son and add the father, it is one degree. Take away one of the number of persons, and you have the number of degrees. If there be four persons, it is the third degree, if five, the fourth, &c. *Co. Litt.* 23 b. See *Gradus.*

Le primer degree *avalaunt;* the first degree descending. *Britt.* c. 119. *Les autres* degrees *plus hautz;* the other higher degrees. *Id. ibid. De gree en degree;* degree by degree, step by step, from one degree or step to another. *Id. per tot. Degree pleyn;* a full degree; a degree occupied by a person. *Id. Degre voyde;* a vacant or empty degree, (*gradus vacuus.*) *Id.* Kelham translates this last expression, "a void space;" but it obviously means a degree unoccupied by a person, or made vacant by death. The figures or diagrams used in the old books to represent succession, descent or relationship by lines right or direct, and transverse, collateral, or oblique, are frequently in the form of a series of *steps* upward and downward, supposed to be filled or occupied by *persons.* See *Gradus, Linea.* The steps of a platform were called *degrees.* "The Lord Treasurer sat as High Steward of England, under the cloth of state, on a bench between two posts, three *degrees* high." 1 *How. St. Trials*, 518.

DEGUERPYS. L. Fr. Abandoned. *Kelham.*

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. *Dehors* the record; foreign to the record. 2 *Bl. Com.* 387. See *Hors.*

DEI. L. Fr. [Lat. *digitus.*] A finger; the finger. *LL. Gul. Conq.* l. 13.

DEI GRATIA. Lat. By the grace of God. An expression used in the titles of sovereigns, and considered as one of the prerogatives of royalty, (*propria jura majestatis,*) although anciently a part of the titles of inferior officers and magistrates, ecclesiastical and civil. *Spelman.*

DEI JUDICIUM. L. Lat. The judgment of God. The Saxon trial by ordeal. See *Judicium Dei.*

DEINS, *Deinz, Deynz, Dans, Dedens.* L. Fr. Within. *Deins age;* within age; under age. *Litt.* sect. 406. *Deins le quater meres;* within the four seas. *Stat. Westm.* 1, c. 44. *Stat. Modus Lev. Fines.*

DEIT. L. Fr. Owes; ought; owing. *Kelham. Deites;* debts. *Id.* See *Doit.*

DEIVER. L. Fr. To owe; ought. *Kelham.*

DEJECTER. L. Fr. [from Lat. *dejicere,* q. v.] To cast off, or out; to throw down. *L. Fr. Dict. Kelham.*

DEJICERE. Lat. In the civil law. To eject or cast out; to dispossess or deprive of possession. *Dig.* 43. 16. 1. *Inst.* 4. 15. 6. This term is used by Bracton indifferently with the more modern *ejicere. Bract.* fol. 166, 166 b. See *Fleta,* lib. 4, c. 2.

Dejectus; ejected. *Dig. ub. sup. Bract. ub. sup.*

DEL BIEN ESTRE. L. Fr. [L. Lat. *de bene esse.*] In old English practice. Of well being; of form. *Britt.* c. 39. See *De bene esse.*

DEL CONSAIL. L. Fr. Of counsel. *Yearb.* P. 11 Hen. VI. 1.

DEL CREDERE. Ital. (Of belief, trust or warranty.) In mercantile law. A term used to denote the agreement by which an agent or factor, in consideration of an additional premium or commission, when he sells goods on credit, engages to insure, warrant or guarantee to his principal the solvency of the purchaser. *Paley on Agency,* 41. *Russell on Factors,* 2. The additional commission thus given is called a *del credere* commission. 6 *Bro. P. C.* 287. 2 *Steph. Com.* 128. A *del credere* engagement is now settled to be that of a surety or guarantor, the factor becoming liable only in case of the default of the purchaser. 2 *Kent's Com.* 625, and note. *Story on Agency,* § 33, and note.

DEL TEMPS DOUNT MEMORY NE COURT. L. Fr. From time whereof memory runneth not. *Britt.* c. 86.

DELAI. L. Fr. Delay. *Artic. sup. Chart.*

DELAISSEMENT. Fr. In French marine law. Abandonment. *Emerig. Tr. des Ass.* ch. 17.

DELATE. In Scotch law. To accuse. Delated, (O. Sc. delaitit) accused. *Delatit off arte and parte;* accused of being accessory to. 1 *Pitc. Crim. Trials,* part 1, p. 1. 3 *How. St. Trials,* 425, 440.

DELATIO. Lat. [from *deferre,* to accuse or denounce.] In the civil law. An accusation or information. *Calvin's Lex. Jurid.*

DELATOR. Lat. [from *deferre,* to accuse, or denounce.] In the civil law. An informer; a denouncer; an accuser. *Cod.* 10. 11. *Calv. Lex. Brissonius.*

DELATURA. L. Lat. In old English law. An accusation; the reward of an informer. *LL. Hen.* I. c. 46. *LL. Inæ,* c. 20, *apud Brompton. Whishaw.*

DELECTUS PERSONÆ. Lat. The choice of a person. A term applied, in the law of partnership, to the right of a partner to *choose* or determine what *persons* shall be introduced into the firm as new partners. *Story on Partn.* §§ 5, 195.

In Scotch law. The presumed choice of a person, which the grantor of certain deeds is supposed to have for the person in whose favor the right is granted. *Bell's Dict.*

DELEGARE. Lat. In old English law. To assign to another; to transfer a duty or power; to appoint a substitute; to depute or commission; to delegate.* *Bract.* fol. 108 b.

In the civil law. To substitute another in one's place as a debtor. *Delegare est vice suâ alium reum dare creditori vel cui jusserit.* To delegate is to give to a creditor, or to him whom the creditor appoints, another person in one's place as a debtor. *Dig.* 46. 2. 11. See *Delegation.*

DELEGATION. [Lat. *delegatio,* from *delegare,* q. v.] In the civil law. The changing or substitution of one debtor for another, by which the obligation which lay on the first debtor is discharged; a species of novation, (q. v.) *Ersk. Inst.* b. 3, tit. 4, § 22.—Delegation is a kind of novation, by which the original debtor, in order to be liberated from his creditor, gives him a third person, who becomes obliged in his stead to the creditor, or to the person ap-

pointed by him. *Poth. Oblig.* part 3, ch. 2, art. 6, § 1.—Delegation is novation effected by the intervention of another person whom the debtor, in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. *Burge on Suretyship*, 173. See *Civ. Code of Louis.* art. 2188.

DELEGATUS, *Delegata.* Lat. [from *delegare*, q. v.] Delegated, deputed, commissioned; appointed to act for another as delegate, deputy, or agent. See *infra.*

Transferred or assigned, as a power or authority. See *infra.*

Delegatus non potest delegare. A delegate cannot delegate; an agent cannot delegate his functions to a sub-agent without the knowledge or consent of the principal: the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do. *Broom's Max.* 385, [666,] and notes. 9 *Co.* 77. 2 *Steph. Com.* 119, 120. 2 *Kent's Com.* 633. 3 *Jones' Law R.* 45. The civil law maxim was **Constat procuratorem alium procuratorem facere non posse.** *Dig.* 19. 1. 4. 5. *Story on Agency*, § 13. See *Vicarius.*

The term *delegatus* is applied by Bracton to the ancient justices in eyre, as possessing a delegated authority or jurisdiction from the king; and he remarks *quod nullus justitiarius à domino rege sic* delegatus *poterit aliquem sibi* subdelegare. *Bract.* fol. 108 b. See *Cod.* 3. 1. 5. This is probably the earliest application of the maxim in English law. See *infra.*

Delegatus debitor est odiosus in lege. A delegated debtor is odious in law. 3 *Bulstr.* 148.

Delegata potestas non potest delegari. A delegated power cannot be delegated [or re-delegated]. 2 *Inst.* 597. *Branch's Princ. Broom's Max.* 384, [665]. *Story on Agency*, § 13. See 11 *Howard's R.* 223.

Bracton divides jurisdiction, or the power of judging, (*potestas judicandi,*) into ordinary, (*ordinaria,*) as that of the king, and delegated, (*delegata,*) as that of a justice appointed by him, (*sicut justitiarius ab eo constitutus*); and observes that a justice cannot substitute another justice in his place, (*et non alius à justitiario* substituendus, *quia* justitiarius justitiarium substituere non potest). *Bract.* fol. 333 b. See *Fleta*, lib. 2, c. 62, § 1.

DELESTAGE. Fr. In French marine law. A discharging of ballast (*lest,*) from a vessel. *Ord. Mar.* liv. 1, tit. 1, art. 4.

DELETE. Sc. [from Lat. *delere*, to strike out.] In Scotch law. To erase; to strike out. 1 *How. St. Trials*, 1381.

DELIBERARE. Lat. In the civil law. To deliberate; to consult; to consider or think upon, *Deliberandi jus;* the right, privilege or benefit of deliberating. A competent time allowed an heir to deliberate whether he would accept or enter upon an inheritance. *Inst.* 2. 19. 5. *Hallifax, Anal.* b. 2, c. 6, num. 55. *Ersk. Inst.* b. 3, tit. 8, § 54.

DELIBERARE. L. Lat. In old English law. To deliver. *Deliberatur;* is delivered. *Deliberabitur;* shall be delivered. *Bract.* fol. 89 b. *Deliberatum, deliberatus, deliberata;* delivered. *Id.* fol. 76, 154, 157 b. *Deliberari facias;* you shall cause to be delivered. *Fleta*, lib. 2, c. 64, § 21.

DELIBERATIO. L. Lat. [from *deliberare*, q. v.] In old English law. Delivery. See *Liberatio.*

Acquittal or discharge. *Bract.* fol. 143 b.

DELICT. In Scotch law. A species of crime. Delicts are commonly understood of slighter offences which do not affect the public peace so immediately; as petty riots, &c. *Ersk. Inst.* b. 4, tit. 4, § 2. It appears to answer nearly to the English term *misdemeanour*, and is closely formed from the Lat. *delictum*, (q. v.)

DELICTA. [pl. of *Delictum*, q. v.] Crimes; offences. *Delicta puniuntur juxta mores loci commissi delicti, et non loci ubi de crimine cognoscitur;* crimes are punished according to the customs of the place where they are committed, and not of the place where they are tried. *Bartholus*, cited in *Henry on Foreign Law*, 47. 1 *Kent's Com.* 38, note.

DELICTO. See *Delictum, Ex delicto.*

DELICTUM. Lat. [Fr. *delit*, Span. *delito;* from *delinquere*, to offend or transgress.] A crime or offence; a violation of law, either natural or positive. *Liber homo non amercietur pro parvo* delicto, *nisi secundum modum ipsius* delicti, *et pro magno* delicto *secundum magnitudinem* delicti; a freeman shall not be amerced for a small offence, unless according to the measure of that offence, and for a great offence according to the greatness of the offence. *Magna Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 20. **Excusat aut extenuat delictum in capitalibus quod non operatur idem**

in civilibus. That excuses or extenuates an offence in capital cases, which does not operate the same in civil cases. *Bacon's Max.* 36, regula 7. "The offence was deposited with the voyage, and the *delictum* ended with the termination of the cruise." 1 *Kent's Com.* 123. 7 *Wheaton's R.* 283. "The *delictum* is completely done away when the blockade ceases." 1 *Kent's Com.* 152. 6 *Rob. Adm. R.* 387.

A tort or wrong, as distinguished from a contract; a private offence, as distinguished from a crime. The word *delictum* was extensively used in this sense in the civil law, and as a synonyme of *maleficium*, (malfeasance). *Inst.* 4. tit. & pr. *Id.* 3. 14. 2. From this source it appears to have been introduced into the law of England, through Bracton. *Ex malefitio vel* delicto *procedunt injuriæ et transgressiones;* from malfeasance or tort arise injuries and trespasses. *Bract.* fol. 101. *In iis* delictis *sive malefitiis obligatur ille qui delinquit ei contra quem delinquitur;* in those torts or malfeasances, he who commits the offence is bound to him against whom it is committed, [that is, to make satisfaction]. *Id.* fol. 101 b. *Ex delicto* (q. v.) is still a common term in the law of actions.

Guilt, criminality; fault or blame. **In pari delicto potior est conditio defendentis.** In a case of equal guilt, the condition of the defendant is the better one; where both the parties to a transaction are equally guilty or equally to blame, and one of them institutes legal proceedings against the other, the party proceeded against is in the better position, or has the advantage.* Lord Mansfield, *Cowp.* 199, 200.

Delictum, considered with reference to its derivation, (from *delinquere*, q. v.) properly signifies an *omission* of duty, or *neglect* to comply with the requisition of the law, (*quid prætermissum,*) rather than a positive act in violation of it; but the latter has long been the received meaning.

DELINQUERE. Lat. [from *de*, and *linquere*, to leave.] To omit a duty; to neglect or fail to perform a required act. *Calv. Lex. Jurid.* Hence the English *delinquent.*

To offend or transgress. Hence *delictum*, (q. v.) See **Debet quis juri**, &c.

DELITO. Span. [from *delictum*, q. v.] In Spanish law. Crime; a crime, offence or delict. *White's New Recop.* b. 2, tit. 19, c. 1, § 1.

DELIVERANCE. In Scotch law. The verdict of a jury. "The assyis, be thair delyuerance pronuncit be the mouth of the said," &c. 1 *Pitc. Crim. Trials*, part 1, p. 141. Still retained in the oath administered to jurors in criminal cases.

DELIVERER. L. Fr. To deliver. *Britt.* fol. 2 b.

DELIVERY. [Lat. *traditio;* L. Lat. *deliberatio.*] In conveyancing. One of the essential requisites to the validity of a deed. 2 *Bl. Com.* 306, 307. This may be either absolute, that is, to the party or grantee himself, or to a third person, to hold till some conditions be performed on the part of the grantee, in which case, it is not delivered as a deed, but as an *escrow;* that is, as a scrowl or writing which is not to take effect as a deed till the conditions be performed, and then it is a deed to all intents and purposes. *Id. ibid.* 1 *Steph. Com.* 459, and note. 4 *Kent's Com.* 454. *Smith on Contracts*, 7. 2 *Hilliard's Real Prop.* 282, 287. Delivery is the most essential act to give a deed validity. 26 *Mississippi R.* 275. 3 *Maryland R.* 67. It may be by words or acts alone, or by both together. 19 *Penn. St. R.* 194. A deed speaks from the time of its delivery, not from its date. 19 *Howard's R.* 73. Curtis, J. *Id.* 75, 76, citing 5 *Co.* 1. See *Livery*, *Sealed and delivered*, *Traditio*, *Escrow.*

DELIVERY. In the contract of sale. The act by which the seller of a thing transfers it to the hands or possession of the buyer or his agent, or places it within his control or power, or suffers him to have the enjoyment of it.* Actual or real delivery is the manual transfer of the commodity sold to the vendee. Constructive or symbolical delivery is the transfer of some article which is a symbol or evidence of ownership; such as the delivery of the key of a warehouse containing the goods sold, or of the bill of lading of goods at sea, or of the bill of sale of a vessel at sea.* *Story on Sales*, §§ 304, 311. 2 *Kent's Com.* 496—505. *Pothier, Contr. of Sale*, part 5, ch. 1, sect. 1. See 19 *New-Hampshire R.* 419. A permission given by the seller to the buyer, or to some one sent by him, to carry away the things sold, or to exercise acts of ownership over them, amounts to a delivery. *Poth. ub. sup.* To constitute a delivery and acceptance of goods sold, something more than *mere words* is necessary, there must be some *act* of the parties. 1 *Comstock's R.* 261. The case of cumbrous articles is not an exception to this rule. *Id. ibid.*

DEMAIN, *Demaine, Demayne, Demaygne, Demeyne, Demeigne, Demesne.* L. Fr. and Eng. [L. Lat. *demanium, domanium, dominicum.*] In old English law. A term used to denote a lord's chief manor place, with the lands thereto belonging, which he and his ancestors had, from time out of mind, kept in their own *hands* or manual occupation. *Termes de la Ley. Blount.* Derived, accordingly, by Lord Coke, from the Fr. *de*, of, and *main*, hand, i. e. manured [mainoured] or received by the hand. Hence *manual* occupation, possession or receipt. *Co. Litt.* 17 a. This derivation, however, is not approved by Spelman, who rejects also the word *demesne* and its etymology, and considers *demain* as derived from the Lat. *dominicum. Spelman*, voc. *Dominicum.* See *Demesne, Dominicum.*

DEMAND. [L. Fr. *demande, demaunde;* L. Lat. *demanda, demandum;* Lat. *petitio, postulatio, postulatum.*] A calling for a thing due or claimed to be due. *Jacob.*—A claim. *Co. Litt.* 291 b.—A thing or amount claimed to be due.

Demand, according to Lord Coke, is one of the most comprehensive terms in the law. *Co. Litt.* 291 b. Beardsley, J. 1 *Denio's R.* 257, 261. See *Demandum.* It is of much broader import than *debt*, and embraces rights of action belonging to the debtor, beyond those which may appropriately be called debts. Nelson, C. J. 2 *Hill's* (N. Y.) *R.* 220, 223. A release of all manner of demands is the best release that a man can have, and shall enure most to his advantage. *Litt.* sect. 508. *Termes de la Ley.* See 8 *Co.* 153; *Altham's case.* But a release of all demands will not release a rent before it is due. 2 *Show.* 90.

To DEMAND. In practice. To summon; to call in court. "Although solemnly *demanded*, comes not, but makes default."

DEMANDA. L. Lat. In old English law. A demand. *Bract.* fol. 17, 35. *Fleta*, lib. 2, c. 39, § 1. *Si quis recuperaverit* demandam *suam;* if one shall recover his demand. *Stat. Westm.* 2, c. 44. See 8 *Co.* 153. *Demandas. Fleta, ub. sup.*

DEMANDA. Span. In Spanish law. The petition of a plaintiff, setting forth his demand. *Las Partidas*, part 3, tit. 10, l. 3.

DEMANDANT. [L. Fr. *demaundaunt;* L. Lat. *petens.*] In practice. The party suing in a real action; the same as plaintiff (*querens*) in a personal action. *Litt.* sect. 195. He who is *actor* in a real action; so called, because he *demands* (*petit*) lands, &c. *Co. Litt.* 127 b. See *Petens, Peto.*

DEMANDARE. L. Lat. [L. Fr. *demander*, q. v.] In old English practice. To demand. *Towns. Pl.* 63. See *Demanda.*

To order or award; to direct a sentence to be carried into effect. *Judicium executioni* demandare; to order a judgment to be carried into execution; to enforce by execution. *Bract.* fol. 107, 175, 205 b, 303 b. *Latâ sententiâ et executione* demandata; sentence being passed and execution ordered. *Id.* fol. 108 b. The word, in this sense, is derived from the Lat. *mandare.*

To give in charge, as to a jury. *Demandetur* appears to have this sense in the following passage in the Statute of Marlbridge, c. 5: *Et hoc coram justitiariis itinerantibus in suis itineribus, cum opus fuerit,* demandetur. Lord Coke translates it "shall be inquired."

DEMANDER. L. Fr. In old English practice. To demand. *Nous* demandomus *jugement, et priomus nous damages;* we demand judgment and pray our damages. *Yearb.* M. 5 Edw. III. 109.

To ask or inquire. Montague *demand' l' advise del court. Dyer*, 31 b, (Fr. ed.) Marvyn *demande cest question. Id.* 35.

To call a party in court. Hull. *pria q'les def' soient d'ds.* T. 7 Hen. VI. 5.

DEMANDUM. L. Lat. In old English law. A demand. This, says Lord Coke, "is a word of art, and, in the understanding of the common law, is of so large an extent as no other one word in the law is, unless it be *clameum.*" *Co. Litt.* 291 b. See *Demand.*

DEMEMBRATION. In Scotch law. The crime of cutting off a member. *Ersk. Inst.* b. 4, tit. 4, § 50. *Bell's Dict.*

DEMENS. Lat. [from *de*, priv. and *mens*, mind.] One who is deprived of his mental faculties, or who has lost his mind, (*mente captus*).* One who does not think of what he does or says; (*qui non cogitat quid agit aut loquitur*). 4 *Co.* 128; *Beverly's case.* Distinguished by Lord Coke from *amens*, who is a person wholly insane (*qui prorsus insanit*). *Id. ibid.* Calvin also distinguishes *demens* from a madman or lunatic. *Calv. Lex.*

DEMENTENANT EN AVANT. L. Fr. From this time forward. *Kelham.*

DEMENTERS, *Dementiers.* L. Fr. In the mean time; meanwhile. *Kelham.*

DEMESNE, *Demeyne, Demeine, Demeigne.* L. Fr. [Lat. *suus, proprius.*] Own; one's own. *De son tort demesne,* (q. v.); of his own wrong. *De son seigniour demeyne;* of his own lord. *Britt.* c. 38.

DEMESNE, *Demeyne, Demaine, Demain.* L. Fr. and Eng. [L. Lat. *demanium, domanium, dominicum.*] In old European law. Land which a man held originally of himself, as distinguished from that held of a superior lord. *Hotoman in Verb. Feud.* voc. *Dominicum. Cowell. Allodium,* in contradistinction to *feodum;* absolute property or ownership. 2 *Bl. Com.* 104.

In old English law. Lands wherein a man had *proper* dominion or *ownership,* as distinguished from the lands which another held of him *in service. Co. Litt.* 17 a. *Disseisi de son* propre *tenement que il avera tenu en* demeyne *et en severalte;* disseised of his own proper tenement which he shall have held in demesne and in severalty. *Britt.* c. 42. This is one of the proper and original significations of the term in English law, and has received much illustration from Bracton, who dwells on the primary distinction between lands held *in demesne,* (*in dominico,*) and those held *in service,* (*in servitio*). *Bract.* fol. 75, 80. The true and essential meaning of *demesne* seems to have been,—land which a man had under his immediate control, either by having it in his actual manual possession, (see next definition,) or, (where it was in the occupation of others,) by having the right to resume possession at pleasure; as was the case with lands held in villeinage, which Bracton calls *quasi dominicum. Bract.* fol. 263. *Id.* fol. 98. It was the *lord's* own *land,* and hence properly called *dominicum,* (from *dominus,*) in contradistinction to what was *held* by his *tenants,* and which was, with equal propriety, called *tenementum,* (tenement, or holding). The latter could not be taken back from the tenant (that is, the free tenant,) as long as he performed the services and had heirs, as it could from a villein, (the tenant having in fact, in such case, himself the *demesne* or *dominicum,*) but if he committed felony, or died without heir, then the land went back to the lord as an escheat, and the phrase was, *tenementum cadit in dominicum;*—the *tenement* falls or is turned into *demesne;* that is, it went back into the lord's own hands, and was tenement no longer, (*revertitur ad capitalem dominum* in dominico). *Bract.* fol. 81. See *infra;* and see *Dominicum.*

Land which was manually occupied, manured, and possessed for the necessary sustentation, maintenance and support of the lord and his household. *Co. Litt.* 17 a. Land held for the support of one's own table, answering to the English *bordlands;* (*quod quis habet* ad mensam suam *et* proprie, *sicut sunt* bordlandes, *Anglicé*). *Bract.* fol. 263.

*** These are the principal significations of the word *demesne;* others will be noticed under *Dominicum.* As to its etymology, there have been various suggestions, viz.: *demesne,* a man's *own* land; *de main,* that of which he has *manual* occupation; *domus,* that which is kept for the support of the *household. Co. Litt.* 17 a. All these, together with the word *demesne* itself, are rejected by Spelman, who considers the proper spelling to be *demain,* the French form of the Latin *dominicum,* the original word, formed from *dominus.* See *Dominicum.*

Under this head it may be proper to consider the import of the phrase,—"in his demesne as of fee,"—(L. Lat. *in dominico suo ut de feodo;*) a phrase of great antiquity in English law, and still retained as descriptive of the highest estate that a subject can have in land. It formed a part of the old writ of assise of mort d'ancestor, and of the count upon a writ of right, and is thus explained by Sir William Blackstone: "Where a man possesses land merely in his own right, without owing any rent or service to any superior, he is said to be seised thereof absolutely, *in dominico suo,* in his own demesne. But all the lands in England, being holden mediately or immediately of the king, are in the nature of *feodum,* or fee, and hence, in expressing the strongest and highest estate that any subject can have, he is said to be '*seised thereof in his demesne as of fee.*' It is a man's *demesne, dominicum,* or property, since it belongs to him and his heirs forever; yet this *dominicum,* property, or demesne, is strictly not absolute or allodial, but qualified or feodal; it is his demesne *as of fee;* that is, it is not purely and simply his own, since it is held of a superior lord, in whom the ultimate property resides." 2 *Bl. Com.* 105.

Mr. Stephen, in his New Commentaries, very justly remarks upon the expression of Blackstone in the above passage,—"it is a man's demesne, since it belongs to him and

his heirs forever,"—that it assigns no meaning to the words "in his demesne" beyond what would belong to the other words with which they are connected; and he substitutes, according to the plan of his work, the following explanation of the phrase under consideration: "Where a man claims an estate in fee simple in possession in a corporeal hereditament, the precise technical expression is as follows: that he is 'seised in his demesne as of fee' (*in dominico suo ut de feodo*); the words *in dominico*, or 'in his demesne' signifying that he is seised as owner of the land itself, and not merely of the seigniory or services, and the words 'as of fee' importing that he is seised of an estate of inheritance in fee simple, and also, (in reference to the original meaning of the term *fee*,) that he is not the absolute or allodial owner, but holds (feudally) of a superior lord." 1 *Steph. Com.* 220. And in a note on this passage, the same author adds, "there is abundant authority for holding that *dominicum* properly signifies the land which the feudal lord retained to his own use for sustentation of his household, as distinguished from what he granted out on services, and that the true sense of seisin in demesne is that given in the text." *Id. ibid.* note (*x*). In addition to these remarks, and to the passages cited by the learned serjeant from Fleta and Bracton in support of them, the compiler of this work would venture to submit the following: *Demesne* does not appear to have ever had in England the sense of allodial estate upon which the explanation of Blackstone is based, and *fee*, so far from being employed to restrain or qualify demesne, seems to have been always employed (where the terms were used together) to give it enlargement. Demesne was frequently applied to mere estates for life; so often, indeed, that Spelman considers it as peculiarly descriptive of that species of estate. *In dominico seisitus dicitur qui tenet terras aut tenementa ad terminum vitæ.* The term was, in fact, applied to estates both for life and in fee, though not peculiar to either, its proper use being rather to denote the *manner* in which an estate was held, than the duration of it. *Bract.* fol. 263. *Britt.* c. 78. It was applied, (and that without any qualification *of fee*) as often to the estate of a *tenant* as that of a *lord*, which is entirely inconsistent with the idea of its denoting allodial property. *Bract.* fol. 46 b, 263, ¶ 4, 5. A man, according to Bracton, might hold land in demesne, and not in fee, which was the estate of a freeholder, or free tenant for life; and, on the other hand, a man might hold in fee and not in demesne, which was the estate of a chief lord. *Bract.* fol. 263 b, ¶ 6. *Demesne*, in the phrase now under consideration, signifies (as explained under the word, *supra*,) absolute control of property, and *fee*, though implying tenure, serves primarily to mark the duration of the estate, viz. to a man and his heirs. *Bract. ibid.* To be *seised in demesne as of fee*, therefore properly means to have the absolute control of land, (that is, subject to rendering the services due, and saving the right of termors, or tenants for years,) and to enjoy it as an estate of inheritance, (*ut de feodo*, as of fee). See *Dominicum.*

This interpretation is derived from the very full exposition of the phrase and its component terms, given by Bracton in treating of the assise of mort d'ancestor in his fourth book, where the whole seems to be summed up in the following sentence: *Et unde ex præmissis colligi potest, quod unus potest esse* seysitus *de aliqua terra vel redditu* in dominico suo ut de feodo, et de libero tenemento simul, vel tantum ut de feodo, vel [et?] non in dominico, vel tantum ut de libero tenemento et in dominico, non tamen in feodo, *sicut dici poterit de illis qui tantum tenent* ad vitam, *quacunque ratione.* And hence it may be gathered from the premises, that one may be seised of any land or rent in his demesne as of fee, and of freehold at the same time; or only as of fee, or [and?] not in demesne; or only as of freehold and in demesne, yet not in fee; as may be said of those who only hold for life, in whatever way. *Bract.* fol. 263 b, 264. The same author takes notice of, and comments on the peculiar expression "*as of* fee," which he says in some cases denoted merely *resemblance* or appearance, in the sense of *quasi* (as it were); in others, actual *verity* or reality, in the sense of *sicut* (even as, just as); being applicable, in the latter sense, only to possession under a *lawful* title; so that "to be seised *as of* fee" meant, in such cases, nothing more in effect than "to be seised *in* fee." *Bract. ub. sup.*

DEMESNE LANDS. [L. Lat. *terræ dominicales.*] In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and

occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands, (*terræ tenementales*). Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. *Spelman*, voc. *Dominicum*. 2 *Bl. Com.* 90. See *Demesne*, *Dominicum*.

DEMESNE LANDS OF THE CROWN. [L. Lat. *terræ dominicales regis.*] In English law. That share of lands reserved to the crown at the original distribution of landed property; or such as came to it afterwards by forfeitures, or other means. These anciently were very large and extensive, but at present are contracted within a very narrow compass, having been almost entirely granted away to private subjects. 1 *Bl. Com.* 286. 2 *Steph. Com.* 550. See *Crown lands*.

DEMETTRE. L. Fr. To let go; to part with; to put away. *Kelham. Demette se;* parts with. *Id.*

DEMEYNE. L. Fr. Demesne. *En* demeyne, *si est dit a la difference de ceo que est tenu en seignioury, ou en service, ou en commun ovesque autres;* in demesne is so called to distinguish it from that which is held in seigniory, or in service, or in common with others. *Britt.* c. 78.

Demeynes; demesne lands. *Car vos* demeines *sount tielx come nos* demeynes; for your demesnes are such as our demesnes. *Id. ibid.*

DEMI-MARK, *Demy-mark.* [L. Lat. *dimidia marca.*] In old English practice. Half a mark; a sum of money of the value of six shillings and eight pence, the tender of which was formerly necessary in a writ of right; the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count, that is, to prove that the seisin was in the king's reign there stated. *Roscoe's Real Act.* 216. 2 *Bl. Com.* Appendix, No. I. sect. 6. *F. N. B.* 5 M. *Holt's N. P. Cas.* 657. See *Cowell*, voc. *Half-mark*. According to Mr. Reeves, it was something given to obtain the favor of a trial by the grand assise. 1 *Reeves' Hist.* 429, 430. See *Mark*.

DEMINUERE. Lat. In the civil law. To alienate; to part with; to lose. *Dig.* 37. 10. 5. 3.

DEMINUTIO. Lat. [from *deminuere.*] In the civil law. A taking away; loss or deprivation. See *Capitis deminutio*.

DEMI-SANGUE, *Demy-sangue.* L. Fr. Half-blood. See *Half-blood*.

DEMISABLE. That may be demised. 1 *Crabb's Real Prop.* 607, § 768. Demisability; the quality of being demisable. *Id. ibid.*

DEMISE. [L. Lat. *demissio, dimissio,* qq. v.] In conveyancing. A conveyance of an estate to another for life, for years or at will; most commonly, for years; a lease. 1 *Steph. Com.* 475. 2 *Crabb's Real Prop.* 230, 233, § 1274, 1280. 1 *Penn. St. R.* 126, 129, 131. See *Lease*.

A charter party is sometimes considered as a demise of a ship, (*locatio navis*). *Abbott on Ship.* [46,] 50. *Id.* [288, 289,] 365, 366. 3 *Kent's Com.* 202.

To DEMISE. [L. Lat. *demittere, dimittere,* to send away, or part with.] In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases:—"have [or hath] granted, *demised*, and to farm let, and by these presents do [or doth] grant, *demise* and to farm let." 2 *Bl. Com.* 317. 1 *Steph. Com.* 476. *Co. Litt.* 45 b. See *Demise*.

DEMISE OF THE KING, or CROWN. [L. Lat. *demissio,* [*dimissio*] *regis vel coronæ;* L. Fr. *demise le roy.*] In English law. The natural dissolution of the sovereign, or the disunion of the king's natural body from his body politic, by which the kingdom is transferred or *demised* to his successor, and the royal dignity becomes vested at once in the latter, without any interregnum or interval. 1 *Bl. Com.* 249. *Plowd.* 177, 234. The word *death* is not used; the principle being that the sovereign never dies. (**Rex nunquam moritur.**) 1 *Bl. Com. ub. sup.* 2 *Steph. Com.* 499. *Broom's Max.* 22, [38.] The technical phrase in the old writs is that the king *demised* (or separated) *himself* from the government of his kingdom; (*de regimine regni sui* se dimisit). *Reg. Orig.* 233, 234. *Reg. Jud.* 12. See *Dimittere*.

DEMISE AND RE-DEMISE. In conveyancing. Mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent, (as of a pepper-corn,) and B. re-demises the same property to A. for a shorter time at a real substantial rent. *Jacob. Whishaw.*

DEMISI. L. Lat. [from *demittere*, q. v.] I have demised or leased. Demisi, *concessi, et ad firmam tradidi;* have demised, granted and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 *Bl. Com.* 317, 318. From the word *demisi* in a lease, the law implies a covenant upon the part of the lessor that, at the time of the delivery of the lease, he had full power and authority to demise to the lessee for the time and on the terms expressed in the lease. *Hob.* 12 a. *Archb. Landl. and Ten.* 272.

DEMISSIO. L. Lat. [from *demittere*, q. v.] In old English law. A demise, or lease. *Ex demissione*, (q. v.); on the demise.

A transfer. *Demissio coronæ;* a transfer or demise of the crown. 1 *Bl. Com.* 249. See *Demise of the king.*

DEMITTERE. L. Lat. [from *de*, from, and *mittere*, to send.] In old conveyancing. To transfer; to demise or lease. See *Demisi.*

To send away, or part with. See *Dimittere.*

DEMI VILL. Half a vill. One of the smallest of the ancient civil divisions of England; consisting of five freemen, or frank-pledges, with their families. 1 *Bl. Com.* 115. 1 *Steph. Com.* 116. *Spelman*, voc. *Hamel.* See *Vill.*

DEMOER, *Demoerger.* L. Fr. To stop, or stay; to remain; to abide or dwell with. *Britt.* c. 16. *Kelham.* See *Demorer.*

DEMOERE. L. Fr. Protest; protestation; declaration. *Kelham.*

DEMOLLIRE, *Demolire.* Lat. In old English law. To demolish; to throw down or overthrow. *Bract.* fol. 115, 233. *Demollitio;* a demolishing. *Id.* fol. 234.

DEMONSTRATIO. Lat. [from *demonstrare*, to point out, or show.] Demonstration; description, denomination or addition; the designation of a person or thing by words of addition, or reference; or what Lord Bacon calls "notes" and "signs to call;"—as, "J. S. son and heir of G. S.;" or, "clerk of such a court;" or, "my close called Dale, in the parish of Hurst, in the county of Southampton." *Bacon's Max.* 99, 100, 101. To this head belong the following maxims, (qq. v.) **Falsa demonstratio non nocet.** False description does not injure. **Præsentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis.** The presence of a thing itself takes away the effect of error in the name of it, and the truth of the name takes away the effect of error in the demonstration or description. *Bac. Max.* 96, reg. 25. **Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram.** Words ought not to be taken to import a false demonstration, when they can be understood as words of true limitation. *Id.* 59, reg. 13.

Demonstratio is defined in the civil law, "an accessory designation of persons or things by circumlocution." 1 *Mackeld. Civ. Law.* 169, § 175. This occurred often in testaments; as "Stichus, my slave, born in my family," (*Stichum servum meum vernam*); "Stichus, my slave, whom I bought of Seius," (*Stichum servum quem a Seio emi*). *Inst.* 2. 20. 30. And the rule respecting it was the same as in the common law: **Falsa demonstratione legatum non perimitur.** A legacy is not rendered null by a false description. *Id. ibid.* See *Dig.* 35. 1. 17, 34.

DEMONSTRATIO FALSA. See *Falsa demonstratio.*

DEMORAGE. An old form of *Demurrage*, (q. v.) 1 *W. Bl.* 291.

DEMORARI. Lat. [L. Fr. *demorer, demeurer.*] In old pleading. To wait, stay or abide; to pause, stop or rest; to demur. *Steph. Pl.* 44. *Demoratur;* (he) demurs. *Moratur in lege;* (he) rests or abides in law. *Termes de la Ley*, voc. *Demurrer.*

DEMORER, *Demorier, Demourier.* L. Fr. [from Lat. *demorari*, q.v.] To remain or stay; to abide, reside or dwell. *Pur suffrer eux* demorer *a lour mesons;* for suffering them to stay at their houses. *Britt.* c. 21. Demorauntz *en pays;* residing in the country or neighborhood. *Id. ibid. Lautre partie doit* demorer *al purchasour;* the other part ought to remain with the purchaser. *Id.* c. 39. *Pur* demorer *ensemble;* to live together. *Id.* c. 101. *A* demorer *en prisone;* to stay in prison. *Rot. Parl.* 4 *Hen.* IV.

DEMPSTER, *Dempstare, Doomster.* In Scotch law and practice. An officer of court, whose duty it was to pronounce the *doom* or sentence of the court. *Skene de Verb. Signif.* voc. *Curia.* "Be dome pronuncit be the mouth of Andro Lindesay, dempstare of the said court." 1 *How. St. Trials*, 927. See 1 *Pitcairn's Crim. Trials*, part 1, pp. 129, 132. *Id.* part 2, p. 8. See *Dome, Doom.*

DEMUR. [from L. Fr. *demurer, demor-*

rer, to stop, stay, or rest.] In pleading. To raise an objection in point of law, and *rest* or pause upon it, referring its decision to the court; to object to the pleading of the opposite party as insufficient to sustain his action or defence, and refer it to the judgment of the court whether it ought to be answered; in the language of the old books, to abide in law. "He which demurreth in law is said he that *abideth* in law—*moratur* or *demoratur in lege*." *Co. Litt.* 71 b. To "demur in law," to "demur in judgment," are phrases of constant occurrence in the old books.

DEMURER, *Demurrer*, *Demeurer*. L. Fr. In old English law. To rest or stay; to abide or remain. *Il fuit agard al' Flete, et la* demurt *tanques*, &c.; he was awarded (sentenced) to the Fleet, and there remained until, &c. *Yearb.* T. 10 Edw. III. 28. *Demurt en abeyance;* it rests or remains in abeyance. *Litt.* sect. 649. *Agardomus que la parole* demurge *tanques à son age;* we award (give judgment) that the parol (pleadings) demur (or stay) until his age. *Yearb.* H. 6 Edw. III. 4. See *Parol demurrer*.

In pleading. To abide or rest in law or judgment. *Voiles* demurrer *en jugement, au peril que appent.* P. 5 Edw. III. 23. *Et sur ceo le plf'* demurre *en ley*. *Dyer*, 70 b, (Fr. ed.) *Nous* demurroins *en vos discretions*. H. 3 Edw. II. 66.

DEMURRAGE, *Demorage*. [L. Lat. *demoragium*.] In maritime law. The detention of a vessel by the freighter, beyond the time allowed by the charter party for loading or unloading, or for sailing.* 3 *Kent's Com.* 203.

The allowance or payment made for such detention or delay. *Id. ibid.* 2 *Steph. Com.* 185. *Abbott on Ship.* [304,] 381.

DEMURRER. L. Fr. and Eng. [from L. Fr. *demurer*, *demorer;* L. Lat. *demorari*, to wait, stop, or stay.] In pleading. Literally, a pause, or rest. A resting in the judgment of the law. *Finch's Law*, b. 4, c. 40. A kind of pause or stop put to an action, [and usually in the pleadings,] upon a point of difficulty which must be determined by the court, before any further proceedings can be had. *Cowell. Mansel on Demurrer*, 1.—An exception or objection by one of the parties to an action, to the pleading of the opposite party, as being insufficient in law to sustain his action or defence, upon which the party so objecting *rests* or abides upon the point in question, (*moratur* or *demoratur in lege*,) and submits it to the judgment of the court.* 1 *Lill. Abr.* 435. 3 *Bl. Com.* 314.—A declaration that the objecting party *will not proceed* with the pleading, because no sufficient statement has been made on the other side, but will wait the judgment of the court, whether he is bound to answer. *Steph. Pl.* 44. *Co. Litt.* 71 b. Strictly, a demurrer is not an answer, although it is sometimes considered as such. 6 *Peters' R.* 327.—An abiding in point of law, and a referring to the judgment of the court whether the declaration or plea of the adverse party is sufficient in law to be maintained. *Mansel on Demurrer*, 1.

An issue joined upon matter of law, to be determined by the judges. *Finch's Law*, lib. 4, c. 40. See *Issue in law*.

DEMURRER. In equity pleading. An objection to the complainant's bill in a suit in equity, of nearly the same nature as a demurrer in law, being an appeal to the judgment of the court, whether, upon the face of the bill itself, the defendant shall be bound to answer; as for want of sufficient matter of equity therein contained. 3 *Bl. Com.* 446. 4 *Steph. Com.* 21.

A demurrer is an allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth, they are insufficient for the plaintiff to proceed upon, or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or because of the omission of some matter which ought to be contained therein, or for want of some circumstance which ought to be attendant thereon, the defendant ought not to be compelled to answer. It therefore demands the judgment of the court, whether the defendant shall be compelled to make answer to the plaintiff's bill or to some certain part thereof. *Mitford's Chanc. Pl.* 107, 108, [128, 129, Moulton's ed. and notes, *ibid.*]

DEMURRER TO EVIDENCE. In practice. An objection or exception by one of the parties to an action at law, to the *evidence* produced by the opposite party on the trial, as being *insufficient in law*, (admitting it to be true in fact,) to maintain or overthrow the issue; and referring it to the court to determine what the law is upon the facts as shown in evidence.* 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. 2 *H. Bl.* 187. A mode of proceeding by which the court

may be called upon to give judgment as to the law upon the facts attempted to be given in evidence upon the trial. *Mansel on Demurrer*, 119. If a party wishes to withdraw from the jury the application of the law to the fact, and all consideration of what the law is upon the fact, he *demurs in law* upon the *evidence*, and the precise operation of that demurrer is to take from the jury, and refer to the judge, the application of the law to the fact. Eyre, C. J. 2 *H. Bl.* 187, 206. It is analogous to a demurrer in pleading, the party from whom it comes declaring that *he will not proceed*, because the evidence offered on the other side is not sufficient to maintain the issue. *Steph. Pl.* 90. See 2 *Tidd's Pr.* 865. *Co. Litt.* 72.

DEMURRER BOOK. In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. 3 *Bl. Com.* 317. 3 *Steph. Com.* 581.

DEMY-SANGUE, *Demysanke*. L. Fr. Half-blood. See *Half-blood*.

DEN, *Dene*. Sax. [L. Lat. *dena*.] In old records. A valley, vale, or dale. *Spelman*, voc. *Dena*. *Co. Litt.* 46.

A hollow or low place among woods. *Cowell.*

DEN AND STROND. In old English law. Liberty for ships or vessels to run aground, or come ashore. *Cowell.*

DEN'. An abbreviation of *Denarius*, (q. v.)

DENA. L. Lat. A hollow or valley, especially in woody ground; a den. *Cowell. Spelman.* Frequently used in Domesday Book as a sort of measure of land. *Tres* denæ *de sylva;* three dens of wood. *Id.*

DENARATA. L. Lat. [from *denarius*, a penny.] In old English law. The value or worth of a penny. *Denarata reditûs;* a penny rent. *Reg. Orig.* 1 b. *Towns. Pl.* 64. See *Denariatus.*

DENARIATUS. L. Lat. [from *denarius*, q. v.] In old English law. The price of a thing, consisting of a penny, (*pretium rei quæ* denario *constat*). *Spelman.* A penny's worth. *Fleta*, lib. 2, c. 73, § 3.

DENARII. (pl. of *Denarius*, q. v.) Lat. and L. Lat. In old English law. Pennies; pence. *Quando quarterium frumenti venditur pro duodecim denariis;* when the quarter of corn is sold for twelve pence. *Fleta*, lib. 2, c. 9, § 1. *Viginti* denarii *faciunt unciam;* twenty pennies make an ounce. *Id.* c. 12, § 1.

Money in general, (*pecunia in genere*). *Spelman*, voc. *Denarius.* Any sort of *pecunia numerata*, or ready money. *Cowell. Towns. Pl.* 180.

DENARIUS. L. Lat. [Fr. *denier.*] A penny; an English penny. By the statute called *Compositio Mensurarum*, 51 Edw. I. [Hen. III.] it was declared that the penny sterling of England (denarius *Angliæ qui nominatur* sterlingus,) should weigh 32 grains of corn from the middle of the ear, and 20 pennies [penny weights] should make an ounce, and 12 ounces a pound. *Spelman. Fleta*, lib. 2, c. 12. See 2 *Inst.* 575.

DENARIUS. Lat. In the Roman law. A silver coin of the value of ten asses, or ten pounds of brass. Its value in modern money is estimated at 7¾d. sterling, or about 14¼ cents. *Encyclop. Amer. Brande.*

DENARIUS DEI. L. Lat. In old English law. God's penny. Earnest money, formerly given and received by the parties to contracts, to bind the contract. *Carta*, 31 *Edw.* I. m. 4, cited in *Cowell*, and given at length in *Molloy de Jur. Mar.* 370—380. So called, because the money so used was *given to God*, that is, to the *church*, or the poor. *Cowell.* See *Argentum Dei, Earnest, Money of adieu.*

DENARIUS TERTIUS COMITATUS. L. Lat. In old English law. The third penny of the county. The third part of the fines and profits arising from the county courts, which anciently were reserved to the *comes*, or earl, as his official stipend. *Spelman*, voc. *Comes. LL. Edw. Conf.* c. 31. *Lib. Nig. Scacc.* cited *ibid. Cowell.*

DENELAGE. See *Danelage.*

DENER, *Denier, Denire.* L. Fr. A penny. *Deners, deneres, denerez, denrees, danree;* money. *Kelham. Deners appromptes;* money borrowed. *Britt.* c. 28.

DENER SEINT PERE. L. Fr. Saint Peter's money. Peter pence. *LL. Gul. Conq.* 1. 18.

DENGLETERRE. L. Fr. Of England. Written as one word for *de Engleterre. Britt.* fol. 1, 2.

DENIER. L. Fr. In old English law. Denial; refusal. *Denier* is when the rent (being demanded upon the land) is not paid. *Finch's Law*, b. 3, ch. 5.

DENIER. L. Fr. To refuse. *Lou un*

smith denie *de ferrer mon chival. Keilw.* 50, pl. 4.

DENIER. L. Fr. A penny. *Litt.* sect. 235. See *Dener.*

DENIZATION. In English law. The act of making a denizen. *Cro. Jac.* 540. *Co. Litt.* 129 a. See *Denizen, Naturalization.*

DENIZEN. [from L. Fr. *donaison*, (Lat. *donatio*,) a gift; or *deins nee*, born within. See *infra.*] In English law. An alien born who has obtained *ex donatione regis* (from the king's gift,) letters patent to make him, either permanently or for a time, an English subject; a high and incommunicable branch of the royal prerogative. 1 *Bl. Com.* 374. 2 *Steph. Com.* 431. See 1 *Id.* 406. 7 *Co.* 25, *Calvin's case. Cro. Jac.* 539, 540. "Denizen is one that is but *subditus insitivus* or *adoptivus*, and is never by birth, but only by the king's charter, and by no other mean." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 327, 328. A denizen is in a kind of middle state between an alien and a natural born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien may not, but cannot take by inheritance. 1 *Bl. Com.* 374. 2 *Steph. Com.* 431. See 1 *Id.* 406. *Calvin's case*, 7 *Co.* 1. *Cro. Jac.* 539, 540.

A natural born subject; one born within (*deins nee*) the king's ligeance, and called in Latin *indigena*, the king's liegeman. *Co. Litt.* 129 a. But this is not the ordinary sense of the word. *Id. ibid.* 6 *Peters' R.* 117, and note.

DENOMBREMENT. Fr. In French feudal law. A minute or act drawn up, on the creation of a fief, containing a description of the fief, and all the rights and incidents belonging to it. *Guyot, Inst. Feod.* ch. 3.

DENOMINATIO. Lat. In old English law. Denomination; description; title. **Denominatio est a digniore.** Denomination is from the more worthy. *Bacon's Works*, iv. 261.

DENUNCIATION, *Denounciation.* [from Lat. *denunciatio.*] In Scotch practice. The act by which a person is declared to be a rebel, who has disobeyed the charge given on letters of horning. *Bell's Dict.*

DENUNTIARE, *Denunciare.* Lat. In the civil law. To give notice or warning, to summon. *Inst.* 4. 6. 15. *Calvin's Lex. Jurid.*

In old English law. To give notice; to summon. *Quod* denunciare *faciat tenenti quod sit ad certum diem certo loco;* that he cause notice to be given to the tenant that he be at a certain day at a certain place. *Bract.* fol. 307.

DENUNTIATIO, *Denunciatio.* Lat. [from *denuntiare*, q. v.] In old English law. A notice or summons. *Bract.* fol. 302 b.

A public notice or publication, as of banns. *Id.* fol. 307 b.

DEODAND. [L. Lat. *Deo dandum;* a thing to be given to God.] In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown, to be applied to *pious* uses, and distributed in alms by the high almoner. 1 *Hale's P. C.* 419. *Fleta*, lib. 1, c. 25, § 9. *Bract.* fol. 122. 1 *Bl. Com.* 300. 2 *Steph. Com.* 365. 3 *Ad. & Ell.* N. S. 333. 8 *Id.* 587. Deodands included both animate and inanimate objects; thus, if a horse or other animal killed a person, or a cart ran over him, the horse or cart was forfeited as a deodand. So, the instrument with which a person was killed, as a sword or knife, was forfeited in the same manner. 1 *Bl. Com.* 301, 302. Deodands are unknown in American law, and have recently been abolished in England by statute 9 & 10 Vict. c. 62. *Oliphant on Horses*, Appendix.

*** From the phraseology of the rule in the old books, expressed by the verse,

Omnia quæ *movent* ad mortem sunt Deo danda,

(all things which *move* to death are deodands, *Dyer*, 77 b,) some have been led to confine the proper meaning of deodand to such things as caused death by their *motion*, or by being put in motion. Thus Spelman defines them to be all things, whether brute animals or inanimate objects, by a *stroke* from which the life of a man is unduly taken away, (*quorum* impetu *vita hominis indebite tollitur*); as by the kick of a horse, the goring of an ox, the falling of a beam, the motion of a carriage. In an old case, the fore-wheel of a wagon was said to "move to the death of a man." *Say.* 249. But *movere ad mortem* may also be translated "to tend or lead to death," "to occasion, or contribute to produce death;" a sense to which Spelman also alludes. Accordingly the rule always was that where death was occasioned by a fall from an object at rest, the latter was forfeited as a deodand. *Britt.* cc. 1, 7. *Fleta*, lib. 1, c.

25, § 9. 1 *Hale's P. C.* 422. Much importance, however, seems to have been from an early period, attached to the circumstance of the object being in *motion*, which led to some distinctions in the later law on this subject.

DEPART. [L. Lat. *departire, decedere.*] In pleading. To forsake or abandon the ground assumed in a former pleading, and assume a new one. See *Departure.*

In old English law. To divide or separate; to part; (L. Fr. *departir*). *Cowell.* See *Departir.*

In maritime law. To leave a port; to be out of a port. To *depart* imports more than to *sail*, or set sail. A warranty in a policy, that a vessel shall *depart* on or before a particular day, is a warranty not only that she shall sail, but that she shall be *out of the port* on or before that day. 3 *M. & S.* 461. 3 *Kent's Com.* 307, note. Cowen, J. 3 *Hill's R.* 118, 126. "To depart" does not mean merely to break ground, but fairly to set forward upon the voyage. 6 *Taunt.* 241.

DEPARTABLE. L. Fr. Divisible. *Britt.* c. 72. *Yearb.* T. 2 Edw. III. 5.

DEPARTIR, *Departier.* L. Fr. To divide. *Pur ceo que rien remeynt à* departir *entre les autres parceners;* because nothing remains to divide between the other parceners. *Britt.* c. 72. *Departi, departy;* divided. *Id. ibid. La departie;* the separation. *Kelham.*

DEPARTISON. L. Fr. Division; partition. *Yearb.* P. 8 Edw. III. 17.

DEPARTURE. [L. Lat. *departura, decessus.*] In pleading. The abandonment of the ground of a former pleading, and the adoption of another.* 2 *Saund.* 84 a, note (1).

A departure takes place when, in any pleading, the party deserts the ground that he took in his last antecedent pleading, and resorts to another. *Steph. Pl.* 410. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify it. *Co. Litt.* 304 a. Hence, a departure obviously can never take place till the replication. *Steph. Pl.* 410. The rule against departure is a primary one in pleading, and is ably illustrated by Mr. Stephen. Each subsequent pleading must pursue or support the former one; i. e. the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 *Bl. Com.* 310.

DEPARTURE IN DESPITE OF COURT, in old English practice, was when the tenant in a real action, after once appearing and being present in court, failed to appear upon demand. For being, in contemplation of law, actually in court at the time when he was demanded, he was considered as having actually departed in despite or contempt of the court.* *Roscoe's Real Act.* 283, 284.

DEPASTURE. In old English law. To pasture. "If a man *depastures* unprofitable cattle in his ground." *Bunb.* 1, case 1.

DEPENDENCE. In Scotch practice. Pendency.

DEPENDENT COVENANTS, are those in which the performance of one depends on the performance of the other.

DEPENDING. In practice. Pending or undetermined; in progress. See 5 *Co.* 47.

DEPESAS. Span. In Spanish-American law. Spaces of ground in towns reserved for commons or public pasturage. 12 *Peters' R.* 433, note. *White's New Recop.* b. 2, tit. 1, c. 6.

DEPONE. Sc. [from Lat. *deponere*, q. v.] In Scotch practice. To depose; to make oath in writing.

DEPONENT. [Lat. *deponens*, from *deponere*, q. v.] In practice. One who *deposes*, (that is, testifies or makes oath in *writing*) to the truth of certain facts; one who gives, under oath, testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called. See *Depose, Deposition.*

DEPONER. Sc. In old Scotch practice. A deponent. 3 *How. St. Trials*, 695.

DEPONERE. Lat. [from *de*, off or down, and *ponere*, to put, place or lay.] In the civil law. To put down; to lay down. *Non aliter litium primordium accipere, nisi prius ante sedem judicialem sacrosanctæ* deponantur *scripturæ, et hæ permaneant*, &c.; shall not enter on the trial of causes, unless the holy Scriptures be first laid down before the judgment-seat, and these shall remain, &c. *Cod.* 31. 14. See *Id.* 2. 59. 2, pr.

To deposit; to entrust a thing to another to keep. *Dig.* 16. 3. 1. 14. See *Depositum.*

To testify; to state on oath; to depose. *Nisi prius, tactis sacrosanctis scripturis,* de-

ponant *quod*, &c.; unless they shall first depose, after having touched the holy Scriptures, that, &c. *Cod.* 2. 59. 1. 1. *Ut* deponant *quæ noverint. Cod.* 4. 20. 16. See *Depositio.* This word does not occur, in this sense, in classic writers, nor in the Digests.

DEPONERE. L. Lat. [from *de*, down, and *ponere*, to put or lay.] In old English law. To put down; to put away; to pull down; to remove. *Omnes kidelli de cætero* deponantur *penitus per Tamisiam et Medweiam;* all kidels shall be henceforth wholly removed throughout the Thames and the Medway. *Mag. Cart.* 9 *Hen.* III. c. 23.

In old practice. To put or lay down; to depose. See *Depose.*

To state under oath. *Bract.* fol. 293. Applied by Bracton to the delivery of the verdict of a jury. *Qui veritatem rei* deponant *ex integro;* who shall depose the truth of the matter anew. *Id. ibid.* The word occurs very frequently in this sense in the canon law. *Durand. Spec. Juris*, lib. 1, tit. *De teste.*

To make oath; to swear. In the case of Knight *v.* Rushwood, the defendant assumed to the plaintiff that if he and two witnesses would *deponere* before the Mayor of Lincoln, that a certain obligation was read as an obligation of 200*l.* he would pay it. Whereupon the plaintiff, with two others, came before the Mayor of Lincoln, and there *deposed upon a book* accordingly, and hereupon brought the action. It was objected on argument, that *deponere* was a word uncertain, for *deponere* was, to lay down; but it was held certain enough, for to *depose* or *lay down* are, in truth, *synonyma et tantamount. Cro. Eliz.* 469, 470. See 1 *Stra.* 557, 561, *arg.*

DEPOPULATIO AGRORUM. In old English law. The crime of destroying, ravaging or laying waste a country. 2 *Hale's P. C.* 333. 4 *Bl. Com.* 373.

DEPOPULATION. In old English law. A species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offence. 12 *Co.* 30, 31.

DEPORTATIO. Lat. [from *deportare*, to carry away.] In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, (*in insulam deportatur,*) and thus taken out of the number of Roman citizens, (*ex numero civium Romanorum tollitur,*) being treated as though he were dead. *Inst.* 1. 12. 1. It was banishment for life, attended with the loss of civil rights and the forfeiture of property. *Relegatio* was banishment for years, without the loss of civil rights. *Cooper's Notes in loco. Dig.* 48. 22. *Calvin, Lex. Jurid.* Bracton uses the term *deportatio* as synonymous with exile, abjuration of the realm and outlawry. *Bract.* fol. 136 b.

DEPORTATION. Fr. and Eng. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio* (q. v.) of the Roman law; and still in use in France. *Encyclop. Amer.*

DEPOSE. [L. Lat. *deponere*, q. v.] In practice. To state or testify under oath, in writing; to make a statement or give testimony under oath, which is reduced to writing; to make a statement which is reduced to writing and sworn to; to put down in writing what is afterwards sworn to.* A word constantly used in affidavits, as "A. B. of —, being duly sworn, *deposes* and says that," &c. See *Deposition.*

In old practice. To state under oath, without reference to writing; to testify or make oath to the truth of a thing. "*Deposed* upon a book." *Cro. Eliz.* 470. See *Deponere.*

*** This word is undoubtedly derived from the Roman law of the Christian period, the Latin *deponere*, from which it is obviously formed, frequently occurring (with its derivatives) in the Code of Justinian, but not in any previous collection, in the sense of testifying or making oath. See *Deponere.* There seems also to have been a connection between the meaning of the word *deponere*, as used at this period, and the Christian mode of swearing upon the Scriptures, which tends to throw some light upon its essential meaning. See *infra.* From this source the word *deponere* was introduced into the canon law, in which it was constantly applied, with its derivatives, to the statements of witnesses in judicial proceedings. *Durand. Speculum Juris*, lib. 1, tit. *De teste.* From the latter source, again, it has probably derived its present peculiar application to *written* testimony, it having always been the practice, in the ecclesiastical courts, to reduce the proofs to writing. 3 *Bl. Com.* 100.

The proper meaning of *deponere* itself (to put or lay down,) has been supposed to imply the sense of putting down *in writing;* but there are very early instances of its use in English practice, without any reference to *written* statement. Thus, it is said in Bracton, of a jury, *veritatem rei* deponant *ex integro*, (they shall depose the truth of the matter anew,) clearly importing an *oral* statement, viz. the delivery of a verdict, under oath. *Bract.* fol. 293. The word appears to have been used in the same sense in Knight *v.* Rushwood, *Cro. Eliz.* 469. Besides, if "to put down *in writing*" be the radical sense of *depose*, it seems difficult to see the propriety of its application to a witness, who, in affidavits, is every day repeatedly called a *deponent*, and said to *depose*, though he commonly does not *put down* a line, and *writes* nothing but his signature. *Deposing*, in this sense, is rather the act of the officer who takes the testimony, than of the witness who gives it. In Knight *v.* Rushwood, the court held that "to depose and lay down are in truth synonyma;" but what the party swearing may be considered to *lay down* is not clear, unless perhaps there be some reference in the original use of the word to *laying the hand* upon the gospels, that being anciently, as at present, the usual form of making oath, as contrasted with the rarer form of swearing by the *uplifted* hand, (*erectis sursum manibus*). *Bract.* fol. 143 b. See *Hand*, *Oath*, *Corporal oath*, *Uplifted hand*. That the essential meaning of the word is in some way connected with the use of the Scriptures in the solemnity of making oath, seems indicated by the passages from the Code referred to under *Deponere*, *supra*. The rule established by Justinian required that the Scriptures should be *laid down* (*deponantur*) before the judgment-seat, before the hearing of a cause could be commenced, and kept there until its final termination. *Cod.* 3. 1. 14. The formality of laying hands upon, or touching the Scriptures, by the witness sworn, will be found under other heads.

In modern practice, however, *depose* has undoubtedly become fixed in the sense of *stating under oath what is reduced in full to writing*. Hence a party is now never properly said to *depose*, unless his statement is at the same time put down in writing, either by himself, or the officer before whom he is sworn and examined. In open court, as on a trial before a jury, where no professed record is taken of his evidence, a witness is said to *testify;* out of court, as before a judge, commissioner or examiner, he is properly said to *depose*.

DEPOSIT. [Fr. *depôt;* Span. *deposito*.] A species of bailment, derived from the civil law, and called also, after that law, *depositum*. Lord Holt, who is followed by Sir William Jones, and Chancellor Kent have adopted the latter term in their definitions. 2 *Ld. Raym.* 909. *Jones on Bailm.* 36, *et seq.* 2 *Kent's Com.* 558, 560. Mr. Justice Story has made use of the English word *deposit*. *Story on Bailm.* § 4, 41, *et seq.* See *Depositum*.

DEPOSIT OF TITLE DEEDS. See *Equitable mortgage*.

DEPOSITARY. In the law of bailment. The person with whom a thing is deposited by another, (*is apud quem res deponitur*,) to be kept for the depositor or bailor, and returned upon demand, without a recompense; one who receives the goods of another to keep without compensation.* 2 *Kent's Com.* 560, *et seq.* *Bract.* fol. 99 b. *Inst.* 3. 15. 3.

DEPOSITATION. In Scotch law. Deposit or *depositum;* the species of bailment so called. *Bell's Dict.*

DEPOSITI. Lat. Of deposit. The title of *Cod.* 4. 34. See *Dig.* 16. 3.

DEPOSITIO. Lat. [from *deponere*, q. v.] In the civil law. The testimony of a witness. *Cod.* 4. 20. 15, 17, 20. *Id.* 4. 21. 15.

DEPOSITIO. L. Lat. [from *deponere*, q. v.] In old practice. A deposition; the written testimony of a witness. *Reg. Brev.* Appendix, 53. *Bohun's Cursus Canc.* 266.

DEPOSITION. [L. Lat. *depositio*, q. v.] In practice. The testimony of a witness, put or taken down in writing, under oath or affirmation, before a commissioner, examiner or other judicial officer, in answer to interrogatories and cross interrogatories, and usually subscribed by the witness. 3 *Bl. Com.* 449. 2 *Tidd's Pr.* 810, 811. "The ordinary and usual meaning of the word *deposition* is confined to written testimony, at least in legal proceedings." Story J. 1 *Gallison's R.* 497, 501. A deposition is properly distinguished from an affidavit, (q. v.) which is always an *ex parte* statement drawn up in writing without any formal interrogation, and signed and sworn to by the party

making it; although in affidavits the party is constantly called a *deponent*, and said to *depose*. See *Depose*, *Deponent*.

In a more general sense. The act of giving testimony under oath; the testimony itself so given; a matter related upon oath. 1 *Stra.* 564, arg. This seems to have been the original sense of the word, though no longer in use, at least in American practice. Story, J. 1 *Gallison's R. ub. sup.*

DEPOSITO. Span. [from Lat. *depositum*, q. v.] In Spanish law. Deposit; the species of bailment so called. *White's New Recop.* b. 2, tit. 10, c. 1. *Schmidt's Civ. Law*, 193.

DEPOSITUM. Lat. [from *deponere*, to deposit.] In the civil and common law. A naked bailment of goods, to be kept for the bailor without reward, and to be returned when he shall require it. *Story on Bailm.* § 4, 41. 2 *Kent's Com.* 558, 559. *Jones on Bailm.* 36. *Inst.* 3. 15. 3. *Bract.* fol. 100 b. *Dig.* 16. 3. *Cod.* 4. 34. *Fleta*, lib. 2, c. 56, § 7. Otherwise termed *deposit*, (q. v.) the bailor being in this case termed the *depositor*, and the bailee, the *depositary*. *Bell's Dict.*

DEPOT. Fr. A deposit; an act by which a person receives the property of another, binding himself to preserve it and to return it in kind. *Civil Code of Louis.* art. 2897.

DEPRIVATION. In English ecclesiastical law. The taking away from a clergyman his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court, for fit and sufficient causes, or in pursuance of divers penal statutes which declare the benefice void for some nonfeasance or neglect, or some malfeasance or crime. 3 *Steph. Com.* 87, 88. *Burn's Eccl. Law*, tit. *Deprivation.*

DEPUES. L. Fr. Beaten or trodden down. *Yearb.* T. 11 Hen. VI. 12.

DEPUIS. L. Fr. Since. *L. Fr. Dict.*

DEPUTARE. L. Lat. In old English law. To appoint, fix, or designate. *Si locus fuerit qui* deputatus *sit ad aliquem usum;* if it be a place which is designated for any use. *Bract.* fol. 210 b. *Id.* fol. 170 b, 363. *In campum ad duellum faciendum* deputatum; to the field appointed for making the duel. *Id.* fol. 141 b.

DEPUTATUS. L. Lat. In old English law. A deputy. *Brownl.* part 2, 331.

DEPUTE. [L. Lat. *deputare*, q. v.] To appoint or designate for a particular purpose. Now applied to persons only, but anciently to places. See *Deputare*, *Deputy.*

DEPUTY. [Fr. *deputè;* L. Lat. *deputatus.*] A person appointed, designated or deputed to act for another.* One who exercises an office, &c., in another's right, having no interest therein, but doing all things in his principal's name, and for whose misconduct the principal is answerable. *Termes de la Ley. Tomlins.*

Deputy was anciently used in the sense of *assignee.* Thus, an administrator was called the ordinary's *deputy.* See *Administrator.* So, the assignees of an estate were sometimes termed *deputies.* Assignee is said in the old books to include *deputy*, as being the more comprehensive term. Thus a man who had power to make assigns might always make deputies. *Termes de la Ley.* The distinction was at the same time taken, that assignee signified a person who had an estate or interest in the office itself, and acted in his own name and right, whereas a *deputy* always acted in the name and right of another. *Id. Perkins*, c. 1, § 100. *Cowell.* The distinction made in Scotch law, is that the principal is liable for the acts of his deputy, but the grantor is not liable for his assignee. *Bell's Dict.*

DERAIGN, *Dereyn*, *Dereine.* [L. Lat. *derationare*, *dirationare*, *disrationare;* L. Fr. *dereiner*, *derener*, *disreigner*, *desrener*, contr. for *deraisner* or *deraisoner*. *Spelman.*] In old English law. To prove. To "deraign the warranty paramount." *Stat.* 31 *Hen.* VIII. c. 1. *Cowell.* See *Glanv.* lib. 2, c. 3. *Id.* c. 6, 20. 1 *Reeves' Hist.* 123. *Spelman*, voc. *Dirationare.*

To disprove or refute the assertion of an adverse party. Spelman makes this to be the proper meaning, relying in particular upon the etymology of *disrationare*, (from *dis*, contrary, and *ratiocinari*, to reason.) See more under *Disrationare.*

To deny or refuse. "He cannot *deraign* battel." *Dyer*, 137. See *Barringt. Obs. Stat.* 328. And see *Deresner.*

To put out of place or order; to displace or disarrange; to turn one out of his order; to degrade. Some of the old books give the word this sense, deriving it either from the Fr. *disarrayer*, to confound, or *derayer*, *desranger*, to derange or displace. *Termes de la Ley. Cowell. Co. Litt.* 136. *Perkins*, ch. 1, s. 3, G. This derivation, however, is not approved by Spelman.

DERATIONARE. L. Lat. To deraign. See *Deraign*, *Dirationare.*

DERB'. An abbreviation of *Derbia*, Derbyshire. 1 *Inst. Cler.* 28.

DERCHIEF, *Derechief*, *Derichefs*. L. Fr. Moreover; again; repetition. *Kelham.*

DERECHO. Span. [from L. Lat. *derictum*, q. v.] In Spanish law. Law or right. *White's New Recop.* b. 4, tit. 4. *Derecho comun;* common law. The civil law is so called. *Id.* b. 2, tit. 13, c. 1, § 5.

A right. *Derechos;* rights. *Id.* b. 2, tit. 2, c. 11, § 5.

DERELICT. [Lat. *derelictus*, *derelictum.*] Left, forsaken; as land left dry by the retiring of the sea. 1 *Crabb's Real Prop.* 109. *Dyer*, 326 b.

Abandoned, cast or thrown away; as goods wilfully cast away by the owner on land, or thrown overboard at sea. *Inst.* 2. 1. 46. *Bract.* fol. 8. 2 *Reeves' Hist.* 9. 2 *Bl. Com.* 9. *Pro* derelicto *habetur quod dominus ea mente abjecerit, ut id in numero rerum suarum esse nolit; ideoque statim dominus ejus esse desinit.* That is regarded as, or held for derelict, which the owner has cast away with the intention of never again considering as his property; and therefore he immediately ceases to be its owner. *Inst. ub. sup.* Goods are "*derelict* which have been voluntarily abandoned and given up as worthless, the mind of the owner being alive to the circumstances at the time." Tindal, C. J. 1 *C. B.* 112. *Broom's Max.* [261.] See *Derelictum.*

Deserted or abandoned; as a vessel voluntarily deserted at sea. 2 *Kent's Com.* 457. 3 *Id.* 245. Property is *derelict*, in the maritime sense of the word, when it is abandoned without hope of recovery, or without an intention of returning. 1 *Gallison's R.* 133. 1 *Mason's R.* 373, 374. 1 *Sumner's R.* 207, 336, 400. *Ware's R.* 43. 2 *Kent's Com.* 357, note. 3 *Id.* 246, note.

DERELICTION. [Lat. *derelictio.*] The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of *alluvion*, (q. v.) 2 *Roll. Abr.* 170. *Dyer*, 326 b. 2 *Bl. Com.* 262. 1 *Steph. Com.* 419.

The abandonment of property. 2 *Bl. Com.* 9.

DERELICTUM. Lat. [from *derelinquere*, to leave or abandon.] Derelict; wilfully abandoned or thrown away. *Inst.* 2. 1. 46. *Bract.* fol. 8. That which is without an owner, or which is not in the possession of any one. *Calv. Lex.*

DERENER, *Dereigner*, *Dereyner*, *Deraigner*, *Dereiner*, *Derainer*. L. Fr. To prove; to clear one's self; to deraign. *Kelham.*

DERESNER. Norm. To deny; to refuse. *Barringt. Obs. Stat.* 328, note [c]. See *Deraign.*

DERITTUM, *Derictum*, *Directum*, *Drictum*. L. Lat. [Fr. *droit*, *droict.*] Right. *Spelman.* See *Droit*, *Directum*, *Right.*

Derivativa potestas non potest esse major primitiva. A derivative power cannot be greater than the primitive or original. *Noy's Max.* 4, max. 9. **A derived power cannot be greater than that from which it is derived.** *Finch's Law*, b. 1, ch. 3, p. 11.

DERIVATIVE (or SECONDARY) CONVEYANCES. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 3 *Bl. Com.* 324. They are releases, confirmations, surrrenders, assignments, and defeasances. *Id.*

DEROBARE. L. Lat. [from Fr. *desrobber*, *disrober.*] In old European law. To steal; to pilfer. *Spelman.*

DEROGARE. Lat. [from *de*, from, and *rogare*, to pass a law.] In the civil and old English law. To derogate or diminish; to take from or impair the authority, validity or effect of a law or contract; to repeal some clause of an old law by a new one. Derogatur *legi cum pars detrahitur;* a law is derogated from, when a part of it is taken away. *Dig.* 50. 16. 102. *Hoc multum* derogat *chartæ et ipsius fidei;* this derogates or takes greatly from the charter and the credit to be given it. *Bract.* fol. 398. *Quod multum cartæ* deroget *et ejus fidei. Fleta*, lib. 6, c. 34, § 1. See *Rogare*, *Abrogare.*

DEROGATION. [Lat. *derogatio*, from *derogare*, q. v.] Diminution or partial abrogation; the taking from or impairing the authority or effect of a law or contract.

DES. L. Fr. From. *Kelham.*

DESACCORDAUNT. L. Fr. Different; varying from. *Kelham.*

DESADUNQUES. L. Fr. From that time. *Kelham.*

DESAVOWER. L. Fr. To disclaim or disavow. *Kelham.*

DESBLEMY. L. Fr. Unblemished. *Britt.* c. 68.

DESCEITZ, *Desceninct*, *Desoynt*, *Desceyntz.* L. Fr. Ungirded. *Kelham.*

DESCEND. [Lat. *descendere;* L. Fr. *de-*

scender.] To pass immediately from one person to another by the operation of law, as to an heir on the death of his ancestor.* When an estate is said to have *descended* from A. to B. the natural and obvious meaning of the word is that it is an *immediate* descent from A. to B. Story, J. 3 *Peters' R.* 58, 91.

Strictly and literally, to pass from the ancestor to the heir in the *descending* line; to pass downwards. It is constantly applied, however, to transmission in the *ascending* line. See *Descent.*

DESCENDANT. [Lat. *descendens.*] One who descends or is descended from another; a relative in the descending line; the opposite of *ascendant*, (q. v.)

Descendants is a good term of description in a will, and includes all who proceed from the body of the person named; as grandchildren, and great grandchildren. *Ambl.* 397. 2 *Vern.* 108, note 3. 2 *Hilliard's Real Prop.* 542.

DESCENDER. L. Fr. To descend. Sometimes used as a substantive. See *Formedon in the descender.*

DESCENT, *Discent.* [Lat. *descensus;* Fr. *discent.*] The title by which a man, on the death of his ancestor, acquires his estate by right of representation, as his heir at law. 2 *Bl. Com.* 201. *Co. Litt.* 13 b. 3 *Cru. Dig.* 362. 4 *Kent's Com.* 374. —Succession by law to an estate in lands. *Hallifax, Anal.* b. 2, c. 9, num. 2, 4.—Hereditary transmission or succession. *Hale's Hist. Com. Law*, 291, ch. xi.—Discent is when land, &c., after the death of the ancestor, is cast by course of law upon the heir. *Co. Litt.* 237 b. 2 *Crabb's Real Prop.* 1012, § 2390. The passage or transmission of an estate from the ancestor to the heir, usually in the *descending* line.* —The title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue. 1 *Steph. Com.* 357, note. This last is the new definition adopted by the English statute 3 & 4 Will. IV. c. 106. See *Ancestor, Heir, Inheritance.*

*** *Descent*, as applied to the transmission of estates, is a term wholly derived from the feudal law, in which, after feuds or fiefs became hereditary, it was an established maxim that they should always be transmitted *downwards* from father to son, and so lineally, while heirs continued, and never in the opposite direction. *Feud. Lib.* 2, tit. 50. *Id.* 4, tit. 84. *Esprit des Lois*, liv. 31, c. 33. *Ersk. Inst.* b. 3, tit. 8. 2 *Bl. Com.* 211. Hence, doubtless, the adoption of the word *descent* in its full, proper, and peculiar sense of passage *downwards*, as expressive of this doctrine, in preference to the Roman term *succession*, (*successio,*) which had no such exclusive meaning. *Esprit des Lois, ub. sup.* See *Succession.* The feudal law of descent was obviously founded on principles peculiar to the system, but it had also a quality which seems to have aided its reception and establishment, especially in England, namely, its seeming conformity to the order of *nature.* Hence the observation of Glanville, that an inheritance naturally descends, never naturally ascends; (*hæreditas naturaliter* descendit, *nunquam* naturaliter *ascendit*). *Glanv.* lib. 7, c. 1. Hence, also, the employment by Bracton of the very expressive figure of a heavy body falling *downwards*, to illustrate the old English doctrine of descent, as denoting the natural course of succession. Descendit *itaque jus*, quasi ponderosum quid cadens deorsum, *recta linea vel transversali, et nunquam re-ascendit eâ viâ qua descendit;* the right therefore descends like some heavy body falling downwards, in the right or transverse line, and never re-ascends the same way it descends. *Bract.* fol. 62 b. See *Fleta*, lib. 6, c. 1, § 4. The feudal doctrine of descent was, however, adopted in England with a material qualification confining it to *lineal* succession. Collaterally, the inheritance was allowed to ascend. *A latere tamen ascendit. Bract. ub. sup.*

The ancient rule, thus modified—that inheritances shall lineally descend, but shall never lineally ascend—continued to be a leading canon of descent in English law almost down to the present time. It was abolished by statute 3 & 4 Will. IV. c. 106, which declares that "every lineal ancestor shall be capable of being heir to any of his issue." 1 *Steph. Com.* 378. In American law, the ascent of estates has long been authorized. 4 *Kent's Com.* 392, 393, *et seq.* But, notwithstanding this material departure from the primitive or feudal law on this subject, the characteristic language of that law has been in a marked degree retained; the primitive terms *descent* and *descend* being constantly used even to denote transmission in an *upward* direction. Thus, an inheritance is said to "descend to an ancestor," as "to a fa-

ther." 1 *Steph. Com.* 376. 2 *Hilliard's Real Prop.* c. 77. The language of the ancient law of England, even in Bracton's time, was much more precise and discriminative; a right or estate being said to *ascend* or *descend* according as it passed *upwards* or *downwards* in the lines of consanguinity. *Nunquam re-ascendit. Bract.* fol. 62 b. *A latere ascendit. Id. ibid.* So, in the Scotch law, it is said "the succession *mounts upward* to the father." *Ersk. Inst.* b. 3, tit. 8, § 9. But notwithstanding the example of very high American authority, (4 *Kent's Com.* 393, 397,) the terms *ascent* and *ascend* have never taken firm root even in American law; nor is the derivative *ascendant* employed with the frequency which its peculiar propriety would seem to suggest. See *Ascendant.*

Descent was denoted, in the Roman law, by the term *successio*, which is also used by Bracton, and from which has been derived the *succession* of the Scotch and French jurisprudence. See *Successio, Succession.*

DESCHALENGES. L. Fr. Unchallenged. *Britt.* c. 87.

DESCHEIEZ. L. Fr. Fallen down; gone to ruin; gone to decay. *Kelham.*

DESCHUER, *Descheur.* L. Fr. To fall out, to happen; to fall down. *L. Fr. Dict. Descheu de sa plaint;* falls from his plaint; that is, fails in it, or loses the benefit of it. *Kelham.*

DESCLOR, *Desclar.* L. Fr. Disclosed; set forth. *Kelham.*

DESCLOS. L. Fr. Not enclosed. *Kelham.*

DESCOUNSEILE, *Descounseille.* L. Fr. Discounselled; not filled up; unprovided. *Britt.* c. 92. *Kelham.* A term applied to a church or benefice.

DESCOULPE. L. Fr. Excused; exculpated. *Kelham.*

DESCOVENABLE. L. Fr. Unfitting, unlawful; not juridical. *Britt.* c. 52. *Kelham.*

DESCOVERT. L. Fr. Opened; uncovered. *Kelham.*

DESCRIPTIO PERSONÆ. L. Lat. Description of the person. 3 *Day's R.* 470. 2 *Ld. Raym.* 1437. 2 *Stra.* 729. 1 *Hilliard's Real Prop.* 605. 2 *Selden's R.* 168.

DESCYNERS. L. Fr. Deciners; pledges in a decennary. *Britt.* c. 12.

DESERE EN AVANT. L. Fr. From henceforth. *Stat. of Tithes,* 18 *Edw.* III. 2 *Inst.* 639.

DESERT. [Lat. *deserere.*] To leave or quit with an intention not to return; to forsake utterly; to abandon.

DESERTION. Abandonment; the act of leaving or forsaking a service, duty or person. The act of forsaking, deserting or abandoning a person with whom one is legally bound to live, or for whom one is legally bound to provide; as a wife or husband. See *Malicious abandonment, Malicious desertion.*

DESERVIRE. L. Lat. To serve; as a feudal tenant did his lord. 2 *Bl. Com.* 284.

DESES. L. Fr. Decease. *Kelham.*

DESGARNYS. L. Fr. Unwarned. *Britt.* c. 4.

Unfurnished; unprovided. *Id.* c. 123.

DESHONRA. Span. In Spanish law. Dishonor; injury; slander. *Las Partidas,* part 7, tit. 9, l. 1, 6.

DESICUT. L. Lat. Whereas, (in the sense of opposition). *Dicit quod habet in tali villâ medietatem unius carucatæ terræ;* desicut *non fuit dotata nisi de tertia parte;* says that she has in such a town a moiety of one carve of land, whereas she was not endowed but of a third part. *Bract.* fol. 314 b, 227 b.

Inasmuch as. *Bract.* fol. 335 b, 379, 390, 403, 436.

DESIGN. In the law of evidence. Purpose or intention, combined with plan, or implying a plan in the mind. *Burr. Circ. Evid.* 331.

DESIGNARE. Lat. To mark or point out; to designate, to assign or appoint. *Calv. Lex. Jur.*

DESIGNATIO. Lat. [from *designare,* q. v.] Designation; specification. *Designatio personæ;* designation of the person. 2 *Powell on Dev.* 357, 358. 1 *Hilliard's Real Prop.* 499. Applied to a word of purchase, as distinguished from a word of limitation. 2 *Stra.* 802, 804.

Designatio unius personæ est exclusio alterius. The specification of one person is [or implies] the exclusion of another. *Co. Litt.* 210. "The law shall never seek out a person, when the parties themselves have appointed one." *Id. ibid.* See **Expressio unius est exclusio alterius.**

"DESIRE AND REQUEST," in a will, amount to a direction or command. *Ambl.* 5. 2 *Sch. & Lef.* 189. 17 *Vesey, jun.* 225.

"DESIRE," in a will, held to raise a trust or bequest by implication. 1 *Atk.* 469.

5 *Vesey*, 501. *Ambl.* 520, note (2). But see 20 *Penn. St. R.* 268, where it was held that words in a will, expressive of desire, recommendation and confidence, are not words of technical but of common parlance, and are not, *primâ facie*, sufficient to convert a devise or bequest into a trust.

DES KE, (QUE). L. Fr. From which time; since. *Kelham. Des kes a ore;* from which time until now; so far. *Id.*

DESMAINTENANT. L. Fr. From henceforth; from the present moment; even now; forthwith. *L. Fr. Dict. Kelham.*

DESMARIE, *Desmary, Desmarietz.* L. Fr. Unmarried. *Kelham. Marie ou desmary;* married or unmarried. *Yearb.* M. 8 Edw. III. 47.

DESMEMORIADOS. Span. In Spanish law. Persons deprived of memory. *White's New Recop.* b. 1, tit. 2, c. 1, § 4.

DESORE, *Deshors.* L. Fr. From now; from this time. *Kelham. Desore en avant, desorenavant, desorenaunt;* from this time forward; from henceforth. *Id. Stat. Westm.* 1, c. 34. 1 *Rep. in Ch.* Appendix.

DESORMES, *Desoremes, Desormais.* L. Fr. From henceforth; hereafter. *Stat. Westm.* 1, cc. 3, 7, 11. *Nul comon plee ne soit* desormes *tenus*, &c.; no common plea shall hereafter be held, &c. *Artic. sup. Chart.* c. 4. *Parnes gard de ceo* desormes; take care of this in future. *Yearb.* M. 8 Edw. III. 29.

DESOUBS, *Desoubes.* L. Fr. Under. *Desoubes le seale;* under the seal. *Artic. sup. Chart.* c. 1.

DESOUS, *Desus, Desouz, Dessouz, Desoz.* L. Fr. Under, underneath; hereafter. *Kelham. Britt.* c. 55.

DESOUTH. L. Fr. Under; below. *Desouth le petit seale;* under the petty (or privy) seal. *Artic. sup. Chart.* c. 6. *Desouth nosmes;* undernamed. *Stat. Westm.* 1, c. 39. *Desouth serure;* under lock. *Yearb.* M. 5 Edw. III. 34.

DESPARAGER. L. Fr. To disparage. *Britt.* c. 67. See *Disparager.*

DESPEREE. L. Fr. Unforeseen. *Kelham.*

DESPERATE. [Lat. *desperatus*, from *desperare*, to despair.] Hopeless; without hope of recovery. Used in inventories of property, as a designation of debts or claims considered worthless.

DESPITE, *Despyte, Despight.* L. Fr. and Eng. Contempt. *Despitz;* contempts. *Kelham.* See *Departure, &c.*

DESPITOUSEMENT. L. Fr. Despitefully; contemptuously. *Kelham.*

DESPITUS. L. Lat. Contempt. See *Despite.*

A contemptible, feeble or decrepid person. *Fleta*, lib. 4, c. 5, § 4.

DESPONSARE. L. Lat. In old English law. To marry. *Fleta*, lib. 6, c. 39, § 3.

DESPOSORIO. Span. In Spanish law. Espousals; mutual promises of future marriage. *White's New Recop.* b. 1, tit. 6, c. 1, § 1.

DESPUNI, *Despunies.* L. Fr. Unpunished. *Britt.* c. 4.

DESRENABLE. L. Fr. Unreasonable. *Britt.* c. 121.

DESTREINDRE, *Destreyndre.* L. Fr. To distrain. *Britt.* c. 20, 26.

DESTRER, *Destrier, Dextrier.* L. Fr. [L. Lat. *dextrarius.*] In old records. A war-horse. *Spelman.*

DESTRESSE. L. Fr. Distress; process to compel an appearance. *Britt.* c. 26.

Compulsion. *Kelham.*

The district or bailiwick of a sheriff. *Britt.* c. 120. See *District.*

DESTRUCTION. [Lat. *destructio;* L. Fr. *destruction.*] A term used in old English law, generally in connection with *waste*, and having, according to some, the same meaning. 1 *Reeves' Hist. Eng. Law*, 385. 3 *Bl. Com.* 223. See *Waste.* Britton, however, makes a distinction between waste of woods and destruction of houses; (*wast d' boys*, destruccio' *de tenem'tz*). *Britt.* c. 66. *Stat. Marlbr.* c. 17.

DESTRUERE. Lat. In old English law. To destroy. *Nullus liber homo capiatur—aut aliquo modo* destruatur; no freeman shall be taken—or in any manner destroyed. *Magna Charta*, c. 29. Lord Coke construes *destroyed* to mean, forejudged of life or limb, disherited or put to torture or death. 2 *Inst.* 48. Every oppression against law by color of any usurped authority is a kind of destruction. *Id. ibid.*

DESTURBER. L. Fr. To disturb. *Desturbe;* disturbed. *Britt.* c. 32.

DESUETUDE. [from Lat. *desuetudo*, from *desuescere*, to disuse.] Disuse; cessation or discontinuance of use.

DESUS, *Desuz, Desuis, Desuys.* L. Fr. Under; below. *Comprises* desus *le nosme de peison;* comprised under the name of mast. *Britt.* c. 55. See *Desous.*

Upon; above. *Kelham. L. Fr. Dict.*

Before. *Britt.* c. 89.

DESVESTER, *Devester.* L. Fr. To devest; to unclothe. *L. Fr. Dict.* See *Devest.*

DET. L. Fr. Debt; an action of debt. *Dyer*, 26 b, *et passim.* See *Debt.*

DETACHIARE. L. Lat. To seize or take into custody another's goods or person. This word is given by Cowell, but seems a corruption of *attachiare*, (q. v.)

DETAINER. [Lat. *detentio;* L. Fr. *detenue.*] Detainment or detention. The keeping another out of possession of lands or tenements. 3 *Bl. Com.* 179. The withholding possession of another's goods. 3 *Steph. Com.* 524.

In English practice. A process which lies against persons in custody. 1 *Arch. Pr.* 80. *Arch. N. Pract.* 517.

DETENER. L. Fr. To detain. *Detenour;* a detainer; one who detains. *Britt.* c. 27.

DETENTIO. Lat. In old English law. Detention or detainment, as distinguished from, or in connection with *captio*, (taking). *Bract.* fol. 156 b. *Injusta captio et injusta detentio. Fleta*, lib. 1, c. 42, § 1. *Detentor;* a detainor. *Bract. ub. sup.*

In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. 1 *Mackeld. Civ. Law*, 236, § 229. It forms the substance of possession in all its varieties. *Id. ibid.*

DETENUE. L. Fr. Detention. *En la prise et en la* detenue; in the taking and in the detention. *Britt.* c. 27. Hence the name of the action of *detinue*, (q. v.)

DETERMINABLE. That which may cease or determine upon the happening of a certain contingency. 2 *Bl. Com.* 121. See *Determine.*

DETERMINATION. [L. Lat. *determinatio.*] A ceasing, termination, or coming to an *end* (*terminus*).* Distinguished from *expiration*, as depending on contingency. See *Determine.* "Tenant for life, or his representatives shall not be prejudiced by any sudden *determination* of his estate, because such a determination is contingent and uncertain." 2 *Bl. Com.* 122. Applied to estates at will. 2 *Crabb's Real Prop.* 407, *et seq.*

DETERMINE. [L. Lat. *determinare*, from *terminus*, an end or limit.] To cease, terminate, or come to an end, on the happening of a certain contingency.* "There are some estates for life which may *determine* upon future contingencies, before the life for which they are created *expires.* As, if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely *determined* and gone." 2 *Bl. Com.* 121. This illustrates the distinction between *determination* and *expiration.*

To cause to cease or terminate; to put an end to, or bring to an end.* Where a tenant holds his estate at the will of his lessor, the latter may *determine* his will and put him out whenever he pleases. 2 *Bl. Com.* 145. 2 *Crabb's Real Prop.* 407, *et seq.* If a person *determine* his estate by his own act, he shall not have emblements. *Co. Litt.* 55 b.

DETESTARI. Lat. In the civil law. To summon or give notice to one in his absence, (*absenti denuntiare*). *Dig.* 50. 16. 39. 2.

DETESTATIO. Lat. In the civil law. A summoning made, or notice given in the presence of witnesses, (*denuntiatio facta cum testatione*). *Dig.* 50. 16. 40.

DETINET. Lat. (He detains.) In pleading and practice. A term anciently used (as the English equivalent still is,) in declaring in certain actions of debt, as against executors and administrators, &c., and which has given name to the mode of declaring in such cases; the declaration being said to be "in the *detinet.*" *Reg. Orig.* 140. 3 *Bl. Com.* 155. See *Debet et detinet.*

A term applied to the action of replevin where it is founded on the wrongful *detention* of a thing. 2 *Burr. Pr.* 1. 3 *Hill's* (N. Y.) *R.* 282. 4 *Id.* 603. 6 *Id.* 613.

DETINUE. L. Fr. and Eng. [L. Lat. *detentio*, or *breve vel actio de detentione.*] In practice. A species of personal action *ex delicto*, which lies to recover the specific possession of a personal chattel wrongfully *detained* from another, where the original taking was lawful, (as where the possession was acquired by delivery, finding, &c.,) or its value, and damages for its detention. 3 *Bl. Com.* 151. *F. N. B.* 138. *Co. Litt.* 286 b. 1 *Tidd's Pr.* 5. *Browne on Actions*, 358. 3 *Steph. Com.* 461. This was anciently a common remedy for the recovery of charters, deeds, and other title papers; but is now in a great measure superseded in English practice by the action of

trover. *Co. Litt.* 286 b. 3 *Bl. Com.* 152. In some of the United States, it has been abolished, and its place supplied by replevin. 2 *N. Y. Rev. St.* [553,] 456, § 15. 2 *Kent's Com.* 241, note.

DETRACTARE. L. Lat. In old English law. To draw, or drag; to draw along; to draw or drag a convict to the gallows or stake. *Detractentur et suspendentur;* they shall be drawn and hanged. *Fleta*, lib. 1, c. 37, § 4. *Detractari et comburi;* to be drawn and burned. *Id.* § 2.

DETRIE. L. Fr. Tries; tried. *Britt.* c. 90. *Kelham.*

DETT, *Dette*, *Det.* L. Fr. Debt; a debt. *Artic. sup. Chart.* c. 12. *De dette. Britt.* c. 28. *Distreine pur* dette *dont il n'est dettour;* distrained for a debt of which he is not a debtor, [which he does not owe]. *Stat. Westm.* 1, c. 23. *Art. sup. Chart.* c. 3.

An action of debt. 1 *And.* 4.

DETTEE. L. Fr. A creditor. *Dyer*, 83.

DETTOUR. L. Fr. A debtor. *Britt.* c. 28. See *Dett.*

DEUE, *Deve.* L. Fr. Due. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Ch.* Appendix.

DEUNX, (pl. of DEUNCES). Lat. In the Roman law. A division of the *as*, containing eleven *unciæ* or duodecimal parts; the proportion of eleven-twelfths. 2 *Bl. Com.* 462, note. *Tayl. Civ. Law*, 492. See *As.*

DEVADIARI. L. Lat. [from *de*, priv. and *vadiare*, to pledge.] In old English law. To be discharged from giving gage (*vadium*) or pledge. *Bract.* fol. 102. This seems to be the proper meaning; *devadiatus* in Domesday signifying, without sureties or pledges. *Cowell.* Although it is also used in Bracton in the opposite sense,—to be bound by pledges, to have pledges taken. *Bract.* fol. 217.

DEVALER. L. Fr. To go downwards; to bring down. *Kelham.*

DEVANT, *Devaunt*, *Devent.* L. Fr. Before. Devant *le roy en son place;* before the king in his place, (i. e. in his own court). *Reg. Orig.* 17 b, *nota. Devaunt nos justices;* before our justices. *Britt.* c. 45.

DEVANT SES HEURES. L. Fr. Before this time; heretofore. *Yearb.* M. 11 Hen. VI. 28.

DEVASTATION. [Lat. *devastatio*, from *devastare*, to waste.] The waste of the property of a deceased person by his executor or administrator. 2 *Bl. Com.* 508. Sometimes called *devastavit*, (q. v.)

DEVASTAVERUNT. L. Lat. (pl. of *devastavit*, q. v.) They have wasted. A term applied, in old English law, to waste by executors and administrators, and to the process issued against them therefor. *Cowell.* See *Devastavit.*

DEVASTAVIT. [L. Lat. from *devastare*, to waste.] He has wasted. Waste by an executor or administrator; a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the trust reposed in him.* *Shep. Touch.* 485. 2 *Williams on Executors*, 1529. 2 *Greenl. on Evid.* § 347 a.

In practice. A return made by a sheriff, (in addition to the return of *nulla bona*,) to a writ of execution against an executor or administrator, signifying that *he has wasted* the goods of the testator or intestate; upon which the plaintiff may have execution immediately against the defendant personally, by *fieri facias de bonis propriis.* 2 *Tidd's Pr.* 1018, 1025. *Shep. Touch.* 486. 5 *Co.* 32. 3 *Salk.* 125.

An entry or suggestion, on record, of waste by an executor or administrator, made on the part of a plaintiff, as the foundation of a new writ, or of an action of debt.* 2 *Tidd's Pr.* 1113, 1114. 5 *Co.* 32.

DEVENER, *Devenir*, *Deveigner.* L. Fr. To come; to become; to fall to. *L. Fr. Dict. Devenus;* come. *Britt.* c. 21.

DEVENERUNT. L. Lat. [from *devenire*, to come, to come to; or fall to.] In old English practice. A writ directed to the escheator, where any tenant of the king, holding *in capite*, died; and his son and heir being within age, and in the king's custody, died; commanding the escheator that by the oaths of good and lawful men he inquire what lands and tenements, by the death of the tenant *came to* (*devenerunt*) the king. *Termes de la Ley. Cowell. Dyer*, 359 b. *Com.* 616.

DEVENIO. L. Lat. [L. Fr. *deveigne.*] I become. *Devenio vester homo;* (Fr. *jeo deveigne vostre home*,) I become your man. The first words of the ancient form of doing homage. *Bract.* fol. 80. *Fleta*, lib. 3, c. 16, § 20. *Litt.* sect. 85. *Co. Litt.* 64 b. 2 *Bl. Com.* 54.

DEVENIT. L. Lat. Comes or falls. Distinguished from *descendit. Cro. Car.* 427, 430.

DEVER, *Deyver.* L. Fr. To owe; ought. *L. Fr. Dict. Kelham.*

DEVERS, *Dev's.* L. Fr. Against. *Devers le chiefe seigniour. Britt.* c. 74. *Yearb.* T. 3 Edw. III. 9, 23, *et passim.*

Towards. *Devers le fyn;* towards the end. *Kelham.*

DEVEST. [L. Fr. *devester, desvester;* L. Lat. *devestire*, q. v.] In old English law. To take away; to deprive of, as a possession, title, or estate; the opposite of *invest.** *Termes de la Ley. Cowell.* See *Devestire.* Sometimes written *divest;* but *devest* has the support of the best authority. *Co. Litt.* 15 a, b. *Hale's Anal.* sect. xxxii. See *Invest.*

In modern law. To take or draw away. "The whole estate was *devested* and drawn out of the feoffees." 4 *Kent's Com.* 240. "The feoffment made by the feoffees *devested* all the estates." *Id. ibid.*

To strip or deprive. "The statute *devested* the feoffees of all the estate." *Id.* 239. See *Vest.*

DEVESTIRE. L. Lat. [from *de*, priv. and *vestire*, to cloth, from *vestis*, a garment.] In feudal law. To take away an investiture; to deprive of possession of a fee or feud. *Feud. Lib.* 1, tit. 7. *Calvin de Verb. Feud.*

DEVIATION. In marine insurance. A voluntary departure, without necessity, or any reasonable cause, from the regular and usual course of the specific voyage insured. *Park on Ins.* 294, ch. 17. 1 *Marshall on Ins.* 183. *Hughes on Ins.* 139, (Am. ed. 1833). 3 *Kent's Com.* 312.

A deviation is the increasing or varying the risks insured against, without necessity or reasonable cause. 1 *Phillips on Ins.* 480, (ed. 1840). A deviation is not merely going out of the direct or usual course of the voyage, but it comprehends unusual and unnecessary delay, or any other act of the assured, or his agents, which, without necessity or just cause, increases or changes the risks included in the policy. *Id.* 481. Going out of the way or stopping for any other purpose than to save life or to relieve a vessel in distress, is a deviation. 2 *Wash. C. C. R.* 80. 2 *Cranch's R.* 268. 1 *Sumner's R.* 400, 328. 3 *Kent's Com.* 312—318. *Abbott on Ship.* (Perkins' ed.) [361], 441, notes.

DEVIER, *Devyer.* L. Fr. To die. *Devie, devia, devy;* dies. *Litt.* sect. 2, 4. *Deviont;* (they) die. *Id.* sect. 4.

DEVISA, *Divisa.* L. Lat. A devise. See *Devise.*

DEVISABLE. Capable of being devised. 1 *Powell on Dev.* 165. 2 *Bl. Com.* 373.

DEVISARE. L. Lat. In old English law. To devise. *Devisavit;* he devised. See *Devisavit vel non.*

Devisamentum; devisatio; a devise. *Rast. Entr.* 486.

DEVISAVIT VEL NON. L. Lat. (Did he devise or not? Was there, in fact, a will or not? Will or not will? 2 *Rep. in Ch.* 303.) In practice. An issue directed by a court of equity to a court of law, to try the validity of a will, upon some alleged objection of fact; such as fraud, or incapacity on the part of the testator.* 1 *Powell on Dev.* 626, 628, and note. 1 *Story's Eq. Jur.* § 440. 1 *W. Bl.* 95. 1 *Rep. in Ch.* 191. 2 *Id.* 303. 3 *Jones' Law R.* 154.

DEVISE. L. Fr. In old English law. A boundary; a division line, or space separating lands. *De* devises *et de boundes entre veisins;* of divisions and bounds between neighbors. *Britt.* c. 42. *Si* devises *entre veisins soient arres;* if division lines or spaces between neighbors be ploughed up. *Id. ibid.*

A court. *LL. Gul. Conq.* l. 5.

DEVISE. L. Fr. and Eng. [L. Lat. *devisamentum, devisatio, devisa*, or *divisa;* from Fr. *deviser;* Lat. *dividere*, to divide.] A gift or disposition of lands or other real property, by a last will and testament.* 2 *Bl. Com.* 373. 4 *Kent's Com.* 501, and note. 2 *Hilliard's Real Prop.* 474.

A will of lands, or other real estate. 1 *Powell on Dev.* 7—9. 2 *Bl. Com.* 373. 4 *Kent's Com.* 501.

The Latin form of this word (*divisa,*) would seem to show that the original spelling was *divise.* See *Divisa.* The word *devisisset*, however, occurs in Domesday. *Cowell*, voc. *Devisere.* Devise (*divisa,*) is used by Glanville to signify a division or disposition of personal property. *Glanv.* lib. 12, c. 20. *Spelman*, voc. *Divisa.* But it is now exclusively employed to denote a disposition of *real* estate, as distinguished from a *bequest* of personal. 2 *Bl. Com.* 373. 1 *Steph. Com.* 557. A devise is said to be not a conveyance by the common law, but by custom and statute. 3 *Salk.* 127. See *United States Digest*, Devise.

To DEVISE. [L. Fr. *deviser;* L. Lat. *devisare.*] To give or dispose of lands or

hereditaments by will; to make a will of lands.* 1 *Powell on Dev.* c. 2. 2 *Bl. Com.* 373, *et seq.* In old law, to dispose of chattels by will. *Finch's Law*, b. 2, c. 15.

To frame or draw an instrument, as a conveyance or assurance, by counsel. This word is used in *Roswell's case*, (5 *Co.* 19 b,) as *advise* is in *Higginbottom's case*, which follows, (*Id. ibid.*) both being treated in some degree as synonymous. *Cro. Eliz.* 297, 298, S. C. See *Dyer*, 31 b. The phrase, "shall be reasonably devised, advised or required," continues to be used in covenants in deeds for further assurances.

DEVISEE. The person to whom lands or other real property, are devised or given by will. 1 *Powell on Dev.* c. 7.

DEVISER. L. Fr. To devise.

Some make the proper meaning of this word to be, *to speak;* others, *to will. Co. Litt.* 111 a. *Brande.* It is, more correctly, to divide, or distribute, from the Lat. *dividere. Houard's Dict.* cited 4 *Kent's Com.* 501, note.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator. 1 *Powell on Dev.* c. 5. 1 *Steph. Com.* 544.

DEVON'. An abbreviation of *Devonia*, Devonshire. 1 *Instr. Cler.* 28.

DEVORCE, *Devors.* L. Fr. Divorce; a, or the divorce. *Britt.* c. 51, 107.

DEVYER. L. Fr. To die. *Devya;* died. *Yearb.* T. 1 Edw. II. 11.

DEX. Norm. God. *Kelham.*

DEXTANS. Lat. In the Roman law. A division of the *as*, consisting of ten *unciæ;* ten-twelfths, or five-sixths. 2 *Bl. Com.* 462, note (*m*). *Taylor's Civ. Law*, 492.

DEY. L. Fr. Ought. *Dey apper;* ought to appear. *Fet Assaver*, § 30.

DEYNS AGE. L. Fr. Within age. *Dyer*, 55, (Fr. ed.)

DEYVER, *Deiver.* L. Fr. To owe; ought. *Kelham. Deyvent;* ought. *Id.*

DEZ, *Deze.* L. Fr. Ten. *Kelham.*

DEZINER, *Dezyner.* L. Fr. A deciner; one of a decennary. *Chiefe* dezyner *del hundred de F. Yearb.* H. 6 Edw. III. 27. *Les deziners.* P. 7 Edw. III. 15.

DI. ET FI. L. Lat. In old writs. An abbreviation of *dilecto et fideli;* (to his beloved and faithful). *Reg. Orig.* 17, *et passim.*

DIACONUS. Lat. Deacon; a deacon. *Cod.* 1. 3. 6, 20. See Spelman for a full explanation.

ΔΙΑΔΟΧΗ, *Διαδοχή.* Gr. [from *διαδέχομαι*, to succeed.] In the civil law. Succession. *Περί διαδοχῆς τῶν κατιόντων;* concerning the succession of descendants. *Nov.* 118, c. 1.

DIÆTA. Lat. In the civil law. A parlour; an apartment in a house. *Cod.* 4. 65. 3.

DIALOGUS DE SCACCARIO. L. Lat. Dialogue of, or about the Exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. *Crabb's Hist. Eng. Law*, 71. See *Blackst. Law Tr.* 94. Mr. Madox thinks it was composed in the reign of Henry II.

ΔΙΑΘΗΚΗ, *Διαθήκη.* Gr. [from *διατίθημι*, to dispose.] In the civil law. A will or testament. *Dig.* proœm. § 6. *Dig.* 26. 3. *Nov.* 119, c. 9.

ΔΙΑΤΑΞΙΣ, *Διαταξις.* Gr. [from *διατάσσω*, to ordain.] In the civil law. A constitution, or ordinance. *Nov.* 66. The Novels (Novellæ) of Justinian and his successors are designated by this word throughout.

DIATIM. L. Lat. [from *dies*, day.] In old records. Daily, every day; from day to day. *Spelman.*

DIBENDRE. L. Fr. Friday. *Kelham.*

DICA. L. Lat. In old English law. A tally for accounts, by number of cuts, (*taillees,*) marks or notches. *Cowell. Lib. Rub. Scacc.* cited *ibid.* See *Tallia, Tally.*

DICEL. L. Fr. Of this same. *Kelham.*

DICERE. Lat. In old English law. To say, to speak; to deliver or pronounce, as a verdict. Dicere *veritatem*, (*verum;*) to say or speak the truth. *Bract.* fol. 292. *Et cum xxiiii veredictum suum* dixerint; and when the twenty-four shall have pronounced their verdict. *Id. ibid.* See *Dictum.*

DICT. L. Fr. A word. *Kelham.*

DICTIO. L. Lat. [from *dicere*, q. v.] In old English law. A word; an expression. *Si aliqua* dictio *duos contineat intellectus;* if any word contain two meanings. *Bract.* fol. 34. *Fleta*, lib. 5, c. 41, § 4.

DICTUM, (pl. DICTA). L. Lat. [from *dicere*, to say.] A saying or remark; an opinion expressed by a judge in deciding a cause or question, either aside from the point to be decided, and hence said to be extra-judicial, or *obiter*, (by the way); or

given without deliberation, as a hasty opinion at *nisi prius.** Lord Mansfield, in Saunderson *v.* Rowles, observed upon an opinion of Lord Holt, cited on the argument of the cause, "that is an *obiter* saying only, and not a resolution or determination of the court, or a direct, solemn opinion of the great judge from whom it dropped. This *dictum* of Lord Chief Justice Holt's is no formed decisive resolution, no adjudication, no professed deliberate determination." 4 *Burr.* 2064, 2068. These extra-judicial *dicta* are not usually considered as binding upon courts. 2 *Powell on Dev.* (by Jarman,) 200. 2 *Kent's Com.* 177, 335. In some cases, however, they are treated with great consideration. Lord Ellenborough, 10 *East*, 189. See the observations of Lord Brougham on *nisi prius dicta.* 2 *Bell's Appeal Cases*, 21, 22. And see 16 *Howard's R.* 275, 287.

An assertion or statement. *Gratis dictum;* a gratuitous or voluntary representation; one which a party is not bound to make. 2 *Kent's Com.* 486. *Simplex dictum;* a mere assertion; an assertion without proof. *Bract.* fol. 320.

In old practice. The verdict of a jury. Literally, "a saying." Originally entered on record thus—*Dicunt super sacramentum suum;* say upon their oath. *Plac. Cor. Just. Itin.* in Com. Linc. Ann. 56 Hen. III. *Rot.* 29, in dors. *Si juratores in* dicto *suo perseverent;* if the jurors persist in their verdict. *Bract.* fol. 201. *Si velint emendare* dictum *suum;* if they wish to amend their verdict. *Id.* fol. 296. See *Id.* fol. 292. *Fleta*, lib. 5, c. 22, § 10. *Dictum* is one of the component parts of the word verdict, (*veredictum*, q. v.)

DICTUM DE KENILWORTH. L. Lat. The edict or declaration of Kenilworth. An edict or award between king Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth castle in Warwickshire in the 51st year of his reign, A. D. 1266; containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. *Blount.* 2 *Reeves' Hist. Eng. Law*, 62. *Hale's Hist. Com. Law*, 10, and note.

DIEI DICTIO. Lat. In the Roman law. The notice given by a magistrate that he intended to impeach a certain citizen, (whom he mentioned by name,) of a certain crime, before the people, on a certain day. *Hallifax, Anal.* b. 3, ch. 13, num. 40.

DIEM CLAUSIT EXTREMUM. L. Lat. (He closed his last day; he died.) In English practice. A writ founded on the statute of Marlbridge, (c. 16,) anciently issued out of chancery to the escheator of the county, after the death of any of the king's tenants *in capite*, to inquire by a jury of what lands he died seised, and of what value, and who was the next heir to him, and to take the lands into the king's hand. *Reg. Orig.* 291 b. *F. N. B.* 251, K. 2 *Reeves' Hist.* 327. 3 *Id.* 55.

A writ awarded out of the exchequer after the death of a crown debtor. *Termes de la Ley.* This writ is still in use in England, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts and lands he had at the time of his decease, and to take and seize them into the crown's hands. 4 *Steph. Com.* 47, 48.

DIEMANE. L. Fr. Sunday. *Kelham.*

DIES. Lat. In the civil law. Day; a day; the day. *More Romano*, dies *à media nocte incipit, et sequentis noctis media parte finitur; itaque quidquid in his viginti quatuor horis, id est, duabus dimidiatis noctibus et luce mediâ, actum est, perinde est, quasi quavis hora lucis actum esset.* According to the Roman custom, a day begins at midnight, and ends in the middle of the following night; whatever, therefore, is done in these twenty-four hours, that is, in two half-nights and the daylight between, is the same as though it were done at any hour of the daylight. *Dig.* 2. 12. 8.

Day; the day or date of an instrument. *In omnibus obligationibus, in quibus* dies *non ponitur, præsenti* die *debetur.* In all obligations in which a date is not put, the debt or obligation commences on the present day, that is, immediately on execution. *Dig.* 50. 17. 14. *Sine* die *et consule;* without date and consul's name. *Id.* 20. 1. 34. 1.

DIES. Lat. [Fr. *jour.*] In old English law. Day, a day; days. *Clara dies;* day-light. *Bract.* fol. 137 b. *Dies Solis*, (L. Fr. *Dimaigne*,) Sunday; *Dies Lunæ*, (L. Fr. *Dilune*,) Monday; *Dies Martis*, (Fr. *Dimar*,) Tuesday; *Dies Mercurii*, (Fr. *Dimecre*,) Wednesday; *Dies Jovis*, (Fr. *Dijau, Dijou*,) Thursday; *Dies Veneris*, (Fr. *Dibendre*,) Friday; *Dies Sa-*

turni, (Fr. *Dissate*,) Saturday. *Law Lat. Dict. Kelham.*

Provisions or maintenance for a day, (*diei alimonium*). *Spelman. Dies de firma ;* a day of farm or rent; i. e. a day's entertainment as a rent. *Domesday*, cited *ibid.* See *Firma.* The king's rents were anciently reserved in provisions, (*firmes* or *feormes*) ; that is, in so many days' and nights' provisions. *Cowell. Spelman.*

A day of appearance in court, or continuance. *Fleta*, lib. 2, c. 65, § 15. *Co. Litt.* 134 b. See *Day.*

Dies inceptus pro completo habetur. A day begun is considered as completed. *Bell's Dict.* voc. *Computation of time.*

DIES AMORIS. L. Lat. In old English practice. A day of favor or indulgence; supposed to be the same with the *quarto die post*, as granted by the favor of the court. *Co. Litt.* 135 a. *Crabb's Hist. Eng. Law*, 218. It seems, however, to have rather signified any day granted by the court to a party, as a matter of indulgence, or out of the usual course of proceedings, as with a view to an amicable disposition of the suit. *Bract.* fol. 358, 369. *Fleta*, lib. 6, c. 14, § 18. It might be obtained after a default, and if so obtained by a defendant without any mention of the default, it amounted to a waiver of it. *Bract. ub. sup.* 2 *Reeves' Hist.* 60.

DIES A QUO. Lat. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem.* 1 *Mackeld. Civ. Law*, 168, § 172. See *A quo.*

DIES COMMUNES IN BANCO. L. Lat. In English practice. Common days in banc, or bench, (or, in the bench). Stated days of appearance in the courts; called also common return days. *Crabb's Hist.* 217. 2 *Reeves' Hist.* 56, 57. See *Days in bank.* According to Fleta, they were termed common, as being equally common to all suitors, (*pariter omnibus communes*). *Fleta*, lib. 2, c. 35.

The title of the statute 51 Hen. III. regulating the returns of writs and the continuance of proceedings in term. *Crabb's Hist.* 159. 2 *Reeves' Hist. ub. sup.*

DIES DATUS. L. Lat. In practice. A day given. A day or time of respite given by the court to a defendant in an action; an adjournment or continuance. *Bro. Abr.* Continuance. A continuance before the count or declaration. *Hardr.* 365, 366. See *Continuance.*

Dies datus in banco ; a day given in the *bench* (or court of Common Pleas). *Bract.* fol. 257 b, 361. A day given in bank, as distinguished from a day at *nisi prius. Co. Litt.* 135. See *Bank.*

Dies datus partibus ; a day given to the parties to an action; an adjournment or continuance. *Crabb's Hist.* 217.

Dies datus prece partium ; a day given on the prayer of the parties. *Bract.* fol. 358. *Gilb. C. Pleas*, 41. 2 *Reeves' Hist.* 60.

DIES DOMINICUS. Lat. [L. Fr. *diemane, dimaigne, dymain.*] The Lord's day; Sunday. *Cod.* 3. 12. 11. *Const. Leonis Aug.* 54.

Dies dominicus non est juridicus. Sunday is not a court day, or day for judicial proceedings, or legal purposes. *Co. Litt.* 135 a. *Noy's Max.* 2. *Wingate's Max.* 7, max. 5. *Broom's Max.* 19. **The Sabbath-day is no day for law cases.** *Finch's Law*, b. 1, ch. 3, num. 1. See *Cod.* 3. 12. 11. See *Sunday.*

DIES EXCRESCENS. L. Lat. In old English law. The added or increasing day in leap year. *Bract.* fol. 359, 359 b.

DIES FASTI. Lat. In the Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prætor to pronounce (*fari*) the *three* words, DO, DICO, ADDICO. 1 *Mackeld. Civ. Law*, 24, § 35, and note. 3 *Bl. Com.* 424, note. *Calv. Lex. Jur.* Hence called *triverbial* days; answering to the *dies juridici* of the English law.

DIES FERIATI. Lat. In the civil law. Holidays. *Dig.* 2. 12. 2, 9.

DIES GRATIÆ. L. Lat. [L. Fr. *jour de grace.*] In old English practice. A day of grace, courtesy or favor. *Co. Litt.* 134 b. The *quarto die post* was sometimes so called. *Id.* 135 a.

DIES IN BANCO. L. Lat. In practice. A day (or days) in banc; a day in the bench, or court of Common Bench. 3 *Bl. Com.* 277. *Bract.* fol. 361, 362. See *Days in bank.*

DIES INTERCISI. Lat. In the Roman law. Divided days; days on which the courts were open for a part of the day. *Calv. Lex. Jur.* 1 *Mackeld. Civ. Law*, 24, § 35, note.

DIES JURIDICUS, (pl. DIES JURIDICI). Lat. In practice. A court or

juridical day; a day for judicial proceedings or legal purposes. *Clerke's Prax. Cur. Adm.* tit. 1. *Dies juridici* are otherwise termed in the old books, *temps convenables. Britt.* c. 52. *Co. Litt.* 135 a. The term is derived from the civil law. *Omnes dies jubemus esse juridicos. Cod.* 3. 12. 7.

DIES LEGITIMUS. Lat. In the civil and old English law. A lawful or law day; a term day. *Hallifax, Anal.* b. 3, c. 9, § 6. *Bract.* fol. 334 b. A day of appearance. *Id.* fol. 359.

DIES MARCHIÆ. L. Lat. In old English law. A day of the march, or border. A day of meeting of the English and Scotch, anciently appointed to be held annually on the *marches* or borders, to adjust all differences, and to preserve the articles of peace. *Cowell. Tomlins.*

DIES NEFASTI. Lat. In the Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law. 1 *Mackeld. Civ. Law*, 24, § 35, note. See *Dies fasti.*

DIES NON. An abbreviation of *Dies non juridicus*, (q. v.)

DIES NON JURIDICUS. L. Lat. In practice. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays; as Christmas, Good Friday and Easter in England; and the fourth day of July, and (in some places) the first day of January in the United States.* 3 *Chitt. Gen. Pr.* 104, 107. *Wharton's Lex.* voc. *Holiday.*

DIES PACIS. L. Lat. In old English law. Days of peace. According to Sir Henry Spelman, the Saxons and Normans divided the year between God [or the church] and the king; calling those days and parts of the time which were assigned to the former, *dies pacis ecclesiæ*, (days of the peace of the church,) and the residue *dies pacis regis*, (days of the king's peace). *Crabb's Hist. Eng. Law*, 35. *Spelman's Orig. of Terms*, cited *ibid.*

DIES SOLARIS. L. Lat. In old English law. A solar day, as distinguished from what was called *dies lunaris*, (a lunar day); both composing an artificial day. *Bract.* fol. 264. See *Day.*

DIES SOLIS. Lat. In civil and old English law. Sunday, (literally, the day of the sun). So called in *Cod.* 3. 12. 7.

DIES UTILES. Lat. In the Roman law. Available days. *Inst.* 2. 10. 6. Days on which a party having knowledge that an inheritance was open to him, might apply to the judge. *Cooper's trans.* See *Utilis.*

DIET, *Dyet.* In Scotch practice. The sitting of a court. 3 *How. St. Trials*, 654.

An appearance day. *Bell's Dict.*

A day fixed for the trial of a criminal cause. 2 *Alison's Pr.* 343. 2 *Brown's R.* 240.

A criminal cause as prepared for trial. 1 *Brown's R.* 268. 2 *Id.* 141. "Deserting the diet." *Arkley's R.* 481.

DIETA, *Diæta.* L. Lat. [from *dies*, a day.] In old English law. A day's journey, (*iter unius diei*). *Spelman. Bract.* fol. 135 b, 163, 235 b, 359. Treby, C. J. 1 *Ld. Raym.* 432, 433. According to Bracton, (fol. 235 b,) a reasonable *dieta* consisted of twenty miles. Blackstone makes this to be the computation of Sir Matthew Hale, but Hale merely refers to the passage in Bracton, (fol. 235 b,) which Blackstone has not quoted. *Hale on F. N. B.* 184, note. 3 *Bl. Com.* 218. See *Fleta*, lib. 4, c. 28, § 13.

A day's work. *Fleta*, lib. 2, c. 73, § 2. *Cowell.*

A day's expenses. *Fleta*, lib. 2, c. 14, § 2.

DIETÆ COMPUTATÆ. L. Lat. In old practice. Journeys accounts. Literally, days' journeys computed, or reckoned. *Selden's Diss. ad Flet.* c. 8, sect. 1. Talfourd, Serj. arg. 7 *Man. & Gr.* 773, 774, and notes. See *Journeys accounts.*

DIEU SON ACTE. L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. *Termes de la Ley.* See *Act of God.*

DIEZ, *Dies, Dieux.* L. Fr. God. *Kelham.*

DIFALMEMENT. L. Fr. Defamation. *Kelham.*

DIFFACERE, *Disfacere.* L. Lat. [O. Fr. *deffacer.*] In old European law. To disfigure or *deface;* to mutilate; to destroy. *Spelman. LL. Longobard.* lib. 1, tit. 25, l. 68, cited *ibid.*

Diffactio; a mutilating or maiming. *Whishaw.*

DIFFAMATIO. Lat. In old English law. Defamation or slander. *Reg. Orig.* 49. *Artic. Cleri*, c. 1, 4. *Fleta*, lib. 2, c. 60, § 33.

DIFFIDARE, *Diffiduciare.* L. Lat.

[from *dis*, priv. and *fides*, fealty or faith.] In feudal law. To renounce one's fealty or allegiance; the opposite of *affidare*, (q. v.) *Spelman.*

To put out of allegiance; to outlaw. *Quos tanquam inimicos diffidavimus. Cart. Confirm.* 49 Hen. III.

To proclaim hostilities; to declare war, (*faida*); to defy. *Spelman. Calvin de Verb. Feud. Skene de Verb. Sign.* voc. *Affidatio. Grot. de Jur. Bell.* lib. 3, c. 3, § 9.

DIFFIGURARE. L. Lat. In old English law. To disfigure or deform. *Spelman. LL. Longobard.* lib. 1, tit. 25, l. 43, cited *ibid.*

DIFFINDERE. Lat. In the Roman law. To put off or postpone. *Calv. Lex. Jur.*

DIFFORCIARE. L. Lat. In old English law. To deny, or keep from one. *Difforciare rectum;* to deny justice to any one, after having been required to do it. *Matt. Par.* A. D. 1164. Perhaps the same with *Deforciare*, (q. v.)

DIGEST. See *Digests.*

DIGESTA. Lat. [from *digerere*, to divide or arrange.] Digests. One of the titles of the Pandects of Justinian. *Inst.* proœm. § 4. *Dig.* proœm. *Id. De Conf. Dig.* § 1. *Cod.* 1. 17. 1. 12. Bracton uses the singular *Digestum. Bract.* fol. 19.

DIGESTS. [Lat. *Digesta*, q. v.] The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation *Dig.* instead of *Ff.* as formerly. *Inst.* proœm. §§ 2, 4. *Cooper's Notes*, in *loc.* See *Pandects, Ff.* Sometimes called *Digest*, in the singular.

DIGITUS. Lat. In old records. Handwriting. *Spelman.*

DIGNITARY. In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, &c.; but it now includes all the prebendaries and canons of the church. *Brande.* See 3 *Inst.* 155.

DIGNITAS. Lat. In the civil law. Dignity. *Cod.* 12. 1—8.

DIGNITY. [Lat. *dignitas.*] In English law. An honor; a title, station or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 *Bl. Com.* 37. 1 *Id.* 396. 1 *Crabb's Real Prop.* 468, *et seq.*

DIJAU, *Dijou.* L. Fr. Thursday. *Kelham.*

ΔΙΚΑΖΕΙΝ, Δικάζειν. Gr. [from δικη, justice.] In the civil law. To judge. *Nov.* 15, c. 3, § 2. *Nov.* 26, c. 3, § 1.

ΔΙΚΑΣΤΗΡΙΟΝ, Δικαστήριον. Gr. [from δίκη, justice.] In the civil law. A judicial tribunal; a court. *Nov.* 18, c. 10.

ΔΙΚΑΣΤΗΣ, Δικαστης. Gr. [from δίκη, justice.] In the civil law. A judge. *Nov.* 53, c. 4. *Nov.* 82, c. 13.

ΔΙΚΗ, Δίκη. Gr. In Greek and civil law. Right; justice. *Calv. Lex. Jur. Schrev. Lex.*

An action; a cause. *Nov.* 15, c. 3, § 2. *Nov.* 17, c. 3.

Judgment. *Schrev. Lex.*

A penalty or punishment. *Id.*

A forensic pleading, (*libellus forensis*). *Calv. Lex.*

A custom recognized by law. *Schrev. Lex.*

DILAPIDATION. [L. Lat. *dilapidatio*, from *di*, apart, and *lapidare*, from *lapis*, a stone.] Literally, the taking *apart* of the *stones* of a building. The pulling down of a building, or any part of it; the suffering a building, or any part of it, to fall, or be in a state of decay; neglect of necessary repairs of a building.* *Grady on Fixtures*, 269, *et seq.* 5 *Carr. & P.* 239. Used as synonymous with *waste* in buildings, and sometimes extended so as to include waste in lands, woods, &c. *Grady on Fixtures*, 222, 275. See *infra.*

In ecclesiastical law. A kind of ecclesiastical waste, which is either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage, and other buildings thereunto belonging, to decay. 3 *Bl. Com.* 91. 3 *Steph. Com.* 112, 711. Dilapidation is where an incumbent on a church living suffers the parsonage house or outhouses to fall down, or lie in decay for want of necessary reparation; or it is the pulling down or destroying any of the houses or buildings belonging to a spiritual living, or destroying of the woods, trees, &c. appertaining to the same. *Degge's Parson's Counsellor*, b. 1, c. 8.

DILATIO. Lat. [from *differre*, to put off.] In old English law. Delay. *Sine dilatione;* without delay. *Reg. Orig.* 1. **Dilationes in lege sunt odiosæ.** Delays in law are odious. *Branch's Princ.*

In the civil and canon law. Time allowed a plaintiff or defendant to do a judicial act; the putting off, or postponement

of a cause. *Cod.* 3. 11. *Calv. Lex.* 4 *Reeves' Hist. Eng. Law*, 17.

DILATORIUS. Lat. [from *differre*, to put off.] In civil and old English law. That which delays or puts off; dilatory. Anciently applied to a defendant's *exception* or plea by which the action was delayed, (*per quam actio differtur*). *Bract.* fol. 399 b. *Fleta*, lib. 6, c. 36, § 3. *Inst.* 4. 13. 8, 10, 11. See *Dilatory plea, Exceptio.*

DILATORY PLEA. [Lat. *exceptio dilatoria*, q. v.] A plea which tends or is intended to delay or put off an action, by questioning the propriety of the remedy rather than by denying the injury, or right of action.* 3 *Bl. Com.* 391. Anciently termed a *dilatory*. *Hob.* 245.—A plea founded on some matter of fact, not connected with the merits of the case, but such as may exist without impeaching the right of action itself. 3 *Steph. Com.* 576. 1 *Reeves' Hist. Eng. Law*, 451. This class of pleas comprises pleas to the jurisdiction, pleas in suspension, and pleas in abatement. *Steph. Pl.* 46. 3 *Steph. Com.* 576.

DILIGENCE. [Lat. *diligentia*, q. v.] In the law of bailment. Care; carefulness; attention. "There are infinite shades of care or diligence, from the slightest momentary thought, or transient glance of attention, to the most vigilant anxiety and solicitude." *Jones on Bailm.* 5. But only three degrees of diligence are generally recognized, viz.: high, *great* or extraordinary diligence; *common* or ordinary diligence; and low or *slight* diligence. *Story on Bailm.* §§ 11, 16. Common or ordinary diligence is that degree of diligence which men, in general, exert in respect to their own concerns. It may be said to be the common prudence which men of business and heads of families usually exhibit in affairs which are interesting to them. *Id.* § 11. See *Ordinary care, Ordinary diligence, Negligence.*

DILIGENCE. In Scotch law and practice. Process of law, by which persons, lands or effects are seized in execution or in security for debt.* *Ersk. Inst.* b. 2, tit. 11, § 1. *Bell's Dict. Brande.*

Process for enforcing the attendance of witnesses, or the production of writings. *Ersk. Inst.* b. 4, tit. 1, § 71.

DILIGENTIA. In the civil and old English law. Diligence; care; carefulness. The opposite of *culpa*, (q. v.) *Dig.* 18. 1. 68, pr. *Calv. Lex. Brissonius. Fleta*, lib. 2, c. 59, § 4.

DILIGIATUS. L. Lat. [from *di*, away, and *ligius*, or *ligiatus*, under the protection of the law.] In old English law. Cast out of the law's protection, (*ejectus è patrocinio legis*); outlawed; an outlaw. *Spelman. LL. Hen.* I. c. 45, cited *ibid.*

DILLEOQUES, *Dillouques.* L. Fr. Afterwards. *Kelham.*

DIL'O'ES. A contraction of *Dilationes. Fleta*, lib. 5, c. 4, § 9.

DILUCIDUS. Lat. In old English law. Clear; lucid; clear in mind; rational. *Dum* dilucidis *gauderet intervallis*; while he enjoyed lucid intervals. *Bract.* fol. 43. *Fleta*, lib. 3, c. 3, § 10.

DIMAIGNE, *Dimeine, Dimeins, Dimeignt, Dimenche, Dimegne.* L. Fr. Sunday. *Kelham.*

DIMAR. L. Fr. Tuesday. *Kelham.*

DIMECRE. L. Fr. Wednesday. *Kelham.*

DIMIDIA. Lat. In the civil and old English law. Half. *Dimidia pars*; a half part; one-half. *Dig.* 48. 19. 8. *Brissonius.* See 6 *Mod.* 231.

Dimidia marca; half a mark; a demi-mark. *Fleta*, lib. 2, c. 30. *Dimidia villa*; half a vill; a demi-vill. *Id.* lib. 1, c. 18, § 4. *Dimidia acra*; half an acre. *Towns. Pl.* 64.

DIMIDIUM. Lat. In old English law. Half; a half; *Dimidium unius libratæ*; half a pound. *Towns. Pl.* 64. *Dimidium unius* acræ; half an acre. *Id. ibid.*

An undivided half of a thing, as *medietas* was the half part divided. Dodridge, J. *Latch*, 224. But see 6 *Mod.* 231.

DIMIDIETAS. L. Lat. [from *dimidius*, half.] In old English law. One-half; a moiety. *Cowell.* See *Medietas.*

DIMIDIUS, *Dimidia, Dimidium.* Lat. Half; a half; the half. See *Dimidia, Dimidium.*

DIMINUERE. Lat. In old English law. To lessen or diminish; to take away, leave out or omit. *De recordo diminuere*; to take from, or diminish a record. *Bract.* fol. 147.

DIMINUTIO, *Deminutio.* Lat. [from *diminuere*, q. v.] In the civil law. Diminution; a taking away; loss or deprivation. *Diminutio capitis*; loss of *status* or condition. See *Capitis diminutio.*

DIMINUTION. [Lat. *diminutio*, from *diminuere*, q. v.] In practice. Omission; imperfection or deficiency. A term applied to a record, where something is left out of it. See *Diminuere.* In proceedings for the

reversal of a judgment, if the whole record be not certified, or not truly certified by the inferior court, the party suing out the writ of error may *allege diminution*, [i. e. may allege that it is imperfect in certain respects,] and may thereupon have a writ to the court below, to certify the whole record. 2 *Tidd's Pr.* 1167.

DIMISI. L. Lat. [from *dimittere*, to demise.] In old conveyancing. I have demised. Dimisi, *concessi, et ad firmam tradidi;* have demised, granted and to farm let. The usual words of operation in a lease. 2 *Bl. Com.* 317, 318. Sometimes written *demisi*, (q. v.)

DIMISIT. L. Lat. In old conveyancing. (He) has demised. See *Dimisi.*

DIMISSIO. L. Lat. [from *dimittere*, to demise.] In old English law. A demise or lease. So written in Bracton, though the more modern form is *demissio. Bract.* fol. 23 b. See *Demissio.*

DIMISSOR. L. Lat. [from *dimittere*, to demise.] In old English law. A lessor. *Fleta*, lib. 3, c. 12, § 7.

DIMISSORIÆ LITTERÆ. Lat. In the civil law. Letters dimissory or dismissory, commonly called *apostles*, (*quæ vulgo* apostoli *dicuntur*). *Dig.* 50. 16. 106. See *Apostoli, Apostles.*

DIMITTERE. Lat. In the civil law. To send away; to discharge; to dismiss. *Filium de potestate* dimittere; to dismiss a son from one's power or authority; to emancipate. *Inst.* 1. 12. 7, 10. *Uxorem dimittere;* to send away or repudiate a wife. *Calv. Lex. Jur. Dimitti debito;* to be released from a debt. *Id.*

In old English law. To send away; to dismiss; to part with. *Dimittere se;* to dismiss one's self; to withdraw from. *Se* dimittere, *et a possessione recedere;* to dismiss himself and withdraw from the possession. *Bract.* fol. 31 b, 85. *Id.* fol. 49, c. 20, *in tit.* See *Demise of the crown.*

To let go; to release or discharge from custody. *Per ballium dimittere;* to discharge on bail. *Fleta*, lib. 1, c. 26, § 3. *Per plegios dimittere. Id.* lib. 2, c. 52, § 40. *Dimisit per pleviam.* 3 *How. St. Trials*, 121.

To demise. See *Dimisi, Dimissio.*

DINER. L. Fr. A penny. *Kelham.*

DINERO. Span. [from Lat. *denarius.*] In Spanish law. Money. *Dinero contado;* money counted. *White's New Recop.* b. 2, tit. 13, c. 1, § 1.

DIOCESE. [Lat. *diœcesis*, from Gr. διοίκησις, from διοικέω, to govern.] In ecclesiastical law. The see of a suffragan bishop; the circuit or territorial extent of a bishop's jurisdiction. 1 *Bl. Com.* 111. *Co. Litt.* 94. 4 *Reeves' Hist.* 4. *Tomlins.*

A civil division of the Roman empire, embracing several provinces. *Calv. Lex. Jur.*

ΔΙΩΚΩΝ, Διώκων. Gr. [from διώκω, to pursue.] In the civil law. A plaintiff; a pursuing party. *Nov.* 49, c. 3. Scotticé, a pursuer.

DIPLOMA. Græco-Lat. [from Gr. διπλόω, to double or fold double.] In the civil law. A royal charter; letters patent granted by a prince or sovereign. *Calv. Lex. Brissonius.* Sometimes written *duploma.*

An instrument given by colleges and societies on commencement of any degrees. *Wharton's Lex.*

A license granted to a physician, &c. to practice his art or profession. See 25 *Wendell's R.* 469.

DIPLOMACY. Negotiation or intercourse between nations through their representatives. The rules, customs, and privileges of representatives at foreign courts. See *Wheat. Elem. Intern. Law*, 355.

DIPLOMATICS. The science of diplomas, or of ancient writings and documents; the art of judging of ancient charters, public documents, diplomas, &c., and discriminating the true from the false. *Webster. Wharton's Lex.*

DIPTYCHA. Lat. [Gr. δίπτυχα, two-leaved.] Diptychs; tablets of wood, metal or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. *Hubback's Evid. of Succession*, 567. *Encyclop. Amer.* See *Calv. Lex. Brissonius.*

DIRATIONARE, *Derationare, Disrationare.* L. Lat. [from *di*, or *dis*, contrary, and *ratiocinari*, to prove.] In old English law. To deraign; to prove. Dirationabit *jus suum hæres propinquior;* the next heir shall prove his right. *Glanv.* lib. 2, c. 6. *Et parati sunt hoc* dirationare; and this they are ready to deraign or prove. *Id.* lib. 4, c. 6. *Id.* lib. 2, c. 20.

To disprove; to prove the contrary, or refute an adversary's allegation, (*assertio-*

nem contrariam refellere). Spelman considers this to be the proper meaning, though the word seems to occur rarely in this sense. See *Disrationare*, *Deraign*.

To make good a defence; to clear or acquit one's self. See *Barringt. Obs. Stat.* 21, note [*d*].

DIR. L. Fr. Different; diverse. *Dirs enkes*; different inks. *Britt.* c. 48.

DIRECHEF. L. Fr. Again. *Kelham.*

DIRE. L. Fr. [Lat. *dicere.*] To say.

DIRECT. [from Lat. *directus*, straight.] Immediate; by the shortest course; without circuity; operating by an immediate connection or relation, instead of operating through a medium; the opposite of *indirect*. *Direct evidence* is that which immediately applies to, or goes to establish the principal fact to be proved; *indirect* evidence is that which goes to prove the principal fact by establishing other, or subordinate facts, from which the principal fact may be inferred or presumed. See *Circumstantial evidence*.

In the usual or regular course or order, as distinguished from that which diverts, interrupts or opposes; the opposite of *cross* or contrary. *Direct examination* of a witness is thus distinguished from cross examination; as the *actio directa* of the Roman law was from the *actio contraria*, (q. v.)

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of *collateral*, (q. v.) The *direct line* of descent is that composed of persons arranged in the natural or genealogical order of succession, as son, grandson; father, grandfather, &c.; each person being immediately descended from the one above him in the series. See *Linea recta*.

DIRECTUM. Lat. In the civil law. That which is founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

DIRECTUM, *Derictum*, *Drictum*. L. Lat. [O. Fr. *droict.*] In old European law. Right. *Spelman*, voc. *Derittum*. That which is straight, as opposed to crooked, (*tortum*, tort, or wrong). *Id.* See *Tort*.

DIRIBITORES. Lat. In the Roman law. Officers who distributed ballots to the people, to be used in voting. *Taylor's Civ. Law*, 192.

DIS. L. Fr. Ten. *Kelham.*

DISABILITY. [L. Lat. *dishabilitas*, *disabilitas.*] Incapacity to do a legal act, as to enter upon lands, to inherit or convey, to sue or be sued, &c., arising from the peculiar condition of a person, as from infancy, coverture, lunacy, alienage, imprisonment, or absence. *Termes de la Ley. Cowell. Blount. Angell on Limit.* cc. 19, 36. 2 *Hilliard's Real Prop.* 169, *et seq. United States Digest*, Limitations of actions.

DISABLING STATUTES. The English statutes of 1 Eliz. c. 19, 13 Eliz. c. 10, 14 Eliz. cc. 11, 14, 18 Eliz. c. 11, and 43 Eliz. c. 29, (otherwise called the restraining statutes,) by which all colleges, cathedrals, and other ecclesiastical or eleemosynary corporations, are restrained from making any leases of their lands, unless under certain regulations. 2 *Bl. Com.* 319, 321. *Co. Litt.* 44 a. 3 *Steph. Com.* 140.

DISADVOCARE. L. Lat. To disavow. See *Deadvocare*.

DISAFFIRM. To refuse to confirm; to disclaim being bound by a former act; to declare that one will not abide by a former act.

DISAFFOREST. In English law. To discharge from being a forest; to release from the forest laws; to restore land which had been converted into a forest, to its former condition.* *Crabb's Hist.* 153, c. 12. 2 *Bl. Com.* 416. See *De-afforest*.

DISBAR. In English practice. To expel a barrister from the bar. A power vested in the benchers of the four Inns of court, subject to an appeal to the fifteen judges. *Wharton's Lex.*

DISBOCATIO. L. Lat. [from *dis*, priv. and *boscus*, wood.] In old English law. A conversion of wood grounds into arable or pasture; an assarting. *Cowell.* See *Assart*.

DISCARCARE. L. Lat. [from *dis*, priv. and *carcare*, to load or charge.] In old English law. To discharge, to unload; as a vessel. *Carcare et* discarcare; to charge and discharge; to load and unload. *Cowell. Plac. Parl.* 18 *Edw.* I. cited *ibid.* In the Salian law, it is written *discargare*, (q. v.)

Discarcatio; a discharging or unloading of a vessel. *Towns. Pl.* 226.

DISCARGARE. L. Lat. In old European law. To discharge or unload, as a wagon. *Spelman. L. Salic.* tit. 29, § 21, cited *ibid.*

DISCEIT. See *Deceit*.

DISCENT. The old way of writing

descent, after the French. *Litt.* sect. 385. *Co. Litt.* 237. 1 *Salk.* 241.

DISCEPTATIO CAUSÆ. Lat. In Roman law and practice. The argument or disputation of a cause by the advocates on both sides. *Hallifax, Anal.* b. 3, c. 9, num. 39.

DISCHARGE. A setting free; a clearing, acquittance, release or delivery.

The instrument by which a person is discharged from a debt or obligation, or an encumbrance is cancelled; as the *discharge* of an insolvent, the *discharge* of a mortgage, &c. See *Charge.*

In maritime law. The unlading or unlivery of a cargo from a vessel. Story, J. 2 *Sumner's R.* 589, 600.

In equity practice. A statement of disbursements, and an offset of counter claims, brought in and filed on accounting before a master in chancery, and which follows the *charge* in the order of the proceedings, though not properly a defence to it.* *Hoffman's Mast. in Chanc.* 38. See *Charge and discharge.*

To DISCHARGE. [from L. Lat. *discargare.*] To set free or release; as to *discharge* a person from arrest or imprisonment, or from the obligation of his debts.

To dismiss or send away; as to *discharge* a jury from further attendance in court.

To dissolve, cancel or put an end to; as to *discharge* a contract, a mortgage, &c.

To unload; as to *discharge* a vessel; to take out; as to *discharge* a cargo. *Webster.* See *Discharge.*

DISCLAIM. [L. Lat. *disclamare, disadvocare.*] To relinquish a claim; to deny having a claim, as by a disclaimer in equity. See *Disclaimer.*

To deny or disavow another's claim; as in the case of a disclaimer of tenure. See *Id.*

To decline accepting an estate, interest, or office. See *Id.*

DISCLAIMER. [from *dis*, priv. and Fr. *clamer*, to claim; L. Lat. *disclaimium, disclamatio, disadvocatio.*] A denial, disavowal or renunciation of a title or claim; the relinquishment or waiver of an interest or estate.

Disclaimer of tenure in English law, is where a tenant, in an action to recover services, disowns his tenure or *disclaims* to hold of his lord, which occasions a forfeiture of his estate. 2 *Bl. Com.* 275. 3 *Id.* 233. 1 *Steph. Com.* 431. *Termes de la Ley.* 3 *Reeves' Hist.* 457. And in American law, a tenant *disclaiming* his landlord's title, and claiming the fee himself, is considered as a trespasser and may be ejected. 13 *Peters' R.* 1. 14 *Id.* 156.

Disclaimer of an estate is the refusal to accept an estate to which a person is entitled. There can be no disclaimer of an estate by the curtesy. 1 *Hilliard's Real Prop.* 116, and cases cited *ibid.*

Disclaimer in equity is where a defendant, by his answer, renounces all claim to the subject of the demand made by the plaintiff's bill. *Story's Equity Pl.* § 838. A disclaimer is distinct in substance from an answer, though sometimes confounded with it. But it can seldom be put in without an answer. *Id. ibid. Mitford's Chanc. Pl.* 318, (378, Moulton's ed. and notes).

DISCLAMATION. In Scotch law. Disavowal of tenure; denial that one holds lands of another. *Bell's Dict. Skene de Verb. Signif.* See *Disclaimer of tenure.*

DISCOMMON. To deprive commonable lands of their commonable quality, by enclosing and appropriating or improving them. See *Common, Appropriare.*

DISCONTINUANCE. A cessation, intermission, interruption or suspension. *Co. Litt.* 325 a. *Litt.* sect. 592. "An ancient word in the law," and of divers significations. *Id. ibid.*

The omission of a continuance. See *infra.*

DISCONTINUANCE OF AN ESTATE. The termination or suspension of an estate tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 *Bl. Com.* 275. 3 *Id.* 171. An alienation made or suffered by tenant in tail, or by any that is seised in *auter droit*, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. *Co. Litt.* 325 a. Mr. Preston calls it "the cesser of a seisin under an estate, and the acquisition of a seisin under a new, and necessarily a wrongful title." *Preston on Merger*, ch. ii.

Discontinuance is mentioned by Blackstone as a species of ouster of the freehold; and its operation formerly was, to take away entirely the right of entry, and put the issue and those in reversion and remainder, to the necessity of bringing a real action. 3 *Bl. Com.* 167. *Termes de la Ley.* 1 *Steph. Com.* 431, note. But now, by statute 3 & 4 Will. IV. c. 27, s. 39, no discontinuance

shall take away any right of entry. 1 *Steph. Com.* 522, 523. So that the title by discontinuance seems to be abolished, in English, as in American law. 3 *Id.* 485. 2 *Crabb's Real Prop.* 1064, § 2456. 2 *Arch. N. Prius*, 301. 1 *N. Y. Rev. Stat.* [725], 720, § 32.

DISCONTINUANCE. In practice. The termination of an action at law by the voluntary act of the plaintiff, and which is usually effected by entering a common rule for that purpose. 1 *Tidd's Pr.* 679. 2 *Arch. Pr.* 234. This cannot, however, be done without the payment of the defendant's costs, unless by consent or on a settlement, &c. *Id. ibid.* And sometimes, not without leave of the court. *Arch. N. Pract.* 306. A *non pros* (q. v.) is sometimes termed a discontinuance.

The termination of an action, in consequence of the plaintiff's omitting to continue the process or proceedings by proper entries on the record. 3 *Bl. Com.* 296. 1 *Tidd's Pr.* 678. 2 *Arch. Pr.* 223. See *Continuance.* With the disuse or abolition of continuances, this has become obsolete. *Arch. N. Pract.* 305, 306.

DISCONTINUANCE. In pleading. That technical interruption of the proceedings in an action, which follows where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. *Steph. Pl.* 216, 217.

DISCONTINUARE. L. Lat. In old law and practice. To discontinue; to intermit, disuse, interrupt. *Co. Litt.* 325 a.

DISCONTINUOUS (or INTERRUPTED) SERVITUDE. In the civil law. That kind of servitude which needs the act of man to be exercised; such as the right of passage, of drawing water, of pasture, and the like. *Civ. Code of Louis.* art. 723.

DISCONVENABLE. L. Fr. Improper; unfit. *Kelham.*

DISCOOPERTA. L. Lat. In old English law. Uncovered; out of repair, as a church. *Stat. Circumspecte Agatis.* 2 *Inst.* 489. *Fleta*, lib. 2, c. 60, § 28.

Discovert, (q. v.)

DISCOUNT. [Fr. *deconte* or *decompte.*] Literally, a counting back, from or off.

In a general sense. An allowance or deduction made from a gross sum, on any account whatever.

In a more limited and technical sense. The taking of interest in advance. See 6 *Ohio St. R.* 535.

An allowance paid on account of the immediate advance of a sum of money not due till some future period. *McCulloch's Dict.*

DISCOVERT. L. Fr. and Eng. [L. Lat. *discooperta.*] In old English law. Not covert; unmarried; an unmarried woman or widow; one not within the bonds of matrimony. *Cowell. Blount.*

DISCOVERY. In equity. The revealing or disclosing of a matter by a defendant, in his answer to a bill filed for that purpose; the object of a species of bill in equity. See *infra. Hale on Discovery.*

DISCOVERY, BILL OF. In equity pleading. A bill for the discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power; but seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law till the discovery is made. *Story's Eq. Pl.* § 311, 312, and notes. *Mitford's Chanc. Pl.* 53, (63, 64, Moulton's ed. notes). This is the definition of a bill of discovery properly so called, as distinguished from a bill for discovery and relief.

DISCREDIT. In the law of evidence. To deprive of credibility; to destroy or impair credibility. To discredit a witness is to destroy his credibility, or render it doubtful, by showing that his character is such as not to entitle him to be believed.

DISCRETIO. L. Lat. Discretion. **Discretio est discernere per legem quid sit justum.** Discretion is to discern by the law what is just. 4 *Inst.* 41. 6 *Q. B.* 700.

DISCRETION. [L. Lat. *discretio;* Lat. *arbitrium.*] The liberty or power of acting according to one's own ideas of right, without being bound by any fixed rule. The exercise of judgment; the liberty of adapting one's conduct to circumstances.* See *Arbitrium.*

DISCRIES. L. Fr. Proclaimed. *Discries enemies;* notorious enemies. *Kelham.*

DISCUS, *Descus.* L. Lat. In old records. A desk, or leaning shelf. *Cowell.*

DISCUSSION. [Lat. *discussio, excussio.*] In the civil law. The exhausting of a remedy against a principal debtor, before proceeding against the surety.* *Story's Confl. of Laws*, § 322 b. *Burge on Suretyship*, 329, *et seq.* The creditor must first proceed against the principal and *dis-*

cuss him, before resorting to the surety. *Id. ibid.* This privilege of a surety was called, in the Roman law, *beneficium ordinis*, or *excussionis*. The word radically imports a thorough examination or search, as by *shaking apart*, (*discutiendo*,) or shaking out (*excutiendo*).

DISE. L. Fr. The tenth part. *Kelham.*

DISFRANCHISE. To deprive or divest certain places or persons of any privilege, freedom, liberty or franchise. See *Franchise.*

DISGAVEL. In English law. To deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant. 2 *Wooddes. Lect.* 76. 2 *Bl. Com.* 85. *Robinson on Gavelkind*, 97, note. 6 *Mann. & Gr.* 282. See *Gavelkind.*

DISGRADING. In old English law. The depriving of an order or dignity. *Termes de la Ley. Blount.* See *Degradation.*

DISHABILITAS. L. Lat. In old English law. Disability; incapacity. *Towns. Pl.* 32, 64.

DISHERISON, *Disinherison.* L. Fr. and Eng. [L. Lat. *exhæredatio.*] In old English law. Disinheriting; a depriving or putting out of an inheritance. *Stat. of Vouchers*, 20 *Edw.* I. *Stat.* 8 *Ric.* II. c. 4. *F. N. B.* 55, C. 3 *Bl. Com.* 228. *Co. Litt.* 53.

DISHONOR. In mercantile law and usage. To refuse or decline to accept a bill of exchange, or to refuse or neglect to pay a bill or note at maturity. *Smith's Merc. Law*, 138, 146, 153. See 1 *Wisconsin R.* 264, 276. In Sheldon *v.* Braithwaite, (7 *Mees. & W.* 436,) the Court of Exchequer held that the word "dishonored" had a technical signification, and imported that the bill had been presented for payment and had not been paid. And see 14 *Mees. & W.* 7. 10 *Ad. & Ell.* 125.

DISJUNCTA. Lat. [from *disjungere*, to disjoin.] Things (words, phrases) disjoined, disunited or separated. *Sæpe ita comparatum est, ut conjuncta pro* disjunctis *accipiantur, et* disjuncta *pro conjunctis;* it often happens that things (words or phrases) conjoined are to be taken as disjoined, and those disjoined as conjoined. *Dig.* 50. 16. 53. See *Conjuncta, Aut, Or.*

DISJUNCTIM. Lat. In the civil law. Separately; severally. The opposite of *conjunctim*, (q. v.) *Inst.* 2. 20. 8. *Calvin, Lex. Jur. Divisim* (q. v.) was the term used in the common law.

DISLIEE. L. Fr. Not bound; under no obligation. *Kelham.*

DISMARI, (pl. *Dismaries*). L. Fr. Unmarried. *Stat. Westm.* 1, c. 22. *Kelham.*

DISMES. L. Fr. [L. Lat. *decimæ.*] Tithes. See *Tithes.*

Tenths; the tenths of all spiritual livings granted to the crown. *Cowell. Blount.* See *Decimæ, Tenths.*

DISMISS. [from Lat. *dimittere*, from *di*, or *dis*, and *mittere*, to send.] In practice. To send away; to send out of court; to dispose of finally. See 6 *Mod.* 232. A term originally peculiar to chancery practice, but now applied to certain common law proceedings, writs, &c. See 24 *Mississippi R.* 462, where the distinction between "dismiss" and "quash," as applied to writs is shown.

DISORDERLY PERSONS. A species of offenders whose punishment is made the subject of particular statutes by which they are defined. *Stat.* 5 *Geo.* IV. c. 83, amended by 1 & 2 *Vict.* c. 38. 4 *Steph. Com.* 309. 4 *Bl. Com.* 169. 1 *N. Y. Rev. Stat.* [638], 645.

DISPARAGARE. L. Lat. [L. Fr. *disparager, desparager;* from *dis*, priv. and Fr. *parage*, family or parentage, or from Lat. *dispar*, unequal. *Spelman. Co. Litt.* 80 a.] In old English law. To bring together those that are unequal, (*dispares conferre*); to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage, (*impares sanguine et natalitiis connectere*); to disparage. *Spelman. Ita maritentur ne* disparagentur; they shall be so married that they be not disparaged. *Magna Charta*, (*Regis Johan.*) c. 3. 2 *Bl. Com.* 71. *Stat. Merton*, c. 7.

DISPARAGATIO. L. Lat. [L. Fr. *disparagacion;* from *disparagere*, q. v.] In old English law. Disparagement. *Hærcdes maritentur absque* disparagatione; heirs shall be married without disparagement. *Magna Charta*, (9 Hen. III.) c. 6.

DISPARAGATION. L. Fr. Disparagement; the matching an heir, &c. in marriage, under his or her degree or condition, or against the rules of decency. *Kelham.*

DISPARAGE. [L. Lat. *disparagare*, q. v.] To connect unequally; to match unsuitably. "The ward who is ward for

knight's service land, is accounted in law *disparaged*, if he be tendered a marriage of the burgher's parentage." *Bacon's Arg.* Low's case, *Works*, iv. 235. See *Disparagement.*

DISPARAGEMENT. [L. Lat. *disparagatio*, q. v.] An unequal alliance, or unsuitable connection in marriage. An injury done to a ward by marrying him or her to a person of inferior degree, or against decency.* 2 *Bl. Com.* 70. *Co. Litt.* 80. A shame, disgrace or villainy done by the guardian in chivalry to his ward within age in point of his marriage. *Termes de la Ley.*

DISPARAGER. L. Fr. To disparage.

DISPARAGIUM. L. Lat. In old Scotch law. Inequality in blood, honor, dignity or otherwise. *Skene de Verb. Sign.*

Disparata non debent jungi. Things unlike ought not to be joined. *Jenk. Cent.* 24, *marg.*

DISPARK. In English law. To dissolve a park. *Cro. Car.* 59. To convert a park into ordinary ground.

DISPAUPER. In practice. To take away from a person the capacity or privilege of suing *in forma pauperis*, which he has already exercised. 1 *Tidd's Pr.* 98.

DISPENSA. L. Lat. In old English law. A place in a house where things were kept under the key of the housewife; a spence. *Bract.* fol. 151 b.

DISPENSATION. In English law. An exemption from some law; a permission to do something forbidden, or to omit something commanded. *Wharton's Lex. Vaugh.* 330.

DISPIT, *Dispitz.* L. Fr. Contempt. *Kelham.*

DISPONE. In Scotch law. To grant, convey or dispose of. 1 *Kames' Equity*, 254. Closely formed from the Lat. *disponere*, (q. v.) As to the meaning of this term, see 3 *Bell's Appeal Cases*, 100, 120, 125.

Disponer; a grantor. 1 *Kames' Eq.* 256. *Disponee;* a grantee. *Id. ibid.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 1, sect. 1.

DISPONERE. Lat. To dispose of, or convey.

To arrange, or set in order; to direct or regulate. See **Cujus est dare ejus est disponere.**

DISPORT. L. Fr. Diversion; entertainment. *Kelham.*

DISPOSE. [from Lat. *disponere*, q. v.] To part with, as by sale, gift or otherwise. Called a word of large extent. *Freem.* 177.

DISPOSITION. In Scotch law. A deed of alienation by which a right to property is conveyed. *Bell's Dict.*

DISPOSSESSION. A species of injury to real property by the amotion or deprivation of possession; otherwise termed *ouster.* 3 *Bl. Com.* 167. See *Ouster.*

DISPUNI. L. Fr. Dispunishable. *Dyer*, 28, (Fr. ed.)

DISPUNISHABLE. In old English law. Not answerable. *Co. Litt.* 27 b, 53. 1 *Steph. Com.* 245. 2 *Crabb's Real Prop.* 47, § 1000.

Not punishable. "This murder is dispunishable." 1 *Leon.* 270.

DISPUTABLE PRESUMPTION. In the law of evidence. A presumption of law, which may be rebutted or disproved. *Best. on Pres.* § 25. *Burr. Circ. Evid.* 47.

DISPUTATIO FORI. Lat. In the civil law. Discussion or argument before a court. 1 *Mackeld. Civ. Law*, 23, § 34. *Dig.* 1. 2. 2. 5.

DISRATIONARE. L. Lat. [L. Fr. *desreigner.*] In old English law. To prove; to deraign; to establish or make good a claim, charge or accusation. *Bract. ub. infra.* Spelman considers this as merely another form of *dirationare*, (q. v.); and makes its proper signification to be, to disprove or refute, (from *dis*, priv. and *ratiocinari*, to prove). It is, however, never employed in this sense by Bracton, who uses it frequently, but only in the sense first given. *Et quod fecit hoc—offert se* disrationare *versus eum;* and that he did this—he offers himself to deraign (or prove) against him. *Bract.* fol. 138. See *Id.* fol. 101 b, 119, 372 b, 373 b. *Fleta*, lib. 1, c. 31, § 6. *Id.* lib. 1, c. 21, § 2. *Si negaverit, oportet quod appellatus hoc* disrationet *versus eum;* if he deny, the appellee must deraign this against him. *Bract.* fol. 151. *Dat appellatus vadium se defendendi, et appellator vadium* disrationandi; the appellee gives pledge to defend himself, and the appellor pledge to deraign (or prove his charge). *Id.* fol. 137, 144, 153. *Corpus disrationare;* to deraign (or prove) the body; to prove a man to be another's villein. *Id.* fol. 25 b, 191. *Villanus fuit, quia* disrationavit *eum coram justitiariis in villanum suum;* he was a villein, because he proved him before the justices to be his villein. *Id.* fol. 199 b, 306. See *Skene de Verb. Sign.*

Disrationatio is used in the same sense. See *infra.*

DISRATIONATIO. L. Lat. In old English law. Deraignment or proof; the making good a claim or charge. *Et quod ita fui inde dotata et seysita, habeo sufficientem* disrationationem *et probationem;* and that I was so endowed and seised thereof, I have sufficient deraignment and proof. *Bract.* fol. 313 b, 297. See *Fleta*, lib. 5, c. 39, § 5; c. 40, § 3.

DISSAISARE, *Dissaisire.* L. Lat. In old English law. To disseise, or put out of seisin. *Spelman.* The more usual forms are *disseysire* and *disseisire.* See *Disseise.*

DISSASINA. L. Lat. In old Scotch law. Disseisin; dispossession. *Skene de Verb. Sign.*

DISSATE. L. Fr. Saturday. *Kelham.*

DISSEISE. [L. Lat. *disseisire, disseysire, dissaisire, disseisiare;* L. Fr. *disseisir.*] To deprive of seisin; to turn or put out of possession wrongfully; to oust or dispossess of a freehold, (*verum dominum è prædiis ejicere eademque per injuriam possidere*). *Spelman.* See *Disseisin.*

DISSEISEE. [L. Fr. *disseisi, disseise;* L. Lat. *disseysitus.*] The party who is disseised, or put out of possession or seisin of the freehold. *Litt.* sect. 472. *Termes de la Ley.*

DISSEISIARE. L. Lat. To disseise. *Magna Charta*, c. 27.

DISSEISIN, *Disseizin.* [L. Fr. *disseisine, dissaisin;* L. Lat. *disseisina, disseysina, dissaisina, dissasina.*] Deprivation or putting out of seisin; a wrongful putting out of him that is actually seised of the freehold. *Co. Litt.* 277 a. 3 *Bl. Com.* 169. A species of injury by ouster or dispossession. *Id. ibid.* 3 *Steph. Com.* 483. *Litt.* sect. 279. *Roscoe's Real Act.* 61. See *Seisin.*

Disseisin was originally an actual dispossession, but afterwards many acts were held to amount to disseisin, if the injured party chose to consider them as such; and this was called *disseisin by election.* 2 *Crabb's Real Prop.* 1063, 1064, § 2455. 4 *Kent's Com.* 482—490. 1 *Burr.* 60, 107, 108. See *Disseisina.*

DISSEISINA, *Disseysina.* L. Lat. In old English law. Disseisin. *Fleta*, lib. 4, c. 1. *Bract.* fol. 159 b, *et seq. Disseisinam satis facit qui uti non permittit possessorem, vel minus commode, licet omnino non expellat;* he effectually commits a disseisin who does not permit the possessor [of land] to enjoy it, or makes the enjoyment of it inconvenient, though he does not wholly (or absolutely) expel him. *Co. Litt.* 331. *Bract.* lib. 4, tr. 2.

DISSEISIRE, *Disseysire.* L. Lat. In old English law. To disseise. *Fleta*, lib. 4, c. 7, § 2, *et passim. Disseysire* is uniformly used by Bracton. *Bract.* fol. 26, *et passim. Fleta*, lib. 4, c. 7, § 2.

Disseisitor, disseysitor. A disseisor. *Fleta*, lib. 4, c. 4, § 6. *Bract.* fol. 176, *et passim.*

Disseisitus, disseysitus. A disseisee. *Bract.* fol. 176, *et passim.*

DISSEISITRIX. A female disseisor; a disseisoress, (q. v.) *Fleta*, lib. 4, c. 12, § 4.

DISSEISOR. [L. F. *disseisour;* L. Lat. *disseysitor.*] He who disseises; he who puts another out of possession or seisin of the freehold.* *Litt.* sect. 279. He who puts a man out of his land, without order of law. *Termes de la Ley.*

DISSEISORESS. [L. Lat. *disseisitrix.*] A woman that disseises another person. *Litt.* sect. 678. *Co. Litt.* 357 b.

DISSIGNARE. L. Lat. In old law. To break open a seal. *Whishaw.*

DISSIMULATIO. Lat. A passing over. **Dissimulatione tollitur injuria.** An injury is extinguished by the forgiveness or reconcilement of the party injured. *Ersk. Inst.* b. 4, tit. 4, § 108.

DISSOLUTION. [Lat. *dissolutio*, from *dissolvere*, q. v.] A putting an end to, as by unloosing some legal bond, or setting parties free from its effect.

DISSOLVERE. Lat. [from *di* or *dis*, and *solvere*, to loose, to free.] To dissolve, as a contract or connection; to unloose a legal bond or tie; to set free from obligation. **Eodem modo quo oritur, eodem modo dissolvitur.** By the same means by which a thing originates, by the same means is it dissolved. It is dissolved in the same mode in which it was created. *Story on Partn.* §§ 117, 268. Ordinarily, the dissolution of a contract is required by the common law to be by an instrument of the same dignity and solemnity as that by which it is created. *Id. ibid.*

DIST. L. Fr. [from *dire*, to say.] Spoken. *Britt.* c. 42.

Speech or report. *Kelham.*

DISTINCTE ET APERTE. L. Lat. In old English practice. Distinctly and openly. Formal words in writs of error, referring to the return required to be made to them. *Reg. Orig.* 17.

DISTINGUERE. Lat. To distinguish; to make a distinction.

Distinguenda sunt tempora; distingue tempora et concordabis leges. Times are to be distinguished; distinguish times and you will harmonize laws. 1 *Co.* 24. A maxim applied to the construction of statutes.

Distinguenda sunt tempora; aliud est facere, aliud perficere. Times must be distinguished; it is one thing to do, another to perfect. 3 *Leon.* 243. *Branch's Princ.*

DISTRACTIO. Lat. [from *distrahere*, q. v.] In the civil law. The sale of a pledge by a creditor. *Inst.* 2. 8. 1. See *Distrahere.*

DISTRAHERE. Lat. [from *dis*, apart, and *trahere*, to draw.] In the civil law. To sell, particularly at auction. *Calv. Lex. Jur. Distrahere pignus;* to sell a pledge in payment of a debt. *Id. Heinecc. El. Jur. Civ.* lib. 2, tit. 8, § 467. 1 *Mackeld. Civ. Law*, 384, § 349.

To draw apart, or separate; to dissolve, as an obligation or contract. *Calv. Lex.*

In feudal law. To sell or alienate. *Feud. Lib.* 2, tit. 52.

DISTRAIN, *Distrein.* [from L. Fr. *distreindre, destreyndre;* L. Lat. *distringere*, to bind or coerce.] To take and keep the property of another as a pledge, (*ceu pignus et vadem,*) in order to compel the performance of some duty; such as the payment of rent, the performance of services, an appearance in court, &c. *Spelman.* 3 *Bl. Com.* 231.

DISTRAINOR, *Distreinor.* The party distraining goods or chattels.

DISTREINDRE. L. Fr. To distrain. *Britt.* c. 26. *Distreint;* distrained. *Id. ibid.* The more usual form is *destreindre* or *destreyndre. Id. per tot.*

DISTRESS. [from L. Fr. *destresse;* L. Lat. *districtio*, q. v.] The taking a personal chattel out of the possession of a wrong-doer into the custody of the party injured, to procure a satisfaction for a wrong committed; as for non-payment of rent, or injury done by cattle. 3 *Bl. Com.* 6, 7. *Co. Litt.* 47. The taking of beasts, or other personal property, by way of pledge, to enforce the performance of something due from the party distrained upon. 3 *Bl. Com.* 231. The taking of a defendant's goods, in order to compel an appearance in court. *Id.* 280. 3 *Steph. Com.* 361, 363. *Gilbert on Rents*, 3, 92. 1 *Crabb's Real Prop.* 224. 3 *Kent's Com.* 461.

The thing or chattel itself, so taken or distrained. *Spelman*, vocc. *Distringere, Districtus. Termes de la Ley.* See *Distringas.*

DISTRESS INFINITE. In English practice. A distress which has no bounds with regard to its quantity, and may be repeated from time to time until the stubbornness of the party is conquered. 3 *Bl. Com.* 231, 280, 281. *Termes de la Ley.* 3 *Steph. Com.* 509. *Fleta*, lib. 2, c. 62, § 4.

DISTRIBUTION. [Lat. *distributio*, from *distribuere*, to distribute.] A dealing or division among several; a dealing in portions or shares; the giving to each of several his or her share.* Commonly used to express the division of the personal effects of an intestate among his widow and children, or next of kin. See *Distributions, Statute of.*

DISTRIBUTIONS, *Statute of.* The title of the English statute of 22 & 23 Charles II. c. 10, containing provisions for the distribution of the personal estate of an intestate among the widow and children, or next of kin. 2 *Kent's Com.* 420, 427. Statutes of a similar kind in the United States are generally termed *statutes of distribution.*

DISTRICT. [L. Lat. *districtus, districtio*, from *distringere*, to distrain; L. Fr. *destresse*, from *destreindre*, to distrain.] In old law. A circuit or territory within which the power of *distraining*, or other coercive authority, might be exercised. See *Districtio, Districtus.*

In modern law. A portion of territory, (as of a state, county, city or town,) defined by law, within which a certain jurisdiction or authority may be exercised; a civil division of a state or country for judicial or other purposes; any limited extent of territory.

By successive extensions of meaning, this word has gradually lost its original and peculiar signification, and is now constantly used in ordinary language, to denote *any* extent of territory for *any* purpose. Its original import is sufficiently pointed out by its etymology; in further illustration of which it may be observed, that the terms *district* and *distress* appear to have been at one time used in English law, to denote the same thing; the former being formed from the Latin, (*districtus,*) the latter from the French (*destresse*) form of the word. Thus, it is said in Britton, "if

the vouchee be not within the *distress* [bailiwick] of the sheriff, &c., (*si celuy garaunt ne soit en la* destresse *le visconte*, &c.) *Britt.* c. 120.

DISTRICT COURTS. In American law. Courts held in each of the thirty-five districts into which the United States are divided, consisting of a single judge, and which act both as courts of common law and also as courts of admiralty. 1 *Kent's Com.* 303—305, 353.

DISTRICTIO. L. Lat. [from *distringere*, to bind, coerce, or distrain; L. Fr. *destresse.*] In old English law. A distress, distraint or distraining. Districtio—*modum non excedat;* distress shall not exceed measure, (shall not be excessive). *Bract.* fol. 203 b. *Si fiat* districtio *ubi nulla causa est distringendi;* if a distress be made where there is no cause for distraining. *Id.* fol. 217. See *Id.* fol. 440 b. *Stat. Marlb.* c. 4. *Magna districtio;* the grand distress. *Fleta*, lib. 2, c. 65, § 8. Said by Lord Coke to mean a strait, (*angustiæ*), because the cattle distrained are put into a strait or pound. *Co. Litt.* 96 a. But see *Distringere.*

The right of distress. *Districtio semper sequitur fidelitatem;* distress always follows fealty. *Fleta*, lib. 3, c. 11, § 1. See *Id.* c. 16, § 37.

A thing, chattel or animal distrained. *Nullus de cætero faciat ducere* districtiones *quas fecerit extra comitatum in quo captæ fuerint;* no persons henceforth shall cause the distresses which he has made, to be led out of the county in which they were taken. *Stat. Marlbr.* c. 4. *Id.* c. 1. *Fleta*, lib. 2, c. 62, § 4. *Spelman*, voc. *Distringere.*

A circuit or territory within which the power of distraining might be exercised. *Qui terras—infra* districtionem *vestram non habent, per quæ—distringi possunt;* who have not lands within your district by which they can be distrained. *Reg. Orig.* 6 b. *Districtus* (q. v.) was used in the same sense.

Any compulsory proceeding. *In omni actione, ubi duæ concurrunt districtiones, videlicet in rem et in personam, illa* districtio *tenenda est quæ magis timetur et magis ligat.* In every action, where there are two concurrent distresses, [modes of compulsory proceeding,] namely, against the property and against the person, that distress [proceeding] is to be adopted which is the more feared, and is the more stringent [binds harder]. *Bract.* fol. 372. See *Fleta*, lib. 6, c. 14, § 28.

DISTRICTUS. L. Lat. [from *distringere*, to bind; L. Fr. *destresse.*] In old English law. A distress; a distraint; a district. The place or locality within which the power of distraining might be exercised; (*quicquid loci in quo* distringendi *potestatem quis habet*). *Spelman.* Hence the English *district*, (q. v.) The phrase, "out of his fee," (Fr. *hors de son fee,*) was otherwise expressed, "out of his district," (*extra* districtum *suum*). *Spelman.*

A person distrained on. *Fleta*, lib. 2, c. 49, § 16.

In feudal law. The power of coercion or distress; the jurisdiction of a magistrate or feudal lord. *Feud. Lib.* 1, tit. 5, § 7.

A place or territory within which such power or jurisdiction might be exercised. *Calv. Lex. Jurid. Id. de Verb. Feudal.*

DISTRINGAS. L. Lat. (You distrain.) In English practice. A writ directed to the sheriff of the county in which a defendant resides, or has any goods or chattels, commanding him to *distrain* (*Præcipimus tibi quod* distringas—, We command you that you distrain;) upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. 3 *Steph. Com.* 567. This writ issues in cases where it is found impracticable to get at the defendant personally, so as to serve a summons upon him. *Id.*

A *distringas* is also used in equity, as the first process to compel the appearance of a corporation aggregate. *Stat.* 11 *Geo.* IV. and 1 *Will.* IV. c. 36. *Wharton's Lex.*

DISTRINGAS JURATORES. L. Lat. (You distrain the jurors.) In English practice. A process for enforcing the attendance of jurors, which is supposed to be issued after the *venire* to summon them, but in practice is issued at the same time, founded on a supposed and fictitious neglect of the jurors to attend upon the *venire.* It commands the sheriff to distrain them by their goods, so that he may have them before the court in banc on an ulterior day, to try the cause, or (alternatively,) before the court at *nisi prius*, if the judge of *nisi prius* shall first come, on some intervening day specified, into the county where the venue is laid.* 3 *Steph. Com.* 590, 591.

DISTRINGAS NUPER VICE COMITEM. L. Lat. (You distrain the late sheriff.) In practice. A writ issued against a sheriff who had gone out of office before complying with a rule to bring in the body of a defendant, directed to his successor,

commanding him to *distrain the late sheriff* by all his lands, &c., so that he might have the defendant's body in court, to answer the plaintiff. 1 *Tidd's Pract.* 313. It is now obsolete. *Id.* note.

A writ to distrain a sheriff out of office, in order to compel him to sell goods seized under a *fieri facias*. *Archb. N. Prac.* 373.

DISTRINGERE. Lat. In feudal and old English law. To distrain; to coerce or compel; literally, to bind fast or strain hard.* *Spelman. Calv. Lex. Jurid. Nec villa nec homo* distringatur *facere pontes;* nor shall a vill nor a man be distrained to make bridges. *Mag. Cart.* 9 *Hen.* III. c. 15. *Id. Johan.* c. 23. *Constringere* is used in this sense in old writs. *Spelman.*

DISTURBANCE. [L. Lat. *disturbantia, disturbatio.*] A wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. 3 *Bl. Com.* 236. 2 *Crabb's Real Prop.* 1074, § 2472.—The hindering of that which in right belongeth unto one to do. *Finch's Law*, b. 3, ch. 2, p. 187.—The wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. 3 *Steph. Com.* 510.

DISTURBANCE OF FRANCHISE. The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished.* 3 *Bl. Com.* 236. 3 *Steph. Com.* 510. 2 *Crabb's Real Prop.* 1074, § 2472 a. See *Franchise.* As to disturbance of office, see 1 *Crabb's R. P.* 466, § 595.

DISTURBANCE OF COMMON. The doing any act by which the right of another to his common is incommoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commonable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it.* 2 *Bl. Com.* 237—241. 3 *Steph. Com.* 511, 512. 1 *Crabb's Real Prop.* 312, § 348. See *Common.*

DISTURBANCE OF WAYS. The obstructing a person's right of way over another's grounds by enclosures, or other obstacles, or by ploughing across it, by which means he cannot enjoy his right of way, or at least not in so commodious a manner as he is entitled to do.* 3 *Bl. Com.* 241. 3 *Steph. Com.* 513. 1 *Crabb's Real Prop.* 347, § 393. See *Way.* As to disturbance of the right to water, see 1 *Crabb's R. P.* 372, § 427; of the right to light and air, *Id.* 395, § 462.

DISTURBANCE OF TENURE. The compelling or inducing a tenant at will to leave his tenancy.* 3 *Bl. Com.* 242. 3 *Steph. Com.* 513, 514.

DISTURBANCE OF PATRONAGE. The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 *Bl. Com.* 242. 3 *Steph. Com.* 514. 2 *Crabb's Real Prop.* 1075, § 2472 d. See *Advowson.*

DIT. L. Fr. [from *dire*, to say or speak.] Said. See *Il est dit.*

A word; a decree. *Kelham.*

DITES OUSTER. L. Fr. Say over. The form of awarding a *respondeas ouster*, in the Year Books. M. 5 Edw. III. 49.

DITTAY. In Scotch law. A criminal information or accusation. 2 *Forbes' Inst.* 242, 362. *Skene de Verb. Signif.* voc. *Iter.* "Accusit be dittay openly read in judgment." 1 *How. St. Trials*, 926. Articles or points of dittay were the same as indictment. 2 *Forbes' Inst. ub. sup.* 1 *Pitc. Crim. Trials*, part 1, p. 65. See the form in 3 *How. St. Trials*, 436.

DIUTURNITAS. Lat. In old practice. Length of time. *Fleta*, lib. 4, c. 18, § 1.

DIVERSION. [Lat. *diversio*, from *divertere.*] A turning aside. See *Divert.*

DIVERSIS VICIBUS. L. Lat. At different times. *Reg. Orig.* 272. *Hob.* 189 a. *Diversis diebus et vicibus;* at different days and times. 13 *East*, 407.

DIVERSITAS. Lat. [L. Fr. *diversite.*] In old English law. Diversity; difference; unlikeness. *Si in scriptura inveniatur* diversitas *calami, et* diversitas *scribendi, et diversa manus;* if in the writing [or instrument] there be found a difference of pen, and a difference of writing, and a different hand. *Bract.* fol. 398 b. *Item* diversitas *incausti;* also a difference of ink. *Id. ibid. Diversitas calami, vel atramenti, vel manûs. Fleta*, lib. 6, c. 34, § 5. *Diversite de mayn ou de enke, en lescripture. Britt.* c. 28.

DIVERSITE DES COURTS. A treatise on courts and their jurisdiction, written in French in the reign of Edward III. as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. *Crabb's Hist.* 330, 483. 3 *Bl. Com.* 53. 3 *Reeves' Hist.* 152. 4 *Id.* 420. 3 *Steph. Com.* 414.

DIVERSO INTUITU. Lat. With a

different view, purpose or design; in a different view or point of view; by a different course or process. 1 *W. Bl.* 89. *Cas. temp. Hardw.* 132. 9 *East*, 311. 4 *Kent's Com.* 211, note. 1 *Peters' R.* 500. 2 *Gallison's R.* 318. *Story on Bailm.* § 57. See *Alio intuitu.*

DIVERSORIUM. Lat. [from *divertere*, to turn aside.] In old English law. A lodging or inn. *Towns. Pl.* 38.

DIVERT. [from Lat. *divertere*, q. v.] To turn aside; to turn out of the way; to alter the course of things. Usually applied to water-courses. *Angell on Water-Courses*, § 97, *et seq.* Sometimes to roads. 8 *East*, 394.

DIVERTERE. Lat. In the Roman law. To turn aside; to go away from; to leave. A woman was said *divertere*, who left her husband. *Dig.* 5. 1. 42. *Id.* 9. 2. 27. 30. From *divortere*, an old form of this word, was derived *divortium*, (q. v.)

DIVIDENDA. L. Lat. [from *dividere*, to divide.] In old English law. A thing to be divided. An indenture is so called in old statutes. *Claus.* 6 *Edw.* II. *in dors.* m. 24. *Stat. de Escætoribus*, 29 *Edw.* I. *Cowell.* Because it was to be divided, or cut in two. See *Indenture.*

A part of an indenture. *Stat.* 10 *Edw.* I. c. 11. *Stat.* 28 *Edw.* I. st. 3, c. 2. *Termes de la Ley.*

DIVINARE. Lat. To divine; to conjecture or guess; to foretell. *Divinatio;* a conjecturing or guessing.

Nemo tenetur divinare. No man is bound to divine; that is, to have foreknowledge of a future event. 10 *Co.* 55. No man is bound to guess at the intention of the parties to an instrument.

Divinatio, non interpretatio est, quæ omnino recedit a litera. That is guessing, not interpretation, which altogether departs from the letter. *Bacon's Max.* 18, (in reg. 3,) citing *Yearb.* 3 Hen. VI. 20.

DIVISA, *Devisa.* L. Lat. [from Fr. *diviser*, to divide.] In old English law. A division or partition. A division or distribution of goods by will; a will or testament of goods or chattels. *Spelman. Cowell. Glanv.* lib. 12, c. 20. *Id.* lib. 7, c. 5. Hence the modern *devise*, now confined to mean a will of *lands* or disposition of real estate by will. See *Devise.*

A division or boundary between neighboring or adjoining lands, (L. Fr. *devise*, q. v.) such as a highway; a wall, ditch or stream; a stake or stone. *Bract.* fol. 180 b. As to streams, see *Fleta*, lib. 4, c. 6, § 3. It might also be composed of the land itself, (*fit divisa de consensu vicinorum*, ex eorum terra,) in which case it was common to both proprietors, (*et est talis* divisa *communis inter eos*). *Bract. ub. sup. Id.* fol. 167. The use of strips of unploughed land, as boundaries in open or common fields, still prevails in England. *Stat.* 6 & 7 *Will.* IV. c. 115. *Dicitur* divisa *eo quod* dividit *agros et tenementa;* it is called *divisa* because it *divides* lands and tenements. *Bract.* fol. 180 b. See *Fleta*, lib. 4, c. 6, § 3. The word was more commonly used in the plural, (*divisæ*, or *devisæ*,) and very frequently in connection with the terms *metæ*, (metes,) and *bundæ*, (bounds,) though not very clearly distinguished from either. *Per metas et divisas. Reg. Orig.* 157 b. *Super bundis et divisis. Id.* 263 b. *Metæ, bundæ et divisæ. Reg. Jud.* 84 b. *Bundæ, et metæ et rationabiles* divisæ, *quæ ponuntur in terminis agrorum, ad distinguendum prædia et dominia vicinorum;* bounds and metes and reasonable divisions, which are placed in the limits of fields to distinguish the lands and properties of neighbors. *Bract.* fol. 166 b. See *Fleta*, lib. 5, c. 41.

A sentence or decree. *Cowell. LL. Hen.* I. c. 9, cited *ibid.*

DIVISÉ. L. Lat. Separately. Lord Ellenborough, 15 *East*, 559.

DIVISIM. L. Lat. In old English law. Severally; separately. *Bract.* fol. 47.

DIVISUM IMPERIUM. Lat. A divided empire or jurisdiction; a jurisdiction shared between two tribunals, or exercised by them alternately.* This classic phrase is frequently applied in the books, to the jurisdiction alternately exercised by the courts of common law and admiralty, between high and low water mark, where the sea ebbs and flows; the one having jurisdiction upon the water when it is full sea, and the other upon the land when it is an ebb. *Finch's Law*, b. 2, ch. 1, p. 78. 5 *Co.* 107. 1 *Bl. Com.* 110. *Molloy de Jur. Mar.* 231. 1 *Kent's Com.* 366. It is applied also to the jurisdiction exercised by courts of common law and equity, over the same subject. 4 *Steph. Com.* 9.

DIVORCE. [Lat. *divortium*, from *divertere*, (anc. *divortere*,) to turn away, to separate; L. Fr. *devorce*, *devors.*] The separation of husband and wife by the sentence of the law.* *Shelford, Mar. & Div.* 363.—The lawful separation of husband

and wife, made before a competent judge, on due cognizance had of the cause, and sufficient proof made thereof. *Ayliffe's Parergon*, 225. See *Godolph. Abr.* 493. —The dissolution of the marriage contract by law, either totally, (*à vinculo matrimonii*,) or partially, (*à mensa et thoro*).* 1 *Bl. Com.* 440, 441. 2 *Steph. Com.* 310, 311. 2 *Kent's Com.* 95, *et seq.* See *infra.*

The word *divorce* appears to be framed partly from the original Latin *divortium*, and partly from the old French form *devorce* or *devors*. *Divorce* is used by Littleton. According to Lord Coke, it is so called from *divertendo*, (turning away,) because a man is thus *turned away* from his wife; (divortium *dicitur à* divertendo, *vel* divortendo, *quia vir* divertitur *ab uxore*). *Co. Litt.* 235. The derivation given in the civil law illustrates the facility with which the Roman divorces were allowed. Divortium *vel à* diversitate mentium *dictum est*, *vel quia* in diversas partes *eunt qui distrahunt matrimonium ;* divorce is so called either from *diversity* of minds, or because they who break off marriage go *different* ways. *Dig.* 24. 2. 2. It is worthy of remark that, of the two great writers on the ancient law of England, Britton defines divorce to be nothing more than a separation of the bed; (devorce *nest autre chose que* severaunce de lyt *parentre espous et espouse*,) while Bracton makes a clear distinction between the two. *Britt.* c. 107. *Bract.* fol. 92 b. See *Divortium.*

DIVORCE A VINCULO MATRIMONII. A divorce from the bond of marriage. A total divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations. 1 *Bl. Com.* 440. 2 *Steph. Com.* 310, 311. *Shelford, Mar. & Div.* 363, *et seq.* 2 *Kent's Com.* 95.

DIVORCE A MENSA ET THORO. A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. 1 *Bl. Com.* 440. 3 *Id.* 94. 2 *Steph. Com.* 311. *Shelf. Mar. & Div.* 363, 364. 2 *Kent's Com.* 125. Called by Bracton *separatio thori. Bract.* fol. 92 b. By the recent statute 20 & 21 Vict. c. 85, § 7, no divorce can in future be granted *à mensa et thoro*, but a decree of judicial separation is to be pronounced, having the like effect.

DIVORTIUM. Lat. [from O. Lat. *divortere*, to turn aside.] In the civil and old English law. Divorce; a separation of husband and wife; a going different ways, (*in diversas partes*). *Dig.* 24. 2. Distinguished from *repudium*, (q. v.) *Id.* 50. 16. 191. *Tayl. Civ. Law*, 349. See *Divorce. Divortium sine causa*, or *sine ulla querela ;* a divorce without cause, or without any complaint. 2 *Kent's Com.* 102.

Bracton appears to use *divortium* only to denote a separation *à vinculo*, or total divorce, as distinguished from a *separatio thori. Bract.* fol. 92 b.

DIXIEME. Fr. Tenth; the tenth part. *Ord. Mar.* liv. 1, tit. 1, art. 9.

In old French law. An income tax payable to the crown. *Steph. Lect.* 359.

To DO. This word was sometimes used in old law, in the sense of *to make ;* both being translations of the Lat. *facere*, (q. v.) Thus, "to *do* law" and "to *make* law," signified the same thing. See *To make.* So the expression "we *do* you to wit," occurs as the translation of *scire facimus*, (we make you to know, or give you to understand).

DO. Lat. I give. The ancient and aptest word of feoffment and of gift. 2 *Bl. Com.* 310, 316. *Co. Litt.* 9. Used by Bracton in all his examples and illustrations of conveyances. *Bract.* fol. 17, *et passim.* See *Fleta*, lib. 3, c. 9. Probably the most ancient term of conveyance.

DO, LEGO. Lat. I give, I bequeath; or, I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. *Titio et Seio hominem Stichum* do, lego; I give and bequeath to Titius and Seius, my man Stichus. *Inst.* 2. 20. 8, 30, 31. The expression is literally retained in modern wills. According to Calvin, who quotes Spiegelius, either of these words separately imports as much as both together. *Calv. Lex. Tayl. Civ. Law*, 240.

DO UT DES. Lat. I give that you may give; I give [you] that you may give [me]. A formula in the civil law, constituting a general division under which those contracts (termed *innominate*) were classed, in which something was *given* by one party as a consideration for something *given* by the other. *Dig.* 19. 4. *Id.* 19. 5. 5. 2 *Bl. Com.* 444. I *give* you money, on a contract *that you shall give* me goods, and *è converso ;*—the contract of purchase and sale. *I give* you goods, in consideration of *your giving* me other goods;—the contract of exchange or barter. *I give* you

money now, in consideration or on condition of *your giving* it to me hereafter;—the contract of loan of money.* *Id. Cooper's Justin. Inst.* Notes,* 584. Bracton's example shows his familiarity with the civil law. Do *tibi digestum*, ut des *mihi codicem;* I give you a digest, that you may give me a code. *Bract.* fol. 19. See *Do ut facias.*

DO UT FACIAS. Lat. I give that you may do; I give [you], that you may do or make [for me]. A formula in the civil law, under which those contracts were classed, in which one party *gave* or agreed to give money, in consideration the other party *did* or performed certain work. *Dig.* 19. 5. 5. 2 *Bl. Com.* 444. Do *tibi codicem*, ut facias *mihi scribi digestum;* I give you a code, that you may have a digest written (or copied) for me. *Bract.* fol. 19.

The particle *ut*, in this and the foregoing phrase, is considered as denoting or expressing a *consideration;* so much, that Blackstone has treated them as forms of consideration. 2 *Bl. Com. ub. sup.* Strictly, however, *ut* denotes what the civilians called *modus*, (qualification); *quia* being the particle employed to denote what they called *causa*, which is generally translated *consideration. Bract.* fol. 18 b. See *Consideration, Causa.* Britton calls these phrases or formulæ, *conditions*, and repeats them after Bracton; but the passage in the original edition is much corrupted. *Britt.* c. 36. See *Jeo done.*

DO, DICO, ADDICO. Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the prætor. Do denoted that he *gave* or granted actions, exceptions and judices, (*prætor* dabat *actiones, exceptiones, judices*); DICO, that he pronounced judgment, (dicebat *jus*); ADDICO, that he adjudged the controverted property, or the goods of the debtor, &c. to the plaintiff. 1 *Mackeld. Civ. Law*, 187, Kaufmann's note. *Id.* 24, § 35, note (*b*). *Calv. Lex. Jur.*

DOAIRE. L. Fr. Dower. *Fet Assaver*, § 21.

DOARIUM, *Douarium, Dodarium, Dotarium, Dotalitium.* L. Lat. Dower. The use of these words is entirely confined to the early continental law of Europe, although, according to Spelman, they are the proper Latin equivalents of the English word *dower; dos*, (the term employed by all the English writers since Bracton to signify dower,) denoting properly quite a different thing. *Spelman.* 2 *Bl. Com.* 129. See *Dos, Dower.*

Doarium is mentioned in the early law of France, as the popular term for dower, or a widow's portion of her husband's estate. *Spelman. Calv. Lex. Jur. Douarium* occurs in the history of Bretagne in a similar sense. The latter word, sometimes inaccurately written *donarium*, comes very near the form of the English word *dower.* Both *doarium* and *douarium* are from the Fr. *douaire*, which seems also to be the root of the English word. *Dower* occurs in its present form in the Law French of Britton. *Britt.* c. 101.

DOAYRE. L. Fr. Dower. *Fet Assaver*, § 47.

DOCERE. Lat. In the civil and old common law. To show; to set forth; to make out a case by proper statements. *Cum querens*—docuit *tenementum esse suum, tenens, si possit*, doceat, &c.; when the plaintiff has shown [by his count or declaration,] the tenement to be his, the tenant if he can, may show, &c. *Bract.* fol. 209. See *Fleta*, lib. 4, c. 7, § 2.

To show or establish by proof. *Et hoc paratus est* docere; and this he is ready to show, or verify. *Bract.* fol. 216 b.

DOCK. In criminal practice. An enclosed place in criminal courts, occupied by prisoners when brought in for trial.

DOCK. The space between wharves. Grier, J. 17 *Howard's R.* 434. A space in a harbor, river, &c., enclosed between two wharves.

DOCKET, *Docquet, Dogget.* In practice. A brief or abstract in writing. *Cowell.* An abridged entry of an instrument, or proceeding in an action; a list or register of such abridged entries.

An abridged entry of a judgment; an entry made in a proper book, by the clerk of the court in which a judgment is recovered, containing an abstract of the judgment, that is, the title of the cause, amount of the judgment, time of the recovery, attorneys' names, &c. 3 *Bl. Com.* 397, 398. 2 *Tidd's Pr.* 939. It is an index to the judgment. *Id. ibid.*

The list or calendar of causes ready for hearing or trial, prepared by clerks for the use of courts, is, in some of the United States, called a *docket.* In England, the entry made in the docket book at the bankrupt office, on delivery of a petitioning creditor's affidavit and bond, is called *striking a docket. Eden's Bankr. Law*, c. 4. sect. 1.

In the old definitions, a docket is said to be "an abridged entry on a *small piece* of paper or parchment;" or "a small piece of paper or parchment containing the effect of a larger writing." *Cowell*, citing *West's Symbol.* part 2, tit. *Fines*, sect. 106. The word, however, was used as far back as the statute 4 & 5 W. & M. c. 20, (A. D. 1692), by which the docketing of judgments was first regulated, in the sense of an abridged entry *in a book*, which is its usual modern meaning. It is written *dogget* by West, (*ub. sup.*) and in the English statute just referred to. See the statute at large in *Miller's Law of Equitable Mortgages*, Appendix, No. I.

To DOCKET, *Docquet*, *Dogget*, *Doquet*. In practice. To abstract and enter in a book. 3 *Bl. Com.* 397, 398. To make an abridged entry of a judgment, or other proceeding in a book kept for that purpose.* See *Docket*.

Dogget is the word used in the statute 4 & 5 W. & M. c. 20. *Doquet* is used by Bacon. *Works*, iv. 143. *Docquet* is used by Blackstone, (*ub. sup.*) *Docket* is the modern form. Townsend gives some curious old forms of *doggetting* causes. *Towns. Pl.* 159—162.

DOCTOR AND STUDENT. The title of a work written by St. Germain, in the reign of Henry VIII. in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a Doctor of Divinity and a Student in Law, and has always been considered a book of merit and authority. 1 *Kent's Com.* 504. *Crabb's Hist. Eng. Law*, 482.

DOCTORS' COMMONS. The popular name of the courts and offices occupied by the body incorporated in England, in 1768, under the title of "The College of Doctors of Law, exercent in the ecclesiastical and admiralty courts;" and which are situated on the southern side of St. Paul's churchyard, London. It is a college consisting of a president, (the Dean of the Arches for the time being) and of those doctors of laws, who, having regularly taken that degree in either of the universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the college in the manner prescribed by the charter. *Wharton's Lex. Brande.*

DOCUMENTS. [Lat. *documenta*, from *docere*, to show.] Written instruments adduced for the purpose of *showing* or proving a claim or title, or other matter in controversy; evidences of title.* See *Documentum*. This term was anciently applied, in particular, to the evidences of title to real property, or muniments of title, (*quibus jus prædiorum firmatur*,) and otherwise called *telligrapha*. *Spelman*. See *Telligraphum*.

Documents are a species of instruments of evidence, and, according to a modern writer on evidence, "properly include all material substances on which the thoughts of men are represented by any species of conventional mark or symbol. Thus, the wooden score on which a baker and his customers indicate by notches the number of loaves of bread supplied, the old exchequer tallies, and such like, are *documents* as much as the most elaborate deed." *Best on Evid.* 238.

DOCUMENTUM. Lat. [from *docere*, to show.] In the civil law. A document; an instrument; (*instrumentum*; Gr. συμβολαῖον.) *Nov.* 119, c. 3. See *Gloss.* in loc.

DODARIUM. L. Lat. [from Lat. *dos*, q. v.] In old European law. Dower. Used in this sense in Hoveden, cited in *Spelman*, voc. *Doarium*. The same as *dotarium*, (q. v.) See *Doarium*.

DODKIN. See *Doitkin*.

DODRANS. Lat. In the Roman law. A subdivision of the *as*, containing nine *unciæ*; the proportion of nine-twelfths, or three-fourths. 2 *Bl. Com.* 462, note. *Tayl. Civ. Law*, 492.

DOER. In Scotch law. An agent or attorney. 1 *Kames' Equity*, 325.

DOET. L. Fr. Ought; he ought; owes. *L. Fr. Dict.*

DOG-DRAW. In forest law. Drawing after, (that is, pursuing) a deer with a dog. One of the circumstances which constituted what was called the manifest deprehension of an offender against venison in a forest; that is, his being caught in the act of committing the offence, or *taken with the mainour*, as it was otherwise called.* *Manwood*, part 2, c. 8. See *Mainour*.

DOGGET. See *Docket*.

DOIGNE, *Doyne*. L. Fr. Give; given; I give. *Britt.* c. 36. *Kelham*. See *Done*.

DOING. [L. Lat. *faciendo*, *faciendum*.] The formal word by which *services* were reserved and expressed in old conveyances; as "rendering," (*reddendo*) was expressive of *rent*. *Perk.* ch. 10, sect. 625, 635, 638.

DOIT, *Dovit.* L. Fr. He or it ought; he owes. *Doient, doyent;* they ought. *L. Fr. Dict. Kelham.*

DOITKIN, *Dotkin, Dodkin.* A foreign coin of small value, prohibited by statute 3 Hen. V. c. 1, from being introduced into England. *Crabb's Hist. Eng. Law*, 357. 3 *Reeves' Hist.* 261. 4 *Bl. Com.* 99. According to Mr. Crabb, it was the Dutch *duitkin*, of the value of two penningen.

DOL. Fr. [from Lat. *dolus.*] In French law. Evil or malicious design; deceit; fraud. See *Dolus.*

DOLE. [L. Lat. *dola*, Sax. *dæl;* from *dælan*, to divide, or distribute.] In old English law. A part or portion. *Spelman.* Dole-meadow was one in which several persons had a share. *Cowell.*

DOLE. Sc. [from Lat. *dolus.*] In Scotch law. Criminal intent; evil design. *Bell's Dict.* voc. *Crime.*

DOLG. Sax. A wound. *Spelman.*

DOLI CAPAX. Lat. Capable of mischief or criminal intention; of the age of discretion; capable of distinguishing between good and evil. A phrase derived from the civil law, in which it was used in defining the liability of infants to punishment for crimes. *Dig.* 29. 5. 14. *Id.* 50. 17. 111. *Id.* 47. 2. 23. 1 *Bl. Com.* 464. 4 *Id.* 22. According to Bracton, a female is more *doli capax* than a male, as arriving sooner at maturity. *Bract.* fol. 86 b.

DOLI INCAPAX. Lat. Incapable of criminal intention; not of the age of discretion. 4 *Bl. Com.* 22, 23.

DOLIUM. L. Lat. In old English law. A tun. 2 *Ld. Raym.* 1468. A hogshead. *L. Lat. Dict.* Fleta describes it as containing fifty-two sextaries of four gallons each. *Fleta*, lib. 2, c. 12, § 71.

DOLO. Span. [from Lat. *dolus*, q. v.] In Spanish law. Bad or mischievous design. *White's New Recop.* b. 1, tit. 1, c. 1, § 3.

DOLUS. Lat. [Fr. *dol;* Span. *dolo;* Sc. *dole.*] In the civil law. Deceit; fraud. Otherwise called *dolus malus*, (q. v.) *Fraud* is the word most commonly used to define this term, but *deceit* appears to be the more strictly accurate expression. The civilians drew various distinctions between *dolus* and *fraus*, some of which seem to be still recognized; making the essence of the former to be the intention to deceive, while the latter imported actual damage or detriment. *Calv. Lex. Jur.* 2 *Kent's Com.* 560, note. Mr. Justice Story thinks it questionable whether *dolus* was used in the Roman law in the intense sense of the word *fraud*, (that is intentional fraud,) in our law. *Story on Bailm.* § 20 a. See *Broom's Max.* [573.] Strictly, it was a *vox media*, a word of middle or indifferent signification, and to be determined by its adjunct or other circumstance. *Tayl. Civ. Law*, 118. See *Dig.* 4. 3. 3. *Grot. de Jur. Bell.* lib. 3, c. 1, §§ 7, 8. In Scotch law, it is translated by a word framed immediately from the Latin, viz. *dole*, (q. v.)

Design; evil or criminal intention; malice. *Si* dolo *aut culpa homo occisus fuerit;* if a man have been killed through design or carelessness. *Inst.* 4. 3. 14. See *Doli capax.*

Dolus versatur in generalibus. Fraud deals in generalities. 2 *Co.* 34 a. 3 *Id.* 81 a. Otherwise expressed, **Dolosus versatur in generalibus.** A person intending to deceive deals in general terms. *Wingate's Max.* 636, max. 165. *Broom's Max.* 321, [216].

Dolus circuitu non purgatur. Fraud is not purged by circuity. *Bacon's Max.* 4. *Broom's Max.* [170].

Dolus et fraus nemini patrocinentur, (patrocinari debent). Deceit and fraud shall excuse or benefit no man. *Yearb.* 14 Hen. VIII. 8. *Best on Evid.* 469, § 428. 1 *Story's Equity Jur.* § 395.

Lata culpa dolo æquiparatur. Gross negligence is tantamount to fraud, (or evil design). See *Culpa.*

DOLUS MALUS. Lat. In the civil law. Fraud; evil design; the intentional endeavoring to injure another by fraudulent delusion, or other unlawful means.* Defined in the Digests, after Labeo, to be—*omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam;* (every kind of craft, deceit and contrivance used to circumvent, deceive and mislead another). *Dig.* 4. 3. 1. 2. So called to distinguish it from *dolus bonus*, (justifiable deceit,) which was allowed in certain cases, as in self-defence against an unlawful attack. *Id.* 4. 3. 1. 3. 1 *Mackeld. Civ. Law*, 165, § 166. *Calv. Lex. Jurid.*

Ex dolo malo non oritur actio. Out of fraud no action arises. Lord Mansfield, *Cowp.* 341—343. A right of action cannot arise out of fraud. No contract can arise out of a fraud; and an action brought upon a supposed contract, which is shown to have arisen from fraud, may be resisted.

Broom's Max. 349, [571]. *Dolo malo ait prætor pactum se non servaturum.* The prætor says that he will not uphold an agreement founded in fraud. *Dig.* 2. 14. 7. 9.

DOM. Sax. Judgment. Hence the English *doom.* See *Dome.*

DOM. PROC. An abbreviation of *Domus Procerum*, or *Domo Procerum;* the House of Lords in England. Sometimes expressed by the letters D. P. *Sugden's Law of Prop. passim.*

DOMAIN. [L. Lat. *domanium*, *demanium.*] Ownership of land, (*fundi proprietas*). *Spelman.* Immediate or absolute ownership; paramount or ultimate ownership.* The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the right of *eminent domain.* 2 *Kent's Com.* 339.

An estate or patrimony which one has in his own right, (*quod quis proprio suo jure possidet*). *Spelman.* The same with *dominicum*, (q. v.) *Id.* Land of which one is the absolute owner.* The public lands of a state are frequently termed the public *domain*, or *domain* of the state. 1 *Kent's Com.* 166, 259. 2 *Id.* 339, note.

DOMBEC, *Domboc.* Sax. [from *dom*, judgment, and *bec*, *boc*, a book.] Dome-book or doom-book. A name given, among the Saxons, to a code of laws. Several of the Saxon kings published *dombocs*, but the most important one was that attributed to Alfred. *Crabb's Hist.* 7. 1 *Bl. Com.* 64. This is sometimes confounded with the celebrated *Domesday book.* See *Dome-book*, *Domesday.*

DOME, *Doom.* [Sax. *dom.*] In old English law. Judgment or sentence. "So help me God at the holy *dome*, and by this book." The oath of a juror, mentioned in the Black Book of the Admiralty. *Molloy de Jur. Mar.* 104. "So help me God at his holy *dome*, and by my trowthe." The homager's oath in the Black Book of Hereford. *Blount.*

In old Scotch law. Judgment; sentence; doom. 1 *Pitc. Crim. Trials*, part 2, p. 30. See a form of dome of forfeiture. *Id.* part 1, p. 132; part 2, p. 8. The reversal of judgment or sentence was called *falsing of domes. Cowell*, voc. *Domesmen.* In criminal cases, the *dome* was pronounced by an officer of the court called *dempster*, or *doomster.* 1 *How. St. Trials*, 927. See *Dempster.* It concluded with the words, "And this I give for dome," [doom].

DOME-BOOK. [Sax. *dombec;* Lat. *liber judicialis.*] A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanours, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV. but is now lost. 1 *Bl. Com.* 64, 65. This is stated by Blackstone on the authority of the early English historians, though Mr. Hallam considers their authority insufficient to establish the facts. 2 *Hallam's Middle Ages*, 402, (7th ed.) 1 *Steph. Com.* 41, 42.

DOMESCHE. L. Fr. Tame; domesticated. *Britt.* c. 24.

DOMESDAY, *Doomsday*, *Domesdei.* [from *dome* or *doom*, judgment, and *day.* See *infra.*] An ancient English record, made in the time of William the Conqueror, and by his command, containing the details of a great survey of the kingdom, including all the demesne lands of the crown, and completed A. D. 1086, or 1087. It consists of two volumes, a greater and a less; the greater containing a survey of all the lands in England, (embracing thirty counties,) except the counties of Cumberland, Northumberland, Durham, and a part of Lancashire, which were not surveyed, and also Essex, Norfolk and Suffolk, which are comprehended in the lesser volume. 2 *Bl. Com.* 49, 99. *Spelman*, voc. *Domesdei. Cowell. Blount. Ducange. Crabb's Hist.* 52, 53. The original Domesday book is still in existence, fair and legible, and is preserved in the Chapter House at Westminster. It was formerly kept with great care in the Exchequer, under three locks. *Spelman.* It is now printed, (its publication having been commenced in 1767, and completed in 1783,) and copies may be found in public libraries in this country, but being in the Latin of the times, with numerous contractions and abbreviations, its perusal is a work of very considerable difficulty.

*** This venerable record, which Spelman calls *monumentum totius Britanniæ absque controversia augustissimum*, was anciently known in Latin by various names, all indicating the general object of its compilation; as *Liber Judiciarius*, (the judg-

ment book), *Censualis Angliæ*, (the tax book of England), *Angliæ Notitia et lustratio*, (the survey of England), *Rotulus Regis*, (the king's roll); *Rotulus* or *Liber Wintoniæ*, (the roll or book of Winchester). The English term *Domesday* appears to be compounded of *dome* or *dom*, (Sax. judgment,) and *day*, the precise meaning of which has been a matter of some doubt. Cowell supposes that it was made a part of the word, not with any allusion to the final day of judgment, but to double and confirm the meaning; *day* having itself, in fact, the same meaning as *dome*, that is, judgment. *Cowell*, voc. *Daysman*. But that the idea of the day of judgment did enter into the original composition of the word, seems clear from the testimony of the old chroniclers, who have taken some pains to explain it. In the Black Book of the Exchequer, it is said that this book is called by the native English *domesdei*, that is, the day of judgment, by a figure. (*Hic liber ab indigenis* Domesdei *nuncupatur, id est*, dies judicii, *per metaphoram.*) For as the sentence of that last severe and terrible ordeal cannot by any artifice be escaped, so where a controversy has arisen in the kingdom on subjects noticed in that book, and an appeal is made to it, its sentence can neither be impugned nor evaded with impunity. *Lib. Nig. Scacc.* par. 1, cap. antepenult. Again, Ingulphus has recorded that this roll was called by the English *Domesday*, from its comprehensiveness, embracing all the lands of the whole kingdom completely. (*Iste rotulus—ab Anglicis*, pro sua generalitate, *omnia tenementa totius terræ integré continente*, Domesday *cognominatur.*) *Ingulphus*, cited in *Spelman*. These accounts of the origin of the word, given by writers nearly contemporary with the compilation of Domesday itself, are very forcibly expressive of the feelings with which this great survey of the Conqueror was regarded by the native population (or *indigenæ*) of England; the searching minuteness of its details, and its overwhelming authority as a record, suggesting to the unlettered mind of the age a comparison with the dread book of final doom itself.

This great census appears to have been compiled in the following manner: The king sent five of his justices into every shire, to make the requisite inquiries by the oaths of persons living on the spot, (*per provincialium jurajuranda*). These persons, who are called *taxatores*, (assessors) were chosen from every neighborhood, and gave a particular description of their several districts, with estimates of value. Hence the unequalled minuteness of the survey, rendering almost literally true the words of Ingulphus, that there was not a hide of land in England but the king knew its value, and its owner's name, nor a pool nor a place (*nec lacus nec locus,*) that was not described in the king's roll, with its rent and income. *Ingulph. Hist. Croyl.* cited in *Spelman. Termes de la Ley.*

The following sketch of the general plan of Domesday may serve to give some idea of its completeness as a census of England. It contains a description, not only of each county, rape, lathe, hundred or wapentake, but even the smaller divisions, cities, boroughs, towns, castles, manors. Mention is made of the quantity of land in each case, by the carve and acre, specifying not only whether demesne or tenemental, but its quality, as whether arable, meadow, pasture, wood, fishery, marsh, common, &c., and sometimes how much live stock, as sheep, hogs, &c., was raised upon it: how many men each manor supported, and their condition, whether knights, husbandmen, laborers, slaves, (giving the distinctive names then used): what was the present value of its income, or what it paid as tax tribute, rent, services and customs; and what these were in the time of Edward the Confessor. This last feature of Domesday has probably led to the singular mistake of Fitzherbert and Coke, that it was compiled in the time of St. Edward. *F. N. B.* 16, D. 3 *Co.* pref. vii.

DOMESMEN. [Lat. *homines judiciarii.*] In English law. Men appointed to *doom*, i. e. to determine or pronounce judgment in suits and controversies; an inferior kind of judges anciently so called. *Cowell.* See *Dome.*

Suitors in a court of a manor in ancient demesne, who were the judges there. *Termes de la Ley.*

DOMESTE. L. Fr. [L. Lat. *domitus.*] Tame; domesticated. *Stat. West.* 1, c. 20. See *Domesche.*

DOMESTIC ATTACHMENT. A species of attachment against absent and absconding debtors, being a remedy against *resident* debtors absenting or concealing themselves, as *foreign* attachment is against *non-residents.* 20 *Penn. St. R.* 144. See

2 *Kent's Com.* 403, notes. See *Attachment, Foreign attachment.*

DOMESTIC BILL OF EXCHANGE. A bill of exchange drawn on a person residing in the same state with the drawer; or dated at a place in the state, and drawn on a person living within the state. 25 *Mississippi R.* 143. It is the residence of the drawer and drawee which must determine whether a bill is domestic or foreign. *Id. ibid.* See *Inland bill of exchange, Foreign bill of exchange.*

DOMESTICUS. Lat. In old European law. A seneschal, steward or major domo. *Spelman.*

A judge's assistant; an assessor. *Id.*

DOMICELLA. L. Lat. In old English law. A damsel. *Fleta*, lib. 1, c. 20, § 80.

DOMICELLUS. L. Lat. [dimin. of *dominus.*] In old European law. A young lord. A title anciently given to the king's (natural) sons in France, and sometimes to the eldest sons of noblemen there. *Spelman. Blount.* Spelman says it answered to the Saxon *Adeling, Aetheling.*

DOMICIL, *Domicile.* [Lat. *domicilium*, from *domus*, house or home, and *colere*, to keep.] The place where a person has his home. A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.* 1 *Binney's R.* 349, note. This is the definition adopted by Dr. Phillimore, in preference to any of those given by the foreign publicists. *Phillimore on Domicil*, chap. ii. Domicil, he observes, answers very much to the common meaning of our word *home*, and where a person possessed two residences, the phrase *he made the latter his home* would point out that to be his domicil. *Id.*—The place where a person lives, or has his home; the place where he has his true, fixed, and permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning. *Story's Conflict of Laws*, § 41. See 2 *Kent's Com.* 430, note. Marshall, C. J. 8 *Cranch*, 253. 27 *Mississippi R.* 704.—The place in which a person has taken up his permanent residence. 1 *Mackeld. Civ. Law*, 142, § 136. —The place where a man carries on his business, or professional occupation, and has his home or permanent residence. 27 *Mississippi R.* 704. Where a party has two residences at different seasons of the year, that will be esteemed his domicil which he himself selects or describes or deems to be his home, or which appears to be the centre of his affairs, or where he votes, or exercises the rights and duties of a citizen. *Id. ibid.*

Residence, combined with intention, constitutes a domicil. 2 *Kent's Com.* 430, notes. Residence alone is not sufficient. The domicil may be in one state, and the actual residence in another. 19 *Wendell's R.* 11. The apparent or avowed intention of residence, and the manner of it, constitute domicil. 27 *Mississippi R.* 704. As to the evidence of intention, see *Id. ibid.* So, in regard to *change* of domicil, mere intention to remove without actual removal, avails nothing; nor does mere removal, without a fixed intention of acquiring a new domicil. 2 *Maryland R.* 186. In New-York, a person may be a non-resident of the state, within the meaning of the statute relative to non-resident debtors, while his domicil continues within the state. 1 *Selden's R.* 422, 423. See *Residence, Resident.* And see generally, as to domicil, *United States Digest*, Domicil.

DOMICIL OF ORIGIN. [Lat. *domicilium originis*, vel *nativitatis.*] The home of the parents. *Phillimore on Domicil*, 25, 101. That which arises from a man's birth and connections. 5 *Vesey, Jr.* 750. The domicil of the parents at the time of birth, or what is termed the domicil of origin, constitutes the domicil of an infant, and continues until abandoned, or until the acquisition of a new domicil in a different place. Marshall, C. J. 1 *Brock. R.* 389, 393. See 5 *Metcalf's R.* 587. As to the change of the domicil of origin into the domicil of choice, see 14 *Howard's R.* 423.

DOMICILIUM. Lat. Domicil; residence. See *Domicil. Si in comitatu plura habeat* domicilia, *potius fiat ei summonitio ad* domicilium *ubi magis habitaverit, vel ubi majorem habuerit substantiam.* If he have several residences in the county, he should be summoned at the residence where he dwells most of the time, or where he has the largest estate. *Bract.* fol. 333 b.

DOMINA. L. Lat. In old English law. Lady; a lady. *Bract.* fol. 116 b.

DOMINANT TENEMENT. In civil and Scotch law. A term used in the constitution of servitudes, meaning the tenement or subject in favor of which the servitude is constituted. *Bell's Dict.*

DOMINATIO. L. Lat. In old English law. Lordship. *Mem. in Scacc.* H. 22 *Edw.* I.

DOMINICA PALMARUM. (*Dominica in ramis palmarum.*) L. Lat. In old English law. Palm Sunday. *Towns. Pl.* 131. *Cowell. Blount.*

DOMINICUM. L. Lat. [from *dominus*, lord, master.] In old English law. Demesne, demain or domain. That of which one is lord or *master;* that of which one has the exclusive control, (*de quo quis facere voluntatem suam potest*).* Applied to the estate both of a feudal lord and his tenant.

A lord's own land or estate, (*patrimonium domini*); that portion retained in his own possession or control, as distinguished from that which was granted out to tenants; the former being said to be held *in dominico*, the latter *in servitio. Bract.* fol. 263. Land held in villeinage, however, was considered as *dominicum*, the lord having the right to resume its possession at any time. *Id. ibid.* So was land let for a term of years. *Spelman.* See *infra.*

That portion of a lord's lands which was reserved for his own special use, as for the supply of his table, and the maintenance of his family. *Bract. ub. sup. Fleta*, lib. 5, c. 5, § 18. See *Demesne.* Spelman cites Choppinus (lib. 1, tit. 1, § 6) for the use of the word *domanium* in the old French law, in this sense, and traces its origin to *dominus*, the master or giver of an entertainment, in the Roman writers.

The estate which a free tenant (*liber tenens,*) had in the land, fee, or tenement held by him of his lord. It was not the lord's fee in demesne, but the tenant's; the lord had nothing in the fee but the service; it was the tenant's fee in demesne, and the lord's fee in service. (*Dominus nihil habet in feodo nisi servitium; et sic erit feodum tenentis* in dominico, *et feodum domini in servitio.*) *Bract.* fol. 46 b. That is, the lord could not, (so long as homage and service were rendered him,) interfere with the tenant's possession, nor prevent him from doing as he pleased with the tenement itself. He could not even prevent him from aliening it to another person, unless the tenant were expressly restrained from so doing by the terms of the original conveyance (*in ipsa donatione*). *Id. ibid.* and fol. 45 b, 46. The tenant in fact was *dominus*, in the sense of *master*, he had the exclusive control of the fee; the *dominicum* was in him, and not in the lord. Hence *dominicum* came to signify that in which one had a free tenement (*liberum tenementum*) or freehold, and it made no difference whether another was in actual possession of the land as lessee for a term of years, as guardian, or the like. *Bract.* fol. 263. See *Id.* fol. 143 b, 209. *Fleta*, lib. 2, c. 50.

DOMINICUM ANTIQUUM. L. Lat. In old English law. Ancient demesne. *Bract.* fol. 369 b.

DOMINICUS. L. Lat. [from *dominus*, lord.] In old European law. Of, or belonging to the king or lord. *Dominicum bannum;* the lord's ban, the sovereign's edict. *Spelman. Dominici coloni;* those tenants who were bound to cultivate their lord's lands; *ascriptitii*, socmen. *Id.* See *Ascriptitii. Dominica curtis;* the lord's court. *Id.*

DOMINION. [Lat. *dominium*, q. v.] Ownership, or right to property. 2 *Bl. Com.* 1. "The holder has the dominion of the bill." Lord Ellenborough, 8 *East*, 576.

Sovereignty or lordship; as the dominion of the seas. *Molloy de Jur. Mar.* 91, 92.

DOMINIUM. Lat. [from *dominus*, lord or master.] In the civil and old English law. Ownership; property in the largest sense, including both the right of property and the right of possession or use. *De acquirendo rerum dominio*, (of acquiring the ownership of things) is the title of Bracton's second book; borrowed, doubtless, from the second book of Justinian's Institutes, or the forty-first book of the Digests. Bracton employs also the plural *dominia.* Blackstone uses *dominium* as a synonyme of *dominicum*, in which he is sustained by Spelman. 2 *Bl. Com.* 105. But see the next definition.

The mere right of property, as distinguished from the possession or usufruct. *Dig.* 41. 2. 17. 1. *Calv. Lex. Jur.* The right which a lord had in the fee of his tenant. In this sense the word is very clearly distinguished by Bracton from *dominicum*, as in the following passage: *Nihil habuit in dominico nisi nudum* dominium, s. *homagium et servitium;* (he had nothing in demesne except the naked property, that is, homage and service.) *Bract.* fol. 27.

The estate of a feoffee to uses. "The feoffees to use shall have the *dominium*, and the *cestui que use*, the disposition." Dodridge, J. *Latch*, 137.

Sovereignty or dominion. *Dominium maris;* the sovereignty of the sea.

A lordship. *Towns. Pl.* 20.

DOMINIUM DIRECTUM. Lat. In the civil law. Strict ownership; that which was founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

In later law. Property without use; the right of a landlord. *Tayl. Civ. Law*, 478.

In feudal law. Right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant. *Id. ibid. Butler's Co. Litt.* Note 77, lib. 3. The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount. *Prædium domini regis est* directum dominium, *cujus nullus est author nisi Deus;* the estate of the king is right ownership, of which none but God is the source. *Co. Litt.* 1 b. 2 *Bl. Com.* 105.

Allodial property; that which is held of no superior. This phrase is used in this sense by Blackstone, who superadds the epithet *absolutum*, and makes *absolutum et directum dominium* to import the same with *dominicum*. 2 *Bl. Com.* 105.

DOMINIUM PLENUM. Lat. Full ownership; the union of the *dominium directum* with the *dominium utile*. *Tayl. Civ. Law*, 478.

DOMINIUM UTILE. Lat. In the civil law. Equitable or prætorian ownership; that which was founded on equity. 1 *Mackeld. Civ. Law*, Kaufmann's note.

In later law. Use without property; the right of a tenant. *Tayl. Civ. Law*, 478.

In feudal law. Useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum*, (q. v.) or ownership of the soil itself; the right of a vassal or tenant. 2 *Bl. Com.* 105. *Butler's Co. Litt.* Note 77, lib. 3.

*** Mr. Spence supposes that the divided ownership of lands, expressed by the terms *dominium directum* and *dominium utile*, was known to the Roman law; and hence deduces a principal argument in favor of the Roman origin of the feudal system. 1 *Spence's Chancery*, 28—34. But the use of these terms in the Roman law appears to have originated with the glossators, who erroneously applied the distinction between the *actiones directæ* and *utiles* to the contract of *emphyteusis*, (q. v.) 1 *Mackeld. Civ. Law*, 268, Kaufmann's note. *Tayl. Civ. Law*, 478. See *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, §§ 337, 338.

DOMINIUM DIRECTUM ET UTILE. L. Lat. The complete and absolute dominion in property; the union of the title and the exclusive use. Story, J. 7 *Cranch's R.* 603.

DOMINIUM EMINENS. L. Lat. Eminent domain. *Cooper's Justin. Inst.* Notes, *456, 457. *Tayl. Civ. Law*, 463. See *Eminent domain.*

Dominium non potest esse in pendenti. Property cannot be in abeyance. *Halkerst. Max.* 39, cited *Broom's Max.* Introd.

DOMINUS. Lat. In the civil law. Lord, master; one who has the control or property of a thing; owner; proprietor.* *Dominus fundi;* owner of land or ground. *Inst.* 2. 1. 12. *Dominus soli;* owner of the soil. *Bract.* fol. 10. *Dominus ædificii;* owner of the building. *Inst.* 2. 1. 29. *Dominus materiæ;* owner of the materials. *Id.* 2. 1. 25. *Dominus litis*, (q. v.); master of a suit; one who has the control or management of a suit.

The owner or proprietor of a thing, as distinguished from him who has the usufruct, or right of using it; (*qui habet proprietatem, etsi ususfructus alienus sit*). *Dig.* 29. 5. 1. 1.

A master or principal; one under whose direction another acts. He who appointed a *procurator*, a proctor or attorney, to act for him, was called his *dominus*, or master. *Dig.* 3. 3. 1, 39. *Inst.* 3. 28. 1. *Id.* 4. 11. pr. 3. *Story on Agency*, § 3. The word was extensively used in this sense, by the old writers on the law of England; sometimes with the addition of the adjective *principalis*, from which the modern word *principal* seems to be taken. *Bract.* fol. 42 b, 212 b, 262, 342 b. *Stat. Westm.* 2, c. 10. So, in French, he who appointed an attorney to appear for him in court, was called his master, (*son maister*). *Theloall's Dig.* lib. 13, c. 15. See *Attorney at law.* So, a party who sent another to essoin for him, was called his *dominus*. *Bract.* fol. 337 b. In old admiralty practice, a client was called *dominus*. *Dominus meus est promptus et paratus;* my client is ready and prepared. *Clerke's Prax. Cur. Adm.* tit. 9.

DOMINUS. Lat. [Fr. *seigneur;* L. Fr. *seigniour.*] In feudal and ecclesiastical law. A lord, or feudal superior. *Feud. Lib.* 1, titt. 4, 5, *et passim. Dominus rex;*

the lord the king; the king's title as lord paramount. 1 *Bl. Com.* 367. *Towns. Pl.* 149. *Dominus capitalis;* a chief lord. *Dominus medius;* a mesne or intermediate lord. *Dominus ligius;* liege lord or sovereign. 1 *Bl. Com.* 367.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and, according to Cowell, was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

*** Spelman, in remarking on the assumption of this divine appellation by human sovereigns, and the higher dignitaries of church and state, takes notice of what he terms the modesty of the ancients in adopting it. As an evidence of this, he mentions the fact that when the Christian emperors of Rome came to admit it among their other titles, it was first contracted (by omitting the letter *i*,) into *Domnus;* and that the Greek Κύριος was by a similar change converted into Κύρος, the remains of which are still preserved in the English and French *Sir*, *Sire*, (*Syr*, *Cyr*, from Gr. κῦρ,) and the Italian and Spanish *Don* and *Dom*. See *Senior*, *Seniores*.

DOMINUS LITIS. Lat. In the civil law. Literally, master of a suit; the client or party, as distinguished from the proctor or attorney; he whose suit it was.* *Dig.* 3. 3. 31, pr. The word *dominus* is said to be here used in an improper sense. 1 *Mackeld. Civ. Law*, 268, 269, § 259, note.

The person having entire control over a suit. Curtis, J. 1 *Curtis' R.* 343. The party treated by the court in which it is pending, as liable for costs. Applied to a third person appearing and defending a suit in admiralty, in behalf and in the absence of the party to the suit. 1 *Curtis' R.* 201, 203.

DOMINUS NAVIS. Lat. In the civil law. The owner of a vessel. *Dig.* 39. 4. 11. 2.

DOMITÆ NATURÆ. Lat. [*domitus*, *domita*, tamed; from *domare*, to tame; L. Fr. *domeste*, *domesche*.] In old English law. Of a tame or subdued nature or disposition. A phrase applied to tame domestic animals, (as horses, kine, sheep, poultry, &c.) in which a man may have an absolute property, as distinguished from wild animals. 2 *Bl. Com.* 390. 2 *Kent's Com.* 348. 2 *Steph. Com.* 68. It seems properly applicable to wild animals that have been actually tamed, such as deer, swans, &c. *Bract.* fol. 9. See *Feræ naturæ*.

DOMNUS, *Dompnus*. Lat. The contracted form of *dominus*, as formerly used in the titles of emperors, &c. *Spelman*. See *Dominus*.

DOMUS. Lat. In civil and old English law. A house or dwelling; a habitation. *Inst.* 4. 4. 8. *Towns. Pl.* 183—185. *Appellatione* domus *habitationem quoque significari, palam est;* by the term *domus* it is clear that a habitation also is meant. *Dig.* 48. 5. 8. 1. Held to be synonymous with *messuagium* (a messuage). *Cro. Jac.* 634. But see *Keilw.* 57, pl. 7. *Domus competens;* a suitable house. *Magna Charta*, c. 7. *Domus mansionalis;* a dwelling-house. 11 *Mod.* 302. *Domum suam reficere unicuique licet, dum non officiat invito alteri, in quo jus non habet;* every one is allowed to repair his own house, provided he does not incommode another, against his will, in a matter in which he has no right. *Dig.* 50. 17. 61.

A home, residence or domicil. *Constitutum esse eam* domum *unicuique nostrum debere existimari, ubi quisque sedes et tabulas haberet, suarumque rerum constitutionem fecisset;* it is settled that that ought to be considered every man's domicil where he has had his residence and kept his books of account, and made the seat of his business affairs. *Dig.* 50. 16. 203.

Domus tutissimum cuique refugium atque receptaculum sit. A man's house should be his safest refuge and shelter. *Dig.* 2. 4. 18. This maxim has been adopted in the common law, with a slight change in the phraseology. **Domus sua cuique est [est unicuique] tutissimum refugium.** To every man his own house is his safest refuge. 5 *Co.* 91 b. 11 *Id.* 82. 3 *Inst.* 162. The house of every one is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose. 5 *Co.* 91 b. *Say.* 227. *Broom's Max.* 205, [321]. A man's dwelling-house is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein. Walworth, C. 4 *Hill's* (N. Y.) *R.* 437.

DOMUS CAPITULARIS. L. Lat. In old records. A chapter-house; the chapter-house. *Dyer*, 26 b.

DOMUS CONVERSORUM. L. Lat. The house of the converts. An ancient house or institution, (Spelman calls it *collegium*) established by Henry III. for the benefit of such Jews as were converted to the Chsritian faith. This continued to the

reign of Edward III. who, having expelled the Jews from the kingdom, converted the building into a place for keeping the rolls and records of the chancery. *Spelman. Cowell*, voc. *Rolls.* It is now called the Rolls' Office in Chancery Lane, though in Latin the old name is sometimes retained. *Id.* voc. *Master of the Rolls.*

DOMUS RELIGIOSA. L. Lat. In old English law. A religious house. *Mag. Cart.* 9 Hen. III. c. 36.

DON. L. Fr. A gift. *Britt.* c. 34. See *Done.*

DONA. Lat. (plur. of *Donum*, q. v.) In old English law. Gifts. **Dona clandestina sunt semper suspiciosa.** Clandestine gifts are always suspicious. 1 *Eden's R.* 168. *Broom's Max.* [217].

DONACIOUN, *Doneison, Donyson, Donesein.* L. Fr. A gift; a grant. *Kelham.*

DONARE. Lat. [from *donum*, a gift; L. Fr. *doner, donner.*] In civil and old English law. To give; to make a gift, (*donationem facere*). *Inst.* 2. 7. 1. *Quis* donare *possit, et quis non;* who can make a gift, and who not. *Bract.* fol. 11 b. The same as *dare. Id.* fol. 12. **Donari videtur quod, nullo jure cogente, conceditur.** That is considered to be given which is granted without the obligation of any law. *Dig.* 50. 17. 82.

DONATARIUS. L. Lat. In old English law. A donee. *Fleta*, lib. 3, c. 13, § 3.

DONATIO. Lat. [from *donum*, a gift, or *donare*, to give. See *Dig.* 39. 6. 35. 1.] In the civil law. Gift, or donation; one of the modes of acquiring property. *Inst.* 2. 7, pr. 1, 2. *Dig.* 39. 5. *Cod.* 8. 54. This is of two kinds; *causa mortis*, and *inter vivos. Inst. ub. sup. Bract.* fol. 11. See *infra.*

DONATIO. Lat. [L. Fr. *don, done, doun.*] In old English law. A gift of lands or chattels. See *Done.* Defined by Bracton (and after him, by Fleta,) to be a "certain institution, [or established mode of conveyance,] which proceeds from pure liberality and free will, under the compulsion of no law, [and has for its object] to transfer a thing to another;" (*quædam institutio, quæ ex mera liberalitate et voluntate, nullo jure cogente, procedit, ut rem transferat ad alium*). *Bract.* fol. 11. *Fleta*, lib. 3, c. 3. See *Done. Donatio* appears to have been the most ancient mode (as *do, dedi, dabo* were the most ancient words) of conveying lands, comprehending a gift, grant or feoffment; the latter term signifying nothing more than the gift of a fee, (*donatio feudi*). *Co. Litt.* 9. *Crabb's Hist. Eng. Law*, 95. The English "gift" has in modern times been appropriated to signify the conveyance of an estate tail. 2 *Bl. Com.* 316, 317. But the Latin *donatio* is constantly used by Bracton in the largest sense, including as well a conveyance in fee simple, (*simplex et pura,*) as that which was qualified or conditional, (*conditionalis* or *sub modo*). *Bract.* fol. 11, 17.

Donatio simplex et pura; a simple and pure gift; one which, without the compulsion of any law, civil or natural, and without the intervention of any reward, menace or force, proceeds from the pure and gratuitous liberality of the donor, and where the donor in no case wills that what he has given, or promises to give, shall return to him. *Bract.* fol. 11. *Fleta*, lib. 3, c. 3, § 3. Otherwise called *donatio libera et pura*, (a free and pure gift). *Bract.* fol. 11 b.

Donatio conditionalis; a conditional gift, a gift under a condition or qualification, (*sub conditione vel sub modo*). *Id.* fol. 11. *Fleta*, lib. 3, c. 3, § 4. These terms and distinctions are taken essentially from the civil law. *Calv. Lex. Jurid.*

Donatio absoluta et larga; an absolute and unlimited gift, as to a man and his heirs generally; [a gift in fee simple]. *Bract.* fol. 11 b. *Fleta*, lib. 3, c. 3, § 5.

Donatio stricta et coarctata; a gift restrained and narrowed, that is, to some particular heirs exclusive of others, (*sicut certis hæredibus, quibusdam vero a successione exclusis*). *Id. ibid. Fleta*, lib. 3, c. 3, § 5. This answers to a gift in fee tail.

Donatio non præsumitur. A gift is not presumed. *Wharton's Lex.*

Donatio perficitur possessione accipientis. A gift is perfected [made complete] by the possession of the receiver. *Jenk. Cent.* 109, case 9. A gift is incomplete until possession is delivered. 2 *Kent's Com.* 438.

DONATIO CAUSA MORTIS. Lat. A gift in apprehension, expectation, contemplation or prospect of death.* *Dig.* 39. 6. *Cod.* 8. 57. *Nov.* 87. A conditional gift, dependent on the contingency of expected death. Gibson, C. J. 2 *Wharton's R.* 17, 22. Blackstone has defined it to be "a *death-bed* disposition of property, where a person *in his last sickness*, apprehending his dissolution near, delivers, or causes to be delivered to another the possession of any personal goods, to keep in case of his

decease." 2 *Bl. Com.* 514. And this definition is essentially adopted by Tilghman, C. J. in Wells *v.* Tucker, 3 *Binney's R.* 366, 370. It is, however, too narrow in so far as it confines this species of gift to cases of last illness, it being sufficient if the apprehension of death arise from other causes, as from infirmity, old age, or any external and anticipated danger. *Dig.* 39. 6. 3. 3 *Kent's Com.* 444. This is clearly shown by Gibson, C. J. from Justinian's Institutes, and appears also from the Digests, which are followed by Bracton. 2 *Wharton's R.* 17, 22. *Inst.* 2. 7. 1. *Dig.* 39. 5 & 6. *Bract.* fol. 60. *Fleta*, lib. 2, c. 57. *Calv. Lex. Jurid.* 1 *White's Lead. Eq. Cases*, 614, (Am. ed.)

A donatio causâ mortis is sometimes considered as a species of legacy, and it is always accompanied with the implied trust or condition that, if the donor lives, the property shall revert to himself, being given only in contemplation of death. 2 *Bl. Com.* 514. 2 *Steph. Com.* 103, note (*p*), and cases cited *ibid.* *Ward on Legacies*, 55, ch. i. sect. iv. *Inst.* 2. 7. 1. 1 *White's Equity Cases*, 602, 603. *Id.* 615, (Am. ed. note, where the American cases are given). It is indispensable to its validity that it be accompanied and perfected by a present delivery of the subject of the gift, according to the manner in which it is capable of being delivered. *Id.* 604—607. *Id.* 615—619, (Am. ed.) 2 *Kent's Com.* 445—448, and notes. See 1 *Story's Eq. Jur.* §§ 606—607 d.

Donations or gifts of this kind are derived entirely from the civil law, and were introduced into England as early as the time of Bracton, who closely follows the language of the Digests. *Bract.* fol. 60. The first reported case on the subject of these gifts, is said to be that of Jones *v.* Shelby, in 1710. *Prec. in Ch.* 300.

DONATIO INTER VIVOS. Lat. A gift between the living. The ordinary kind of gift by one person to another. 2 *Kent's Com.* 438. 2 *Steph. Com.* 102. A term derived from the civil law. *Inst.* 2. 7. 2.

DONATIO PROPTER NUPTIAS. Lat. In the civil law. A gift on account of marriage. *Inst.* 2. 7. 3. *Cod.* 5. 3. A gift made by a husband to his wife, by way of security for her *dos* or marriage portion. *Hallifax, Anal.* b. 2, ch. 5, num. 16. Called in Greek ἀντιφερνὴ, that is, a counter or mutual gift. *Calv. Lex. Jurid.* This was introduced by the later Roman emperors, and at first called *donatio ante nuptias*, (a gift before marriage,) it being made upon the tacit condition that it should take effect when the marriage was celebrated, and was never allowed after marriage. Justinian first allowed it as well after as before marriage, and accordingly changed its name to *donatio propter nuptias. Inst.* 2. 7. 3. Bracton uses it as another name for the old English dower *ad ostium ecclesiæ*, or dower according to the custom of England. *Bract.* fol. 92 b. See *Fleta*, lib. 5, c. 23, § 7. See *Dower, Dos.*

DONATION. In ecclesiastical law. A mode of acquiring a benefice by deed of gift alone, without presentation, institution or induction. 3 *Steph. Com.* 81.

DONATIVE ADVOWSON. In ecclesiastical law. A species of advowson, where the benefice is conferred on the clerk by the patron's deed of donation, without presentation, institution or induction. 2 *Bl. Com.* 23. *Termes de la Ley.*

DONATOR. Lat. [from *donare*, q. v. L. Fr. *donour.*] In civil and old English law. A donor or giver; the party who makes a *donatio*, or gift. *Bract.* fol. 11, *et seq.* *Fleta*, lib. 3, c. 7, § 4.

Donatorius, (properly *Donatarius;* Scotticé, a donatary); a donee; a person to whom a gift is made; a purchaser. *Bract.* fol. 13, *et seq.* *Fleta, ub. sup.*

Donatur nunquam desinit possidere, antequam donatorius incipiat possidere. The donor never ceases to possess, until the donee begins to possess. *Bract.* fol. 41 b.

DO'NC'O. A contraction of *Dominico.* 1 *Inst. Cler.* 10.

DONE, *Don, Doun.* L. Fr. [from Lat. *donum.*] A gift. Don *est un nosme general plus que ne feffement;* gift is a more general name than feoffment. *Britt.* c. 34.

DONE, *Donee.* L. Fr. In old English law. Given. Done *à Londres*, &c.; Given at London, &c. *Stat. of Tithes*, 2 *Inst.* 639. Donees *à Gaunt*, &c.; Given at Ghent, &c. *Conf. Chartar.* ad finem.

DONE. [Lat. *factum, actum.*] Distinguished from "made." "A 'deed made' may no doubt mean an 'instrument made;' but a 'deed done' is not an 'instrument done,'—it is an 'act done;' and therefore these words, 'made and done' apply to acts as well as deeds." Lord Brougham, 4 *Bell's Appeal Cases*, 38. "You do not say 'to do a sale,' so readily as you say

o make a sale.'" *Id.* 2 *Bell's Appeal Cases*, 99.

DONEC. Lat. Until. *Fleta*, lib. 3, c. 12, § 6. A word of limitation in old conveyances. *Co. Litt.* 235 a.

DONEE. [L. Lat. *donatarius, donatorius.*] In old English law. He to whom lands were given; the party to whom a *donatio* was made. See *Donatio, Donatorius.*

In later law. He to whom lands or tenements are given in tail. *Litt.* sect. 57.

In modern and American law. The party executing a power; otherwise called the *appointer.* 4 *Kent's Com.* 316. Called in New-York, the *grantee.* 1 *Rev. Stat.* [738], 730, § 135.

DONERESSE. L. Fr. A female donor. *Yearb.* T. 7 Edw. III. 34.

DONK, *Dunk.* L. Fr. Then.. A corrupted form of *Donque*, (q. v.) *Fet Assaver*, passim.

DONOR. [from L. Fr. *donour;* Lat. *donator.*] In old English law. He by whom lands were given to another; the party making a *donatio*, (q. v.) See *Donator.*

In later law. He who gives lands or tenements to another in tail. *Litt.* sect. 57. *Termes de la Ley.*

In modern and American law. The party conferring a power. 4 *Kent's Com.* 316. Called in New-York, the *grantor.* 1 *Rev. Stat.* [738], 730, § 135.

DONQUE, *Donques, Adonques, Donc, Dunc, Donk, Dunk, Dunky.* L. Fr. Then. *Britt.* c. 30, *et passim. Litt.* sect. 157. *Kelham. Donques vivant;* then living. 1 *And.* 1, 2.

DONUM. Lat. In the civil law. A gift; a free gift. *Calv. Lex. Jur.* Distinguished from *munus. Dig.* 50. 16. 194, 214.

DOOM, *Dome.* In Scotch practice. Judgment; sentence. The judgment of a court, formerly pronounced by the mouth of an officer called a *dempster*, (q. v.) and ending with the words, "And this I give (or pronounce) for doom." See *Dome.* The term is still retained; sentences in criminal cases ending with the words—"which is pronounced for doom." See 2 *Brown's R.* 128.

DORESENAVANT. L. Fr. From henceforth. *Kelham.*

DORMANT. Fr. and Eng. [from Fr. *dormir;* Lat. *dormire*, to sleep.] Sleeping; suspended; not active; not in exercise; out of view; not apparent; not known.

A *dormant* partner is one whose name is not known, or does not appear as partner, but who nevertheless is a silent partner, and partakes of the profits, and thereby becomes a partner, either absolutely, to all intents and purposes, or at all events, in respect to third persons. According to Mr. Justice Story, *dormant* partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm as principals. *Story on Partn.* § 80.

The term *dormant* is sometimes applied to an execution, when it is delivered to the sheriff with directions to levy merely, and not to sell until a junior execution is received. 2 *Hill's* (N. Y.) *R.* 364.

Dormiunt aliquando leges, nunquam moriuntur. The laws sometimes sleep, never die. 2 *Inst.* 161.

DORS'. An abbreviation of *Dorsetia*, Dorsetshire. 1 *Inst. Cl.* 28.

DORS, *Dorse, Dorce.* L. Fr. [from Lat. *dorsum.*] The back. *Kelham. L. Fr. Dict. Sur le* dorse *del obligacion. Keilw.* 162.

DORSUM. Lat. The back. *In* dorso *recordi;* on the back of the record. 5 *Co.* 44 b.

DOS. Lat. [Gr. προίξ.] In the Roman law. A sum of money given to a husband, to enable him to sustain the burdens of marriage; (*pecunia data marito ad sustinenda matrimonii onera*). *Heinecc. El. Jur. Civ.* lib. 2, tit. 8, § 465. *Dig.* 23. 3. *Cod.* 5. 12. The portion which was given with a woman to her husband in marriage; corresponding with what was called in the common law, *maritagium*, or marriage portion. 1 *Reeves' Hist. Eng. Law*, 103. *Co. Litt.* 31 a. *Bract.* fol. 92. Properly translated by the word *dowry. Macqueen on Husb. & Wife*, 151, note.

Dos profectitia was that species of dowry or portion which proceeded from, (*profecta,*) or was given by the father or relative (*parente*) of the male sex, out of his property or by his act. *Dig.* 23. 3. 5, pr. *Calv. Lex. Jur.*

Dos adventitia was that kind of portion which was bestowed by a stranger, (*ab extraneo*). *Id. Dig.* 23. 3. 5. 9, 11. Bracton adopts these terms and distinctions, but defines the *dos profectitia* to be that which

was given by the father or mother, or other relative, at the time of the contract for marrying the daughter; and the *dos adventitia* to be that which was bestowed by others than the father or mother, whether it were a relative or stranger. *Bract.* fol. 92 a, b. Fleta uses the terms *dos perfectiva*, and *dos adventiva*. *Fleta*, lib. 5, c. 23, § 4.

DOS. L. Lat. In old English law. That property or portion which a freeman gave to his wife at the door of the church, in consideration of the nuptials that were about to take place, and the burden of matrimony; and intended for the support of the wife and education of the children, in case the husband should die before her; (*id quod liber homo dat sponsæ suæ ad ostium ecclesiæ, propter nuptias futuras et onus matrimonii, et ad sustentationem uxoris et educationem liberorum, cum fuerint procreati, si vir præmoriatur*). *Bract.* fol. 92. *Fleta*, lib. 5, c. 23, § 2. Usually translated *dower;* and otherwise called by Bracton, *dos mulieris secundum consuetudinem Anglicanam;* the wife's dower according to the custom of England. *Bract.* fol. 92 b. 1 *Reeves' Hist.* 100. See *Dos rationabilis.*

In later law. The one-third part of the husband's lands, which the law, on his death, gave the wife, in case he had not previously endowed her *ad ostium ecclesiæ.* This was established by the Magna Charta of 9 Hen. III. c. 7. *Assignetur ei pro* dote *suâ, tercia pars tocius terre mariti sui, que sua fuit in vita suâ, nisi de minori dotata fuerit ad hostium ecclesiæ.* This provision, however, is not contained in the Charter of King John.

Dower, in the modern sense. 2 *Bl. Com.* 129, 134. See *Dower.*

*** The use of this word to signify the *dower* of the common law, though established by long usage, is, as Spelman has shown, an obvious misapplication. *Dos* was used in the Roman law, in the opposite sense of a marriage portion. 2 *Bl. Com.* 129. See *supra.* Hence, Tacitus remarked it as a singularity among the ancient Germans, that instead of the wife bringing a portion to the husband, the husband conferred it on the wife. Dotem *non uxor marito, sed uxori maritus affert. De Morib. Germ.* c. 18. *Dos* was used in the English sense of dower as early as the time of Glanville, though that writer takes notice that in the Roman law it had a different meaning. *Glanv.* lib. 6, c. 1. Bracton constantly employs *dos* in the sense of dower, (sometimes qualifying it as *dos rationabilis*, (q. v.) and *dos mulieris*,) though he adopts the Roman phrases *dos profectitia, dos adventitia*, in which *dos* denoted the reverse of dower. *Bract.* fol. 92 a, b. The proper Latin word for dower, according to Spelman, is *doarium*, a termed used in that sense in the early continental law of Europe. See *Doarium.*

Dos de dote peti non debet. Dower ought not to be demanded of dower. *Co. Litt.* 31. 4 *Co.* 122 b. A widow is not dowable of lands assigned to another woman in dower. 1 *Hilliard's Real Prop.* 135.

Doti lex favet; premium pudoris est, ideo parcatur. The law favors dower; it is the reward of modesty, therefore it should be spared. *Branch's Princ. Co. Litt.* 31.

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower. *Bract.* fol. 92. To entitle a woman to dower, she must be the actual wife of the party at the time of his decease. 2 *Bl. Com.* 130. This maxim seems to be derived from that of the civil law: **Ubicunque matrimonii nomen non est, nec dos est.** *Dig.* 23. 3. 3.

DOS RATIONABILIS. L. Lat. In old English law. Reasonable dower. Rationabilis dos *est cujuslibet mulieris de quocunque tenemento, tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominico suo, et ita in feodo, quod eam inde dotare poterit die quo eam desponsavit.* Reasonable dower is [the right] of every married woman, out of every kind of tenement, [being] the third part of all the lands and tenements which her husband held in his demesne and in fee, so that he might endow her thereof on the day he married her. *Bract.* fol. 92. See *Fleta*, lib. 5, c. 23, § 11. This passage is quoted by Lord Coke. *Co. Litt.* 33 b.

This kind of dower was otherwise called dower by the common law. 2 *Bl. Com.* 134.

DOT. Fr. [from Lat. *dos*, q. v.] In the civil law. Dowry, or marriage portion. *Civ. Code of Louis.* art. 2317.

DOTAL. [from Lat. *dotalis.*] Relating to the marriage portion of a woman; constituting or comprised in her portion.* *Wharton's Lex.*

This word is not properly applicable to the dower of the English law, the Lat. *dotalis* from which it is formed being a term of the Roman law, derived from *dos*

in the Roman sense. *Dotale prædium;* the dotal estate. *Inst.* 2. 8, pr. See *Dig.* 23. 4. *Id.* 23. 5.

DOTALITIUM. L. Lat. In canon and feudal law. Dower. *Spelman*, voc. *Doarium. Calv. Lex.* 2 *Bl. Com.* 129. Used as early as A. D. 841.

DOTARD. A dry old tree; a tree decayed with age. *Bacon's Works*, iv. 217. Pollards and dotards. *Ambl.* 134.

DOTARE. Lat. [from *dos*, q. v.] In old English law. To endow; to give a dowry or dower. *Bract.* fol. 93, 94. *Dotata;* endowed. *Id. ibid.*

DOTARIUM. L. Lat. In early European law. Dower. *Spelman*, voc. *Doarium.*

DOTE, *Dotif.* L. Fr. Doubtful. *Kelham.*

DOTE. Span. [from Lat. *dos*, q. v.] In Spanish law. The marriage portion of a wife. *White's New Recop.* b. 1, tit. 6, c. 1. The property which the wife gives to the husband on account of marriage, or for the purpose of supporting the matrimonial expenses. *Id.* b. 1, tit. 7, c. 1, § 1. *Schmidt's Civ. Law*, 75.

DOTISSA. L. Lat. [from *dos*, dower.] A dowager. *Com.* 185.

DOTKIN. See *Doitkin.*

DOTOUS. L. Fr. Doubtful; in doubt. *Kelham.*

DOUARIUM. See *Doarium.*

DOUBLE AVAIL OF MARRIAGE. In Scotch law. Double the ordinary or single value of a marriage. *Bell's Dict.* See *Duplex valor maritagii.*

DOUBLE BOND. In Scotch law. A bond with a penalty, as distinguished from a single bond. 2 *Kames' Equity*, 359.

DOUBLE COSTS. In practice. The ordinary single costs of suit, and one-half of that amount in addition. 2 *Tidd's Pr.* 987. Double is not used here in its ordinary sense of *twice* the amount. These costs are now abolished in England, by statute 5 & 6 Vict. c. 97. *Wharton's Lex.*

DOUBLE FINE. In old English law. A fine *sur done grant et render* was called a double fine, because it comprehended the fine *sur cognizance de droit come ceo*, &c. and the fine *sur concessit.* 2 *Bl. Com.* 353.

DOUBLE INSURANCE, (or ASSURANCE). The insurance of property twice by the party insured, on the same risk.* A double insurance is where the party insured makes two insurances on the same risk and the same interest. 3 *Kent's Com.* 280. See 2 *Steph. Com.* 175. *Park on Ins.* 280. This is not to be confounded with *re-assurance*, which is made by the insurer. See *Re-assurance.*

DOUBLE PLEA. [L. Lat. *duplex placitum.*] A plea which contains several distinct answers to the plaintiff's declaration.* *Steph. Pl.* 251, 252. A plea containing several distinct matters in answer to different parts of the declaration, where either of such matters alone is a sufficient answer to the whole.* *Id. ibid.* See *Arch. Civ. Pl.* 174. A plea containing an averment or denial of several facts, constituting distinct points or defences.* 1 *Burr.* 316. The averment of several facts going to make up *one* point, will not render a plea double. 1 *Smith's Lead. Cas.* 249, (Am. ed. note).

DOUBLE QUARREL. See *Duplex querela.*

DOUBLE VOUCHER. In a common recovery. A voucher over; a voucher by a party who had himself been vouched.* It was formerly usual, first to convey an estate of freehold to some indifferent person, against whom the præcipe was brought; and then he vouched the tenant in tail, who vouched over the common vouchee. *Id. ibid.* See *Voucher.*

DOUBLE WASTE. The name given to that species of waste where a tenant suffers a house to be wasted, and then fells timber to repair it. *Co. Litt.* 53 b.

DOUCE, *Douze.* L. Fr. Twelve. *Reconisaunce de* douce *jurours. Britt.* c. 90.

DOULCE. L. Fr. Gracious; gentle. *Kelham.*

DOUN. L. Fr. A gift. Otherwise written *don* and *done.* The thirty-fourth chapter of Britton is entitled *De Douns.*

DOUNQUES. L. Fr. Then. *Yearb.* M. 2 Edw. II. 21.

DOUNT. L. Fr. Wherefore; from whence. *Kelham. Britt.* c. 110.

Whereof; out of which. *Id. ibid.*

DOUS. L. Fr. Two. *Kelham.*

DOUTE. L. Fr. Doubt; fear. *Kelham.*

DOUTER, *Doubter.* L. Fr. To doubt; to fear or apprehend. *Kelham.*

DOUX. L. Fr. Two. *Kelham.*

DOVORRE, *Douree.* L. Fr. Dover. *Kelham.*

DOW. [Lat. *dotare.*] To give, or endow. *Cowell.*

DOWABLE. [Lat. *dotabilis.*] Entitled to be endowed.

DOWAGER. [L. Lat. *dotata, dotissa.*]

In English law. A widow endowed, or who has a jointure. *Blount.* A widow who either enjoys a dower from her deceased husband, or who has property of her own brought by her to her husband on marriage, and settled on herself after his decease. *Brande.*

A title given in England to a widow lady, to distinguish her from the wife of her husband's heir, having the same title. *Brande.* It is applied chiefly to the widows of princes, dukes, and other personages of rank and title. *Cowell. Blount.* A queen dowager is the widow of the king. 1 *Bl. Com.* 223.

DOWARIE. L. Fr. Dower. *Britt.* c. 47.

DOWE. L. Fr. Endowed. *Britt.* c. 110.

DOWER. L. Fr. and Eng. [L. Lat. *dos, dos mulieris, doarium, douarium, dotarium, dodarium, dotalitium, triens, tertia ;* L. Fr. *dowarie, douaire, dowere, dower ;* Scotch, *terce.*] That portion (usually one-third) of a man's lands and tenements which his widow is entitled, after his death, to have and hold for the term of her natural life, for the sustenance of herself, and the nurture and education of her children. *Co. Litt.* 30 b. *Litt.* sect. 36. *Bract.* fol. 92, 92 b. *Fleta*, lib. 5, c. 23, § 11. 2 *Bl. Com.* 129, 130. 2 *Steph. Com.* 302. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. *Macqueen, Husb. & Wife*, 158. The estate or interest of the widow in such portion is called an *estate in dower*, and she herself is termed *tenant in dower* (*tenens in dote*). *Co. Litt.* 30 a. See *Estate in dower, Dos.*

*** Dower is now given to the widow by the express provision of the law, but was anciently conferred in England by the act of the husband himself, who endowed his wife at the church door, at the time of the espousals, with the whole of his lands or such part as he pleased, specifying the same; which was called the *constitutio dotis*, or establishment of dower. See *Dower ad ostium ecclesiæ.* If no specific dotation of this kind was made by the husband, the common law gave the wife the *third* part (which was called her *dos rationabilis*, q. v.) of such lands and tenements as the husband was seised of at the time of the espousals, or, in Bracton's language, of which he might then have endowed her. 2 *Bl. Com.* 134. *Bract.* fol. 92. This is the origin of the modern dower, and is expressly confirmed by Magna Charta, (9 Hen. III.) c. 7. The ancient mode of endowment at the church door, by the husband, is supposed by some to be derived from the *donatio propter nuptias* of the Roman law, and Bracton calls it expressly by that name. *Long's Discourses*, 99—102. *Bract.* fol. 92 b. But see 2 *Bl. Com.* 129. *Spelman*, voc. *Doarium. Cruise Dig.* tit. Dower.

The word *dower* itself is derived by Spelman from the Fr. *douaire*, as are also the Lat. *doarium*, and *douarium.* It occurs in its present form at a very early period, being constantly used as a law French word by Britton, whose several chapters on this subject are entitled *De Dowers, De establissementz de dower, De assignment de dower*, and *De remedy de dower. Britt.* cc. 101, 102, 103, 104. *Dowar* or *douar* may have been an earlier form. *Dower* is also used in the original law French of Littleton.

DOWER BY THE COMMON LAW. [L. Lat. *dos per communem legem.*] The ordinary kind of dower in English and American law, consisting of one-third of the lands of which the husband was seised in fee at any time during the coverture. *Litt.* sect. 36. 2 *Bl. Com.* 132. 2 *Steph. Com.* 302. 4 *Kent's Com.* 35. 1 *Greenleaf's Cruise's Dig.* [183], 165, note. See *United States Digest*, Dower and Curtesy.

The law of dower in England has been materially modified of late, by the statute called the Dower Act, 3 & 4 Will. IV. c. 105.

DOWER BY CUSTOM. A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands, or, in some places, the whole; and in some, only a quarter. 2 *Bl. Com.* 132. *Litt.* sect. 37.

DOWER AD OSTIUM ECCLESIÆ. L. Lat. Dower at the church door or porch. An ancient kind of dower in England, where a man, (being tenant in fee simple, of full age,) openly *at the church door*, where all marriages were formerly celebrated, after affiance made and troth plighted between them, *endowed* his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. *Litt.* sect. 39. 2 *Bl. Com.* 133. According to Bracton, the endowment was made before

the espousal, at the commencement of the contract, (*ante desponsationem, in initio contractûs*). *Bract.* fol. 92.

*** This appears to have been the original English dower, and is supposed by some to have been derived from the *donatio propter nuptias* of the civil law. See *Dower.* It was formerly the most usual species of dower, and, though latterly fallen into disuse, was not abolished until the statute of 3 & 4 Will. IV. c. 105, s. 13. 2 *Bl. Com.* 133—135. 1 *Steph. Com.* 252, 253. The wife might be endowed of personalty or goods as well as of lands, and a trace of this ancient kind of dower is still distinctly preserved in the marriage ritual of the church of England, in the expression "with all my worldly goods I thee endow." See 2 *Bl. Com.* 134, note (*p*).

DOWER DE LA PLUIS BEALE. L. Fr. Dower of the fairest [part]. A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed *de la pluis belle* of the tenement in socage. *Litt.* sect. 48. This kind of dower was abolished with the military tenures. 2 *Bl. Com.* 132.

DOWER EX ASSENSU PATRIS. L. Lat. Dower by the father's assent. A species of dower *ad ostium ecclesiæ*, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. *Litt.* sect. 40. 2 *Bl. Com.* 133.

DOWERE. L. Fr. Dower. *Dowere ne devietz avoir, qar vostre baroun est en vie;* dower you ought not to have, for your husband is alive. *Yearb.* P. 1 Edw. II. p. 6.

DOWMENT. L. Fr. In old English law. Endowment. A word used by Littleton in nearly the sense of *dower*. *Dower que est appelle* dowment *ad ostium ecclesiæ, et dower appelle* dowment, &c.; dower which is called dowment at the church door, and dower called dowment, &c. *Litt.* sect. 38.

DOWRESS. A woman entitled to dower; a tenant in dower. 2 *P. Wms.* 707.

DOWRY. The portion or property which the wife brings her husband in marriage; which, if in lands, was anciently called *frank-marriage*, or *marriage*, (*maritagium*); if in money, goods or chattels, a marriage portion. *Co. Litt.* 31 a. See *Maritagium.* It expresses the proper meaning of the *dos* of the Roman, the *dot* of the French, and the *dote* of the Spanish law, but is a very different thing from *dower*, with which it has sometimes been confounded.

DOY. L. Fr. Owe; ought. *Sauve la foy que jeo* doy *au roy;* saving the faith which I owe to the king. *Britt.* c. 68. See *Doit.*

DOYNE, *Doigne.* L. Fr. Give. *Jeo te* doyne; I give you. *Britt.* c. 36.

DOZ, *Doze, Dozze.* L. Fr. Twelve; the twelfth. *Kelham.*

DOZEIN. L. Fr. Twelve; a person twelve years of age. *Stat.* 18 *Edw.* II. *Barringt. Obs. Stat.* 208.

DOZYME, *Dozime, Dozine.* L. Fr. Twelve. *A parfaire sa ley ove sa* dozyme *meyn;* to perfect his law with his twelve hand. *Britt.* c. 27. See *Duzein.*

DR. An abbreviation of *Droit. Kelham.*

DRACHMA. A term employed in old pleadings and records, to denote a groat. *Towns. Pl.* 180.

An Athenian silver coin, (Gr. δραχμή,) of the value of about 7¾d. sterling.

DRAFT, *Draught.* The common term for a bill of exchange; as being *drawn* by one person on another. 2 *Bl. Com.* 467.

An instrument or paper as first, or originally *drawn*, or roughly written before it is copied or engrossed.

DRANA. L. Lat. In old records. A drain. *Cowell.*

DRASCHIA. L. Lat. In old English law. Grains; the refuse of malt after brewing. *Fleta*, lib. 2, c. 82, § 5.

DRAW. [L. Lat. *tractare, detractare.*] In English criminal law. To draw on a hurdle to the place of execution. 4 *Bl. Com.* 92, 377. In cases of high treason the convict was *drawn*, hung and quartered. *Id. ibid.*

DRAWBACK. In commerce. An allowance made to merchants on the re-exportation of certain imported goods, which in some cases consists of the whole, in others of a part of the duties which had been paid upon the importation. *Encyclop. Americ.* —The remitting or paying back of duties previously paid on a commodity, on its being exported. *McCulloch's Dict. Andrews on Rev. Laws*, chap. vii. See *Debenture.*

DRAWEE. [L. Lat. *trassatus.*] In mercantile law. The person to whom a

bill of exchange is addressed, or on whom it is drawn. 3 *Kent's Com.* 75. *Story on Bills*, § 115.

DRAWER. [L. Lat. *trassans.*] In mercantile law. The person who draws a bill of exchange. 3 *Kent's Com.* 75. *Story on Bills*, § 114.

DRAWING TO EXECUTION. In English criminal law. The act of drawing a condemned criminal on a hurdle, from the place of prison to the place of execution. *Bacon's Works*, iv. 291. 4 *Bl. Com.* 377. See 4 *Mod.* 162. Where a man was hanged on an appeal of death, the wife of the person killed and all his kindred drew the felon to execution. *Blackst. L. Tr.* 35.

DRAWLATCHES. In old English law. Thieves or robbers. *Stat.* 5 *Edw.* III. c. 14. 7 *Ric.* II. c. 5. *Lambard Eirenarch.* lib. 2, c. 6. *Cowell.*

DREIT, *Drect*, *Drett.* L. Fr. Right. *Kelham.* The same as *droit*, (q. v.) These forms of the word show very clearly the derivation, through the L. Lat. *derittum*, *derictum*, from the Lat. *directum*, (qq. v.)

DREIT DREIT. L. Fr. [Lat. *jus duplicatum.*] In old English law. Double right. The right of possession and the right of property united. (*Est jus possessionis et jus proprietatis.*) *Bract.* fol. 206 b, 283 b. See *Droit droit.*

DRENCHES, *Drenges.* [L. Lat. *drengi.*] A species of tenants mentioned in Domesday book, whom Spelman supposes to have been military vassals or tenants by knight-service. The same author quotes an old MS. record of the family of Sharnburn, in Norfolk, from which it would appear that the name was given to certain tenants *in capite*, who, at the coming of William the Conqueror, being put out of their estates, were afterwards, upon complaint being made to him, restored to them, on their making it appear that they were owners thereof, and had taken no part against him either by aid or counsel, (*in consilio et auxilio*). *Spelman.* According to Lord Coke, who spells the word *dreuchs*, they were free tenants of a manor. *Co. Litt.* 5 b.

DRENER. See *Derener.*

DRENGAGE. [L. Lat. *drengagium.*] The tenure by which the *drenches* (q. v.) held their lands. *Spelman.*

DREYN, *Drein.* L. Fr. Forms of *Darrein*, (q. v.)

DRIFT. [Lat. *agitatio.*] In old English law. A driving. A term applied to cattle. See *infra.*

DRIFT OF THE FOREST. [L. Lat. *agitatio animalium in foresta.*] In forest law. An examination or view of cattle in a forest; formerly made at certain times in the year, by the officers of the forest, by *driving* all the cattle into some pound or enclosed place, in order to see whose they were, and whether they were commonable, and whether the forest were surcharged or not. *Manwood*, part 2, c. 15. 4 *Inst.* 309. *Termes de la Ley.* See *Common, Forest.*

DRIFT-WAY. [L. Lat. *actus, drova.*] A way, road or path used for driving cattle. *Co. Litt.* 56 a. See *Actus, Drift.* A term used in the state of Rhode Island. 2 *Hilliard's Real Prop.* 33. Called in Scotch law, *drove-road*, (q. v.) A carriage-way will comprehend a horse-way, but not a drift-way. Heath, J. 1 *Taunt.* 285.

DRINCLEAN. Sax. A contribution of tenants, in the time of the Saxons, towards a potation, or ale, provided to entertain the lord, or his steward. *Cowell.* See *Cervisarii.*

DRIP. [Lat. *stillicidium.*] A species of servitude derived from the civil law, by which one man engages to permit the waters flowing from the roof of his neighbor's house to *fall* [or drip] on his estate. 3 *Kent's Com.* 436. 2 *Hilliard's Real Prop.* 85. See *Stillicidium.*

DROFDENE, *Drofden.* Sax. A grove, or woody place, where cattle were kept. *Cowell. Blount.*

DROFLAND. Sax. [from *dryfene*, driven.] A quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for *driving* their cattle through a manor to fairs or markets. *Cowell. Blount.*

DROIT, *Droict*, *Dreit.* L. Fr. [Lat. *jus, rectum, directum.*] Right; justice. *Co. Litt.* 158 b. See *Directum, Right.*

A right. See *infra*, and see *Jus.*

A writ of right, so called in the old books. *Co. Litt.* 158 b.

Law. The common law is sometimes termed *common droit. Litt.* sect. 213. *Co. Litt.* 142 a. See *Common law.*

Droit ne done pluis que soit demaunde. The law gives not more than is demanded. 2 *Inst.* 286.

Droit ne poet pas morier. Right cannot die. *Jenk. Cent.* 100, case 95.

DROIT D'AUBAINE (D'AUBAIGNE, and sometimes DROIT D'AUBENAGE). L. Fr. [L. Lat. *jus albinatus, jus albanagii.*] A right or prerogative of the sovereigns of

some countries in Europe, entitling them, on the death of an alien or stranger, to all he was worth, unless he had a particular exemption. 1 *Rob. Charles* V. Appendix, Note xxix. 1 *Bl. Com.* 372. This was particularly the case in France, where, from the time of Charlemagne down to within a recent period, a stranger could not, except by special favor, dispose of his property by will, and when he died, the sovereign or lord of the barony succeeded by right of inheritance to his estate. *Id. ibid. Spelman*, voc. *Albanus. Ducange*, voc. *Albani. Repertoirè de Jurisp. par Merlin*, tit. *Aubaine.* 2 *Kent's Com.* 67—69. It was abolished in 1791, but revived under Napoleon, and was finally abolished only in 1819. *Id. ibid.* It appears, however, to have survived in other places to the present day, being formally relinquished as a subsisting right, in treaties recently made between the United States and several of the European powers. *Convention with Hesse Cassel*, March 25, 1844, Art. 1. *Convention with Wurttemburg*, April 10, 1844.

The etymology of *aubaine* has been variously given. Nicot says it was anciently spelt *hobaine*, from the verb *hober*, which signifies to remove from one place to another. *Thresor de la Lang. Franc.* fol. Paris, 1606. Cujacius derives the word from the Lat. *advena*, a foreigner or stranger. *Cujac. Opera*, fol. Neap. 1758, tom. ix. col. 1719. Spelman derives it from the Lat. *aliba natus*, (a person born elsewhere,) which seems the best explanation. *Spelman*, voc. *Albanus. P. Cyclop.* voc. *Aubaine.*

DROIT DE BRIS. L. Fr. A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called *droit de bris sur le naufrages.* The right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III. as duke of Normandy, Aquitaine and Guienne, in a charter granted A. D. 1226, preserved among the rolls at Bordeaux. *Laws of Oleron*, Art. xxvi. Note. 1 *Peters' Adm. Decis.* Appendix. See *Bris.*

DROIT DE GARDE. In French feudal law. Right of ward. The guardianship of the estate and person of a noble vassal, to which the king, during his minority, was entitled. *Steph. Lect.* 250.

DROIT DE GITE. Fr. In French feudal law. The duty incumbent on a roturier, holding lands within the royal domain, of supplying board and lodging to the king and to his suite, while on a royal progress. *Steph. Lect.* 351.

DROIT DE GREFFE. Fr. In old French law. The right of selling various offices connected with the custody of judicial records or notarial acts. *Steph. Lect.* 354. A privilege of the French kings.

DROIT DE MAITRISE. In old French law. A charge payable to the crown by any one, who, after having served his apprenticeship in any commercial guild or brotherhood, sought to become a master workman in it on his own account. *Steph. Lect.* 354.

DROIT DE PRISE. Fr. In French feudal law. The duty (incumbent on a roturier) of supplying to the king on credit, during a certain period, such articles of domestic consumption as might be required for the royal household. *Steph. Lect.* 351.

DROIT DE QUINT. Fr. In French feudal law. A relief payable by a noble vassal to the king as his seigneur, on every change in the ownership of his fief. *Steph. Lect.* 350.

DROIT DROIT. L. Fr. [L. Lat. *jus duplicatum.*] In old English law. A double right. The right of possession united with the right of property. 2 *Bl. Com.* 199. *Co. Litt.* 266 a. 1 *Reeves' Hist.* 476. 4 *Kent's Com.* 373. See *Dreit dreit.*

DROIT ÉCRIT. Fr. In French law. (The written law.) The Roman civil law, or Corpus Juris Civilis. *Steph. Lect.* 130.

DROITS OF ADMIRALTY. Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. 1 *Robinson's Adm. Rep.* 32. 2 *Kent's Com.* 357, note. Applied also to property captured in time of war, by non-commissioned vessels of a belligerent nation. 1 *Kent's Com.* 96.

DROITURAL. [from *droit*, right.] In old English practice. Relating to right; or, more strictly, relating to the mere right of property, as distinguished from the right of possession. An action *droitural* was an action brought to determine the right of property, as distinguished from an action *possessory*, in which the object was to ascertain the right of possession. 3 *Steph. Com.* 486. *Burton's Real Prop.* 123, pl.

377, note. *Roscoe's Real Act.* 2. This was the old distinction of writs relating to lands. *Gilb. C. Pleas*, 5. Writs of right proper were writs droitural. See *Possessory.*

DROITURE. L. Fr. [from *droit*, right.] In old English law. Right; justice. *En primes voit le roy—que common* droiture *soit fait à touts;* in the first place, the king wills that common right be done to all. *Stat. Westm.* 1, c. 1.

DROITURELE, *Droiturel, Droiturelle.* L. Fr. [from *droiture* or *droit*, right.] Rightful; lawful. *Britt.* c. 27.

DROMO, *Dromunda.* L. Lat. In old records. A ship or large vessel made for great burden and swift sailing. *Cowell. Spelman.*

DROVA. L. Lat. In old records. A drove, or drift-way. A common road for driving cattle. *Cowell.*

DROVE-ROAD. In Scotch law. A road for driving cattle. 7 *Bell's Appeal Cases*, 43, 53, 57. A drift-road. Lord Brougham, *Id. ibid.*

DROVE-STANCE. In Scotch law. A place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 *Bell's App. Cas.* 53, 57.

DROWN. To merge or sink. "In some cases, a right of freehold shall *drown* in a chattel." *Co. Litt.* 266 a, 321 a.

DRU. A thicket of wood in a valley. *Domesday.*

DRUCHTE, *Druthe.* In old European law. Betrothed. *L. Salic.* tit. 14, § 10. *Spelman.*

DRUDES, *Drudi.* L. Lat. In old feudal law. A name given to a species of vassal. *Spelman.*

DRUNGARIUS. L. Lat. In old European law. The commander of a *drungus*, or band of soldiers. Applied also to a naval commander. *Spelman.*

DRUNGUS. L. Lat. In old European law. A band of soldiers, (*globus militum*). *Spelman.*

DRY EXCHANGE. [L. Lat. *cambium siccum.*] In English law. A term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas in truth, nothing passed but on one side, in which respect it was called *dry. Stat.* 3 *Hen.* VII. c. 5. *Cowell. Blount. Lud. Lopez. de Contr. et Negot.* cited *ibid.*

DRY MULTURES. In Scotch law. Quantities of corn paid to a mill, whether the payers grind or not. *Wharton's Lex.*

DRY RENT. [L. Lat. *redditus siccus.*] The same as *rent seck*, (q. v.) 2 *Bl. Com.* 42.

Duas uxores eodem tempore habere non licet. It is not lawful to have two wives at the same time. *Inst.* 1. 10. 6. 1 *Bl. Com.* 436.

DUB. An abbreviation of *Dubitatur*, (q. v.) used in the reports.

DUBITANS. Lat. Doubting. Dobbin, J. *dubitans.* 1 *Show.* 364.

DUBITATUR. L. Lat. It is doubted. Frequently used in the books, where a point is doubted.

DUBITAVIT. Lat. Doubted. Vaughan, C. J. *dubitavit. Freem.* 150.

DUBLEE. L. Fr. Doubled; repeated; duplicate. *Kelham.*

DUC. L. Fr. Duke. *Yearb.* M. 8 Hen. VI. 22.

DUCATUS. L. Lat. [from *dux*, q. v.] In old English law. A duchy. *Reg. Orig.* 153.

In feudal and old European law. A dukedom; the dignity or territory of a duke. *Feud. Lib.* 1, tit. 14. *Lib.* 2, tit. 10. *Spelman*, voc. *Dux.*

DUCE, *Douce.* L. Fr. [from Lat. *dulcis.*] Fresh. *Ewe douce;* fresh water. *Britt.* c. 1.

DUCES TECUM. L. Lat. (You bring with you.) In practice. A term applied to certain writs, where a party summoned to appear in court is required to *bring with him* some piece of evidence, or other thing that the court would view. *Cowell. Termes de la Ley.* See *Subpœna duces tecum.*

DUCES TECUM LICET LANGUIDUS. L. Lat. (Bring with you, although sick.) In practice. An ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner, without danger of death, he being *adeo languidus*, (so sick); whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus. Cowell. Blount.*

DUCHY COURT OF LANCASTER. A court of special jurisdiction in England, held before the chancellor of the duchy of Lancaster, or his deputy, concerning all matter of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446. The proceedings in this court are the same as on the equity side in the courts of exchequer and chancery. *Id. ibid.*

DUCISSA. L. Lat. [from *dux*, q. v.] In old pleading. A duchess. *Towns. Pl.* 149.

DUCKING STOOL. See *Castigatory, Cucking stool.*

DUDZIME. L. Fr. Twelve. *Kelham. Dudzime main;* twelve hands. *LL. Gul. Conq.* l. 4.

DUE. L. Fr. Of the. *Kelham.*

DUE. [Lat. *debitum*, from *debere*, to owe.] That which one *owes;* that which one *ought* to pay, or do to, or for another.*

Owed, or owing, as distinguished from payable. A debt is often said to be *due* from a person, where he is the party owing it, or primarily bound to pay, whether the time for payment has, or has not arrived. Story, J. 6 *Peters' Rep.* 29, 36. *Wharton's Lex.* See *Debitum.*

Payable. 3 *Selden's R.* 476. A bill or note is commonly said to be *due*, when the time for payment of it has arrived. Story, J. *ub. sup.*

Regular; formal; according to rule or form.

DUE-BILL. A brief written acknowledgment of a debt, usually in the following words: "Due A. B.—dollars, [payable on demand.] Dated, &c. C. D." It is not made payable to order, like a promissory note. See *I. O. U.*

DUE PROCESS OF LAW. Law, in its regular course of administration through courts of justice. 2 *Kent's Com.* 13, cited by Comstock, J. 3 *Kernan's R.* 395. Due process of law imports a judicial trial, and not a mere declaration of legislative will by the passing of a law. Johnson, J. *Id.* 416. See 4 *Hill's* (N. Y.) *R.* 140. 3 *Comstock's R.* 511. 2 *Story on the Const.* § 1789.

DUELLUM. Lat. [from *duo*, two.] In old English and Scotch law. The judicial combat, or trial by battel. *Bract.* lib. 3, tr. 2, c. 21, fol. 141 b. *Spelman. Skene de Verb. Sign.* A single combat between *two*, to prove the truth in a suit; the one who overcame being considered as having proved his case. (*Est singularis pugna inter duos, ad probandum veritatem litis, et qui vicerit probasse intelligitur.*) *Fleta*, lib. 1, c. 34, § 26. *Duellum* is the appropriate Latin word, sometimes expressed by *monomachia*, (single fight). *Id. ibid. Co. Litt.* 294 b. 4 *Inst.* 157. *Battail, bataille*, or *battayle*, was the Norman French. *Vadiare duellum;* to wage the duel, to give pledges to fight. *Bract.* fol. 141 b. *Percussio duelli;* the striking of a duel, the commencement of the combat. *Id. ibid.* See *Battel, Combat, Camp-fight.*

DUI. L. Fr. To-day. *Kelham.*

DUIST, *Duit.* L. Fr. Ought. *Kelham. Britt.* c. 22.

DUKE. [L. Fr. *duc;* from Lat. *dux*, from *ducere*, to lead.] The first title of dignity in Great Britain, after the royal family. 1 *Bl. Com.* 397. 3 *Steph. Com.* 1, 2. *Camden Brit.* tit. *Ordines.* Derived from the Latin *dux*, the leader of an army, which *duke* itself originally signified. *Crabb's Hist.* 236. See *Dux.*

DULY. In due or proper form, or manner.

Regularly; upon a proper foundation, as distinguished from mere form. See 15 *Mees. & W.* 465, 469.

DUM. Lat. While. A word of limitation in old conveyances. *Co. Litt.* 235 a. 10 *Co.* 41 b.

DUM BENE SE GESSERIT. L. Lat. While he conducted himself well; during good behaviour. 2 *Bl. Com.* 252. The implied condition on which a feud or fee was originally given. *Id.* See *Quamdin bene se gesserint.*

DUM FERVET OPUS. Lat. While the work glows; in the heat of action. 1 *Kent's Com.* 120.

DUM FUIT INFRA ÆTATEM. L. Lat. (While he was within age.) In old English practice. A writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and after his death, his heir had the same remedy. *Reg. Orig.* 228 b. *F. N. B.* 192, G. *Litt.* sect. 406. *Co. Litt.* 247 b. *Roscoe's Real Act.* 93. Long superseded by the action of ejectment, and finally abolished in England, by statute 3 & 4 Will. IV. c. 27.

DUM FUIT IN PRISONA. L. Lat. (While he was in prison.) In old English practice. A writ of entry which lay to restore a man to the possession of lands which he had aliened under duress of imprisonment. *Roscoe's Real Act.* 93. 2 *Inst.* 482. Abolished with the preceding writ.

DUM FUIT NON COMPOS MENTIS. L. Lat. (While he was of unsound mind.) In old English practice. A writ of entry which lay for a man who had aliened his lands while he was of unsound mind, to recover them from the alienee.

Reg. Orig. 228 b. *F. N. B.* 202, C. 2 *Bl. Com.* 291. 3 *Reeves' Hist.* 31. *Termes de la Ley. Roscoe's Real Act.* 93. Abolished with the preceding writ.

DUM RECENS FUIT MALEFICIUM (FACTUM). Lat. While the offence was fresh. A term employed in the old law of appeal of rape. *Bract.* fol. 147.

DUM SOLA. Lat. While sole, or single. *Dum sola fuerit;* while she shall remain sole. *Dum sola et casta vixerit;* while she lives single and chaste. Words of limitation in old conveyances. *Co. Litt.* 235 a.

DUMETA. Lat. In old English law. A thicket. *Fleta*, lib. 1, c. 24, § 8.

DUMMODO. Lat. Provided that; so that. A word of limitation in old conveyancing. 10 *Co.* 41 b. *Co. Litt.* 235 a. One of the apt words of reserving a rent. *Co. Litt.* 47 a. *Dummodo solverit talem redditum;* provided he shall pay such a rent. *Id.* 235 a.

DUN. Sax. [L. Lat. *duna, dunum.*] A hill of small elevation; a low hill. *Domesday. Co. Litt.* 4 b. Places in England, the names of which end in *dun*, or *don*, (Lat. *dunum*,) are supposed to have been so called from their elevated situation. *Id. Cowell. Spelman*, voc. *Dunum.* Hence banks, or elevations along the seashore, are called *downs.*

DUNA. L. Lat. In old records. A bank of earth cast up; the side of a ditch. *Cowell. Chartular. Glaston.* MS. 75, cited *ibid.*

DUNELM'. An abbreviation of *Dunelmia*, Durham. 1 *Inst. Cler.* 28.

DUNK. L. Fr. Then. A corrupted form of *donque.* See *Fet Assaver*, passim.

DUNUM. L. Lat. A hill or rising ground. *Spelman.* See *Dun.*

Duo non possunt in solido unam rem possidere. Two cannot possess one thing in entirety. *Co. Litt.* 368.

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et authoritas. There are two instruments for confirming or impugning all things,—reason and authority. 8 *Co.* 16, *The Prince's case.*

DUODECIMA MANUS. L. Lat. [L. Fr. *dozyme meyn, dudzime main.*] The twelfth hand; twelve hands, or twelve-hand. The oath of twelve men, (including the party himself, though Britton makes it to be exclusive,) by whom a defendant was formerly allowed to make his law. *Glanv.* lib. 1, c. 9. *Bract.* fol. 410. *Britt.* c. 27. 3 *Bl. Com.* 343. *Il covint aver oue luy xi maynz de jurer oue luy*, &c.; it behooves to have with him *eleven hands* to swear with him, &c. *Dyversite des Courts*, fol. 305. Called *hands*, because the hand was always used in making oath, and generally by laying it on the gospels. See *Manus, Hand, Compurgator, Wager of law.*

DUODECEMVIRALE JUDICIUM. L. Lat. The trial by twelve men, or by jury. Applied to juries *de medietate linguæ. Molloy de Jur. Mar.* 448.

DUODENA. L. Lat. In old records. A jury of twelve men. *Cowell.*

A dozen. *Duodena panis;* a dozen of bread. *Towns. Pl.* 170. *De tribus duodenis fili;* of three dozen of thread. *Id.* 104.

ΔΥΟΚΑΙΔΕΚΑΔΕΑΤΟΝ. Gr. The name given to the law of the Twelve Tables, in the Greek of the civil law. *Cod.* 6. 4. 15.

DUPLA. Lat. In the civil law. Double the price of a thing. *Dig.* 21. 2. 2. *Simplam pro dupla. Id.* 21. 2. 37. 2.

DUPLEX. Lat. Double. Applied to a plea. *Freem.* 321.

DUPLEX QUERELA. L. Lat. (A double complaint, or double quarrel.) In English ecclesiastical law. A complaint in the nature of an appeal, made by a clerk, or other person, to the archbishop of the province, against an inferior ordinary, for delaying or refusing to do justice in some ecclesiastical cause; as to give sentence, institute a clerk, &c. *Cowell. Blount. Tomlins.* 3 *Bl. Com.* 247. So called because most commonly made against *both* the judge, and him at whose suit justice is denied or delayed. *Cowell.*

DUPLEX VALOR MARITAGII. L. Lat. In old English law. Double the value of the marriage. Infant wards who married without their guardians' consent forfeited double the value of the marriage. 2 *Bl. Com.* 70. *Litt.* sect. 110. *Co. Litt.* 82 b. See *Maritagium.* Called in Scotch law, the *double avail* of marriage. See *Avail.*

DUPLICARE. Lat. To double or repeat; to make twice or in two parts, as the old charters were executed.* *Fleta*, lib. 2, c. 64, § 2. *Si* [*chartæ*] *communes sint, duplicari debent, quod quilibet habeat partem suam;* if the charters be common, [i. e. involving mutual covenants,] they ought to be executed in two, so that each party may have his part. *Bract.* fol. 33 b. *Conventio duplicata;* a duplicate covenant or agreement. *Id.* fol. 169.

DUPLICATE. [Lat. *duplicatum*, from *duplicare*, to double.] That which is doubled, or twice made; an original instrument repeated.* A document which is the same as another, in all essential particulars. Tindal, C. J. 7 *Man. & Gr.* 93. Maule, J. *Id.* 94. Sometimes defined to be the *copy* of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor, it seems, need it be an exact copy. See *supra.* Defined also to be the *counterpart*, of an instrument; but in indentures there is a distinction between *counterparts* executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and *duplicate originals* each executed by all the parties. 7 *Man. & Gr.* 91, note. See 2 *Id.* 518, note. And see *Counterpart.* The old indentures, charters, or chirographs, seem to have had the character of duplicates. See *Duplicare.*

DUPLICATIO. Lat. [from *duplicare*, to double, or follow as the *second* in order.] In the civil law. The defendant's answer to the plaintiff's replication; corresponding to the rejoinder of the common law. *Inst.* 4. 14. 1. *Heinecc. El. Jur. Civ.* lib. 4, tit. 14, § 1284. The fourth pleading in the series. 3 *Bl. Com.* 310. Translated *duplication. Hallifax, Anal.* b. 3, c. 5, num. 7. In Scotch practice, *duply.* Bracton and Fleta call this pleading *triplicatio. Bract.* fol. 400 b, 428 b, 57 b. *Fleta*, lib. 6, c. 36, § 10.

DUPLICATIO. Lat. A doubling.

Duplicationem possibilitatis lex non patitur. The law does not allow the doubling of a possibility. 1 *Rol. R.* 321.

DUPLICATUM JUS. L. Lat. Double right. *Bract.* fol. 283 b. See *Droit droit.*

DUPLICITY. In pleading. That fault which consists in employing two or more distinct allegations or answers, where one is sufficient.* *Steph. Plead.* 251, 252. See *Double plea.*

DUPLUM. Lat. In civil and old English law Double. *Damna in duplo;* double damages. *Stat. Westm.* 2, c. 26.

DUPLY. [from Lat. *duplicatio*, q. v.] In Scotch pleading. The defendant's answer to the plaintiff's replication.

To DUPLY. In Scotch pleading. To rejoin. "It is *duplyed* by the pannel." 3 *State Trials*, 471.

DUPONDIUS. Lat. In the civil law. Two pounds; the double of an *as;* twenty-four *unciæ. Calv. Lex. Jurid. Inst.* 2. 14. 8. *Heinecc. El. Jur. Civ.* lib. 2, tit. 14, § 541.

DURANTE. L. Lat. During. A word of limitation in old conveyances. *Co. Litt.* 234 b. *Durante viduitate;* during widowhood. *Id. ibid. Durante virginitate;* during virginity. *Id. ibid. Durante vita;* during life. *Id. ibid.*

DURANTE ABSENTIA. L. Lat. During absence. 2 *Bl. Com.* 503. See *Administration.*

DURANTE BENEPLACITO. L. Lat. During good pleasure. The tenure by which the judges in the superior courts in England formerly held their commissions. 1 *Bl. Com.* 267, 342. 2 *Steph. Com.* 492.

DURANTE MINORE ÆTATE. L. Lat. During minority. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. See *Administration.* Words taken from the old form of letters of administration. 5 *Co. ub. sup.*

DURANTE VIDUITATE. L. Lat. During widowhood. 2 *Bl. Com.* 124. *Durante casta viduitate;* during chaste widowhood. 10 *East*, 520. See *Durante.*

DURESME. L. Fr. Durham. *Yearb.* P. 1 Edw. II. 6.

DURESS. [L. Fr. *duresse;* Lat. *durities, duritia.*] Constraint; compulsion. The state of compulsion or necessity in which a person is induced, by the restraint of his liberty, or menace of bodily harm, to execute a deed, or do any other legal act, or to commit a misdemeanour; and which constraint may afterwards be taken advantage of, to avoid such act, or its consequences. 1 *Bl. Com.* 130. 2 *Id.* 292. 4 *Id.* 30. 1 *Steph. Com.* 130, 442. 2 *Kent's Com.* 453. *Termes de la Ley.*

DURESS OF IMPRISONMENT. The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 *Bl. Com.* 130, 131, 136, 137. 1 *Steph. Com.* 137. 2 *Kent's Com.* 543.

DURESS PER MINAS. L. Lat. Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanour. 1 *Bl. Com.* 130. 4 *Id.* 30. 4 *Steph. Com.* 83. See *Metus.*

To DURESS. To subject to duress. A word used by Lord Bacon. "If the party *duressed* do make any motion," &c. *Bacon's Max.* 89, reg. 22.

DURESSE, *Duresce.* L. Fr. Duress, (q. v.) Hardship. *Graunt* duresce *serroit;* it would be a great hardship. *Yearb.* P. 2 Edw. II. 39.

DURESSOR. One who subjects another to duress; one who compels another to do a thing, as by menace. A word used by Lord Bacon. *Bac. Max.* 90, reg. 22.

DURITIA. Lat. [from *durus*, hard.] In old English law. Duress. 3 *Leon.* 239.

DURSLEGI, *Dursley.* [from Germ. durre, dry, and Sax. *slege*, a stroke.] In old European law. Blows without wounding or bloodshed; dry blows or beating. *Spelman.*

DUS. L. Fr. Duke. *Kelham.*

DUSCENS. L. Fr. Two hundred. *Kelham.*

DUSESME, *Duzim.* L. Fr. Twelfth. *Kelham.*

DUSKES A CHOU QE. L. Fr. Until that. *Kelham.*

DUTIES. Rights due from persons. 1 *Bl. Com.* 123. See *Duty.*

DUTIES, in revenue law, in a large sense, is a word very nearly equivalent to *taxes*, embracing all impositions or charges levied on persons or things. 1 *Story on the Const.* § 952. *Id.* (Abr.) § 474.

In its more restrained sense, it is often used as equivalent to *customs*, and in this sense is nearly synonymous with *imposts.* *Id. ibid.* *Andrews on Rev. Laws*, § 133. See *Duty.*

DUTY. [Lat. *debitum.*] A thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than *debt*, although both are expressed by the same Latin word *debitum.* Redfield, C. J. 26 *Vermont R.* 725, 733. An inchoate right or duty may exist, which has not become ripened or perfected into a debt. *Id.* 736. *Duty* is the correlative of *right.*

A sum payable to government, on the importation or exportation of goods. See *Duties.*

DUUMVIRI. Lat. [from *duo*, two, and *viri*, men.] A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function.* *Brande.*

Duumviri municipales were two annual magistrates in the towns and colonies, having judicial powers. *Calv. Lex.*

Duumviri navales were officers appointed to man, equip and refit the navy. *Id. ibid.*

DUX. Lat. [from *ducere*, to lead.] In the Roman law. A leader or military commander. The commander of an army. *Dig.* 3. 2. 2, pr.

In later law. A military governor of a province. See *Cod.* 1. 27. 2. A military officer having charge of the borders or frontiers of the empire; called *dux limitis*, (*duces limitum*). *Cod.* 1. 49. 1, pr. *Id.* 1. 46. 4. *Id.* 3. 26. 7. At this period, the word began to be used as a title of honor or dignity.

In feudal and old European law. Duke; a title of honor, or order of nobility. 1 *Bl. Com.* 397. *Crabb's Hist.* 236. One who was invested by the prince with a dukedom or ducal fief, (*ducatus*). *Feud. Lib.* 2, tit. 10. The highest order of *capitanei regis* or crown vassals. *Id.* lib. 1, tit. 1, pr. The origin and history of this title are elaborately treated by Spelman, who observes that it was originally an official title, afterwards honorary, and finally feudal and hereditary. *Dux* is used in Bracton, as descriptive of the first order of subjects in the kingdom. *Sub eis* [*regibus*] duces, *comites*, *barones*, &c.; under them, dukes, earls, barons, &c. *Bract.* fol. 5 b.

DUZ, *Dus*, *Dug.* L. Fr. A leader. *Kelham.*

DUZ. L. Fr. Due. *Kelham.*

DUZE, *Dusze.* L. Fr. Twelve. *Kelham.*

DUZEIN. L. Fr. Twelve; a jury of twelve. *La petite duzein;* the petty jury. *Yearb.* T. 4 Edw. III. 21.

DWELLING-HOUSE, [L. Lat. *domus mansionalis.*] In conveyancing, includes all buildings attached to, or connected with the house. 2 *Hilliard's Real Prop.* 338, and note.

In the law of burglary. A house in which the occupier and his family usually reside, or, in other words, dwell and lie in. *Wharton's Am. Crim. Law*, 357. Otherwise called a mansion-house. 3 *Serg. & R.* 199. A building or out-house standing near enough to the dwelling-house to be used with it, as appurtenant to it, or standing in the same yard, whether the yard be enclosed or open, is part of the dwelling-house, so that burglary may be committed within it. 1 *Devereux* (N. C.) *R.* 253. 1 *Hayward*, 242, 102. See 2 *N. Y. Rev. St.* [669], 557, §§ 16, 17. See *Burglary.* A place permanently used by the occupier or any member of his family, as a place to

sleep in. Goldthwaite, J. 26 *Alabama R.* 152.

DY. L. Fr. Due; just. *Kelham.*

DYENT. L. Fr. (They) say. *Kelham.*

DYING DECLARATIONS. In the law of evidence. Declarations made in extremity, (*in extremis*), when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. Lord C. B. Eyre, 2 *Leach's Cr. C.* 563, case 218. 1 *Parker's Crim. R.* 11. See *Id.* 299. 1 *Jones' Law R.* 251, 274. These are admissible as evidence only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 1 *Greenl. on Evid.* § 156. And they are admissible in evidence only where the party making them thinks that he is in a dying state, and does not expect to survive the injury. 1 *Parker's Cr. R.* 302. See 23 *Mississippi R.* 322. *United States Digest*, Evidence.

"DYING WITHOUT ISSUE," or "DIE WITHOUT ISSUE," at common law, means an indefinite failure of issue, and not a dying without issue living at the time of the death of the first taker. See *Broom's Max.* [432]. 6 *Ohio St. R.* 563. This rule has been adopted in several of the United States. See 16 *Johns. R.* 409. 11 *Wendell's R.* 259. 5 *Paige's R.* 514. In others, however, as in Ohio and Kentucky, it has been rejected. 6 *Ohio St. R. ub. sup.* 14 *B. Monroe's R.* 662. In Mississippi it has been abolished by statute. See 24 *Mississippi R.* 350, 351. And in England it is now provided by stat. 7 Will. IV. and 1 Vict. c. 26, s. 29, that the words "die without issue," or other words which may import a want or failure of issue, shall be construed to mean dying without issue living at the time of the death of the person, and not an indefinite failure of issue, unless a contrary intention appears by the will. See the late case of Parish's Heirs *v.* Ferris, 6 *Ohio St.* (Critchfield's) *R.* 563, in which the subject is considered at length.

DYS, *Dyz.* L. Fr. Ten. *Kelham.*

DYVOUR. In Scotch law. A bankrupt. 1 *Forbes' Inst.* part 2, b. 3, ch. 1, tit. 10. A debtor who applies for the benefit of the *cessio bonorum;* and who, although he obtained a *cessio*, might formerly be compelled to wear a peculiar habit as his outer dress, one-half brown, the other yellow. *Bell's Dict.* And see *Skene de Verb. Signif.*

E.

E, at the commencement of words having the first syllable *En* or *Em*, properly denotes a derivation from the French, as I denotes a derivation from the Latin. Thus, *Enclose*, *Encumber*, *Endow*, *Enfranchise*, *Engross*, *Enjoin*, *Enlarge* and *Enroll* are closely formed from the L. Fr. *Enclorer*, *Encombrer*, *Endower*, *Enfranchir*, *Engrosser*, *Enjoyndre*, *Enlarger* and *Enrouler*, (qq. v.) On the other hand, *Indict*, *Inform*, *Infringe*, *Inquire* follow the L. Lat. *Indictare*, *Informare*, *Infringere* and *Inquirere*, (qq. v.) The orthography, however, has not been uniform. Thus, there seems to have been a tendency, from an early period, to the use of I, rather than E, even in words wholly and properly of French origin; as in *Imparl*, *Implead* (qq. v.) and *Imprison*, which being derived from the pure L. Fr. *Emparler*, *Empleder* and *Emprisoner*, should properly have been spelled with an E. This may have arisen from the *sound* of the initial letter, the E being probably pronounced I, as it is at present. Hence we meet, in the old books, with *Ingross*, *Injoin*, *Inrol*, *Intitle*, *Inlarge*, *Imploy* and *Imbezzle*, which are no longer used. On the other hand, we meet with such words as *Encur*, *Endebted*, *Endictment*, *Enfant*, *Enform*, *Entermarriage*, *Enterlining* and others, which are equally obsolete. On the whole, the gradual tendency in modern orthography has been to the use of I rather than E, as an initial letter. In a few cases, however, *both* forms are still employed. Thus, *Endorse* and *Indorse*, (qq. v.) continue to have their respective advocates, although the latter enjoys the support of standard authority.

E, in the Latin of the civil law, frequently occurs in the place of *i;* as in the words *intellegere*, *neglegere*, *deminuere;* for *intelligere*, *negligere*, *diminuere*. So in the end of words, *defensione*, *exceptione* and others are constantly used for *defensioni*, *exceptioni*, &c. *Calv. Lex. Jurid.*

E, in the civil law and the old books, is constantly used for the diphthong *æ*, as in *ceterum*, *hereditas*, and other words. *Dig.* and *Cod. passim.* *Bract. passim.* *Etas* is used for *ætas*, throughout Magna Charta.

E. L. Fr. A contraction of *et*, (and). *Arsions* e *homicides. Artic. sup. Chart.* c. 17. *E volums ke;* and we will that. *Conf. Cart.* 25 Edw. I.

E. Lat. From; out of. See *Ex.*

Ea est accipienda interpretatio, quæ vitio caret. That interpretation is to be received [or adopted] which is free from fault [or wrong]. The law will not intend a wrong. *Bacon's Max.* 17, (in reg. 3).

EA INTENTIONE. L. Lat. With that intent. Held not to make a condition, but a confidence and trust. *Dyer*, 138 b.

Ea quæ, commendandi causa, in venditionibus dicuntur, si palam appareant, venditorem non obligant. Those things which are said on sales, in the way of commendation, if [the qualities of the thing sold] appear openly, do not bind the seller. *Dig.* 18. 1. 43, pr.

Ea quæ dari impossibilia sunt, vel quae in rerum natura non sunt, pro non adjectis habentur. Those things which are impossible to be given, or which are not in the nature of things, are regarded as not added [as no part of an agreement]. *Dig.* 50. 17. 135.

Ea quæ raro accidunt non temere in agendis negotiis computantur. Those things which rarely happen are not to be taken into account in the transaction of business, without sufficient reason. *Dig.* 50. 17. 64.

EAGE. L. Fr. Age. *Kelham.*

EALDER. Sax. [Lat. *senior.*] In Saxon law. Elder. A term generally used to express age, and sometimes office, though the latter was usually denoted by *ealderman*, (q. v.) *Spelman*, voc. *Aldermannus.*

EALDERMAN, *Ealdorman.* Sax. [L. Lat. *aldermannus;* Lat. *senior.*] Elder man, or elder. A very ancient title, applied among the Saxons to a great variety of officers, (see *Aldermannus*); the term being indicative not so much of age, as of experience and fitness for public station. *LL. Edw. Conf.* c. 35. *Spelman*, voc. *Aldermannus.* Used, in particular, as the title of a high officer having the government of a county, or shire, otherwise called *shireman*, and by some writers thought to be the same with the *eorle*, or *earl* of later times. *Co. Litt.* 168 a. 1 *Reeves' Hist. Eng. Law*, 6. *Gilb. C. Pleas*, Introd. p. 3, note. *Id.* 57. 1 *Bl. Com.* 116, 398. 3 *Id.* 36. 3 *Steph. Com.* 3. *Crabb's Hist.* 24. He had judicial powers and presided with the bishop in the *shiremote*, (Sax. *scyre gemote*,) or county court; and Spelman is of opinion that he was properly the chief judicial officer or judge of the county, (*prætorem seu justitiarium comitatûs*,) answering to the *sagibaro* of the Salian law; and that he was a different officer from the *earl* or *comes*, (who properly was the governor of the county,) occupying a middle rank between him and the *vice-comes*, or earl's deputy. *Spelman*, vocc. *Aldermannus*, *Aldermannus comitatus.* A law of Athelstan, cited by Spelman, (voc. *Eorla*,) in which *eorles* and *ealdormannes* are both mentioned, strongly confirms this idea; but the ancient authorities are not uniformly clear on this point. The word *ealdorman* is sometimes erroneously written (with an *r*,) *earl*derman, the first syllable of which may have led to the idea that it denoted the same officer as *earl.* See *Earl.*

EAR GRASS. In English law. Such grass which is upon the land after the mowing, until the feast of the Annunciation after. 3 *Leon.* 213.

EARL. [Sax. *eorl, eorle;* Sc. *erll;* L. Lat. *comes, eorla;* Fr. *comte;* L. Fr. *countee.*] The most ancient title of nobility in England, and formerly the highest, (answering to the Lat. *comes*); but now the third, ranking between a marquess and a viscount. 1 *Bl. Com.* 398. 3 *Steph. Com.* 3.

*** *Earl* is said to be a Danish word, (sometimes written *jarl*, and derived from *ear*, or *ar*, honor,) which was introduced into England by the Danes at the time of their invasion. As it had nearly the same signification with the Saxon *ealderman*, it was adopted by the Saxons as the name of that officer, and was afterwards applied to the *comes* or count of the Normans. *Spelman*, vocc. *Eorla*, *Aldermannus.* *Camden Brit.* tit. *Ordines.* The terms *count*, and *countee*, continued to be used by the Normans, for some time after the Conquest, as the titles of the governor or chief officer of a county, but were finally supplanted by the English *earl;* although *count* has left its traces in the words *county*, an earl's territory; *countess*, an earl's wife; and *viscount*, an earl's deputy; the two latter being also subsisting titles of nobility. See *Count*, *Viscount.*

After the office of earl or *comes* was made hereditary by William the Conqueror, the title became the highest dignity in the kingdom. At first it was territorial, being annexed either to the office itself, or to the possession of certain lands held of the

crown. When the earl relinquished the government of the county, the title continued to be one of territorial dignity as annexed to the lands he held; but it gradually lost this character, also, and finally became what it now is, a mere personal dignity annexed to the family of the possessor and independent of land. *Home's* (Lord Kames) *Brit. Antiq.* Essay III. *Crabb's Hist.* 235, chap. xvi. *Cruise's Dig.* tit. *Dignities.* 1 *Ld. Raym.* 10, 13. It now merely confers nobility and an hereditary seat in the House of Lords. *Wharton's Lex.*

EARLDOM. [L. Lat. *comitatus.*] The office, jurisdiction, or dignity of an earl, (*comes*). An earldom originally consisted in dignity, office, and the possession of lands. 1 *Ld. Raym.* 10, 13. It is now a mere personal dignity, without office annexed, and independent of any land. See *Earl, Comitatus.*

EARL MARSHAL. [L. Lat. *comes mariscallus.*] A great officer of state in England, who anciently presided in the court of chivalry, or court of honor. 3 *Bl. Com.* 68. 4 *Id.* 267. Since the disuse of that court, the office, which still exists, has been confined to the adjusting armorial ensigns, determining the rights of place and precedence, marshalling and conducting coronations, marriages and funerals of the royal family, and proclaiming war and peace. *Crabb's Hist.* 553, chap. xxxiii.

EAR-MARK. A mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear; a mode of marking sheep and other animals. "The *dictum* that money has no ear-mark must be understood in the same way, i. e. as predicated only of an undivided and undistinguishable mass of current money. But money in a bag or otherwise kept apart from other money, guineas or other coin marked, (if the fact were so,) for the purpose of being distinguished, are so far *ear-marked* as to fall within the rule on this subject," &c. Lord Ellenborough, 3 *M. & S.* 575.

EARNEST. [Lat. *arrha, arra, arræ.*] A part of the price of goods sold, or a portion of the goods themselves, delivered by one of the parties to a contract of sale to the other, in order to bind the contract.* A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 *Kent's Com.* 495, note. 2 *Bl. Com.* 447, 448. 2 *Steph. Com.* 121, and note.—A sum advanced by the buyer of goods, in order to bind the seller to the terms of the agreement. *McCulloch's Dict.* See *Arrha, Denarius Dei.*

Earnest was in use in the early ages of the English law, as a means of binding the parties, and completing the sale, but has fallen into very general disuse in modern times. 2 *Kent's Com.* 495, note. It is however still given in some parts of England, on hiring farm and household servants at the "statutes" or meetings for that purpose; the money paid being otherwise called the *fastening penny*, though now a shilling. *Howitt's Rural Life of England*, 416, (Phil. ed. 1841).

EASEMENT. [L. Lat. *aisiamentum, aysiamentum*, from Fr. *aisé*, a convenience.] A liberty, privilege or advantage in land, without profit, existing distinct from an ownership of the soil. Prentiss, C. J. 3 *Vermont R.* 279. 1 *Crabb's Real Prop.* 125, § 115. The right to use a public highway is a public easement. Swift, J. 1 *Connecticut R.* 103, 132. 2 *Smith's Leading Cas.* 98, (Am. ed. note).

A private easement is a privilege, service, or convenience, which one neighbor has of another, by prescription, grant or necessary implication, and without profit; as a way over his land, a gateway, watercourse, and the like. *Kitch.* 105. 3 *Cruise Dig.* 484. Otherwise defined as "a right of accommodation in another's land;" "a right which one man has to use the land of another for a special purpose." *Burton's Real Prop.* 361, pl. 1165. 3 *Kent's Com.* 434. A species of what the civil law terms servitudes (*servitutes*). *Inst.* 2. 3. *Glanv.* lib. 12, c. 14. *Bract.* fol. 220 b, lib. 4, tr. 1, c. 37. See *Aisiamentum, Servitude.* See *Gale & Whatley on Easements*, per tot. *United States Digest*, Easement.

EAST GREENWICH. The name of a royal manor in the county of Kent, England; mentioned in royal grants or patents, as descriptive of the tenure of free socage. "To be holden of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, in free and common socage, and not *in capite*, nor by knight's service." *Patent of New-England*, 18 Jac. I.

EASTER TERM. [L. Lat. *terminus Paschæ.*] In English practice. One of the four terms of the superior courts in England, formerly called a moveable term,

but now fixed, beginning on the 15th April, and ending on the 8th of May in every year. *Stat.* 11 *Geo.* IV. 1 *Will.* IV. c. 70. 3 *Chitt. Gen. Pr.* 91.

EAT INDE SINE DIE. L. Lat. (*Quod eat*, &c.; that he go thereof without day.) In practice. Words anciently used in recording a judgment rendered for a defendant, as the corresponding English words still are; signifying that he is dismissed or permitted to *go out of court, without any further day*, or adjournment; the action being at an end. *Yearb.* M. 1 Edw. II. 2. *Id.* T. 1 Edw. II. 11. 3 *Bl. Com.* 316, 399. 3 *Steph. Com.* 636. Held to be of the same effect with *sit inde quietus*. *Cro. Jac.* 211. Where there were several defendants, the form was, *eant inde sine die*, &c. 5 *Mod.* 148. See *Adjournment, Continuance, Day, Dies.*

EAUE, *Eawe, Eaw, Awe, Ewe.* L. Fr. Water. *Kelham. Yearb.* P. 8 Edw. III. 9. See *Ewe.*

EAUX, *Eaus.* L. Fr. They; them. *Eaux meismes;* themselves. *Kelham.*

EAVES DROPPING. In English criminal law. The offence of listening under walls or windows, or the *eaves* of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. 4 *Bl. Com.* 168. It is a misdemeanour at common law, indictable at sessions, and punishable by fine and finding sureties for good behaviour. *Ibid. Steph. Crim. Law*, 109. *Lewis' U. S. Crim. Law*, 233.

EBBA. L. Lat. In old English law. Ebb. *Ebba et fluctus;* ebb and flow of tide; ebb and flood. *Bract.* fol. 255, 338. The time occupied by one ebb and flood, was anciently granted to persons essoigned as being beyond sea, in addition to the period of forty days. *Id. ibid.* See *Fleta*, lib. 6, c. 8, § 2.

EBEREMORD, *Eberemorth.* Sax. [from *abere*, manifest, and *mord*, killing.] In Saxon law. Open killing or murder, as distinguished from manslaughter. *LL. Hen.* I. c. 13. Called *open*, not because openly perpetrated, but because the fact of its perpetration was open or manifest to all. *Spelman.* See *Aberemurder.*

EBRIEUX. L. Fr. Hebrew. *Kelham.*

ECCE. Lat. See; behold; look. A word calling attention to a proposition or illustration. *Fleta*, lib. 3, c. 2, § 13; c. 9, § 18.

ECCE modo mirum! quod fœmina fert breve regis,
Non nominando virum conjunctum robore legis.

Behold, now, a wonder! that a woman bears, [or has] the king's writ, not naming her husband, though united to her by the strong bond of the law. An exclamation in the form of a rhyming Latin couplet, expressive of surprise that a married woman could, in any case, sue without her husband. Quoted by Lord Coke, and said to have been occasioned by the case of Belknap *v.* Lady Weyland. 2 *Hen.* IV. 7. *Co. Litt.* 132 b, 133 a. 2 *Kent's Com.* 154.

ECCHYMOSIS. Græco-Lat. [from Gr. ἐκχέω, to pour out.] In medical jurisprudence. An effusion of blood under the skin. 2 *Beck's Med. Jur.* 15—17. *Taylor's Med. Jur.* 181.

ECCLESIA. Lat. [from Gr. ἐκκλησία, from ἐκκαλέω, to call out; L. Fr. *esglise, egglise.*] In English law. A church; a place of religious worship, (*templum, seu domus qua fideles conveniunt, ritus divinos celebraturi*). *Spelman.* Called by Lord Coke, "the dwelling-house of Almighty God;" (*ecclesia est domus mansionalis Omnipotentis Dei*). 2 *Inst.* 164. See *Church.*

A parsonage. *F. N. B.* 32, H. That is, the living or benefice. *Bract.* fol. 52. Bracton says the common people in his time used *ecclesia*, which properly denoted the material building, (*ex lignis et lapidibus,*) in the sense of advowson or right of presentation, and that it was so construed *propter eorum simplicitatem. Id. ibid. Id.* fol. 95.

Εκκλησια was used among the ancient Greeks, as *curia* and *senatus* among the Romans, to denote a public assembly, (*pro cœtu et congregatione,*) as well as the place of meeting itself (*pro loco in quem convenitur*). *Spelman.* See *Calvin's Lex. Jur.*

Ecclesia ecclesiæ decimas solvere non debet. The church ought not to pay tithes to the church. *Cro. Eliz.* 479.

Ecclesia non moritur. The church does not die. 2 *Inst.* 3.

Ecclesia magis favendum est quam personæ. The church is more to be favored than the parson. *God. Rep.* 172.

ECCLESIASTICAL. Belonging to, or connected with the church. *Tomlins.*

ECCLESIASTICAL CORPORATIONS. In English law. Corporations whose members are entirely spiritual persons, and incorporated as such; as bishops, certain deans and prebendaries, archdeacons, parsons and vicars, which are sole corporations; and deans and chapters, which are bodies aggregate. 1 *Bl. Com.* 470.

3 *Steph. Com.* 169. What are called in the United States, *religious* corporations, belong to this division. 2 *Kent's Com.* 274.

ECCLESIASTICAL COURTS. [L. Lat. *curiæ christianitatis.*] Courts held in England by the king's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. *Jacob. Tomlins.* 4 *Inst.* 321. They are the archdeacon's court, the consistory court, the court of arches, the court of peculiars, the prerogative court, and the privy council, which is the great court of appeal. 2 *Chitt. Gen. Pr.* 494. *Wharton's Lex.* See *Archdeacon's court*, and the other titles. These courts have recently been divested of their jurisdiction in testamentary and matrimonial causes, by the statute 20 & 21 Vict. c. 77, § 3, c. 85, § 2; Aug. 25 and 28, 1857.

ECCLESIASTICAL LAW. That species of law which is administered by the ecclesiastical courts. The ecclesiastical law of England is compounded of these four main ingredients; the civil law; the canon law, the common law, and the statute law. *Burn's Eccl. Law*, pref. See 5 *Co. Caudrey's case.*

ECCL'IA. A contraction of *Ecclesia.* 1 *Instr. Cler.* 10.

ECDICUS, pl. ECDICI. Græco-Lat. [from Gr. ἐκδικος, from ἐκ, and δικη, justice.] The attorney, proctor, or advocate of a corporation. *Episcoporum ecdici;* bishops' proctors; church lawyers. 1 *Reeves' Hist.* 65.

ECHANTILLON. Fr. In French law. One of the two parts or pieces of a wooden tally. That in possession of the debtor is properly called the tally, the other *echantillon. Poth. Obl.* part 4, ch. 1, art. 2, § 8.

ECHEVIN. Fr. In French law. A municipal officer corresponding with alderman or burgess, and having in some instances a civil jurisdiction in certain causes of trifling importance. *Meredith's Emerigon on Ins.* 43, note.

ECHOUEMENT. Fr. In French marine law. Stranding. *Emerig. Tr. des Ass.* ch. 12, s. 13, § 1.

E CONTRA. Lat. On the other side; of the opposite opinion. *Dyer*, 10 b. *Keilw.* 18. 1 *Show.* 208.

E CONVERSO. Lat. Conversely; reciprocally. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 1. *Perk.* ch. 2, s. 230. *Bacon's Read. Uses*, Works, iv. 202.

ECRIVAIN. Fr. In French marine law. The clerk of a ship. *Emerig. Tr. des Ass.* ch. 11, sect. 3, § 2.

EDERE. Lat. To give out; to put forth; to publish; to declare; to propose. *Calv. Lex. Jurid.* See various applications of the word, *Id. ibid.* And see *Dig.* 2. 13. *Id.* 50. 16. 89. 2.

EDICTAL CITATION. In Scotch law. A citation published at the market-cross of Edinburgh, and pier and shore of Leith. Used against foreigners not within the kingdom, but having a landed estate there, and against natives out of the kingdom. *Bell's Dict.*

EDICTUM. Lat. [from *edicere*, to publish or declare.] In the Roman law. An edict; a mandate, or ordinance. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis. Inst.* 1. 2. 6. *Cooper's Notes, in loc.* An edict was a mere voluntary constitution of the emperor; differing from a rescript in not being returned in the way of answer; and from a decree, in not being given in judgment; and from both, in not being founded upon solicitation. *Tayl. Civ. Law.* 233.

A general order published by the prætor, on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. *Dig.* 1. 2. 2. 10. 1 *Mackeld. Civ. Law*, 21, 29, §§ 31, 40. *Tayl. Civ. Law*, 214. See *Calv. Lex. Jur.*

EDICTUM PERPETUUM. Lat. In the Roman law. The perpetual edict. A compilation or system of law in fifty books, digested by Julian, a lawyer of great eminence under the reign of Adrian, from the Prætor's edicts and other parts of the *Jus Honorarium.* All the remains of it which have come down to us, are the extracts of it in the Digests. *Butler's Hor. Jur.* 52.

EDITUS, *Aeditus.* L. Lat. [from *edere*, to put forth, or publish.] In old English law. Put forth; published or promulgated; passed as a law. *Reg. Jud.* 22. *Contra formam statuti*—editi *et provisi;* against the form of the statute—made and provided. *Rast. Entr.* 598, 599.

Brought forth or born, as a child. *Bract.* fol. 278.

EE. A termination giving to the words in which it occurs a passive sense, denoting the party *to whom* an act is done, or on whom a right is conferred; the *receiving* party; as—"*or*" denotes the *acting* party.

Thus *feoffee*, (*feoffatus*) denotes the party to whom a feoffment is made; *donee* (*donatorius*,) the party who receives a gift in tail; *lessee*, (*firmarius*,) the party to whom a lease is made, &c. 2 *Bl. Com.* 140, note (*a*). *Litt.* sect. 57. These words have long been in use, and many others have, in modern times, been constructed on the same principle; as *obligee*, *vendee*, *drawee*, and even *promisee*, *confirmee*, *abandonee*, *transferee*, *loanee*, *licensee*, and *usee*. *Ee* corresponds, in many cases, with the Latin termination—*atus*, and the French —*è*.

E'E. L. Fr. A common contraction of *estre*, to be, or *este*, been. *Ceux q' av'o't e'e somo's;* those who shall have been summoned. *Britt.* c. 1. *E'e faites;* to be done. *Id.* c. 27.

EES. L. Fr. Bees. *Britt.* c. 33.

EFFECTS. Personal estate or property. This word has been held to be more comprehensive than the word *goods*, as including fixtures, which "goods" will not include. 7 *Taunt.* 188. 4 *J. B. Moore*, 73, 4 *B. & A.* 206. 2 *Chitt. Bl. Com.* 384, note.

In the second title of Part I. ch. xviii. of the Revised Statutes of New-York, it is declared that the term "effects," as used in this title, shall be construed to embrace every species of property, real and personal, including things in action. 1 *Rev. St.* [599], § 64.

In wills, the word *effects* is equivalent to property, or worldly substance, and if used *simpliciter*, as in a gift of "all my effects," will carry the whole personal estate. 15 *Vesey, Jr.* 507. *Ward on Legacies*, 209. The addition of the words "real and personal," will extend it so as to embrace the whole of the testator's real and personal estate. *Cowp.* 299. 3 *Bro. P. C.* 388. The word "effects," however, without the word "real," will not, *proprio vigore*, comprehend land, though followed by the words "of what nature, kind or quality soever." 2 *Powell on Dev.* (by Jarman,) 167. 2 *M. & S.* 448. 15 *Mees. & W.* 450. See 13 *Vesey, Jr.* 39. 15 *East*, 394. 14 *Howard's R.* 421.

EFFORCER. L. Fr. To aid or assist. *Kelham.*

EFFORCIALITER. L. Lat. Forcibly.

EFFRACTORES. Lat. [from *effringere*, to break open or out.] In civil and old European law. Burglars; house-breakers; those who break into houses to steal; (*qui furandi causâ domos effringunt*). *Spelman. Cowell. Effractor;* a burglar. *Bract.* fol. 105. *Calv. Lex. Jur.*

Prison-breakers; those who *break out* of prison; (*qui se è carcere proripiunt*). *Spelman. Dig.* 47. 18. 1. See *Fractores.*

EFFUSIO SANGUINIS. Lat. In old English law. The shedding of blood; (Sax. *bloodwit*). The mulct, fine, *wite*, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. *Cowell. Tomlins.* See *Bloodwit.*

EGALTIE. L. Fr. Equality. *Litt.* sect. 253.

EGETTEMENT. L. Fr. Ejectment. *Yearb.* M. 10 Hen. VI. 63.

EGETTER. L. Fr. To eject. *Ejetta;* ejected. *Yearb.* M. 10 Hen. VI. 63.

EGGLISE. L. Fr. Church. *Fet Assaver*, § 15.

EGO TALIS. Lat. I, such a one. Words used in describing the forms of old deeds. *Fleta*, lib. 3, c. 14, § 5.

EGREDIENS ET EXEUNS. L. Lat. In old pleading. Going forth and issuing out of (land). *Towns. Pl.* 17.

EGRESSUS. Lat. [from *egredi*, to go forth.] In old English law. A going forth; egress. *Stat. Mert.* c. 4. See *Accessus, Ingressus.*

EGUN. L. Fr. Any. *Kelham.*

Ei incumbit probatio qui dicit, non qui negat. The proof lies upon him who affirms, not upon him who denies. *Dig.* 22. 3. 2. This maxim of the civil law is adopted in the common law of evidence. 3 *Bl. Com.* 566. *Best on Evid.* 295, § 254. 1 *Greenl. on Ev.* § 74.

Ei nihil turpe, cui nihil satis. To him to whom nothing is enough, nothing is base. 4 *Inst.* 53.

EIA. L. Lat. [from Sax. *eage*, by changing *g* into *i* or *y*.] An island, or *ey*, (Lat. *insula*). So called, according to Spelman, from a supposed resemblance to the shape of an eye, or egg; the proper meanings of the Sax. *eage*. See *Ey.* A common termination of ancient names of towns, indicating an island, peninsula, or site near a river or water. *Spelman.*

EIDE. L. Fr. Aid; relief; judicial relief. *Kelham. Year Books*, passim.

EIENT, *Eyent.* L. Fr. (They) have; (they) shall have. *Stat. Westm.* 1, c. 15. *Artic. sup. Chart.* c. 2.

EIGNE, *Eign, Eisne, Eygne, Aisne.* L. Fr. The eldest, or first born. *Litt.* sect.

399. See *Bastard eigne. L'eign;* the elder. 1 *And.* 3. *L'eygne. Dyer*, 55.

EIGNESSE. L. Fr. [from *eigne*, elder; L. Lat. *einecia, aisnetia.*] In old English law. Eldership. The privilege of an eldest sister, of choosing first on a partition of lands held in coparcenary. *Britt.* c. 72. 6 *M. & Gr.* 327, note.

EIK. In Scotch law. An addition. *Bell's Dict. Tomlins.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 2, sect. 1.

To EIK. In Scotch law. To add. 3 *How. St. Trials*, 619.

EINECIA, *Esnecia.* L. Lat. [L. Fr. *eignesse.*] In old English law. Eldership; the right or privilege of the first born. *Cowell.* See *Eignesse, Aisnecia.*

EINETIUS, *Enetius, Enitius, Eneyus, Aesnecius.* L. Lat. [from *eigne*, or *aisne.*] In old English law. The eldest or first born; (Lat. *primogenitus*). *Pars einetia;* the part or share of the eldest sister. *Spelman.*

EINS, *Eyns, Einz.* L. Fr. In. One who is in actual possession, is emphatically said to be *in.* See *In. Tenant à volunt, que est* eins *per lease de son lessor;* tenant at will, who is *in* by lease of his lessor. *Litt.* sect. 82. Eins *encounter la ley; in* against the law. *Id.* sect. 306. *Eins per tort,* eins *per title; in* by wrong, *in* by title. *Keilw.* 2, pl. 2. Eins *per descent. Litt.* sect. 403. Eins *per divers titles. Id.* sect. 662. *La ley luy adjudgera* eins; the law will adjudge him *in. Id.* sect. 659, 660.

In; into. *A mettre* eins *les bestes;* to put in the beasts. *Britt.* c. 54.

EINS CEO QUE. L. Fr. In this that; inasmuch as. *Britt.* c. 54. *Eins ceo* is translated by Kelham, when, unless, the same, rather, until.

EIRE, *Eyre, Eier, Eyer.* L. Fr. [from Lat. *iter*, by dropping the *t.*] In old English law. A journey anciently made by the justices, called justices in eyre, or justices itinerant, (*justitiarii in itinere*, or *itinerantes*,) from one place to another, to administer justice. *Spelman. Co. Litt.* 293 b. Answering nearly to the modern *circuit.*

The court of the justices in eyre. *Co. Litt.* 293 a. See *Eyre, Iter.*

EIRENARCHA. Græco-Lat. [Gr. εἰρηναρχης, from εἰρήνη, peace, and ἀρχὴ, government.] A name formerly given to a justice of the peace. See *Bacon's Works*, iv. 316. In the Digests, the word is written *Irenarcha*, (q. v.)

Eisdem modis dissolvitur obligatio quæ nascitur ex contractu, vel quasi, quibus contrahitur. An obligation which arises from contract or quasi contract, is dissolved in the same ways in which it is contracted. *Fleta*, lib. 2, c. 60, § 19.

EISNE, *Eysne, Aisne.* L. Fr. The eldest. *Co. Litt.* 166 b.

EISNETIA, *Einetia.* L. Lat. In old English law. The part or share of the eldest. *Co. Litt.* 166 b. See *Einecia, Einetius.*

EISSI. L. Fr. As. *Kelham.*

EISSIR. L. Fr. To go out of; to issue. *Kelham.*

EIT. L. Fr. Has. *Le lessee* eit *possession;* the lessee has possession. *Litt.* sect. 460.

EJECT. [from Lat. *ejicere*, to throw out.] To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 *Bl. Com.* 198, 199, 200.

EJECTION. [L. Lat. *ejectio*, from *ejicere*, q. v.] A turning out of possession. 3 *Bl. Com.* 199.

EJECTIONE CUSTODIÆ. L. Lat. [L. Fr. *ejectment de garde.*] In old practice. Ejectment of ward. A writ which anciently lay against him who turned out a guardian from any land during the minority of the heir. *Reg. Orig.* 162. *F. N. B.* 139, L. *Litt.* sect. 323. First mentioned in the statute of Westminster 2. 2 *Reeves' Hist. Eng. Law*, 208, 325.

EJECTIONE FIRMÆ. L. Lat. [L. Fr. *ejectment de firme.*] Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger, *ejected* or ousted the lessee of his term, *ferme*, or *farm*, (*ipsum a* firma *ejecit*). In this case, the latter might have his writ of *ejection*, by which he recovered at first *damages* for the trespass only, but it was afterwards made a remedy to recover back the *term* itself, or the remainder of it, with damages. *Reg. Orig.* 227 b. *F. N. B.* 220, F. G. 3 *Bl. Com.* 199. *Litt.* sect. 322. *Crabb's Hist.* 290, 448. See 3 *Reeves' Hist.* 390. It is the foundation of the modern action of ejectment. See *Ejectment, Firma, Ferme.*

EJECTMENT. A species of mixed action which lies to recover the possession of lands, with damages and costs for the wrongful withholding of them; being the

principal method in modern use, for trying titles to land, and especially distinguished from other actions by the series of legal *fictions* on which it is founded. Ejectment is nothing more than the old personal action of *ejection of farm*, (*ejectione firmæ*,) which lay to recover a term for years, adapted to the purpose of trying titles to the freehold; and the fictions which distinguish it are merely the essential features of the old action, (viz. a *lease*, an *entry*, and an *ouster*,) retained in form, though long dispensed with in fact. It is still nominally an action to recover a *term for years*, but as, in order to do this, the lessor's title must first be made out, a recovery always necessarily involves the establishment of the title, and thus effectually, although collaterally and incidentally, accomplishes the object of the suit.* The peculiarities of this action are fully explained in the elementary books, to which it will suffice to refer. 3 *Bl. Com.* 199—205. 3 *Steph. Com.* 669—676. *Id.* 490. 2 *Crabb's Real Prop.* 1079, § 2477, *et seq.* *Wharton's Lex.* *Crabb's Hist.* 418, 448, 556. The fictions of ejectment have been made the subject of much criticism, but they have effectually survived the late sweeping changes in the remedial law of England, and are still retained in practice in some of the United States. 4 *Kent's Com.* 70, 71, note.

Ejectment has been described above as a *mixed* action. This is according to the arrangement of Blackstone, and it is expressly so denominated in England, by the stat. 3 & 4 Will. IV. c. 27. 3 *Bl. Com.* 199. 3 *Steph. Com.* 460, note (*q*). It is, however, classed by Mr. Crabb with *real* actions, and this is the arrangement of the New-York Revised Statutes. 2 *Crabb's Real Prop.* 1079. 2 *N. Y. Rev. St.* [302], 229. On the other hand, Mr. Stephen prefers to consider it as a *personal* action, which it originally was. 3 *Steph. Com.* 460, note (*q*).

EJECTMENT, (EGETTEMENT) DE GARDE. L. Fr. Ejectment of ward. See *Ejectione custodiæ*. Lord Hale calls it ejectment of *gard*. *Anal.* sect. xxxiv.

EJECTUM. L. Lat. [from *ejicere*, to throw out, or up.] In civil and old English law. That which is thrown out of, or up by the sea, (*quod è mari* ejicitur; *ejectus maris*); jet; jetsom; wreck. *Cart. Hen.* III. A. D. 1226, given at length in 1 *Peters' Adm. Decisions*, Appendix, xliii.

That which is thrown out of a vessel into the sea, in order to escape shipwreck; or out of a house, to escape destruction by fire. *Calv. Lex. Jur.*

EJICERE. Lat. [from *e*, out, and *jacere*, to throw.] To throw or cast out; to eject or dispossess. *Bract.* 165, 166. *Dejicere*, (q. v.) was more commonly used in the civil law. Calvin, quoting Spiegelius, makes a distinction between these terms; *ejicere* signifying to keep out one who has not yet entered, *dejicere*, to eject one who has already entered. *Calv. Lex.*

EJURARE. Lat. [from *e*, from, and *jurare*, to swear.] In feudal law. To abjure, renounce or disclaim by oath. *Feud. Lib.* 2, tit. 34.

Ejus est nolle, qui potest velle. He who can will, [exercise volition] has a right to refuse to will [to withhold consent]. *Dig.* 50. 7. 3.

Ejus nulla culpa est, cui parere necesse sit. No guilt attaches to him who is compelled to obey. *Dig.* 50. 17. 169, pr. Obedience to existing laws is a sufficient extenuation of guilt before a civil tribunal. *Broom's Max.* [9].

EJUSDEM GENERIS. Lat. Of the same kind or nature. 1 *Powell on Devises*, 509, note. 1 *Atk.* 462. *Sugden's Law of Prop.* 220, 222.

ΕΚ ΠΛΑΓΙΟΥ, Εκ πλαγίου. Gr. In the civil law. Across; obliquely; transversely. A term descriptive of collateral relatives. *Nov.* 22, c. 22.

ΕΚΠΟΙΕΙΝ, Εκποιεῖν. Gr. [from ἐκ, from, and ποιειν, to make.] In the civil law. To alienate; to transfer; "to make over." *Nov.* 7, c. 1.

ΕΚΠΟΙΗΣΙΣ, Εκποίησις. Gr. [from εκποιειν, q. v.] In the civil law. Alienation; transfer; a "making over." *Nov.* 46, in tit.

ELABORARE. L. Lat. [from *labor*.] In old European law. To gain, acquire, or purchase, as by labor and industry.

Elaboratus; property acquired by labor. *Spelman.*

ELARGARE. L. Lat. [from *e*, and *largus*, large.] In old English law. To enlarge; to widen. *Fleta*, lib. 1, c. 24, §§ 8, 10.

ELARGATIO. L. Lat. [from *elargare*, to enlarge.] In old English law. An enlargement. *Reg. Orig.* 250 b, 255. Elargatio *mansi vel curiæ;* the enlargement of a manse, or manor, or court, by taking in more land. *Id. ibid.*

ELECTIO. Lat. [from *eligere*, to

choose.] In old English law. Election; choice. *Electio est interna, libera et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate;* election is the internal, free and voluntary separation of one thing from another, without compulsion, consisting in intention and will. *Dyer*, 281. *Electio fori;* choice of a court. *Cas. temp. Hardw.* 214.

Electio semel facta non patitur regressum. Election once made does not admit of going back, (or recall). *Co. Litt.* 146.

Electiones fiant rite et libere sine interruptione aliqua. Elections should be made in due form and freely, without any interruption. 2 *Inst.* 169.

ELECTION. [L. Fr. *eleccion;* Lat. *electio*, from *eligere*, to choose.] Choice; election; selection. Election is where a man is left to his own free will, to take or do one thing or another, which he pleases. *Co. Litt.* 144 b. *Termes de la Ley. Bract.* fol. 113, 114. 6 *Cruise's Dig.* 18. 2 *Co.* 35, *et seq.* 5 *Co.* 59. "Election is to choose one or the other, and not every one of them successively." Wythers, J. 2 *Show.* 442. For the doctrine of election in equity, see 1 *White's Equity Cases*, 223, 225—250, and Am. Editor's note. 2 *Story's Eq. Jur.* § 1075, *et seq.*

ELECTUS, pl. *Electi.* [from *eligere*, to choose.] Chosen. 10 *Mod.* 101, 2. 11 *Id.* 174. *Electi, triati et jurati;* chosen, tried and sworn. *Cro. Jac.* 119.

ELEEMOSYNA. Lat. [from Gr. ἐλεημοσύνη; Fr. *almoigne.*] In old English law. Alms. *Cowell. In liberam eleemosynam;* in free alms; in frank almoign. *Bract.* fol. 27 b. See *Frankalmoign.*

ELEEMOSYNARIA. L. Lat. [from *eleemosyna*, q. v.] The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor. In old English, the *aumerie*, *aumbry*, or *ambry;* words still used in common speech in the North of England, to denote a pantry or cupboard. *Cowell.*

The office of almoner. *Cowell.*

ELEEMOSYNARIUS, *Elemosinarius.* L. Lat. [from *eleemosyna*, q. v.] In old English law. An almoner, or distributer of alms. An officer in religious houses, who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses. *Cowell.*

An officer in the king's house, called the king's almoner, or almner. *Co. Litt.* 94 a. *Fleta*, lib. 2, c. 23. See *Cro. Jac.* 48.

ELEEMOSYNARY. Relating to the distribution of alms, bounty or charity; charitable.

ELEEMOSYNARY CORPORATIONS. Lay corporations, or private charities, constituted for the perpetual distribution of the alms and bounty of the founder of them, to such persons as he has directed. They include hospitals for the relief of the poor, sick and impotent, and colleges and academies established for the promotion of learning and piety. 1 *Bl. Com.* 471. 3 *Steph. Com.* 171. 2 *Kent's Com.* 274.

ELEF, *Elefe.* L. Fr. Flux and reflux. *Kelham.*

ELEGANTER. Lat. In the civil law. Accurately; with discrimination. Ware, J. 3 *Story's R.* 611, 636.

ELEGIT. Lat. [from *eligere*, to choose.] (He has chosen.) In practice. A writ of execution given by the statute of Westminster 2, (13 Edw. I.) c. 18, on judgments for debt or damages, or upon recognizance, and commanding the sheriff to deliver to the plaintiff all the defendant's goods and chattels, (beasts of the plough excepted,) and if these were not sufficient, a *moiety* of the defendant's lands, to hold until out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired; and during such term or period the plaintiff is called *tenant by elegit*, and the estate created by such tenancy is termed an *estate by elegit. Reg. Orig.* 299, 301. *Reg. Jud.* 2. *Co. Litt.* 289 b. 3 *Bl. Com.* 418. 2 *Id.* 161. 1 *Steph. Com.* 287. The statute gave the plaintiff his *election* to have either a *fieri facias* or this writ, and when the plaintiff prayed this writ, the entry on the roll was, *quod* elegit *sibi executionem fieri de omnibus catallis et medietate terræ*, (that he hath *elected* to have execution of all the chattels and half of the land [of the defendant,]) and the writ itself had a similar recital, *quia* elegit *sibi liberari omnia bona*, &c. Hence the name of *elegit. Reg. Orig.* and *Reg. Jud. ub. sup.*

This writ is still in use in some of the United States, as Virginia, Kentucky and Alabama. 4 *Kent's Com.* 431, 436, and notes. 10 *Grattan's R.* 580. In England, a material alteration has been made in its form by the stat. 1 & 2 Vict. c. 110, s. 11, which provides that, upon an *elegit*,

the sheriff shall deliver the *whole* of the defendant's lands, instead of a moiety as before. 1 *Steph. Com.* 278, 288. 3 *Id.* 652. *Sewell's Sheriff*, 204. 2 *Crabb's Real Prop.* 924, § 2288. 15 *Mees. & W.* 764.

ELIDERE. In civil and old English law. To defeat an adversary's pleading. *Bract.* fol. 399 b. To destroy. *Fleta*, lib. 2, c. 60, § 3. Literally, to crush or strangle.

ELIGERE. Lat. [L. Fr. *eslier.*] To choose.

ELISIO. Lat. [from *elidere*, q. v.] A defeating or destroying.

ELISORS, *Eslisors.* [from Fr. *eslier*, to choose.] In practice. Electors or choosers. Persons appointed by the court to execute writs of *venire*, in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to *choose*, that is, name and return the jury. 3 *Bl. Com.* 355. *Co. Litt.* 158. 3 *Steph. Com.* 597, note.

Persons appointed to execute *any* writ, in default of the sheriff and coroner, are also called *elisors.* 3 *Cowen's R.* 298.

ELL. [Lat. *ulna;* Sc. *elne.*] A measure of length, answering to the modern yard. 1 *Bl. Com.* 275.

ELOGIUM. Lat. In the civil law. A will or testament. *Cod.* 6. 23. 29, 30. *Id.* 6. 51. 2.

ELOIGN, *Eloin*, *Eloine*, *Esloin.* [L. Fr. *eloigner*, *esloiner;* L. Lat. *elongare.*] In practice. To remove, or send a great way off, (*longum iter*).* *F. N. B.* 68, 69, 74. 3 *Bl. Com.* 148. Applied to persons, by stat. 13 Edw. I. c. 15, but generally to chattels. See *infra.* Mr. Bentham has observed that this word and its derivative *eloignment*, (q. v.) are wanted in current or ordinary language. 3 *Jud. Evid.* 166, note.

ELOIGNER, *Alloigner.* L. Fr. To eloign; to remove or carry to a distance. *Eloigne;* eloigned. *Yearb.* M. 8 Edw. III. 39. See *Eloign*, *Alloigner.*

To take one's self away; to go away; to elope, as a wife from her husband. *Yearb.* T. 3 Edw. III. 9. T. 6 Edw. III. 1.

ELOIGNMENT. [from *eloign*, q. v.] The getting a thing or person out of the way; or removing it to a distance, so as to be out of reach.

ELONGARE. L. Lat. In old practice. To remove to a distance, (*longum iter*); to carry off or away; to eloign, (q. v.) *Fleta*, lib. 2, c. 45, § 3.

To drive away; to eject or expel. *Artic. Mag. Cart. Johan.* c. 44.

ELONGATA. L. Lat. [from *elongare*, q. v.] In practice. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned*, that is, carried to a distance, to places to him unknown. 3 *Bl. Com.* 148. 3 *Steph. Com.* 522. *F. N. B.* 73, 74. *Archb. N. Pract.* 552.

ELONGATUS. L. Lat. [L. Fr. *eloigne.*] Eloigned. A return made by a sheriff to a writ *de homine replegiando*, stating that the party to be replevied has been eloigned, or conveyed out of his jurisdiction. 3 *Bl. Com.* 129.

ELOPEMENT. [from Belg. ꝛꝛ, marriage, and loopen, to run. *Blount.*] The voluntary departure of a wife from her husband, to live with an adulterer. *Cowell. Tomlins. Wharton.* This occasioned a forfeiture of dower, according to the lines,

> Sponte virum mulier fugiens, et adultera facta,
> Dote sua careat, nisi sponsi sponte retracta.

Blount expresses his persuasion that this word is taken from the Saxon *geleoran*, to depart from one place to dwell in another, the Saxon *r* being easily mistaken for a *p*. But see *Leipa.*

*** In Hatchett *v.* Baddeley, (2 *W. Bl.* 1080,) De Grey, C. J. observed, "The word *elopement* is not a legal term, nor has it any express meaning in the law. It is not to be found in Bracton, Britton or Fleta, nor is it used in the statute of Westm. 2. The Mirror, indeed, has the word *elopa*, but in a different sense; and none of the dictionaries or etymologists explain the word except Blount and Jacob. Lord Coke is the first that I remember to have mentioned it, and he speaks (2 *Inst.* 435,) of a wife's eloping *and* remaining with an adulterer. The modern books never speak of elopement, but in a criminal view." Both the words *elope* and *elopement* occur in the *Year Book*, M. 1 Hen. VI. pl. 8.

"ELSEWHERE." In another place; in any other place. See 1 *Vern.* 4, and note.

ELUVIONES. L. Lat. In old pleading. Spring tides. *Towns. Pl.* 197.

EMANARE. L. Lat. In old practice. To issue or award. *Emanare brevia;* to award writs. *Towns. Pl.* 28. *Quia erronicè emanavit;* because it issued erroneously. *Yelv.* 83.

EMANCIPATION. [Lat. *emancipatio*, from *mancupare* or *mancipare*, to sell.] In the Roman law. A setting free. The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary *sale*. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. *Inst.* 1. 12. 6.

In Louisiana, the emancipation of minors is expressly recognised and regulated by law. *Civil Code of Louis.* art. 367, *et seq.*

In England, the term *emancipation* has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 *Ad. & Ell.* N. S. 574, note. In the United States, it is used to signify the liberation of African slaves. See *United States Digest*, Slaves.

EMBARGO. [from Span. *embargar*, *embaragar*, to detain.] A detention of a vessel in port.*—A stopping of ports. 2 *How. St. Trials*, 402.—A prohibition to sail. Johnson, J. 2 *Wheaton's R.* 148.—A restraint or prohibition imposed by the public authorities of a country, on merchant vessels, or other ships, to prevent their leaving its ports, and sometimes amounting, (as the United States embargo act of December 22, 1807,) to an entire interdiction of commercial intercourse. *Jacobsen's Sea Laws*, 382. 1 *Kent's Com.* 60, 432. See *United States Digest*, Embargo and Non-intercourse. Embargoes are peculiar to a state of war, either actual or apprehended. They are imposed, in England, by the mere proclamation of the sovereign, without the intervention of parliament. 1 *Bl. Com.* 270, 271. The word is written by Cowell and Blount, *Imbargo*.

EMBEZZLEMENT. In criminal law. The fraudulent appropriation to one's own use or benefit, of property or money entrusted to him by another; such as the embezzlement by clerks, servants and agents, of their employer's money, or property; the embezzlement by mariners of goods on board a vessel; and the embezzlement, by public officers, of the public money. 4 *Bl. Com.* 230, 231. 4 *Steph. Com.* 168, 169, 219. 3 *Kent's Com.* 194. *Lewis' U. S. Crim. Law*, 237. *Wharton's Am. Crim. Law*, 421. Embezzlement is distinguished from larceny, properly so called, as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. 4 *Steph. Com.* 168.

The secretion of property by a bankrupt, with intent to defraud his creditors. *Steph. Crim. Law*, 91, 92.

Embezzle is written by Cowell, *Imbezzle*, and *Imbesil*.

EMBLEMENTS. [from Fr. *embler*, to sow, or *bled*, *ble*, grain; *emblavance de bled*, corn sprung up above ground.] The profits of *sown* land; the profits of the crop; growing crops of corn or grain. 2 *Bl. Com.* 122, 145. 1 *Steph. Com.* 242, 269. 2 *Crabb's Real Prop.* 77, § 1046.

Any annual profit of land, produced by expense and labor, as distinguished from the permanent and natural profit of the earth. 2 *Bl. Com.* 122, 403. *Co. Litt.* 55, 56. 4 *Kent's Com.* 73, 109, 110.—The growing crops of those vegetable productions of the soil, which are annually produced by the labor of the cultivator. 2 *Steph. Com.* 257. 2 *Crabb's Real Prop.* 77, 78, §§ 1046—1048. *Id.* 355, § 1469. *Archbold's Landl. & Tenant*, 337. *Lovelass on Wills*, 58, 59. *Bisset on Estates*, 276. *Sewell's Sheriff*, 235. *Grady on Fixtures*, 172.

EMBLER. L. Fr. To sow. *Si le lessee* emblea *la terre;* if the lessee sow the land. *Litt.* sect. 68.

To steal. *Emble;* stolen. *LL. Gul. Conq.* l. 44. Emble *ou robbes;* stolen or robbed. *Britt.* c. 4. *Si le chival fuit* emble *hors de sa garde;* if the horse was stolen out of his custody. *Id.* c. 24. *Emblers des gentz;* stealings from the people. *Rot. Parl.* 21 Edw. III. m. 62.

EMBRACEOR. [L. Fr. *embrasour*; L. Lat. *imbraciator.*] In criminal law. One who practices or is guilty of embracery. One who labors a jury, or instructs them, or puts them in fear. *Co. Litt.* 369 a. Defined by statute 19 Hen. VII. c. 13, to be one who, when a matter is on trial between party and party, comes to the bar with one of the parties, (having received some reward so to do,) and speaks in the case, or privily labors the jury, or stands there to survey or overlook them, thereby to put them in fear or doubt of the matter. *Termes de la Ley.* See *Embracery.*

EMBRACERY. In criminal law. The offence of attempting to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. 1 *Hawk. P. C.* 259. 4 *Chitty's Bl. Com.* 140, and note. 4 *Steph. Com.* 253. Punished in England by fine

and imprisonment. *Id. ibid.* See *Lewis' U. S. Crim. Law*, 241.

EMENDA, *Emendæ.* L. Lat. [from Fr. *amende, emende.*] Amends; that which is given in reparation or satisfaction for a loss, or trespass committed; (*quod in restaurationem damni tribuitur*). *Spelman.* Emenda *pro transgressione. Bract.* fol. 230. See *Fleta*, lib. 2, c. 47, § 13. *Mag. Chart.* c. 4.

In Saxon law. A pecuniary compensation for an injury or crime. *Spelman.*

EMENDALS. [L. Lat. *emenda.*] An old word, still used in the accounts of the society of the Inner Temple, where so much in *emendals*, at the foot of an account, signifies so much in bank in the stock of the house, for the supply of all emergent occasions. *Cowell.*

EMENDARE. L. Lat. In Saxon law. To make amends or satisfaction for any crime or trespass committed; (*emendam solvere;*) to pay a fine; to be fined. *LL. Edw. Conf.* c. 35. *Spelman. Emendare se;* to redeem, or ransom one's life, by payment of a weregild. *LL. Longob.* cited *ibid.*

To amend or correct. See *Emendatio.*

To repair. *Reg. Orig.* 44 b.

EMENDATIO. Lat. [from *emendare*, q. v.] In old English law. Amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures. *Cowell.*

In Saxon law. A pecuniary satisfaction for an injury; the same as *emenda*, (q. v.) *Spelman.*

EMENDATIO PANIS ET CEREVISIÆ. L. Lat. In old English law. The assizing of bread and beer, or the power of supervising and correcting the weights and measures of them. *Kennett's Par. Ant.* 196. *Cowell.*

EMERCIABLE. L. Fr. Liable to amercement; amerciable. *Britt.* c. 21.

EMERGE. [from Lat. *emergere*, q. v.] To arise; to come to light. "Unless a a matter happen to *emerge* after issue joined." *Hale's Anal.* sect. 1.

EMERGERE. Lat. In old English law. To emerge; to arise; to happen. *Bract.* fol. 1 b, 109. *Stat. Marlbr.* c. 13. *Novis injuriis* emersis, *nova constituuntur remedia;* as new injuries arise, new remedies are ordained. *Fleta*, lib. 2, c. 2, § 1. **Remoto impedimento emergit actio.** The impediment removed, the action rises, (becomes available or efficacious). *Shep. Touch.* (by Preston), 150.

EMI, *Emmi.* L. Fr. In half; in the middle. *Kelham.*

EMINENT DOMAIN. [Lat. *dominium eminens.*] The inherent sovereign power of a state, which gives to the legislature the control of private property for public uses. 2 *Kent's Com.* 339, and note.—The ultimate right of the sovereign power to appropriate not only the public property but the private property of all the citizens within the territorial sovereignty, to public purposes. Story, J. 11 *Peters' R.* 420, 641. Webster, *arg.* S. C. Wood, C. J. 14 *Ohio R.* 147, 173. See 6 *Howard's R.* 531. 4 *Ohio St. R.* 308. 5 *Id.* 374. *Id.* 140, 148. 29 *Mississippi R.* 21, 32. 25 *Vermont R.* 465. 1 *Selden's R.* 434.

The original and ultimate property claimed by the people of a state, in and to all lands within the jurisdiction of the state.* 1 *N. Y. Rev. Stat.* [718,] 714, § 1. 3 *Kent's Com.* 513. 4 *Id.* 3.

EMIT. [from Lat. *emittere*, from *e*, out, and *mittere*, to send.] To send out or send forth; to put out; to issue, as paper money for the purpose of circulation.

In Scotch practice. To speak out; to state in words. A prisoner is said to *emit* a declaration. 2 *Alison's Crim. Pr.* 560.

EMNE CHRISTEN. Sax. Brother in Christ. *Spelman.*

EMPALER. L. Fr. To fence in. *Empalement;* a fencing in. *Keilw.* 30, pl. 2.

EMPANEL. The old form of writing *Impanel*, (q. v.) *Cowell. Blount.*

EMPARKER. L. Fr. [from *en*, in, and *parke*, a pound; L. Lat. *imparcare.*] To impound. *Britt.* c. 21, 51.

EMPARL. [from Fr. *enparler, emparler*, to speak together.] The old form of *imparl*, (q. v.) as *emparlance* was of *imparlance*, (q. v.) *Cowell. Blount. Finch's Law*, b. 4, ch. 42. The ancient orthography is, in strictness, correct. See *E, Enparler.*

EMPARLER. L. Fr. To emparl or imparl. *Isser d'emparler;* to go out to imparl. *Yearb.* P. 5 Edw. III. 18.

EMPARNOURS. L. Fr. Undertakers of suits. *Kelham.*

EMPEROR. [from Lat. *imperator*, q. v.] The title of the sovereign or supreme monarch of an empire. Frequently considered as of superior dignity to that of *king*, although Blackstone treats this as "a ridiculous notion." See 1 *Bl. Com.* 242.

EMPESCHER. L. Fr. To impeach. *L. Fr. Dict.* See *Impeach.*

EMPESCHEMENT. L. Fr. Impeachment. *Kelham.*

EMPHYTEUSIS, *Emphyteosis, Emphiteosis.* Græco-Lat. [from Gr. ἐμφυτεύσις, from ἐμφυτεύειν, to plant, or improve land.] In the civil law. An improving lease; a contract (of the class termed consensual,) by which houses or lands are given to be possessed for ever, (*perpetuo fruenda traduntur,*) or, at least, for a long time, upon condition that the land shall be improved, and that a small yearly rent or pension, (*pensio sive redditus,*) shall be paid to the proprietor. *Inst.* 3. 25. 3. *Cooper's Notes, in loc. Hallifax, Anal.* b. 2, ch 18, num. 9. See *Cod.* 4. 66. It is distinguished both from the contract of sale, and the contract of hiring, and rests on its own peculiar covenants. *Inst. ub. sup. Calv. Lex.* It resembles the fee farm and copyhold estates of the English law. See *Emphyteuta.*

The right granted by such a contract, (*jus emphyteuticum*, or *emphyteuticarium*). The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. 1 *Mackeld. Civ. Law*, 357, § 324.—An inheritable and transferable real right, which is granted by the proprietor of an estate to another, in consideration of a certain and invariable rent to be paid at the time agreed upon. *Id.* 359, Kaufmann's note.

The thing or estate itself, (*bonum seu prædium emphyteuticarium,*) in which such a right is given. *Id.* 356, note.

EMPHYTEUTA. Græco-Lat. [from *emphyteusis*, q. v.] In the civil law. The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis. Calv. Lex.* 1 *Mackeld. Civ. Law*, 357, § 324, 325.

EMPHYTEUTICUS. Græco-Lat. [from Gr. ἐμφυτεύτικος.] In the civil law. Founded on, growing out of, or having the character of an *emphyteusis;* held under an *emphyteusis.* 3 *Bl. Com.* 232. *Calv. Lex.*

EMPIRE, *Enpire.* L. Fr. To make worse. *Britt.* c. 54.

EMPLEAD. The old (and strictly, the correct) form of *Implead*, (q. v.) from the Fr. *empleder*, (q. v.) Otherwise written *Enpleet. Cowell.*

EMPLEDER, *Enpleder.* L. Fr. To implead. *Ne pleder ne estre emplede;* neither to plead, nor to be impleaded. *Britt.* c. 33. See *Id.* c. 11. *Ne* emplederont *ne serront* empledes; shall neither implead nor be impleaded. *Litt.* sect. 76.

EMPLER, *Emplir.* L. Fr. To fulfil. *Kelham.*

EMPORTER. L. Fr. To carry away. *Yearb.* 8 Edw. III. 2.

EMPRESTITO. Span. In Spanish law. Loan; a thing lent at the request of the borrower. *White's New Recop.* b. 2, tit. 11, c. 1.

EMPREZ, *Empres.* L. Fr. After; afterwards. *Kelham.*

EMPRIMECHIEF. L. Fr. First of all. *Kelham.*

EMPRIS. L. Fr. Undertaken. *Kelham.*

EMPRISONER, *Enprisoner.* L. Fr. To imprison. *Britt.* c. 66.

EMPRISONEMENT. L. Fr. Imprisonment. *Emprisonement pur emprisonement;* imprisonment for imprisonment. *Britt.* c. 25.

EMPROMPTER, *Enprompter.* L. Fr. To borrow. *Emprompt;* borrowed; borrowing. *Britt.* c. 21.

EMPTI ACTIO. See *Actio ex empto.*

EMPTIO, *Emtio.* Lat. [from *emere*, to buy.] A buying or purchase. *Calv. Lex. Bract.* fol. 61 b. See *Emtio.*

EMPTIO ET VENDITIO. Lat. Purchase and sale; sometimes translated *emption and vendition.* The name of the contract of sale in the Roman law. *Inst.* 3. 24. *Cod.* 4. 38. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24. Sometimes made a compound word,—*emptio-venditio. Hallifax, Anal.* b. 2, ch. 18.—A consensual contract to deliver a thing for a certain price. *Heinecc. ub. sup.*—An agreement for the seller to part with a thing for money given to him by the buyer. 3 *Salk.* 61.

EMPTOR. Lat. [from *emere*, to buy.] In old English law. A purveyor. *Fleta*, lib. 2, c. 17.

EMPTOR. Lat. [from *emere*, to buy.] A buyer or purchaser. Emptor *tenetur venditori ad pretium, et venditor* emptori, *è converso, ad ipsam rem tradendam;* the buyer is bound to the seller for the price, and the seller, *è converso*, to the buyer, to deliver the thing sold. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 1. See *Emtor.*

Emptor emit quam minimo potest, venditor vendit quam maximo potest. The buyer purchases for the lowest price he can, the seller sells for the highest price he can. 2 *Kent's Com.* 486. The law does not interfere with the right of each party to make

the best bargain for himself, where no imposition is practiced. *Id. ibid.* The same maxim is cited to show that a person cannot act as agent for another to sell property, and become himself the purchaser. 4 *Kent's Com.* 438.

Caveat emptor, (q. v.) Let the purchaser take care.

EMTIO. Lat. In the civil law. Purchase. This form of the word is used in the Digests and Code. *Dig.* 18. 1. *Cod.* 4. 49.

EMTOR. Lat. In the civil law. A buyer or purchaser; the buyer. *Dig.* 18. 1. *Cod.* 4. 49.

EMTRIX. Lat. In the civil law. A female purchaser; the purchaser. *Cod.* 4. 54. 1.

EN. L. Fr. [Lat. *in.*] In. En *quel counte, ou* en *quel maner, ou* en *quel fee, ou* en *quel baronie;* in what county, or in what manor, or in what fee, or in what barony. *Britt.* c. 51.

Into. *Le tenement soit turne* en *l'estate que il fuit avaunt;* the tenement shall be turned into the estate which it was before. *Id.* c. 50. *Turne* en *trespas. Id. ibid.*

EN APRES. L. Fr. Hereafter; afterwards. *L. Fr. Dict.*

EN ARERE. L. Fr. In time past. *Stat. de Judaismo.* 2 *Inst.* 506.

EN AUTRE (AUTER) DROIT. L. Fr. In another's right. 2 *Bl. Com.* 177.

EN AVANT. L. Fr. In future; for the time to come. *Kelham.*

EN BANKE. L. Fr. In the bench. 1 *And.* 51.

EN BARRE. L. Fr. In bar. *Yearb.* T. 8 Edw. III. 6.

EN BONNE FOY. L. Fr. In good faith. *Yearb.* T. 4 Edw. II. 107.

EN CERTEIN. L. Fr. In certain. *Mys en certein;* put in certain; reduced to certainty. *Britt.* c. 69.

EN CHIEFE. L. Fr. [L. Lat. *in capite.*] In chief. *Que tenent en chiefe;* who hold in chief, or *in capite. Britt.* c. 34.

EN COSTE. L. Fr. On the side; collateral. *Kelham.* See *Coste.*

EN COURT. L. Fr. In, or into court. *Viendra en court;* shall come into court. *Britt.* c. 26.

EN DEMEURE. Fr. [Lat. *in mora.*] In delay; chargeable with delay; guilty of improper delay; in default. *Poth. Obl.* part 1, ch. 4, sect. 4, § 3.

EN DEMEYNE. L. Fr. In demesne. *En demeyne et en severalte. Britt.* c. 42.

EN FET. L. Fr. In fact. *Yearb.* M. 3 Edw. II. 59.

EN GROS. L. Fr. In gross; by wholesale. *Britt.* c. 21.

EN JUGEMENT. L. Fr. In judgment; in or into court, (*in judicio,* q. v.) *Co'e les p'ties viendr' en jugement;* when the parties shall appear in court. *Britt.* c. 24.

EN JUICIO. Span. Judicially; in a court of law; in a suit at law. *White's New Recop.* b. 2, tit. 8, c. 1.

EN LE (LA) MERCIE. L. Fr. [L. Lat. *in misericordia.*] In mercy. *Britt.* c. 24. *Litt.* sect. 514.

EN LE PER. L. Fr. In the *per. En le per et cui;* in the *per* and *cui. En le post;* in the *post.* Terms applied, in the old books, to writs of entry. *Reg. Orig.* 228, 229. 3 *Reeves' Hist.* 34. See *In the per,* &c.

EN MORT MEYNE. L. Fr. [L. Lat. *in mortua manu.*] In a dead hand; in mortmain. *Britt.* c. 43.

EN OULTRE. L. Fr. Furthermore. *Kelham.*

EN OWEL MAIN. L. Fr. In equal hand. *Yearb.* M. 5 Edw. III. 106. See *In æquali manu.*

EN PAIS, *En pays.* L. Fr. [L. Lat. *in patria.*] In the country. *Litt.* sect. 618. See *In pais.*

On the country. *Se soient mys en pays;* put themselves on the country. *Britt.* c. 4.

EN ΠΑΑΤΕΙ. Gr. Broadly; liberally; with an allowance. *Dig.* 46. 3. 13. *Id.* 46. 8. 12. 2.

EN PLEIN CONTE. L. Fr. In full county court. *Artic. sup. Chart.*

EN PLEIN (or PLEYN) VIE. L. Fr. In full life. *Britt.* c. 106.

EN POIGNE, *En poin.* L. Fr. In hand. *Quant le feoffor ad le fait* en poigne; when the feoffor hath the deed in hand. *Litt.* sect. 375.

EN PRIMES. L. Fr. [Lat. *imprimis.*] In the first place; first. *Britt.* fol. 1. *Id.* c. 26. This phrase constantly occurs in the old French statutes. *Stat. Westm.* 1, c. 1. *Artic. sup. Chart.*

EN SON DAMAGE. L. Fr. [L. Lat. *in damno suo.*] In his damage; doing him damage; damage feasant, (q. v.) *En son pree, ou en ses blees, ou aillours* en son damage; in his meadow, or in his corn, or elsewhere in his damage. *Britt.* c. 27.

EN SON DEMEYNE COME DE FEE.

L. Fr. In his demesne as of fee. *Britt.* c. 51, 72. See *Demesne.*

EN SUSPENCE. L. Fr. In abeyance. *Dyer*, 71, (Fr. ed.)

EN TESMOIGNANCE. L. Fr. [Lat. *in testimonium.*] In testimony or witness. *En tesmoignances des queux choses nous avons fait faire cestes nous lettres overts;* in testimony whereof we have caused these our letters to be made patent (open). *Stat. Confirm. Chartarum*, c. 7. *En testimoignance de quele chose*, &c. *Stat. of Tithes.* 2 *Inst.* 639.

EN VENTRE SA MERE. L. Fr. In its mother's womb. *Britt.* c. 118.

EN VIE. L. Fr. In life; alive. *Britt.* c. 50.

ENABLING STATUTE. In English law. The statute 32 Hen. VIII. c. 28, by which tenants in tail, husbands seised in right of their wives, and persons seised of an estate of fee simple in right of their churches, were empowered or *enabled* to make leases to endure for their lives, or twenty-one years, which could not do so before. 2 *Bl. Com.* 319. *Co. Litt.* 44 a. 3 *Steph. Com.* 139.

ENACT. To put into the form of an act;* to make, as a law; to pass, as a bill, into a law; to give legislative sanction to a bill. *Webster.*

ENBEVERER. L. Fr. To water, (as cattle). *Britt.* c. 61.

ENBLER. L. Fr. To sow. *Enblee, enblaye;* sown.

ENBOSOGNEZ. L. Fr. Engaged in business. *Kelham.*

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviate;* to put into a schedule. *Britt.* c. 1. See *Imbreviare.*

ENCAUSTUM. Lat. In the civil law. A kind of ink or writing fluid appropriated to the use of the emperor. *Cod.* 1. 23. 6. See *Incaustum.*

ENCAVER. L. Fr. To beware. *Kelham.*

ENCÈA, *Enci.* L. Fr. So; also; afterwards. *Kelham.*

ENCEINT, *Enceynt, Ensient.* L. Fr. Pregnant; with child. *Enceynte de enfaunt.* *Britt.* c. 24.

ENCEPPER. L. Fr. To confine; to put into the stocks. (?) *Britt.* c. 49.

ENCHASER. L. Fr. To chase or hunt; to drive; to compel. *L. Fr. Dict. Kelham.*

ENCHAZ ET RECHAZ. L. Fr. Inchace and outchace; the right of driving cattle to and from a common. *Kelham.*

ENCHESON, *Enchesson, Enchason, Enchison, Acheson.* L. Fr. Cause; reason; occasion. *Par quel* encheson *il se neya;* for what reason he drowned himself. *Britt.* c. 1. *Par* encheson *de matrimoyne;* in consideration of marriage. *Id.* c. 34. *Sans reasonable* encheson; without reasonable cause. *Stat. Westm.* 1, c. 6.

ENCI. L. Fr. So; also; afterwards. *Kelham.*

ENCLAMER. L. Fr. To claim. Enclamaunt *fraunk tenement;* claiming the freehold. *Britt.* c. 42. *Id.* c. 70.

ENCLORER. L. Fr. To enclose. *Britt.* c. 61. *Enclos;* enclosed; shut in, or shut up. *Id. ibid. Id.* c. 33.

ENCLOSE. In Scotch practice. To shut up a jury, after the case has been submitted to them. 2 *Alison's Crim. Pr.* 634. "*Enclosure* of the jury." *Id.* 635.

ENCOIRES. L. Fr. Besides. *Kelham.*

ENCOMBRER, *Encumbrer.* L. Fr. To encumber or hinder. *Britt.* c. 68. *Encombrement;* hindrance or encumbrance. *Id.* c. 75.

To possess a church; to be the incumbent. *Id.* c. 92.

ENCONTER, *Encontre, Encounter, Encountre.* L. Fr. [Lat. *contra.*] Against; in opposition to; in violation of. *Britt.* fol. 3. *Id.* c. 93, *et passim. Conf. Cartar.* 25 Edw. I.

ENCOUPER. L. Fr. [Lat. *inculpare.*] To accuse or charge. *Encoupe;* accused. *Britt.* c. 4, 110.

ENCOURER. L. Fr. [Lat. *incurrere.*] To run; to run against, or bar. *Car nul temps en ceo cas ne luy encoure;* for no time in this case runs against him. *Britt.* c. 38.

ENCRECER. L. Fr. To accrue; to increase. *Kelham.*

ENCRES. L. Fr. Increase; accretion. *Si* l'encres *eyt este si soutil, que nul ne poet voier ne aperceyver cel* encres *que luy eyt estre* encru *par proces de temps;* if the increase have been so imperceptible that none might see nor perceive such increase which may have accrued by process of time. *Britt.* c. 33.

ENCROACH. [from L. Fr. *encrocher*, q. v.] To gain unlawfully upon the rights or possession of another; to take more than is one's right or due.* "If the tenant holds by fealty and a hawk, and the lord *encroaches* a horse." *Plowd.* 94 a. "If the

tenant holds by fealty and 2*s.* rent, and the lord *encroaches* 4*s.* or if the tenant holds by one horse and the lord *encroaches* two horses." *Id. ibid.* Applied to the taking of fees by the clerks of a court. 1 *Leon.* 5. Cowell derives this word from the Fr. *accrocher*, in which he is followed by Webster. But the L. Fr. *encrocher* (q. v.) was constantly used. Anciently written *Incroch*, (q. v.) See *Accroach.*

ENCROACHMENT. [L. Fr. *encrochement.*] An unlawful gaining upon the rights or possessions of another. *Cowell.*

ENCROCHER. L. Fr. To pull or draw to, as with a hook, (*croc*); to take more than is due.* *Plowd.* 94, 95, (Fr. ed.)

ENCUMBRANCE. [from L. Fr. *encombrer.*] A burden or charge upon property, such as a mortgage. See *Incumbrance.*

ENCURRED. An old form of *Incurred.* 1 *Leon.* 13.

ENCUSER. L. Fr. To accuse. *Encuse*; accused. *Britt.* c. 4, 22.

Encusement; accusation. *Id.* c. 22.

Encusour; an accuser. *Id.* c. 4.

ENCZ. L. Fr. But. *Kelham.*

END. Object; intent. Things are construed according to the end. *Finch's Law*, b. 1, ch. 3, num. 10.

END AND EXPIRATION. Held to be synonymous terms. *Plowd.* 198.

ENDEBTED. An old form of *Indebted.* 3 *Leon.* 205.

ENDENT, *Endente.* L. Fr. Indented; cut or divided in a line resembling the teeth of a saw. *Issint que l'escript soit* endente, *et que les justices eyent la une partie, et l'autre partie remeigne as presentours*; so that the writing be indented, and that the justices shall have one part, and the other part shall remain with the presentors. *Britt.* c. 2. *Deyvent estre doubles, trebles et endentes. Id.* c. 39. *Per fait endente*; by deed indented. *Litt.* sect. 217. *En faits endentes. Id.* sect. 370. See *Indent.*

ENDENTURE. L. Fr. An indenture. *Litt.* sect. 370. See *Indenture.*

ENDICT. The old form of *Indict.* *Keilw.* 25 b.

ENDICTMENT. The old form of *Indictment.* *Keilw.* 25. 3 *Leon.* 140. Used by Cowell.

ENDITE. An old form of *Indict*, (q. v.) Formed directly from the Fr. *enditer*, (q. v.)

ENDITEMENT. An old form of *Indictment*, used by Cowell and Blount; and derived from the Fr. *enditer*, (q. v.)

ENDITER, *Endicter.* L. Fr. To indict. *Endite, endites*; indicted. *Britt.* c. 1, 15. *Enditees. Yearb.* T. 7 Hen. VI. 18.

ENDORCER. L. Fr. To endorse. *Dyer*, 1, (Fr. ed.)

ENDORMIR. L. Fr. To sleep; to be or become dormant. *Endormy*; dormant or suspended. *Britt.* c. 108.

ENDORSE. [from L. Fr. *endorser, endorcer.*] To put *on* the *back*, (*en dorse*). To write on the back; to back, (q. v.)

In mercantile law. To write one's name on the back of a bill, note or check. See *Indorse.*

Endorse is still used in preference to *Indorse* by writers of high authority, and is undoubtedly the correct form, if the word is to be considered as directly formed from the French. 3 *Kent's Com.* 88—93. See *E.*

ENDORSEMENT. See *Endorse, Indorsement.*

ENDORSER. See *Endorse, Indorser.*

ENDOSSER. L. Fr. To endorse. *Fet Assaver*, § 28.

ENDOWMENT. L. Fr. and Eng. [L. Lat. *dotatio.*] The assignment or bestowment of dower to, or upon a woman. 2 *Bl. Com.* 135.

The providing for the officiating ministers of a church, by setting apart a certain portion of lands, &c. for their maintenance, &c. *Id.* 21. 1 *Bl. Com.* 387. 3 *Steph. Com.* 111. It has no reference to building or providing a site. 35 *Eng. Law & Eq. R.* 433.

The provision itself, so made; (*dos ecclesiæ*). *Com. Dig.* Dismes, B.

ENEMIABLEMENT. L. Fr. In a hostile manner. *Kelham.*

ENEMY. [Lat. *hostis.*] In the law of nations. A hostile nation; a nation or power at war with another, or against whom a war is declared or carried on; the whole body of a nation at war with another. See 1 *Kent's Com.* 94.

A citizen or subject of a hostile nation. See *Id.*

ENFANT. The old form of *Infant.* 3 *Leon.* 113.

ENFAUNT. L. Fr. [from Lat. *enfans.*] An infant, (child). *Britt.* c. 107.

An infant or minor. Enfaunt *dedens age*; an infant under age. *Britt.* c. 54, 126.

ENFEOFF. [L. Lat. *feoffare, infeudare*, q. v.] To give, bestow or convey a fee or fief. 2 *Bl. Com.* 310. See *Feoffment.*

ENFERGES. L. Fr. Put in irons. *Kelham.*

ENFORM. The old form of *Inform.* 2 *Leon.* 3.

ENFOURNER. L. Fr. To perform. *Enfourny;* performed. *Yearb.* M. 3 Edw. II. 49.

ENFORMER. L. Fr. To inform. *Britt.* c. 84, 96.

ENFRANCHISE. [from L. Fr. *enfraunchir*, q. v.] To make free. See *Enfranchisement.*

To incorporate a person into any body politic or corporation; to make a person a free denizen. *Cowell. Blount. Termes de la Ley.*

ENFRANCHISEMENT. L. Fr. and Eng. [from *enfraunchir*, q. v.] The act of making a person free, as a villein or bondman. *Enfranchisement* is a more general word than manumission, for that is properly applied to a villein. Every manumission is an enfranchisement, but every enfranchisement is not a manumission. *Co. Litt.* 137 b.

The incorporating a person into any society or body politic, and thereby imparting to him its liberties and privileges. *Cowell. Termes de la Ley.* 11 *Co.* 91. The making a man free of a company or corporation. *Co. Litt.* 137 b.

ENFRANCHISEMENT OF COPYHOLDS. In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, &c., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 *Watkins on Copyholds*, 362. *Scriven on Copyholds*, 616. 2 *Steph. Com.* 51. 1 *Id.* 208. 1 *Crabb's Real Prop.* 693, 695, §§ 894, 895, 897.

ENFRAUNCHIR, *Enfranchir.* L. Fr. [from *en*, in, and *fraunk*, free.] To make free; to confer a privilege or liberty; to enfranchise, (q. v.) *Enfraunchys par chartres. Britt.* c. 120.

ENFREINDRE, *Enfreinder.* L. Fr. To break; to violate or infringe. *L. Fr. Dict. Enfreint*, broken. *Dyer*, 45, (Fr. ed.) *Nostre peas enfreynt;* our peace broken. *Britt.* c. 29.

ENGAGEMENT. [from L. Fr. *engager*, q. v.] A binding by gage or pledge.

Obligation by agreement or contract. *Webster.*

ENGAGER. L. Fr. To pledge. *Kelham.* See *Gage.*

ENGEINE. L. Fr. Ingenuity; skill to apprehend another's meaning. *Dyer*, 57.

ENGENDRER. L. Fr. To beget, or engender. *Britt.* c. 36.

ENGENDRURE. L. Fr. [from *engendrer*, q. v.] Issue. *Britt.* c. 77.

ENGETTER. L. Fr. To eject; to cast or throw out. *Engette;* ejected. *Britt.* c. 32, 34, 40.

ENGIN, *Enghein.* L. Fr. Ill design; deceit; fraud. *Kelham.* See *Engyn.*

"ENGINE," said to be a word of very general signification; and when used in an act, its meaning must be sought out from the act itself, and the language which surrounds it, and also from other acts *in pari materia*, in which it occurs. Abbott, J. 6 *M. & S.* 192. In a large sense, it applies to all utensils and tools which afford the means of carrying on a trade. But in a more limited sense it means a thing of considerable dimensions, of a fixed or permanent nature, analogous to an erection or building. *Id.* 182.

ENGLECERY, *Englecherie, Englescherie, Engleschery.* L. Fr. and Eng. [L. Lat. *Englescheria, Engleceria, Anglescheria.*] In old English law. The fact of being an Englishman; Englishery; (*Anglietas, nativitas Anglica*). *Spelman*, voc. *Englecheria. Bract.* fol. 135. *Fleta*, lib. 1, c. 30. 2 *Reeves' Hist.* 22. 4 *Bl. Com.* 195. In Bracton's time it was the law that, where a person was found killed, he was presumed to be a Frenchman, (*Francigena,*) unless Engleschery, (that is the fact of his being an Englishman,) was proved by the relations and presented before the justices. *Bract. ub. sup. Britt.* c. 6. This law was introduced first by Canute and afterwards by William the Conqueror, for the greater protection of their respective subjects from assassination; a much heavier fine being imposed upon the vill or hundred, for killing a Dane or Norman, than a native. *Spelman.* It was an object, therefore, to prove Engleschery, which relieved the country from this burden. *Id.* 4 *Bl. Com.* 195. Englishery was abolished by statute 14 Edw. III. c. 4. *Id. ibid.*

ENGLETERRE. L. Fr. England. *Britt.* fol. 1.

ENGLEYS. L. Fr. English; an Englishman. *Britt.* c. 6. *Engloys. Dyer*, 92.

ENGLISHERY. See *Englecery.*

ENGROSS. [from Fr. *en*, in, and *gros*,

grosse, large.] In practice. To write in a gross, or *large* strong hand. 1 *Bl. Com.* 183.

To copy in a large or fair hand; to copy upon parchment or stamped paper; to copy a paper for the purpose of filing.

In old conveyancing, a fine was said to be *engrossed*, when the chirographer made the indentures of the fine, and delivered them to the party to whom the conusance was made. 5 *Co.* 39 b.

In criminal law. To buy up any commodity in *large* quantities, so as to obtain the exclusive possession or monopoly of it, with an intent to sell it at an unreasonable price.* 4 *Bl. Com.* 158. See *Engrossing.*

ENGROSSER. [L. Lat. *ingrossator.*] A clerk or copyist.

One who practices, or is guilty of engrossing. See *Engrossing.*

ENGROSSING. In English law. The getting into one's possession, or buying up *large* quantities of corn, [grain,] or other dead victuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreasonable price. 4 *Bl. Com.* 158, 159. This was, until recently, a misdemeanour, punishable by fine and imprisonment. *Id. ibid. Steph. Crim. Law*, 95. Now repealed by 7 & 8 *Vict.* c. 24. 4 *Steph. Com.* 291, note.

ENGYN, *Engin*, *Ingen*, *Ingene*. L. Fr. [from Lat. *ingenium*, contrivance.] Fraud; deceit; ill design. *Britt.* c. 4.

ENHABLER. L. Fr. To enable. *Kelham.*

ENHAUNCER. L. Fr. To raise; to lift up; to set up. *Enhaunce;* raised. *Ou* enhaunce *ou abatu;* raised or lowered. *Britt.* c. 61. Applied to material objects.

ENHERITANCE. L. Fr. and Eng. The old form of *inheritance*, (q. v.) *Cowell.*

ENHERITER. L. Fr. To inherit. **Cestuy que doit enheriter al pere doit enheriter al fitz.** He who should have inherited to the father shall inherit to the son. See *Cestui.*

ENHERITRIX. L. Lat. A female heir. 3 *Leon.* 190.

ENITIA, (ENICIA) PARS. L. Lat. In old English law. The part or share of the eldest. The part which the eldest sister had, where a partition of lands was made by friends chosen by agreement of parceners, and she chose first one of the parts so divided. *Litt.* sect. 244, 245. *Co. Litt.* 166 b. *Stat. Marlbr.* c. 9. *Reg. Orig.* 177. *Enitia pars semper præferenda est propter privilegium ætatis;* the part of the eldest is always to be preferred on account of the privilege of age. *Co. Litt. ub. sup.* See *Eisnetia*, *Esnecy.*

ENJOIN. [from L. Fr. *enjoyndre;* Lat. *injungere.*] To impose or lay upon; to lay a command upon; to command.

In practice. To command a person to refrain from doing a thing; to prohibit or restrain by express command. See *Injunction.*

ENJOYNDRE. L. Fr. To command; to enjoin. *Et puis lour soit* enjoynt *que si*, &c.; and afterwards it shall be enjoined upon them, that if, &c. *Britt.* c. 29. See *Id.* cc. 70, 74.

ENKE. L. Fr. Ink. *Diversite de mayn, ou de* enke *en l'escripture;* difference of hand or of ink in the writing. *Britt.* c. 28.

The English word *ink*, though closely and obviously formed from the French, follows the Latin *incaustum*, in its initial letter. See *E*, *Incaustum.*

ENLARGE, *Inlarge.* [from L. Fr. *enlarger*, q. v.] In old law. To set at large; to release from custody. Selden, arg. 3 *State Trials*, 109.

ENLARGE. [from L. Fr. *enlarger*, q. v.] In practice. To extend; to add to; to grant further time. To *enlarge* a rule is to extend the time for a party to show cause under it. *Holthouse.*

ENLARGER. L. Fr. To enlarge; to make more comprehensive; to make wider. Applied both to rights and to material objects. *Puit home* enlarger *le don;* a man may enlarge the gift. *Britt.* c. 39. *Chemyn enlargy;* a way or road enlarged or widened. *Id.* c. 63.

ENLARGER L'ESTATE. L. Fr. In conveyancing. The enlarging of an estate; as where an immediate remainder-man in fee releases all his right to the particular tenant in possession, and his heirs; this gives the latter the estate in fee. 2 *Bl. Com.* 324. *Litt.* sect. 465. 1 *Steph. Com.* 480.

ENLARGING STATUTE. A remedial statute which enlarges or extends the common law. 1 *Bl. Com.* 86, 87.

ENLOST, (*En l'ost*). L. Fr. In the army. *Kelham.*

ENNOYER, *Enoyer.* L. Fr. To annul. *Kelham.*

ENOR. L. Fr. Honor. *Kelham.*

ENORMIS. Lat. [from *e*, out of, and *norma*, rule.] Out of rule or measure; irregular; immoderate; excessive.

Out of rule or law; against law; unlawful; wrongful. See *Enormia.*

Enormous; heinous. *Enormis transgressio;* a heinous trespass. *Stat. Westm.* 2, c. 29.

ENORMIA. L. Lat. [from *enormis*, q. v.] In old practice and pleading. Unlawful or wrongful acts; wrongs. *Et alia enormia;* and other wrongs. This phrase constantly occurs in the old writs of trespass in the Register. *Reg. Orig.* 92 b, 93. It occurs also in the old declarations in trespass, and is literally translated in the modern forms; the original *alia enormia* being still retained as the name of the clause containing it. See *Alia enormia.*

ENORMOUS. [from Lat. *enormis*, q. v.] Aggravated. "So enormous a trespass." *Vaugh.* 115. Written "enormious," in some of the old books. *Enormious* is where a thing is made without a rule or against law. *Brownl.* part 2, 19.

ENOUNDEZ. L. Fr. Overflowed. *Kelham.*

ENPARLER. L. Fr. In old practice. To speak or talk together; to emparl or imparl. Applied by Britton to the deliberation of a jury. *Et tauntost voysent les jurours en une part par eux mesmes, pur* enparler; and presently the jurors shall go to one side [aside] by themselves, to imparl or talk together. *Britt.* c. 52. *Ove v're cong' nous voulons enparler;* with your leave, we will imparl. *Yearb.* P. 7 Hen. VI. 18.

ENPEIRANT. L. Fr. Impairing. *Kelham. Enpeirez;* impaired. *Id.*

ENPLEET. An old form of *Implead.*

ENPORTER. L. Fr. To carry away. *Kelham.*

ENPRISONER. L. Fr. To imprison. *Britt.* c. 66. See *Emprisoner.*

ENPROUER, *Enprower.* L. Fr. To improve. *Britt.* c. 67. *Kelham.*

ENQUERER. L. Fr. [from Lat. *inquirere.*] To inquire; to make inquiry. *Britt.* c. 51. *Enquerge;* he shall inquire. *Id.* c. 1.

ENQUEST. L. Fr. and Eng. [Fr. *enquête;* from Fr. *enquerer*, q. v.] Inquisition or inquiry; an inquest; the inquisition of a jury. *Britt.* cc. 1, 33.

A jury. *Yearb.* M. 3 Edw. II. 56. *Litt.* sect. 368.

Enquest was the old English form of *Inquest*, and is used by Cowell. 1 *Leon.* 5.

ENQUORE. L. Fr. Yet; still. *Kelham.*

ENRACER. L. Fr. To pull up by the roots. *Kelham.*

ENROLL. [from L. Fr. *enrouler;* L. Lat. *irrotulare.*] In practice. To put in, or on a *roll;* to write, transcribe or enter on a roll of parchment, or other material. See *Roll, Enrouler.*

To enter on record, as a decree in chancery. 2 *Daniell's Chanc. Pract.* 1220.

To record, as a deed. *Stat.* 27 *Hen.* VIII. c. 16.

Inroll was an old English form of this word, which is used by Cowell, and adopted by some modern writers.

ENROLLMENT. [from L. Fr. *enroulement;* L. Lat. *irrotulatio.*] An entering on a roll, or on record; the recording of a deed. See *Enroll.* Written by Cowell, *Inrollment.*

ENROULER. L. Fr. [from *en*, in or on, and *roule*, a roll.] To enroll; to put or write on a roll. *Enrouler* en roule *de coroner;* to enroll on the roll of the coroner. *Britt.* c. 1. *Les nosmes des futyfs soient* enroules *de deux roules;* the names of the fugitives shall be enrolled in two rolls. *Id.* c. 26.

ENROULEMENT, *Enroullement.* L. Fr. Enrollment. *Ou* enroulement *de court que porte record;* or enrollment of a court of record. *Britt.* c. 67. *Fet Assaver*, § 17.

ENS. L. Lat. Being; existence. 3 *Bl. Com.* 322.

ENS. L. Fr. In; within. *Kelham.*

ENSEAL. [from L. Fr. *enseler*, q. v.] To seal. *Ensealing* is still used as a formal word in conveyancing.

ENSECCHER. L. Fr. To dry, or dry up. Sometimes written *ensercher. A fower,* ensercher, *& à carier;* to dig, dry and carry away. M. 7 Edw. III. 1. *Ensecchi;* dried. *Kelham. Ensekchies,* in T. 5 Edw. III. 16, is the same word. *Fowes ensekchies;* dry or withered wood cut down.

ENSELER. L. Fr. To seal. Ensele *desouth les seals de jurours;* sealed under the seals of the jurors. *Britt.* c. 58. Ensele *de son seal;* sealed with his seal. *Id.* c. 121. *Ensellomes;* we sealed. *Yearb.* H. 12 Hen. VI. 7.

ENSEMENT, *Ansement.* L. Fr. Also; likewise; in like manner. *Stat. Glocest.* c. 4. *Kelham.*

ENSENSER. L. Fr. To inform; to instruct. *Kelham. Ensenses;* instructed. *Britt.* c. 4.

ENSERVE. L. Fr. [from *enserver*, q. v.] Servile; subject to service; the opposite of free. *Ascuns fraunches, et ascuns* enserves; some free, and some servile. *Britt.* c. 54.

ENSERVER. L. Fr. To make subject to a service or servitude. *Britt.* c. 54.

ENSEVILIR. L. Fr. [from Lat. *sepelire*, to bury.] To bury. *Ensevely;* buried. *Britt.* c. 11.

ENSEYNER. L. Fr. To show; to point out. *Kelham.*

ENSI, *Ensy.* L. Fr. So; thus; also; in like manner. *Kelham. Ensi totes voies;* provided always. *Id.*

ENSIWER, *Ensuer.* L. Fr. To ensue; to follow. *Autrement* ensiweit *cele duresse;* otherwise this hardship would ensue. *Yearb.* T. 1 Edw. II. 10. *Autrement* enswereit *graunt mischief.* M. 3 Edw. II. 56.

ENT. L. Fr. In; in the mean time. *Kelham.*

ENTAIL. [L. Fr. *entaille.*] A fee entailed; that is, abridged, curtailed or limited to certain heirs.* *Cowell. Blount.* 2 *Bl. Com.* 112, *et seq.* See *To entail, Fee tail.*

To ENTAIL. [from L. Fr. *tailler*, from L. Lat. *talliare*, to cut, cut off or limit.] To create an estate in tail; to settle an estate according to a certain rule of descent; to limit to certain heirs.* 2 *Bl. Com.* 113, *et seq.* See *Tail.*

ENTENCION. L. Fr. [from Lat. *intentio*, q. v.] In old pleading. A plaintiff's count or declaration. *Britt.* c. 92. See *Entente.*

ENTENDAUNT. L. Fr. [from *entendre*, q. v.] Attendant. *Britt.* fol. 1 b.

ENTENDEMENT. L. Fr. [from *entendre*, q. v.] Understanding; meaning; signification. *En ceo mot*, mort, *y ad double* entendement; in this word *mort*, (dead,) there is a double meaning. *Britt.* c. 92. See *Id.* c. 53.

ENTENDMENT. The old form of *Intendment*, (q. v.) derived directly from the Fr. *Entendement*, (q. v.) and used by Cowell to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law.

ENTENDRE. L. Fr. To understand. *Et fait à entendre;* and it is to be understood. *Britt.* c. 40.

To intend. *L. Fr. Dict.*

To attend. *Kelham.*

ENTENT. L. Fr. Understanding. *A ma entent;* according to my understanding; as I understand it. *Yearb.* M. 9 Hen. VI. 3.

ENTENTE. L. Fr. [L. Lat. *intentio*, q. v.] In old pleading. The plaintiff's count, or declaration in a real action. *Et puis die le pleyntyfe sa* entente *solonc les pointz del brefe original;* and then the plaintiff shall say (or repeat) his count, according to the points of the original writ. *Britt.* c. 74. See *Id.* c. 75, 91, 47.

ENTER. [from L. Fr. *entrer*, (q. v.); L. Lat. *intrare.*] To take actual possession of lands; to go into, or upon them. See *Entry.* Said to be not confined to the original act of going upon the land. 3 *Jones' Law R.* 298.

In practice. To place a thing properly before a court, and usually in writing; to put upon, or among its records; as to *enter* an appearance, rule or judgment. The word has nearly the same sense of *setting down in writing*, either at large, or in an abridged form, as in mercantile accounts.

ENTER, *Entre.* L. Fr. In; within. See *Entre. Enter mains;* in his hands. *Kelham.*

ENTERCEUR. L. Fr. A party challenging (claiming) goods; he who has placed them in the hands of a third person. *Kelham.*

ENTERFERER. L. Fr. To exchange blows in a combat. *Yearb.* M. 4 Edw. III. 12.

ENTERING. See *Entry.*

ENTERLESSE. L. Fr. Left out; omitted. *Stat. of Additions*, 1 *Hen.* V. c. 5. 2 *Inst.* 665. *Enterlessant;* leaving out. *Yearb.* P. 7 Hen. VI. 12.

ENTERLINE. The old form of *Interline. Finch's Law*, b. 4, ch. 9, p. 281.

ENTERMARRIAGE. The old form of *Intermarriage. Finch's Law*, b. 1, ch. 3, num. 55. 1 *Leon.* 3.

ENTERPLEDER. The old form of *Interpleader*, (q. v.) used by Cowell.

ENTIER. L. Fr. Entire; whole. *Entier sanke;* the whole blood. *Litt.* sect. 2.

ENTIERCIR. L. Fr. To deposit a thing with a third person, till the property is proved. *Kelham.*

ENTIRE. [from Fr. *entier.*] Whole; without division, separation or diminution.

ENTIRETE, *Entiertie.* L. Fr. The whole; the entirety. *Kelham.*

ENTIRETY. [L. Fr. *entierte*, from *entier*, whole.] The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do not take by moieties, but both are seised of the *entirety.* 2 *Kent's Com.* 132. 4 *Id.* 362. Parceners, on the other hand, have not an *entirety* of interest, but each is properly entitled to the whole of a distinct moiety. 2 *Bl. Com.* 188.

ENTORSE, *Entoir*, *Entour*, *Entur*. L. Fr. About; round; concerning. *Kelham.*

ENTRE. Fr. and L. Fr. In; within; between. *Entre ses bras;* within her arms. *Britt.* c. 23. A term applied to a husband *de facto.* See *Infra brachia. Entre meins;* in the hands. *LL. Gul. Conq.* l. 25. *Entre les mains;* between the hands. *Ord. Mar.* liv. 4, tit. 2, art. 1.

ENTRE, *Entree.* L. Fr. [from *entrer*, q. v.] Entry. *Brefe d' entre;* a writ of entry. *Britt.* c. 114. *Bref de entree. Fet Assaver*, § 15.

ENTREBAT. L. Fr. An intruder or interloper. *Britt.* c. 114.

ENTREGA. Span. Delivery. *Las Partidas*, part 6, tit. 14, l. 1.

ENTRELIGNURE. L. Fr. Interlineation. *Kelham.*

ENTREMETTRE. L. Fr. [from Lat. *intromittere*, to let or put in.] To intermeddle; to intrude into. *Britt.* c. 58. *Qui se ad* entremys *del office;* who shall have intruded into the office. *Id.* c. 16.

ENTRER. L. Fr. [from Lat. *intrare*, q. v.] To enter. *Entrast;* enters. *Britt.* c. 114. *Entrant;* enter. *Id. ibid.*

ENTREVAL. L. Fr. An interval. *Apres long* entreval. *Britt.* c. 111.

ENTRUSION. An old form of *Intrusion*, (q. v.) used by Cowell.

ENTRY. [L. Lat. *intratio.*] In practice. The putting a proceeding on record, in proper technical language and order.* A judgment record is composed of *entries* of the various proceedings in the action, actual or formal, in a certain order. *Books of entries* are books containing forms or precedents of the proceedings in various actions, as they appear on record. They were formerly much relied on. 3 *Bl. Com.* 271, note.

ENTRY. [L. Fr. *entre, entree;* L. Lat. *ingressus, introitus.*] The actual taking possession of lands or tenements, by entering into, or setting foot upon the same; an extra-judicial and summary remedy against certain species of injury by ouster, (viz. abatement, intrusion, and disseisin,) used by the legal owner, when another person who has no right has previously taken possession of lands or tenements. 3 *Bl. Com.* 5, 174. 1 *Steph. Com.* 469, 470. *Crabb's Hist. Eng. Law*, 402, 403. *Burton's Real Prop.* 120, *et seq.* 1 *Hilliard's Real Prop.* 83. 2 *Id.* 151. *Tomlins.* It must be peaceable and without force. 3 *Bl. Com. ub. sup.*

ENTRY. In the law of burglary. An act, which, in addition to breaking, (q. v.) is essential to complete the offence of burglary. Any, the least degree of entry, with any part of the body, or with an instrument held in the hand, is sufficient for this purpose; as to step over the threshold, to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries. 1 *Hale's P. C.* 555. 4 *Bl. Com.* 227. So, if the prisoner breaks open a shop window, and with his hand takes out goods, the offence is complete. *Foster's C. L.* 107. *Russ. & Ry. C. C.* 499. Introducing the hand between the glass of an outer window and an inner shutter, is sufficient entry to constitute burglary. *Id.* 341. See 4 *Chitty's Bl. Com.* 227, note. 1 *Russell on Crimes*, 794—797. *Wharton's Am. Crim. Law*, 356. *Lewis' U. S. Crim. Law*, 131.

ENTRY, *Writ of.* [L. Fr. *brefe d'entre;* L. Lat. *breve de ingressu.*] A species of real action, of great antiquity in English law, and, until a comparatively recent period, the general remedy to recover the possession of lands when wrongfully withheld from the owner. 3 *Bl. Com.* 180, 183. Its object was to regain the *possession* of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the *possessory* division of real actions. 3 *Bl. Com.* 180. *Roscoe's Real Act.* 3. It decided nothing with respect to the *right of property*, but only restored the demandant to that situation in which he was, (or by law ought to have been,) before the dispossession committed. 3 *Bl. Com.* 180. There were many varieties of writs of entry under the several titles of *Dum fuit non compos mentis, Dum fuit infra ætatem, Dum fuit in prisona, Ad communem legem, In casu proviso, In casu consimili, Cui in vita, Sur cui in vita, Cui ante divortium, Sur cui ante divortium, Quare ejecit infra terminum, Ad terminum qui præteriit,* and *Causa matrimonii prælocuti;* all of which have been recently abolished in England, by statute 3 & 4 Will. IV. c. 27. *Roscoe's Real Actions*, 3, 88—100. See the above titles.

The writ of entry was directed to the sheriff, requiring him to *command* the tenant of the land that he render (*præcipe quod reddat*) to the demandant, the land in question, which he claims to be his right and inheritance, and *of which* (*de quo*, or

de quibus) the said tenant, unjustly and without judgment, disseised [him or] his ancestor, within the time limited by law for such actions, or that upon refusal, he do appear in court on such a day, to show wherefore he hath not done it. *Reg. Orig.* 229. This was the common or simple form of the writ, (called a writ of entry *in the quo* or *quibus*,) where it was brought against the party himself that did the wrong. 3 *Reeves' Hist. Eng. Law*, 33. 3 *Bl. Com.* 181. If, however, he had made any alienation of the land, or it had descended to his heir, that circumstance was required to be alleged in the writ. This led to certain variations in the form, from which the writ was technically called a writ of entry "in the *per*," "in the *per* and *cui*," or, "in the *post*," according to the number of descents or alienations which had taken place. *Id. ibid. Reg. Orig.* 229. See *infra*.

ENTRY IN THE PER, *Writ of.* A writ of entry, so called from the words "*et in quod idem A. non habet ingressum, nisi* PER *E. qui illud ei dimisit;*" and into which the said A. (the tenant) hath not entry, unless *by* E. (the original wrong-doer,) who demised it to him. 3 *Bl. Com.* 181. 3 *Reeves' Hist.* 34. This was called a writ of entry on the first degree, or on the first alienation or descent of the land. *Id. ibid.*

ENTRY IN THE PER AND CUI, *Writ of.* A writ of entry, so called from the words "*et in quod non habet ingressum, nisi* PER *C.* CUI *D. illud dimisit,*" &c.; and into which he hath not entry unless *by* C. *to whom* D. demised it, &c. *Reg. Orig.* 229. 3 *Reeves' Hist.* 33. 4 *Bl. Com.* 181. This was called a writ of entry in the second degree. *Id. ibid.*

ENTRY IN THE POST, *Writ of.* A writ of entry, so called from the words "*et in quod non habet ingressum, nisi* POST *disseisinam quam L. inde injuste et sine judicio fecit C. patri vel alio antecessori prædicti B. &c.;*" and into which he hath not entry, unless *after* the disseisin which L. unjustly and without judgment thereof made to C. the father, or other ancestor of the aforesaid B. &c. *Reg. Orig.* 229. This writ was given by the statute of Marlbridge, (c. 30,) in cases where the number of alienations or descents exceeded the usual degrees, no mention of degrees being required to be made in it. The writ merely alleged the injury of the wrong-doer, without deducing all the intermediate title from him to the tenant. 3 *Bl. Com.* 182.

ENTZ, *Enz.* L. Fr. But. *Kelham.*

ENURE. [from L. Fr. *enurer, enuer, urer.*] To take effect; to take place; to operate. *Un releas prendra effect et* urera; a release shall take effect and *enure*. *Litt.* sect. 305, 306, 307. See *Id.* sect. 465, 479, 486. *Co. Litt.* 193 a, b, 273.

ENVEER, *Enveyer.* L. Fr. To send. *Kelham.* See *Envoyer. Enviees;* sent. *Conf. Cart.* 25 *Edw.* I.

ENVERS, *Enverz.* L. Fr. Against. *Litt.* sect. 58. 1 *And.* 8. *Envs. Yearb.* T. 4 Edw. III. 7.

ENVOY. In international law. A public minister of the second class, ranking next after an ambassador. *Wheaton's Intern. Law*, 277.

ENVOYER. L. Fr. To send. *Envoye;* sent. *Britt.* c. 21. Envoyes *à nostre gaole. Id.* c. 100. *Envoyable. Id.* c. 110.

To send for; to summon to court. *Rot. Parl.* 4 *Hen.* IV.

ENZ. L. Fr. In; within; but. *Kelham.*

EO. Lat. In the civil law. In so much, for as much; (*in tantum*). *Calv. Lex. Jur.* Used also by the canonists.

For the reason, (*propterea*). *Id.*

There, (*ibi*). *Id.*

EO INSTANTE. L. Lat. At that instant; at the very or same instant; immediately. 1 *Bl. Com.* 196, 249. 2 *Id.* 168. *Co. Litt.* 298 a. 1 *Co.* 138.

EO INTUITU. L. Lat. With or in that view; with that intent, or object. *Hale's Anal.* sect. ii. See *Intuitus.*

EO LOCI. Lat. In the civil law. In that place, (*eo loco,*) there. *Dig.* 5. 1. 19. 2.

In that state or condition. *Calv. Lex.*

EO NOMINE. Lat. Under that name; by that appellation. *Perinde ac si* eo nomine *tibi tradita fuisset;* just as if it had been delivered to you by that name. *Inst.* 2. 1. 43. A common phrase in the books.

EOD', (abbreviation of *eodem*) in references in the civil law, refers to the title last quoted. *Tayl. Civ. Law*, 25.

EODEM. Lat. By the same; by the said. 2 *Ld. Raym.* 888, arg. See *Idem.*

Eodem modo quo quid constituitur, dissolvitur. In the manner in which [by the same means by which] a thing is constituted, is it dissolved. 6 *Co.* 53 b.

EORLE. Sax. [L. Lat. *eorla.*] A word adopted by the Saxons from the Danish *jarl*, and applied to the *ealderman*, and afterwards to the count (*comes*) of the

Normans. Hence the English *earl*. *Spelman*, voc. *Eorla*. *Gilb. C. Pleas, Introd.* notes. 1 *Bl. Com.* 398. See *Earl*. The *eorl* or *eorle* is mentioned in the laws of Canute, par. 2, c. 69. *Spelman, ub. sup.* Through ignorance of the Saxon letters, this word is printed *cople*, in the French edition of Montesquieu's *Spirit of Laws*, (ed. Sarrebruck, 1782, liv. 30, c. 18,) and the error is retained in the English translation. (Am. ed. Worcester, 1802.)

EOS. L. Fr. Use. *Kelham.*

ΕΠ'ΑΥΤΟΦΩΡΩ, Επ'αυτοφώρω. Gr. [from ἐπὶ, in, αὐτὸς, very, and φῶρα, theft.] In the civil law. In the very act; in the act of theft. *Inst.* 4. 1. 3. *Schrev. Lex.* See *Furtum manifestum.*

ΕΠΙΕΙΚΕΙΑ, 'Επιεικεία. Gr. [from ἐπὶ, and ἔικω, to be like.] Equity, equality; the fitting, adapting or adjusting of one thing to another, (*convenientia*).* *Calv. Lex. Jur.* See *Equity.*

ΕΠΙΕΙΚΕΣ, 'Επιεικὶς. Gr. [from ἐπὶ, and ἔικω, to yield, to be like.] Equitable; fit or becoming; moderate or mild; (*æquum et bonum*). *Calv. Lex. Schrev. Lex.*

Equity, as moderating the rigor of the law, or equalizing and adjusting rights according to circumstances. See *Equity.*

EPISCOPALIA. L. Lat. [from *episcopus*, q. v.] In ecclesiastical law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans. *Cowell.*

ΕΠΙΣΚΟΠΟΣ, 'Επίσκοπος. Gr. [from ἐπισκέπτομαι, to look around upon, to oversee.] A bishop; an overseer, supervisor or superintendent. *Calv. Lex.* See *Episcopus.*

EPISCOPUS. Lat. [from Gr. ἐπίσκοπος, q. v.] In the civil law. A superintendent, or overseer. *Episcopi qui præsunt pani et ceteris venalibus rebus;* overseers who have the charge of bread and other things exposed for sale. *Dig.* 50. 4. 18. 7.

EPISCOPUS. Lat. [from Gr. ἐπίσκοπος, q. v.] A bishop. *Cod.* 1. 3. *Calv. Lex. Feud.* lib. 2, tit. 20. *Fleta*, lib. 2, c. 69.

EPISTOLA. Lat. In old European law. A letter or epistle. *Calv. Lex.*

A charter; any instrument in writing for the conveyance of lands or the assurance of contracts; (*instrumentum quo prædia conceduntur, pactionesque firmantur*). *Spelman.* See *Letter.* Spelman refers to Cassiodorus and Marculfus, to show that all deeds or charters were, during, and after the lower empire, (*ab inclinato imperio,*) called *epistolæ;* commencing as a letter, with an address and salutation. Hence the origin of the ancient form of charters or deeds in England, which commenced with —*Omnibus Christi fidelibus ad quos hoc præsens scriptum pervenerit, N. de D. salutem. Sciatis*, &c. "To all the faithful of Christ to whom this present writing shall come, N. of D. sends greeting: Know ye, &c." The same form of commencement is still preserved, with some modification, in our modern deeds poll.

EPISTOLA. Lat. In the civil law. An opinion of the emperor upon a case submitted to him, or a decision in answer to a petition; a rescript. *Inst.* 1. 2. 6. *Tayl. Civ. Law*, 229, 230.

Equality is equity. *Francis' Max.* 9. max. iii. Thus where an heir buys in an incumbrance for less than is due upon it, (except it be to protect an incumbrance to which he himself is entitled,) he shall be allowed no more than what he really paid for it, as against other incumbrancers upon the estate. 2 *Vent.* 353. 1 *Vern.* 49, S. P. 1 *Salk.* 155. For the taking away one man's gain to make up another's loss, is making them both equal; and here the gain the heir would have made, if the whole money due on the incumbrance should be allowed him, shall be taken from him, to make up the loss of the other incumbrancers upon the estate. *Francis' Max. ub. sup.* This maxim is also applied to cases of contribution between sureties and others; to cases of abatement of legacies, where there is a deficiency of assets; and especially to cases of the marshalling and distribution of equitable assets. 1 *Story's Eq. Jur.* § 64 f. See *Æquitas.*

EQUES. Lat. A knight. *Spelman.* 1 *Bl. Com.* 404. So called because serving on horseback. *Id. ibid.*

Eques auratus; a knight, so called from the *gilt* spurs he wore. *Id. ibid.* Spelman, who himself bore this title, says its object was to distinguish one who had been created a knight with due ceremony, (*ritu honorario institutum,*) from one who merely assumed the title. According to Cowell, it is never used in law, *miles* (q. v.) being the proper word.

EQUITABLE. By operation of equity; cognizable in equity. See *infra.*

EQUITABLE ASSETS. Such assets as, at law, cannot be reached by a creditor. 3 *Wooddes. Lect.* 290, and notes. Equitable assets are all assets which are chargea-

ble with the payment of debts or legacies in equity; and which do not fall under the description of *legal* assets. 1 *Story's Eq. Jur.* § 552. See *Legal assets.*

EQUITABLE ESTATE. An estate acquired by operation of equity, or cognizable in a court of equity; such as the estate or title of a person for whose use or benefit lands are held in trust by another, the latter having the legal estate; and the estate of a mortgagor, after the mortgage has become forfeited by non-payment, and before foreclosure.* 1 *Steph. Com.* 217, 285, 328. 2 *Crabb's Real Prop.* 5, § 947, 442. *Holthouse.* See *Equity of redemption, Trust.*

EQUITABLE MORTGAGE. A mortgage arising in equity, out of the transactions of the parties, without any deed or express contract for that special purpose. 4 *Kent's Com.* 150. Thus, if a debtor deposits his title deeds with a creditor, it is evidence of a valid agreement for a mortgage, and amounts to an *equitable mortgage*, which is not within the operation of the statute of frauds. *Id. ibid. Burton's Real Prop.* 484, pl. 1570. *Cross on Lien*, chap. x. *Miller's Law of Equitable Mortgages*, 1, *et passim.* 2 *Crabb's Real Prop.* 848—855, §§ 2203—2208. 1 *White's Lead. Equity Cases*, 440. *Id.* 465, (Am. ed.) note. In Pennsylvania, the validity of this kind of mortgage is not recognized. 3 *Penn. St.* (Barr's) *R.* 233.

The mortgage of an equitable estate or interest. *Holthouse. Miller's Law of Eq. Mortg.* 1.

EQUITATURA. L. Lat. [from *equitare*, to ride.] In old English law. Travelling furniture, or riding equipments, including horses, horse harness, &c. *Reg. Orig.* 100 b. *Stat. Westm.* 2, c. 39.

EQUITY. [Lat. *æquitas;* from *æquus*, equal, even, just; Gr. ἐπιείκεια, qq. v.] In a general sense,—natural right or justice, as addressed to the conscience, independently of any express or positive rule or law; otherwise termed *natural* or moral equity. In this large sense, equity belongs to the science of morals, rather than of jurisprudence. See 1 *Story's Eq. Jur.* §§ 1, 2.

In a stricter sense,—the application of the principles of natural right and reason in the actual administration of justice; either by supplying rules for cases not provided for by the positive law, by mitigating the rigor of the law itself by a liberal and rational interpretation] of its rules, or by adapting its remedies more exactly to the exigencies of particular cases. Otherwise termed *civil* equity. This definition presents equity as a part or branch of jurisprudence, but expresses its ancient more fully than its modern meaning, being founded essentially on the definition of Aristotle—ἐπανόρθωμα του νομου ᾗ ἐλλείπει διὰ τὸ καθόλου, (the correction of the law, where it is defective, by reason of its universality). *Arist. Eth. Nicom.* lib. v. c. 10. This is equity, as contradistinguished from strict or mere *law*, (*strictum et summum jus*). and as it was recognized and applied in Roman jurisprudence; it being the province of the prætor, or equity judge, to assist, supply, interpret and moderate the law. *Dig.* 1. 1. 7. On nearly the same basis, a modern writer of authority has defined equity to be "a judicial interpretation of laws, which presupposing the legislature to have intended what is just and right, pursues and effectuates such intention." 1 *Wooddes. Lect.* 114. And Blackstone, in much fewer words, has explained equity to be the "sound interpretation of the law," and "the method of interpreting laws by the reason of them." 1 *Bl. Com.* 61. 3 *Id.* 431. And yet the same writer has clearly shown this to be an insufficient definition of equity, as actually administered (distinct from law) in the courts. *Id.* 429—437. 1 *Story's Eq. Jur.* §§ 7—20.

EQUITY. A system of jurisprudence collateral to, and, in some respects, independent of *law*, properly so called; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect; or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense; an elaborate system of rules and process, administered in many cases by distinct tribunals, (termed courts of chancery,) and with exclusive jurisdiction over certain subjects. It is "still distinguished by its original and animating principle, that no right should be without an adequate remedy," and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. It is also no longer a mere principle

or even system of *interpretation*, but a system of *practical remedy*, remarkably direct and thorough in its operation, from its close investigation of facts, and its precise adaptation of remedies. This quality is due perhaps to the peculiarity of its process, or mode of procedure, which is according to the course of the *civil law*, and is regarded by Blackstone as the chief characteristic of the whole system. 3 *Bl. Com.* 436. Equity, in this view, has become in many respects a distinct branch of jurisprudence, and the exclusive jurisdiction it possesses over certain subjects, as trusts, infants and the specific performance of contracts, has tended to make it emphatically such. But in other important particulars, it retains its original character of an auxiliary and even dependent system. Over certain important subjects, as fraud, accounts, mistake and accident, its jurisdiction is merely concurrent with that of the common law, and its essential dependence on the law is well expressed by the maxim, *æquitas sequitur legem*, (q. v.)

*** Under some systems of jurisprudence, equity, as already observed, is kept carefully distinct from law, being administered not only in distinct tribunals, but according to a peculiar course of procedure or practice. This is the case in England, and in some of the United States, and was so formerly in the state of New-York, and it has the sanction of the very highest authority. "All nations," says Lord Bacon, "have equity; but some have law and equity mixed in the same court, which is the worse; and some have it distinguished in several courts, which is the better." *Bacon's Works*, iv. 274. Under other systems, especially those of most modern date, not only is equity administered by the same courts, but according to the same course and practice. In New-York, the Code of Procedure has abolished all distinction between legal and equitable remedies, and blended them into one system, combining, or professing to combine the principles peculiar to each. 4 *Comstock's R.* 600. But see 3 *Kernan's R.* 488. This blending of the practice of the courts has been pointedly condemned by the Supreme Court of the United States in several recent cases; and the rule laid down that, as the Constitution of the United States has recognized the distinction between law and equity, it must be observed in the federal courts. 11 *Howard's R.* 669. See 20 *Id.* 523, 524—526. *Id.* 552, 555. And see 3 *Jones' Law R.* 290, 294.

Equity follows the law. Talbot, C. *Cas. temp. Talb.* 52. 1 *Story's Eq. Jur.* § 64. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. *Id. ibid.* A leading maxim of equity jurisprudence, which, however, is not of universal application, but liable to many exceptions. *Id.* §§ 64—64 b. See **Æquitas sequitur legem.**

Equity looks upon that as done which ought to have been done. 1 *Story's Eq. Jur.* § 64 *g.* Equity will treat the subject matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. *Id. ibid.*

He who seeks equity must do equity. 1 *Story's Eq. Jur.* § 64 *e.* He that will have equity done to him [by another,] must do it to the same person. *Francis' Max.* 1.

He that hath committed iniquity shall not have equity. *Francis' Max.* 5, max. 2.

Where equity is equal, the law must prevail. *Francis' Max.* 6, max. 14. See 2 *Jones' Eq. R.* 468, 469.

EQUITY, COURTS OF. Courts which administer justice according to the system of equity, and according to a peculiar course of procedure, or practice. See *Equity.* Frequently termed courts of chancery. See 1 *Bl. Com.* 92.

EQUITY OF REDEMPTION. The right which equity gives to a mortgagor, of redeeming his mortgaged estate after the appointed period has gone by, for repayment of the sum of money which was due on the mortgage. *Holthouse.* 2 *Bl. Com.* 158, 159. 1 *Steph. Com.* 284, 285. 4 *Kent's Com.* 158, 162. 2 *Crabb's Real Prop.* 898, § 2261, *et seq.* It is a species of equitable estate, and is considered to be the real and beneficial estate, tantamount to the fee at law. 1 *Steph. Com.* 328. 4 *Kent's Com.* 159. In Pennsylvania, it is a legal right. 11 *Serg. & R.* 223.

EQUIVOCAL. [Lat. *equivocum*, *æquivocum*, from *æquus*, equal, and *vox*, a word.] Of several meanings or significations, (*multiplex*).

Of doubtful signification, (*ambiguum*). See *Æquivocum.*

EQUIVOCUM. See *Æquivocum.*

ERASURE. [from Lat. *e*, out, and *radere*, to scrape.] A scraping, scratching or rubbing out. The removal of one or more words or parts of words from a writing, by scraping the letters from the paper, with a sharp or rough instrument or substance, otherwise called *rasure* (*rasura*). See *Rasure.*

The place in a writing where a word or letter has been erased.

Removal of a word or part of a word from a writing, by any means; obliteration. This is an improper sense of the word.

ERCEVESQUE. L. Fr. Archbishop. *Stat. Westm.* 1, 3 *Edw.* I.

ERCISCERE. Lat. In the civil law. To divide or partition. A very ancient word. See *Erciscundus.* Written also *Herciscere*, (q. v.)

ERCISCUNDUS. Lat. In the civil law. To be divided. *Judicium familiæ erciscundæ;* a suit for the partition of an inheritance. *Inst.* 4. 17. 4. *Id.* 3. 28. 4. *Id.* 4. 6. 20. An ancient phrase derived from the Twelve Tables. *Calv. Lex. Jur.* See *Herciscunda.*

"ERECT." [Lat. *erigere.*] One of the formal words of incorporation in royal charters. "We do — incorporate, *erect*, ordain, name, constitute and establish." *Patent of New-England*, 18 Jac. I. See *Erigimus.*

ERER, *Arer.* L. Fr. To plough. *Kelham.* See *Arer.*

ERABILIS. L. Lat. A maple tree. Sometimes confounded with *arabilis*, (arable land). See *Barringt. Obs. Stat.* 217.

ERGO HIC. Lat. Therefore here; words used in argument in old cases. *Yearb.* P. 10 Edw. III. 35. *Ergo nec hic;* therefore neither here.

ERGOLABI. Græco-Lat. [from Gr. ἐργον, work, and λαμβανω, to take.] In the civil law. Undertakers of work; contractors. *Cod.* 4. 59.

ERIACH, in the Irish Brehon law, was a pecuniary satisfaction or recompense, (corresponding in some degree with the *weregild* of the Saxon law,) which a party guilty of murder was condemned to pay to the wife or child or friends of the deceased.* 4 *Bl. Com.* 313. The same, probably, with *enach*, in old Scotch law. *Skene de Verb. Sign.* voc. *Enach.*

ERIGIMUS. Lat. We erect. One of the words by which a corporation may be created in England by the king's charter. 1 *Bl. Com.* 473.

ERIT. Lat. [future of *sum*, *esse*, to be.] Shall be. This word, in the civil law, was sometimes understood as denoting the past tense. *Dig.* 50. 16. 123.

ERMING-STREET. One of the four great public ways through England, in the times of the Saxons. *LL. Edw. Conf.* c. 12. *LL. Gul. Conq.* l. 30. *Spelman*, voc. *Ikenild-street.*

ERRANT, *Erraunt.* L. Fr. and Eng. [from L. Fr. *eirer*, *erer*, *errer;* to travel, to go about.] In English law. Itinerant; travelling about. A term formerly applied to justices, who went the circuit (otherwise called justices in eyre,) and to bailiffs at large. *Cowell. Britt.* fol. 1 b. See *Bailiffs errant*, *Eyre.*

ERRATICUM. L. Lat. In old law. A waif or stray; a wandering beast. *Cowell.*

ERRER. L. Fr. To go. *Kelham. Erra;* shall go. *Id.*

ERRO. Lat. In the civil law. A truant slave. *Dig.* 21. 1. 17. 14.

ERROIS. L. Fr. Irish. *Kelham.*

ERRONICE. L. Lat. In old practice. Erroneously; through mistake. *Yelv.* 83.

ERROR. Lat. and Eng. [L. Fr. *erreur*, *errour.*] In practice. A mistake in the foundation, proceedings, judgment or execution of a suit in a court of record, in matter of law or of fact; and to correct which a writ of error lies.* *Co. Litt.* 288 b.

ERROR, *Writ of.* [L. Lat. *breve de errore;* L. Fr. *brefe d'errour.*] In practice. An original writ which lies after judgment in an action at law, in a court of record, to correct some supposed mistake in the proceedings or judgment of the court.* 3 *Bl. Com.* 406. 2 *Tidd's Pr.* 1134, 1140. 1 *Arch. Pr.* 230. *Co. Litt.* 288 b. Sometimes simply termed *error.* It lies for some error or defect in substance, that is not aided, amendable or cured at common law, or by some of the statutes of amendments or jeofails; and it lies to the same court in which the judgment was given, or to which the record was removed by writ of error, or to a superior court. 2 *Tidd's Pr.* 1136. In England, if a judgment in the Queen's Bench be erroneous in matter of *fact* only, and not in point of law, it may be reversed in the same court by writ of error *coram nobis*, and in the Common Pleas, the same

writ is called a writ of error *coram vobis ;* the writ in these cases being merely in the nature of a commission to the judges to examine the error, without removing the record out of the court. *Id. ibid.* 1137, 1143. See *Coram nobis, Coram nobis.* The same kind of writ, under the name of a *writ of error for error in fact*, is in use in such of the United States as follow the English practice. But the most usual and important species of writ of error is that which lies for error in *law*, and which removes the record to a superior court, in order to have the judgment reviewed. This writ is well described as consisting of two parts, a *certiorari* to remove the record, and a commission to examine it. 2 *Tidd's Pr.* 1134, 1143. 1 *Arch. Pr.* 229, 230. When the record, or a transcript of it has been removed to the superior court in compliance with the writ, the particular error complained of is brought before the court by means of pleadings and issue thereon ; and after argument on the points presented by the parties, if the court be of opinion that there is error in the judgment of the court below, it proceeds to reverse the judgment; otherwise, the judgment is affirmed. See *United States Digest*, Error.

Under the new practice introduced in England, by the Common Law Procedure Act of 1852, writs of error are, in most cases, abolished. They have also been abolished in New-York, Ohio, Indiana, and several other states. See *Writ of error.*

ERROR. Lat. Error; mistake. 1 *Mackeld. Civ. Law*, 163. *Calv. Lex.* See *Ignorantia.*

Error juris nocet. Error of law injures. A mistake of the law has an injurious effect; that is, the party committing it must suffer the consequences. 1 *Mackeld. Civ. Law*, 163, § 165, and notes. 1 *Story's Eq. Jur.* § 139, note.

Error nominis nunquam nocet, si de identitate rei constat. A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, [where the thing intended is certainly known]. 1 *Duer on Ins.* 171. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed. *Id. ibid.*

Error qui non resistitur approbatur. An error which is not resisted or opposed, is approved. *Doct. & Stud.* c. 40.

Error fucatus nuda veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error. Error artfully disguised [or colored] is, in many instances, more probable than naked truth; and frequently error overwhelms truth by [its show of] reasons. 2 *Co.* 73.

Error scribentis nocere non debet. The mistake of a writer [a clerical error] ought not to injure. *Jenk. Cent.* 325, case 42.

Errores ad sua principia referre, est refellere. To refer errors to their sources is to refute them. 3 *Inst.* 15. To bring errors to their beginning is to see their last. *Id. ibid. in marg.*

ERROUR. L. Fr. [from Lat. *error,*] Error; mistake. *Britt.* c. 26.

ERS. L. Fr. Heirs. *Kelham.*

ERUDICION. L. Fr. Learning; doctrine. *Ceo est un comon* erudicion *en nostre ley ;* this is a common doctrine in our law. *Yearb.* M. 20 Hen. VI. 16. See *Dyer*, 27 b, 33, (Fr. ed.)

ESBRANCATURA. L. Lat. [from Fr. *esbrancher.*] In old law. A cutting off the branches or boughs of trees. *Cowell. Spelman.*

ESCA. Lat. In old European law. Nuts of trees, or mast, used as the food of swine, deer and other animals. *Spelman, LL. Longobard.* lib. 1, tit. 23, l. 3; cited *ibid.*

ESCÆTA. L. Lat. In old English law. An escheat. *Mag. Chart.* 9 Hen. III. c. 31. *Reg. Orig.* 164 b. Escætæ *vulgo dicuntur quæ, decedentibus his qui de rege tenent in capite, cum non extat ratione sanguinis hæres, ad fiscum relabuntur;* those things are commonly called escheats, which, on the death of the king's tenants *in capite*, without heirs of blood, revert to the fisc, or treasury. *Lib. Nig. Scacc.* par. 2, c. 10, cited in *Spelman*, voc. *Eschæta.*

ESCÆTOR. L. Lat. In old English law. An escheator. *Reg. Orig.* 247, 256. See *Escheator.*

ESCAMBIO, *Breve de.* L. Lat. In old English law. A writ of exchange. A license in the shape of a writ, formerly granted to an English merchant, to draw a bill of exchange on another in foreign parts, (*in partibus exteris*). *Reg. Orig.* 194.

ESCAMBIUM, *Eschambium, Excambium.* L. Lat. In old English law. Exchange. See *Escambio, Excambium.*

Recompense in value. Anciently, when

land was recovered of a tenant, as in an action of dower, and the tenant had vouched another to warranty, he was allowed out of the vouchee's land enough to make up for what he had lost, which was called *escambium ad valentiam;* (L. Fr. *eschaunge a la vaillaunce*). *Bract.* fol. 27, 296 b, 301, 387 b. *Britt.* c. 75, 105.

ESCAPE. [L. Lat. *escapium, eschapium*, from L. Fr. *eschaper, escapper;* Lat. *effugere*, to fly from.] In practice. A violent or privy evasion out of some lawful restraint. *Cowell.*—The gaining one's liberty after being arrested or imprisoned, before being delivered by course of law. 4 *Steph. Com.* 254. *Termes de la Ley.*

Any liberty given to a prisoner not authorized by law. 5 *Mass. R.* 310.

An escape from arrest under civil process is either *negligent* or *voluntary; negligent*, where the party escapes, without the knowledge or consent of the sheriff or his officer; *voluntary*, where the sheriff or his officer permits him to go at large. 3 *Bl. Com.* 415. 1 *Arch. Pr.* 85. *Sewell's Sheriff*, 441. If a defendant, having been once taken in execution, be afterwards seen at large for any, the shortest time, even before the return of the writ, it is an *escape*, unless it be by consent of the plaintiff himself, given previously to, or at the time of the discharge, founded on a good consideration, or under the authority of a writ of *habeas corpus ad testificandum*, or where the defendant has been discharged under an insolvent act. 8 *Johnson's R.* 472. 10 *Id.* 220. 16 *Id.* 181. 18 *Id.* 48. 1 *Salk.* 271. 1 *Show.* 174. 3 *Wendell's R.* 184. 1 *Burr. Pr.* 312. *United States Digest*, Escape.

The escape of a person lawfully arrested for crime is itself a crime punishable by fine and imprisonment. 4 *Steph. Com.* 254. See *Wharton's Am. Crim. Law*, 551. *Lewis' U. S. Crim. Law*, 241, *et seq.*

ESCAPE WARRANT. In English practice. A warrant granted by statute 1 Ann. c. 6, and 5 Ann. c. 9, to retake a prisoner who has escaped from custody on execution, or mesne process. It is issued on an affidavit of the escape, made before a judge of the court in which the action was brought, and is directed to all sheriffs, &c., throughout England, commanding them to retake the prisoner, and to commit him to gaol where taken, there to remain until the debt is satisfied. *Tomlins. Jacob.*

ESCAPIUM, *Escapia.* L. Lat. In old English law. An escape. *Reg. Orig.* 312.

A chance, or accident. *Cowell.* See *Eschapium.*

ESCHÆTA, *Escæta.* L. Lat. In old English law. An escheat. *Spelman. Bract.* fol. 30. See *Escheat.*

The falling of a material object, as a tree; the appendages of a tree felled or cut down. *Cart. ex. Reg. Eccl. Norwic.* cited in *Cowell.* Whatever fell or dropped from trees. *Escætas quercuum;* escheats of oaks. *Fleta*, lib. 2, c. 41, § 24. See *Escheat.*

The droppings of straw on the ground. *Fleta*, lib. 2, c. 73, § 9.

ESCHÆTOR, *Escætor.* L. Lat. In old English law. An escheator. *Spelman.* See *Escheator.*

ESCHAMBIUM. L. Lat. In old English law. Exchange. *Bract.* fol. 322 b. Another form of *Escambium*, (q. v.)

ESCHANGE, *Eschaunge.* L. Fr. Exchange. A title in the old abridgments of Fitzherbert, Brooke, and Viner.

En eschange, il covient que les estates soient egales. In an exchange, it behooves that the estates should be equal. *Litt.* sect. 64. *Co. Litt.* 50 b. That is, equal as to the quantity of interest. *Id. ibid.* 2 *Hilliard's Real Prop.* 298.

ESCHAPER. L. Fr. To escape. *Et se le prisoun que avera* eschape, *soit* eschape *hors de la garde;* and if the prisoner who shall have escaped, be escaped out of the custody. *Britt.* c. 11. See *Id.* c. 21.

ESCHAPIUM. L. Lat. Chance, hap, or accident; a casual opportunity. *Bract.* fol. 230. *Cowell*, voc. *Escapium.*

ESCHAUDE. L. Fr. Smothered. *Kelham.* Famished; choked. *L. Fr. Dict.* But *quære.*

ESCHAUNGE. L. Fr. Exchange. *Britt.* c. 54. Eschaunges *à la vaillaunce;* exchanges to the value. *Id.* c. 75.

ESCHEAT. [L. Fr. *eschete, eschet*, from *eschier, eschoir*, to fall or happen; L. Lat. *eschæta, escæta.* A falling or happening.] In feudal and English law. The falling (falling back or reverting) of lands, by accident or chance, to the lord of whom they are holden, in consequence of the extinction of the blood of the tenant, either by his dying without heirs, (*propter defectum sanguinis,*) or by his attainder for treason or felony, (*propter delictum tenentis*).* *Co. Litt.* 13 a, 92 b. 2 *Bl. Com.* 72, 73. *Id.* 244, 245. 1 *Steph. Com.* 401, 402, 414.

1 *Crabb's Real Prop.* 638, § 818. 2 *Id.* 1028, 2411. Mr. Stephen distinguishes between *escheat* properly so called, and *forfeiture;* the former being the effect of the death of the tenant without heirs, the latter of his violation of his duty to his lord. 1 *Steph. Com.* 166. A distinction is also made in the case of attainder, between escheat to the lord of the fee, and forfeiture to the crown. *Id.* 409. See *Forfeiture.* But both words seem to have been used indifferently to signify the same thing, from a very early period. *Britt.* c. 18. See *Escæta, Eschete.*

The land or fee itself, which thus fell back to the lord. *Spelman*, voc. *Eschæta.* Such lands were called *excadentiæ*, or *terræ excadentiales. Fleta*, lib. 6, c. 1. *Co. Litt.* 13 a.

Any profits that fell to the lord on the tenant's death, without heirs. Called by the civilians *caduca*, (q. v.) *Co. Litt.* 13 a.

Escheat is applied, in old records, to material substances that fell to the ground. Thus the *escheat of wood*, signified all the appendages of lop and top, &c. that belonged to a tree *felled* or cut *down.* John de Grey, Bishop of Norwich, gave liberty to the monks of his church, that in his wood of Thorp they should have one tree with the branches, bark, loppings, root, and all the *escheat*, (*tota eschæta*). *Cowell.* See *Escæta.*

ESCHEAT. In American law. The reverting of land to the state, on the death of the owner without lawful heirs.* 4 *Kent's Com.* 423, 424. See *Forfeiture.* See *United States Digest*, Escheat.

To ESCHEAT. [L. Fr. *eschier;* L. Lat. *cadere, excidere, accidere*, to fall or happen.] To fall back, (Lat. *relabi*); to revert, return or become forfeited to the lord, the crown, or the state; as lands do in certain cases.* See *Escheat.* "When, by accident, lands fall to the lord of whom they are holden,—we say the fee is *escheated.*" *Co. Litt.* 13 a. It is a general principle in American law, that when the title to land fails from defect of heirs or devisees, it necessarily reverts or *escheats* to the people, as forming part of the common stock, to which the whole community is entitled. 4 *Kent's Com.* 424.

ESCHEAT, *Writ of.* [L. Lat. *breve de escæta;* L. Fr. *breve d'eschete.*] A writ which anciently lay for a lord, to recover possession of lands that had escheated to him. *Reg. Orig.* 164 b. *F. N. B.* 143, 144. *Termes de la Ley.* 2 *Bl. Com.* 245. 3 *Id.* 194. Now abolished. 1 *Steph. Com.* 401, note.

ESCHEATOR. [L. Lat. *escætor;* L. Fr. *eschetor, eschetour.*] An ancient officer, appointed by the lord treasurer in every county in England, to look after the escheats which fell due to the king in his particular county. It was his duty to make inquests of titles by escheats, by the oaths of good and lawful men of the county impanelled by the sheriff, and to certify their inquisitions into the exchequer. *Co. Litt.* 13 b, 92 b. 4 *Inst.* 225. *Reg. Orig.* 247, 252, 254. *F. N. B.* 100, C. D. *Tomlins. Crabb's Hist.* 469.

ESCHEATOR, *Escheater.* In American law. An officer appointed to take charge of escheated estates, sometimes termed *escheator general. Purdon's* (Pa.) *Digest*, 316. In Virginia, escheators are state officers, appointed for each county. *Code of Virginia*, (ed. 1849,) chap. 113, p. 489. 12 *Grattan's R.* 564. See *Revised Code of Mississippi*, (ed. 1857,) p. 187. 4 *Kent's Com.* 425, note.

ESCHEKER. L. Fr. Exchequer. *Envoyes a nostre* eschekер; sent to our exchequer. *Britt.* c. 26.

ESCHEQUER. L. Fr. Exchequer. *Artic. sup. Chart.* c. 4.

ESCHETE. L. Fr. [from *eschier*, q. v.] Escheat; an escheat. *De* eschetes *que nous duissent* eschier *par la felonie des felons;* of escheats which ought to fall to us by the felony of felons. *Britt.* c. 18.

ESCHIER, *Eschire, Eshire, Eshuer, Eshure, Eschure, Escheter.* L. Fr. To fall or happen; to fall to; to descend; to escheat. *Britt.* c. 18. See *Eschete. Heritage que* eschire *lour purra;* inheritance which may fall to them. *Britt.* c. 5. *Que eschue;* which happened. *Dyer*, 33.

ESCHUER, *Eschure, Eschever.* L. Fr. To shun or avoid; to eschew. *Kelham. Pur* eschuer *grand delayes. Reg. Orig.* 19 b, nota. *Pur* eschure *la perilouse aventure de battailles;* for avoiding the perilous chance of battel. *Britt.* c. 25.

ESCLAUNDER. L. Fr. False accusation; calumny; slander. *Britt.* c. 22.

ESCLUSE. L. Fr. A sluice. *Kelham.*

ESCOCE. L. Fr. Scotland. *Britt.* c. 16.

ESCOTER. L. Fr. To pay. *Stat. Westm.* 1, c. 18.

ESCOUDIRAD. L. Fr. Let him clear or purge. *LL. Gul. Conq.* l. 16.

ESCRIE. L. Fr. Notorious; pro-

claimed; publicly declared. *Felons escries;* notorious felons. *Stat. Westm.* 1, c. 12.

ESCRIPT, *Escrit.* L. Fr. Writing; a writing; a written instrument. *Mettre en* escript; to put in writing. *Britt.* fol. 1. *En* escript, *issint que* lescript *soit endente;* in writing, so that the writing be indented. *Id.* c. 2. *Par* escript *de une parte. Id.* c. 51. *Soit lour verdit mys en* escrit; their verdict shall be put in writing. *Id.* c. 58. *Par title de* escrit. *Id.* c. 66. See *Best on Evid.* 240, § 198, note.

ESCRITURA. Span. [from Lat. *scriptura*, a writing.] In Spanish law. A written instrument. Every deed that is made by the hand of a public *escribano*, or notary of a corporation or council (*concejo*,) or sealed with the seal of the king or other authorized persons. *White's New Recop.* b. 3, tit. 7, c. 5.

ESCRITURE. L. Fr. [from Lat. *scriptura.*] Writing; a writing. *Yearb.* M. 4 Hen. VI. 7.

ESCROVET. L. Fr. A scroll. *Litt.* sect. 246. Perhaps this should be *escrovel.* Kelham has *escrover.*

ESCROW, *Escrowe, Escrovet.* L. Fr. and Eng. A scroll, (scrowl, scrole, escrowl) or writing; (Lat. *scriptum, schedula;*) a *mere writing*, as distinguished from a perfect deed.* *Britt.* c. 71. *Litt.* sect. 246. A deed, (and the term includes a *bond*,) delivered to a third person to hold or keep, until some act is done or condition performed, and then to be delivered to the grantee or obligee, when it takes effect, and becomes a deed to all intents and purposes.* 2 *Bl. Com.* 307. *Co. Litt.* 36. *Termes de la Ley.* 1 *Steph. Com.* 459, note (k), and cases *ibid.* 4 *Kent's Com.* 454. *Hob.* 246. 5 *Cranch's R.* 351. Until the condition be performed, and the deed delivered over, the estate does not pass, but remains in the grantor. 4 *Kent's Com.* 454. Generally, an *escrow* takes effect from the second delivery, and is to be considered the deed of the party from that time. In cases, however, where it becomes necessary for the purposes of justice, there is a relation back to the first delivery, so as to give the deed effect from that time. *Id. ibid. Smith on Contracts*, 10, 11, and note. An instrument cannot be an escrow, if delivered to the party himself; the delivery must be to a stranger. 8 *Richardson's R.* 325. 1 *Selden's R.* 229. 2 *Michigan* (Gibbs) *R.* 390. 14 *Georgia R.* 145. And see 4 *Florida R.* 374. 11 *M. & W.* 145.

*** *Escrowe* occurs in very nearly its modern form, in the law French of Britton, but in Littleton's time was written *escrovet*, (q. v.); both words being used by these authors, in describing the manner of partitioning an inheritance among co-parceners. Thus, Britton observes, that after partition made, "the parcels should be entered and specified in several scrolls or *escrows*, (*en plusurs escrowes*,) and these *escrowes* should be delivered to a layman who knows nothing of letters, and he shall deliver to each parcener an *escrow* (*un escrowe*). And according to the lot of the *escrows*, (that is, according as they happen to be thus distributed,) each parcener shall hold for her share." *Britt.* c. 71. Littleton describes the mode of drawing the lots thus: "After the partition of the lands made, each part of the land shall be written alone by itself, in a little *scroll*, (*en un petit escrovet*,) and shall be covered all over in wax, in the manner of a little ball, (*d'un petit pile*,) so that no one can see the *scroll*, and then the four balls of wax shall be put into a hat to be kept in the hands of an indifferent man," and then the eldest daughter drew first, &c. *Litt.* sect. 246. *Escrowe* seems properly to mean something more than a mere *writing*, (that being denoted by the Fr. *escript*, which, however, *escrovet* somewhat resembles). The radical idea appears to be, *a writing the contents of which are temporarily kept out of view*, as by being put in a third hand, by rolling up, enclosing in wax, &c. It will be seen from the foregoing extracts, that the distinctive modern feature of an escrow, viz. its being held in the hands of a *third person*, has belonged to it from the earliest times.

ESCROWL. In old English law. An escrow; a scroll. "And deliver the deed to a stranger, as an escrowl." *Perk.* ch. 1, s. 9; ch. 2, ss. 137, 138.

ESCU. L. Fr. [from Lat. *scutum.*] A shield or buckler. *Un* escu *de iiii corners;* a square buckler used in the trial by battel. *Britt.* c. 22.

ESCUAGE. L. Fr. [from *escu*, a shield; L. Lat. *scutagium*, q. v.] In old English law. A species of military or knight-service; (service of the shield;) or rather an incident to the tenure by knight-service. *Litt.* sect. 95. *Co. Litt.* 68 b.

A pecuniary payment made as a com-

pensation or commutation for actual service. Otherwise called *scutage*, (q. v.) 2 *Bl. Com.* 74, 80. See Mr. Barrington's derivation of this word. *Obs. Stat.* 342, 343.

ESCUN. L. Fr. Each; every. *Kelham.*

ESEE. L. Fr. Easy. *Meyns* esee *que devaunt;* less easy than before. *Britt.* c. 54.

Esement; easily. *Id.* c. 61. An easement. *Kelham.*

ESKIPPAMENTUM. L. Lat. In old English law. Tackle or furniture of ships; skippage. *Claus.* 1 *Edw.* I. cited in *Cowell.*

ESKIPPARE. L. Lat. In old English law. To ship. *Towns. Pl.* 223. *Rast. Entr.* 409.

ESKIPPER, *Eskepper*, *Escepper.* L. Fr. To ship. *L. Fr. Dict. Kelham. Eskippa;* shipped. *Dyer*, 43 b. *Keilw.* 87.

ESKIPPESON. L. Fr. [from *eskipper*, q. v.] Shipping or passage by sea. *Cowell.*

ESLAUNDER. L. Fr. Slander. *Keilw.* 27 b.

ESLIER. L. Fr. To choose. *Litt.* sect. 58. *Esle;* chosen. *Kelham.*

Eslieus, *eslus;* chosen. *Stat. Westm.* 1, c. 10. *Britt.* fol. 2. *Id.* c. 1. *Ont eslew;* have chosen. *Mem. in Scacc.* H. 22 *Edw.* I.

ESLISORS, *Esliors.* [from Fr. *eslier*, q. v.] Electors, or choosers. More commonly written *elisors*, (q. v.)

ESLOIGNER. L. Fr. To remove or eloign, (q. v.)

To put off or adjourn. *Kelham.*

ESNECY. [L. Fr. *aisnesse;* L. Lat. *aesnecia*, *eisnetia*, *enitia pars*, *dignitas primogeniti.*] In old English law. The privilege of the eldest. *Fleta*, lib. 2, c. 66, § 5.

A privilege or prerogative granted to the eldest among co-parceners, to have the first choice after the inheritance was divided. *Fleta*, lib. 5, c. 9, § 13. *Litt.* sect. 244. 245. *Co. Litt.* 166 b.

ESPEALTARE. L. Lat. In old English law. To expeditate or disable dogs. *Cowell.* See *Expeditate.*

ESPECHEMENT. L. Fr. Disturbance; impediment. *Kelham.*

ESPERONS. L. Fr. Spurs. *Per les servic' dune piere des* esperons *orretz;* by the services of one pair of gold spurs. *Yearb.* T. 1 Edw. II. 17. *Esporouns. Kelham.*

ESPLEES. L. Fr. and Eng. [L. Fr. *esples*, *espleits;* L. Lat. *expletiæ*, from *explere*, to fill up.] In old practice. Profits; full profits of land. The full profits or products which ground or land yields, as the hay of the meadows, the feed of the pasture, the corn and grain of the arable; the rents, services, and such like issues. *Cowell. Blount. Finch's Law*, b. 4, c. 27. An essential word in writs of right. See *Expletiæ.*

The lands themselves from which such profits are derived. *Ducange.*

Profits of other subjects than land; as of a gorse or wear. *Yearb.* H. 10 Edw. III. 1.

ESPOUSALS. [L. Fr. *esposailles;* Lat. *sponsalia.*] The contract or mutual promise between a man and a woman, to marry each other. *Wood's Inst.* 57.

The ceremony of betrothing.

ESPURIO. Span. [from Lat. *spurius*, q. v.] In Spanish law. A spurious child; one begotten on a woman who has promiscuous intercourse with many men. *White's New Recop.* b. 1, tit. 5, c. 1, § 1.

ESQUIRE, *Esquier.* [L. Fr. *escuier*, from *escu*, a shield; L. Lat. *scutifer*, *armiger.*] A knight's attendant, who waited on him in time of war, and bore his *shield*, or *armor. Spelman*, voc. *Armiger.*

A name or title of dignity in English law, next above gentleman, and below knight. Also, a title of office given to sheriffs, serjeants and barristers at law, justices of the peace, and others. 1 *Bl. Com.* 406. 3 *Chitt. Bl. Com.* 28, note. 3 *Steph. Com.* 15, note. *Tomlins.* Esquires are first mentioned in the statutes 1 Ric. II. st. 2, c. 7, and 16 Ric. II. c. 4. 3 *Reeves' Hist. Eng. Law*, 172. See *Armiger.*

ESSART. [L. Lat. *essartum*, *esartum*, *exartum.*] Woodland turned into tillage, by uprooting the trees, and removing the underwood. *Spelman*, voc *Essartum.* Commonly written *assart*, (q. v.)

ESSARTER. L. Fr. To cut down woods, to clear land of trees and underwood; properly to thin woods, by cutting trees, &c. at intervals. *Spelman*, voc. *Essartum.*

ESSARTUM. L. Lat. In old English law. Essart or assart. *Cart. de For.* 9 Hen. III. c. 4. See *Assartum.*

ESSE. Lat. [infinitive of *sum*, I am.] To be; being. Although a verb, this word is often used in law Latin as a substantive, and governed by a preposition; as in the phrases *ad esse*, *de esse*, *in esse*, &c. See *De bene esse*, *In esse.*

To appear in court. *Quod* sit *coram*

nobis; that he be before us. A word constantly used in the old writs. *Fleta*, lib. 2, c. 65, § 12.

ESSENDUM, ESSENDI. L. Lat. Being; of being. A barbarous gerund formed from the verb *sum, esse*, to be. See *infra.*

ESSENDI, (or DE ESSENDO), QUIETUM DE THEOLONIO, *Breve.* L. Lat. In old English law. A writ of being quit of toll. A writ which anciently lay for citizens and burgesses of a city or town, which, by charter or prescription, was entitled to exemption from toll, where toll was exacted of them. *Reg. Orig.* 258 b. *F. N. B.* 226, I.

ESSOIN, *Essoign.* [L. Fr. *essoine, essoyne, exoine, asoyne, assoigne, assoygne;* L. Lat. *essonium, exonium*, from Fr. *essonier*, (which from *ex*, priv. and *soign*, care,) to excuse, to relieve from care; or from Gr. ἐξόμνυσθαι, to excuse on oath; from ἐξ, from, and ὄμνυμι, to swear.) *Spelman.*] In English practice. An excuse for not appearing in court, at the return of process; the exhibition or presentation of such excuse to the court; (*ipsa excusatio, ejusdemque exhibitio.*) *Spelman*, voc *Essoniare. Britt.* c. 122. *Roscoe's Real Act.* 156. Formerly allowed both to the plaintiff and defendant, (though generally the latter,) in real, personal and mixed actions. *Co. Litt.* 131. *Com. Dig.* Exoine, B. I. *Boote's Suit at Law*, 56, 57. *Gilb. C. Pleas*, 12, 13.

*** The excuses or essoins which were allowed to be offered were five, viz.: that the party was (1) in the king's service, (Lat. *in servitio regis;* Fr. *en service del roy;* called simply *servitium regis:*) (2) in the holy land; (Lat. *in terra sancta*, or *in terram sanctam;* called simply *terra sancta:* Fr. *a la terre seynte:*) (3) beyond sea, (Lat. *trans* or *ultra mare*, Fr. *outre meer*, or *ouster le mer:*) (4) ill in bed; (called *malum lecti;* Fr. *mal de lyt;* illness in bed:) and (5) prevented by *misfortune* happening on the *way* to the court, (called *malum viæ;* Fr. *mal de venue;*) which last was the common essoin. Hence the technical names of the essoins; (1) *De servitio regis*, or *de service del roy:* (2) *De terra sancta*, or *de terre seynte:* (3) *De ultra mare*, or *de outre meer:* (4) *De malo lecti*, or *de mal de lyt:* and (5) *De malo veniendi*, or *de mal de venue*, (qq. v.) *Glanv.* lib. 1. *Bract.* lib. 5, tr. 2. *Britt.* cc. 122—125. 1 *Reeves' Hist.* 405, *et seq.* 2 *Id.* 122, 303. All these, except the last, have long been obsolete, and no essoin is now allowed in personal actions. *Roscoe's Real Act.* 163. 2 *Term R.* 16. 16 *East's R.* 7 note (a). In real actions, essoins are still allowed in England. 3 *Steph. Com.* 659. See 10 *Bing.* 65.

To ESSOIN. [L. Fr. *essoyner, essonier;* L. Lat. *essoniare.*] In English practice. To present or offer an excuse for not appearing in court on an appointed day, in obedience to a summons; to cast an essoin. *Spelman*, voc. *Essoniare.* This was anciently done by a person whom the party sent for that purpose, called an essoiner, (*essoniator*); and who, according to Bracton, presented the excuse in this form: *Essonio talem dominum meum, quod cum esset in veniendo versus curiam, talis infirmitas accedit ei per viam, quod venire non potest pro lucrari, nec pro perdere; et hoc paratus sum docere, sicut curia consideraverit*, &c. I essoin such a one, my master, that while he was coming towards the court, such an infirmity happened to him by the way, that he cannot come, either to gain or lose; and this I am ready to show, or prove, as the court shall consider, &c. *Bract.* fol. 340.

ESSOIN DAY. In English practice. Formerly the first general return day of the term, on which the courts sat to receive *essoins*, i. e. excuses for parties who did not appear in court, according to the summons of writs. 3 *Bl. Com.* 278. *Boote's Suit at Law*, 57. *Gilb. C. Pleas*, 13. 1 *Tidd's Pr.* 107. But, by statutes 11 Geo. IV. and 1 Will. IV. c. 70, § 6, these days were done away with, as a part of the term. *Tomlins. Wharton's Lex.*

ESSOIN ROLL. In English practice. A roll upon which essoins were formerly entered, together with the day to which they were adjourned. *Boote's Suit at Law*, 57. *Roscoe's Real Act.* 162, 163. *Gilb. C. Pleas*, 13. *Co. Entr.* 266 a.

ESSONEOUR. L. Fr. An essoiner; an excuser, (*excusour*). *Britt.* c. 122.

ESSONIABILIS. L. Lat. In old English law. Essoinable; excusable. *Fleta*, lib. 4, c. 5, § 4.

ESSONIARE. L. Lat. In old English practice. To essoin; to present an excuse or essoin to a court. *Spelman. Bract.* fol. 340, *et seq.*

Essoniator; an essoiner; a person sent to essoin another, or present an excuse for him; an excuser, (*excusator*). *Bract.* fol. 337 b. *Fleta*, lib. 6, c. 7, § 11. 1 *Reeves' Hist.* 116, 118. But see *Excusator.*

Essoniatus; a person essoined, or for whom an essoin was presented. *Glanv.* lib. 1, c. 25. *Bract.* fol. 343 b.

ESSONIO. L. Lat. (I essoin.) In old English practice. The commencement of the old formula of essoining. *Bract.* fol. 343 b. See *To essoin.*

ESSONIUM, *Exonium, Exonia, Sonium.* L. Lat. In old English law and practice. An essoin; an excuse for not appearing in court. *Spelman. Bract.* lib. 5, tract. 2, *De Essoniis. Fleta*, lib. 6, cc. 8, 9, 10. 2 *Inst.* 125. See *Essoin.*

An excuse or reason, in general. *Spelman.*

EST. Lat. [from *sum, esse*, to be.] Is; it is; there is. *Est aliquid quod non oportet, etiam si licet; quicquid vero non licet certe non oportet;* there is something [are some things] which ought not to be done, even though it be lawful; but whatever is not lawful certainly ought not to be done. *Hob.* 159.

Est, in the civil law, was sometimes used to signify the past. *Dig.* 50. 16. 123.

Est ipsorum legislatorum tanquam viva vox; rebus et non verbis legem imponimus. [The voice, utterance or declaration] of legislators themselves is like the living voice, [the spoken word of an individual]; we impose law upon things, not upon words. 10 *Co.* 101 b. Statutes are to be interpreted, like ordinary language, with reference rather to substantial effect than mere verbal nicety.

EST. L. Fr. [from *estre*, to be.] Is; it is; there is. *Britt. passim.*

EST. L. Fr. East; the east. *Kelham.*

EST ASCAVOIR. L. Fr. [Lat. *sciendum est.*] It is to be understood or known; "it is to wit." *Litt.* sect. 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." *Co. Litt.* 16. It seems to be directly derived from the *sciendum est* (q. v.) of the civil law.

ESTABLIR. L. Fr. [Lat. *constituere.*] In old English law. To establish or ordain as a law. *Establie est;* it is ordained. *Stat. Gloc.* c. 7.

To fix or settle, as dower. *Estably;* fixed or settled. *Britt.* c. 102.

ESTABLISHMENT. [L. Fr. *establissement;* L. Lat. *constitutio.*] In old English law. An ordinance or statute; an established law. A term particularly applied to the statutes passed in the reign of Edward I. These, according to Sir Edward Coke, truly deserve the name of *establishments*, because they were more constant, standing and durable laws than any made since. 2 *Inst.* 156.

ESTABLISSEMENT. L. Fr. [from *establir*, q. v.; L. Lat. *constitutio.*] In old English law. An establishment or ordinance; an act or statute. *Ceux sont les* establissements *le Roy Edward;* these are the establishments (acts or ordinances) of King Edward. *Stat. Westm.* 1, pr. *L'establissement de nostre estatute. Britt.* c. 21.

The settlement of dower on a woman by her husband. *Britt.* c. 102, *De establissementz de dower.*

ESTAGNE, *Estaignee.* L. Fr. [Lat. *stagnum.*] A pool. *Yearb.* P. 8 Edw. III. 9.

ESTANDARD. L. Fr. A standard (of weights and measures). So called, because it stands constant and immovable, and hath all other measures coming towards it for their conformity. *Termes de la Ley. Estandars;* standards. *Britt.* fol. 2. *Id.* c. 30.

ESTAPE. L. Fr. Staple. *Yearb.* M. 12 Hen. VI. 9.

ESTAT. L. Fr. Estate; condition; statute. *Kelham.*

ESTATE. L. Fr. and Eng. [L. Fr. *estat;* from Lat. *status*, state or condition, from *stare*, to stand.] The interest which any one has in lands, or in any other subject of property. 1 *Preston on Estates*, 20. Called the natural and primary signification of the word. 2 *P. Wms.* 524. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 *Bl. Com.* 103.—The condition or circumstance in which the owner *stands* with regard to his property. *Id. ibid.* 2 *Crabb's Real Prop.* 2, § 942. In this sense, *estate* is constantly used in conveyances, in connection with the words *right, title* and *interest*, (qq. v.) and is, in a great degree, synonymous with all of them. See *Co. Litt.* 345.

The property itself, in which one has an interest; technically called the *corpus.* Thus, lands are real estate; goods and chattels are personal estate. See *Real estate, Personal estate.* The word is also frequently, though untechnically, used as a term of local description, as "my *estate* at A." 1 *Chitt. Gen. Pr.* 238.

*** The old definitions of this word generally confine it to lands or realty. Thus, according to Lord Coke, "*state* or *estate* signifieth such inheritance, freehold, term for years, &c., as any man hath in *lands* or tenements." *Co. Litt.* 345 a. So Cowell defines it to be "that title or interest which a man hath in *lands* or tenements," and the same definition is given in the *Termes de la Ley.* And this limited sense of the word has been relied on, in argument, in some cases. See 1 *P. Wms.* 2. But, according to the settled modern doctrine, the term *estate* is of much more extensive import and application, being indeed *genus generalissimum*, and clearly comprehending things personal as well as real; personal as well as real estate. Holt, C. J. 1 *Salk.* 237. Kent, C. 16 *Johns. R.* 587. *Ward on Legacies*, 208. Marshall, C. J. 1 *Peters' R.* 583, 588. Paterson, J. 3 *Cranch's R.* 97. Wayne, J. 11 *Howard's R.* 358. Dewey, J. 4 *Metcalf's R.* 178, 180. Hence it is well remarked, that, in general, whenever legal enactments are intended to apply exclusively to one or the other of these different species of property, the statutes use the proper qualifying words, "personal" or "real estate," as the case may require. Dewey, J. *ub. sup.*

In wills, the import of the term *estate* depends in a great degree upon its association with other expressions. 2 *Powell on Dev.* (by Jarman,) 158, chap. x. Marshall, C. J. 1 *Peters' R.* 585, 588. Thus, in a recent case in England, it was held that the word *estate* in a will did not, of necessity, include *real* property, but its meaning must be taken as explained by the context. Accordingly, where a testator, after devising certain real estates by his will, proceeded, "I give all the rest of my household furniture, books, linen and china, except as hereinafter mentioned, goods, chattels, *estate* and effects of whatever nature or kind soever, and wheresoever the same shall be at the time of my death," unto certain executors in trust to dispose of the same as specified by the will, it was held that the word "estate" did not pass real estate. 1 *Welsby, H. & Gordon*, 141. See 1 *Jarman on Wills*, 658, (566, Perkins' ed. notes). But, subject to qualification and restriction, the term *estate* is the most general, significant and operative word that can be used in a will, and, according to all the cases, may embrace every degree and species of interest. Paterson, J. 3 *Cranch's R.* 97. If used as descriptive of land, it will carry every thing, both the land and the interest in it, unless it be restrained by particular expressions. *Id. ibid.* It will carry the inheritance, though it be accompanied by words descriptive of local position, or other expressions referable exclusively to the *corpus* of the land. 2 *Powell on Dev.* (by Jarman,) 411, 412, and cases cited *ibid.* 1 *Hilliard's Real Prop.* 614. Marshall, C. J. 1 *Peters' R.* 588. Kent, C. 16 *Johns. R.* 587. Bennett, J. 26 *Vermont R.* 260, 267. 2 *Jarman on Wills*, 181, (132, Perkins' ed. notes), *et seq.*

ESTATE OF INHERITANCE. A species of freehold estate in lands, otherwise called a *fee*, where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him *in perpetuum*, in right of blood, according to a certain established order of descent. 1 *Steph. Com.* 218. *Litt.* sect. 1. *Co. Litt.* 237 b. 1 *N. Y. Rev. Stat.* [722], 717, § 2.

ESTATE IN FEE SIMPLE. An estate to a man and his heirs forever. *Hale's Anal.* sect. xxx. A species of estate of inheritance which a man has, to hold to him and his heirs general, that is, his heirs whether lineal or collateral, male or female; and which is often called an *estate in fee*, without the addition of the word *simple.* 1 *Steph. Com.* 220. 2 *Crabb's Real Prop.* 6.—The entire and absolute interest and property in land. *Cruise's Dig.* tit. i. sect. 44. See *Fee, Fee simple.*

ESTATE IN FEE TAIL, generally termed an ESTATE TAIL. An estate of inheritance which a man has, to hold to him and the heirs of his body, or to him and particular heirs of his body. 1 *Steph. Com.* 228.—An estate of inheritance by force of the statute *De Donis*, limited and restrained to some particular heirs of the donee, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. *Cruise's Dig.* tit. ii. ch. 1, sect. 12. See *Tail, Fee tail.*

ESTATE FOR LIFE. A freehold estate, not of inheritance, which a man has, to hold for the term of his own life, or for that of any other person, or for more lives than one.* 1 *Steph. Com.* 239.—A freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain

event. *Cruise's Dig.* tit. iii. ch. 1, sect. 1. 1 *Hilliard's Real Prop.* 99.—That interest in lands which may possibly last for a life, but cannot last longer. 2 *Crabb's Real Prop.* 59, § 1020. When it is an estate for a man's own life, it is called absolutely an *estate for life*, but when it is for another's life, it is called an estate *pur autre vie*. *Id. Litt.* sect. 56. See 4 *Kent's Com.* 23, 24.

ESTATE BY THE CURTESY. A species of life estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised in fee during the marriage, provided he had issue by her, born alive, and capable of inheriting her estate.* 1 *Steph. Com.* 246. 2 *Bl. Com.* 126. *Cruise's Dig.* tit. v. 2 *Crabb's Real Prop.* 97, § 1074. 1 *Hilliard's Real Prop.* 110. See 4 *Kent's Com.* 27. See *Curtesy.*

ESTATE IN DOWER. A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 *Steph. Com.* 249. 2 *Bl. Com.* 129. *Cruise's Dig.* tit. vi. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. See *Dower.*

In several of the United States, (Vermont, Connecticut, Tennessee, North Carolina, and Georgia,) the title to dower has been reduced down to the lands whereof the husband *died seised*. 4 *Kent's Com.* 41. 1 *Greenleaf's Cruise's Dig.* 164, note. 1 *Hilliard's Real Prop.* 122. In England, by the late Dower Act, 3 & 4 Will. IV. c. 105, seisin of the husband is not necessary. 2 *Crabb's Real Prop.* 130.

ESTATE PUR AUTRE VIE. Estate for another's life. An estate in lands which a man holds for the life of another person. 2 *Bl. Com.* 120. *Litt.* sect. 56.

ESTATE FOR YEARS. A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 *Steph. Com.* 263, 264. Blackstone calls this estate a *contract* for the possession of lands or tenements for some determinate period. 2 *Bl. Com.* 140. See 2 *Crabb's Real Prop.* 224, § 1267. 1 *Hilliard's Real Prop.* 198. 4 *Kent's Com.* 85. It is frequently called a *term*, (*terminus*,) because its duration or continuance is bounded, limited and determined. 2 *Bl. Com.* 143.

ESTATE AT WILL. A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant, by force of this lease, obtains possession. 2 *Bl. Com.* 145. 4 *Kent's Com.* 110. *Litt.* sect. 68. Or it is where lands are let without limiting any certain and determinate estate. *Id.* 2 *Crabb's Real Prop.* 403, § 1543. *Cruise's Dig.* tit. ix. ch. 1.

ESTATE AT (or BY) SUFFERANCE, is where one comes into possession of land under a lawful demise, and after his estate is ended, wrongfully continues the possession. 1 *Steph. Com.* 273. *Co. Litt.* 57 b. 2 *Bl. Com.* 150. *Cruise's Dig.* tit. ix. ch. 2. 2 *Crabb's Real Prop.* 437, § 1597. See 4 *Kent's Com.* 116.

ESTATE UPON CONDITION. An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. *Co. Litt.* 201 a. *Litt.* sect. 323, 325. *Cruise's Dig.* tit. xiii. —An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created, or enlarged or destroyed. 4 *Kent's Com.* 121.

ESTATE UPON CONDITION IMPLIED, (or CONDITION IN LAW). An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 *Bl. Com.* 152. 4 *Kent's Com.* 121. See *Condition implied.*

ESTATE UPON CONDITION EXPRESSED. An estate granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification, or condition. 2 *Bl. Com.* 154. See *Condition expressed.*

An estate which is so expressly defined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens, upon which the estate is to fail. 1 *Steph. Com.* 278.

ESTATE IN VADIO. An estate in gage, or pledge. 2 *Bl. Com.* 157. 1 *Steph. Com.* 282. See *Mortgage.*

ESTATE BY STATUTE MERCHANT. See *Statute merchant.*

ESTATE BY ELEGIT. See *Elegit.*

ESTATE IN POSSESSION. An estate whereby a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance, or contingency. 2 *Bl. Com.* 163. An estate where the tenant is in actual pernancy, or receipt of the rents and other advantages arising therefrom. *Id. ibid.* 2 *Crabb's Real Prop.* 958, § 2322. *Cruise's Dig.* tit. xvi. ch. 1, sect. 1. Where a man is entitled immediately to the possession of land, his estate is said to be in possession; when entitled to it, not immediately but *in futuro*, his estate is said to be in expectancy. 1 *Steph. Com.* 289. 1 *N. Y. Rev. St.* [723], 718, § 8.

ESTATE IN EXPECTANCY. An estate where the right to the pernancy of the profits is postponed to some future period. *Cruise's Dig.* tit. xvi. chap. 1, sect. 1.

ESTATE IN REVERSION. A species of estate in expectancy, created by operation of law, being the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 *Bl. Com.* 175. 2 *Crabb's Real Prop.* 978, § 2345.—The residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. 1 *N. Y. Rev. St.* [723], 718, § 12.—An estate in reversion is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest being called the *particular* estate, (as being only a small part or *particula* of the original one,) and the ulterior interest, the *reversion.* 1 *Steph. Com.* 290. See *Reversion.*

ESTATE IN REMAINDER. An estate limited to take effect, and be enjoyed, after another estate is determined. 2 *Bl. Com.* 163. *Cruise's Dig.* tit. xvi. ch. 1, sect. 2. 2 *Crabb's Real Prop.* 959, § 2323. An estate in remainder is where any estate is derived by grant out of a larger one, an ulterior estate immediately expectant on that which is so derived being, at the same time, granted away by the original owner. The latter interest is called the particular estate, and the ulterior one, the remainder. 1 *Steph. Com.* 295. See *Remainder.*

ESTATE IN SEVERALTY. An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 *Bl. Com.* 179. *Cruise's Dig.* tit. xviii. ch. 1, sect. 1.

ESTATE IN JOINT TENANCY. An estate in lands or tenements granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 *Bl. Com.* 180. 2 *Crabb's Real Prop.* 937. *Cruise's Dig.* tit. xviii. ch. 1, sect. 2.—An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 *Steph. Com.* 312. The most remarkable incident or consequence of this kind of estate is, that it is subject to survivorship. *Id.* 315. See *Survivorship.* It is an estate not favored in law. 2 *Chitty's Bl. Com.* 180, note. See 4 *Kent's Com.* 357. 2 *Greenl. Cruise's Dig.* 352, note. In New-York, every estate, granted or devised to two or more persons in their own right, has been declared to be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in executors or trustees, as such, shall be held by them in joint tenancy. 1 *N. Y. Rev. St.* [727], 721, § 44. See *Joint tenancy.*

ESTATE IN COPARCENARY. An estate acquired by two or more persons, (usually females,) by descent from the same ancestor.* 2 *Bl. Com.* 187. 1 *Steph. Com.* 319. *Cruise's Dig.* tit. xix. See *Coparcenary.* See 4 *Kent's Com.* 366. 2 *Greenleaf's Cruise's Dig.* 382, notes.

ESTATE IN COMMON. An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph. Com.* 323. See *Tenancy in common.* See *Cruise's Dig.* tit. xx. 2 *Greenleaf's Cruise's Dig.* 390, *et seq.* notes.

"ESTATES," held to carry a fee. 4 *M. & S.* 366. Estates may mean as well the interest in the lands, as the lands themselves. Le Blanc, J. *Id.* 370.

ESTATES OF THE REALM. In Eng-

lish law. The lords spiritual, the lords temporal, and the commons of Great Britain. 1 *Bl. Com.* 153. 2 *Steph. Com.* 356.

ESTATUTE, *Estatut.* L. Fr. Statute; a statute. *Yearb.* P. 8 Edw. III. 2, 25. *Soloncqz les* estatutes *de Wyncester;* according to the statutes of Winchester. *Britt.* c. 12. *En nos* estatutz *de Westminster. Id.* c. 14.

ESTAUNKE. L. Fr. A pool or wear; a stank. *Britt.* c. 54. *Id.* c. 61.

ESTE, *Estee.* L. Fr. [from Lat. *æstas.*] Summer. *Kelham.*

ESTE. L. Fr. [from *ester*, to be.] Been. *Avera* este *tue;* shall have been slain. *Britt.* c. 23.

ESTEANT. L. Fr. [from *estre*, q. v.] Being. *Dyer*, 14, (Fr. ed.)

ESTENDRE. L. Fr. To extend, or lay out. *Britt.* c. 71. See *Extend. Estendu;* extended. *Id.* c. 53.

Estendour; an extender. *Id.* c. 71.

ESTENTE, *Estant, Esteinte.* L. Fr. Extent; the laying out of lands. *Britt.* c. 71. Value; estimation. *Kelham.*

ESTER, *Estre, Estoier.* L. Fr. To stand; to be. *De* ester *a droit;* to stand to the right; to meet an accusation, (*de stando ad rectum*). *Britt.* c. 27. See *Ad standum recto. Estoite;* was. *Kelham. Estoyent;* were. *Id.*

ESTERLING, *Sterling.* [L. Lat. *esterlingus, sterlingus.*] The silver penny of England, (*denarius argenteus*). *Spelman*, voc. *Esterlingus.* See *Denarius.*

Good money, (*moneta proba*), as distinguished from bad (*reproba*). *Spelman.*

Lawful money in general. *Id.*

Standard silver money. *Argent del allay del esterling. Artic. sup. Chart.* c. 20.

According to Spelman and Dufresne, this word was derived from the *Esterlingi*, or *Easterlings*, (people from the *East*,) as those Saxons are anciently called who inhabited that district of Germany afterwards occupied by the Hanse Towns and their appendages, and by whom the arts of assaying and coining silver are said to have been introduced into England. 1 *Bl. Com.* 278, note. See 2 *How. St. Trials*, 122, 123. Lord Coke observes that the esterling or sterling penny took the name of the workmen, being Esterlings, that both coined it and gave it the allay. 2 *Inst.* 575.

ESTEYME, *Estainte, Estagne, Estank, Estonbz, Esteigne.* L. Fr. Tin. *Kelham.*

ESTO. Lat. [imper. of *sum, esse*, to be.] Be it; suppose; suppose it to be. A word used by old English writers, in putting their cases. *Fleta*, lib. 3, c. 9, § 24; c. 10, § 1.

ESTOFFER. L. Fr. To store; to stock; to furnish. *Kelham.*

ESTOP. [L. Fr. *estopper;* L. Lat. *oppilare, obstare, obstipare.*] To stop, bar, or impede; to prevent, to preclude. *Co. Litt.* 352 a. See *Estoppel.*

To stop or obstruct. "Estopping a river." 3 *Leon.* 174.

ESTOPPEL. [from *estop;* L. Lat. *oppilare.*] An impediment, or bar, by which a man is precluded in law from alleging or denying a fact, in consequence of his own previous act, allegation or denial, to the contrary.* *Steph. Pl.* 196, 197.—An estoppel is where a man has done some act, or executed some deed, which *estops* or precludes him from averring any thing to the contrary. 3 *Bl. Com.* 308.—It is called an estoppel, says Lord Coke, "because a man's own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth." *Co. Litt.* 352 a. 2 *Crabb's Real Prop.* 1046, § 2432. This is called by Mr. Smith, "a startling," and by Mr. Best, "an unlucky" definition; the last named writer observing that "one would imagine, from the language of Sir E. Coke, that truth was the enemy which the law of estoppel was invented to exclude." 2 *Smith's Lead. Cas.* 436. *Best on Evid.* 403, § 362. The definition given in the *Termes de la Ley* is less objectionable; "Estoppel is where one is concluded and forbidden to speak against his own act or deed, yea, *though it be to say the truth.*" And see, as to the doctrine of estoppels, and the reason of it, 4 *Kent's Com.* 261, and note.

ESTOPPEL BY MATTER OF RECORD. An estoppel founded upon matter of record; as a confession or admission made in pleading in a court of record, which precludes the party from afterwards contesting the same fact in the same suit. *Steph. Pl.* 197. As to this kind of estoppel, and the doctrine of the conclusive effect of a record, see 2 *Smith's Lead. Cas.* 437—445, and American ed. note. Lord Coke classes letters patent, fines and recoveries among matters of record which estop a party. *Co. Litt.* 352 a.

The effect of a judgment, as *res judicata.* The decision of a question by a competent

tribunal, as precluding the same question from being again raised between the same parties. See *Res judicata.*

ESTOPPEL BY DEED is where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. *Steph. Pl.* 197. A man shall always be *estopped* by his own deed, or not permitted to aver or prove any thing in contradiction to what he has once so solemnly and deliberately avowed. 2 *Bl. Com.* 295. *Plowd.* 434. *Cowp.* 601. 2 *Crabb's Real Prop.* 1046, § 2432. 2 *Smith's Lead. Cas.* 456, 457. 4 *Kent's Com.* 261, and note. A writing which is not technically a *deed*, that is, which is not under seal, does not operate as an estoppel. A good example of this is the case of a receipt. *Smith on Contracts*, 16. Bronson, J. (dissenting), 3 *Hill's* (N. Y.) *R.* 215, 220.

ESTOPPEL BY MATTER IN PAIS, (or *in the country*). An estoppel by matter that is neither a record, nor a deed,* such as livery, entry, acceptance of rent, &c. *Co. Litt.* 352 a. Thus, where one man has accepted rent of another, he will be estopped from afterwards denying, in any action with that person, that he was, at the time of such acceptance, his tenant. *Steph. Pl.* 197. *Com. Dig.* Estoppel. *Co. Litt.* 352 a. 2 *Smith's Lead. Cas.* 458. See 3 *Hill's* (N. Y.) *R.* 215. Bronson, J. *Id.* 220. 4 *Mann. & Gr.* 209. 22 *Alabama R.* 543. Admissions belong to this division of estoppels. See 8 *Wendell's R.* 480, 483.

The doctrine of *estoppels in pais* is one which, so far at least as that term is concerned, has grown up chiefly within the last few years. But it is, and always was a familiar principle in the law of contracts. It lies at the foundation of morals, and is a cardinal point in the exposition of promises, that one shall be bound by the state of facts which he has induced another to act upon. Redfield, C. J. 26 *Vermont R.* 366, 373. And see 2 *Welsby, H. & Gordon*, 653.

ESTOPPEL, COLLATERAL. The collateral determination of a question by a court having general jurisdiction of the subject. See Small *v.* Haskins, 26 *Vermont R.* 209, 221. The whole subject of collateral estoppels is one of comparatively recent origin. And it is exclusively of the creation of the courts, and, like fictions of law, ought not to be allowed to aid in the perpetration of wrong. Redfield, C. J. *Id.* 223.

ESTOPPEL. In pleading. A plea, replication or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. *Steph. Pl.* 219. 3 *Bl. Com.* 308.

ESTOPPER, *Estoper.* L. Fr. To stop, or obstruct, as by damming up a stream. *De ewes estoppes ;* of water-courses stopped. *Britt.* c. 29.

ESTOVER. L. Fr. and Eng. [L. Lat. *estoverium.*] An allowance made to a person. See *Estoverium.* The plural only (*estovers,*) is now used. See *Estovers.*

ESTOVER. L. Fr. To furnish, or supply. *Britt.* c. 103.

To be necessary. *Id.* c. 75.

ESTOVERIUM. L. Lat. In old English law. An estover; an allowance made to a person out of an estate, or other thing, for his or her support. An allowance of wood (*in boscis*) made to a tenant in dower for repairs, (*ad ædificandum,*) fuel, (*ardendum,*) and fencing, (*claudendum*). *Bract.* fol. 315. See *Magna Charta*, c. 7.

An allowance of wood to a commoner, for similar purposes. *Bract.* fol. 222 b, 231. *Fleta*, lib. 4, c. 25.

An allowance made to a man arrested for felony, for the support of himself and family during his imprisonment. *Bract.* fol. 136 b, 137. *Fleta*, lib. 1, c. 26, § 2.

An allowance of forage to horses. *Fleta*, lib. 2, c. 73, § 3.

The plural *estoveria* is used by more modern writers. *Estoveria ædificandi, ardendi, arandi et claudendi ;* estovers of building, (house-bote,) burning, (fire-bote,) ploughing, (plough-bote,) and enclosing, (hedge-bote). *Co. Litt.* 41 b. See *Stat. Westm.* 2, c. 25.

ESTOVERS. L. Fr. and Eng. [L. Lat. *estoveria*, and more anciently *estoverium ;* from Fr. *estouver*, *estover* or *estoffer*, to furnish, supply or maintain.] An allowance made to a person out of an estate, or other thing for his or her support, as for food and raiment, (*in victu et vestitu*). *Stat. Gloc.* c. 4. See *Estover*, *Estoverium.* An allowance (more commonly called *alimony,*) granted to a woman divorced *a mensa et thoro*, for her support out of her husband's estate. 1 *Bl. Com.* 441.

An allowance of wood made to a tenant for life or years; a liberty of taking necessary wood for the use or furniture of his house or farm, from off the land demised to him. 2 *Bl. Com.* 35. 1 *Steph. Com.* 241, 269. 2 *Crabb's Real Prop.* 76, § 1044. *Bisset on Estates*, 276, 277. 4 *Kent's Com.* 73. This is the ordinary meaning of the word *estovers*, which are also called in law *botes*, embracing the various kinds of *house-bote*, *fire-bote*, *plough-bote*, and *hay-bote*. See *Botes*. Estovers are sometimes erroneously confounded with *common of estovers*, (q. v.) and the distinction is not clearly made by Britton in his 60th chapter, *De renables estovers*.

ESTOYER, *Estoier*, *Estere*, *Ester*. L. Fr. [from Lat. *stare*.] To stand; to stand good; to stand to, or abide. *Kelham*. Estoyse *le primer jugement;* the first judgment shall stand. *Britt.* c. 105.

ESTRAUNGE, *Estrange*. L. Fr. A stranger. *Britt.* c. 12. *Yearb.* P. 4 Edw. III. 15.

ESTRAY. [L. Fr. *estraye*, *estrayeur;* L. Lat. *extrahura*, from *extra*, without.] Any thing *out of* its place, especially an animal that has escaped from its owner, and wanders or strays about; a wandering animal, (*animal palans*). *Spelman*, voc. *Extrahura*. Usually defined as a wandering animal whose owner is unknown. *Pecus quod*, *elapsum à custode*, *campos pererrat*, *ignoto domino;* a beast which, having escaped from its keeper, wanders over the fields, its owner being unknown. *Spelman*, *ub. sup.* *Pecus vagans*, *quod nullus petit*, *sequitur vel advocat;* a wandering beast, which no one seeks, follows or claims. *Fleta*, lib. 1, c. 43. *Bract.* fol. 120.—Cattle whose owner is unknown. 2 *Kent's Com.* 359. See *United States Digest*, Estray.

In a late case in the Supreme Court of Texas, in which the signification of this term came under consideration, Hemphill, C. J. was of opinion that it did not necessarily, and in all cases, import an animal whose owner was *unknown;* but that, as used in the statute of that state relating to estrays, it was intended to have a wider range, so as to include animals whose owners were known. See 14 *Texas R.* 428, 430, 431.

In English law, an *estray* is any valuable animal, [whether beast or bird,] that is not wild, found within a lordship, and whose owner is not known; and which belongs to the king, or to the lord of the manor by special grant from the crown.* 1 *Bl. Com.* 297, 298. 2 *Id.* 14. 2 *Steph. Com.* 561, 562. 1 *Crabb's Real Prop.* 513—518, §§ 665—671.

ESTRE. *Estr'*. L. Fr. To be; being. *Del bien estre;* of well being. *Britt.* c. 39. *Esteant;* being. *Este;* been. *Estoie;* was. *Id. passim.* *L. Fr. Dict.*

ESTREAT. [L. Fr. *estrete;* L. Lat. *extractum*.] In practice. A true copy or duplicate of an original writing. *Cowell.*

An extract from the rolls or records of a court, especially records of amercements.*

A forfeited recognizance taken out, (estreated, i. e. *extracted*) from among the other records of the courts, and sent or returned to the court of exchequer to be prosecuted. 4 *Bl. Com.* 253. This last is the modern meaning.

Anciently, in the English Court of Common Pleas, after the amercements had been entered on record, which was done without assessing any sum, the clerk of the warrants made the *estreats*, (that is, *extracts* or copies from the record,) and delivered them to the clerks of the assize, by whom they were delivered to the coroners to affeer the amercements. See *Affeer*. After the coroners had affeered or assessed the amercements, they were delivered back through the same channel to the clerk of the warrants, and then the rolls of the estreats, thus completed, were carried into the exchequer. *F. N. B.* 75, I. K. 76. Fitzherbert explains these proceedings in detail, and gives a form of the estreat. *Id. ibid.* See *Stat.* 3 & 4 *Will.* IV. c. 99.

To ESTREAT. [L. Lat. *extrahere*.] To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See *Estreat*.

To bring or draw into the exchequer. "It is hard to *estreat* the fine hither, without taking the usual remedy for it by distress." Hale, C. B. *Hardr.* 471.

ESTREITE, *Estreyte*. L. Fr. [from Lat. *strictus*.] Straitened; contracted; narrowed. *De ewes estoppes ou estreites;* of water-courses stopped or narrowed. *Britt.* c. 29.

Strict; limited. *Id.* c. 55, 34.

ESTREPAMENTUM, *Estrepementum*. L. Lat. In old English law. Estrepement; a destructive kind of waste committed by a tenant for life or years in lands, woods or houses. *Spelman*. *Reg. Orig.* 76 b, 77. *Reg. Jud.* 33. See *Estrepement*.

ESTREPE. L. Fr. [from Fr. *estropier*, to mutilate, or Lat. *extirpare*, to root up.] To strip or lay bare, as trees of their branches, or land of wood, houses, &c. To commit waste or spoil in lands, woods or houses, to the damage of another, as of a reversioner.* See *Estrepement.*

ESTREPEMENT, *Estrepment.* L. Fr. and Eng. [L. Lat. *estrepamentum;* from Fr. *estrepe*, or *estropier*, to mutilate; or Lat. *extirpare*, to root up, or utterly destroy.] Spoil made by tenant for life, upon any lands or woods, to the prejudice of the reversioner; as by drawing out the heart of the land by ploughing or sowing it continually, without manuring, or other such usage as is requisite in good husbandry; or by cutting down trees, or lopping them further than the law will allow. *Cowell. Blount.* Called in the old books, *strip. F. N. B.* 60, 61.

An aggravated kind of waste (*gravius vasti genus,*) committed in lands, woods, or houses, by a tenant for life or years, and especially during the pendency of a suit to recover possession; as by cutting down trees, destroying houses, &c., to the prejudice of the reversioner.*

*** The etymology of this word, as well as its precise meaning, does not seem to be expressed with much clearness in the books. Practically, it appears to have been considered the same as waste, distinguished only by the circumstances under which it was committed, viz.: during the pendency of a suit. This, at least, seems to have been the principal distinction between a writ of *estrepement*, and a writ of *waste* proper. 3 *Bl. Com.* 225, 226. Spelman is the only writer who seems to have discovered the true derivation of the word, and through that, to have arrived at its radical meaning. *Estrepamentum* is quasi *extirpamentum*, from *extirpare*, to root out, or rase to the foundations; to destroy utterly, (*delere*). In confirmation of this, he refers to the judicial writ *de estrepamento* in the Register, in which the word *extirpare* is prominently used. *Reg. Jud.* 33 b. Two other writs in the Register of similar character are called writs *de extirpatione. Reg. Jud.* 13, 58 b. See *Termes de la Ley*, voc. *Extirpation.*

ESTRETE. L. Fr. An extract. *Britt.* c. 26. See *Estreat.*

ESTRETE. L. Fr. Street; a street, way or road. *En le haut estrete;* in the highway. *Yearb.* H. 2 Edw. II. 27.

ESTRETEMENT, *Estreytement.* L. Fr. Strictly; closely. *Britt.* cc. 100, 104.

ET. Lat. and Fr. And. See *Calv. Lex. Jur.*

ETABLISEMENT. Fr. In old French law. Establishment; an ordinance, statute or decree. *Les Etablisements de St. Louis* hold a high rank for the wisdom with which they are written, and the curious matter they contain. *Butler's Hor. Jur.* 92. *Steph. Lect.* 199. See *Establishment.*

ET ADJOURNATUR, (or *Adjornatur*). L. Lat. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day; or where a second argument was had. *Yearb.* T. 3 Edw. III. 37. 1 *Keb.* 692, 754, 773. *Keilw.* 65. *Hardr.* 68. *Cro. El.* 180. *T. Raym.* 55. See *Adjournatur.*

ET AL. (Abbreviation of *Et alius* or *alium.*) Lat. And another. ET ALS. (abbrev. of *Et alios.*) And others. Abbreviations often used in entitling causes, where there are two or more plaintiffs or defendants.

ET ALII E CONTRA. L. Lat. And others on the other side. A phrase constantly used in the Year Books, in describing a joinder in issue. P. 1 Edw. II. *Prist;* et alii è contra, *et sic ad patriam;* Ready; and others *è contra*, and so to the country. T. 3 Edw. III. 4.

ETAS. L. Lat. An old form of *ætas*, (q. v.) *Magna Charta*, c. 3.

ET DE CEO SE METTENT EN LE PAYS. L. Fr. And of this they put themselves upon the country. *Fet Assaver*, § 64.

ET DE HOC PONIT SE SUPER PATRIAM. L. Lat. And of this he puts himself upon the country. *Mem. in Scacc.* 22 Edw. I. *Yearb.* T. 1 Edw. II. 11. The old conclusion of a plea in bar by way of traverse. Literally translated in the modern forms. See *Conclusion to the country.*

ET EI LEGITUR IN HÆC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record. See *Oyer.*

ET HABEAS IBI TUNC HOC BREVE. L. Lat. And have you then there this writ. A clause in old writs, expressive of the command to return to them. *Reg. Jud.* 1. *Fleta*, lib. 2, c. 64, § 19. *Towns. Pl.* 166. Literally translated in the modern forms.

ET HÆC SANCTA. L. Lat. And these holy (things; i. e. gospels). The

words with which oaths formerly concluded. *Fleta*, lib. 2, c. 63, § 12. Expressed in law French, *Et ces saints;* which has sometimes been improperly rendered, "And the saints." See *Oath, Sancta.*

ET HOC PARATUS EST VERIFICARE. L. Lat. And this he is ready to verify. The ancient conclusion of a plea in bar in confession and avoidance. *T. Raym.* 50, 94. 1 *Salk.* 2. *Bract.* fol. 306 b. Literally translated in the modern forms.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. L. Lat. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. 1 *Salk.* 6. 1 *Show.* 181. Literally translated in the modern forms.

ET INDE PETIT JUDICIUM. L. Lat. And thereupon, (or thereof,) he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. *Bract.* fol. 57 b. *Crabb's Hist. Eng. Law*, 217.

ET INDE PRODUCIT SECTAM. L. Lat. And thereupon, (or thereof,) he produces suit. A formula used at the conclusion of declarations, from a very early period, to express the fact that the plaintiff *produced* to the court, at the time of declaring, the testimony of his *secta*, (i. e. his *suit* or followers,) for the purpose of confirming his allegations, which the ancient law required. *Bract.* 214 b, 410 a. *Steph. Plead.* 429. 3 *Bl. Com.* 295. *Gilb. C. Pleas*, 48. *Towns. Pl.* 166. This production of the *secta* was originally an actual occurrence. *Et inde producat* sectam *sufficientem, scilicet probos homines, qui præsentes fuerint in curia;* and thereupon he should produce a sufficient suit, to wit, good men who should be present in court. *Fleta*, lib. 2, c. 47, § 20. This soon became a mere form, but the clause was retained, though apparently in a new sense, as being supposed to express summarily the grounds of the *suit* or action, and was afterwards translated into the English formula: "And thereupon (or therefore) he brings his suit," with which declarations now conclude. See *Suit, Secta.*

ET HABUIT. L. Lat. And he had it. A common phrase in the Year Books, expressive of the allowance of an application or demand by a party. Parn. *demanda la view. Et habuit*, &c. M. 6 Edw. III. 49.

ET ISSINT. L. Fr. And so. *Co. Litt.* 303 b.

ET MODO AD HUNC DIEM. L. Lat. And now at this day. Words anciently used (as the corresponding English words still are) in entering continuances on record, expressive of the day of appearance of the parties.

ET NON. L. Lat. And not. Words sometimes anciently used in pleading, instead of *absque hoc*, (q. v.)

ET NON ALLOCATUR. L. Lat. And it is not allowed. *Yearb.* M. 2 Edw. III. 19.

ET PETIT AUXILIUM. L. Lat. And he prays aid. *Yearb.* M. 1 Edw. II. 1.

ET PRÆDICTUS A. SIMILITER. L. Lat. And the said A. likewise. The Latin form of the *similiter* in pleading. See *Similiter.*

ET SIC. L. Lat. And so. The commencement of a formula, (as, *et sic nil debet, et sic non est factum,*) formerly used as a special conclusion to a plea in bar, in order to render it positive, and to avoid the fault of argumentativeness. *Archb. Civ. Pl.* 224. *Mansel on Demurrer*, 75.

ET SIC AD JUDICIUM. L. Lat. And so to judgment. *Yearb.* T. 1 Edw. II. 10.

ET SIC AD PATRIAM. L. Lat. And so to the country. A common phrase in the Year Books, in recording an issue to the country. *Il ne dona pas, prist, &c. et alii è contra; et sic ad patriam.* M. 3 Edw. III. 29.

ET SIC FECIT. L. Lat. And he did so. *Yearb.* P. 9 Hen. VI. 17.

ET SIC PENDET. Lat. And so it hangs. A term used in the old reports, to signify that a point was left undetermined. *T. Raym.* 168. *Et sic pendet placitum;* and so the plea hangs. *Yearb.* T. 1 Edw. II. 8.

ET SIC ULTERIUS. L. Lat. And so on; and so further; and so forth. *Fleta*, lib. 2, c. 50, § 27.

ET UNDE DICIT. L. Lat. And whereupon he says. *Yearb.* M. 1 Edw. II. 1.

EUANGELIES, *Ewangelies.* L. Fr. The gospels; or evangelists. *Paumaunt les Euangelies;* laying hands on the gospels. *Britt.* c. 52. *Jurer sur seyntz* Evangelies *de Dieu;* to swear upon the Holy Evangelists of God. *Id.* c. 97.

EUNDO, MORANDO, ET REDEUNDO. L. Lat. In going, staying, and returning. A phrase used to express the extent of the privilege from arrest enjoyed by

the parties to suits, witnesses, &c. See *Privilege from arrest.* A similar phrase was used in the Saxon law. *Eundo ad gemotum, et rediens de gemoto. Spelman,* voc. *Gemotum. LL. Edw. Conf.* c. 25, cited *ibid.*

EUNDO ET REDEUNDO. Lat. In going and returning. Applied to vessels. 3 *Rob. Adm. R.* 141.

EVASIO. Lat. [from *evadere*, to escape.] In old practice. Escape; an escape from prison or custody. *Reg. Orig.* 312. *Fleta*, lib. 1, c. 26, § 4.

EVENTUS. Lat. [from *evenire*, to come out, or come from.] In old English law. An event; a thing which happens from a cause. *Eventus est qui ex causa sequitur, et dicuntur* eventus *quia ex causa eveniunt;* an event is that which follows from a cause, and they are called events because they *come out of a cause.* 9 *Co.* 81 b.

EVERWYK, *Everwike, Everwik.* L. Fr. York. *Conf. Cartar.* 25 Edw. I. *Reg. Orig.* 76 b, *regula.* Probably shortened from the Lat. *Eboracum, Eborac, Evorac.* Translated Warwick, in *Dyer*, 37 b.

Every man must be taken to contemplate the probable consequences of the act he does. Lord Ellenborough, 9 *East*, 277. A fundamental maxim in the law of evidence. *Best on Pres.* § 16. 1 *Phill. Ev.* 444. 1 *Greenl. Ev.* § 18. 9 *B. & C.* 643. Lord Ellenborough, 3 *M. & S.* 11, 17. *Burr. Circ. Ev.* 43, 44, 298, 309.

EVESCHE, *Euesche.* L. Fr. A diocese. *Britt.* c. 107.

EVESQUE. L. Fr. A bishop. *Litt.* sect. 651.

EVESQUERY. L. Fr. A bishopric. *Litt.* sect. 651.

EVICT. [from Lat. *evincere*, q. v.] In the civil law. To take something from a person, by virtue of a judicial sentence or recovery at law. *Evincere est aliquid vincendo auferre.** *Pothier, Contr. of Sale,* part 2, ch. 1, sect. 2, art. 1.

In the common law. To recover land by process of law. "If the land is *evicted*, no rent shall be paid." 10 *Co.* 128 a. The term is now applied to a tenant against whom land is recovered, or who is otherwise compelled to leave the demised premises. "If the tenant be *evicted* from the lands demised to him, by a title paramount, before the rent falls due, he will be discharged from the payment of the rent." 3 *Kent's Com.* 464. See *Eviction.*

EVICTION. [Lat. *evictio*, from *evincere*, to overcome, to prevail in law.] In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. *Pothier, Cont. of Sale,* part 2, ch. 1, sect. 2, art. 1, n. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.* *Id. ibid.*

The sentence which orders such abandonment. *Id.*

The depriving a buyer, without any sentence, of the power to retain the thing bought, in virtue of the sale. *Id.* n. 86.

The loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. *Civil Code of Louisiana,* art. 2476.

EVICTION. In the common law. The recovery of lands, &c., by form of law.* 10 *Co.* 128. *Tomlins.*

The recovery from a tenant of the whole or a part of the demised premises, by a title paramount to that derived from his landlord.* 3 *Kent's Com.* 464, 465.

The compelling a tenant to abandon the demised premises, by rendering them unfit for occupation; as by a nuisance.* *Id.* 464, note. 1 *Carr. & M.* 479.

The recovery from a vendee, of land purchased by him, under a paramount title.* 4 *Kent's Com.* 475—477.

EVIDENCE. [Lat. *evidentia*, from *evidens*, clear.] That which tends to render evident, or clear; the means by which the truth of a fact or point in issue is made clear or demonstrated.* *Best on Evid.* 8, § 11. 3 *Bl. Com.* 367.—Any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact. *Best on Evid. ub. sup. Best on Pres.* 7, § 6. 1 *Benth. Jud. Ev.* 17.—The word *evidence*, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 *Greenleaf on Evid.* § 1. See *Burr. Circ. Evid.* 1.

Any proof, be it testimony of men, records or writings. *Cowell.* Proof, either written or unwritten, of facts in issue between parties. *Wharton's Lex.* The terms *evidence* and *proof* are constantly used in practice as synonymous. 3 *Bl. Com.* 367. 3 *Steph. Com.* 604. Strictly, however,

proof is the effect or result of evidence; *evidence* is the medium of proof. 1 *Greenl. on Ev.* § 1. Without evidence there can be no proof, although there may be evidence which does not amount to proof. *Best on Pres.* 8, § 6. *Burr. Circ. Ev.* 1, 2.

EVIDENCE OF DEBT. A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 *N. Y. Rev. Stat.* [599], 601, § 5.

EVIDENCES OF TITLE. Deeds and other documents establishing the title to property, especially real estate, (*quibus jus prædiorum firmatur*). *Spelman.*

EVIDENTIA. Lat. [from *evidens*, clear, open to view, from *e*, out, and *videre*, to see.] In the civil law. Clearness or fullness of conviction. *Mascard. de Prob.* lib. 1, quæst. 8. *Best on Pres.* § 6, note.

The state or quality of being evident, that is, clear, manifest, open to view. The true radical meaning of the English word *evidence*. *Johnson's Dict.*

EVIDENTIARY. Having the quality of evidence; constituting evidence; evidencing. A term introduced by Mr. Bentham, and, from its convenience, adopted by other writers. See *Burr. Circ. Ev.* 3, and note.

EVINCERE. Lat. In the civil law. To overcome or prevail at law, (*vincere judicio*). *Calvin's Lex.*

To take a thing from one by right of ownership, through a judicial sentence, (*per sententiam judicis*). *Brissonius.*

To claim a thing by suit as one's own by right of ownership, from him who had no right to it, but has given or sold it to another; and to wrest it from the purchaser by a judicial sentence, condemning him to give it up. *Prateius Lex.*

EW. Sax. Marriage. See *Ewbrice.*

EWA. L. Lat. In old German and Saxon law. Law. *Spelman.*

EWAGE. [from L. Fr. *ewe*, q. v.] In old English law. Toll paid for water passage. The same as *aquage*. *Cowell. Tomlins.*

EWBRICE. Sax. [from *ew*, marriage, and *brice*, or *bryce*, a breach.] Marriage breach; adultery. *Cowell. Blount. Tomlins.*

EWE. L. Fr. Water. *Ewe douce;* fresh water. *Britt.* c. 1. *Au fil del ewe;* to the thread (edge) of the stream. *Id.* c. 42.

The water ordeal. *LL. Gul. Conq.* l. 17. See *Alt wal ewe.*

EWE. L. Fr. Had. *Litt.* sect. 253, 690.

EX. Lat. From; of; out of. *Ex facto*, (q. v.); from fact. *Ex contractu*, (q. v.); from, or out of contract. *Ex mero motu*, (q. v.); of mere motion. See 2 *Salk.* 622.

By, or with. *Ex assensu*, (q. v.); by the assent. *Ex causa*, (q. v.); by title.

On; upon. *Ex dimissione*, (q. v.); on the demise. *Ex facie*, (q. v.); on the face. *Ex relatione*, (q. v.); on the relation.

According to. *Ex æquitate*, (q. v.); according to equity.

At or in. *Ex arbitrio*, (q. v.); at the discretion.

EX ABUNDANTI. Lat. Out of abundance; abundantly; superfluously; more than sufficient. *Calv. Lex. Jur. Ex habundanti. Mem. in Scacc.* H. 22 Edw. I.

EX ABUNDANTI CAUTELA. Lat. Out of abundant caution. "The practice has arisen *ex abundanti cautela.*" 8 *East*, 319. Lord Ellenborough, 4 *M. & S.* 544.

EX ABUNDANTIA. Lat. Out of abundance. *Yearb.* M. 20 Hen. VI. 16.

EX ADVERSO. Lat. On the other side. 2 *Show.* 461. Applied to counsel.

EX ÆQUITATE. L. Lat. According to equity; in equity. *Fleta*, lib. 3, c. 10, § 3.

EX ÆQUO ET BONO. Lat. According to what is just and good; according to equity and good morals or conscience. 3 *Bl. Com.* 162. A phrase derived from the civil law, in which it is more commonly expressed *ex bono et æquo*, (q. v.)

EX ALTERA PARTE. L. Lat. Of the other part. *Yearb.* H. 6 Edw. II. 191.

Ex antecedentibus et consequentibus fit optima interpretatio. The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts]. 2 *Inst.* 317. The law will judge of a deed or other instrument consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the intention of the parties. *Broom's Max.* 249, [442, 443]. The whole instrument is be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 *Kent's Com.* 555. The construction must be made upon the entire instrument, and not merely upon disjointed parts of it; the whole context must be considered, in endeavoring to collect the

intention of the parties, although the immediate object of inquiry be the meaning of an isolated clause. *Broom's Max.* 249, [442], and cases cited *ibid.* See *Antecedens.*

EX ARBITRIO JUDICIS. Lat. At, in or upon the discretion of the judge. 4 *Bl. Com.* 394. A term of the civil law. *Inst.* 4. 6. 31.

EX ASSENSU CURIÆ. L. Lat. With the assent of the court. *Ex assensu totius curiæ*, Crew, C. J. gave judgment *quod quærens nil capiat. Latch*, 139.

EX ASSENSU PATRIS. Lat. By or with the father's consent. *Litt.* sect. 40. 2 *Bl. Com.* 133. See *Cro. Jac.* 415, 587.

EX ASSENSU SUO. L. Lat. With his assent. Formal words in judgments for damages by default. *Comb.* 220.

EX ASSIGNATIONE. L. Lat. From, or on the assignment. *Reg. Orig.* 75 b.

EX BONIS. Lat. Of the goods or property. A term of the civil law; distinguished from *in bonis*, as being descriptive of, or applicable to property not in actual possession. *Calv. Lex. Sive* in bonis *sit, sive non, si tamen* ex bonis *sit, locum hæc actio habebit;* whether it be actually *among* his goods, (in his actual possession) or not, yet if it be *of* his goods, (or a part of his property) this action shall have place. *Inst.* 4. 2. 2.

EX BONO ET ÆQUO. Lat. According to what is good and just; according to conscience and equity; according to good faith and equity. *Inst.* 4. 6. 30, 31, 39. A phrase of the civil law.

EX CAUSA. L. Lat. By title. Ex causâ *successionis, sive* ex causâ *perquisiti;* by title of succession, or by title of purchase. *Bract.* fol. 92 b. Ex causâ *successionis, vel donationis, vel* ex causâ *dotis, vel* ex *aliqua alia justa* causâ *acquirendi;* by title of succession, or of gift; or by title of dower, or by any other lawful title. *Id.* fol. 183 b. See *Id.* fol. 10 b. *Ex una causâ—ex eadem causâ—ex nova causâ. Id.* fol. 45.

EX CERTA SCIENTIA. Lat. Of certain or sure knowledge. Formal words anciently used in letters patent, implying that the king had full knowledge and understanding of the matter. 1 *Co.* 40 b; *Alton Wood's case.* 1 *Mann. Gr. & Scott*, 518, arg. See *Ex gratia speciali*, &c.

EX COMITATE. Lat. Out of comity, or courtesy; by courtesy. 2 *Kent's Com.* 457. See *Comitas. Ex comitate et jure gentium.* Lord Mansfield, 1 *W. Bl.* 258.

EX COMMODATO. Lat. From, or out of loan. A term applied, in the old law of England, to a right of action arising out of a loan, (*commodatum*). *Glanv.* lib. 10, c. 13. 1 *Reeves' Hist.* 166.

EX COMPARATIONE SCRIPTORUM. L. Lat. By a comparison of writings, or handwritings. A term in the law of evidence. *Best on Presumptions*, 218. See *Comparison, Comparatio.*

EX CONCESSIONE. L. Lat. From, on, or by the grant. *Reg. Orig.* 75 b.

EX CONCESSIS. Lat. From things or premises granted.

EX CONTINENTI. Lat. Immediately; without any interval or delay; incontinently. A term of the civil law. *Calv. Lex.*

EX CONTRACTU. Lat. From contract; arising out of, or founded on contract; the opposite of *ex delicto.* A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 3. 14. 2. *Id.* 4. 1, pr. *Id.* 4. 6. 1, 17, 18. *Dig.* 44. 7. 1. 1 *Mackeld. Civ. Law*, 101, § 195. Adopted at a very early period in the English common law, and still constantly employed in the law of actions. *Bract.* fol. 99. *Fleta*, lib. 2, c. 1, § 2. 3 *Bl. Com.* 117. 1 *Tidd's Pr.* 1. 1 *Chitt. Pl.* 2.

EX DEBITO JUSTITIÆ. L. Lat. From, or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia*, (q. v.) 3 *Bl. Com.* 48, 67. 4 *Id.* 330, 392. In the Mirror, writs grantable *come de det* (as of debt or right,) are distinguished from those *de grace. Mirr.* c. 5, § 1. 9 *Co.* pref.

EX DEFECTU SANGUINIS. L. Lat. From failure of blood; for want of issue. *Hale's Anal.* sect. xix.

EX DELICTO. Lat. From fault or crime; arising out of, or founded upon misconduct, malfeasance or tort. A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 4. 1. tit. & pr. 1 *Mackeld. Civ. Law*, 192, § 195. Constantly associated with its opposite *ex contractu*, and introduced with that term into the law of England, at a very early period. *Bract.* fol. 101 b. *Fleta*, lib. 2, c. 1, § 2. 3 *Bl. Com.* 117. See *Ex contractu.*

As a consequence of crime, or violation of law. Used, in this sense, in the law of

nations. "Contraband goods are seized and condemned *ex delicto*." 1 *Kent's Com.* 143. See *Id.* 125.

EX DEM. An abbreviation of *ex demissione*, (on the demise); frequently used in the titles of ejectment suits. See the reports *passim*.

EX DEMISSIONE. L. Lat. From, or on the demise. Usually written *ex dimissione*, (q. v.)

EX DICTO MAJORIS PARTIS. L. Lat. According to the saying, or verdict of the majority. *Ex dicto majoris partis juratorum;* according to the verdict of the major part of the jurors. Anciently it was not necessary, (at least, not in civil causes,) that all the twelve should agree; but, in case of difference among the jury, the method was to separate one part from the other, and then to examine each of them as to the reasons of their differing in opinion; and if, after such examination, both sides persisted in their former opinions, the court caused both verdicts to be fully and distinctly recorded, and then judgment was given *ex dicto majoris partis juratorum*. *Hale's Hist. Com. Law*, (Runnington's ed. 1820,) 349, note.

EX DIMISSIONE. L. Lat. On the demise. *Reg. Orig.* 75 b, 163 b.

EX DIRECTO. L. Lat. Directly; immediately. *Story on Bills*, § 199.

Ex diuturnitate temporis, omnia præsumuntur solemniter esse acta. From length of time [after lapse of time] all things are presumed to have been done in due form. *Co. Litt.* 6 b. *Best on Evid.* Introd. § 43. 1 *Greenl. on Ev.* § 20.

EX DOLO MALO. Lat. Out of fraud. **Ex dolo malo non oritur actio.** Out of fraud no action arises; fraud never gives a right of action. *Cowp.* 341, 343. *Broom's Max.* 349, [571]. See *Dolus malus*.

EX EMPTO. Lat. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. *Inst.* 4. 6. 28. *Bract.* fol. 102. See *Actio ex empto*.

EX FACIE. L. Lat. On the face. 2 *Steph. Com.* 158.

EX FACILI. Lat. Easily. *Calv. Lex.*

EX FACTO. Lat. From, by or in consequence of an act, or thing done. *Bract.* fol. 172. Applied generally to an act done in violation of law or right. A title is said to originate *ex facto*, when it commences in an unlawful act. *Id. ibid.* Bracton uses it in the same sense with *de facto*, (q. v.) *Id. ibid.*

Ex facto jus oritur. Law arises out of fact, or is brought into exercise by fact.* A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. *Best on Evid.* Introd. § 1.

The law arises out of the fact, or is determined or regulated by the fact. 3 *Bl. Com.* 329. The decision of the law in a particular case, depends upon the fact which is proved or made to appear. Otherwise expressed, **De facto jus oritur.** 2 *Inst.* 49.

EX FICTIONE JURIS. L. Lat. Out of, or by fiction of law. *Bract.* fol. 53.

EX GRATIA. Lat. Out of grace, or favor; (Fr. *de grace;*) as a matter of mere grace or indulgence. The opposite of *ex debito*. 4 *Bl. Com.* 392.

EX GRATIA SPECIALI, CERTA SCIENTIA ET MERO MOTU. L. Lat. Out of special grace, certain knowledge and mere motion. Formal words anciently used in royal charters and letters patent; otherwise expressed, *De gratia speciali, ex certa scientia, et mero motu*, (q. v.) 1 *Co.* 43, 45, 46, 49. See 6 *Peters' R.* 691, 738.

EX GRAVI QUERELA. L. Lat. (From, or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words,) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. *Rey. Orig.* 244 b. *F. N. B.* 198, L. *et seq.* 3 *Reeves' Hist.* 49. Abolished by statute 3 & 4 Will. IV. c. 27, § 36.

EX IMPROVISO. L. Lat. Without preparation. *Dyer*, 28.

EX INDUSTRIA. Lat. From, or with a deliberate design; on purpose. Story, J. 1 *Wheaton's R.* 304. 1 *Kent's Com.* 318.

EX INSINUATIONE. L. Lat. On the suggestion or information. *Yearb.* P. 8 Edw. III. 24. *Reg. Jud.* 25.

EX INTEGRO. Lat. Anew; afresh. *Bract.* fol. 293.

EX INTERVALLO. L. Lat. After an interval. *Fleta*, lib. 2, c. 60, § 2.

EX JUSTA CAUSA. Lat. From a just or lawful cause; by a just or legal title. See *Ex causa*.

EX LATERE. Lat. From the side;

collaterally; a collateral relation. *Dig.* 23. 2. 68.

EX LEGIBUS. Lat. According to the laws. A phrase of the civil law, which the Digests declare to signify—according to the intent or spirit of the law, as well as according to the words or letter. (Ex legibus *accipiendum est tam ex legum sententia quam ex verbis.*) *Dig.* 50. 16. 6. See *Calv. Lex.*

EX LICENTIA REGIS. L. Lat. By the king's license. 1 *Bl. Com.* 168, note.

EX LOCATO. Lat. From, or out of letting. A term of the civil law, applied to actions or rights of action arising out of the contract of *locatum*, (q. v.) *Inst.* 4. 6. 28. Adopted at an early period in the law of England. *Bract.* fol. 102. 1 *Reeves' Hist.* 166.

EX MALEFICIO. Lat. From, arising out of, or founded upon misconduct or malfeasance. A term of the civil law, used (more commonly than *ex delicto*,) as the opposite of *ex contractu. Inst.* 3. 14. 2. *Id.* 4. 1, pr. *Dig.* 44. 7. 4. Adopted by Bracton, but not much used in this sense in modern law. *Bract.* fol. 99, 101, 102.

Out of a vicious or illegal act. **Ex maleficio non oritur contractus.** A contract cannot arise out of an act radically vicious and illegal. 1 *Term R.* 734. Lord Kenyon, C. J. 3 *Id.* 422. *Broom's Max.* 351, [576].

EX MERO MOTU. L. Lat. Of mere motion. Formal words in old English letters patent. 1 *Co.* 40 b; *Alton Wood's case.* See *Ex gratia speciali*, &c.

EX MORA. Lat. From, or in consequence of delay. Interest is allowed *ex mora*, that is, where there has been delay in returning a sum borrowed. A term of the civil law. *Story on Bailm.* § 84.

EX MORE. Lat. According to custom. *Calv. Lex.*

Ex multitudine signorum, colligitur identitas vera. From a great number of signs or marks, true identity is gathered or made up. *Bacon's Max.* 103, in regula 25. A thing described by a great number of marks is easily identified, though, as to some, the description may not be strictly correct. *Id.*

EX MUTUO. Lat. From, or out of loan. In the old law of England, a debt was said to arise *ex mutuo*, when one lent another any thing which consisted in number, weight or measure. 1 *Reeves' Hist.* 159. *Bract.* fol. 99.

EX NECESSITATE. Lat. Of necessity. 3 *Rep. in Ch.* 123.

EX NECESSITATE LEGIS. Lat. From, or by necessity of law. 4 *Bl. Com.* 394.

EX NECESSITATE REI. Lat. From the necessity or urgency of the thing or case. 2 *Powell on Dev.* (by Jarman,) 308.

Ex nudo pacto non oritur [nascitur] actio. Out of a nude or naked pact, [that is, a bare parol agreement without consideration,] no action arises. *Bract.* fol. 99. *Fleta*, lib. 2, c. 56, § 3. *Keilw.* 82 b. *Plowd.* 305. Out of a promise neither attended with particular solemnity, (such as belongs to a specialty,) nor with any consideration, no legal liability can arise. 2 *Steph. Com.* 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. *Cod.* 2. 3. 10. *Id.* 5. 14. 1. *Noy's Max.* 24. *Broom's Max.* 336, [583]. 2 *Bl. Com.* 445. *Smith on Contracts*, 85, 86. See *Nudum pactum.*

EX OFFICIO. Lat. [L. Fr. *de office*, q. v.] From office; by virtue or as a consequence of office; without any other appointment or authority than that conferred by the office. Courts are bound to take notice of public acts, judicially, and *ex officio.* 1 *Bl. Com.* 86.

Ex pacto illicito non oritur actio. From an illegal contract, an action does not arise. *Broom's Max.* [581]. See 7 *Cl. & Fin.* 729.

EX PARTE. L. Lat. From, or of a part or side; of the one part; from, or upon one side. A common term in practice, which seems to have originally been derived from the canon law. *Durand. Spec. Jur.* lib. 2, tit. *De rescript. præsentatione, passim.* See *Calv. Lex.* An *ex parte* application to a court is an application made by one party only, without notice to the opposite party, or opportunity given him to oppose it.* *Holthouse.* 1 *Burr. Pr.* 340.

EX PARTE MATERNA. Lat. On the maternal side; in the maternal line. 1 *Steph. Com.* 382. 2 *Crabb's Real Prop.* 1021, § 2401. *Ex parte matris;* on the side of the mother. *Stat. Westm.* 2, c. 16.

EX PARTE PATERNA. Lat. On the paternal side; in the paternal line. 1 *Steph. Com.* 381, 382. 2 *Crabb's Real Prop.* 1020, § 2400, *et seq. Ex parte patris;* of the father's side; on the side of the father. *Stat. Westm.* 2, c. 16.

EX PARTE TALIS. L. Lat. (On the

behalf of such a one.) In old English practice. The name of a writ which lay for a bailiff or receiver, who, having auditors assigned to hear his account, could not obtain of them reasonable allowance, but was cast into prison by them. *Cowell. F. N. B.* 129, F.

EX PATIENTIA. L. Lat. By sufferance. *Fleta*, lib. 4, c. 18, § 1.

EX PAUCIS. Lat. From a few things or words.

Ex paucis dictis intendere plurima possis.

From a few words, you may understand many things. *Litt.* sect. 384. "By this verse," says Lord Coke, "inferences and conclusions in like cases are warrantable." *Co. Litt.* 237.

Ex paucis plurima concipit ingenium; from a few words or hints the understanding conceives many things. *Litt.* sect. 550.

EX POST FACTO; properly, EX POSTFACTO, or EX POST-FACTO. Lat. From, by or in consequence of an after-act, or thing done afterwards; by matter of subsequent occurrence; by after-matter. A term of the civil law, introduced into the common law at a very early period, and the precise import of which may be better understood from the following examples: **Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest.** An institution or act which was of no effect at the beginning, (when made or done) cannot acquire force or validity from after-matter, (as by lapse of time). *Dig.* 50. 17. 210. **Nunquam crescit ex postfacto præteriti delicti æstimatio.** The estimate of the character of a past offence is never enhanced by after-matter. *Dig.* 50. 17. 138. 1. *Non* ex post-facto, *sed ex præsenti statu damnum factum sit, necne, æstimari oportere, Labeo ait;* Labeo says that the question whether a damage be done [to a building] or not, is to be determined not from any after-act or occurrence, but from the condition of the building at the time. *Dig.* 43. 24. 7. 4. *Donationum, quædam valida esse possunt ab initio, et invalida fieri* ex post facto, *et è converso;* of gifts, some may be valid at the beginning (or when made,) and become invalid by subsequent matter, and *è converso*. *Bract.* fol. 11 b, 12. *Non mandante, nec autoritatem præstante ab initio, sed* ex post facto *ratum habente;* not commanding nor giving authority at the beginning, (or originally,) but ratifying it by an after-act, (or afterwards). *Id.* fol. 171. *Sive ratum habuerit ab initio, vel* ex post facto; whether he ratified it at the beginning or afterwards. *Id.* fol. 213. *Item id quod ab initio non fuit nocumentum injuriosum,* ex post facto, *et per constitutionem fieri poterit injuriosum;* also that which originally was not an injurious nuisance, may be made injurious by after-act or matter, and in consequence of agreement. *Id.* fol. 232. See *Fleta*, lib. 4, c. 26, § 4. *Poterit esse* [*summonitio*] *legitima ab initio, sed inefficax* ex post facto; the summons may be lawful at first, but become of no force in consequence of after-matter, (or afterwards). *Bract.* fol. 336 b.

It will be seen from the preceding quotations, that *ex post facto* has always been used in contrast with the still common phrase *ab initio*, which, indeed, seems to be its proper correlative; and hence the two phrases may be conveniently employed to illustrate each other. Thus, a man may become a trespasser *ab initio*, (from the beginning, or first act,) in consequence of a subsequent act, (*ex post facto*,) although his first act was, at the time it was done, a lawful one. Chase, J. 3 *Dallas' R.* 386. See *Trespasser ab initio.* On the other hand, an act unlawful in the beginning, (*ab initio*,) may in some cases become lawful by matter of after-fact, (*ex post facto*). Chase, J. *ub. sup.* Again, an act which was indifferent in itself when done, (that is, *ab initio*,) is sometimes made criminal or punishable *ex post facto*, (by a subsequent act, or matter,) that is, a *law made afterwards*, (*ex lege post lata*). See *Ex post facto law.*

*** *Ex post facto* seems to have been a familiar phrase in English law in the time of Bracton, and the very numerous examples of its use and application furnished by that writer, (a few only of which have been quoted,) show that its grammatical signification was then perfectly well ascertained. Afterwards, however, it fell into comparative disuse, and it may now be said to be less common in English than in American jurisprudence. See *Ex post facto law.* Its substantial import seems to be well enough understood, but its grammatical meaning has, in general, been either wholly misapprehended, or singularly mixed up with error. Thus, it has been translated in two of the latest English law dictionaries,—"from something *after the fact*,"—"from an after act; *after a deed is done.*" *Wharton's Lex. Holthouse.* See also the opin-

ion of Chase, J. 3 *Dallas' R.* 386. This misapprehension and error have arisen, in part, from the narrow sense given to the word *facto*, (confining it to the *acts* of *individuals*,) but principally from the common mode of writing the whole phrase, which presents *post* as a distinct word, thereby not only leading to an ungrammatical connection of its meaning with that of *facto*, (in the expressions "after a deed," "after the fact,") but entirely destroying the sense and force of the word *ex*, which, in the ordinary translations, is quite disregarded. Strictly, *post* should be connected with *facto*, either as one entire word, (*postfacto*,) in which form it usually occurs in the civil law, and frequently in Bracton, or as a double word, (*post-facto*,) the latter form having the express authority of Aulus Gellius, who uses both *post-facta* and *ante-facta* in a passage which will be referred to under *Ex post facto law.* This mode of writing the phrase dissipates at once all the grammatical difficulty hitherto supposed to attend the use of *post* in immediate juxtaposition with *ex;* (both words being commonly treated as prepositions, although *post* is in fact an adverb, with the sense of *afterwards*). *Ex post-facto* is thus most distinctly contrasted with its correlative *ab initio;* the meaning of *ex* is the one phrase being at once seen to correspond with that of *ab* in the other. See *Postfactum.* It may be added that the whole phrase *ex postfacto* is frequently used in old English law, as synonymous with *postea*, (afterwards,) or *post tempus*, (after a time). *Bract.* fol. 213. *Fleta*, lib. 3, c. 3, §§ 5, 7. *Id.* lib. 4, c. 26, § 4.

EX POST FACTO LAW. A law which operates *by after-enactments.**—A law which makes an act done before its passage, and which was innocent when done, criminal. 3 *Dallas' R.* 386.—A law which renders an act punishable in a manner in which it was not punishable when committed. 3 *Cranch's R.* 87. Marshall, C. J. *ibid. Federalist*, No. 84. 1 *Kent's Com.* 409. The making of laws *ex post facto* is when, after an action, (indifferent in itself) is committed, the legislator then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. 1 *Bl. Com.* 46. 1 *Steph. Com.* 27.

The use of the term *ex post facto*, in the Constitution of the United States, (Art. I. Sect. IX. X.) has occasioned considerable discussion as to its exact meaning; which, however, has resulted in establishing the definitions above given. An *ex post facto* law is a species of retrospective law, which is confined in its operation to the creation or the punishment of a *crime;* and the term is not properly applicable to any other kind of retrospective enactment. Chase, J. 3 *Dallas' R.* 386. 17 *Howard's R.* 456, 463. 1 *Kent's Com.* 409. Instead of using the term *ex post facto*, the constitutions of some of the states, in prohibiting such laws, describe them as "laws made to punish for actions done before the existence of such laws;" (*Constitution of Massachusetts*, part 1, sect. 24;) "retrospective laws." *Const. of N. Hampshire*, part 1, art. 23. Others employ both the phrase itself, and its explanation. *Constit. of Florida*, art. 1, sect. 18.

*** The inaccuracy of most of the literal translations of the phrase *ex post facto* has been already noticed under that head. See *supra.* It appears, however, most strikingly in the attempts made to give a strict and literal explanation of the phrase *ex post facto law.* Thus, it is said, that an *ex post facto* law means a law "passed *concerning* and *after a fact* or thing done, or action committed;" a law passed "*after a fact* done by a subject or citizen, which shall have relation to such fact, and shall punish him for having done it." Chase, J. 3 *Dallas' R.* 386. The error of this kind of translation, and the cause of it, have been already explained. See *Ex post facto.* The true meaning of the phrase is made very apparent by writing *post-facto* (or *postfacto*) as one word, and thus giving to *ex* its full and proper sense of *from* or *by.* In this way, it becomes susceptible not only of a literal, but of a grammatical translation; "an *ex post-facto* law" signifying "a law operating *by after-enactment;*" that is, upon previous acts.

The following passage from Aulus Gellius, while it clearly justifies the use of *post-facto* as one word, furnishes in other respects a very apposite illustration. The old Atinian law had this provision: *Quod subreptum erit, ejus rei æterna auctoritas esto;* whatever thing shall be privily stolen, let the ownership of that thing be perpetual; that is, the property of the owner shall never be devested out of him by the theft. Gellius records that a question arose upon the word *erit*, as to the operation of this law, and that Scævola, Brutus and Manilius, men of

the first learning, were in doubt *utrumne in post-facta modo furta lex valeret, an etiam in ante-facta;* (whether the law took effect only on thefts committed after it, or on those committed before, also). *Noct. Att.* lib. xvii. c. 7. In other words, the question was, whether this was an *ex post-facto* law or not. The phrase "*in ante-facta*," (upon acts or actions done before,) in this passage, expresses the peculiar operation of such a law more distinctly, perhaps, than *ex post facto* itself, and is almost literally translated in the best modern definitions. See *supra*. The words *ante-facta* and *post-facta*, as contrasted in the same passage, both obviously refer exclusively to the acts of *individuals;* but in the phrase *ex post-facto*, the *post-factum* (after-act or post-act) is the act of the *legislature* itself in passing the law; the *ante-factum* being the act of the individual upon which the law is made to operate retrospectively. This distinction is noticed by Mr. Justice Chase, in the case already referred to. 3 *Dallas' R.* 386.

EX PRÆCOGITATA MALICIA. L. Lat. Of malice aforethought. *Reg. Orig.* 102.

EX PRÆMISSIS. Lat. From the premises; from what has gone before; from what has been said. *Fleta*, lib. 5, c. 11, § 7.

EX PROPRIO VIGORE. L. Lat. By their, or its own force. 2 *Kent's Com.* 457.

EX PROVISIONE HOMINIS. L. Lat. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 *Co.* 80 b.

EX QUASI CONTRACTU. L. Lat. From *quasi* contract. *Fleta*, lib. 2, c. 60.

EX REL. An abbreviation of EX RELATIONE, on the relation. A term used in the titles of legal proceedings, which are prosecuted by the people, *on the relation* or information of the aggrieved party, who is called the *relator*. See *Ex relatione*, *Relator*.

EX RELATIONE. L. Lat. On the relation. *Bract.* fol. 403 b.

EX RELATU. L. Lat. On the relation, or information. *Reg. Orig.* 34, 36, 42.

EX RIGORE JURIS. L. Lat. According to the rigor or strictness of law; in strictness of law. *Fleta*, lib. 3, c. 10, § 3.

EX SCRIPTIS OLIM VISIS. L. Lat. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting, where the witness *has seen* letters or documents professing to be the handwriting of a party, and has afterwards had correspondence or communication with such party, so as to induce a reasonable presumption that the letters or documents were actually his handwriting. 5 *Ad. & El.* 703, 730. *Best on Presumptions*, 219.

EX SPECIALI GRATIA, CERTA SCIENTIA ET MERO MOTU. L. Lat. Of special grace, certain knowledge, and mere motion. 2 *Bl. Com.* 347. 6 *Peters' R.* 738. See *Ex gratia speciali*, &c.

EX STATUTO. L. Lat. According to the statute. *Fleta*, lib. 5, c. 11, § 2.

EX STIPULATU ACTIO. Lat. In the civil law. An action of stipulation. An action given to recover marriage portions. *Inst.* 4. 6. 29.

EX SUPERABUNDANTI. L. Lat. Out of superabundance, or superfluity. See *Ex abundanti*. *Ex superabundanti, et ad majorem cautelam;* out of superabundance, and for greater security. 2 *How. St. Trials*, 1184. *Ad cautelam et ex superabundanti*. *Id.* 1163.

EX TEMPORE. Lat. From, or in consequence of time; by lapse of time. *Bract.* fol. 51, 52. *Ex diuturno tempore;* from length of time. *Id.* fol. 51 b.

EX TESTAMENTO. Lat. From, by or under a testament, or will. *Inst.* 2. 9. 7. *Cod.* 6. 30. 19.

Ex tota materia emergat resolutio. The explanation should arise out of the whole subject matter; the exposition of a statute should be made from all its parts together. *Wingate's Max.* 238.

EX TRANSVERSO. Lat. Across. *Ex transverso viæ;* across the way. *Towns. Pl.* 31. See *A latere*.

Ex turpi causa non oritur actio. Out of a base [illegal, or immoral] consideration, an action does [can] not arise. 1 *Selwyn's N. Pr.* 63. *Broom's Max.* 350, [573]. *Story on Agency*, § 195.

Ex turpi contractu actio non oritur. From an immoral, or iniquitous contract, an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 *Kent's Com.* 466. *Dig.* 2. 14. 27. 4. All contracts which have for their object anything repugnant to justice, or against the

general policy of the common law, or contrary to the provisions of any statute, are void. Nelson, C. J. 2 *Hill's* (N. Y.) *R.* 434, 437.

EX UNA PARTE. Lat. Of one part or side; on one side.

EX UTRAQUE PARTE. Lat. On both sides. *Dyer*, 126 b.

EX UTRISQUE PARENTIBUS CONJUNCTI. L. Lat. Related on the side of both parents; of the whole blood. *Hale's Hist. Com. Law*, c. xi.

EX VISCERIBUS. Lat. From the bowels; from the interior or essential substance. *Ex visceribus causæ;* from the bowels or heart of the cause. 10 *Co.* 24 b. *Ex visceribus testamenti;* from the particular will in question itself, without reference to the language or construction of other wills. Lord Ellenborough, 4 *M. & S.* 97. 2 *Metcalf's R.* 213.

EX VISITATIONE DEI. L. Lat. By the visitation of God. 4 *Bl. Com.* 324.

EX VISU SCRIPTIONIS. L. Lat. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting. *Best on Presumptions*, 218.

EX VI TERMINI. L. Lat. From, or by the force of the term. 2 *Bl. Com.* 109, 115.

EXACTIO. L. Lat. A demand. *Co. Litt.* 292 a.

EXACTION. A wrong done by an officer or one in pretended authority, by taking a reward or fee for that which the law allows not. *Jacob. Tomlins.*

EXACTOR. Lat. In the civil law. A collector, or exactor. *Exactores tributorum;* collectors of taxes. *Cod.* 10. 19.

In old English law. One who collected taxes and other public moneys. *Exactor regis;* the king's exactor, who collected the taxes and other moneys due to the treasury. In the counties, this office was performed by the sheriff; in the seaports and cities, by publicans and their assistants. *Spelman.*

EXADONIARE, *Exidoniare.* L. Lat. In old European law. To manumit, or make free. *Spelman. L. Alaman.* tit. 18, § 5, cited *ibid.*

EXA'IT'R. A contraction of *Examinatur.* 1 *Inst. Cl.* 10.

EXALTARE. L. Lat. In old English law. To raise or elevate. *Exaltare stagnum;* to raise a pool. *Reg. Orig.* 199. *F. N. B.* 184, O. To raise the water in a pond by damming, so as to overflow another's land. *Bract.* fol. 232. *Fleta*, lib. 4, c. 1, § 19.

EXAMEN. L. Lat. A trial. *Examen computi;* the balance of an account. *Towns. Pl.* 223.

EXAMINATION DE BENE ESSE. In practice. A conditional examination. The examination of a witness out of court before a trial, with the view of using his deposition in case his personal attendance cannot be procured at the trial. See *De bene esse.*

EXAMINED COPY. In English practice. A copy of a record or paper, sworn (by the party intending to use it,) to have been *examined* with the original, being first prepared by the officer having custody of it. See *Copy.*

EXAMINER IN CHANCERY. An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. *Cowell.* 2 *Daniell's Chanc. Pract.* 1053, (Perkins' ed.) *et seq.*

EXANNUAL ROLL. In old English practice. A roll into which (in the old way of exhibiting sheriff's accounts,) the illeviable fines and desperate debts were transcribed, and which was *annually* read to see what might be gotten. *Hale's Sheriff's Accounts*, 67. *Cowell.*

EXBRANCHIATURA. L. Lat. In forest law. A cutting off the branches of trees. *Fleta*, lib. 2, c. 41, § 5. This word is not noticed either by Cowell, Blount, or Spelman. Probably the same with *esbrancatura*, (q. v.)

EXCADENTIÆ. L. Lat. (*terræ excadentiales.*) In oldEuropean law. Escheats, or escheated lands. *Spelman. Fleta*, lib. 6, c. 1. *Co. Litt.* 13 a. *Cowell*, voc. *Escheat.*

EXCAMB. In Scotch law. To exchange. 6 *Bell's Ap. Cas.* 19. 22. Closely formed from the L. Lat. *excambiare*, (q. v.)

EXCAMBIARE, *Excambire.* L. Lat. In old English law. To exchange. *Spelman.*

Excambiator; an exchanger, a broker. *Cowell.*

EXCAMBION. In Scotch law. Exchange. 1 *Forbes' Inst.* part 2, p. 173.

EXCAMBIUM, *Escambium, Cambium.* L. Lat. In old English law. Exchange of lands. 4 *Co.* 121. The word im-

plied a condition and also a warranty. *Id. ibid.* The proper word in old deeds of exchange. *Perk.* ch. 4, ss. 252, 253. See old form in *West's Symboleog.* part 1, lib. 2, sect. 513.

Exchange of money. *Molloy de Jur. Mar.* 313.

A recompense or equivalent in value. 1 *Reeves' Hist.* 442, 447. 3 *Id.* 14. See *Escambium.*

EXCEPCION. L. Fr. An exception, or plea. *Britt.* c. 48.

EXCEPTA DIGNITATE REGALI. Lat. Saving the royal dignity. 1 *Bl. Com.* 205.

EXCEPTIO. Lat. [from *excipere*, to except or take out.] In the Roman law. An exception. In a general sense,—a judicial allegation opposed by a defendant to the plaintiff's action; (*judicialis quædam allegatio reo competens adversus actionem*). *Calv. Lex. Jur.* citing *Hotoman.*—A stop or stay to an action opposed by the defendant. *Cowell. Hallifax, Anal.* b. 3, ch. 5. Answering to the *defence* or *plea* of the common law.—An allegation and defence of a defendant, by which the plaintiff's claim or complaint is defeated, either according to strict law, or upon grounds of equity; (*omnis rei allegatio ac defensio, quâ intentio actoris vel ipso jure, vel ob æquitatem eliditur*). *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 13, § 1277.

In a stricter sense,—the exclusion of an action that lay in strict law, on grounds of equity, (*actionis jure stricto competentis ob æquitatem exclusio*). *Heinecc. El. J. C. ub. sup.*—A kind of limitation of an action, by which it was shown that the action, though otherwise just, did not lie in the particular case. *Calv. Lex.* citing *Gœddæus de Verb. Signif.*—A species of defence allowed in cases where, though the action, as brought by the plaintiff, was in itself just; yet it was unjust as against the particular party sued, (*licet ipsa persecutio, quâ actor experitur, justa sit, tamen iniqua sit adversus eum cum quo agitur*). *Inst.* 4. 13. pr.—A mode of defence to an action, consisting of facts, which although they did not, *ipso jure*, destroy the right of action, served to protect the defendant upon equitable grounds.* Thus, if a person, under the influence of fear, deception or mistake, made a promise to another which he ought not to have made, he was nevertheless bound according to the law, (*jure civili*, that is, according to the strict rule of law,) to fulfil such promise, and was liable to an action to enforce it; but as it was unjust that he should be condemned, he was allowed to plead the facts of the case by way of *exception*, so as to defeat the action, (*ad impugnandam actionem*). *Inst.* 4. 13. 1. The exception in these cases was called *exceptio metûs causa, exceptio doli mali*, &c. *Id. ibid.* See *Dig.* 44. 1 & 4. 1 *Mackeld. Civ. Law*, 207, § 204. *Id.* 209, § 206, and note.

These *exceptions* of the Roman law were originally *exceptions*, in the literal meaning of the term, that is, they were allowed by the prætor on the ground that the facts of the particular case constituted, in equity, an *exception* to the general rule of law, of which the defendant might avail himself.* 1 *Mackeld. Civ. Law, ub. sup.* In the time of Justinian, however, they had lost this original signification; nor has this sense of *exceptio* been revived in modern times. And yet it may be remarked that the whole of the modern system of equitable relief is essentially a system of *exception.* One of the most eminent of American statesmen and jurists has observed that the great and primary use of a court of equity is to give relief in extraordinary cases, which are *exceptions* to general rules; and that, though the principles by which that relief is governed are now reduced to a regular system, it is not the less true that they are, in the main, applicable to *special* circumstances, which form *exceptions* to general rules. *Federalist*, No. 83, by Hamilton.

EXCEPTIO. Lat. In modern civil law. Any objection of a defendant by which he alleges a *new fact*, in order to defend himself against the action; as distinguished from a simple *denial* of the facts alleged by the plaintiff. 1 *Mackeld. Civ. Law*, 207, § 204. Answering to the *plea in confession and avoidance*, in the common law.

EXCEPTIO. Lat. [Fr. *excepcion.*] In the early common law. The defendant's answer to the plaintiff's declaration, (*narratio*, or *intentio*); the first pleading in an action on the part of the defendant; a plea. Defined by Bracton to be *actionis elisio, per quam actio perimitur vel differtur;* (the defeating of an action, by which the action is either destroyed or deferred). *Bract.* fol. 399 b. A term very frequently employed by this writer, who devotes an entire division of his great work (the fifth tract of the fifth book, *De exceptionibus,*)

to the consideration of this kind of pleading. See *Fleta*, lib. 6, c. 36. It is obviously borrowed, with its leading divisions, from the Roman law, (*supra*,) but is considerably modified and enlarged in its application to English jurisprudence. *Id. ibid. Steph. Plead.* Appendix, Note (35).

Exceptio was also used in the canon law, to denote the second pleading in an action. *Corv. Jus. Canon.* lib. iii. tit. 32.

Exceptio ejus rei cujus petitur dissolutio nulla est. A plea of that matter, the dissolution of which is sought [by the action] is null, [or of no effect]. *Jenk. Cent.* 37, case 71.

Exceptio nulla est versus actionem quæ exceptionem perimit. There is [can be] no plea against an action which destroys [the matter of] the plea. *Jenk. Cent.* 106, case 2.

Non potest adduci exceptio ejusdem rei, cujus petitur dissolutio. A plea of the same matter, the dissolution of which is sought [by the action] cannot be brought forward. *Bacon's Max.* 6, reg. 2. It were impertinent and contrary in itself, for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for it is included, otherwise a man should never come to the end and effect of his suit, but be cut off in the way. *Id. ibid.* See **Non valet exceptio**, &c.

EXCEPTIO. L. Lat. In old practice. An exception taken by a party, at the trial of a cause. *Stat. Westm.* 2, c. 31. *Fleta*, lib. 6, c. 55, § 8.

An objection to a juror; a challenge. *Id.* lib. 4, c. 8.

EXCEPTIO. L. Lat. In old conveyancing. An exception in a deed, release, &c. **Exceptio semper ultimo ponenda est.** An exception should always be put last. 9 *Co.* 53.

EXCEPTIO. Lat. In general law and practice. An exception; the taking of a case out of the operation of a rule.

Exceptio firmat regulam in casibus non exceptis. The exception confirms or strengthens the rule, in the cases not excepted. *Bac. Aph.* 17. **Exceptio firmat legem in casibus non exceptis.** *Bac. Arg.* Jurisd. of Marches, *Works*, iv. 270. **Exceptio firmat regulam in rebus non exceptis.** 10 *Mod.* 115, arg.

Exceptio probat regulam (de rebus non exceptis). The exception proves the rule (so far as concerns things not excepted). 11 *Co.* 41.

Exceptio quæ firmat legem, exponit legem. An exception which confirms the law, explains the law. 2 *Bulstr.* 189.

EXCEPTIO AD BREVE PROSTERNENDUM. L. Lat. [L. Fr. *excepcion pur brefe abatre.*] In old pleading. An exception or plea to overthrow or abate the writ; a plea in abatement. *Bract.* fol. 413. *Britt.* c. 48. *Steph. Pl.* Appendix, Note (22).

EXCEPTIO DILATORIA. Lat. In the civil law. A dilatory exception; called also *temporalis*, (temporary); one which delayed the action (*quæ differt actionem*), or defeated it for a time, (*quæ ad tempus nocet*,) and created delay, (*et temporis dilationem tribuit*); such as an agreement not to sue within a certain time, as five years. *Inst.* 4. 13. 10. See *Dig.* 44. 1. 2. 4. *Id.* 44. 1. 3.

In the common law. A dilatory plea. *Bract.* fol. 240, 399 b, 421 b. *Fleta*, lib. 5, c. 14, § 1. See *Dilatory plea.*

EXCEPTIO DOLI MALI. Lat. In the civil law. An exception or plea of fraud. *Inst.* 4. 13. 1, 9. *Dig.* 44. 4. *Bract.* fol. 100 b.

EXCEPTIO IN FACTUM. Lat. In the civil law. An exception on the fact; an exception or plea founded on the peculiar circumstances of the case. *Inst.* 4. 13. 1. *Calv. Lex.*

EXCEPTIO JURISJURANDI. Lat. In the civil law. An exception of oath; an exception or plea that the matter had been sworn to. *Inst.* 4. 13. 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (*creditore deferente*,) had sworn that nothing was due the latter, and had notwithstanding been sued by him. *Id. ibid.*

EXCEPTIO METUS. Lat. In the civil law. An exception or plea of fear or compulsion. *Inst.* 4. 13. 1, 9. *Dig.* 44. 4. *Bract.* fol. 100 b. Answering to the modern plea of duress. See *Duress.*

EXCEPTIO PACTI CONVENTI. Lat. In the civil law. An exception of compact; an exception or plea that the plaintiff had agreed not to sue. *Inst.* 4. 13. 3.

EXCEPTIO PECUNIÆ NON NUMERATÆ. Lat. An exception or plea of money not paid; a defence allowed a party where he was sued on a promise to repay money that he had never received. *Inst.* 4. 13. 2. See *Pecunia non numerata.*

EXCEPTIO PEREMPTORIA. Lat. In the civil law. A peremptory exception;

called also *perpetua*, (perpetual); one which forever destroyed the subject matter or ground of the action, (*quæ semper rem de qua agitur perimit*); such as the *exceptio doli mali*, the *exceptio metûs*, &c. *Inst.* 4. 13. 9. See *Dig.* 44. 1. 3. And see *Peremptory exception.*

In the common law. A peremptory plea; a plea in bar. *Bract.* fol. 240, 399 b.

EXCEPTIO REI JUDICATÆ. Lat. In the civil law. An exception or plea of matter adjudged; a plea that the subject matter of the action had been determined in a previous action. *Inst.* 4. 13. 5. *Dig.* 44. 2.

This term is adopted by Bracton, and is constantly used in modern law, to denote a defence founded upon a previous adjudication of the same matter. *Bract.* fol. 100 b, 177. 2 *Kent's Com.* 120, and note. *Story's Confl. of Laws*, § 584. A plea of a former recovery, or judgment. See *Res judicata.*

EXCEPTIO REI VENDITÆ ET TRADITÆ. Lat. In the civil law. An exception or plea that the article claimed in an action was sold and delivered to the defendant.* 1 *Mackeld. Civ. Law*, 315, § 291. *Dig.* 21. 3. *Calv. Lex.*

EXCEPTIO TEMPORIS. Lat. In the civil law. An exception or plea of time, or lapse of time; that is, that the action had not been brought within the time limited by law.* 1 *Mackeld. Civ. Law*, 200, § 200. Answering to the modern plea of the statute of limitations. See *Limitation.*

EXCEPTION. In practice. An objection in writing, taken in the course of an action; as to bail or security put in by one of the parties; to an opinion of a judge expressed on the trial of a cause; or to a pleading or master's report in chancery. See *infra.*

EXCEPTION TO BAIL. In practice. An objection, on the part of the plaintiff, to the special bail put in by a defendant in an action at law, on the ground of their insufficiency. 1 *Tidd's Pr.* 255. 1 *Arch. Pr.* 105. It is made by endorsing the exception on the bail-piece on file, and giving written notice of such exception to the defendant or his attorney. *Id. ibid.*

EXCEPTION ON TRIAL. In practice. An exception taken by the counsel of a party, on the trial of a cause, to a decision made by the judge in the course of the trial, or to an opinion expressed or direction given in his charge to the jury; and usually for the purpose either of moving for a new trial, or of bringing a writ of error. *Steph. Pl.* 89. 2 *Tidd's Pr.* 862. 1 *Arch. Pr.* 210. The exception is made orally, and a minute or note of it taken in writing on the trial; and it is afterwards formally entered and engrossed in the shape of a *bill of exceptions.* See *Bill of exceptions.*

EXCEPTION. In equity practice. A formal written statement of objections to a pleading, or master's report.* The usual grounds of exception to a pleading are scandal, impertinence and insufficiency. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 397, 401, 402. 2 *Id.* 872, 1490. *Mitford's Chanc. Pl.* 315, (376, Moulton's ed. and notes). *Story's Eq. Pl.* § 864.

EXCEPTION. In conveyancing. A clause in a deed whereby the grantor, lessor, &c. *excepts* something out of that which he has before granted, (as ground out of a manor, a room out of a house, &c.) by which means it is severed from the things granted, and does not pass by the deed.* *Co. Litt.* 47 a. *Shep. Touch.* 77. The apt words of exception in Latin, were *exceptis, salvo, præter*, and the like.

The distinction between an exception and a reservation is, that an *exception* is always of part of the thing granted, and of a thing *in esse;* a *reservation* is always of a thing not *in esse*, but newly created or reserved out of the land or tenement demised. *Co. Litt.* 47 a. 4 *Kent's Com.* 468. It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched, and does not exempt. *Plowd.* 361.

EXCEPTIS. Lat. In old conveyancing. Excepting; excepted. One of the apt words for denoting an exception in a deed. *Exceptis præ-exceptis;* excepting what was before excepted; except as above excepted. *Towns. Pl.* 21.

EXCEPTOR. L. Lat. In old English law. A party who excepted, or put in a plea (*exceptio*). *Fleta*, lib. 6, c. 39, § 2.

EXCESSIVE DAMAGES. In practice. Damages, given by the verdict of a jury, which are unreasonably great in amount, and not warranted by law; outrageous damages. One of the grounds for granting new trials. See 3 *Graham & Waterman on New Trials*, ch. 13, sec. 4, pp. 1127—1164.

EXCESSUS. L. Lat. In old English law. Excess; transgression; violation of engagements. *Mag. Cart. Johan.* c. 61.

EXCHANGE. [L. Lat. *excambium;* L. Fr. *eschange;* Span. *cambio.*] In conveyancing. A mutual grant of equal interests in lands, the one in exchange, or consideration for the other; one of the species of primary or original conveyances at common law, formerly of very frequent occurrence. The estates exchanged must be *equal* in quantity of interest, as fee simple for fee simple, a lease for twenty years for a lease for twenty [or thirty] years, and the like, but the quantity of value is immaterial. The word "*exchange*" must always be used in this conveyance, it being so individually requisite and appropriated by law to this case, that it cannot be supplied by any other word, or expressed by any circumlocution. *Shep. Touch.* 289, 294. 2 *Bl. Com.* 323. *Litt.* sect. 64, 65. *Co. Litt.* 50, 51. 1 *Steph. Com.* 477.

EXCHANGE OF GOODS. A commutation, transmutation or transfer of goods for other goods, as distinguished from *sale*, which is a transfer of goods for money. 2 *Bl. Com.* 446. 2 *Steph. Com.* 120.

EXCHEQUER. [L. Fr. *eschequier, exchequer, escheker;* O. Sc. *checker;* L. Lat. *scaccarium;* from Ital. *scacco*, a chess board, or Germ. schatz, a treasure.] An establishment of very remote antiquity in England, consisting of two divisions; the first being the office of the receipt of the exchequer, for collection of the royal revenue; the second being a court for the administration of justice. 4 *Inst.* 103. 2 *Steph. Com.* 544. It is said to be called the exchequer from the *checked cloth*, resembling a chess board, which covers [or once covered] the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 *Bl. Com.* 44. As an office of revenue, it has been newly organized by statute 4 & 5 Will. IV. c. 15. 2 *Steph. Com.* 544. The exchequer is said to have been originally divided into eight distinct courts. 2 *Chitt. Gen. Pract.* 389.

EXCHEQUER, COURT OF. One of the three superior courts of law in England, (inferior, however, in rank to both the Queen's Bench and the Common Pleas); originally intended principally to order the revenues of the crown, and to recover the king's debts and duties, but which has long possessed the character of an ordinary court of justice between subject and subject. 3 *Bl. Com.* 44. 3 *Steph. Com.* 400, 401. It was formerly a court both of law and equity, but the equitable jurisdiction was taken away by statute 5 Vict. c. 5, and it is now, therefore, a court of revenue and a court of common law only. In the former capacity, it ascertains and enforces, by proceedings appropriate to the case, the proprietary rights of the crown against the subjects of the realm; in the latter, it administers redress between subject and subject, in all actions whatever, except real actions. It is a court of record, and its judges are five in number, consisting of one chief and four puisne *barons*, as, in this court, the judges are termed. *Id. ibid.* 2 *Id.* 544, note.

EXCHEQUER BILLS. Bills of credit issued in England by authority of parliament. *Brande.* Instruments issued at the exchequer, under the authority, (for the most part,) of acts of parliament passed for the purpose, and containing an engagement, on the part of the government, for repayment of the principal sums advanced with interest. 2 *Steph. Com.* 586.

EXCHEQUER CHAMBER, *Court of.* A court of appeals in England, established to correct the errors of the three superior courts of common law, (the Queen's Bench, Common Pleas and Exchequer,) consisting of any two of these courts, sitting as a court of error to revise the judgment of the third. This is the modern constitution of the court by statutes 11 Geo. IV. and 1 Will. IV. c. 70, s. 8. 3 *Steph. Com.* 419. It also exists as a court of mere debate, such causes from the other courts being sometimes adjourned into it, as the judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below. *Id. ibid.* 3 *Bl. Com.* 56.

EXCIPERE. L. Lat. In old English practice. To plead. *Excipi;* to be pleaded. *Fleta*, lib. 4, c. 16, § 2. *Ordo excipiendi;* the order of pleading. *Id.* lib. 2, c. 54.

EXCISE. [from Belg. accijse, tribute.] An inland imposition upon commodities, charged in most cases on the manufacturer. 2 *Steph. Com.* 579.—A duty or tax laid on certain articles produced and consumed at home. *Wharton's Lex.* 1 *Bl. Com.* 318. It includes also the duties on licenses and auction sales. 2 *Steph. Com.* 581. 3 *Id.* 314.—An inland imposition, paid sometimes upon the consumption of the com-

modity, or frequently upon the retail sale, which is the last stage before the consumption. *Story on the Const.* § 953. *Andrews, Rev. Laws*, § 133.

EXCLUSA. L. Lat. In old English law. A sluice; a structure for carrying off water, especially such as is dammed or pent up, as in a mill pond or fish pond. *Cowell. Reg. Orig.* 96. In old English, a *scluse*. *Spelman.*

In old European law. A place in a stream, made narrow for the purpose of fishing; a wear. *Spelman. Fleta*, lib. 4, c. 27, § 4.

EXCLUSAGIUM, *Slusagium.* L. Lat. In old records. A sluice or sluisage. *Cowell.* 1 *Mon. Angl.* 398, 868, cited *ibid.*

EXCOMMENGE. L. Fr. [Lat. *excommunicatus.*] Excommunicated. *Litt.* sect. 201. *Co. Litt.* 133 b. The old form was *escumenge. Conf. Cartar.* 25 *Edw.* I.

EXCOMMENGEMENT. L. Fr. [L. Lat. *excommunicatio.*] Excommunication. *Britt.* c. 49. *Bro. Abr.* Excommengement. *Stat.* 23 *Hen.* VIII. c. 3. *Gilb. C. Pleas*, 202.

EXCOMMUNICATION. [L. Lat. *excommunicatio;* from *ex*, from, and *communicatio*, communion.] In English law. An ecclesiastical interdict or censure, by which a man is cut off *from communion* with his church. It is described to be two-fold, the less and the greater. The less excommunication is that by which a party is excluded from the participation of the sacraments; the greater proceeds further, and excludes him not only from these, but also from the company of all Christians. *Co. Litt.* 133 b. 3 *Bl. Com.* 101. Formerly, too, an excommunicated man was disabled to do any act, that was required to be done by a *probus et legalis homo.* He could not serve upon juries; could not be a witness in any court, and, what was worst of all, could not bring an action, either real or personal, to recover lands or money due to him. But now, by statute 53 Geo. III. c. 127, s. 3, no person who shall be pronounced excommunicate, shall incur thereby any civil penalty or incapacity whatever, save such imprisonment, not exceeding six months, as the court so excommunicating such person shall pronounce. 3 *Steph. Com.* 721. 3 *Bl. Com.* 102.

EXCUSABLE HOMICIDE. In criminal law. That kind of homicide which the law *excuses* from the guilt of felony, though in strictness it judges it deserving of some little degree of punishment. It is of two kinds, homicide *per infortunium*, by misadventure; and homicide *se defendendo*, in self-defence, upon a sudden affray. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. See *Homicide.*

EXCUSARE. Lat. [from *ex*, from, and *causa*, cause.] In the civil law. To excuse; to relieve or release from a duty or obligation, for sufficient cause shown. *A tutela excusantur;* are excused from guardianship. *Dig.* 27. 2. 41.

Excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. That excuses or extenuates an offence in capital cases, which does not operate the same in cases of civil injuries. *Bacon's Max.* 36, reg. 7. "In capital causes, *in favorem vitæ*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong-doer; and, therefore, the law makes a difference between killing a man upon malice forethought, and upon present heat. But if I give a man slanderous words, whereby I damnify him in his name and credit, it is not material whether I use them upon sudden choler and provocation, or of set malice, but, in an action upon the case, I shall render damages alike." *Id. ibid.*

EXCUSATIO. Lat. [from *excusare*, q. v.] In the civil law. Excuse; an excuse, an exemption or release from duty or obligation, for sufficient cause shown. See *Dig.* 27. 1, *De excusationibus.* Herennius Modestinus, the Greek writer from whose work this title is chiefly compiled, calls it παραίτησις. *Cod.* 5. 62. *Id.* 10. 47. *Id.* 10. 64.

A ground, cause or reason for exemption from duty. *Dig.* 27. 1.

EXCUSATOR. L. Lat. In old English law. An excuser; one who offered the excuse of another in court. *Fleta*, lib. 6, c. 13, § 1. Such person was not properly an *essoiner. Id. ibid.*

EXCUSE. [Lat. *excusatio*, (q. v.); Gr. παραίτησις.] A cause or ground of exemption or relief from some duty, obligation or liability.

A matter alleged and presented to a court, as a ground or cause for some exemption or relief from duty, prayed for by a party.

This word combines both the ideas presented by its Greek and Latin equivalents,—release *for cause*, (*ex causa*,) and such release *prayed* for. The Greek is literally a requesting to be let off, (παρὰ, off, and αἰτέομαι, to request.)

EXCUSSIO. Lat. [from *excutere*, to shake out, to search.] In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated *discussion*, (q. v.)

In old English law. Rescue or rescous. *Spelman.*

EXCUTERE. Lat. In the civil law. To search thoroughly; to prosecute a remedy against one to the uttermost, especially against a principal debtor; to search *ad peram et sacculum*, to the last farthing. *Calv. Lex.*

EXECUCYON. L. Lat. Execution. *Britt.* fol. 1 b.

EXECUTE. [Lat. *exequi*, *exsequi*, from *ex*, from, and *sequi*, to follow.] To complete, finish, or perfect; to follow out or carry out; to make effectual or operative.* A deed is not complete, and has no operation or effect, until *executed*, that is, signed, sealed and delivered by the party making it. See *Execution.*

To perform or fulfil; to comply with, as a contract.

To carry into effect; to make effectual; as by complying with, or acting under a legal order or authority; to obey the writ or mandate of a court. See *Execution.*

To carry into effect a sentence of death; to inflict the punishment of death. See *Id.*

A statute is said to *execute* a use, where it transmutes the equitable interest of *cestuy que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 *Steph. Com.* 339.

EXECUTED. Completed; made; done; carried into full effect; performed; complied with; obeyed; taking effect immediately; now in existence or in possession; conveying an immediate right or possession. The opposite of *executory.* "Things executed and done" are distinguished by Finch, from things "executory and to do." *Law*, b. 1, c. 3, num. 39. See *infra*, and see *Executory.*

EXECUTED CONSIDERATION. A consideration performed prior to the promise upon which it is founded, and which, to be valid, must have been at the precedent request of the promiser.* As if I bail a man's servant, at the master's request, and the latter afterwards promises to indemnify me; this is an executed consideration.* 2 *Steph. Com.* 113.

EXECUTED CONTRACT. A contract which transfers the possession of a thing, together with the right; a contract which conveys a chose in possession, as distinguished from a chose in action. 2 *Bl. Com.* 443. 2 *Steph. Com.* 112.—A contract where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made; as where an article is sold and delivered, and payment therefor is made on the spot. *Story on Contracts*, § 18.

EXECUTED ESTATE. An estate in possession, by which a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 *Bl. Com.* 162.

EXECUTED REMAINDER. A remainder by which a present interest passes to the party, though to be enjoyed *in futuro.* 2 *Bl. Com.* 168. See *Vested remainder.*

EXECUTED TRUST. A trust is so called in respect to its creation, when the transaction by which it is created is complete, and in respect to its execution, when no further act is necessary to be done by the trustee to give effect to it.* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. See 1 *White's Lead. Eq. Cases*, 1—31, and Am. ed. note.

EXECUTED USE. A use to which the legal possession or estate is transferred or annexed by statute; a use transferred into possession.* 2 *Crabb's Real Prop.* 478, § 1654. 1 *Steph. Com.* 339.

EXECUTED WRIT. In practice. A writ carried into effect by the officer to whom it is directed. The term *executed*, applied to a writ, has been held to mean *used.* Lord Hardwicke, *Ambl.* 61.

EXECUTIO. Lat. [from *exequi*, or *exsequi*, to follow up.] The doing or following up of a thing; the doing a thing completely or thoroughly; management or administration. See *Executio bonorum.*

EXECUTIO. L. Lat. In old practice. Execution; the final process in an action. See *Execution.*

Executio est finis et fructus legis. Exe-

cution is the end and fruit of the law. *Co. Litt.* 289. An execution is the end of the law. It gives the successful party the fruits of his judgment. Marshall, C. J. 9 *Peters' R.* 28. It is the *end* in both of the English senses of the word; being not only the *final* proceeding in an action, but the *object* also for which the action is prosecuted, putting the party into actual possession of the lands, goods, or money to which he is entitled.*

Executio juris non habet injuriam. The execution of the law does not work a wrong. 2 *Inst.* 482. The law will not, in its executive capacity, work a wrong. *Broom's Max.* 57, [95]. The imprisonment of a party in the execution, and by virtue of lawful process, is not such an act as can be pleaded in avoidance of a contract entered into while under its coercion.* *Id.*

EXECUTIO BONORUM. L. Lat. In old English law. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit* executio *bonorum;* the execution of the goods shall belong to the church and to the friends of the deceased. *Bract.* fol. 60 b.

EXECUTION. [Lat. *executio;* L. Fr. *execucyon.*] The completion of an act or proceeding, by which it is rendered operative or effectual; a following out or carrying into effect; an enforcement. See *infra.*

EXECUTION. In practice. The act or mode of putting the sentence of the law in force, or of carrying into effect the judgment or decree of a court.* 3 *Bl. Com.* 412. A judicial writ, (otherwise termed *final process,*) founded on a judgment obtained in a civil court, and issued in behalf of the party recovering such judgment, for the purpose of obtaining the satisfaction or full benefit of it.* Called by Lord Coke "the life of the law," and "the fruit and life of every suit." 5 *Co.* 89, 91. There are various kinds of this process, but the two most usual in practice are the *fieri facias,* and the *capias ad satisfaciendum.* See *Fieri facias, Capias ad satisfaciendum, Levari facias, Extendi facias, Elegit, Habere facias possessionem, De retorno habendo.*

EXECUTION. In criminal law. The carrying into effect the sentence of the law, by the infliction of capital punishment. 4 *Bl. Com.* 403. 4 *Steph. Com.* 470.

EXECUTION. In conveyancing. The formality of signing, sealing and delivery by the party making a deed, or of signing and publication by the party making a will, in the presence of witnesses; by which it is rendered complete and operative.* 4 *Kent's Com.* 450. *Id.* 513—516, and notes. 2 *Bl. Com.* 376.

EXECUTOR. L. Lat. [from *exequi,* or *exsequi,* to follow up, execute or perform.] In old English law. A person appointed or authorized to execute or perform a duty or trust; especially to manage and dispose of the property or estate of a deceased person; an executor.*

Executor à lege constitutus; an executor appointed by law; the ordinary of the diocese. 1 *Williams on Exec.* 185.

Executor ab episcopo constitutus, or *executor dativus;* an executor appointed by the bishop; an administrator to an intestate. *Id. ibid.*

Executor à testatore constitutus; an executor appointed by a testator. *Id. ibid.* Otherwise termed *executor testamentarius;* a testamentary executor. *Id. ibid.* This is the modern sense of the word, commonly expressed in the old books by the single word, *executor. Glanv.* lib. 7, c. 6. *Bract.* fol. 20, 61. *Et residuum relinquatur* executoribus *ad faciendum testamentum defuncti;* and the residue shall be left to the executors, to do the will of the deceased. *Mag. Chart. Joh.* c. 26. *Id.* 9 *Hen.* III. c. 18.

Executor testamenti; executor of a will. *Fleta,* lib. 2, c. 70, § 5.

EXECUTOR. [L. Lat. *executor;* L. Fr. *executour.*] A person appointed by a testator, in his last will and testament, to carry it into effect or *execution* after his decease, and to dispose of his property according to the tenor of the will.* *Wood's Inst.* 310. *Cowell. Blount. Whishaw.*—A person appointed by a testator, and whose appointment is confirmed by the proper court, to execute his will, and to represent him in his personal rights and liabilities. *Brande.* He to whom another man commits by will the execution of his last will and testament. 2 *Bl. Com.* 503. See 1 *Williams on Exec.* 185, *et seq.*

This word has been adopted, without change, from the Latin of the earliest writers on English law. *Glanv.* lib. 7, c. 6. *Bract.* fol. 20, 61. *Mag. Chart. Joh.* c. 26. *Mem. in Scacc.* H. 5 *Edw.* I. *Stat. Westm.* 2, c. 19. See *supra.* Lord Hardwicke, in Androvin *v.* Poilblanc, calls it a "barbarous term," unknown to the civil law, the proper term in that law, as

to goods, being *hæres testamentarius.* 3 *Atk.* 299, 301.

EXECUTOR DE SON TORT. L. Fr. An executor of his [own] wrong; an executor by his own wrongful act.* A stranger who takes upon himself to act as executor, without any just authority, (as by intermeddling with the goods of the deceased,) is so called, and is liable to all the trouble of an executorship, without any of the profits or advantages. 2 *Bl. Com.* 507. But merely doing acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling, as will charge a man as executor of his own wrong. *Id. ibid.* See 1 *Williams on Exec.* 210, *et seq.*

EXECUTOR. Lat. In the civil law. A ministerial officer who executed or carried into effect the judgment or sentence in a cause. *Calv. Lex. Jur.* citing *Prateius* and *Brissonius.* Otherwise called *executor litis. Inst.* 4. 6. 24, 25.

EXECUTORY. To be executed or performed; relating to the future; depending upon a future event, or act. See *infra.*

EXECUTORY CONSIDERATION. A consideration which is to be performed after the making of the promise on which it is founded.* 2 *Steph. Com.* 113.

EXECUTORY CONTRACT. A contract which is to be executed at some future time, and which conveys only a *chose in action.* 2 *Bl. Com.* 443. 2 *Kent's Com.* 511, 512, note. See *Executed contract.*

EXECUTORY DEVISE. In a general sense,—a devise of a future interest in lands, not to take effect at the testator's death, but limited to arise and vest upon some future contingency. 1 *Fearne on Remainders*, 382. A disposition of lands by will, by which no estate vests at the death of the devisor, but only on some future contingency.* 2 *Bl. Com.* 172.

In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law.* 4 *Kent's Com.* 263. 1 *Steph. Com.* 564.—A limitation by will, of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 *Powell on Dev.* (by Jarman,) 237. *Lewis on Perpetuity*, 71, 72.

EXECUTORY ESTATE. An estate depending upon some future circumstance or contingency, which must happen before any interest passes.* 2 *Bl. Com.* 162.

EXECUTORY REMAINDER. The same as a contingent remainder. See *Contingent remainder.*

EXECUTORY TRUST. A trust is so called when the transaction by which it is created is only in *fieri*, or rests in covenant; or where some further act is necessary to be done by the author of the trust, or the trustee, to give effect to it.* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. 1 *White's Lead. Eq. Cases*, 18.

EXECUTOUR. L. Fr. An executor. *Britt.* c. 28, 64.

EXECUTRESS. A female executor. *Hardr.* 165, 473. See *Executrix.*

EXECUTRIX. L. Lat. and Eng. A female executor. *Yearb.* P. 10 Edw. III. 2. See *Executor.* Sometimes translated, in the old books, *executress*, (q. v.)

EXECUTRY. In Scotch law. The moveable estate of a person dying, which goes to his nearest of kin. So called, as falling under the distribution of an executor. *Bell's Dict.*

EXEMPLIFICATION. [L. Lat. *exemplificatio;* from *exemplum*, a copy, and *facere*, to make.] A certified transcript, under seal, of a record.* An exemplification of letters patent is a certified transcript of the enrolment, under the great seal. *Cowell. Burton's Real Prop.* 160. 1 *Archb. Pr.* 159, 162. The term is confined to matters of record. 3 *Inst.* 173. 5 *Co.* 52, *Page's Case. Cowell.* See *Authentication.*

EXEMPLUM. Lat. In the civil law. A copy; a copy of a writing. *Dig.* 42. 1, 33. *Calv. Lex.*

EXEMPLUM. Lat. An example; an instance. **Exempla illustrant non restringunt legem.** Examples illustrate the law; do not restrict it. *Co. Litt.* 24 a.

EXEMPT. [from Lat. *eximere*, to take out.] To free or relieve from some service, duty or requisition, to which others are subject; as from militia duty. *Act of Congress*, May 8, 1792, sess. 1, ch. 33, sec. 2.

EXEQUATUR. Lat. (Let him execute or perform his office.) The official recognition of a person in the character of consul or commercial agent, authorizing him to exercise his power. *Wharton's Lex.*

EXEQUI. Lat. In old English law. To execute. *Fleta*, lib. 1, c. 26, § 3. *Id.* lib. 2, c. 64, § 19.

EXERCERE. Lat. In the civil law. To employ; to use in the course of business, as a vessel. *Dig.* 4. 9. 2.

To keep, as a tavern, (*caupona*) or stable (*stabulum*). *Id.* 4. 9. 5.

EXERCITALIS. L. Lat. [from *exercitus*, an army.] In feudal and old European law. A soldier; a vassal or feudatory. *Spelman. Calv. de Verb. Feud.*

EXERCITOR NAVIS. Lat. In the civil law. The employer of a vessel; the person who sent a vessel to sea at his own risk, and received all her earnings; (*ad quem quotidianus navis quæstus pertinet; ad quem obventiones et reditus omnes perveniunt*). *Inst.* 4. 5. 3. *Id.* 4. 7. 2. *Dig.* 14. 1. 1. 15. *Id.* 4. 9. 6. 7. 3 *Kent's Com.* 161, note. *Molloy De Jur. Mar.* 243. * *Story on Agency*, §§ 36, 317. The *exercitor* appointed the master, and was bound for his acts *ex contractu*, and *ex delicto*. *Loccen. de Jur. Mar.* lib. 3, c. 8, sect. 3. *Voet. Com. ad Pand.* 14. 1. 7. 3 *Kent's Com. ub. sup. Story on Agency*, § 163. This word corresponds with the Belg. and Germ. reeder and schiffs-freunde, and the English *ship's-husband*. *Loccen. de Jur. Mar.* lib. 3, c. 8, sect. 2.

EXERCITORIA ACTIO. Lat. In the civil law. An action which lay against the employer of a vessel, (*exercitor navis*,) for the contracts made by the master. *Inst.* 4. 7. 2. *Dig.* 14. 1. *Cod.* 4. 25. 3 *Kent's Com.* 161.

EXERCITUALE. L. Lat. [from *exercitus*, an army.] In old English law. A heriot. *LL. Edw. Conf.* 1. *Cowell.* So called, as being anciently paid only in arms or *military* accoutrements. *Id.* See *Heriot.*

EXERCITUS. Lat. In old European law. An army; an armed force. A collection of thirty-five men and upwards. *LL. Inæ, apud Spelman.*

A gathering of forty-two armed men. *L. Boior.* tit. 3, c. 8.

A meeting of four men. *LL. Longobard.* lib. 1, tit. 17, c. 1. *Spelman.*

As to the meaning of this term in the Roman law, see *Grotius de Jur. Bell.* lib. 2, c. 16, sect. 3.

EXFESTUCARE. L. Lat. [from *ex*, from or off, and *festuca*, a wand.] In feudal and old European law. To devest one's self of the possession of an estate, honor, dignity or any other thing; anciently expressed by the ceremony of delivering a wand or *staff*. *Spelman. Calv. de Verb. Feud.*

EXFREDIARE. L. Lat. [from *ex*, priv. and Sax. *frede, frith*, peace.] In old English law. To break the peace; to commit open violence. *Cowell. LL. Hen.* I. c. 31, cited *ibid.*

EXHÆREDARE. Lat. [from *exhæres*, q. v.] In the civil law. To disinherit; to exclude from inheriting. *Inst.* 2. 13. pr. *Dig.* 28. 2. 1, 2. In Scotch law, to *exheredate*, (q. v.)

EXHEREDATE. In Scotch law. To disinherit; to exclude from inheriting. 1 *Kames' Equity*, 247.

EXHAEREDATIO. Lat. [from *exhæredare*, q. v.] In the civil law. Disinheritance; a disinheriting. *Inst.* 2. 23. tit. *Bract.* fol. 383. An exclusion from the lawful inheritance. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 13, § 528.

In the common law. Disherison; an injury done to one who has the inheritance, particularly to a remainder-man or reversioner. See *Ad exhæredationem.*

EXHÆRES. Lat. [from *ex*, priv. and *hæres*, an heir.] In the civil law. One who is excluded from being an heir; a person disinherited. *Inst.* 2. 13, pr. A child was disinherited by the following form of words: *Titius filius meus* exhæres *esto;* let Titius, my son, be disinherited. *Id. ibid.* Adopted by Bracton. *Bract.* fol. 383.

EXHIBERE. Lat. [from *ex*, out, and *habere*, to have.] In the civil law. To have out; to show openly; to exhibit; to present or produce a thing, so that it may be seen and handled. *Calv. Lex.* citing *Gœddæus. Exhibere est præsentiam corporis præbere;* to exhibit is to furnish the presence of the body; to present a thing or person corporeally. *Dig.* 50. 16. 22. *Exhibet qui præstat ejus de quo agitur præsentiam;* he exhibits who furnishes the presence of that which [or him who] is the subject of the action. *Id.* 50. 16. 246.

This was a common word in interdicts, and is otherwise variously defined in the Digests, according to the subject. Thus, where a person was the subject of the action,—*Exhibere est in publicum producere, et videndi tangendique hominis facultatem præbere; proprie autem* exhibere *est* extra *secretum* habere; to exhibit is to produce in public, and to give an opportunity of seeing and touching the person; but properly to exhibit is *to have out* of secrecy. *Dig.* 43. 29. 2. 8. Where a will was the subject,—*Exhibere est materiæ ipsius ap-*

prehendendæ copiam facere; to exhibit is to give the opportunity or means of taking hold of the subject-matter itself. *Dig.* 43. 5. 3. 8. And generally, under the title of *Actio ad exhibendum,—Exhibere est facere in publico potestatem, ut ei qui agat experiundi sit copia;* to exhibit is to give a power in public, in order that he who sues may have the means of trying the subject. *Dig.* 10. 4. 2.

To EXHIBIT. [Lat. *exhibere.*] In practice. To present or show in legal form; to present to a court; to produce or show in or before a court or judicial officer.* See *Exhibere, Exhibit.*

EXHIBIT. [Lat. *exhibitum*, (from *exhibere*, q. v.) shown to.] In practice. Any writing which, on the examination of a witness before an examiner, or commissioner, is *exhibited* or *shown* to the witness to be proved, and on the back of which, the examiner or commissioner certifies that such writing was *shown to* the witness, at the time of his examination, and by him sworn to. *Jacob. Gray's Chanc. Pr.* 98. Where there are several, they are generally distinguished by the letters of the alphabet, as "Exhibit A.," "Exhibit B.," &c.

EXHIBITIO BILLÆ. L. Lat. (The exhibition of the bill.) In old practice. A phrase formerly used in pleading, and generally equivalent to "*the commencement of the suit*;" the suit, (where the proceedings were by bill,) being anciently commenced by the *exhibition* of such a *bill* to the court.

EXIGENT, or EXIGI FACIAS. L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to *demand* the defendant, (or *cause him to be demanded, exigi faciat,*) from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 *Tidd's Pr.* 132. 3 *Bl. Com.* 283, 284. *Archb. N. Prac.* 485. Now regulated by statute 2 Will. IV. c. 39.

EXIGENTER. [L. Lat. *exigendarius.*] An officer of the English Court of Common Pleas, whose duty it was to make out the *exigents* and proclamations, in the process of outlawry. *Cowell.* 1 *Archb. Pr.* 11. Abolished by statute 7 Will. IV. and 1 Vict. c. 30. *Holthouse.*

EXIGI FACIAS. L. Lat. (You cause to be demanded.) Another name of the writ of *exigent;* being the two emphatic words of that writ. *Reg. Jud.* 2.

EXILE. [Lat. *exilium.*] Banishment; a driving out or sending away of persons; a species of waste committed by manumitting or ejecting tenants; or so excessive in itself as to have the effect of driving them away.* See *Exilium.*

EXILER. L. Fr. To drive off, as villeins from a manor. *Dyer*, 37, (Fr. ed.)

EXILIUM. L. Lat. [L. Fr. *exil, exyl.*] In old English law. Exile or banishment; a driving out, or sending away of persons. A species of waste, anciently classed with *vastum*, (waste proper,) *destructio*, (destruction,) and *venditio*, (sale,) but distinguished from these by having reference to persons (*homines*) only. It was a species of injury done to an estate, by setting free the bondmen (*servi*) or bond-tenants, or by wrongfully *ejecting* them. *Fleta*, lib. 1, c. 12, § 20. *Stat. Marlbridge*, c. 24. Bracton describes it as an aggravated kind of waste done to the injury and disfigurement of the chief messuage and the court or grounds about it, (*ad magnam deformitatem curiæ et capitalis messuagii,*) as by pulling down and selling the buildings, *so as to compel the occupants to leave,* (*ut si inhabitatores mansionem habuerint derelictum,*) or by cutting down and rooting up trees and orchards. *Bract.* fol. 316 b. 1 *Reeves' Hist. Eng. Law*, 386.

EXIRE. Lat. [from *ex*, from, and *ire*, to go.] In old English law. To go out.

To issue, as a writ. *Fleta*, lib. 2, c. 50, § 8.

EXISTENS. L. Lat. Being. 2 *Stra.* 747, 748.

EXISTIMATIO. Lat. In the civil law. The civil reputation which belonged to the Roman citizen, as such. 1 *Mackeld. Civ. Law*, 133, § 123. Called a state or condition of unimpeached dignity or character, (*dignitatis inlæsæ status*); the highest standing of a Roman citizen. *Dig.* 50. 13. 5. 1. See *Status.*

EXIT WOUND. In medical jurisprudence. A wound made by a weapon in coming out of the body, after having passed through it, or any part of it. 2 *Beck's Med. Jurispr.* 119.

EXITUS. Lat. [from *exire*, to go out, or proceed from.] In old English law and practice. Issue or offspring; a child or children. *Habuit* exitum *Thomam*, &c.; had issue Thomas. 2 *Mon. Angl.* 607.

Issues, (in the plural); the rents or profits

of land. *Cowell.* Defined by the statute of Westminster, 2, (c. 39,) to include rents, grain in barns, and all moveable things except horse furniture, clothing, and household utensils. See *Fleta*, lib. 2, c. 68, § 1. See *Issues.*

An issue, in pleading. So called, according to Lord Coke, because "*issuing out* of the allegations and pleas of the plaintiff and defendant." *Co. Litt.* 126 a. But properly, because it is the *end* of the pleading. Exitus *idem est quod finis, sive determinatio placiti;* issue is the same as the *end*, or determination of the plea. *Year Book*, 21 *Edw.* IV. 35. *Steph. Plead.* Appendix, Note (10). *De materia in exitu;* of the matter in issue. 12 *Mod.* 372.

A duty outwards; a custom on goods exported. *Exitus de cocketto; exitus sigilli quod vocatur cocquett;* issues of the cocket. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 11. See *Cocket.*

The issue or result of an act. *In maleficiis spectatur voluntas et non exitus;* in injuries, the will or motive is regarded, and not the result. *Britt.* fol. 136 b.

An end. Exitus *termini;* the end of a term. *Bract.* fol. 20. An issue, as the end of pleading. See *supra.* See *Issue.*

EXLEGALITAS. L. Lat. [from *exlex*, q. v.] In old English law. Outlawry. *LL. Edw. Conf.* c. 38. *Spelman.*

EXLEGARE. L. Lat. In old English law. To outlaw; to deprive one of the benefit and protection of the law; (*exuere aliquem beneficio legis*). *Spelman.*

EXLEX. L. Lat. In old English law. An outlaw; *qui est extra legem;* one who is *out* of the *law's* protection. *Bract.* fol. 125. *Qui beneficio legis privatur. Spelman*, voc. *Exlegare.*

EXONERARE. Lat. [from *ex*, from, and *onus*, a burden.] In old English law. To discharge; to relieve or release from a burden or liability.

EXONERATIO. Lat. [from *exonerare*, q. v.] Discharge; the discharge or unlading of a cargo. *Loccen. de Jur. Mar.* lib. 2, c. 5, num. 9.

EXONERATION. In Scotch law. A discharge, or a deed by which a person is disburdened. *Bell's Dict.*

EXONERETUR. L. Lat. [from *exonerare*, to discharge.] (Let him be discharged.) In practice. An entry made upon a bail-piece, where the bail are discharged, either by the surrender of their principal, or otherwise; signifying that the bail are *exonerated.* 1 *Tidd's Pr.* 280, 288. See an entry in Latin. 1 *Leon.* 58.

EXONIER. L. Fr. To excuse. See *Essonier.*

EXPATRIATION. [from Lat. *ex*, from, and *patria*, country.] The removing from, or forsaking one's native country; the renunciation or abjuration of one's native allegiance.* 2 *Kent's Com.* 43, 49.

Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit. No man can shake off the country in which he was born, nor abjure the obligation of his allegiance. *Co. Litt.* 129. The principle of this maxim is not settled in American law. 2 *Kent's Com.* 49. 1 *Duer on Ins.* 545. Cowen, J. 5 *Hill's* (N. Y.) *R.* 16, 22.

EXPECT. [from Lat. *expectare*, from *ex*, from, and *spectare*, to look.] To look for; to wait for; to look forward to, as to something probable, intended, or contemplated. The words "expects to prove," in an affidavit, have been held insufficient. The party ought to say, "he firmly believes he can." 2 *Littell's R.* 230.

To be in readiness to operate. The word has sometimes been applied, in this sense, to instruments. To make a clause "wait and expect." *Bacon's Arg.* Case of Revocation of Uses; *Works*, iv. 248, 253.

EXPECTANCY, *Estate in.* An estate the possession of which a person is entitled to have *in futuro.** 1 *Steph. Com.* 289. See *Estate in expectancy.*

EXPECTANT ESTATE. An estate in expectancy. See *Expectancy.*

EXPEDIT. Lat. It is expedient or profitable; it is for the good, benefit or advantage.

Expedit reipublicæ ut sit finis litium. It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. *Co. Litt.* 303 b. It is for the general good that some period be put to litigation. 6 *Co.* 7. 9 *Id.* 79.

Expedit reipublicæ ne sua re quis male utatur. It is for the interest of the state that a man should not enjoy his own property improperly, [to the injury of others]. *Inst.* 1. 8. 2.

EXPEDITARE, *Espealtare.* L. Lat. [from *ex*, out, and *pes*, foot.] In old forest law. To cut out the ball, or cut off the claws of a dog's foot; to expeditate, (q. v.) *Spelman. Cowell.*

To cut the foot or root of a tree, so as to occasion it to fall. *Fleta*, lib. 2, c. 41, sec. 32. *De quercubus expeditatis. Id. ibid.*

EXPEDITATE. [from *expeditare*, q. v.] In the forest law. To cut out the ball of dogs' forefeet, to prevent them from running after deer or game. *Cart. de Forest.* c. 6. *Crompt. Jur.* 152 *Manwood*, c. 16. 3 *Bl. Com.* 72. *Spelman*, voc. *Expeditare.*

EXPEDITATION. In forest law. The act or mode of expeditating dogs; otherwise called *lawing*, (q. v.) 3 *Bl. Com.* 72. It was done in two ways; by cutting off three claws of the right fore-foot, (*ortelli;*) and by cutting out the ball (*pelota*) of the same foot. *Spelman*, voc. *Expeditare.* See *Cart. de For.* 9 *Hen.* III. c. 6. *Spelman*, voc. *Expeditare.*

EXPEDITIO. Lat. An expedition; an irregular kind of army. *Spelman.*

EXPEDITIO BREVIS. L. Lat. In old practice. The service of a writ. *Towns. Pl.* 43.

EXPENDITORS. In old English law. Persons who disbursed or expended moneys collected by tax, particularly for the repairs of sewers.* *Cowell.*

EXPENSÆ. Lat. [from *expendere*, to expend.] In the civil law. Expenses or charges. *Cod.* 7. 51. 5. *Expensæ litis;* costs of suit. *Calv. Lex. Expensæ circa funus;* funeral expenses. *Fleta*, lib. 2, c. 57, § 10.

Victus victori in expensis condemnabitur. The vanquished party shall be condemned to the victor in the costs, [i. e. adjudged to pay the costs]. *Cod.* 3. 1. 13.

Experientia per varios actus legem facit. Experience, by various or repeated acts, makes law. *Branch's Princ. Co. Litt.* 60.

EXPERIRI. Lat. In the civil law. To sue; to try one's right by law. *Inst.* 2. 6. 9. *Id.* 4. 6. 40. *Id.* 4. 11, pr. Used in the same sense with the words *judicio, actione*, &c. *Calv. Lex.*

EXPERT. [L. Lat. *expertus, peritus.*] A skilful or experienced person; a person having skill, experience or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. Persons of this character, when called as witnesses in a cause, are allowed to state their opinions in evidence, contrary to the general rule that the opinion of a witness is not evidence. *Broom's Max.* 422, [721.] See **Cuilibet in arte sua perito est credendum.** It seems that the rule sometimes allowed to prevail, admitting *experts* to give an opinion, whether a signature is genuine or imitated, is not well established upon authority, and that such testimony is incompetent. Bronson, C. J. 1 *Denio's R.* 343, 346. 1 *Penn. R.* 161. 5 *B. & A.* 330. *Best on Evid.* 268, § 220. But see 10 *Clarke & F.* 193. *Id.* 154. 9 *Connecticut R.* 55. 17 *Pick. R.* 497.

EXPILARE. Lat. In the civil law. To spoil; to rob or plunder. Applied to inheritances. *Dig.* 47. 19. *Cod.* 9. 32.

EXPILATOR. Lat. [from *expilare*, q. v.] In the civil law. A robber; a spoiler or plunderer. *Expilatores sunt atrociores fures. Dig.* 47. 18. 1. 1.

EXPIRE. To come to an end; to cease; to terminate; as a lease, a contract, &c.

EXPIRY OF THE LEGAL. In Scotch law and practice. Expiration of the period within which an adjudication may be redeemed, by paying the debt in the decree of adjudication. *Bell's Dict.*

EXPLACITARE. L. Lat. In old English law. To gain a suit, (*litem obtinere,*) to overcome in pleading, (*placitando evincere*). *Spelman. Will. Malmsb. de Reg. Gest.* lib. 2, c. 13.

EXPLECTAMENTA. L. Lat. A term used in old European law, corresponding, as Spelman conjectures, with the *esplees* (q. v.) of the English law.

EXPLEES. [L. Lat. *expletia*, q. v.] The profits of an estate. See *Esplees.*

EXPLETIA, *Explecia, Explicia.* L. Lat. [from *explere*, to fill or make up; to complete or make perfect.] In old English law. Esplees; the profits of land. *Bract.* fol. 40, 44 b. *Excoluit terram, et blada expendit, et redditus et* expletia *cepit;* he cultivated and sowed the land, and took the rents and esplees. *Id.* fol. 50 b, 206 b, 372 b, 373. See *Fleta*, lib. 2, c. 53, § 3. *Id.* lib. 6, c. 16, § 2. So called, because the estate is made *complete* and perfect by reaping the explees, that is, the fruit and commodity thereof. 6 *Co.* 58 b. See *Esplees.*

EXPLICATIO. Lat. In the civil law. A pleading corresponding with the surrejoinder of the common law; (*allegatio infirmans supplicationem*). *Calv. Lex. Spiegelius*, cited *ibid.* See *Supplicatio.*

EXPOLIARE, *Exspoliare.* Lat. In the civil law. To rob, plunder or spoil. *Expoliatores;* robbers. *Calv. Lex. Spelman*, voc. *Effractores.*

To deprive or take away. *Calv. Lex.*

To EXPORT. [from Lat. *exportare*, from *ex*, from, and *portare*, to carry.] To carry out; to carry out of a country; to carry or send goods and merchandise from one country to another, in the course of trade.

To carry out or convey goods by sea. *Vaugh.* 171, 172.

EXPORT. A thing or commodity exported. More commonly used in the plural.

EXPORTATION. The act of exporting goods or merchandise. The day of the sailing of a vessel from a foreign port to the United States, is the true period of exportation of goods. 20 *Howard's R.* 571.

EXPOSITIO. Lat. [from *exponere*, to explain or interpret.] Explanation; exposition; interpretation.

Expositio quæ ex visceribus causæ nascitur, est aptissima et fortissma in lege. That kind of interpretation which is born [or drawn] from the bowels of a cause, is the aptest and most forcible in the law. 10 *Co.* 24. See *Ex visceribus.*

EXPRESS, EXPRESSED. [Lat. *expressum, expressa;* from *exprimere*, to declare openly.] Openly declared or signified; distinctly mentioned in words or set down in writing, as distinguished from what is implied by law. See *infra.*

EXPRESS ABROGATION. Abrogation by express provision or enactment; the repeal of a law or provision, by a subsequent one, referring directly to it. See *Abrogation.*

EXPRESS ASSUMPSIT. An express undertaking to do some act, or to pay a sum of money to another. See *Assumpsit.*

EXPRESS CONSIDERATION. A consideration distinctly declared by the terms of the contract itself; as where a man contracts to sell his land for a named sum of money.

EXPRESS CONTRACT. A contract, the terms of which are openly uttered or declared at the time of making it. 2 *Bl. Com.* 443. 2 *Steph. Com.* 110. A contract made in express words, or by writing; as distinguished from an implied contract. 2 *Kent's Com.* 450.

EXPRESS TRUST. A trust created or declared in express terms, and usually in writing, as distinguished from a trust implied by law. Otherwise called an *active* trust. 4 *Kent's Com.* 305, 310. As to the proof of an express trust, see 5 *Ohio St. R.* 194.

EXPRESS WARRANTY. In conveyancing. A warranty in a deed expressed by particular words, (such as *warrantizo*, I warrant); as distinguished from that which was implied by law from other words, (such as *dedi*, I have given). 2 *Bl. Com.* 300, 301. See *Dedi.*

In the law of insurance. An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true; or certain acts relating to the same subject have been or shall be done. 1 *Phillips on Ins.* 346.

EXPRESSA. Lat. [from *exprimere*, to express or declare.] Things or words expressed, or expressly mentioned.

Expressa nocent, non expressa non nocent. Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which, if omitted, had done no harm. *Dig.* 35. 1. 52. *Id.* 50. 17. 195. See *Calv. Lex.* A party may sometimes prejudice himself by using words unnecessarily. Another form of this maxim is **Expressa non prosunt quæ non expressa proderunt.** 4 *Co.* 73.

EXPRESSIO. Lat. [from *exprimere*, to express.] Expression; distinct mention in words or writing.

Expressio eorum quæ tacite insunt nihil operatur. The expression or express mention of those things which are tacitly implied, avails nothing. 2 *Inst.* 365. A man's own words are void, when the law speaketh as much. *Finch's Law*, b. 1, ch. 3, num. 26. Words used to express what the law will imply without them, are mere words of abundance. 5 *Co.* 11. Thus, if land be let to two persons for the term of their lives, this creates a joint tenancy; and if the words "and the survivor of them" are added, they will be mere surplusage, because, by law, the term would go to the survivor.* *Co. Litt.* 191 a. 4 *B. & Ald.* 306. *Broom's Max.* 286, [518].

Expressio unius est exclusio alterius. The expression of one thing is the exclusion of another. *Co. Litt.* 210 a. The express mention of one thing [person or place] implies the exclusion of another. See **Designatio unius est exclusio alterius.** This is a leading maxim in the construction of deeds, and the foundation of the rule that an implied covenant is in all cases controlled within the limits of an express covenant. 4 *Co.* 80 b. *Broom's Max.* 278, 279, and note; [505—518]. It is a maxim also in the construction of statutes. Story, J. 3 *Story's R.* 87, 89. But it has been held

not to apply in construing the Constitution of the United States. *Federalist*, No. 83.

For other applications of this maxim, see 1 *Story's Eq. Jur.* § 102. *Story on Bailm.* § 550. *Story on Partn.* § 209. Shaw, C. J. 2 *Metcalf's R.* 234, 241.

EXPRESSUM, *Expressa.* Lat. [from *exprimere*, to express.] Express; expressed. A thing or word expressly or distinctly mentioned. *Bract.* fol. 18.

Expressum facit cessare tacitum. That which is expressed makes that which is implied to cease; [that is, supersedes it, or controls its effect]. Thus, an implied covenant in a deed is, in all cases, controlled by an express covenant. 4 *Co.* 80. *Broom's Max.* 278, [505—518]. So, in other cases than those of instruments under seal, it is a general rule that parol evidence is inadmissible to show terms upon which the instrument is silent; or, in other words, where there is an express contract between parties, none can be implied. *Id.* 281, and cases cited *ibid.* [517]. 2 *Steph. Com.* 112.

EXPROMISSOR. Lat. [from *expromittere*, q. v.] In the civil law. One who assumes the debt of another, discharging the first debtor, and making himself originally liable in his place; one who was substituted as a debtor by the process of *delegation*, (q. v.) *Inst.* 2. 1. 41. *Dig.* 12. 4. 4. *Heinecc. El. Jur. Civ.* lib. 3, tit. 30, § 1015. *Calv. Lex.* A person whom a creditor takes as a substitute for his debtor, whom he thereby discharges. *Poth. Obl.* part 3, ch. 2, art. 1.

EXPROMITTERE. Lat. In the civil law. To undertake for another, with the view of becoming liable in his place. *Calv. Lex.*

EXQUÆSTOR. Lat. In the Roman law. One who had filled the office of *quæstor*. A title given to Tribonian. *Inst.* procem. § 3. Used only in the ablative case, (*exquæstore*).

EXROGARE. Lat. [from *ex*, from, and *rogare*, to pass a law.] In the Roman law. To take something from an old law, by a new law. *Tayl. Civ. Law*, 155. The same with *derogare*, (q. v.)

EXTEND. [L. Lat. *extendere;* L. Fr. *estendre.*] In English practice. To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full *extended* value. 3 *Bl. Com.* 420. *F. N. B.* 131. To execute the writ of *extent* or *extendi facias*, (q. v.) 2 *Tidd's Pr.* 1043, 1044.

This term seems to be considered synonymous with *value*, although the latter word is always used in connection with it. So, in the oldest forms, both words occur;—*extendere et appreciare,—extendi et appreciari,—extentio* (or *extenta*) *et appreciatio. Bract.* fol. 72. *Id.* fol. 75 b. *Reg. Jud.* 2, 32 b. It would appear that its proper original meaning was to *lay out* land, or to make an inventory of it under certain heads, as preparatory to appraisement. This may be gathered from the use of the term in Bracton, as applied to the partition of estates. See *Extendere*, *Extensores*, *Extenta.*

EXTENDERE. L. Lat. In old English practice. To appraise or value. See *Extend.*

To lay out, survey, or make an inventory of. *Extendere et appreciare;* to lay out and appraise. *Bract.* fol. 72. See *Britt.* c. 71.

To set off, or assign. *Extenderunt tali xx. libratas terræ pro decem;* they set off to such a one twenty pound-lands instead of ten. *Bract.* fol. 75.

Extendere se; to amount to. *Ad quam summam damna* se extendunt *occasione, &c.;* to what sum the damages amount, on occasion, &c. *Reg. Jud.* 58 b. See *Attingere.*

EXTENDI FACIAS. L. Lat. (You cause to be extended.) In English practice. The name of a writ of execution, (derived from its two emphatic words); more commonly called an *extent.* 2 *Tidd's Pr.* 1043. 4 *Steph. Com.* 43. See *Extent.*

EXTENSIO. L. Lat. [from *extendere*, q. v.] In old English law. An extent. *Fleta*, lib. 5, c. 9, § 4.

EXTENSION. In mercantile law. Enlargement of time for the payment of debts. An agreement between a debtor and his creditors, by which they allow him further time for the payment of his liabilities.

EXTENSORES. L. Lat. [L. Fr. *estendours.*] In old English law. Extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule or inventory of the lands, to lay them out under certain heads, and then to ascertain the value of each, as preparatory to the division or partition. *Bract.* fol. 72 b, 75. *Britt.* c. 71. *Fleta*, lib. 5, c. 9, § 5. *Barringt. Obs. Stat.* 103, note [*w*].

EXTENT, (or EXTENDI FACIAS). In English practice. A species of execution upon debts of record due to the crown,

differing in this respect from an ordinary writ of execution at suit of the subject, that under it the body, lands and goods may be all taken at once in order to compel the payment of the debt. 4 *Steph. Com.* 42. Its name is derived from the words of the old writ, commanding the sheriff to *cause* the lands, goods and chattels *to be extended* (*extendi facias,*) and appraised, &c.* *Id.* 43. 3 *Bl. Com.* 420. See *Extendi facias, Extend.* There are two kinds of this writ; an extent *in chief*, and an extent *in aid*. 2 *Tidd's Pr.* 1045.

The act of extending lands, (L. Lat. *extenta, extensio;*) the act of the sheriff in executing the writ of extent. *Bro. Abr.* Extent. *Stat.* 16 & 17 *Car.* II. c. 5. See *Extenta, Extentio.*

EXTENT IN CHIEF. In English practice. The principal kind of extent, issuing at the suit of the crown, for the recovery of the crown's debt. 4 *Steph. Com.* 47. 2 *Tidd's Pr.* 1045. See *Extent.*

EXTENT IN AID. In English practice. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 *Tidd's Pr.* 1045. 4 *Steph. Com.* 47.

EXTENT. In Scotch practice. The value or valuation of lands. *Bell's Dict.*

The rents, profits and issues of lands. *Skene de Verb. Signif.*

EXTENTA. L. Lat. In old records. An extent; an estimate or valuation; or, more properly, a survey or register of lands. 1 *Mon. Angl.* 548. *Cowell.* See *Extenta manerii.*

EXTENTA MANERII. L. Lat. (The extent or survey of a manor.) The title of a statute passed 4 Edw. I. st. 1; being a sort of direction for making a *survey* or terrier of a *manor*, and all its appendages. 2 *Reeves' Hist. Eng. Law*, 140. Mr. Barrington observes that it is most certainly no act of parliament, in any sense of the word, but is merely a set of instructions to the king's *extender*, with regard to what he shall inquire into, and upon what heads and particulars he is to make his report. *Obs. Stat.* 103.

EXTENTIO, *Extensio.* L. Lat. [from *extendere*, q. v.] In old English law. An extending, surveying or laying out of lands. *Bract.* fol. 72, 75 b. *Fleta*, lib. 6, c. 25, § 6.

EXTENUATE. [from Lat. *extenuare*, from, *ex*, and *tenuis*, slender or small.] To lessen; to palliate; to mitigate.

EXTERUS. Lat. A foreigner or alien; one born abroad. The opposite of *civis. Bacon's Works*, iv. 345.

EXTINCT. [from Lat. *extinguere*, to destroy or put out.] Extinguished. A rent is said to be extinguished when it is destroyed and put out. *Co. Litt.* 147 b. See *Extinguishment.*

EXTINCTION. See *Extinguishment.*

Extincto subjecto, tollitur adjunctum. When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases. *Inst.* 3. 26. 6. 3 *Kent's Com.* 52, note.

EXTINGUISHMENT. A putting an end to a thing, as an estate or right, usually by consolidating or uniting it with another.*—The annihilation of a collateral thing or subject, in the subject itself out of which it is derived. *Preston on Merger*, 9. Extinguishment is sometimes confounded with *merger*, though there is a clear distinction between them. *Merger* is only a mode of extinguishment, and applies to estates only under particular circumstances; but *extinguishment* is a term of general application to rights as well as estates. 2 *Crabb's Real Prop.* 367, § 1487. Called *extinction.* 2 *Steph. Com.* 41. See *United States Digest*, Extinguishment.

EXTINGUISHMENT OF COMMON is effected in various ways. By unity of seisin or possession; as where the person entitled to common becomes seised in fee by purchase, or otherwise, of the land which is subject to the right. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 303, § 336. By severance from the land to which it belongs. *Id.* 305, § 340. By release; as when a person entitled to common, releases it to the owner of the soil over which it is claimed. *Co. Litt.* 280 a, 270 a. *Litt.* sect. 479, 480. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 306, § 341. By approvement or enclosure; and by dissolution of the estate. *Id.* 306, 307, §§ 342, 343. See 2 *Hilliard's Real Prop.* 75.

EXTINGUISHMENT OF COPYHOLD. In English law. A copyhold is said to be *extinguished*, when the freehold and copyhold interest unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold, or by the freehold interest coming to the copyhold. 1 *Crabb's Real Prop.* 670, § 864.

EXTINGUISHMENT OF DEBT. Where a judgment is given for a debt, the original debt is *extinguished*. So, if a feme sole who is a creditor marry her debtor, or if a man make his debtor his executor, the debt is *extinguished*. 8 *Co.* 136. *Plowd.* 184. 1 *Salk.* 304. *Whishaw. Wharton's Lex.*

EXTINGUISHMENT OF RENT. If a person have a yearly rent of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is *extinguished*. *Termes de la Ley. Cowell. Co. Litt.* 147. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release and by surrender. 1 *Crabb's Real Prop.* 210—213, § 209.

EXTINGUISHMENT OF WAYS is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is *extinguished*. 1 *Crabb's Real Prop.* 341, § 384.

EXTIRPARE. Lat. In old English law. To extirpate or root out; to destroy utterly, or from the foundation. Applied in old writs to the destruction or demolition of houses. *Unam aulam—quatuor cameras—unam coquinam—extirpaverunt*, &c.; they extirpated or entirely destroyed one hall, four chambers, one kitchen, &c. *Reg. Jud.* 13. *Id.* 58 b.

EXTIRPATION. In English law. A species of destruction or waste, analogous to estrepement. See *Estrepement, Extirpare.*

EXTOCARE. L. Lat. In old records. To grub wood-land and reduce it to arable or meadow; "to stock up," as it is rendered in *Cowell.* 2 *Mon. Angl.* 71.

EXTORTION. [from Lat. *extortio*, from *extorquere*, to wring or wrest from.] In criminal law. An unlawful or violent wringing of money or money-worth from any man. *Cowell.* A taking of more than is due, by color or pretence of right. *Id.*

The offence of an officer's taking, by color of his office, any money, or thing of value that is not due to him, or more than is due, or before it is due. *Co. Litt.* 368 b. 10 *Co.* 102. 4 *Bl. Com.* 141. 4 *Steph. Com.* 272. 2 *N. Y. Rev. Stat.* [650,] 542, § 5. *Lewis' U. S. Crim. Law*, 267.

EXT'PO'IT'. A contraction of *Extrapositus.* 1 *Inst. Cler.* 10.

EXTRA. Lat. [L. Fr. *hors, dehors.*] Without; out of; beyond. Applied to things and places; its opposite being *in* or *intra. Calv. Lex.*

Except; (as applied to persons.) *Id.*

A term by which the Decretals of Gregory, in the canon law, are usually cited. *Hallifax, Anal.* b. 1, ch. 1, note.

EXTRA FEODUM. L. Lat. [L. Fr. *hors de son fee.*] Out of his fee; out of the seigniory, or not holden of him that claims it. *Co Litt.* 1 b. *Reg. Orig.* 97 b.

EXTRA JUDICIUM. Lat. Out of court. *Sive in judicio, sive extra judicium;* whether in court, or out of court. *Inst.* 4. 11. 4.

Not by a judicial proceeding; not by due course of law. *Quæ non in judicio, sed* extra *prosequimur;* which we prosecute not by course of law, but without it. *Bract.* fol. 98 b.

Out of judgment; beyond the line of judicial duty; extra-judicial, (q. v.)

EXTRA JUS. Lat. Beyond the law; more than the law requires. *In jure, vel extra jus. Bract.* fol. 169 b.

EXTRA LEGEM. L. Lat. Out of the law; out of the protection of the law. Extra legem *positus est civiliter mortuus;* one who is put out of the law [outlawed] is civilly dead. *Co. Litt.* 130. Outlaws (*utlagati*) said to be *extra legem positi;* put out of the law. *Fleta*, lib. 1, c. 28, § 14.

EXTRA QUATUOR MARIA. L. Lat. Beyond the four seas; out of the kingdom of England. 1 *Bl. Com.* 457. See *Beyond sea, Four seas.*

EXTRA REGNUM. Lat. Out of the realm. 7 *Co.* 16 a. 2 *Kent's Com.* 42, note.

EXTRA TERRITORIUM. Lat. Beyond or without the territory. 6 *Binney's R.* 353. 2 *Kent's Com.* 407.

Extra territorium jus dicenti impune non paretur. One who exercises jurisdiction out of his territory is not obeyed with impunity. *Dig.* 2. 1. 20. *Branch's Princ.* 10 *Co.* 77. He who exercises judicial authority beyond his proper limits, cannot be obeyed with safety.

The peculiar meaning of the words *jus dicenti*, (which themselves present an analysis of the word *jurisdiction*,) is lost sight of in the ordinary translations of this maxim. See *Branch's Princ. Wharton's Lex.*

EXTRA VIAM. Lat. Out of the way. Bayley, J. 16 *East*, 351.

EXTRACT. In Scotch law. The certified copy, by a clerk of a court, of the proceedings in an action carried on before

the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. *Jacob. Whishaw.*

EXTRACTA. L. Lat. In old English law. Extracts; estreats. *Stat. Westm.* 2, c. 8. See *Estreat. Extracta scaccarii*, or *de scaccario;* estreats of the exchequer. *Fleta*, lib. 1, c. 20, § 101. *Id.* lib. 2, c. 13, § 13.

Profits arising from amercements. *Extracta curiæ;* the issues or profits of holding a court, arising from the customary dues, fees and amercements. *Cowell.*

EXTRADITION. [from Lat. *ex*, from or out of, and *traditio*, a delivery.] Delivery from one nation or state to another. Delivery, by one nation or state to another, of fugitives from justice, in pursuance of a law or treaty.* *Webster. Lewis' U. S. Crim. Law*, 241, *et seq. Wheaton's Intern. Law*, 176—180; part 2, chap. 2, § 13.

EXTRADOTAL. Not forming a part of a woman's dowry. A term applied to a species of a wife's separate property. *Code of Louis.* art. 2315.

EXTRAFAMILIATUS. Lat. The same with *forisfamiliatus*, (q. v.) *Spelman.*

EXTRAHERE. L. Lat. In old practice. To estreat. *Extraxit;* estreated. 3 *Leon.* 8.

EXTRAHURA. L. Lat. In old English law. An estray; a beast which having escaped from its keeper, strays over the country, its owner being unknown, (*pecus quod, elapsum à custode, campos pererrat, ignoto domino;*) a wandering animal, (*animal palans.*) *Spelman.* Called by Spelman, a law term, (*vox fori,*) and derived from the Fr. *extrayeur*, as though withdrawing (*extrahens*) itself from the flock, or from its companions, and wandering alone (*solivagum;*) or from *extra*, quasi *extrarius*, out of its place. See *Estray.*

EXTRA-JUDICIAL. [from Lat. *extra*, beyond, and *judicium*, judgment or due course of law. See *Extra judicium.*] Out of the ordinary course of law; out of the regular order of judicial procedure; beyond the limits of judicial authority or duty; out of, or beside the matter to be adjudged. Applied most commonly to the acts of a judge where he exceeds his authority, or goes beyond what is required of him; as where he expresses an opinion on a point not regularly submitted to him. See *Dictum.* An extra-judicial opinion, whether given in or out of court, is no more than the *prolatum* of him who gives it; it has no legal efficacy. So, an opinion given in court, if not necessary to the judgment, is extra-judicial. *Vaugh.* 332. *Hale's Hist. Com. Law*, 90, note.

EXTRANEUS. Lat. [from *extra*, without.] In old English law. A stranger or foreigner; one who is born *out of* the king's dominions, (*qui* extra *terram*, i. e. *potestatem regis, natus est.*) 7 *Co.* 16.

A stranger; a person not known. *Fleta*, lib. 1, c. 24, §§ 4, 5.

In the Roman law. A term applied to an heir who was not subject to the power of the testator; (*testatoris juri non subjectus.*) *Inst.* 2. 19. 3. The *hæres extraneus* was thus distinguished from the *suus*, or *domesticus hæres. Id.* 2. 19. 2. *Heinecc. El. Jur. Civ.* lib. 2, tit. 19, § 586.

EXTRAPAROCHIAL. [from *extra*, without, and *parochia*, a parish.] Out of a parish; not within the bounds or limits of any parish. 1 *Bl. Com.* 113, 284.

EXTRA TERRITORIALITY. In international law. A fiction by which a public minister, though actually in a foreign country, is supposed still to remain within the territory of his own sovereign. *Wheaton's Intern. Law*, 283, 284; part 3, ch. 1, § 14.

EXTRAVAGANTES. L. Lat. In the canon law. The title of the papal constitutions and decretal epistles of Pope John XXII. and his successors; being one of the divisions of the *Decretales*, or second part of the *Corpus Juris Canonici.* See *Decretales.* So called, because at first they were not digested or embodied with the other papal constitutions, but remained *out of* (*extra*) the body of the canon law, as though wandering or *straying* (*vagantes*) by themselves.* *Ducange.* 1 *Bl. Com.* 82. They are generally called, in English, *Extravagants*, and are of two kinds; the *Extravagantes Joannis* XXII. or those published by John himself, consisting of twenty decretals, and the *Extravagantes Communes*, or those published by his successors, being divided into five books. *Id. ibid.* 1 *Mackeld. Civ. Law*, 82, 83, note. *Hallifax, Anal.* b, 1, ch. 1, note. See *Butler's Hor. Jur.* 116.

EXTREMIS. See *In extremis.*

EXTUMÆ. L. Lat. In old records. Reliques. *Cowell.*

EXTUNC. Lat. From then; from that time; from thence; thereafter. *Calv. Lex. Fleta*, lib. 2, c. 47, § 2. 2 *Mod.* 24. *Extunc imperpetuum;* from thenceforth for-

ever. *Reg. Orig.* 289 b. *Extunc deinceps* (or *de cætero*) *imperpetuum. Towns. Pl.* 22.

EXUERE PATRIAM. Lat. To throw off or renounce one's country or native allegiance; to *expatriate* one's self. *Phillimore on Domicil*, 18. See *Expatriation.*

EXULARE. Lat. In old English law. To exile or banish. *Nullus liber homo*—exuletur, *nisi*, &c.; no freeman shall be exiled, unless, &c. *Magna Charta*, c. 29. 2 *Inst.* 47.

EY. [L. Lat. *eia;* L. Fr. *ewe*, water; Sax. *eage.*] In old English law. A watery place or water. *Co. Litt.* 5 b. Kelham puts this down as a French word.

A place surrounded by water; an island. *Spelman*, voc. *Eia.* A frequent termination of the names of places in England, (as *Ramsey*, *Sheppey*, &c.) denoting, according to Spelman, either an island or peninsula, or a situation near a river or other water. See *Eia.*

EYDE, *Eide*, *Aide.* L. Fr. Aid; help; relief; assistance. *Par* eyde *de nostre court. Britt.* c. 15.

Aid, in the feudal law. *Id.* c. 27.

A subsidy. *Stat. Confirm. Chart.* c. 5. 2 *Inst.* 528.

Help. See *Eyder.*

EYDER. L. Fr. To aid or help. *Se purra il* eyder *par excepcions;* he may help himself by exceptions. *Britt.* c. 104.

Si moy eyde *Dieu et ses* (*les*) *seyntz;* so help me God, and his (the) saints. *Id.* c. 68.

EYENS. L. Fr. But. *Kelham.*

EYES EID'. L. Fr. Have aid; have relief. A common form of giving judgment in the Year Books. T. 2 Hen. VI. 3.

EYE-WITNESS. [Lat. *oculatus testis.*] One who saw the act, fact or transaction, to which he testifies. Distinguished from an ear-witness, (*auritus.*) See Plus valet, &c.

EYGNE, *Eyne.* L. Fr. Eldest. *Fitz eygne. Britt.* c. 27. See *Aisne.*

EYNESSE, *Eynesce.* L. Fr. Eldest. *Fille eynesse. Britt.* c. 27.

EYNTZ. L. Fr. Therein. *Kelham.*

EYOTT, *Eyot*, *Eyet.* [dimin. of *ey*, an island; L. Lat. *insuletta.*] A small island; an islet. 2 *Bl. Com.* 261. 1 *Crabb's Real Prop.* 113. *Schultes' Aquat. Rights*, 94.

EYR. L. Fr. Air. *Britt.* c. 33.

EYRE, *Eire*, *Eier*, *Eyer.* L. Fr. and Eng. [Scotch *ayre*, *ayr*, *aire;* from Lat. *iter*, a journey.] In old English law. A journey; the journey or circuit of the king's justices. *Britt.* c. 2. See *Eire.*

The court of the justices itinerant, or justices in eyre. *Britt.* c. 2. *Co. Litt.* 293. *Gilb. C. Pleas*, Introd. 23. 1 *Reeves' Hist. Eng. Law*, 52. *Spelman*, voc. *Iter.*

EYRER. L. Fr. [Lat. *itinerare.*] To travel, or journey; to go about or itinerate. *Britt.* c. 2.

EYSEMENT. L. Fr. Easement. *Kelham.*

EYSNE. L. Fr. Elder; eldest. *Yearb.* T. 1 Edw. II. 14.

EYT. L. Fr. Have; hath. *Britt.* c. 55. Shall be; will be. *Kelham. Eyent;* have. *Britt.* c. 21.

EZ. L. Fr. In; within. *Kelham.*

EZI. L. Fr. His. *Kelham.*

F.

F. The letter anciently used in England, for branding persons who had been guilty of *falsity*, in breaking their oaths under the statute of laborers; *fighters* and makers of *frays* in churches and churchyards; and *felons*, on their being admitted to the benefit of clergy. *Stat.* 34. *Edw.* III. c. 10. 2 *Reeves' Hist. Eng. Law*, 392. 4 *Id.* 485. *Stat.* 5 & 6 *Edw.* VI. c. 4. *Cowell. Stat.* 4 *Hen.* VII. c. 13. *Tomlins.*

F. A letter used in the civil law, in various abbreviations. F. C. for *fidei commissum*, or *fiduciæ causa*, or *fraude creditoris.* F. D. for *fides data*, or *fide data.* F. F. for *filius familias*, or *fidem fecit.* F. J. for *fieri jussit.* F. N. C. for *fidei nostræ commisit. Calv. Lex. Prateius.*

FAB. fur. porta, domus, vir. gur. mo. murus, ovile,
Et pons, tradantur hæc vice-comitibus.

A Latin couplet artificially composed of words and parts of words, anciently used as an aid to the memory, to show what descriptions of nuisances or disseisins by nuisance were cognizable before the sheriffs in the county court. *Reg. Orig.* 199, *regula.* By writing the abbreviated words at length, the following sentence is produced: *Fabrica*, *furca*, *porta*, *domus*, *virgultum*, *gurges*, *molendinum*, *murus*, *ovile*, *et pons*, *tradantur hæc vice-comitibus;* or in English, Building, gallows, gate, house, wood, gulf, mill, wall, sheepfold and bridge, these should be delivered to the sheriff; i. e. writs for nuisances to the several objects enumerated, must be tried before the sheriff in the county where the nuisance was committed. *Reg. Orig. ub. sup.*

FABRIC LANDS. In English law. Lands given towards the maintenance, rebuilding or repairing of cathedral and other churches. *Cowell. Blount.* So called because given *ad* fabricam *ecclesiæ reparandum;* (to repair the *fabric* of the church.) *Id.*

FABRICA. L. Lat. In old English law. The making or coining of money. *Mem. in Scacc.* H. 12 Edw. I.

FABRICARE. L. Lat. In old pleadings and records. To forge. *Fabricavit et contrafecit;* (he) forged and counterfeited. 2 *Ld. Raym.* 1462. 1 *Salk.* 342. *Falsum factum fabricavit;* (he) forged a false deed. 5 *Co.* 62. See *Forge.*

In old English law. To make lawfully; to coin. *Mem. in Scacc.* H. 12 Edw. I.

FABRICATE. [from Lat. *fabricare*, q. v.] In the law of evidence. To forge; to devise falsely; to create by artifice, with a view to deceive; as to fabricate evidence, or facts, the materials of evidence. To produce or exhibit false and deceptive appearances, in order to their being observed and testified to, as genuine facts. To present false statements of transactions or occurrences, through the medium of evidence. See *infra.*

FABRICATED FACT. In the law of evidence. A fact existing only in statement, without any foundation in truth. The semblance or appearance of a fact, created by design and presented as a reality. *Burr. Circ. Evid.* 131, 219, 420.

An actual or genuine fact to which a false appearance has been designedly given. A physical object employed to give a false appearance to a transaction; a physical object placed in a false connection with another, or with a person on whom it is designed to cast suspicion; such as a bloody knife conveyed into his possession, or foot-prints made with his shoes near a scene of crime. See *Burr. Circ. Evid.* 131, 132, 142, 219—221, 421.

An act on the part of a criminal, simulating innocence, or conveying an impression of innocence. *Id.* 428—433.

FABRICATION. In the law of evidence. False making; production of false and deceptive appearances; creation by artifice, with a view to deceive; the employment of physical objects for the purpose of making false impressions upon observers, and with a view to such impressions being reported in evidence; the arrangement of physical objects or appearances in such a manner as to convey false impressions of the nature of a transaction, and lead to false inferences as to the persons concerned in it. See *Burr. Circ. Ev.* 131, 420, *et seq.* Sometimes called *forgery of real evidence.* 3 *Benth. Jud. Ev.* 49. *Best on Pres.* § 220, *et seq.*

Production of false impressions, by language and conduct. *Burr. Circ. Ev.* 428.

Presentation, through witnesses, of false impressions as facts, or of fabricated facts, as genuine ones. *Id.* 434.

FABULA. L. Lat. In old European law. A contract or covenant. Used in the laws of the Lombards and Visigoths, to denote a nuptial contract, and a will; (*tabulæ nuptiales seu testamentales.*) *Spelman. LL. Longob.* lib. 1, tit. 30, c. 3. *Id.* tit. 19, c. 9. *LL. Wisegoth.* lib. 3, tit. 1, l. 6. *Id.* lib. 5, tit. 2, l. 4., cited *ibid.*

FACERE. Lat. In the civil law. To do; to make. A word of very comprehensive signification. *Dig.* 50. 16. 218. See *Calv. Lex. Brissonius.*

FACERE. Lat. [Fr. *faire.*] To do, to make, to act; to cause (a thing to be done.) An important word formerly in the language of writs and contracts, and the general language of the law. See *Facio.*

Facere defaltam; to make default. *Bract.* fol. 238, 334 b, 360 b, 363.

Facere duellum; to make the duel; to engage in the combat, or make or *do battle,* as the phrase still is. *Bract.* fol. 141 b.

Facere finem; to make or pay a fine. *Id.* fol. 154.

Facere legem; to make one's law. *Id.* fol. 156 b, 334 b, 335 b, 410. See *To make law.*

Facere sacramentum; to make oath. *Id.* fol. 50 b, 185 b. See *Make.*

FACIAS. L. Lat. [from *facere*, q. v.] You cause, (*quod facias*, that you cause.) An emphatic word in various writs, as of *venire facias, fieri facias, scire facias,* (qq. v.) Hence selected to express their names.

FACIENDO. L. Lat. [from *facere*, (q. v.); L. Fr. *fesaunt.*] Doing, making or paying. One of the apt words of reserving a rent, used in ancient deeds. *Co. Litt.* 47 a. Applied usually to those services which consisted of acts done, (*factiones.*) *Faciendo inde talia servitia;* doing therefor such services. *Bract.* fol. 35 b. *Fleta,* lib. 3, c. 14, § 17. See *Doing.*

FACIES. Lat. The face, outward appearance or color of a thing; the inspection or view of a thing. *Prima facies;* the first face or appearance. *Prima facie;* on the first view or color, (at first blush, as the modern phrase is.) *Bract.* fol. 29, 280. See *Color*, *Ex facie*, *In facie ecclesiæ.*

FACIES? FACIAM. Lat. (Will you do? I will do.) In the civil law. One of the forms in which verbal obligations or stipulations were made. *Inst.* 3. 16. 1.

FACILE. [from Lat. *facilis*, easy.] In Scotch law. Easily persuaded; easily imposed upon. *Bell's Dict.*

FACILITY. In Scotch law. Pliancy of disposition. *Bell's Dict.* See *Facile.*

FACIO UT DES. Lat. (I do that you may give.) In the civil law. A form of words used to express that kind of contract where a man agrees to *do* a thing for a price or thing to be *given* him by another. 2 *Bl. Com.* 445. *Dig.* 2. 14. 7. *Id.* 19. 5. 5. *Bract.* fol. 18, 19, 19 b. *Fleta*, lib. 2, c. 60, § 23.

FACIO UT FACIAS. Lat. (I do that you may do.) In the civil law. Words used to express that kind of contract where a person agrees to *do* some act for another, if the other will *do* some other act for him. 2 *Bl. Com.* 444. *Dig.* 19. 5. 5. *Bract.* fol. 19 b. *Fleta*, lib. 2, c. 60, § 23. See *Facio ut des.*

FACION. L. Fr. Making; fashion. *Kelham.*

FACIT. Lat. [from *facere*, q. v.] In old English law. He does or acts; it makes, or contributes to establish. *Ad idem facit;* it makes to the same thing; it goes to establish the same point. A common expression in Bracton. *Bract.* fol. 27 b, 29. *Ad hoc facit.* *Fleta*, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

Qui facit per alium, facit per se, (q. v.) He who acts through another, acts through himself. 1 *Bl. Com.* 429, 474.

Qui facit id quod plus est, facit id quod minus est, sed non convertitur. He who does the greater does the less; but this is not true *è converso.* *Bract.* fol. 207 b.

FACT. [L. Lat. *factum*, q. v.] A thing done; a circumstance, event or occurrence. This word was anciently used almost exclusively as the synonyme of *act* or *deed;* e. g. "accessary before and after the *fact;*" but in modern law it has the broader sense of circumstance.

Fact is contrasted with *law* in the common phrases, "attorney at *law* and attorney in *fact;*" "issue in *law*, and issue in *fact;*" "fraud in *law*, and fraud in *fact.*" The Lat. *factum* had sometimes the more intense sense of a thing done in *violation* of law. See *Factum.*

FACT. [from Lat. *factum*, q. v.] In the law of evidence. A circumstance, event or occurrence as it actually takes or took place; a physical object or appearance, as it actually exists or existed. An actual and absolute reality, as distinguished from mere supposition or opinion; a truth, as distinguished from fiction or error. *Burr. Circ. Evid.* 218.

A circumstance, event, occurrence, physical object or appearance, as stated or described by a witness before a judicial tribunal.

Facts are the sources or materials of evidence; evidence is the medium by which facts are presented. Again, facts are the results of evidence, and, as such, are often distinguished from it. See *Special verdict.*

According to Mr. Bentham, a fact is either a state of things, that is, an existence; or a motion, that is, an event. 1 *Jud. Evid.* 48. As to the distinction between a fact and a circumstance, see *Circumstance.*

FACTA. Lat. (pl. of *factum*, q. v.) In old English law. Deeds. *Facta armorum;* deeds or feats of arms, that is, jousts or tournaments. *Cowell.*

Facts. *Facta et casus;* facts and cases. *Bract.* fol. 1 v.

FACTIO. L. Lat. [from *facere*, q. v.] In old English law. A doing. Anciently applied to services done by a tenant. *Bract.* fol. 35 b.

FACTIO TESTAMENTI. Lat. In the civil law. The right, power or capacity of making a will; called *factio activa.* *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes*, *488. *Dig.* 28. 1. 3.

The right or capacity of taking by will; called *factio passiva.* *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes, ub. sup.*

FACTO. L. Lat. (abl. of *factum*, q. v.) In fact; by an act; by the act or fact. *Ipso facto;* by the act itself; by the mere effect of a fact, without any thing superadded, or any proceeding upon it to give it effect. 3 *Kent's Com.* 55, 58.

FACTOR. In mercantile law. A mercantile or commercial agent, who buys and sells goods for others on commission.* 2 *Kent's Com.* 622. Otherwise called a commission merchant, and a consignee of goods, being generally the correspondent of a for-

eign house. *Id. ibid.* note. More commonly employed to *sell* than to buy, and hence also defined to be "an agent to whom goods are consigned or delivered for *sale* by, or for a merchant, or other person residing abroad, or at a distance from the place of sale." *Russell on Factors*, 1. *Story on Agency*, § 33.

A factor is distinguished from a broker by being entrusted with the possession, management and control of the goods, and by being authorized to buy and sell in his own name, as well as in that of his principal. *Russell on Factors*, 4. *Story on Agency*, § 33. 2 *Steph. Com.* 127. 2 *B. & Ald.* 137, 143. 2 *Kent's Com.* 622, note. See 11 *Howard's R.* 209.

FACTOR. In American law. A person in whose hands the effects of another are attached for debt. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed a *trustee* and *garnishee*. *Drake on Attachment*, § 451.

FACTORAGE. The allowance or commission paid to a factor by his principal. *Russell on Factors*, 1. *Tomlins*. More commonly termed *commissions*.

FACTORIZING PROCESS. In American law. A process by which the effects of a debtor are attached in the hands of a third person. A term peculiar to the practice in Vermont and Connecticut. Otherwise termed *trustee process* and *garnishment*. *Drake on Attachment*, § 451.

FACTORY. In Scotch law. A power or commission given to a factor; a power of attorney. *Bell's Dict.* vocc. *Factor*, *Power of attorney*.

FACTUM. Lat. [from *facere*, to do, to make; L. Fr. *fait*, q. v.] In civil and old English law. A thing done; an act or deed. Sometimes distinguished from *gestum*, (q. v.) *Dig.* 50. 16. 58. *Occultum factum;* a secret act. *Bract.* fol. 137 b. *Initium facti;* the beginning of the deed. *Id.* *Ex uno facto;* from one act. *Id.* fol. 235. *Ex post facto;* from an after act; in consequence of a thing done afterwards. *Id.* fol. 11 b, 12.

Fieri non debet, sed factum valet, (q. v.) It ought not to be done, but if done, it is valid. See *Fieri*.

Factum a judice, quod ad officium ejus non pertinet, ratum non est. An act done by a judge, which does not belong to his office, is not valid. *Dig.* 50. 17. 170. See *Broom's Max.* [69.]

Factum cuique suum, non adversario, nocere debet. A party's own act should prejudice himself, not his adversary. *Dig.* 50. 17. 155, pr.

Factum infectum fieri nequit. A thing done cannot be undone. 1 *Kames' Equity*, 96, 259.

Factum negantis nulla probatio sit [est.] There is no proof incumbent upon him who denies a fact. *Cod.* 4. 19. 23. One is not bound to prove a negative.

Factum non dicitur quod non perseverat. That is not said to be done, which does not hold out. 5 *Co.* 396. *Shep. Touch.* (by Preston,) 391. An act which may be avoided as soon as done, is no act in law. 5 *Co.* 3.

Factum unius alteri nocere non debet. The act or deed of one man ought not to prejudice another. *Co. Litt.* 152 b.

FACTUM. Lat. and L. Lat. A culpable act; a fault. *Sine* facto *hæredis;* without fault of the heir. *Inst.* 2. 20. 16.

An unlawful act; an act not founded in right or law; a wrongful act. See *Ex facto*, *De facto*.

A criminal act. *Factum*, in old English criminal law, was distinguished from *fortia*, as the principal act of a murder, in contradistinction to the acts of those who aided and abetted it. *Bract.* fol. 138, 139. See *Fortia*. *Fleta*, lib. 1, c. 27, § 18; c. 31, § 8.

FACTUM. L. Lat. In old English law. A deed; [a thing done in writing;] a conveyance or other written instrument, under seal, formerly otherwise termed *charta*, and by the civilians *literarum obligatio*. *Co. Litt.* 35 b, 171 b. 2 *Stra.* 815. *Spelman.* 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *Charta*, *Deed*. *Factum simplex;* a deed poll. *Spelman*. *Factum indentatum;* a deed indented. *Id.* Bracton uses *factum* with *charta*, though not apparently as a synonyme. *De chartis regiis et* factis *regum*. *Bract.* fol. 34. *Nec* factum *regis nec chartam*. *Id. ibid.* The *charta* was the expression and evidence of the *factum*, and hence the natural transition from the one term to the other, to signify the same thing. *Factum*, however, does not appear to have at first had the full meaning of *charta*, and hence the distinction made between them by Lord Coke. *Co. Litt.* 9 b. See *Deed*.

FACTUM. In testamentary law. The execution or due execution of a will. The *factum* of an instrument means not barely the signing of it, and the formal publica-

tion or delivery, but proof that the party well knew and understood the contents thereof, and did give, will, dispose and do, in all things, as in the said will is contained. 11 *Howard's R.* 354, citing 3 *Phillimore's R.* 179.

FACTUM. Lat. Fact, as distinguished from law. *Facti non juris. Dig.* 41. 2. 1. 3.

A fact. *Facta et casus. Bract.* fol. 1 b. *Factum probandum;* a fact to be proved, the principal fact in a case. *Factum probans;* a proving fact; a minor or evidentiary fact, from which another fact is inferred. *Wills, Circ. Evid.* 24. 1 *Greenl. Evid.* § 13. *Best, Evid.* 21, § 27. *Id.* 314, § 274. *Burr. Circ. Evid.* 119, 734, 735.

FACTUM. L. Lat. In old European law. A portion or allotment of land. *Spelman.*

FACULTY. [Lat. *facultas.*] Power or ability.

In Scotch law. A power founded on consent, as distinguished from a power founded on property. 2 *Kames' Equity,* 265.

In English ecclesiastical law. A privilege or special dispensation, granted to a man by favor and indulgence, to do that which, by law, he could not do. *Tomlins. Termes de la Ley. Cowell.*

Facultas probationum non est angustanda. The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 *Inst.* 279.

FADERFIUM, *Fadelfium.* L. Lat. [Sax. *fæderfeh;* from *fæder,* father, and *feh,* a gift.] In old European law. A gift or portion which a woman's father or brother gave her on her marriage. *Spelman. LL. Longob.* lib. 2, tit. 1, l. 4, cited *ibid.*

FÆSTING-MEN, *Fasting-men.* In Saxon law. Pledges, sureties or bondsmen, which by custom were *fast* bound to answer for one another's peaceable behaviour. *Cowell.* Ducange renders it *vassals. Id. ibid.*

FAICT. L. Fr. Did. *Kelham.*

FAIDA, *Feida.* L. Lat. [Germ. fhęde, feide; Sax. *fæhd,* enmity, from *fah,* a foe; O. Sc. *feid.*] In old European law. A combination of kindred, to revenge the death of any of their blood against the killer and all his race. *Cowell,* voc. *Feed.* A right or custom common to most of the nations of Europe during the middle ages, by which the relatives of a person injured or slain, took up his quarrel, (*susceperunt inimicitias,*) by placing themselves in a state of open and declared enmity against the wrong-doer and his family, and carrying on a species of private war for the purpose of obtaining the desired satisfaction or revenge. This custom, which is sometimes called *deadly feud,* (Sc. *deidlie feid,*) was of Germanic origin, and prevailed on the continent and in England down to the time of the Norman invasion. According to the Saxon laws, it might be waived by a pecuniary compensation. Hence the old English proverb cited by Spelman; *Byhe spere of side, othe bær,* (buy spear off side, or bear;) i. e. buy exemption from war or carry it on. *Spelman,* voc. *Faida.* 1 *Robertson's Charles* V. Appendix, Note xxi.

FAILLER. L. Fr. To fail; to neglect; to omit; to disappoint. *Kelham.*

FAILLITE. Fr. In French law. Bankruptcy. *Code de Com.* art. 442, 580. 4 *Man. & Gr.* 239, note. Failure; the situation of a debtor who finds himself unable to fulfil his engagements. *Civil Code of Louis.* art. 3522.

FAILURE OF RECORD. In practice. The failure to produce a record, after pleading it.* Where a defendant pleads any matter of record, and offers to prove it by the record, and the plaintiff denies that there is any such record, and the defendant has a day given him to bring in the record; if he fails to do so, or produces such a one as is no bar to the action, he is then said to *fail of his record,* and thereupon the plaintiff shall have judgment to recover, &c. *Termes de la Ley.*

FAIN. L. Fr. Hay. *Kelham.* Beach wood. *Id.*

FAINT (or FEIGNED) ACTION. In old English practice. An action was so called, where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. *Litt.* sect. 689. *Co. Litt.* 361. See *Feigned action.*

FAINT-PLEADER. [L. Lat. *falsa placitatio.*] In old practice. A fraudulent, false, or collusory manner of pleading, to the deceit of a third person. *Termes de la Ley. Stat.* 34 & 35 *Hen.* VIII. c. 24. *Cowell.*

FAIR. [Fr. *feire, feyre;* Lat. *feriæ nundinæ.*] A larger sort of market instituted in England for the greater convenience of domestic trade and commerce, and held at certain times of the year, either by grant

from the crown, or by prescription which supposes a grant. 2 *Inst.* 220. 1 *Bl. Com.* 274. *Tomlins.* According to Lord Coke, every fair is a market, but every market is not a fair. 2 *Inst.* 406. The privilege of having a fair is a franchise, which may be held by a town or an individual. 1 *Crabb's Real Prop.* 525, § 679, *et seq.* 2 *Steph. Com.* 14, 15.

FAIR PLEADER. See *Beaupleader.*

FAIRE, *Faiere, Fere, Fer.* Fr. and L. Fr. [Lat. *facere.*] To make or do. *Faire sa ley;* to make his law. *Britt.* c. 27. *Faire satisfaccion. Id.* c. 110. *Faire gree;* to make satisfaction. *Id.* c. 75. *Faire la foi;* to make faith; to do fealty. *Guyot, Inst. Feod.* ch. 2.

To do, or commit. *Sauns fraude faire;* without doing fraud. *Britt.* c. 16.

FAISANT. L. Fr. [from *faire,* q. v.] Doing. See *Feasant.*

FAIT, *Fet.* L. Fr. [from *faire,* (q. v.); L. Lat. *factum.*] A deed, (conveyance.) *Co. Litt.* 35 b, 121 b. *Fait endent;* a deed indented. *Litt.* sect. 217, 370. *Fait polle;* a deed poll. *Id.* sect. 218. Matters *en fait* (in deed) are distinguished by Lord Coke from matters of record. *Co. Litt.* 380 b.

An obligation for the payment of money. *Keilw.* 34 b, pl. 1.

A deed or act. *Chescun respoyne pur son fait;* every one shall answer for his act. *Britt.* c. 27. *Ou le* fait *fuit fait;* where the deed was done. *Yearb.* H. 3 Hen. VI. 14.

Fact. *Femme de fait;* a wife in fact, (or *de facto.*) *Britt.* c. 107.

Done. *Si le fait eyt este fait;* if the deed have been done. *Id.* c. 27. See *supra.*

FAITH. In Scotch law. A solemn pledge; an oath. "To make faith" is to swear with the right hand uplifted, that one will declare the truth. 1 *Forbes' Inst.* part. 4, b. 235. This phrase seems to be the literal translation of *affidare,* (q. v.)

FAITOURS, *Faitures.* L. Fr. Evil doers; idle persons; vagabonds or vagrants. *Stat.* 7 *Ric.* II. c. 5. *Termes de la Ley. Kelham. Blount.*

FAITZ. L. Fr. Deeds; feats. *Kelham.*

FAIX. L. Fr. False. *Kelham.*

Times. *Id.*

A burden, or load. *Id.*

FAIZ. L. Fr. Deeds; facts; business. *Kelham.*

FALAIZE. L. Fr. A bank or hill by the sea-side. *Kelham.*

FALCARE. Lat. [from *falx,* a scythe.] In old English law. To mow; to cut. *Falcare prata;* to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. *Kennett's Gloss. Herbam falcare. Reg. Orig.* 94. *Jus falcandi;* the right of cutting. *Bract.* fol. 231. *Fleta,* lib. 4, c. 19, § 6.

Falcata; grass fresh mown, and laid in swathes. *Kennett's Gloss.*

Falcatio; a mowing. *Bract.* fol. 35 b, 320.

Falcator; a mower; a servile tenant who performed the labor of mowing. *Kennett's Gloss. Falcatores;* mowers. *Fleta,* lib. 2, c. 73, § 4.

Falcatura; a day's mowing. *Kennett's Gloss.*

FALCIDIA LEX. In Roman law. The Falcidian Law. *Inst.* 2. 22. *Dig.* 35. 2. *Cod.* 6. 50. See *Falcidian Law.*

FALCIDIAN LAW. [Lat. *Lex Falcidia.*] In the civil law. A law enacted on motion of Publius Falcidius, tribune of the people, A. U. C. 714, by which a testator was forbidden to give more, in legacies, than three-fourths of all his effects, (*quâ cavetur ne plus legare liceat quam dodrantem totorum bonorum;*) or, in other words, requiring him to leave at least one-fourth of his estate to the heir. *Inst.* 2. 22, pr. *Cooper's Notes, in loc. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 22. *Calv. Lex.*

FALCIDIAN PORTION. In the civil law. That portion of a testator's estate which, by the Falcidian law, (q. v.) was required to be left to the heir, amounting to at least one-fourth.* *Hallifax, Anal.* b. 2, ch. 7, num. 18. 19. *Civil Code of Louis.* art. 1608. 1 *White's New Recop.* 106.

FALDA. L. Lat. [Sax. *fald,* an enclosure.] In old English law. A sheepfold, (*ovile.*) *Cowell. Spelman.*

A place in which any animals were shut up. *Id.*

The liberty of faldage, (q. v.) *Id. Libera falda;* free foldage. 1 *Leon.* 11.

FALDÆCURSUS. L. Lat. In old English law. A fold course; the course, (going or taking about) of a fold. *Spelman.* See *Faldagium.*

A sheep walk, or feed for sheep. 2 *Ventr.* 139.

FALDAGE. [L. Lat. *faldagium,* from *falda,* q. v.] In old English law. Foldage; the privilege of setting up and moving about in a field, a fold, (i. e. a moveable pen for sheep), for the purpose of manuring the ground. *Spelman,* voc. *Falda.* A privi-

lege which several lords anciently reserved to themselves in any fields within their manors, for the better manurance of the same, not only with their own but their tenant's sheep. *Id. Cowell.* This privilege on the part of the lords was called *falda libera*, (frank or free fold,) *cursus faldæ*, (course of fold, fold-course,) and in some old charters, *faldsoca*. The corresponding dûty of the tenant was called *secta faldæ*, (suit of fold.) *Id. ibid.*

FALDARE. L. Lat. In old English law. To fold. *Faldari;* to be folded. *Fleta*, lib. 2, c. 73, § 5.

FALDATA. L. Lat. [from *falda*, q. v.] In old English law. A flock or fold of sheep. *Cowell.*

FALDFEY. Sax. [from *fald*, a fold, and *feh*, a fee.] A fee or rent paid by a tenant to his lord, for leave to *fold* his sheep on his own ground. *Blount.* See *Falda.*

FALDSOCA. Sax. [from *fald*, fold, and *soc*, liberty]. The liberty or privilege of foldage. See *Faldage.*

FALDWURTHI, *Faldwrthi.* Sax. [from *fald*, a station, or fixed abode, and *wurthi*, worthy.] In Saxon law. A person of proper age to be fixed in some certain decennary or friburg. *Spelman.*

FALERÆ. L. Lat. In old English law. The tackle and furniture of a cart or wain. *Blount.*

FALESIA. L. Lat. In old English law. A hill, bank, or down by the seaside. *Co. Litt.* 5 b. *Domesday.*

FALESTE. L. Fr. Thrown into the sea. *Britt.* c. 110, fol. 257 b. See *Kelham.*

FALL. In Scotch law. To lose. To *fall* from a right, is to lose or forfeit it. 1 *Kames' Equity*, 228. See *Cadere.*

FALSA DEMONSTRATIO. Lat. In the civil law. False designation; erroneous description of a person or thing in a written instrument. *Inst.* 2. 20. 30. *Dig.* 35. 1. 17. 1 *Mackeld. Civ. Law*, 169, § 175. See *Demonstratio.*

Falsa demonstratio non nocet, cum de corpore (persona,) constat. False description does not injure or vitiate, provided the thing or person intended have once been sufficiently described. Lord Kenyon, C. J. 6 *Term R.* 676. Park, B. 11 *Mees. & W.* 189. Story, J. 2 *Story's R.* 291. 6 *Hill's* (N. Y.) *R.* 616. Mere false description does not make an instrument inoperative. *Broom's Max.* 269, [490.] 1 *Greenl. on Ev.* § 301. *Shep. Touch.* (by Preston,) 77, 99, 248. 4 *Kent's Com.* 267. Applied to the description of a vessel in a policy. *Emerig. Tr. des Ass.* ch. 6, sect. 3.

Falsa demonstratione legatum non perimi [perimitur.] A bequest is not rendered void by an erroneous description. *Inst.* 2. 20. 30.

FALSA GRAMMATICA. L. Lat. False or bad grammar. **Falsa grammatica non vitiat concessionem.** False or bad grammar does not vitiate a grant. *Shep. Touch.* 55. 9 *Co.* 48 a. Neither false Latin nor false English will make a deed void, when the intent of the parties doth plainly appear. *Shep. Touch.* 87. *Wingate's Max.* 19, max. 13.

Falsa orthographia non vitiat chartam [concessionem.] False spelling does not vitiate a deed. *Shep. Touch.* 55, 87. 9 *Co.* 48 a. *Wingate's Max.* 19.

FALSA MONETA. Lat. In the civil law. False or counterfeit money. *Cod.* 9. 24.

FALSARE. L. Lat. [from *falsus*, q. v.] In old English law. To counterfeit. *Quia falsavit sigillum;* because he counterfeited the seal. *Bract.* fol. 276 b.

Falsarius; a counterfeiter. *Towns. Pl.* 260.

FALSE ACTION. See *Faint action.*

FALSE CLAIM, in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. *Manwood*, c. 25. *Tomlins.*

FALSE FACT. In the law of evidence. The appearance or semblance of a fact; a fact existing only in statement, without any foundation in truth. *Burr. Circ. Evid.* 218, 219.

FALSE IMPRISONMENT. [L. Lat. *falsum inprisonamentum.*] An unlawful restraint of liberty. *Finch's Law*, b. 3, ch. 10.—A trespass committed against a person, by arresting and confining or imprisoning him without sufficient authority, as by doing so without some lawful warrant or process, or by executing a lawful warrant or process at an unlawful time, as on a Sunday.* 3 *Bl. Com.* 127. 3 *Steph. Com.* 480. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or even by forcibly detaining one in the public streets. 2 *Inst.* 589. No actual force is necessary to constitute a false imprisonment. If a man is restrained of his personal liberty by fear of a personal difficulty, that amounts to a false imprisonment. 7 *Humphrey's* (Tenn.) *R.* 43. See *United States Digest*, False Imprisonment.

The name of the action which lies for this species of injury. 3 *Bl. Com.* 138. *Tomlins.*

FALSE JUDGMENT. [L. Lat. *falsum judicium ; breve de falso judicio.*] In English law. A writ which lies to the courts at Westminster, to reverse the judgment of some inferior court not of record. 3 *Bl. Com.* 34, 406. *F. N. B.* 18. *Finch's Law*, b. 4, c. 47.

In old French law. An appeal of false judgment was where the party against whom a judgment was given, charged the judges or peers of the court with pronouncing a false judgment, and thereupon usually appealed or challenged them to the combat. *Esprit des Lois*, liv. 28, c. 27.

FALSE LATIN. In old practice. Ungrammatical Latin. Before the statute directing law proceedings to be in English, if a Latin word was significant, though *not true* or *good Latin*, yet an indictment, declaration or fine should not be impeached or quashed on account of it, as where the word *præfato* was used for *præfatæ*, and the like. But if the word was *not Latin*, nor allowed by the law as *vocabulum artis*, (a word or term of art,) but was insensible, there, if it were in a material point, as if *murdredum* was used for *murdrum*, in an indictment, or *burgariter* for *burglariter*, it made the whole vitious and insufficient. 5 *Co.* 121 b. See 4 *Mod.* 159. 5 *Id.* 281. 11 *Id.* 399.

FALSE PERSONATION. In criminal law. The offence of falsely personating another, or representing one's self to be another person, and acting in such assumed character, either with the view of obtaining some property or exercising some right belonging to such person, or with the view or effect of subjecting such person to some legal liability.* 4 *Steph. Com.* 181, 290. 2 *N. Y. Rev. St.* [676,] 563, §§ 48, 50. *Wharton's Am. Crim. Law*, § 2681, *et seq.*

FALSE PRETENCES. In criminal law. False statements or representations made with intent to defraud, for the purpose of obtaining money or property. See *Wharton's Am. Crim. Law*, § 2069, *et seq.*

FALSE RETURN. In practice. An untrue return made to process by the officer to whom it was delivered for execution; as that the party could *not* be *found*, when he might have been taken, or that he had *no goods*, (*nulla bona*,) when property of some kind could have been levied on. 1 *Tidd's Pr.* 309. 2 *Id.* 1022.

FALSE TOKEN. In criminal law. A false document or sign of the existence of a fact, used with intent to defraud, for the purpose of obtaining money or property. See 2 *N. Y. Rev. Stat.* [677,] 564, § 53. 13 *Wendell's R.* 87. 14 *Id.* 547. *Wharton's Am. Crim. Law*, § 2069, *et seq.*

FALSEDAD. Span. In Spanish law. Falsity; an alteration of the truth. *Las Partidas*, part. 3, tit. 26, l. 1.

Deception; fraud. *Id.* part. 3, tit. 32, l. 21.

FALSEHOOD. In Scotch law. A fraudulent imitation or suppression of truth, to the prejudice of another. *Bell's Dict.* "Something used and published falsely." Lord Justice Clerk, 2 *Brown's R.* 78. An old Scottish *nomen juris*. *Id.* 77. "Falsehood is undoubtedly a nominate crime; so much so, that Sir George Mackenzie and our older lawyers used no other term for the falsification of writs, and the name 'forgery' has been of modern introduction." *Id.* 78. "If there is any distinction to be made between forgery and falsehood, I would consider the latter to be more comprehensive than the former." *Id. ibid.*

"FALSELY," in the Act of Congress, providing a penalty against any one who shall *falsely* make, forge, or counterfeit any silver coin,—implies that there must be a fraudulent or criminal intent in the act. 5 *McLean's R.* 208, 211.

FALSIFICATION. In equity practice. The showing an item in the debit of an account to be either wholly false, or in some part erroneous. 1 *Story's Eq. Jur.* § 525.

FALSIFY. [L. Fr. *fauxer ;* L. Lat. *falsare, falsificare, falsum facere.*] To prove false; to avoid or defeat. *Perk.* 383. *Litt.* sect. 149. *Co. Litt.* 104 b. 1 *Co.* 62 b.

To reverse or avoid, as a verdict, or judgment. 4 *Bl. Com.* 390. 4 *Steph. Com.* 455.

In equity practice. To show, in accounting before a master in chancery, that a charge has been inserted which is wrong, that is, either wholly false, or in some part erroneous. *Pulling on Merc. Accounts*, 162. 1 *Story's Eq. Jur.* § 525.

In criminal law. To forge or counterfeit; to make false; to give a false appearance to a thing. See *Crimen falsi.*

FALSING. In Scotch law. False making; forgery. "Falsing of evidentis," (evidents.) 1 *Pitc. Crim. Trials*, part 1, p. 85.

Making or proving false. See *Falsing of dooms.*

FALSING OF DOOMS. In Scotch law. The proving the injustice, *falsity*, or error of the *doom*, or sentence of a court. *Bell's Dict. Tomlins. Jacob.* The reversal of a sentence or judgment. *Skene de Verb. Sign.* voc. *Soc.* An appeal. *Bell's Dict.*

FALSONARIUS. In old English law. A counterfeiter; a maker of false or spurious money. *Falsonarii;* counterfeiters. *Bract.* fol. 117.

FALSO RETORNO BREVIUM, *Breve de.* L. Lat. A writ which formerly lay against the sheriff who had execution of process, for false returning of writs. *Reg. Jud.* 43 b.

FALSUM. Lat. In the civil law. A fraudulent imitation, perversion or suppression of truth; such as an imitation of another's handwriting, or an instrument or writing belonging to him; a cutting out of a part of a writing; (*si quis alienum chirographum imitetur, aut libellum vel rationes intercidat, vel describat.*) *Dig.* 48. 10. 23. See *Crimen falsi.* Called, in Scotch law, *falsehood*, (q. v.)

FALSUS. Lat. In old English law. False; erroneous; fraudulent. Applied to persons and things.

Falsus in uno, falsus in omnibus. False in one thing, false in every thing. Story, J. 1 *Sumner's R.* 329, 356. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. *Id. ibid.*

This maxim is also frequently applied to the testimony of witnesses. It is a general rule that, where a witness deliberately and knowingly swears falsely in regard to one material fact, the jury are not bound to believe him in any of his statements, unless he is corroborated. But it is wrong to say that the jury are not at liberty to believe him. The maxim *falsus in uno, falsus in omnibus* does not operate to preclude the jury from believing the witness, if they choose to do so. 3 *Wisconsin R.* 645, 647. The maxim is to be applied by the jury, according to their own judgment, for the ascertainment of the truth; and is not a rule of law, in virtue of which the judge may withdraw the evidence from their consideration, or direct them to disregard it altogether. 2 *Jones'* (N. C.) *Law R.* 257. To bring a case within the operation of this rule, the oath must be corruptly false, in regard to a matter material to the issue. 1 *Jones' Law R.* 251.

FAMA. Lat. In the civil and old English law. Fame; character or reputation. See *Famosus.*

Fame; report. *Fama patriæ;* fame of the country; report or common opinion, upon which a man might anciently be indicted. *Bract.* fol. 143. It must have arisen, however, *apud bonos et graves*, (among the good and grave; that is, persons of good character and influence.) *Id.*

FAMA. Span. In Spanish law. Character. *Las Partidas*, part. 7, tit. 6, l. 1.

FAME. See *Fama.*

FAMILIA. Lat. In the Roman law. A family, consisting of the servants, (*famuli,*) or slaves, belonging to one common master. This was the ancient and proper sense of the term.* *Calv. Lex. Taylor's Civ. Law*, 443. See *Dig.* 21. 1. 25. 2. More than two were necessary to make a *familia. Dig.* 50. 16. 40. 3.

A family or household; including wife, children, servants and all others who lived in the same house, and in subjection to one head, (*qui sub unius potestate in eadem domo, natura vel jure vivunt.*) *Calv. Lex. Dig.* 50. 16. 195. 2. *Id.* 43. 16, 1. 16, 18. *Id.* 50. 16. 40. 2. Hence the term *pater familias*, (q. v.) It included the head of the family also. *Id.* 50. 16. 196, pr.

A family or connection of persons related by blood, and having a common descent. A *familia* was a subdivision of a *gens.* The latter embraced all of the same stock and *nomen*, though most remotely related; the former was more limited, and included especially the *agnati* or relations on the paternal side.* *Calv. Lex. Dig.* 50. 16. 195. 1, 4. See *Gens, Nomen.*

A family estate or inheritance. *Dig.* 50. 16. 195. 1. See *Familiæ erciscundæ.*

Family, or family right; one of the three kinds of *status* or conditions of persons. It was applied to a *homo sui juris*, i. e. a Roman citizen who was entitled to enjoy and acquire civil rights in his own name, and to hold other persons in his power. 1 *Mackeld. Civ. Law*, 130, § 119.

FAMILIA. Lat. In old English law. A family or household, including servants, that is, hired persons (*mercenarii* or *conduc-*

titii,) as well as bondmen, and all who were under the authority of one master, (*dominus.*) *Bract.* fol. 124 b, 171 b. Bracton uses the word in the original sense, as denoting servants or domestics. *Id. ibid.*

A portion of land sufficient to maintain one family; sometimes called a *hide* of land, sometimes a *manse*, sometimes *carucata* or plough-land. *Cowell. Spelman. Co. Litt.* 69 a. See *Hide.*

FAMILIA. Span. [from Lat. *familia*, q. v.] In Spanish law. A family; which might consist of domestics or servants. It seems that a single person owning negroes was the head of a family, within the meaning of the colonization laws of Coahuila and Texas. 9 *Texas R.* 156.

FAMILIÆ ERCISCUNDÆ, *Actio.* Lat. In the civil law. An action brought by co-heirs for the partition of their inheritance; (*quæ competit cohæredibus de dividenda hæreditate.*) *Inst.* 4. 6. 20. *Id.* 4. 17. 4. *Id.* 3. 28. 4. Answering to the modern writ of partition. *Cooper's Notes, in loc. Dig.* 10. 2. *Cod.* 3. 36. Otherwise termed *judicium familiæ herciscundæ.* 1 *Mackeld. Civ. Law*, 286, § 271. *Bract.* fol. 443 b. *Fleta*, lib. 2, c. 60, § 1.

FAMILIARES REGIS. L. Lat. Persons of the king's household. The ancient title of the "Six Clerks" of chancery in England. *Crabb's Hist. Eng. Law*, 184. 2 *Reeves' Hist.* 249, 251. *Familier de la chauncery. Kelham.*

FAMOSUS. Lat. [from *fama*, character.] In civil and old English law. Relating to, or affecting character or reputation; defamatory, slanderous. *Cooke's Law of Defamation*, 483, Appendix, No. II. *Famosus libellus;* a publication affecting character; a libel. See *Libellus famosus, Libel.*

Of bad character or repute; infamous. *Inst.* 1. 26. 6.

FANAL. Fr. In French marine law. A large lantern, fixed upon the highest part of a vessel's stern. *Ord. Mar.* Appendix.

FANATIO. L. Lat. In old English law. The fawning season, or fence month (*mensis fanationis,*) in forests. *Kennett's Gloss.*

FANG, *Fangen.* Sax. To take. See *Infangthefe.*

FARANDMAN. In Scotch law. A merchant stranger, (*peregrinus mercator.*) *Skene de Verb. Sign.* Spelman gives the word *faramannus*, from the laws of the Burgundians, (tit. 54, § 2,) and derives it from Sax. *faran*, or *færan*, to travel.

FARDEL. [L. Lat. *fardella, ferdella;* from Sax. *feorth*, fourth, and *del* or *dæl*, a part.] In old English law. The fourth, (or, according to some, the eighth) part of a yard-land. *Cowell. Blount.* Spelman makes it to be the fourth part, and considers all the words, *fardel, fardendel, fardingdel, fardingel, farthindel*, and *farundel*, as signifying the fourth part of any thing. *Spelman*, voc. *Fardella.*

FARDELLA. L. Lat. In old English law. A bundle, or pack; a fardel. *Fleta*, lib. 1, c. 22, § 10.

FARDINGDEAL, *Fardingdel, Fardingel, Fardindel, Farthindel, Farundel.* [L. Lat. *quadrantata terræ.*] In old English law. The fourth part of an acre. *Cowell.* But Spelman considers it to be the same with *fardel*, (q. v.)

FARINARIUM. L. Lat. In old European law. A mill. *L. Salic.* tit. 32, § 3. *Spelman.*

FARISTEL. Sax. [from *far*, a way, and *stal*, a stall or stopping.] In Saxon law. A stopping or obstruction of ways. *Domesday.* Hence *forestall*, (q. v.) *Spelman.*

FARLEY, *Farleu.* In English law. Money paid by tenants in lieu of a heriot. *Cowell. Blount.* Sometimes written *Farlief.* 4 *Ad. & El.* (N. S.) 408. See *Heriot.*

FARLIEF. See *Farley.*

FARM, *Fearme, Ferm, Firm.* [L. Lat. *firma;* L. Fr. *ferme;* from Sax. *fearme, feorme*, food or provisions.] In English law. The rent of land held under lease, anciently reserved and paid in *provisions*, (*in eduliis.*) *Spelman*, voc. *Firma. Cowell*, voc. *Ferme.* 2 *Bl. Com.* 318. *Gilbert on Rents*, 2. Called by Spelman, *reditus annonarius.* See *Fearme, Feorme, Firma, Reditus, Rent.*

Rent reserved on a lease of land, payable in money; (L. Lat. *reditus pecuniarius;* Fr. *fermage.*) *Spelman*, voc. *Firma.* 2 *Bl. Com.* 318. Dyer, C. J. and Brown, J. *Plowd.* 195. "If it shall happen that the said annual rent and *farm* of £37 3*s.* 4*d.* or any part thereof, be in arrear and unpaid." *Plowd.* 131. Called *blanche firme*, or *fearme*, white farm, or white rent, (*alba firma, firma blanca,*) to distinguish it from rent paid in provisions. *Spelman, ub. sup.* 2 *Bl. Com.* 42. See *Alba firma, Blanche ferme.*

A term in lands; that is, an estate granted for a definite period, as for life or years, (usually for years,) on payment of a rent; a lease of land; the estate or interest of a lessee; a leasehold interest in lands. "Possessed of the farm of a manor." *Dyer*, 110. "40 *l.* for the *farm* and occupation of the said lands." 3 *Leon.* 159, case 106. Anciently written *ferm*, (L. Lat. *firma.*) In this sense, the word (*firma*) is constantly employed by Bracton. "To let for a *ferm* or farm," (*ad firmam.*) *Bract.* fol. 12 b. "For (to) *farm*, or for life:" (*ad* firmam, *vel ad vitam.*) *Id.* fol. 41. "He let to (for a) *farm* for a term of years;" (*dimisit ad* firmam *ad terminum annorum.*) *Id.* fol. 59. "Saving to the lessee (fermer or farmer,) his *farm* and term;" (*salvo firmario* firma *et termino suo.*) *Id.* fol. 166 b. 1 *Reeves' Hist. Eng. Law*, 301, note. *Ferms* and *fermors* are used in the statute of Marlbridge, c. 23, s. 2, in the sense of *terms* and *lessees.* 2 *Inst.* 145. *Doct. & Stud.* 233, 234. The old action of *ejectione firmæ*, was for ejecting one from his *ferm* or *farm*, that is, his *term.* See *Ejectione firmæ.* Hence the expression "to let to *farm*," that is, *for a term.* See *To farm let*, *Firma.* This has continued to be the proper technical meaning of the word *farm* in English law, viz.: a term, a lease or leasehold estate; that which is held by a person standing in the relation of tenant to a landlord. *Bro. Abr.* Grants, 135. 2 *Chitty's Bl. Com.* 17, note. 6 *Term R.* 353. 1 *Crabb's Real Prop.* 69, § 87.

Land itself, let and held for a *term* on payment of rent, (*ipsum prædium elocatum.*) 2 *Bl. Com.* 318. *Spelman*, voc. *Firma. Gilb. Rents*, 2. "Sheep upon a *farm.*" 1 *Leon.* 41.—A capital or chief messuage in a vill or town, with great demesnes belonging to it, that has been let or demised to another for life, for years or at will. Dyer, C. J. *Plowd.* 195. *Termes de la Ley. Cowell.*—In more modern language, a large tract or portion of land taken by a lease under a yearly rent, payable by the tenant. *Tomlins.* In this sense, *farm* is a collective word, consisting of many things, as a messuage, lands, meadows, pastures, woods, and other things appertaining thereto. *Id. Plowd. ub. sup.* Hence the common or popular significations of the term, now prevalent in England and America,—a tract of land, with suitable buildings, &c., taken, or hired for a certain *term*, at a certain rent, for the purposes of cultivation;—a tract of land, occupied in tillage, or used for *cultivation*, whether held of another, or owned by the occupant;—a tract of land, devoted to other purposes than cultivation, as to the raising of stock, &c. By the name of *farme* or *ferm*, in this sense of a tract of land, houses, lands and tenements might formerly pass; though this is not now its technical meaning in English law. *Co. Litt.* 5 a. See 1 *Crabb's Real Prop.* 69, § 87, cited *supra.* In wills, the word is still construed according to its popular signification. 2 *Powell on Devises*, (by Jarman,) 191. 1 *Jarman on Wills*, 713, (609, Perkins' ed.) *et seq.*

In American law, *farm* denotes a tract of land devoted in part, at least, to cultivation, without reference to its extent, or to the tenure by which it is held. 2 *Binney's R.* 238. As to what passes by the word *farm*, see 5 *Pick. R.* 512. 18 *Id.* 553. 6 *Metcalf's R.* 529. 4 *Greenleaf's R.* 14. 2 *Hilliard's Real Prop.* 338, 343, 345.

In old English law. Any other thing than land, which is held in lease. Dyer, C. J. *Plowd.* 195. See *infra.*

*** The present meaning of the word *farm* is very properly termed by Sir Wm. Blackstone, the result of "a gradual departure from the original sense;" its successive gradations of meaning appearing from the definitions above given, viz.: provisions,—rent paid in provisions,—rent paid in money, or generally,—a term in lands, held on rent,—land itself, held for a term and rent,—land held or hired for a term, for cultivation,—any land used for cultivation, whether hired or owned. By this process, the idea of *cultivation* has become the prominent one in the modern acceptation of the term; so much so, indeed, as to give rise to the modern words now in common use; "*to farm*," to cultivate land; "*farming*," the business of cultivation. In England, however, the ideas of a lease, a term, and a rent, continue to be in a great degree inseparable, even from the popular meaning of a *farm*, as they are entirely so from the legal sense. The ordinary expression "to farm out," is an instance of the perpetuation of the same meaning.

That rents were originally and generally reserved and paid for in *provisions*, (*feorme*,) is very clearly shown by Spelman from the Black Book of the Exchequer, Domesday Book, and other ancient sources. The gradations of meaning from this primitive

one, (already noticed,) do not, however, seem to have followed in the order of time. *Ferm* (*firma*) was used in the sense of *land leased*, by a chronicler of the time of William Rufus, A. D. 1089. *Spelman*, voc *Firma*. The same word (*firma*) occurs in the sense of *a lease* of land, in the early historian Ingulphus. *Id. ibid.* And even the Saxon *feorme* was used in Saxon times to denote a manor. *LL. Aluredi*, c. 2, cited *ibid.*

Farm, or *ferm*, has been derived by some from the Lat. *firmus*, firm, or fixed; as denoting a fixed rent, or term. *Lib. Nig. Scacc.* cited in *Spelman*. *Cowell*, voc. *Ferme*. *Bacon's Works*, iv. 217. Mr. Reeves inclines to derive it from the Ital. *fermo*, a bargain or contract. 1 *Reeves' Hist. Eng. Law*, 301, note. It is clearly, however, the Saxon word *fearme* or *feorme*, (provisions,) with a slight change in the letters. *Spelman*, voc. *Firma*. See *Feorme*.

FARM. In old English law. A lease of other things than land, as of imposts. There were several of these, such as "the sugar farm," "the silk farm," and farms of wines and currants, called "petty farms." See 2 *How. State Trials*, 1197—1206.

The *sugar farm* was a lease granted of the impost upon sugar, for a term of years, at a certain rent. *Id.* 1206. "Whereas G. H. held the *farm* of sugars upon a rent of 10,000 marks per annum, the Lord Treasurer procured him to surrender that lease." *Id.* 1196. The rent was called the *sugar farm-rent*. *Id.* 1206. As to the silk farm and silk farm-rent, see *Id.* 1204. The lessees were termed *farmers*. *Id.* 1197.

FARMER, (anciently FARMOR and FERMOR.) [L. Lat. *firmarius;* L. Fr. *fermer*, qq. v.] In English law. One who held or hired lands for a term, (*ad firmam*,) on payment of a rent; (*prædii conductor.*) 3 *Bl. Com.* 318. *Spelman*, voc. *Firma*. A renter of lands, (*terræ tenens.*) *T. Jon.* 156. "A man's *farmer* committed waste." *Bacon's Read. Us.* Works, iv. 206. "Termer and farmer." 1 *Leon.* 49. "Tenant and farmer." 1 *H. Bl.* 5.—A lessee for life, years, or at will. *Termes de la Ley. Dyer*, 59. 5 *Co.* 60, *Lord Mountjoy's case.* Hence, by derivation, the modern meanings,—a lessee or hirer of land for cultivation; a cultivator of hired land; a cultivator of land generally. See *Farm.*

A lessee of other things than land. A lessee may be said to be a *farmer* of whatever thing he has in lease. Dyer, C. J. *Plowd.* 195. *Stat. Marlbr.* c. 23, [24,] cited *ibid.* A farmer of the king, that is, of the revenue. *Perkins*, ch. 1, sect. 5, B. See 1 *Leon.* 12. 3 *Id.* 237. A lessee of revenue. "The *farmers* of the petty farms of wines and currants having sustained great loss in their *farm.*" 2 *State Trials*, 1197. See *Ferm*, *Fermor.*

To FARM LET. [L. Lat. *ad firmam locare*, to let to farm.] In conveyancing. Words of operation in leases, introduced at an early period in England. *Dimisi, concessi, et* ad firmam *tradidi;* have demised, granted, and to farm let. *Co. Litt.* 45 b. 2 *Bl. Com.* 317. They are still generally retained, although not indispensable to the effect of a demise. 1 *Steph. Com.* 476, 477.

*** The English expression, *to farm let*, is clearly taken from the Latin, the order, even, of the words being literally followed; so closely, indeed, as sometimes to convey a wrong idea of the meaning. Thus, "to farm" is treated as a verb, and defined "to yield a return or rent." *Holthouse.* It is, however, obviously merely a very literal translation of the Latin words *ad firmam*, which might be more accurately as well as intelligibly rendered, "for a farm," that is, for a term. See *Farm*, *Firma*, *Ad firmam.* The expression "to put to farm," (*ad firmam ponere*,) "to give to farm," (*ad firmam dare*,) occur in records of the reigns of William Rufus, and Henry I. *Spelman*, voc. *Firma.*

To FARM OUT. To let for a term, at a certain rent. Usually applied to the farming of revenues.

FARUNDEL. See *Fardel.*

FARVAND. Norw. [from *fare*, to travel, and *vand*, by water.] Passage by water. 18 *C. B.* (9 *J. Scott*,) 880.

FAS. Lat. Right, justice; the divine law. 3 *Bl. Com.* 2. *Calv. Lex.*

FASTERMANS, *Fastermannes.* In Saxon law. Sureties or securities; bondsmen. *LL. Edw. Conf.* c. 39, cited in *Spelman.* See *Fœstingmen.*

FASTI, (pl. of *Fastus*, lawful.) Lat. In the Roman law. Lawful. *Dies fasti;* lawful days; days on which justice could lawfully be administered by the prætor. See *Dies fasti.*

Fatetur facinus qui judicium fugit. He confesses his guilt, who flies from judgment, (or shuns a judicial trial.) 5 *Co.*

109 b, Foxley's case. 11 *Co.* 60 b, Dr. Foster's case. This maxim of the old law of criminal evidence has been, in later times, much limited and qualified. Flight is not now regarded as conclusive evidence of guilt, but only as a circumstance which it is always of importance to take into consideration, and which, combined with others, may afford strong evidence of guilt; but which, like any other piece of presumptive evidence, it is equally absurd and dangerous to invest with infallibility. *Best on Pres.* § 248. *Burr. Circ. Evid.* 472, 473.

FATUITAS. Lat. [from *fatuus*, q. v.] In old English law. Fatuity; idiocy. *Reg. Orig.* 266.

Folly. *Bract.* fol. 99 b.

FATUITY. [Lat. *fatuitas.*] Idiocy. *Stock on Non Compotes*, Introd. 4—6.

FATUM. Lat. In the civil law. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention. See *Damnum fatale.*

FATUOUS PERSONS. Idiots. *Bell's Dict. Jacob.*

FATUUS. Lat. In old English law. An idiot or fool. *Bract.* fol. 420 b. *Fatuus et idiota. Reg. Orig.* 266.

Foolish; absurd, indiscreet or ill-considered. *Fatuum judicium;* a foolish judgment or verdict. *Bract.* fol. 289. Applied to the verdict of a jury, which, though false, was not criminally so, or did not amount to perjury. *Id. ibid.*

FAUCES TERRÆ. Lat. Narrow headlands and promontories, enclosing a portion or arm of the sea within them, [as in a *gorge*, *fauces.*] 1 *Kent's Com.* 367, and note. *Hale, De Jure Maris*, 10. Story, J. 1 *Story's R.* 251, 259.

FAULT. [Lat. *culpa.*] In the civil law. Negligence; neglect; omission of care. See *Culpa.*

FAUSENERIE, *Fausinerie.* L. Fr. Forgery. *Britt.* c. 4.

FAUSEOUR. L. Fr. A forger, or counterfeiter. *De fauseours de seals, et de monoye. Britt.* c. 4.

FAUSER, *Fauxer, Faucher.* L. Fr. To falsify; to counterfeit or forge. *Kelham.*

FAUSINE, *Fausyn.* L. Fr. Forgery or counterfeiting. *Britt.* c. 4, 22.

FAUTOR. Lat. [from *favere*, to favor; L. Fr. *fautour.*] In old English law. A favorer, or supporter of others; an abettor. *Cowell. Jacob.* One who encouraged resistance to the execution of process. *Stat. Westm.* 2, c. 39.

FAUX, *Falx, Fause, Faix.* L. Fr. In old English law. False; counterfeit. *Faux action;* a false action. *Litt.* sect. 688. *Faux money;* counterfeit money. *Stat. Westm.* 1, c. 15. *Faux peys;* false weights. *Britt.* c. 20. *Faux serement;* a false oath. *Stat. Westm.* 1, c. 38. *Yearb.* M. 8 Edw. III. 43.

FAUX. Fr. In the civil law. The fraudulent alteration of the truth. The same with the Lat. *falsum* or *crimen falsi*, (qq. v.)

FAUXER, *Fauser, Faucher.* L. Fr. To falsify; to forge or counterfeit. *Fauxer le seal le roy. Stat. Westm.* 1, c. 15.

FAVOR. [Lat. *favor*, from *favere*, to favor.] Partiality; bias; affection. See *Challenge.*

FAVORABILIS. Lat. Favorable; entitled to favor; favored. **Favorabilia in lege sunt fiscus, dos, vita, libertas.** Things favored in law are the treasury, dower, life, and liberty. *Jenk. Cent.* 94. **Favorabiliores rei potius quam actores habentur.** Defendants are regarded as more entitled to favor than plaintiffs. *Dig.* 50. 17. 125. *Broom's Max.* [562.] **Libertas omnibus rebus favorabilior est.** Liberty is more entitled to favor [more favored] than any thing. *Id.* 50. 17. 122.

"FAVOUR OF LAW. What mean I by that? The law is equal and favoureth not. It is true, not persons; but things or matters it doth favour." *Bacon's Arg.* Case of the Postnati of Scotland; *Works*, iv. 345. See maxims under *Law.*

FAZ. L. Fr. Make. *Kelham.*

FE. L. Fr. Fee. *Kelham.* See *Fee.*

FEAL. L. Fr. Faithful. *Britt.* fol. 1.

FEALTY. [L. Fr. *feaulté;* Fr. *foi;* L. Lat. *fidelitas.*] In feudal and English law. Fidelity; the feudal obligation by which the tenant or vassal was bound to his lord, to be *faithful* and true to him, and to perform the services incident to his tenure.* 1 *Bl. Com.* 367. 2 *Id.* 45.—The bond of fidelity, obedience and service, by which, generally, a subject is bound to his sovereign, particularly a vassal to his lord; (*fidei, obsequii, et servitii ligamen, quo generaliter subditus regi, particulariter, vassallus domino astringitur.*) *Spelman*, vocc. *Fideles, Fidelitas.* General fealty is otherwise, and more commonly, called allegiance. 1 *Bl. Com.* 367. See *Fidelitas.*

The oath itself, (*ipsum fidelitatis jusjurandum,*) by which the feudal obligation

was assumed, and fidelity to the lord sworn by the tenant. *Spelman. Bract.* fol. 80. *Britt.* c. 68. *Feud. Lib.* 2, tit. 4. *Litt.* sect. 130. *Fleta*, lib. 2, c. 6. The distinction between these two senses of the word is not generally observed; the *oath* being considered as the *obligation* itself. 2 *Bl. Com.* 86. 3 *Steph. Com.* 508. 1 *Crabb's Real Prop.* 610, § 770. See the form of the oath, *Feud. Lib.* 2, titt. 5, 6, 7. *Fleta*, lib. 3, c. 16, § 21.

Fealty was always considered as the essential feudal bond between lord and vassal, without which no feud could exist. *Fidelitas est de substantia feudi. Duarenus de Feud.* cited in *Cowell. Feudi substantia in sola* fidelitate *quæ est ejus forma essentialis, subsistit. Dumoulin*, tit. des Fiefs, n. 115. *Guyot, Inst. Feod.* ch. 2. *Wright on Tenures*, 35, 55, 138. 3 *Kent's Com.* 510. Hence it was always, in England, an indispensable incident to every kind of tenure, except frankalmoign. In modern times, however, it has fallen into disuse, and it is no longer the practice to exact its performance. *Hargr. Co. Litt.* Note 20, lib. 2. 3 *Kent's Com.* 511, 512. Even in theory, it is now confined to copyhold tenures, and is usually respited by a small payment by the tenant. 1 *Crabb's Real Prop.* 610, 611, § 770.

FEAR. [Lat. *metus, timor.*] Apprehension of harm. See *Metus.*

Apprehension of harm or punishment, as exhibited by outward and visible marks of emotion. An evidence of guilt in certain cases. See *Burr. Circ. Evid.* 476.

FEARE. L. Fr. To make. *Kelham.* See *Faire.*

FEARME. Sax. Food, provisions; a feast or entertainment; (Lat. *cibus, alimentum, cœna.*) *Fearme sillan;* to give food. *LL. Canut.* par. 2, c. 68, cited *Spelman*, voc. *Firma.* See *Farm, Feorme.*

FEASANCE, *Faisance, Feasaunce, Fesance, Feasans.* L. Fr. [from *faire*, to do.] A doing; the doing of an act. See *Malfeasance, Misfeasance, Nonfeasance.*

A making; the making of an indenture, release or obligation. *Litt.* sect. 371. *Dyer*, 56 b, (Fr. ed.) The making of a statute. *Keilw.* 1 b.

FEASANT, *Faisant, Fesaunt.* L. Fr. [from *faire*, to do.] Doing.

FEASOR. L. Fr. [from *faire*, to do, to make.] Doer; maker. *Feasors del estatute;* makers of the statute. *Dyer*, 3 b. (Fr. ed.)

FEAT. L. Fr. Done; a deed. *Kelham.* See *Fait.*

FEAW. L. Fr. Fire. *Kelham.*

FECIALES. Lat. An order or body (*collegium*) of priests or heralds among the Romans, whose office was to declare war and make peace. *Calv. Lex. Grotius de Jur. Bell.* lib. 2, c. 23, § 4. 1 *Kent's Com.* 6. *Brande.*

FECIAL LAW. The law relating to declarations of war and treaties of peace among the Romans. So called from the *feciales*, (q. v.) who were charged with its execution.* 1 *Kent's Com.* 6. See *Jus feciale.*

FEDERAL. [from Lat. *fœdus*, a league or treaty.] Founded upon or formed by a league, treaty, or compact between independent states. The government of the United States is a *federal* government, as being formed by the union of several independent states, each surrendering a portion of its power to the central authority. A *federal* is strictly distinguishable from a *national* government, (though in the United States the terms are often used indifferently,) the latter being properly an aggregation of individual citizens. The constitution of the United States is pronounced by Mr. Madison to be neither a national, nor a federal constitution, but a composition of both. *Federalist*, No. 39.

FEDERAL. In American law. Belonging to the general government, or union of the states. Founded on, or organized under the constitution or laws of the United States.

FE'E. An abbreviation of *Femme*, or *Feme*, (q. v.) *Britt.* c. 93.

FEE. L. Fr. and Eng. [L. Lat. *feodum, feudum;* Fr. *fief;* Scotch, *feu;* from Sax. *feh, feoh*, a stipend or reward.] In feudal law. A stipendiary estate, held of a superior by service.* 1 *Steph. Com.* 161. A right to the use of another's land, as a stipend for services to be performed.* *Id.* 163. *Spelman*, voc. *Feodum.*

Such estate or right, held as an inheritance.* *Id. ibid.*

The land itself, held of a superior by service.* *Id. ibid. Wright on Tenures*, 19, 149. 2 *Wooddes. Lect.* 6. See *Feodum, Feudum.*

In early English law. That which one holds of another by service, (*quod quis tenet ab alio.*) "As if one should say, such a one holds of me so many *fees*, by knight-service;" (*ut si quis dicat, talis tenet de me*

tot feoda *per servitium militare.*) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5, § 27. 2 *Bl. Com.* 105. 1 *Steph. Com.* 219.

That which one holds by any title to him and his heirs; (*id quod quis tenet ex quacunque causa sibi, et hæredibus suis.*) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5, § 27. *Britt.* c. 79.

A certain quantity of land, held on condition of service, or held as an inheritance. "He holds so many *fees.*" *Bract. ub. sup.* "To enter one's *fee;*" (*feodum intrare.*) *Id.* fol. 46, 263 b. *Artic. Cleri*, c. 9. The same as to enter into one's tenement. *Bract.* fol. 46 b. "To distrain one's *fee;*" (*distringere feodum.*) *Id.* fol. 263 b. *Britt.* c. 27. See *Knight's fee, Lay fee.*

A seigniory, manor or lordship, as a district of territory or jurisdiction. *Mag. Chart.* 9 *Hen.* III. c. 2. "Out of his *fee* or seigniory," (*extra feodum*, Fr. *hors de son fee.*) *Co. Litt.* 1 b. *Stat. Marlbr.* c. 2, 15. "In the same vill, and of the same *fee*," (*in eadem villa, et de eodem feodo.*) *Bract.* fol. 36. *Britt.* c. 21, 55.

An inheritance. "To hold in *fee*," (*in feodo.*) "In *fee*, or for life," (*in feodo, vel ad vitam.*) *Bract.* fol. 13 b, 29 b, 30, 31, 32, *et passim. Britt.* c. 79.

In modern law. An estate of inheritance. 2 *Bl. Com.* 106. *Litt.* sect. 1. *Co. Litt.* 1 b. See *Fee simple.* This is called by Blackstone the secondary meaning of the term, the primary and original one being, an estate held of a superior. 2 *Bl. Com.* 105, 106. It appears, however, to have been the more important meaning of the two, as early as the time of Bracton, who mentions it first in the order of his definitions. *Bract.* fol. 263 b. Both meanings are still, in England, essential to the idea of a fee, all lands being supposed to be held either mediately or immediately from the sovereign. 1 *Steph. Com.* 173. See *Tenure.* Fee, without other words, means fee simple. *Litt.* sect. 293.

In American law, a fee means an estate of inheritance belonging to the owner and transmissible to his heirs. 3 *Kent's Com.* 514. 4 *Id.* 3, 4.

FEE. [L. Lat. *feodum.*] A reward or compensation given to one for the execution of his office, or for professional services; as to a clerk, sheriff, attorney, counsellor, or other officer of a court. *Cowell.* This is the primitive meaning of the word, (Sax. *feh*, or *feoh*,) from which Spelman derives the term *feodum* or *feudum* itself. *Spelman*, voc. *Feodum.*

*** The word *fee* occurs in precisely its present form, in the law French of Britton, and is used without change by the best writers in that language, to the time of Littleton. *Feodum* (q. v.) is the Latin form, employed by Bracton, and other early English writers. The Lat. *feudum* and Fr. *fief* (qq. v.) are used in the feudal law of the continent. *Feu*, (q. v.) has always been peculiar to the law of Scotland. As to the ultimate derivation of the word, (of which these are only different forms,) various opinions have been entertained. Cowell and the author of the Termes de la Ley, who are followed by Lord Coke, derive *fee* from the Fr. *fief. Co. Litt.* 1 b. Mr. Crabb considers it a corruption of *feud. Crabb's Hist. Eng. Law*, 382. Others derive it, through the Lat. *feudum*, from *fides*, (Lomb. and Ital. *fede*,) faith or fidelity. *Feud. Lib.* 2, tit. 3, § 3. *Connanus*, cited in *Calv. Lex. Webster.* Others, from the Germ. fæð, war. *Calv. Lex.* Others, again, from the Græco-Latin *emphyteusis* of the Roman law. *Palgrave's Rise*, &c. p. ccvi. 1 *Spence's Chancery*, 32, note. The most satisfactory derivation, however, both as to form and sense, is that adopted by Spelman, from the Sax. *feh*, or *feoh*, a stipend or reward. Taking *feoh* as the root, a slight change in the letters, and a much slighter one in the sound produce *feu*, the Scotch word. These two forms Latinized become *feodum* and *feudum* respectively; the letter *d* being introduced, as Spelman observes, for euphony. The French form *fief* is the same word *feu* in different letters, the change from final *u* to *f*, being a common and very natural one; as in the old word *farleu*, (q. v.) changed into *farlief.* In this way, all the old forms are very simply accounted for. In point of sense, on the other hand, the meaning of *feh* or *feoh*, (wages or reward,) accords entirely with the essential idea of the feudal grant of land. The objection to *emphyteusis*, as the origin of *fief* or *fee*, lies not more in the form than in the meaning; *emphyteusis* signifying not only a lease of land for *agricultural* purposes, but a lease for a very long term, if not in *perpetuity*, which is far from agreeing with the nature of the first feudal grants. See *Feud, Feudum.* Besides, if *emphyteusis* supplied the proper idea, it is difficult to see how these grants came to be so long called, (as they first were) *beneficia.* The same objection appears to be applicable to the word *fides*, as

the origin of *fee*, which is the opinion adopted by Webster. If *fides* (*faith*) constituted so essential an idea in the nature of the feudal grant, it is probable that such grant would have been at first called in Latin *feudum*, instead of *beneficium*, (q. v.) But the word *feudum* does not, according to the best authority, occur in records until the eleventh century, long after the establishment of the system. See *Feudum*.

If Spelman's opinion be correct, that the old Saxon was the more ancient dialect of the German, it may not be too much to assume that *feoh* was the primitive word used among the ancient Germans, to denote a stipend or reward, and would naturally be applied to any kind of property bestowed as a consideration for services. That grants of land in this shape were not unknown to the nations of Northern Europe at a very early period, appears strikingly (as Sir William Blackstone has observed) from what is recorded by the historian Florus of the Cimbri and Teutones on their irruption into Italy, about a century before the Christian era. It is said that they requested to have a grant of land made to them *as a stipend*, for which they would perform military and other services, (*ut martius populus aliquid sibi* terræ daret quasi stipendium, *cæterum, ut vellet, manibus atque* armis *suis uteretur.*) *L. Florus*, lib. 3, c. 3. It is not therefore unreasonable to suppose that when the feudal system came to be introduced, the grants of land under it were actually called, in the vernacular of those nations who were of German origin, *feohs* or *feus*. The adoption of the Latin word *beneficia* as the earliest appellation, on record, of the feudal grants, may be accounted for, on the ground of its more fully expressing what was then the leading idea of those grants, viz.: a thing bestowed by the mere *favor* of the giver or lord, and resumable by him at pleasure. *Feud. Lib.* 1, tit. 1, § 1. *Lib.* 2, tit. 23, § 1. It was also a pure and genuine Latin word, which may have recommended it at a time when the practice of framing barbarous Latin from Teutonic and other stocks had not become fully established. When, however, the feudal grants became hereditary, it was found necessary to adopt a new name, the estate of the tenant being of a more permanent and stable character than was properly expressed by the word *beneficium*. At this very point in history the word *feudum* first occurs, a clearly barbarous or low Latin term; readily framed, we may suppose, by adding to the vernacular *feoh* or *feu*, the usual Latin termination. What strengthens this supposition is the fact that *feoh* now conveyed with great accuracy the leading idea of a feudal estate, viz.: an interest in land held as a stipend, wages or reward for military service, being in the nature of a consideration, or *quid pro quo*, and therefore considered more a matter of *right*, than *favor*. The first form of *feoh* or *feu* itself, as a term of law, seems to have been the French *fief*. See *Fief*. From this it is not improbable the word *fee* was formed by the Normans and introduced into England; the Scotch adopting, with less alteration of sound, the form *feu*. It may be added that the *eo* in the English *feodal, feoffment, enfeoff*, and the L. Lat. *feodum, feoffamentum* and *feoffare*, points very distinctly to *feoh* as its origin, and indeed can be accounted for in no other way.

FEE-FARM. [L. Fr. *fee ferme;* L. Lat. *feodi firma;* Sc. *feu-ferme;* literally, the farm of a fee.] In English law. A tenure of lands in fee, at a certain farm or rent. *Mag. Cart.* 9 *Hen.* III. c. 27. *Id. Johan.* c. 37.—Land held of another in fee, in consideration of an annual rent, and without homage, [fealty,] or any other services than were actually specified in the deed of feoffment by which the estate was created. *Cowell. Britt.* c. 96. 2 *Inst.* 44. But, according to Spelman and others, fealty was due in any case. *Spelman*, voc. *Feodi firma. Termes de la Ley.*—An estate partaking of the character both of a lease (or *farm,*) and a fee; or, in other words, an estate in fee, subject to a perpetual (*farm* or) rent. *Hargr. Co. Litt.* Note 235, lib. 2. 2 *Bl. Com.* 43. 2 *Steph. Com.* 27. See *Feodi firma.* In the old books, franchises are said to be granted in or to fee farm. *Britt.* fol. 2. *Stat. Westm.* 1, c. 31. *Fleta*, lib. 2, c. 50, § 30.

FEE-FARM RENT. The rent reserved on granting lands in fee farm; the amount of which must have been at least one-fourth of the value of the lands at the time of its reservation. *Co. Litt.* 143 b. It might be one-third, or even one-half. *Spelman*, voc. *Feodi firma. Termes de la Ley.* Britton's words are, *a respondre pur eux par an le verrey value, ou plus ou meyns;* (to answer for them yearly the true value, more or less.) *Britt.* c. 66.

Some writers use *fee farm* to signify not only the estate itself (see *Fee farm*,) but the *rent* reserved on it, taking the word *farm* itself in the sense of rent. *Hargr. Co. Litt.* Note 235, lib. 2. In that sense, the addition of the word *rent* is clearly superfluous. But as *farm* also signifies a lease, it seems to be more accurate to employ the expression *fee-farm* to denote the estate, and *fee-farm rent* the rent reserved out of it. See *Farm*.

FEE SIMPLE. [L. Lat. *feodum simplex*.] A pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs forever. *Litt.* sect. 1. *Co. Litt.* 1 b. 2 *Bl. Com.* 106. *Termes de la Ley.* An estate to a man and his heirs forever. *Hale's Anal.* sect. xxx. See *Fee*. Called *simple*, that is, *pure*, because clear of any condition, limitation, or restriction to particular heirs; being descendible to the heirs general, whether male or female, lineal or collateral. 2 *Bl. Com.* 106. *Co. Litt.* 1 b, 2 a. See *Simple*. *Fee*, however, itself, without the addition of the word *simple*, imports the same thing. *Litt.* sect. 293. *Spelman*, voc. *Feodum*. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein. 2 *Bl. Com. ub. sup. Litt.* sect. 11. *Spelman*, voc. *Feodum*. 4 *Kent's Com.* 5. It is created in deeds by the word "*heirs*," (to such a person *and his heirs*,) which is the proper, and, at common law, the indispensable word for that purpose, and cannot be supplied by any other, even "*heir*" in the singular. *Co. Litt.* 8 b. 2 *Preston on Estates*, 8. But see 4 *Kent's Com.* 5, note. So that, if a conveyance be "to a man forever," or "to a man and his assigns forever," or "to a man and his heir," he will have but an estate for life. *Termes de la Ley. Wharton's Lex.* 4 *Kent's Com.* 5, 6. This rule, however, has been modified in regard to wills; and, in American law, in some cases entirely abolished by statute. *Id.* 6—8, and notes. 1 *Hilliard's Real Prop.* 609. See *Heirs*.

FEE TAIL. [L. Fr. *fee taille;* L. Lat. *feudum talliatum;* from Fr. *tailler*, to cut.] A limited or restrained fee; literally a *cut* fee. An estate of inheritance limited and restrained to some particular heirs of the person to whom it is granted, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. Called *tail*, that is, cut, according to some, because cut, clipped, or pared down (*amputatur et rescinditur*,) to certain heirs. *Spelman*, voc. *Feodum*. 8 *Co.* 27. *Cowell.* And this accords with the meaning of *feudum talliatum* among the feudists; a mutilated or truncated inheritance, a fee curtailed of its proper quantity or extent. According to others, because it is a particular estate *cut out* of the old conditional fee simple, by the operation of the statute *de donis*. *Crabb's Hist.* 177. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 2 *Crabb's Real Prop.* 21—23, §§ 970, 971. As to fees tail in American law, see 4 *Kent's Com.* 14—19, and notes.

FEEL. L. Fr. Faithful. *Kelham.*

FEET, *Feat*. L. Fr. Made; done. *Kelham.*

FEEZ, *Feetz*. L. Fr. Pensions; fees. *Kelham.*

FEEZ. L. Fr. Times. *Kelham. Autre feez;* heretofore. *Id.*

FEFFE. L. Fr. A feoffee. *Britt.* c. 34, 42.

FEFFEMENT, *Fefment*. L. Fr. A feoffment. *Britt.* c. 34, 47. *Mem. in Scacc.* P. 23 Edw. I.

FEFFOUR. L. Fr. A feoffor. *Britt.* c. 34, 42.

FEGANGI. [from Sax. *feh*, money or goods, and *gange*, to go.] In old European law. A thief caught in the act of going off with the thing stolen. *LL. Longob.* lib. 1, tit. 25, l. 2. *Spelman.*

FEI. L. Fr. Faith. *Kelham.*

FEIGNED ISSUE. In practice. An issue produced in a pretended action between two parties, for the purpose of trying a single question of fact, which it becomes necessary to determine in the progress of a cause.* It is frequently directed by a court of chancery, to determine the fact of adultery, of the validity of a will, &c., and sometimes, though rarely, by a court of law. The issue is produced upon a declaration, and plea; the plaintiff declaring, by a fiction, that he laid a wager of so much with the defendant, that a certain fact was so, and then avers that it is so, and therefore demands the sum wagered; the defendant admitting the feigned wager, but denying that the fact is so. Issue is thereupon joined as to the fact, and brought to trial like any other issue of fact, and the verdict of the jury determines the question. 3 *Bl. Com.* 452.

This has sometimes been defined a *fictitious issue*. The fiction, however, is not in the issue, which is real, as are the plead-

ings; but in the *action* which is supposed to be brought, and in the state of facts (the wager,) upon which it is founded, which in reality have no existence. By the English statute 8 & 9 Vict. c. 109, s. 19, any question of fact may now be referred to a jury, by any court either of law or equity, in a direct form, in lieu of a feigned issue. 4 *Steph. Com.* 28.

FEINT ACTION. See *Faint action.*

FEISOR. L. Fr. A doer; an actor; one who does a criminal act; an offender. *Yearb.* Add. T. 2 Edw. III. 14, 17. *Feisours;* makers. *Kelham.*

FELAGUS. L. Lat. [from Sax. *fe*, faith, and *lag*, bound.] In Saxon law. One bound or pledged for another. A friend who was bound in the decennary for the good behaviour of another; called by Spelman *socius individuus*, and *vitæ comes;* an inseparable companion, or companion for life. *Spelman*, in voc. A sworn brother. *LL. Will. Conq.* cited in *Blount.* The *felagus* was a very important person in the Saxon law, and took the place of a man's parents or lord, where he had neither. *LL. Edw. Conf.* cc. 15, 35. From this word, changed into *felawe* by the Anglo-Normans, Spelman derives the word *fellow.*

FELE, *Feal.* L. Fr. Faithful. See *Feal.*

FELO. L. Lat. A felon. *Bract.* fol. 30. See *Felon. Fleta*, lib. 1, c. 28, § 11. *Id.* lib. 3, c. 10, § 2.

FELO DE SE. L. Lat. [L. Fr. *felon de luy mesme.*] A felon of himself; a self murderer. *Finch's Law*, lib. 3, ch. 20. One who deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death; as if, attempting to kill another, he runs upon his antagonist's sword, or shooting at another, the gun bursts, and kills himself. *Hawk. P. C.* b. 1, ch. 27. 1 *Hale's P. C.* 413. The party must be of years of discretion, and in his senses, else it is no crime. 4 *Bl. Com.* 189. 4 *Steph. Com.* 109.

*** Suicide (in the sense of intentional self destruction,) has always been regarded as a crime in English law, punished with forfeiture of goods and chattels, and, until recently, branded by an ignominious burial in the highway, with a stake driven through the body. 4 *Chitty's Bl. Com.* 190. By the act of 4 Geo. IV. c. 52, § 1, this barbarous kind of burial was abolished, and the bodies of suicides were directed to be interred in churchyards, or other ordinary burial grounds, but under marked circumstances indicative of the law's abhorrence of the crime; the interment being ordered to take place *at night*, and without the performance of any *Christian rites. Id. ibid.* note. Suicide does not seem to be regarded as a crime in the United States.

FELON. L. Fr. and Eng. [L. Lat. *felo.*] One who has committed, or is guilty of felony. See *Felony.*

FELONIA, *Fallonia.* L. Lat. Felony. *Bract.* fol. 29 b, 30. *In felonia;* feloniously. *Id.* fol. 121, 138, 146. *Felonia de seipso;* felony of himself. *Id.* fol. 150.

In the feudal law. The act or offence by which a vassal lost or forfeited his fee. *Fallonia est culpa seu injuria propter quam vasallus amittit feudum. Hostiens. de Feud. Spelman*, voc. *Felo. Calv. Lex.* voc. *Fallonia.* It might also be committed by the lord against the vassal. *Feud. Lib.* 2, tit. 47.

Any capital crime. *Feud. Lib.* 2, tit. 26, § 24. *Hotom. de Verb. Feud.*

Felonia implicatur in qualibet proditione. Felony is implied in every treason. 3 *Inst.* 15.

FELONICE. L. Lat. Feloniously. Anciently an indispensable word in indictments for felony, and classed by Lord Coke among those *voces artis*, (words of art,) which cannot be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Co. Litt.* 391 a. 4 *Bl. Com.* 307. Bracton uses the expression *in felonia*, which means the same thing. See *Felonia.*

FELONIE. L. Fr. Felony. *Britt.* c. 1, 4, 5, 6, 20, 22. *Guyot, Inst. Feod.* ch. 12.

FELONIOUS. Having the quality of felony. See *Felony.*

Criminal. 2 *N. Y. Rev. St.* [702,] 587, § 31. 2 *Compiled Laws of Michigan*, 1568, sec. 19. This is rather the popular, than the technical meaning. In a late Ohio case, it was said that "under our criminal code, the word *felonious*, although occasionally used, expresses a signification no less vague and indefinite than the word *criminal.*" Bartley, J. 4 *Ohio St. R.* 542.

FELONIOUSLY. [L. Fr. *felonisement;* L. Lat. *felonicè.*] An indispensable word in modern indictments for felony, as *felonicè* was in the Latin forms. 4 *Bl. Com.* 307. See *Felonice.* Made synonymous with

"*criminally*," by 2 *N. Y. Rev. St.* [702,] 587, § 31. 2 *Comp. Laws of Michigan*, 1568, sec. 19. 24 *Missouri R.* 380.

FELONIOUS HOMICIDE. In criminal law. The offence of killing a human creature of any age or sex, without justification or excuse. 4 *Bl. Com.* 188. There are two degrees of this offence, manslaughter and murder. *Id.* 190. 4 *Steph. Com.* 108, 111.

FELONISEMENT. L. Fr. Feloniously. *Britt.* c. 22.

FELONY. [L. Lat. *felonia*, *fallonia*; from Sax. *feh*, fief, feud, or fee; and Germ. lon, price or value; the cost of one's fee, (Lat. *pretium feudi*;) or from Sax. *fœlen*, *felen*, to fail, fall, offend. *Spelman.*] In feudal law. An act or offence on the part of the vassal, which *cost* him his *fee*; or, in consequence of which his fee *fell* into the hands of his lord, that is, became forfeited. See *Felonia.* Perfidy, ingratitude or disloyalty to a lord. *Guyot, Inst. Feod.* ch. 12.

*** The word *felony* is clearly derived from the *felonia* of the feudal law, though the latter, according to Dr. Wooddesson, rarely occurs in any ancient code. It is to be met with, however, in the collection of Sicilian laws by Lindenbrog, and more frequently in the Books of Feuds. *Feud. Lib.* 2, titt. 37, 38, 47. 2 *Wooddes. Lect.* 306, note. *Spelman*, voc. *Felo.* Though properly denoting merely the forfeiture of a fee, it seems to have acquired the same sense it bears in the common law, viz., a heinous crime of any sort. Hotoman (*de Verb. Feud.*) defines it to be any capital offence; (*quodvis capitale facinus.*) *Cowell.* See *Felonia.*

Of the two etymologies of this word given by Spelman, (*supra*,) Sir William Blackstone has adopted that which derives it from the two words *fee* and *lon.* 4 *Bl. Com.* 95. Dr. Wooddesson prefers that from *fœlen*, and considers the other derivation far fetched. 2 *Wooddes. Lect.* 306. It is a very judicious remark of the writer last quoted, on the subject of etymology, that "words are oftener deduced from some other *single* word, than from *two* or more." *Id. ibid.* The practice of dividing words into parts, and attempting to account for the formation of each part as a distinct and original element of composition, has often led to the most fantastic and absurd derivations. See *Agreamentum*, *Testament.*

FELONY. [L. Fr. *felonie*; L. Lat. *felonia.*] In criminal law. An offence which occasions a total *forfeiture* of either lands or goods, or both. 4 *Bl. Com.* 95, 98.

An offence punishable by forfeiture, and also by death or other punishment. *Id. ibid.* See 4 *Ohio St. R.* 542. 1 *Wisconsin R.* 184, 188.

An offence punishable by death, or by imprisonment in a state prison. 2 *N. Y. Rev. St.* [702,] 587, § 30. 2 *Comp. Laws of Michigan*, 1568, sec. 18.

An offence punishable by imprisonment in a state prison. *Rev. Stat. of Wisconsin*, (1858,) 979. See 1 *Wisconsin R.* 184, 188. 1 *Parker's Crim. R.* 39.

*** This term, and its peculiar import of *forfeiture*, are derived from the feudal law, (*supra*;) and, in England, forfeiture is still the true criterion of felony. 4 *Bl. Com.* 97. 4 *Steph. Com.* 61. The punishment of death also enters, in a great degree, (though not necessarily nor uniformly,) into the idea of felony. 4 *Bl. Com.* 97, 98. Hence, Blackstone has defined it to be "an offence which occasions a total forfeiture of either lands or goods, or both, at the common law, and to which capital or other punishment may be superadded, according to the degree of guilt." *Id.* 95. In American law, forfeiture as a consequence of crime being generally abolished, the word *felony* has lost its original and characteristic meaning, and is rather used to denote any high crime that is punishable by death or imprisonment. See the New-York definition, *supra.* *United States Digest*, Felony. In a late Ohio case, it was said, "The term *felony* has no distinct and well-defined meaning, applicable to our system of criminal jurisprudence." Bartley, J. 4 *Ohio St. R.* 542. Felony is indeed, properly, rather a generic term, denoting a certain class of offences, than any one in particular. In England, it includes all capital crimes below treason, and, strictly, treason also. 4 *Bl. Com.* 95, 98. 3 *Inst.* 15.

FELONY, COMPOUNDING OF. See *Compounding felony.*

FEM. A form of writing *feme*, (q. v.) Frequent in Coke and other old writers.

FEME, *Fem*, *Femme*, *Fam.* L. Fr. [from Lat. *femina.*] A woman; a wife. *Si prent la* feme *à feme*; if he take the woman to wife. *Litt.* sect. 665. *Le baron et la* feme *sont forsque come une person en ley*; the husband and the wife are but one person in law. *Id. ibid.*

FEME COVERT, *Femme Couverte.* L.

Fr. [L. Lat. *femina co-operta.*] A married woman. 1 *Bl. Com.* 442. 2 *Steph. Com.* 298. See *Covert baron, Coverture.*

FEME SOLE. L. Fr. [Lat. *femina sola.*] A sole, single or unmarried woman.

FEME SOLE TRADER, (or MERCHANT.) In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called, because, with respect to her trading, she is the same as a *feme sole. Jacob. Cust. of Lond.* cited 3 *Burr.* 1776. *Cro. Car.* 68.

The term is applied also to women deserted by their husbands, who do business as *femes sole.* 1 *Peters' R.* 105.

FEMELE. L. Fr. Female. *Soit masle soit femele;* be it male or female. *Britt.* c. 18.

FEMME. L. Fr. A woman or wife. *Britt.* c. 24, 102, 108. See *Feme.*

FENATIO, *Feonatio.* L. Lat. [from Fr. *faon*, a fawn.] In forest law. The fawning of deer; the fawning season. *Spelman.*

FENCE, (or FENSE.) In old Scotch law. To defend or protect by formalities. To "fence a court" was to open it in due form. Before proceeding with the trial, an officer proclaimed that the business of the court was now commencing, and interdicting all manner of persons from disturbing their proceedings. This was called *fencing*, q. d. defending or protecting the court against all intrusion or molestation. 1 *Pitc. Crim. Trials*, part 1, p. 75, and note. *Id.* p. 46, and note. A fenced court is called, in the old Scotch, "ane defensat court." *Id.* part 2, p. 330. See *Affirmare.*

FENCE MONTH. [L. Lat. *mensis prohibitionis, mensis vetitus.*] In forest law. The prohibited month. A period of thirty-one days in the year, during which time it is unlawful for any man to hunt in the forest, because at that time the female deer are fawning. This period commences fifteen days before midsummer, and continues until fifteen days after. It is also called *defence month*, for the same reason, *defence* meaning *prohibition;* or, according to some, because the deer are then to be *defended* from the annoyance of sportsmen and others. *Termes de la Ley. Manwood. Cowell. Spelman. Blount.*

"FENCES" pass under the word "land." 1 *Comstock's R.* 564. See *Rail-fences.*

FENGELD. Sax. [from *fen*, enemies, and *geld*, money or tribute.] In Saxon law. Money or tribute exacted for the repelling of enemies. *Spelman. Cowell.*

FEOBLESCE. L. Fr. Weakness. *Kelham.*

FEOD. [L. Lat. *feodum.*] Supposed by some to be the primitive word expressive of a feudal grant or estate; and from which the Lat. *feodum* was immediately formed; (Sax. *feohod*, from *feoh*, a stipend, and *hod*, state or condition. *Spelman.* Or, *feeodh*, from *fee*, a stipend, and *odh*, property. 2 *Bl. Com.* 45, note.) The better opinion, however, seems to be that *feodum* was formed simply from *feoh*, the primitive word; and that *feod* is merely the Anglicized form of *feodum*, as *feud* is of *feudum.* See *Feodum, Feoh.* It is not used by Blackstone, though its derivative *feodal* is uniformly. See *Feodal, Feudum.*

FEODA. (pl. of *feodum*, q. v.) In old English law. Fees. *Cum* feodis *et proficuis;* with the fees and profits. *Plowd.* 12 a, arg.

FEODAL. [L. Lat. *feodalis.*] Relating to, belonging to, or having the quality of a *feod, feud*, or fee; feudal. 2 *Bl. Com.* 44, *et passim*, in book 2, chap. 4. *Cowell.* This word is uniformly used by Blackstone in preference to *feudal*, probably after the example of the old writers, and the constant use of *feodum* in Bracton, the Register and Magna Charta, instead of *feudum.* So the Lat. *feodalis* generally occurs in the Scotch writers.

FEODAL ACTIONS. Real actions; so called in the old books, as originally relating to *feoda*, fees, or estates in land. *Mirr.* c. 2, § 6. 3 *Bl. Com.* 117.

FEODALITY, *Feudality.* [L. Lat. *feodalitas.*] Fidelity or fealty. *Cowell.* See *Fealty.*

FEODARY, *Feudary.* [L. Lat. *feudatarius.*] In English law. An ancient officer of the court of wards, appointed by the master of that court by virtue of the statute 32 Henry VIII. c. 46. Abolished by stat. 12 Car. II. c. 24. *Cowell. Kennett's Gloss. ibid.*

FEODATORY, *Feudatory.* In feudal law. The grantee of a *feod, feud* or fee; the vassal or tenant who held his estate by feudal service. *Termes de la Ley.* Blackstone uses *feudatory.* 2 *Bl. Com.* 46.

FEODI FIRMA. L. Lat. In old English law. Fee farm; the farm of a fee. *Artic. Mag. Cart. Johan.* c. 27. In the charter of 9 Hen. III. it is written as one word, *feodifirma.*

Feodi firmarius; the lessee or farmer of a fee; a fee-farmer; one who held in fee farm. *Bract.* fol. 165 b. See *Fee farm.*

FEODUM. L. Lat. [from Sax. *feoh*, a stipend, or fee.] In old English law. A fee; the same as *feudum.* See *Fee, Feudum.* This is the word uniformly employed by Glanville and Bracton to denote an estate of inheritance, and an estate held of another by service, instead of *feudum*, which is invariably used by the continental feudists. *Spelman.* Feodum *est id quod quis tenet ex quacunque causa, sibi et hæredibus suis;* fee is that which one holds by any title, to him and his heirs. *Bract.* fol. 263 b. *Item dicitur* feodum *alio modo —quod quis tenet ab alio;* that also is called fee in another sense, which one holds of another. *Id. ibid. Fleta*, lib. 5, c. 5, § 27. *Feodum* is also the form used in the Register, and Magna Charta. *Reg. Orig.* 2, 3, 226. *Mag. Chart.* 9 Hen. III. cc. 32, 36. The same form is used by Littleton. *Feodum idem est quod hæreditas;* fee is the same as inheritance. *Litt.* sect. 1. Spelman uses *feodum* and *feudum* indifferently.

Feodum laicum; a lay fee. *Glanv.* lib. 13, c. 23. *Bract.* fol. 175. *Magna Charta*, c. 18. See *Lay fee.*

Feodum militis, or *militare;* a knight's fee. 2 *Bl. Com.* 62. 1 *Steph. Com.* 176. See *Knight's fee.*

Feodum improprium; an improper or derivative fee or feud. 2 *Bl. Com.* 58. See *Feudum improprium.*

Feodum proprium; a proper, pure and original fee or feud, regulated strictly by the old fundamental rules of feudal tenure and succession. 2 *Bl. Com.* 58. See *Feudum proprium.*

Feodum simplex; fee simple; a simple or pure fee. *Litt.* sect. 1. See *Fee simple.*

Feodum talliatum; fee tail; a fee entailed; a cut fee. *Litt.* sect. 13. See *Fee tail.*

*** *Feodum* has the merit of pursuing more closely than *feudum*, the form and sound of the primitive *feoh*, from which there is little doubt of its being framed, the *h* being changed into *d* for euphony (*feodum*, instead of *feohum.*) *Spelman. Wachter Gloss.* in voc. The proper meaning of *feodum* is obviously *fee*, although, (in consequence, probably, of the established meaning of *fee* in modern law —an estate of inheritance,) some English writers, especially of late, have thought fit, by way of clearer distinction, to designate the ancient feudal grant as a *feod.* See *Feod.*

FEODUM. L. Lat. In old English law. A seigniory or jurisdiction. *Fleta*, lib. 2, c. 63, § 4.

A fee; a perquisite or compensation for a service. *Fleta*, lib. 2, c. 7. See *Skene de Verb. Sign.*

FEOFAMENTUM. L. Lat. [from *feofare*, q. v.] In old English law. A feoffment; the gift of a fee; the act of enfeoffment. *Spelman*, voc. *Feoffare.* More commonly written *feoffamentum*, (q. v.)

FEOFARE. L. Lat. To enfeoff. *Spelman.* See *Feoffare.*

FEOFFAMENTUM. L. Lat. [from *feoffare*, to enfeoff.] In old English law. A feoffment. *Bract.* fol. 12 b, 17 b, *et passim.* 2 *Bl. Com.* 310. *Charta de puro* feoffamento *est de simplici* feoffamento, *sine aliqua adjectione;* a charter of pure feoffment is a charter of simple feoffment, without any addition. *Bract.* fol. 33 b. *Fleta*, lib. 3, c. 14, § 1. See *Feoffment, Feoffare.*

FEOFFARE, *Feofare.* L. Lat. [from Sax, *feoh*, a fee.] In old English law. To enfeoff; to give or bestow a fee; (*feodum dare.*) *Bract.* fol. 17 b, 29 b, 44 b. *Stat. Marlbr.* c. 6. *Et si taliter feoffatus aliquem ulterius inde* feoffaverit, *tenet feoffamentum;* and if one so enfeoffed, enfeoff another thereof over, the feoffment holds. *Bract.* fol. 17 b. *Si* feoffavero A. *et* A. B. *&c.;* if I enfeoff A. and A. B. &c. *Id.* fol. 81. *Feoffavi;* I have enfeoffed. This word, according to Mr. Reeves, was not employed in deeds of feoffment till the reign of Richard II. 1 *Reeves' Hist. Eng. Law*, 91.

Feoffare points even more plainly than *feodum*, to the primitive word *feoh* as its origin; *feofare* (Spelman's mode of writing it) being scarcely distinguishable in sound from *feohare*, which may have been its first form as a verb.

FEOFFATOR. L. Lat. [from *feoffare*, q. v.] In old English law. A feoffor; one who gives or bestows a fee; one who makes a feoffment. *Bract.* fol. 12 b, 81. *Fleta*, lib. 3, c. 12, § 3.

FEOFFATUS, *Feofatus.* L. Lat. [from *feoffare*, q. v.] In old English law. A feoffee; one to whom a fee is given, or a feoffment made. *Bract.* fol. 17 b, 44 b. *Fleta*, lib. 3, c. 12, § 3.

FEOFFMENT, *Feffement.* L. Fr. and Eng. [L. Lat. *feoffamentum*, q. v.] The gift of a fee (*donatio feudi.*) A gift or conveyance in fee, of land, or other corporeal hereditaments, accompanied by livery of seisin, or actual delivery of possession. *Bract.* fol. 12 b. *Britt.* c. 34. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 311. 4 *Kent's Com.* 480, 481.—A conveyance of corporeal hereditaments by delivery of the possession upon, or within view of the hereditaments conveyed. *Butler's Co. Litt.* Note 231, lib. 3.

The deed, instrument or *charter*, (as it was formerly most commonly termed,) by which such a donation is expressed. 2 *Bl. Com.* 310. *Shep. Touch.* 203. 4 *Kent's Com.* 480. See *Feoffamentum, Charta.* For a form of this kind of deed in the original Latin, see 2 *Bl. Com.* Appendix, No. 1. And see *West's Symboleog.* part. 1, lib. 2, sect. 235, *et seq.* Anciently, a feoffment might be without deed, the donation with which the livery was accompanied being merely oral, but it was usually put into writing. 1 *Reeves' Hist. Eng. Law*, 90. *Poterit fieri donatio cum charta, vel sine charta. Bract.* fol. 11 b. By the statute of frauds, a written instrument was expressly required to convey the fee. 1 *Steph. Com.* 218. See *Stat.* 8 & 9 *Vict.* c. 106, § 3.

*** A feoffment originally meant the grant of a *feud* or *fee*, that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant (with livery of seisin) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 *Reeves' Hist. Eng. Law*, 90, 91. *Mad. Form. Angl. Diss.* p. 4. *Butler's Note*, 231, lib. 3. *Co. Litt.* It was for ages the only method (in ordinary use,) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 *Steph. Com.* 467, 468. In American law, it is scarcely known. 2 *Hilliard's Real Prop.* 293, *et seq.*

Littleton uses *feoffment* in its present form, but Britton writes it *feffement.*

FEOFFEE. L. Fr. and Eng. [L. Fr. *feffe;* L. Lat. *feoffatus.*] The person to whom a feoffment is made; the person enfeoffed. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment.*

FEOFFEE TO USES. The person to whom a feoffment was made, upon the trust or confidence that he should hold the land *to the use* of some third person, or of the feoffor himself. *Cruise's Dig.* tit. xi. ch. 2.

FEOFFOR. L. Fr. and Eng. [L. Fr. *feffour;* L. Lat. *feoffator.*] The person making a feoffment, or enfeoffing another in fee. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment.*

FEOH. Sax. A stipend; wages; reward; fee. This seems to have been the primitive word used in the vernacular of the Teutonic nations, to denote a feudal grant of lands; and from which were formed the French *fief*, L. Lat. *feodum* and *feudum*, Scotch *feu*, and English or Anglo-Norman *fee.* See *Fee, Feod, Feodum.*

FEONATIO. L. Lat. In forest law. The fawning season of deer. *Cart. de Forest.* c. 8. *Spelman.* See *Fenatio.*

FEOR. L. Fr. To make. *Kelham.*

FEORME, *Fearme.* Sax. [L. Lat. *firma.*] Food, provisions. *Spelman*, voc. *Firma.* An entertainment or feast. *Id. Herod gegeafwode mycle* feorme; Herod made a great feast. *Sax. Evang. S. Marc.* vi. 21.

Rent paid in provisions. *Spelman, ub. sup. Cowell*, voc. *Ferme.* 2 *Bl. Com.* 318.

A manor. *Spelman, ub. sup.* Hence the L. Lat. *firma*, and English *ferm, farm*, (qq. v.)

FER, *Ferre.* L. Fr. [from Lat. *ferrum.*] Iron. *Hors de fers;* out of irons; not fettered. *Britt.* c. 5.

FERA. Lat. In the civil law. Wild. *Fera natura;* a wild nature. *Dig.* 41. 1. 5. 2, 5.

FERÆ NATURÆ. Lat. Of a wild nature. A term (derived from the civil law,) applied to animals considered as subjects of property, and denoting such as are naturally of a *wild* disposition, (as deer, foxes, hares, pigeons, wild geese, swans, bees and fish,) in contradistinction to those of a tame and domestic nature (*domitæ naturæ.*) *Inst.* 2. 1. 12—16. *Bract.* fol. 8 b, 9. 2 *Bl. Com.* 390, 391. 2 *Steph. Com.* 17, 68, 69. 2 *Kent's Com.* 348. 6 *Ad. & Ell.* (N. S.) 606. See *Domitæ naturæ, Qualified property.* Bracton distinguishes animals into three classes: wild animals, properly so called, (*fera;*) wild animals which have been tamed, (*fera*

facta mansueta ;) and domestic animals, (*domestica.*) *Bract. ub. sup.*

FERCOSTA. Ital. A kind of small vessel or boat. Mentioned in old Scotch law, and called *fercost. Skene de Verb. Sign.*

FERDFARE. Sax. An acquittance from going into the army. *Fleta*, lib. 1, c. 47, § 23. See *Firdfare.*

FERDINGEL. Used in Domesday for *ferdindel.* See *Fardel, Fardingdeal.*

FERDINGMANUS. Skene calls this "ane Dutch word," and defines it "ane pennimaister or thesaurar," (treasurer.)

FERDWITE, *Ferdwyte.* Sax. An acquittance for murder in the army. *Fleta*, lib. 1, c. 47, § 15. See *Firdwite.*

FERE, *Ferve, Feor.* L. Fr. To make or do. *Kelham.* Old forms of *faire*, (q. v.)

FERGES. L. Fr. Irons; fetters. *Kelham.*

FERIA. Lat. [L. Fr. *ferie.*] In old English law. A week day, (*dies ferialis,*) as distinguished from Sunday. *Spelman.*

A holiday; a day exempt from judicial process. *Cowell.* 4 *Reeves' Hist. Eng. Law*, 17. See *Feriæ.*

A fair. *Bract.* fol. 56 b. *Fleta*, lib. 2, c. 63, § 4. *Spelman. Lib. Rames.* cited *ibid.*

FERIA. L. Lat. [from Sax. *fare*, passage, and *eie*, water.] In old English law. A ferry. *Spelman.* See *Ferry.*

FERIÆ. Lat. In the Roman law. Holidays. *Dig.* 2. 12. *Cod.* 3. 12. Not used in the singular.

FERIAL DAYS. [L. Lat. *dies feriales, feriæ.*] In old English law. Holidays. *Cowell.*

Working days, or week days, as distinguished from Sunday. *Stat.* 27 *Hen.* VI. c. 5.

FERITA. L. Lat. In old European law. A wound; a stroke. *Spelman.*

FERLINGATA. L. Lat. In old English law. A quarter of a yard-land. *Cowell.* See *Fardel, Fardingdeal.*

FERLING. [L. Fr. *ferlinge*, L. Lat. *ferlingus ;* from Sax. *feorthling.*] In old English law. A fourth or quarter. The fourth part of a penny. *Spelman. Cowell.*

FERLINGUS. L. Lat. A furlong. *Co. Litt.* 5 b.

FERM, *Fearme.* [L. Fr. *ferme*, L. Lat. *firma ;* from Sax. *feorme*, qq. v.] In old English law. A rent. *Spelman*, voc. *Firma.* 2 *Reeves' Hist. Eng. Law*, 402.

A lease or term for years. *Stat. Marlb.* c. 24. 3 *Inst.* 145.

A house or land, or both, taken by lease. *Cowell*, voc. *Ferme.* See *Farm, Firma.*

FERME. L. Fr. [from Sax. *feorm*, q. v.] A rent; a farm; a lease on rent. *Si home lessa sa terre à ferme ;* if a man let his land to farm. *Stat. Gloc.* c. 4. *Lesses à ferme. Artic. sup. Chart.* c. 14. *Britt.* c. 40. *Lesse à ferme—à trop hautes fermes ;* let to farm at too high farms, (rents.) *Britt.* c. 21.

FERMER. L. Fr. [from *ferme*, q. v.] A lessee; a termor; one who held lands to farm; one who held a term in lands. *Britt.* c. 43, 64, 75. This word is used by Britton indifferently with *termer*, and in the same passage. *Id.* fol. 201 b.

FERMOR. [L. Fr. *fermer ;* L. Lat. *firmarius*, qq. v.] A lessee; one who held a ferm or term. Hence the modern *farmer.* Held to be not a good addition. *Yearbook* T. 28 Hen. VI. 4. "Fermor to the Queen." 3 *Leon.* 237. "Fermor of the Queen." 1 *Id.* 313. See *Farmer, Firmarius.*

FERMORY, *Firmary.* [L. Lat. *firmarium.*] In old records. A place in monasteries, where they received the poor, (*hospicio excipiebant,*) and gave them provisions, (*ferm, firma.*) *Spelman.* Hence the modern *infirmary*, used in the sense of a hospital. *Id.*

FERNIGO. L. Lat. In old English law. A waste ground, or place where fern grows. *Cowell.*

FERRAMENTUM. (pl. FERRAMENTA.) Lat. [from *ferrum*, iron.] In old records. The iron tools or instruments of a mill; iron work in general. *Lib. Nig. Heref. Blount.*

Horse-shoes. *Fleta*, lib. 2, c. 20.

FERRARE. L. Lat. [from *ferrum*, q. v.] In old English law. To shoe (a horse.) *Fleta*, lib. 2, c. 74, § 3.

Ferrator ; a horse-shoer; a farrier. *Id.* lib. 2, c. 14, § 4.

FERREUR. L. Fr. A horse-shoer; a farrier. *Si un* ferreur *face covenant ove moy, à shooer mon chival bien & congeable. Yearb.* 14 Hen. VI. 58.

FERRE. Lat. In old practice. To bring. See *Tulit, Portare.*

FERRI. Lat. In the civil law. To be borne, that is, on or about the person. This was distinguished from *portari*, (to be carried,) which signified to be carried on an animal. *Dig.* 50. 16. 235.

FERRIFODINA. Lat. In old pleading. An iron mine. *Towns. Pl.* 273.

FERRILIMINATIO. L. Lat. The cementation or welding of iron. *Bract.* fol. 9 b. Probably a corruption of *ferruminatio*, (q. v.)

FERRUM. L. Lat. In old English law. A horse-shoe. *Fleta*, lib. 2, c. 12, § 3.

Ferrura; a shoeing. *Id.* lib. 2, c. 14, § 4.

FERRUMINATIO. Lat. In the civil law. A welding together. *Dig.* 6. 1. 23. 5. *Fleta*, lib. 3, c. 2, § 12.

FERRY. [L. Lat. *feria*, q. v.] A species of franchise, being a liberty or privilege, arising from grant or prescription, to have a boat or boats for carrying men and horses across a river for reasonable *fare* or toll. *Termes de la Ley. Tomlins.* 3 *Kent's Com.* 458, 421, note.

FESABLE. L. Fr. To be made. *Kelham.*

FESAUNT. L. Fr. [from *faire*, to do.] Doing. An emphatic word in old deeds. *Britt.* c. 39.

FESOUR. L. Fr. [from *faire*, to do.] A doer; an actor; the perpetrator of a crime. *Les principals fesours;* the principal actors. *Britt.* c. 5. *Fesours de teles noysaunce;* the makers of such nuisance. *Id.* c. 20.

Festinatio justitiæ est noverca infortunii. The hurrying [hasty administration] of justice is the stepmother of misfortune. *Hob.* 97. The word *festinatio* in this maxim is strangely translated, both in Branch's Principia and Wharton's Lexicon, *delay.*

FESTINGMAN. [Sax. *festenmon.*] In old English law. A surety or pledge; frankpledge. *Cowell.*

FESTING PENNY. [from Sax. *fœstnian*, to fasten.] In English law. Earnest given to servants when hired, or retained in service. *Cowell. Blount.* Still in use in some parts of England, under the name of *fastening penny;* though a shilling is the amount actually paid. *Howitt's Rural Life of England*, p. 416, (Phil. ed. 1841.)

FESTINUM REMEDIUM. Lat. A speedy remedy. A term applied by the statute of Westminster 2, (13 Edw. I.) c. 24, to the writ of assise, as compared with the more dilatory remedies previously in use. 3 *Bl. Com.* 184. Lord Ellenborough, 15 *East*, 594.

FESTUM. Lat. A feast. *Tomlins.*

FET. L. Fr. Done; made. *Kelham.* An old form of *fait.*

Fact; a fact, deed, matter or business. *Issue en fet;* issue in fact. *Yearb.* 3 *Edw.* II. 59. *E fet à remembrer;* and it is to be remembered. *Conf. Cartar.* 25 Edw. I.

Fetz, Feyetz, Fez. Deeds, actions, grants. *Kelham.*

FET ASSAVOIR, *Fet Assaver.* L. Fr. (Literally, a matter to be known or understood.) The title of a small French tract, published at the end of Fleta. 2 *Reeves' Hist. Eng. Law*, 281. *Selden's Diss. ad Flet.* c. 1, sect. 1. The expressions *fait assavoir, fait à saver* are common in the old books. *Britt.* cc. 4, 39.

FEU, *Fieu, Fiew, Fewe.* L. Fr. Fire; a fire-place, or hearth. *L. Fr. Dict. Kelham.*

FEU ET LIEU. Fr. In old French and Canadian law. Hearth and home. A term importing actual settlement upon land, by a tenant. *Dunkin's Address*, 15, 29, 85.

FEU, *Few, Ffew.* [L. Lat. *feudum*, q. v.] In Scotch law. A free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Scotch Dict.* Lands taken by purchase are called *feus of conquest. Ersk. Princ.* b. 3, tit. 8, s. 6. 1 *Reeves' Hist. Eng. Law*, 29, note.

The term *feu* has been used in Scotland, in contradistinction to ward-holding, (q. v.) the military tenure of that country, and means that holding where the vassal, in place of military services, makes a return in grain or in money. *Bell's Dict.* See *Feu-holding.*

Feu is derived either from the Fr. *fief*, by a slight change in the letters, or from the Lat. *feudum*, by abbreviation, or it may be directly from the primitive Sax. *feoh*, the sound of which it retains with very little variation. *To feu* is used as a verb in old statutes. *Stat. Jac.* VI. A. D. 1581.

FEU-ANNUALS. In Scotch law. The rent due under the tenure of feu-holding. *Scotch Dict.*

FEUAR. In Scotch law. The tenant of a feu; a feu-vassal. *Bell's Dict.*

FEUD, *Feid.* [L. Lat. *faida, feida.*] A combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Whishaw.* See *Faida, Deadly feud.*

FEUD. [L. Lat. *feudum, feodum;* Fr. *fief*, Scotch, *feu.*] A stipendiary estate in land, held of a superior, by service. 1 *Steph. Com.* 161.—A right which a vassal

had in land, or some other immovable thing of his lord's, to use the same and take the profits thereof hereditarily, rendering unto his lord such feudal duties and services as belonged to military tenure, the mere property of the soil always remaining unto the lord. *Spelman, Feuds & Tenures*, c. 1. See *Fee, Feod, Feud.*

*** This word is used by Blackstone and other writers, as the translation of the Lat. *feudum*, in preference to the proper English word *fee*, apparently with the view of more aptly distinguishing the original feudal grant or estate, from the *fee* of modern law. As the English word *feud*, however, has long had a peculiar meaning of its own, (*supra*,) it would seem preferable to employ the Fr. *fief* as the translation of *feudum*, especially where reference is had to the feudal law of the continent. This is the term used by Dr. Robertson, in his History of Charles V. See *Fief, Feodum.*

FEUDAL. Relating or belonging to, or having the quality of a *feudum*, fief, or fee. That which is held of another by service; the opposite of *allodial*. See *Allodial.*

FEUDAL LAW. [Lat. *Lex Feudalis; Jus Feudorum.*] The law of feuds, or feudal estates. That peculiar system of law by which the creation, enjoyment and transmission of feudal estates were regulated, and the rights and duties growing out of the feudal relation of lord and vassal, defined and enforced. It originally consisted of unwritten customs and usages, which were first reduced to writing about the middle of the twelfth century, in the compilation known as the *Feudorum Libri*, or *Consuetudines*, commonly called the Books of Feuds or Fiefs. See *Feudorum Libri.* It was the law of nearly all Europe during the prevalence of the feudal system, and many of its principles, including the fundamental one of *tenure*, continue to be recognized at the present day. See *Craig Jus Feudale*, lib. 1, dieg. 4. *Sullivan on Feudal law*, lec. 3. 2 *Bl. Com.* 44, *et seq.* 3 *Kent's Com.* 489, *et seq.*

FEUDAL SYSTEM. The system of *feuds* or *fiefs*; that is, estates in land held of a superior by the tenure of service. A system of tenure, the origin of which is generally traced to the peculiar policy and usages of the northern nations who overturned the Roman empire, and settled in its provinces; and which, from rude beginnings, grew up gradually into a vast body of institutions, which prevailed throughout Europe for many centuries, and has left important traces of its existence not only in that continent, but in America. The nature and history of this system have been so often discussed that it will be sufficient to refer to the leading authorities on the subject. 2 *Bl. Com.* 44, chap. iv. 1 *Steph. Com.* 160, *et seq.* 3 *Kent's Com.* 487, lect. liii. *Spelman*, voc. *Feodum.* 1 *Robertson's Charles* V. 10, 12, and Appendix, note viii. *Esprit des Loix*, liv. 30. 1 *Hallam's Middle Ages*, 80, *et seq.* Mr. Spence's theory is, that the sources of the feudal system are to be found in the relation of *patron* and *client* in the Roman provinces, and in the distinction between *dominium directum* and *dominium utile* in the Roman law. 1 *Spence's Chancery*, 28, *et seq.*

FEUDATORY. See *Feodatory.*

FEUDO. Span. [from L. Lat. *feudum.*] In Spanish law. Feud or fee. *White's New Recop.* b. 2, tit. 2, c. 2.

FEUDORUM LIBRI (or CONSUETUDINES.) The Books (or customs) of Fiefs or Feuds. A compilation of feudal law, made about A. D. 1150, (or 1170, according to some,) at Milan, in Lombardy. It is the most ancient work on the subject, and was always regarded of the highest authority on the continent. 1 *Robertson's Charles* V. Appendix, Note xxv. 3 *Kent's Com.* 496, note. Mr. Reeves says no allusion is made to it in the old English law books. 2 *Reeves' Hist. Eng. Law*, 50. It is quoted, however, by Spelman, and, in more modern times, the most eminent writers, such as Sir William Blackstone, have referred to it freely. It is supposed to have been the work of two Milanese lawyers, (or *senators*, as they are termed by Montesquieu,) whose names are given by Spelman as Gerardus Niger, and Obertus de Orto. *Spelman*, voc. *Feodum.* Mr. Butler considers it to be a compilation from the writings of those authors and various customary laws prevailing in Italy, made, probably in the reign of Frederick the Second, by Hugolinus, a Bononian lawyer. *Hor. Jurid.* 93. Voet, in his *Digressio de Feudis*, sect. 2, says it is uncertain who were the authors. Dr. Robertson observes that it was formed plainly in imitation of the Roman code, the Pandects having been discovered only a few years previous. It is usually annexed to

the Corpus Juris Civilis, under the title of *Feudorum Libri*, or *Consuetudines Feudorum*. 3 *Kent's Com. ub. sup.* 1 *Mackeld. Civ. Law*, 94, Kaufmann's note.

FEUDUM. L. Lat. [from Sax. *feoh*, a stipend.] A fief, fee or *feud*, as it is sometimes translated. *Feudum est jus in prædio alieno in perpetuum utendi fruendi; quod pro beneficio dominus dat ea lege, ut qui accipit sibi fidem et militiæ munus aliudve servitium exhibeat;* a fief is a right of perpetual enjoyment in another's land, which the owner grants out of favor, upon condition that he who receives it shall render to him fealty, and military and other service. *Spelman*, voc. *Feodum*, citing *Cujacius ad Lib. Feud.* tit. 1. It is properly not the land itself, but a right in land; (*jus in prædio.*) *Id.*

Feudum antiquum; an ancient feud or fief; a fief descended to the vassal from his ancestors. 2 *Bl. Com.* 212, 221. A fief which ancestors had possessed for more than four generations. *Spelman*, voc. *Feodum.*

Feudum apertum; an open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone. 2 *Bl. Com.* 245.

Feudum francum; a free or frank fief or fee. *Spelman.*

Feudum improprium; an improper or derivative feud or fief. 2 *Bl. Com.* 58.

Feudum individuum; an indivisible or impartible feud or fief; descendible to the eldest son alone. 2 *Bl. Com.* 215.

Feudum ligium; a liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 *Bl. Com.* 367. *Spelman.*

Feudum maternum; a maternal fief; a fief descended to the feudatory from his mother. 2 *Bl. Com.* 212.

Feudum novum; a new feud or fief; a fief which began in the person of the feudatory, and did not come to him by succession. *Spelman.* 2 *Bl. Com.* 212. *Feudum novum ut antiquum;* a new fief held as an ancient one, or with all the qualities annexed to a fief descended from ancestors. 2 *Bl. Com.* 212. 1 *Steph. Com.* 384.

Feudum paternum; a paternal feud, or fief; a fief descendible only to the heirs by the father's side. 2 *Bl. Com.* 223.

Feudum proprium; a proper, genuine and original feud or fief; being of a purely military character and held by military service. 2 *Bl. Com.* 57, 58.

Feudum talliatum; a mutilated or truncated fief, or inheritance, from which the heirs general were cut off. *Craig Jus. Feud.* lib. 1, tit. 10, s. 24, 25. 2 *Bl. Com.* 112, note (*m.*) Hence the English *fee tail*, (q. v.)

*** *Feudum* is the word generally used in the feudal law of the continent of Europe, to denote a feudal estate, as *feodum* is peculiar to the law of England. It does not, however, seem to have been applied to these estates until they had become hereditary, (when it was substituted in place of *beneficium*,) and hence the meaning of an estate of *inheritance* which has always been attached to it, and the words *feodum* and *fee* in English law. See *Fee*, *Feodum*, *Beneficium.* According to Muratori, it does not occur in any charter previous to the eleventh century. 1 *Murat. Antiq. Med. Ævi*, 594. Dr. Robertson observes that a charter of King Robert of France, A. D. 1008, was the earliest deed in which he had met with it. 1 *Rob. Charles* V. Appendix, Note viii. Spelman, (voc. *Feodum*,) remarks that it does not occur in the ancient laws of Lombardy. In the Books of Feuds, both terms *feudum* and *beneficium* are used indifferently. *Feud. Lib.* 2, titt. 1, 23, *et passim.*

FEU-HOLDING. In Scotch law. A holding or tenure of lands, where the tenant or vassal, in place of military services, makes a return in grain or in money. *Bell's Dict.* vocc. *Feu*, *Holding.*

FEVEREZ. L. Fr. February. *Kelham.*

FEWE. L. Fr. Fire. *Per sodden fewe;* by a sudden fire. *Dyer*, 66 b, (Fr. ed.)

FEWER. L. Fr. To dig. *Fewa ove un hach en la terre;* dug with a hatchet in the ground. *Yearb.* H. 2 Edw. III. 10.

FEY. L. Fr. Faith. *Kelham.*

A deed, (*fait.*) *Id. Feyets;* deeds, actions. *Id.*

FEYN. L. Fr. A fine. *Punys par prison et par feyn;* punished by imprisonment and by fine. *Britt.* c. 4.

FEYRE. L. Fr. A fair. *Britt.* c. 15.

FEZ. L. Fr. Fees. *Kelham.*

Actions; things done, (*faits.*) *Id.*

A son, (*fitz.*) *Id.*

Times, (*foitz.*) *Id.*

Ff, or *ff*. A character frequently used by old writers, (and by some modern ones, as Blackstone,) in quoting the Digests or Pandects of the civil law. Supposed, by the majority of jurists, to have originated

from the letter *D*, (for *Digesta*,) by the addition of a stroke of abbreviation. The more probable supposition is, that it was merely a careless mode (as ff) of writing the Greek letter π or π, the initial letter of Πανδεκται, which was used, especially by the Greeks, in quoting the Digest. *Calvin, Lex. Jur.* voc. *Digestorum.* 1 *Mackeld. Civ. Law*, § 65. See *Taylor's Civ. Law*, 24. Bracton uses a single F, in his quotations, thus: F. locati, L. si merces, ff. culpæ nomine. *Bract.* fol. 114. Mr. Long supposes this last character to be a double f; but it appears rather to be a double s, used in place of a §. *Long's Discourses*, 107.

FIANCER. L. Fr. To pledge one's faith. *Kelham.*

FIANZA. Span. In Spanish law. Suretyship. *Schmidt's Civ. Law*, 173.

FIAR. In Scotch law. He that has the fee or *feu*. The proprietor is termed *fiar*, in contradistinction to the life renter. 1 *Kames' Equity*, Pref. 5 *Bell's Appeal Cases*, 280.

FIAT. L. Lat. (Let it be done.) In English practice. A short order or warrant of a judge, commanding or authorizing something to be *done;* as the entry of a rule or order, the issuing of process, and the like. 1 *Tidd's Pract.* 100, 108. 2 *Id.* 1091.

Fiat justitia, (let justice be done,) were words formerly written by the king at the top of a petition for a warrant to bring a writ of error in parliament, signifying his assent. *Jacob. Dyer*, 375. *Staundf. Prærog. Reg.* 22.

Fiat prout fieri consuevit; (nil temere novandum.) Let it be done as it hath used to be done; (nothing must be rashly innovated.) *Jenk. Cent.* 116, case 39. *Branch's Pr.*

FIAT IN BANKRUPTCY. One of the proceedings in the English bankrupt practice, being a power, signed by the Lord Chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 *Steph. Com.* 199. By the statute 12 & 13 Vict. c. 116, fiats were abolished.

FICTIO. Lat. [from *fingere*, to feign.] A fiction. *Fictio juris* or *legis;* a fiction of law. See *Fiction of law.*

FICTION OF LAW. [Lat. *fictio juris; fictio legis.*] A legal assumption that a thing is true, which is either not true, or which is as probably false as true. *Broom's Max.* 54, [90.] *Bell's Dict.* Called by Finch, "a feigned construction." *Law*, b. 1, ch. 5.—An assumption of a possible thing as a fact, which is not true, for the advancement of justice, and which the law will not allow to be disproved. (*Fictio juris est legis, adversus veritatem, in re possibili, ex justa causa dispositio, adversus quam probare non licet.*) 2 *Rol. R.* 502. *Westenberg, Princ. Jur.* lib. 22, tit. 3, n. 28. *Gothofred*, in Dig. lib. 22, tit. 3, fol. 322. *Best on Presumptions*, 24, § 20, and note. The matter assumed should always be for the furtherance of justice, (*ex justa causa.*) Hence the maxim, **In fictione juris semper subsistit æquitas.** 3 *Bl. Com.* 43, 283. *Co. Litt.* 150 a. **Fictio legis neminem lædit—nemini operatur damnum vel injuriam.** A fiction of law injures no man; works loss or injury to no one. 2 *Rol. R.* 502. *Palm.* 354. No fiction shall extend to work an injury. 3 *Bl. Com.* 43. Woodworth, J. 17 *Johns. R.* 348. **Fictio legis inique operatur alicui damnum vel injuriam.** 3 *Co.* 36. The matter assumed should also be physically possible, (*in re possibili.*) 2 *Rol. R. ub. sup. Huber. Prælect. J. C.* lib. 22, tit. 3, n. 22.

*** Mr. Best distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds: affirmative or positive fictions, negative fictions, and fictions by relation. *Best on Presumptions*, 27, § 24.

Affirmative or positive fictions are those which assume something to exist, which in reality does not; such as the fiction of lease, entry and ouster in the action of ejectment, and the *ac etiam* clause in a writ of *capias. Id. ibid.* To these may be added the ancient common recoveries and the modern feigned issues. In *negative* fictions, that which really exists is treated as if it did not. *Id. ibid.*

Fictions by relation are of four kinds: First, where the act of one *person* is taken to be the act of another; as where the act or possession of a servant is deemed the act or possession of the master. Second, where an act done by or to a *thing*, is taken, by relation, as done by or to another; as where a mortgage of land is created by delivery of the title deeds, or an acceptance of a portion of goods sold is taken as equivalent to a taking possession of the whole. Third, fictions as to *place;* as where a contract made abroad is treated as if made in London, or other place where

it is intended to enforce it. 3 *Bl. Com.* 107. To this head belongs the *postliminium* of the Roman law. *Inst.* 1. 12. 5. See *Postliminium.* Fourth, fictions as to *time*, such as the principle that the title of an executor or administrator to the goods of the testator, or intestate, relates back to the time of his death; the general principle that every ratification has relation back to the time of the act done; and the practice of allowing various acts in a suit to be done *nunc pro tunc.** *Best on Presumptions*, 27, 28. See *Ratihabitio, Nunc pro tunc.*

FIDEI-COMMISSARIUS. Lat. [from *fidei-commissum*, q. v.] In the civil law. A person who had a beneficial interest in an estate which, for a time, was committed to the faith or trust of another. *Harris' Justin. Inst.* quoted by Cooper, *ub. infra. Hallifax, Anal.* b. 2, c. 8. This word answers very nearly to the *cestuy que trust* of the English law, but Dr. Cooper prefers Anglicizing it *fidei-commissary*, which is also the form adopted by Dr. Brown. *Cooper's Justin.* Notes, *536. 1 *Brown's Civ. Law*, 190, note. Mr. Justice Story prefers *fide-commissary.* 1 *Story's Eq. Jur.* § 321, note.

FIDEI-COMMISSUM. Lat. (pl. *fidei commissa.*) In the civil law. A thing committed to one's faith. A trust, or bequest in trust; the disposal by will of an inheritance to a person, in confidence that he would convey it, or dispose of the profits, at the will of another, or, in the words of the Institutes, that he would restore (*reddat, restituat*) it to another. *Inst.* 2. 23. 2. *Hallifax, Anal.* b. 2, c. 8. 2 *Bl. Com.* 327. 1 *Steph. Com.* 329. The person in whom the trust was reposed was called *hæres*, or *hæres fiduciarius*, the person intended to be benefited, *fidei-commissarius. Inst.* 2. 23. The trust itself was called *fidei-commissum*, because the performance of it anciently depended entirely upon the *faith* or honor of the trustee. *Ideo* fidei-commissa *appellata sunt, quia nullo vinculo juris, sed tantum pudore eorum qui rogabantur, continebantur;—à fide hæredum pendebant. Inst.* 2. 23. 1, 12. Heineccius calls the testator *fidei-committens. Elem. Jur. Civ.* lib. 2, tit. 23. For a full view of the nature of a *fidei-commissum* under the Roman law, and the code of Louisiana, see the opinion of Mr. Justice Campbell, in Executors of McDonogh *v.* Murdoch, 15 *Howard's R.* 407—410.

*** The right of the *fidei-commissarius* was originally considered as *jus precarium*, one for which the remedy was only by entreaty or request, but was afterwards made *jus fiduciarium*, a confidence, the observance of which might be enforced; and it was made the business of a particular magistrate (the *prætor fidei-commissarius,*) to enforce the observance of them. *Inst.* 2. 23. 1. 1 *Steph. Com.* 329. 4 *Kent's Com.* 289. The terms, however, by which the *fidei-commissum* was created, continued to preserve their ancient character of a *request:—peto*, (I request;) *rogo*, (I ask;) *volo*, (I wish;) *mando, fidei tuæ committo*, (I commit to your faith.) *Inst.* 2. 24. 3. *Cod.* 6. 43. 2. The Institutes give the form of words which might be employed for this purpose. *Lucius Titius hæres meus esto;* let Lucius Titius be my heir. This was the appointment of the heir, or trustee. Then followed the trust: *Rogo te, Luci Titi, ut cum primum poteris hæreditatem meam adire, eam Caio Seio reddas, restituas;* I request you, Lucius Titius, that as soon as you shall enter on my inheritance, you restore it to Caius Seius. *Inst.* 2. 23. 2. 4 *Kent's Com.* 289, 290. See 1 *Spence's Chancery*, 435—438. The expressions *cupio des, opto des, desidero uti des*, (I desire you would give,) *credo te daturum*, (I trust you will give,) amounted to a *fidei-commissum. Dig.* 30. 115, 118.

FIDE-JUBERE. Lat. In the civil law. To order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo;* Do you pledge yourself? I do pledge myself. *Inst.* 3. 16. 1. One of the forms of stipulation. The form in Greek was, τῇ ἐμῇ πίστει κελεύω, λέγω. *Inst.* 3. 21. 7. Sometimes θέλω, βουλομαι, φημί. *Dig.* 46. 1. 8, pr.

FIDE-JUSSIO. Lat. In the civil law. A contract in which a person bound himself, as a surety or accessory, for another, by the way of stipulation, without discharging the obligation of the principal. *Hallifax, Anal.* b. 2, c. 16, num. 10. Called *fide-jussion. Id. ibid.*

FIDE-JUSSOR. Lat. [from *fide-jubere*, q. v.] In the civil law. A surety for another; a guarantor; one who binds himself for another who makes a promise, (*pro eo qui promittit obligatus.*) *Inst.* 3. 21, pr. One who binds himself in the same contract conjointly with the debtor, for the greater security of the creditor. *Cooper's notes, in loc.*

A bondsman or bail for a party in an action. *Fleta*, lib. 2, c. 60, § 11. Fide-jussors were sureties in the nature of special bail, whose undertaking was *judicatum solvi*, that the amount adjudged to the plaintiff should be paid to him. *Inst.* 4. 11, pr. *Dig.* 2. 8. 3 *Bl. Com.* 291. This, however, was only where a defendant appeared by attorney; for if he defended in his own person, the only security he was compelled to give was that he would remain *in judicio* (in court, or within the power of the court,) until the end of the suit. *Inst.* 4. 11. 2.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated fide-jussors. 3 *Bl. Com.* 108. *Clarke's Prax. Cur. Adm.* titt. 11, 13.

FIDELIS. Lat. [pl. *fideles;* from *fides*, faith; L. Fr. *feal, foiall.*] In old European law. Faithful; trusty. *Fideles in Christo;* the faithful in Christ, or Christians. *Spelman*, voc. *Fideles.* Old instruments frequently commence with the words, *Omnibus in Christo fidelibus;* to all the faithful in Christ: *Omnibus Christi fidelibus;* to all the faithful of Christ. See *West's Symboleog.* part 1, b. 2, sect. 528, 529. *Fideles regis;* the subjects of a king or prince. Hence writs, commissions, &c., were formerly addressed by the sovereign in England, *dilecto et fideli suo, dilectis et fidelibus suis;* to his beloved and faithful. *Reg. Orig. passim.*

A feudal tenant, or vassal, as bound to be faithful, or to bear faith (*fidem ferre,*) to his lord. *Spelman. Feud. Lib.* 1, tit. 4, pr. Applied originally to the *comites*, the attached or devoted followers of the chiefs among the ancient Germans. 1 *Robertson's Charles* V. Appendix, Note viii.

FIDELITAS. L. Lat. [from *fidelis*, q. v.] In feudal and old English law. Fealty; fidelity. *Spelman*, voc. *Fidelis. Fleta*, lib. 3, ch. 16, § 21. *Feud. Lib.* 2, titt. 3, 4, 5. 1 *Bl. Com.* 367. See *Fealty.* Used in the plural, *fidelitates. Reg. Orig.* 317 b. Called in French feudal law, the essence of a fief. *Guyot, Inst.* ch. 2; citing *Dumoulin*, tit. des Fiefs, n. 115.

FIDES. Lat. [Fr. *foi, foy.*] Faith; fidelity; allegiance. *Fidem ferre, portare;* to bear faith. Words in the old oaths of fealty. *Spelman. Ad* fidem *utriusque regis;* owing allegiance to each king. *Bract.* fol. 427 b.

Trust; confidence; honesty, sincerity, or uprightness of dealing. *Bona fides;* good faith. See *Bona fides. Uberrima fides;* the most abundant faith; the utmost degree of good faith. 2 *Kent's Com.* 483, note. **Fides servanda est.** Faith must be observed. *Id.* 485. An agent must not violate the confidence reposed in him. *Story on Agency*, § 192.

Belief; veracity; credibility (of a witness.) *Dig.* 22. 4. 2, 3. *Fleta*, lib. 2, c. 60, § 25.

Faith; honor; pledged or plighted word or troth. *Fides data;* faith given; troth plighted. *Legum servanda fides;* the faith of laws must be observed. *Cowell*, voc. *Devise.*

Fides servanda est; simplicitas juris gentium prævaleat. Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. Lord Mansfield, 3 *Burr.* 1672. *Story on Bills*, § 15.

FIDUCIARY. [from Lat. *fiducia*, confidence.] Relating to, founded upon, or having the quality of a trust or confidence.

Founded upon a special or technical trust, as distinguished from an implied trust.* McLean, J. 2 *Howard's R.* 202, 208.

FIE. L. Fr. Fee; a fee. *Kelham.* An old form of *fee.*

Faith. *Id.* Another form of *foy.*

FIEF. Fr. [from Sax. *feoh;* L. Lat. *feudum.*] In feudal law. An estate in land held of a superior by service. The same with the English *fee*, and Scotch *feu.* See *Feudum, Fee.*—An estate in land, held under the charge of fealty, homage, and military service. *Pothier, Traite des Fiefs*, part 1, c. prelim. sec. 1. 3. See *Esprit des Lois*, lib. 30, c. 16, 17, *et passim. Guyot, Inst. Feodal.* ch. 1. *Fief* rarely occurs in old English law, though it is found in the Mirror, together with the derivative *fief-tenant*, (q. v.) *Mirr.* c. 1, § 16, 17.

*** *Fieu* and *fiew*, (qq. v.) occur in the books as old forms of this word; and it is perhaps not assuming too much to suppose that the final *f* in fief was originally an *u;* the convertibility of *u* into *f*, being apparent in other instances. See *Farley, Lieutenant.* This supposition is aided by the fact that the French term for an allodial estate is a word also ending in *eu; aleu.* See *Alleu.* It shows, moreover at once, the derivation from the primitive Saxon *feoh: fieu* being the same sound in other

letters. The great antiquity and expressiveness of this French term have led to its introduction into modern English law, and it is accordingly freely used by the best English writers to denote a feudal grant or estate. 2 *Bl. Com.* 45. 1 *Steph. Com.* 218. 3 *Kent's Com.* 494, 496.

FIEF D'HAUBERT. Fr. [L. Lat. *feudum hauberticum.*] In Norman feudal law. A fief or fee held by the tenure of knight-service; a knight's fee. 2 *Bl. Com.* 62. *Mirr.* c. 2, § 27. *Spelman*, voc. *Feodum.* See *Haubert.* So called, according to Skene, because given upon condition that the vassal, possessor thereof, shall come to the host and army with jack and arms, or with a haubert, haubergeon or coat of mail. *Skene de Verb. Signif.* voc. *Hawbert.*

FIEF-TENANT. L. Fr. In old English law. The holder of a fief or fee; a fee-holder or freeholder. *Touts les* fieftenants *dans le hundred sont obliges de venor, per le servage de lour fiefs;* all the free-holders in the hundred are bound to come, by the service of their fees. *Mirr.* c. 1, § 16.

FIEL. Span. In Spanish law. A sequestrator; a person in whose hands a thing in dispute is judicially deposited; a receiver. *Las Partidas*, part. 3, tit. 9, l. 1.

"FIELD." [Lat. *ager, campus*, qq. v.] Not a usual term of description in legal proceedings. 1 *Chitt. Gen. Pr.* 160.

FIELDAD. Span. In Spanish law. Judicial deposit; sequestration. *Las Partidas*, part. 3, tit. 9, l. 1.

FIERDING COURTS. Ancient Gothic courts of an inferior jurisdiction, so called because *four* were instituted within every inferior district or hundred. 3 *Bl. Com.* 34. *Stiernhook, de Jur. Goth.* lib. 1, c. 2, cited *ibid.*

FIERGES. L. Fr. Fetters; irons. *Kelham.*

FIERI. Lat. To be made; to be done. See *In fieri.*

Fieri non debet, (debuit,) sed factum valet. It ought not to be done, but [if] done, it is valid. *Shep. Touch.* 6. 5 *Co.* 39. *T. Raym.* 58. 1 *Stra.* 526. A maxim frequently applied in practice. Platt, J. 19 *Johns. R.* 84, 92.

FIERI FACIAS. L. Lat. (You cause to be made.) In practice. A writ of execution, (usually termed for brevity, *fi. fa.*;) commanding the officer to whom it is directed that he *cause to be made* of the party's goods and chattels or real estate, (that is, to obtain by a levy and sale of them,) the amount specified in the writ, and that he have it in court on the return day. 3 *Bl. Com.* 417. 3 *Steph. Com.* 649. 2 *Tidd's Pract.* 993, 998.

*** The name of this important writ is derived from its two emphatic words, as distinguished in the form given *infra. Co. Litt.* 290 b. 3 *Bl. Com.* 417. It is supposed by Mr. Reeves to have obtained both its name and existence from the words of the statute of Westminster 2, chap. 18; *quod vicecomes* fieri faciat *de terris et catallis.* 2 *Reeves' Hist. Eng. Law*, 187. The general opinion, however, has been that it was a common law execution. *Id. ibid.* note. 2 *Tidd's Pr.* 998. In modern English practice, the *fi. fa.* issues against goods and chattels only, and it seems to be supposed in the books that the ancient writ was restricted in the same way. See *Fleta*, lib. 2, c. 62, § 8. But the forms in the Register are all *de terris et catallis*, thus: *Rex vic. salutem: Præcipimus tibi quod de terris et catallis T. de S. in balliva tua,* FIERI FACIAS *decem libras, et illas habeas coram justitiariis nostris apud W. in octavis Sancti Hilarii, ad reddendum T. de B. quæ ei in eadem curia nostra adjudicatæ fuerunt, pro damnis ipsius quæ habuit occasione cujusdam transgressionis, &c. Et habeas ibi tunc hoc breve. Teste, &c. Reg. Jud.* 18 b. See *Bract.* fol. 312 b. In American practice, the *fi. fa.* is usually directed to be executed in the first instance against the goods and chattels of the party named, and failing those, against his real estate.

FIERI FECI. L. Lat. (I have caused to be made.) In practice. The name given to the return made by a sheriff or other officer to a writ of *fieri facias*, where he has collected the whole, or a part of the sum directed to be levied. 2 *Tidd's Pr.* 1018. The return, as actually made, is expressed by the word "satisfied" endorsed on the writ.

FIEU. L. Fr. A fee, or fief. *Fieu de chevalier;* a knight's fee. *Kelham.*

FIEW. L. Fr. A fee or fief. *Fiew tenants;* fee tenants, or free tenants. *Kelham.* The same with *fief-tenants*, (q. v.)

FIEZ. L. Fr. Times. *Ascun fiez;* sometimes. *Fet Assaver*, §§ 52, 59. *Une fiez;* once. *Id.* § 37. See *Foits.*

FIFTEENTHS. [L. Lat. *decimæ quintæ;* Fr. *quinzieme.*] In English law. A species of tax upon personal property,

formerly imposed upon cities, townships and boroughs in England, that is, not upon the citizens individually, but upon the whole city, town, &c.; and so called, because amounting to a *fifteenth* part of what each city or town was valued at, or a fifteenth of every man's personal property, according to a reasonable valuation. 2 *Inst.* 77. 1 *Bl. Com.* 308, 309. *Camd. Brit.* 168, 171. *Cowell. Tomlins.*

FIGHTWITE. Sax. In old English law. A mulct or fine imposed on a person for making a fight or quarrel, (*mulcta ob commissam pugnam,*) to the disturbance of the peace. *Spelman. Cowell.*

FIL, *File.* L. Fr. A thread; a line. *Jesques au fil del ewe;* as far as the line of the water. *Britt.* c. 42, fol. 111 b. This corresponds with the Fr. *jusqu'à fil de l'eau. Guyot, Inst. Feod.* ch. 23. *Jesques au fil de myleu del ewe;* as far as the middle line or thread of the water. *Britt.* fol. 110.

FILACE. L. Fr. A file. *En filace;* on file. *Kelham. Philas* occurs in Britton. *Remue de philas;* removed from the file. *Britt.* c. 48.

FILACER, *Filazer, Filizer.* [L. Lat. *filizarius, filazarius;* from Fr. *file, filace,* (Lat. *filum,*) a thread.] An officer of the Court of Common Pleas in England, so called, because he *filed* the writs whereon he made out process. *Cowell.* There were fourteen of these officers, whose duty was to make out all original writs, and process thereon, to enter the appearance of defendants, special bails, imparlances, &c. *Termes de la Ley.* 1 *Arch. Pr.* 11, *et passim.* This office was abolished by statutes 7 Will. IV. and 1 Vict. c. 30. *Holthouse.*

FILACIUM. L. Lat. [from Fr. *filace.*] A file. *Spelman.* See *File.*

FILARE. L. Lat. In old English practice. To file. *Towns. Pl.* 67.

FILCTALE. In old English law. A word used by Bracton to denote a kind of compotation or entertainment, given by bailiffs of hundreds, for the purpose of extorting money from those who attended them; (*ut pecunias extorqueant ab eis qui sequuntur hundreda sua et ballivas suas.*) *Bract.* fol. 117 b. See *Fleta,* lib. 1, c. 20, § 102. Spelman considers the proper reading of this word to be *fildale,* an *ale,* or drinking in a *field.*

FILE. L. Fr. [from Lat. *filia.*] A daughter. *Litt.* sect. 7, 8.

Fielle, fillie and *filie* are given by Kelham as other forms of this word.

FILE. [L. Lat. *filum, filacium.*] In practice. A thread, string or wire, upon which writs and other exhibits in courts and offices, were formerly fastened, or *filed* for the more safe keeping of them together. *Cowell. Spelman,* voc. *Filacium.*

The paper itself, or a number of papers so filed. *Tomlins.* A *file* is a record of the court. 1 *Lill.* 112.

The papers filed appear to have been originally *pierced through* with (*trajecta,*) and *strung upon* the thread or wire employed, as is still sometimes done in offices. *Spelman.* They are now usually arranged in bundles, a thread or string being used on the *outside* to fasten them together. In modern practice, a *file* is a bundle of papers, each paper being similarly folded and endorsed, and tied together. The phraseology of the old practice, however, is still retained in the common expressions "to *put on* file," "to *take off* the files." See *To file, Filum.*

FILE. L. Fr. [L. Lat. *filum.*] A thread, line or mark. *Haut* file *de mer;* the high line of the sea; high-water mark. *Rot. Parl.* 11 *Hen.* IV. m. 61. See *Fil, Filum aquæ.*

To FILE. [L. Lat. *filare.*] In practice. To put upon the *files,* or deposit among the records of a court. *Affile* (q. v.) is used in the old books. See *File.*

Filing a bill in equity is an equivalent expression to *commencing a suit.* 7 *Metcalf's R.* 157.

*** The *filing* of a paper is considered as an exhibition of it to the court, and the clerk's office in which it is filed represents the court for that purpose. The *filing* of papers forms an important part of the proceedings in an action, and is of constant occurrence in practice. It is effected by delivering the paper, (endorsed with the title of the cause and the attorney's name,) to the clerk of the court in which the action is pending, who marks it "*filed,*" adding the date, and deposits it under the proper head, among the papers or files in his office.

"To file" a paper, on the part of a party, is to place it in the official custody of the clerk. "To file," on the part of the clerk, is to endorse upon the paper the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern. Wheeler, J. 14 *Texas R.* 339.

FILEINJAID. Brit. A name given to villeins in the laws of Hoel Dda. *Barringt. Obs. Stat.* 302.

FILIATE. [from Lat. *filius*, a child.] To fix a bastard child on some one, as its father. 2 *W. Bl.* 1017. To declare whose *child* it is. *Id.*

FILIATION. [L. Lat. *filiatio*, from *filius*, a child.] The fact which creates the relation of parent and child. *Hubback's Evid. of Success.* 235.

The adjudging of a bastard to be the child of a certain man.* The fixing of a bastard child on some one as its father. *Webster.* See *Affiliation.*

FILICETUM. Lat. [from *filix*, fern.] In old English law. A ferny or bracky ground; a place where fern grows. *Co. Litt.* 4 b. *Shep. Touch.* 95.

FILIOLUS. Lat. In old records. A god-son. *Spelman.*

FILIUS. Lat. In civil and old English law. A son; a child. *Filium eum definimus, qui ex viro et uxore ejus nascitur;* we define him to be a son, who is born of a man and his wife. *Dig.* 1. 6. 6. *Præsumitur quis esse filius, eo quod nascitur ex uxore;* one is presumed to be another's child, because he is born of his wife. *Bract.* fol. 6, 88. **Filius est nomen naturæ, sed hæres nomen juris.** *Son* is a name of nature, but *heir* is a name [term] of law. 1 *Sid.* 193. 1 *Powell on Devises*, 311. An alien may have a son, but no alien can have an heir. *Id. ibid.* See *Hæres.*

A distinction was sometimes made in the civil law, between *filii* and *liberi;* the latter word including grandchildren, (*nepotes,*) the former not. *Inst.* 1. 14. 5. But according to Paulus and Julianus, they were of equally extensive import. *Dig.* 50. 16. 84. *Id.* 50. 16. 201.

FILIUS-FAMILIAS. Lat. In the civil law. The son of a family; an unemancipated son; one in *aliena potestate. Dig.* 1. 6. 4. *Id.* 50. 17. 93. *Inst.* 2. 12, pr. *Id.* 4. 5. 2. *Story's Conflict of Laws*, § 61.

FILIUS MULIERATUS. L. Lat. In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. *Glanv.* lib. 7, c. 1. Otherwise called *mulier.* 2 *Bl. Com.* 248. See *Mulier.*

FILIUS NULLIUS. Lat. The son or child of nobody. *Filius populi;* a child of the people. Terms applied to a bastard. 1 *Bl. Com.* 459. 6 *Co.* 65 a. *Fortescue de L. L. Angliæ*, c. 40. *Burr. Sett. Cas.* 189.

FILS. Fr. Sons. Defined by the Civil Code of Louisiana to include daughters. *Le mot* fils *comprend les filles.* Art. 3522, num. 1.

FILUM. Lat. [L. Fr. *fil, file*, qq. v.] In old practice. A thread, string or wire used for *passing through* and connecting papers together; a file. Otherwise called *filacium*, (Fr. *filace*, qq. v.) *Spelman*, voc. *Filacium.* See *File.*

A thread or line, *passing through* a stream or road. See *Filum aquæ, Filum viæ.* The English word *thread* has in ordinary speech this sense of running *through;* as in the expressions "*thread* of a discourse or argument;" "to *thread* one's way," &c.

A line or mark, as the edge or border of a thing. *Filum forestæ;* the edge of the forest. *Manwood*, 371. 1 *Crabb's Real Prop.* 485. "To the very last *filum* of the plaintiff's land." 5 *Taunt.* 133, arg. "Up to the extreme *filum* of the plaintiff's property." *Id.* 134, arg.

FILUM AQUÆ. L. Lat. [L. Fr. *fil del ewe.*] A thread or line of water; a water line or mark; the outer line or edge of a stream; the water's edge. *Altum filum;* the high line. *Rot. Pat.* 4 *Hen.* VI. m. 11, par. 2. *Haut* file *de mer;* the high line of the sea; high-water mark. *Rot. Parl.* 11 *Hen.* IV. m. 61. *Blount.*

A stream, or course of water. *Cowell. Blount.*

A thread of water, as running *through* a stream; a middle thread; a central line.* 24 *Pick. R.* 344. Usually called "the thread of the stream." Shaw, C. J. 2 *Cushing's R.* 207. 4 *Wisconsin R.* 486, 508.—An imaginary line drawn through the middle of a stream, and supposed to divide it into two equal parts; constituting, in certain cases, the boundary between the riparian proprietors on each side, and between counties, townships, &c.* *Schultes on Aquatic Rights*, 88. *Blount. Item si tantum ex altera parte prædia possideat, prope ripam, tenementum suum erit usque ad* filum aquæ; also if he own the lands only upon one side [of the stream,] near [on] the bank, it will be his freehold as far as the thread of the water. *Bract.* fol. 208 b. *Item refert utrum aqua, in qua id factum est quod nocet, propria sit ejus de quo queritur, vel communis, vel in parte propria, scilicet usque ad* filum aquæ, *et partim aliena;* it is also a material consideration, whether the water in which the nuisance is made, be the property of the party complained of, or common, or in part his own, that is, as far as the thread of the stream,

and partly another's. *Id.* fol. 235. Fleta calls it *filum in medio aquæ*; the thread in the middle of the stream. *Fleta*, lib. 4, c. 1, § 21. Lord Hale translates *filum aquæ*, middle of the stream. *Hale de Jur. Mar.* pars 1, c. 4.

*** The phrase *filum aquæ* is constantly used in modern law, indifferently with *medium filum aquæ*, (as part of the phrases, *usque filum aquæ*, *ad filum aquæ*, *ad medium filum aquæ*,) to signify the same thing. 17 *Johns. R.* 195. 20 *Id.* 90, 99. 6 *Cowen's R.* 518. *Id.* 543—550. 5 *Wendell's R.* 423. 13 *Id.* 355. 20 *Id.* 149. 24 *Id.* 451. 26 *Id.* 404. 4 *Hill's* (N. Y.) *R.* 369. 2 *N. Hamp. R.* 369. 3 *Greenleaf's R.* 474. 3 *Kent's Com.* 428—431, and notes. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.) But that *filum*, in itself, properly imports an *outer* line, an edge, verge or border, and not a central line, is clear from repeated instances of its use in the old books. Thus, it is expressly applied to the sea, in the phrase *altum filum*, (L. Fr. *haut file de mer*,) to denote high-water mark. See the first definition, *supra*. In the same sense it is applied to a forest. Thus, "if a dog fastens upon a deer before she gains *filum forestæ*, (the edge or verge of the forest,) and she drags the dog *into the forest*, and is there killed, the owner may pursue and take the deer out of the forest." *Manwood's Forest Law*, 371. See *Filum*. Bracton, indeed, (who is followed by Lord Hale,) uses *filum* to denote a *central* line, and it is probably through this author that this sense of the word has become so firmly established in modern law. See the quotations *supra*. In Britton both phrases, *fil del ewe*, and *fil de myleu del ewe*, are used in the chapter *De Disseisine*, but are not apparently distinguished. *Britt.* c. 42. Strictly, the central line of a stream should be designated as *medium filum aquæ*, or, in English, the "*middle thread*;" which is the phrase employed by Lord Mansfield and other high authorities. 4 *Burr.* 2162. 3 *Sumner's R.* 170.

FILUM VIÆ. L. Lat. The thread or middle line of a road, or street. An imaginary line drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.)

FIN. Fr. [from Lat. *finis*, an end.] An end, or limit; a limitation, or period of limitation. *Fin de non-recevoir*; a legal bar to the maintenance of a claim. *Ord. Mar.* liv. 1, tit. 12. *Poth. Oblig.* part 3, ch. 8, art. 1.

FINAL. [L. Lat. *finalis*, from *finis*, an end.] Ending; making an end; that which terminates or ends a matter or proceeding, not absolutely, however; as the final judgment of an inferior court, which admits of an appeal. See *Final judgment*, *Final sentence*.

Absolutely ending or concluding a matter; conclusive; as the final judgment of a court, which admits of no appeal. See *Final judgment*.

FINAL DECREE. In equity practice. A decree which finally decides and disposes of the whole merits of a cause; reserving no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its further decision.* 7 *Paige's R.* 18. 2 *Daniell's Chanc. Pr.* (Perkins' ed.) 1199, note (1.) See 4 *Comstock's R.* 415.

A decree which terminates all litigation on the same right. 1 *Kent's Com.* 316.

FINAL JUDGMENT. In practice. A judgment which puts an *end* to an action at law, by declaring that the plaintiff either has, or has not entitled himself to recover the remedy he sues for. 3 *Bl. Com.* 398. So distinguished from *interlocutory* judgments, which merely establish the right of the plaintiff to recover, in general terms. *Id.* 397. A judgment which determines a particular cause. See 1 *Kent's Com.* 316.

A judgment which cannot be appealed from; which is perfectly conclusive upon the matter adjudicated. Morton, J. 24 *Pick. R.* 300. A judgment which terminates all litigation on the same right. The term "final judgment," in the judiciary act of 1789, sec. 25, includes both species of judgments as just defined. 2 *Peters' R.* 494. 1 *Kent's Com.* 316. 6 *Howard's R.* 201, 209.

A judgment is final and conclusive between the parties, when rendered on a verdict on the merits, not only as to the facts actually litigated and decided, but also as to all facts necessarily involved in the issue. 26 *Alabama R.* 504.

FINAL PROCESS. In practice. Writs of execution in an action at law. So termed as concluding the proceedings, in contradistinction to *mesne process*, (q. v.)

FINAL SENTENCE. Distinguished from a definitive sentence. Marshall, C. J.

1 *Cranch's R.* 103. The last decree of an inferior court is *final* in relation to the power of that court, but not in relation to the property itself, [which is the subject of litigation,] unless it be acquiesced under. *Id. ibid.*

FINALIS. Lat. [from *finis*, an end or limit.] In old English law. Ending; making an *end* or termination; final. *Finalis concordia*, (q. v.;) a final concord or agreement.

Constituting a limit or boundary, as of land. *Arbor finalis;* a boundary tree. See *Arbor*, *Finis.*

FINALIS CONCORDIA. L. Lat. In old conveyancing. A final concord; a fine of lands. *Talis concordia* finalis *dicitur, eo quod* finem *imponit negotio, adeo ut neutra pars litigantium ab eo de cætero poterit recedere;* such a concord is called final because it puts an end to the matter, so that neither of the litigating parties can afterwards recede from it. *Glanv.* lib. 9, c. 3. *Dicitur* finalis concordia, *et ideo* finalis *quia imponit* finem *litibus;* it is called a final concord because it puts an end to suits. *Bract.* fol. 435 b. These passages are descriptive of a fine when it was in the form of an actual suit.

FIND. To ascertain upon judicial examination and inquiry; to ascertain and declare the existence of one or more facts judicially. A jury are said to *find* a deed or a will in a special verdict. *Vaugh.* 84, 85. A jury *find* a certain amount of damages for a plaintiff.

To determine an issue of fact in favor of one or the other party, and to declare such determination to a court. A jury "*find* for the plaintiff," or "for the defendant."

FINDING. In practice. The result of a judicial examination or inquiry, especially into some matter of fact; the statement to a court of such result.

This term is most commonly applied to the making up and delivery, by a jury, of their verdict. See *Verdict.* But Lord Coke applies it to the judgment of the court itself. "There is one *finding* by the jury and another by the judges, and when the defendant confesses it, &c., the judges *find* sufficient matter before them to give judgment." 11 *Co.* 30, *Powlter's case.*

FINDING. One of the modes of acquiring a title to goods by occupancy. 2 *Kent's Com.* 356—360, and notes.

The finder of property who knows the owner, or has reason to believe who he is, is bound to restore it; and is guilty of larceny if he fraudulently converts it to his own use. 1 *Parker's Crim. R.* 9.

FINE. [L. Fr. *fyn, feyn, fyne, fin;* from Lat. *finis*, an end.] In English law. A sum of money or price (*pretium*) paid for obtaining a benefit, favor or privilege; as the ancient fines for obtaining a writ, and for alienation; and the modern fines for admission to a copyhold, for obtaining or renewing a lease.* *Fleta*, lib. 2, c. 13, §§ 12, 13. 8 *Co.* 59 b, *Beecher's case.* See 2 *Selden's R.* 475. See *Fine for alienation.*

A sum of money paid by an offender in satisfaction of his offence, and as a punishment (*pœna*) for it.* 8 *Co.* 59 b. See *Fine (or Mulct.)*

A species of conveyance or assurance, the effect of which was to make men enjoy their lands and inheritances in peace, (*pax.*)* 8 *Co. ub. sup.* See *Fine of lands.* All these, in the words of Lord Coke, "are called *fines* because they are the *end*, or causes of the *end* of all the said businesses." 8 *Co. ub. sup.*

FINE FOR ALIENATION. In feudal law. A sum of money paid to the lord by a tenant, whenever he had occasion to aliene, or make over his land to another; a sum paid for license to alien the land. One of the incidents of tenure by knight-service. 2 *Bl. Com.* 71, 72. 1 *Steph. Com.* 165, 180.

Fines were expressly reserved to copyhold tenures, when tenure by knight-service was abolished by the statute 12 Car. II. Hence they are, in general, still payable, in England, to the lord, on the alienation of copyhold estates. 1 *Steph. Com.* 208. 2 *Id.* 47, 48. 1 *Crabb's Real Prop.* 615—628.

FINE (or MULCT.) In criminal law and general practice. A payment of money imposed upon a party as a punishment for an offence. A pecuniary punishment imposed by some court of record, and usually under the authority of some statute. See *Amercement.*—A pecuniary punishment imposed by the judgment of a court, upon a person convicted of crime. Wheeler, J. 14 *Texas R.* 398. A fine is a judgment, but not such a judgment as can be claimed to bear interest. *Id. ibid.* Fines are more properly sentences than judgments, in the sense of recoveries in civil actions. *Id.* 399.

*** According to Spelman, the word *fine* was not used in this sense, in England, before the Norman invasion. It was ap-

plied originally to the heavier kind of payment, imposed for grave offences (*mulcta gravior, gravioribus delictis imposita,*) answering to the Saxon *wita major*, and so distinguished from an *amercement*. *Spelman*, voc. *Finis*. See *Amercement*. It was applied also to a pecuniary mulct inflicted by the courts on a stranger, in contradistinction to an amercement, which was imposed upon their own officers and ministers. 8 *Co.* 40 b, *Griesley's case*. 4 *Bl. Com.* 380. 4 *Steph. Com.* 442. Fines and amercements are both mentioned in Magna Charta. *Mag. Cart. Joh.* c. 55.

The radical idea of the word corresponds closely with its obvious derivation from the Lat. *finis*:—a sum paid *to end* a matter; as to atone for an offence; to be delivered from a punishment. Thus, in old practice, where a party had been punished by imprisonment, he was frequently allowed to be discharged on payment of a *fine;* his punishment being by such payment *ended*. *Reg. Orig.* 222 b, 232. *Reg. Jud.* 25. A party fined or paying a fine was said *finem facere*, (q. v.) So, in modern practice, where a party is fined, and ordered to stand committed until the fine is paid, the payment has the same effect of putting an *end* to the imprisonment. And in any case where a fine constitutes the sole punishment of a party, its payment puts an *end* to the offence for which it was imposed, or to the legal liability growing out of such offence.

To FINE. To impose a pecuniary punishment; to order, adjudge or sentence that an offender pay a certain sum of money as a punishment for his offence. The Lat. *finire* anciently signified to pay a fine. See *Finire*.

FINE OF LANDS. [L. Fr. *fyn, feyn, fin;* L. Lat. *finis, finalis concordia.*] In conveyancing. A species of conveyance or assurance by matter of record, formerly in extensive use in England, in the form of a fictitious suit, commenced by the party to whom the land was intended to be conveyed, against the party intending to convey, and *compromised* or terminated by the *acknowledgment* of the latter that such land was the right of the former.—An amicable composition of a fictitious suit, by leave of the court, in the shape of an agreement or concord, (*concordia,*) enrolled of record, by which the defendant, or deforciant (as he was usually called,) acknowledged the land for which the suit was supposed to be brought, to be the right of the complainant.* *Glanv.* lib. 8, c. 3. *Shep. Touch.* 2. 2 *Bl. Com.* 349. *Watkins on Conveyancing*, 252. *Burton's Real Prop.* 20, pl. 67. 2 *Wooddes. Lect.* 186. 1 *Steph. Com.* 515. Called also, anciently, a *final concord*, because it put an end to the matter or suit, so that neither of the parties could afterwards recede from it. See *Finalis concordia*.

The *acknowledgment*, conusance, or recognition of right made in this pretended suit, was of the substance and essence of the fine, being, in fact, itself the conveyance of the land; the other proceedings being merely auxiliary. Hence the party intending to convey, (or nominal defendant,) was called the *conusor*, or *cognizor*, that is, the *acknowledging* party; and the party to whom the conveyance was made, the *conusee* or *cognizee*. *Shep. Touch.* (by Preston,) 3—5. 1 *Steph. Com.* 517. 2 *Bl. Com.* 350, 351. Hence, also, a fine was said to be an *acknowledgment* of a feoffment on record. *Id.* 348. It was, in fact, a solemn conveyance on record, from the cognizor to the cognizee. *Id.* 355. Fines were recently abolished in England by statute 3 & 4 Will. IV. c. 74, and have been either expressly abolished, or become entirely obsolete, in most of the United States. 1 *Steph. Com.* 514, 515. 4 *Kent's Com.* 497. They do not appear to have ever been adopted in New-England. Story, J. 4 *Mason's R.* 55.

*** The peculiar efficacy of a *fine* consisted in its being not only a solemn transaction in a *court of record*, but a transaction in the shape of the acknowledgment of the right of a *litigating party*, and having the same effect with an actual adjudication of the court upon the title of the lands conveyed by it. It was, indeed, in its origin (like a common recovery,) an *actual suit* commenced at law for the recovery of the possession of the land, but being found competent to confer a title in cases where the ordinary conveyances would not suffice, it was at length adopted as a mere means of transfer between parties not really standing in the relation of adverse litigants. 1 *Steph. Com.* 515. That is to say, the form of a suit was preserved for the purpose of basing upon it, or extracting from it, the *pretended compromise* or confession of title, but *real conveyance*, which it was intended to give. For this purpose, after a conveyance of lands had been agreed upon, the

party to whom they were to be conveyed commenced, in form, an action or suit at law against the other; generally, an action of covenant, in the Court of Common Pleas, by suing out a writ of covenant, denominated (from its initial words, when the proceedings were in Latin,) a writ of *præcipe quod teneat conventionem*, the foundation of which was a supposed agreement or *covenant* that the one should convey the lands to the other; on the breach of which agreement the action was brought. The suit being thus commenced, there followed, in the next place, the *licentia concordandi*, or leave to agree, (that is, to compromise or settle the suit,) supposed to be applied for by the defendant or deforciant, and granted by the court on payment of a sum of money, called the king's silver, or post fine. Next came the *concord*, or agreement itself, (anciently called the *peace*,) being an acknowledgment or conusance by the deforciant, that the lands in question were the right of the complainant. This concord was the foundation or substance of the fine; being, in form and in fact, the grant or conveyance intended to be given, and was *acknowledged* either openly in court, or before one of the judges, or before two or more commissioners empowered by a special authority. With this acknowledgment, all the *essential* parts of the fine were completed. There remained, however, two more proceedings to complete it *in form;* of which the next was the *note of the fine*, which was only an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. This was to be enrolled of record in the proper office, by direction of the statute 5 Hen. IV. c. 14. The last of the proceedings was the *foot of the fine*, or conclusion of it, which included the whole matter, reciting the parties, day, year and place, and before whom it was acknowledged or levied. Of this there were indentures made, or engrossed at the chirographer's office, and delivered to the cognizor and the cognizee, usually beginning thus: *Hæc est finalis concordia*, (This is the final agreement,) and then reciting the whole proceeding at length. And thus the fine was completely levied at common law. To render it, however, more universally public, it was directed by statute 4 Hen. VII. c. 24, that a fine, after engrossing, should be openly and solemnly read and proclaimed in court, sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by stat. 31 Eliz. c. 2, and these proclamations were endorsed on the back of the record. 2 *Bl. Com.* 350—352. 1 *Steph. Com.* 516—518. *Shep. Touch.* 3, 5, *et seq.* 5 *Co.* 39.

FINE SUR COGNIZANCE DE DROIT, COME CEO QUE IL AD DE SON DONE. L. Fr. A fine upon acknowledgment of the right, as that which he hath of his gift; that is, upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. The best and surest, and most usual kind of fine, by which the deforciant acknowledged a former feoffment, or gift in possession to have been made by him to the plaintiff; hence called a feoffment of record. 2 *Bl. Com.* 352. 1 *Steph. Com.* 518. See *Fine of lands.*

FINE SUR COGNIZANCE DE DROIT TANTUM. L. Fr. and Lat. A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519. See *supra.*

FINE SUR CONCESSIT. L. Fr. and Lat. A fine upon *concessit*, (he hath granted.) A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

FINE SUR DON, GRANT ET RENDER. L. Fr. A fine upon gift, grant and render. A double kind of fine, comprehending the fine *sur cognizance de droit come ceo, &c.*, and the fine *sur concessit;* and which might be used to create particular limitations of estate. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

FINE AND RECOVERY ACT. The English statutes 3 & 4 Will. IV. c. 74; for abolishing fines and recoveries. 1 *Steph. Com.* 514, *et seq.*

FINE FORCE. L. Fr. [*fine*, from Fr. *fin*, crafty or subtle; or artificial or exact.] In old English law. An absolute necessity or constraint, not avoidable. When a man was constrained to do that which he could in no way avoid, he was said to do it *de*

fine force. Cowell. Old N. Brev. fol. 78. *Stat.* 35 *Hen.* VIII. c. 12. So, *à fine force*, (q. v.) The word *fine* seems to be used in this phrase, in the same sense as the modern word *pure*.

FINEM FACERE. L. Lat. In feudal law. To make a composition or compromise; to renounce or relinquish a claim for a consideration. *Finem et refutationem fecit;* made a fine and release. *Feud. Lib.* 2, tit. 49. And see *Skene de Verb. Sign.* voc. *Finis.*

FINEM FACERE. L. Lat. In old English and Scotch practice. To make an end, or settlement; to make or pay a fine. *Finem fecit nobiscum;* he made a fine with us. *Reg. Orig.* 232. *Bract.* fol. 154. *Fleta*, lib. 2, c. 60, § 35. *Omnes* fines *qui* facti *sunt nobiscum;* all fines which have been made with us. *Mag. Cart. Johan.* c. 55. *Finem facere cum rege;* "to fine with the king, or to make ane finance and satisfie him for ony trespasse committed against him or his lawes." *Skene de Verb. Signif.*

To levy a fine. *Bract.* fol. 106.

FINES LE ROY. L. Fr. In old English law. The king's fines. Fines formerly payable to the king for any contempt or offence, as where one committed any trespass, or falsely denied his own deed, or did any thing in contempt of law. *Termes de la Ley.*

FINIRE. L. Lat. [from *finis*, a fine.] In old English law. To fine, or pay a fine, upon composition. *Rog. Hoveden*, 783, cited in *Cowell.* To end or finish a matter.

FINIS. Lat. In old English law and practice. An end or termination. Finis *unius diei est principium alterius;* the end of one day is the beginning of the next. 2 *Bulst.* 305. Finis rei attendendus est. The end of a thing is to be attended to. 3 *Inst.* 51. The means by which a crime is accomplished is a subordinate consideration. *Id. ibid.*

A fine, or payment of money, as an *end*, satisfaction or settlement of a claim, offence, or other matter. *Reg. Orig.* 222 b, 232, 179. *Reg. Jud.* 25 a. See *Fine.*

A fine or conveyance of land, as the *end* or settlement of a pretended suit; or as the *end* of all controversy respecting the title, (*quia* finem *imponit litibus.*) See *Fine of lands.*

A terminus, limit, or boundary of land. *Bundæ et metæ et rationabiles divisæ, quæ ponuntur in terminis et* finibus *agrorum. Bract.* fol. 166, 167. See *Divisa.*

FINITIO. L. Lat. [from *finis*, an end.] In old records. An ending or finishing; death, as the *end* of life; (*quia vita finitur morte.*) *Cowell. Holthouse.*

FINIUM REGUNDORUM ACTIO. In the civil law. Action for regulating boundaries. The name of an action which lay between those who had lands bordering on each other, (*qui confines agros habent,*) to settle disputed boundaries. *Inst.* 4. 6. 20. *Id.* 4. 17. 6. *Cooper's notes in loc. Dig.* 10. 1. *Cod.* 3. 39. 1 *Mackeld. Civ. Law*, 286, § 271.

FIRDFARE, *Ferdfare, Herdfare.* Sax. [from *fird*, an expedition or military service, and *fare*, a going.] In old English law. A summoning forth to a military expedition, (*indictio ad profectionem militarem.*) *Spelman.*

An acquittance from going to war. *Fleta*, lib. 1, c. 47, § 23. *Cowell*, voc. *Ferdfare.*

FIRDSOCNE. Sax. [from *fird*, military service, and *socne*, liberty.] In old English law. Exemption from military service. *Spelman.*

FIRDWITE, *Ferdwite, Ferdwyte.* Sax. [from *fird*, military service, and *wite*, a mulct or fine.] In old English law. A fine for refusing military service, (*mulcta detrectantis militiam.*) *Spelman.*

A fine imposed for murder committed in the army; an acquittance of such fine *Fleta*, lib. 1, c. 47, § 15. *Chart.* 11 *Hen.* III. m. 33, cited in *Cowell.*

FIRE, in insurance, has the ordinary or popular meaning of ignition or burning. "Fire by lightning," in a policy, means actual burning by lightning, and not prostration or destruction without burning. 4 *Comstock's R.* 326. It was argued in this case that lightning was fire. But the court held it unnecessary to determine whether this were so, scientifically considered. *Id.*

FIRE AND SWORD, *Letters of.* In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. *Bell's Dict.*

FIREBARE. Sax. In old records. A beacon, or high tower by the sea side, wherein were lights, either to direct sailors in the night, or to give warning of an enemy. *Cowell. Ordinat. temp. Edw.* II. cited *ibid.*

FIREBOTE, *Fireboot.* Sax. [from *fire*, and *bote*, an allowance.] An allowance of sufficient wood for fuel, for the use

of a tenant for life or years. 2 *Bl. Com.* 35. 2 *Crabb's Real Prop.* 76, § 1044. *Spelman*, voc. *Bota.* Called in the old books, *estoverium ardendi.* See *Bote, Estovers.* In an old English case, it was held by the court that lessee for life or for years, by the common law, cannot take fuel but of bushes and small wood, and not of timber trees. But if the lessor, in his lease, granteth *fire-boot*, if the lessee cannot have sufficient fuel as above, &c. he may take great trees. 3 *Leon.* 16, case 38.

FIRE INSURANCE. A contract of insurance, by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. 3 *Kent's Com.* 370. *Hughes on Ins.* 385. *Angell on Fire Ins.* ch. 2, § 7. See *Fire policy.*

FIRE ORDEAL. In Saxon and old English law. The ordeal or trial by red-hot iron; which was performed either by taking up in the hand a piece of red-hot iron, of one, two or three pounds weight, or by stepping barefoot and blindfolded over nine red-hot ploughshares laid lengthwise at unequal distances. 4 *Bl. Com.* 343. *Cowell.* See *Ordeal.*

FIRE POLICY. A contract of insurance, by which, in consideration of a single or periodical payment of premium, (as the case may be,) the company engages to pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose, by the policy. 2 *Steph. Com.* 180. See *Angell on Fire Ins.* ch. 2, § 12, *et seq.* See *Policy, Fire Insurance.*

FIRLOT. A Scotch measure, containing two gallons and a pint. *Spelman.*

FIRMA. L. Lat. [from Sax. *feorme, fearme*, provisions.] In old English and Scotch law. A firm, ferm, or farm; a rent reserved on letting lands; (*reditus qui in elocandis prædiis domino elocanti reservatur.*) Anciently reserved in provisions. *Spelman. Blount. Precep. Will. Conq.* cited *ibid. Blount*, voc. *Hordeum palmale. Skene de Verb. Sign.* voc. *Firmarius.* See *Farm, Ferm.*

A feast or entertainment. *Spelman. Huntingdon, Hist.* lib. 6 *in An.* 23 *Edw. Conf.* cited *ibid. Ranulf. Cestriens.* cited *ibid. Firma noctis;* a night's ferm; provisions or entertainment for a night, or the value of it; sometimes expressed by inversion, as *nox de firma*, a night of entertainment. *Firma diei;* a day's provisions or entertainment. These are common expressions in Domesday. *Spelman.*

A rent payable in money, (*reditus pecuniarius.*) *Spelman. Hoveden. in Johan. R.* A. D. 1199, cited *ibid. Pro certa* firma *inde annuatim reddenda;* for a certain rent thereof annually to be paid. *Reg. Orig.* 257 b. *De exitibus et proficuis, vel de* firma *dominii nostri;* of the issues and profits, or of the rent of our lordship. *Id.* 265 b. *Cowell*, voc. *Firmaratio. Ad antiquas firmas;* at the old rents. *Mag. Cart. Johan.* c. 25. Called *alba firma, blanch firm*, or *white farm*, (qq. v.)

A lease or letting, (*elocatio;*) a term for years, (*terminus.*) *Adhuc viginti anni de* firma *illorum restent;* twenty years of their lease will yet remain. *Spelman. Ingulph. Sax. Hist. Croyl.* cited *ibid. Ad terminum, vel ad firmam;* for a term or ferm. *Bract.* fol. 30. *Salvo firmario* firma *et termino suo;* saving to the fermor, (termer or lessee) his farm and term. *Id.* fol. 166 b. *Non magis poterit firmarium ejicere de* firma *sua, quam tenentem aliquem de libero tenemento suo;* he can no more eject the fermor (or lessee) from his farm (or term,) than any tenant from his freehold. *Id.* fol. 220 b. *Fleta*, lib. 4, c. 31, § 4. *Ad* firmam *ponere vel dare;* to put or give for a ferm or farm. *Spelman. Chart. Hen.* I. *de Libert. Angl.* cited *ibid. Ad* firmam *dimittere, tradere, locare;* to demise, deliver, let for a farm. *Bract.* fol. 12 b, 44 b. See *To Farm let.*

A farm in the modern sense; a messuage and land, wood, &c., belonging to or used with it. *Co. Litt.* 5 a. *Shep. Touch.* 93. 3 *Leon.* 13. See *Farm.*

FIRMA FEODI. L. Lat. In old English law. A farm or lease of a fee; a fee farm. See *Feodi firma.*

FIRMARIUS. L. Lat. [from *firma*, a term.] In old English and Scotch law. A lessee for a term; one having a term, ferm or farm in lands. *Stat. Marlbr.* c. 24. *Bract.* fol. 12 b, 44 b, 166 b, 178, 226 b. *Fleta*, lib. 2, c. 55, § 8. 2 *Bl. Com.* 318. Called anciently *fermor*, and sometimes *firmary.* Hence *farmer*, (q. v.) *Firmarius nihil habet nisi tantum usumfructum;* the fermor or lessee has nothing but only the usufruct. *Bract.* fol. 261.

Id. fol.318. *Salvo* firmario *firma et termino suo. Id.* fol. 166 b, 12 b, 178. Defined by Skene "a mail-payer, mailer or mail-man." *Firmarii* comprehended all such as held by lease for life or lives, or for years, by deed or without deed. 2 *Inst.* 145. See 7 *Ad. & El.* (N. S.) 637.

FIRMARATIO. L. Lat. [from *firma*, a lease, or term.] In old records. Firming (farming,) or holding to firm, (farm.) The firmary's or farmer's right to the lands and tenements let to him *ad firmam. Cowell. Stat. Eccles. Paulinæ, MS.* cited *ibid.*

FIRMARIUM, *Fermarium.* L. Lat. [from *firma*, provisions.] In old records. A fermary; a place in monasteries, and elsewhere, where the poor were received and supplied with food. *Spelman.* Hence the word *infirmary.*

FIRMATIO. L. Lat. In the forest law. Doe season. *Cowell.*

Firmior et potentior est operatio legis quam dispositio hominis. The operation of the law is firmer and more powerful [or efficacious] than the disposition of man. *Co. Litt.* 102 a.

FIRMITAS. L. Lat. [from *firmus*, firm, sure.] In old European law. An assurance; a deed or charter confirmed by witnesses or seal, for assuring some privilege, &c. *Spelman. Capitular.* lib. 4, c. 37. *L. Alaman.* tit. 1, § 1, cited *ibid.*

FIRST FRUITS. [L. Lat. *primitiæ.*] In English ecclesiastical law. The first year's whole profits of every benefice or spiritual living in England, anciently paid by the incumbent to the pope, and forming, together with *tenths*, a revenue, which at the reformation was annexed to the crown by statute 26 Hen. VIII. c. 3. This revenue was, by charter of Queen Anne, confirmed by statute 2 Anne, c. 11, transferred to a perpetual fund (called from that circumstance Queen Anne's Bounty,) for the augmentation of poor livings. By statutes 5 & 6 Anne, benefices under £50 per annum, clear yearly value, were discharged from the payment of first fruits and tenths. 1 *Bl. Com.* 285, 286. 2 *Steph. Com.* 549, 550.

In feudal law. One year's profits of land which belonged to the king on the death of a tenant *in capite;* otherwise called *primer seisin.* One of the incidents to the old feudal tenures. 2 *Bl. Com.* 66, 67.

FIRST IMPRESSION. [Lat. *prima impressio.*] First occurrence; first presentation to a court for determination. See *Primæ impressionis.*

FIRST PURCHASER. The first acquirer (*perquisitor,*) of an estate. He who first acquired an estate to his family, or first brought an estate into the family which at present owns it, whether the same was transferred to him by sale, or by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220. 1 *Steph. Com.* 355. Styled among the Norman jurists, the *conqueror* or *conquereur. Grand Coust. Gloss.* c. 25. 1 *Steph. Com. ub. sup.* In the English law of descent, this phrase seems to be less used than formerly. See 1 *Steph. Com.* 357, chap. xi. And see the opinion of Story, J. 2 *Peters' R.* 58, 89—94.

FISC. [from Lat. *fiscus*, q. v.] The treasury or property of a prince or state. Hence *confiscate*, and the old word *confisk*, (q. v.)

FISCAL. [Lat. *fiscalis.*] Relating to, or connected with the treasury of a prince or state.

FISCAL JUDGE. [L. Lat. *judex fiscalis.*] An officer named in the laws of the barbarous nations of Europe; the same with the *grafio, graf, greve*, or *reeve. Spelman*, voc. *Grafio.* Called *fiscal*, because charged with the collection of public moneys, either directly, or by the imposition of fines. *Id.* In the Ripuarian law, he is said to be the same with the *comes* or count. *L. Ripuar.* tit. 35. *Esprit des Lois*, liv. 30, c. 18.

FISCUS. Lat. In the Roman law. The treasury of the prince or emperor, as distinguished from *ærarium*, which was the treasury of the state. *Spelman. Plin. Pan.* 36. *Tacit. Annal.* vi. 2. *Calv. Lex.*

The treasury or property of the state, as distinguished from the private property of the sovereign. *Dig.* 49. 14; *De jure fisci. Cod.* 10. 1. 1 *Mackeld. Civ. Law*, 149, § 144.

In English law. The king's treasury, as the repository of forfeited property. *Bona eorum* fisco *non vindicentur,—bona ipsorum confiscentur;* their goods shall not be claimed for the fisc or treasury,—their goods shall be confiscated. *Bract.* fol. 150.

The treasury of a noble, or of any private person. *Spelman.*

*** The use of this word, in the sense of a treasury, is derived from its primary meaning, a wicker basket, or hamper, (*sporta, clitella,*) in which money was kept by the Romans, and carried about. That

the early English kings sometimes carried their treasure with them in hampers of this kind, is shown by Spelman in a quotation from the Book of the Monastery of Ramsey, where a bishop is mentioned as having on one occasion borrowed of King Canute all the gold he had in his hampers, (*in clitellis regiis.*) Spelman supposes this use of the word to be preserved in the hanaper or hamper office of the English court of chancery. But see 3 *Bl. Com.* 48, 49. Lord Coke speaks of a *fine* in *hamper.* 5 *Co.* 44. Lord Bacon traces this word and the old English word *pipe* to a similar origin. *Works*, iv. 133.

FISH ROYAL. See *Royal fish.*

FISHERY. [L. Lat. *piscaria;* L. Fr. *pescherie.*] A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed *piscary*, of which there are several kinds. 2 *Bl. Com.* 34, 39. 3 *Kent's Com.* 409—418. *Angell on Water-Courses*, § 61, *et seq. Angell on Tide-Waters*, 124, chap. 5. *United States Digest*, Fisheries. See *Common fishery, Free fishery, Several fishery.*

FISK. In Scotch law. The right of the crown to the movable estate of a person denounced rebel. *Bell's Dict.*

FIST. L. Fr. [from *faire*, to make or do.] Makes; made. *L'estate de celuy que* fist *le releas;* the estate of him who makes the release. *Litt.* sect. 305. *Fist son volunt;* made his will. 1 *And.* 3. *Fizmez;* we made. *Yearb.* H. 12 Hen. VI. 7.

Did. *Tout* fist *il le fait;* though he did the deed. *Britt.* c. 23.

Done. *Ou tiel fact si fist;* where such deed was done. *Rot. Parl.* 4 Hen. IV.

FISTUCA, *Festuca.* L. Lat. In old English law. A staff or wand, by the delivery of which the property in land or other thing was formerly transferred. Called also *baculus, virga* and *fustis. Spelman.*

FISTULA. Lat. In the civil law. A pipe for conveying water. *Dig.* 8. 2. 18.

FITZ. L. Fr. Son; a son. *Britt.* c. 27, 89. *Fitz en ventre sa mere;* a child unborn. 12 *Mod.* 286.

FIXTURE. A thing fixed to the freehold. *Archb. Landl. & Ten.* 359.—Any thing annexed to, (that is, fastened to, or connected with) the freehold. 2 *Smith's Lead. Cas.* 114.—An article of a personal nature affixed to the freehold. 2 *Kent's Com.* 344, 345, and note.—A thing of an accessory character, annexed to houses or lands. 2 *Steph. Com.* 260.—A movable thing which, either by the operation of nature, or by human art, is connected with an immovable thing in such a manner as to constitute a part of it. 1 *Mackeld. Civ. Law*, 152, § 147.—An article which was a chattel, but which, by being physically annexed or affixed to the realty, became accessory to it, and part and parcel of it. 1 *Ohio St. R.* 511.—An article which, by being attached to the freehold, has been changed from a chattel to a part of the realty.* See 28 *Vermont R.* 428.—A chattel which has been substantially annexed to the freehold in such a manner as not to permit it to be separated from it, without material injury to itself or to the freehold.* See opinion of Bennett, J. *Id.* 433, 434. 10 *Richardson's* (S. C.) *Law R.* 135, 139, 140.—To be a *fixture*, a thing must, on the one hand, be of an *accessory* character, and, on the other, it must be in some *actual union* or connection with the principal subject, and not merely brought into contact with it.* 2 *Steph. Com.* 260.—Therefore the walls and floors of a house, being an original and necessary part of the principal subject, are not fixtures; and, on the other hand, buildings which merely rest *upon* the ground, without being fixed *in*, or *to* it, and pictures and glasses suspended against a wall, are in no sense fixtures. *Id. ibid. Archb. Landl. & Ten.* 362. But see *infra.*

*** Mr. Stephen considers the term *fixtures* as of popular origin. 2 *Steph. Com.* 260, note (*i*). It may be doubted, however, whether it is not derived, with the law of fixtures itself, from the civil law, in which term *adfixa*, or *affixa*, (things fixed or fastened,) was used to denote these accessories. *Dig.* 50. 16. 245. See *Affixus.* It is not used in the common law, as the same writer justly observes, with much uniformity of meaning. Properly, it denotes something *fixed* and permanent, as distinguished from that which is removable, (the Lat. *fixum*, having the sense not only of attachment or connection, but of *stability*,) and in this respect the popular coincides entirely with the primary legal meaning; the general rule being, that a fixture once annexed to the realty cannot be removed, or separated from it, as against the owner of the freehold or inheritance, to whom it belongs. 2 *Steph. Com.* 261. 2 *Smith's Lead. Cas.* 114. 2 *Kent's Com.*

343. From the various *exceptions* to this rule, however, which have been gradually established, a distinction has not only arisen between fixtures removable, and irremovable, but the word *fixtures* itself has been said to have acquired the peculiar meaning of chattels which have been annexed to the freehold, but *which are removable* at the will of the person who annexed them. 1 *Cr. M. & R.* 276. *Grady on Fixtures*, 1, 2. And see 35 *Eng. Law & Eq. R.* 173. More than this, —it has been said that the term *fixtures* does not necessarily mean things affixed to the freehold. 5 *Mees. & W.* 175. This goes to justify Mr. Chitty's remark, that *fixture* is a term in general denoting the very reverse of the name. 1 *Chitt. Gen. Pr.* 161. And this idea has been carried so far in Pennsylvania, as to have led to the establishment of an entirely new definition of a fixture, viz.: something *essential to the use* of the freehold, whether *actually fastened* to it *or not.* 2 *Watts & Serg.* 116, 390. See 6 *Greenleaf's R.* 157. On the other hand, and as the opposite extreme of this doctrine, it has been held in Connecticut that *mere annexation* to the realty was not sufficient to give the attribute of a fixture to a chattel personal, unless it was *so annexed* that an injury would result to the freehold from the mere act of removal. 9 *Conn. R.* 67. And see 14 *Mass. R.* 352. A middle ground has been taken in New-York, between these two opinions. 20 *Wendell's R.* 636. These conflicting decisions, which are collected in 2 *Smith's Leading Cases*, 121, (Am. editor's note,) have tended to unsettle the definition of the term *fixture*, or rather to introduce a variety of definitions which are, in a greater or less degree, departures from the primary meaning above given. The whole subject has recently been very elaborately discussed by the Supreme Courts of Vermont and Ohio. See 28 *Vermont R.* 428. 1 *Ohio St. R.* 511. And see 2 *Kernan's R.* 170. 26 *Alabama R.* 497, 498. Fixtures are now usually divided into several kinds; as *landlord's fixtures*, *tenant's fixtures*, *trade fixtures*, and *farm* or agricultural *fixtures*. *Archb. Landl. & Ten.* 359. See *United States Digest*, Fixtures.

FLAG, *Duty of the.* The ceremony of striking the flag and lowering the topsail of a vessel to the British flag, formerly practised as a solemn acknowledgment of British sovereignty over the British seas. *Molloy de Jur. Mar.* 80, 82. Called, in an old record, "striking and veiling the *bonnet.*" *Id.* 80, *in marg.*

FLAGELLAT'. [abbr. of *flagellatus.*] Whipped; scourged. An entry on old Scotch records. 1 *Pitc. Crim. Trials*, part 1, p. 7.

FLAGRANS. Lat. Burning; raging; in actual perpetration. *Flagrans bellum;* a war actually going on. *Flagrans crimen;* a crime in the act of perpetration, or just perpetrated. See *Flagrante.*

FLAGRANTE. Lat. [from *flagrans*, burning.] In the heat, excitement, or actual commission of an act. *Flagrante delicto—maleficio—crimine;* in the heat of the offence, in the very act, or immediately after. *Bract.* fol. 233, 233 b. *Fleta*, lib. 4, c. 27, § 16. 4 *Bl. Com.* 307. *T. Raym.* 219. *Flagrante disseisina. Bract.* fol. 162 b. *Flagrante facto. Id.* fol. 231 b. *Flagrante bello;* during actual war. 1 *Kent's Com.* 76.

FLANDRENSES. L. Lat. In old English law. Inhabitants of Flanders; Flemings. *Sicut de terris Normannorum et Flandrentium. Bract.* fol. 87 b.

FLAVIANUM JUS. Lat. In the Roman law. The title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. 1 *Mackeld. Civ. Law*, 24, § 35. *Calv. Lex.*

FLEDWITE. Sax. [from *fled*, a fugitive, and *wite*, a fine.] In Saxon and old English law. A mulct or fine set upon an outlaw or fugitive, as the price of obtaining the king's pardon and peace. *Spelman*, voc. *Fletwite. Blount.*

The privilege of being quit from amerciaments, when an outlawed fugitive came to the king's peace of his own will, or being licensed. *Rastal's Expos. of Words. Termes de la Ley.* Sometimes confounded with *flitwite*, (q. v.)

FLEET. A prison in London, so called from Fleet river or ditch, near which it stood. *Committatur gaolæ de Fleete. Fleta*, lib. 2, c. 70, § 13. *Selden's Diss. ad Flet.* c. 10, sect. 3. Formerly the prison of the Court of Chancery and Common Pleas. Now, by statutes 5 & 6 Vict. c. 22, 6 & 7 Vict. c. 20, consolidated with the Queen's Bench and Marshalsea prisons into one, called the Queen's Prison, which is made the prison of all the courts. 3 *Steph. Com.* 254. Tindal, C. J. 1 *Man. Gr. & S.* 463. See *Fleta.*

FLEM, *Flema, Flyma, Fleman.* [Sax. *flyma, flyman.*] In Saxon and old English law. A fugitive bondman or villein. *Spelman.*

The privilege of having the goods and fines of fugitives. *Id.*

FLEMENESFIRINTHE. Sax. Blount makes this to be properly *flymenafyrmthe*, (Sax. *flyma*, a fugitive, and *fyrmthe*, a receiving;) the receiving or relieving a fugitive. *LL. Inæ*, c. 29, 47. *LL. Hen.* I. c. 10, 12. *Cart. Edw. Conf. Monasterio de Waltham.* It seems to be the same with the *flemenfirma* of Spelman, (q. v.) In Fleta, the words *flemenessreive* and *flemesrenthe* are used to signify the right of having the chattels of one's fugitive tenants. *Fleta*, lib. 1, c. 47, § 12.

FLEMENESWITE. Sax. [from *flyma*, a fugitive, and *wite*, a fine.] In Saxon and old English law. A fine imposed upon a fugitive. *Spelman*, voc. *Flema.*

FLEMESWITE. Sax. [from *flæme*, flight, and *wite*, a fine.] The same as *flemeneswite*, (q. v.) The liberty of having or claiming the chattels of a fugitive. *Blount.*

FLEMENFIRMA, *Flymenfirma.* Sax. and L. Lat. [from Sax. *flymen*, fugitives, and *firma*, from *feorme*, food.] In Saxon and old English law. The sustenance or support of fugitives, or outlaws. *LL. Hen.* I. c. 13.

The fine for such offence. *Id.* c. 11. *Spelman.*

FLETA. L. Lat. [from Sax. *fleoten*, to float or flow.] In old English law. An estuary; a stream, canal or ditch, where the tide ebbs and flows; (*æstuarium, fluentum, seu canalis quem aqua fluens et refluens occupat.*) *Spelman.* Hence the name of Fleet ditch in London, and of the Fleet prison which stood near it. *Id. Cowell.* See *Fleet.*

FLETA. The title of an ancient treatise on English law, supposed to have been written in the reign of Edward I. 2 *Reeves' Hist. Eng. Law*, 280. *Crabb's Hist.* 198. *Selden's Diss. ad Fletam*, c. 10. Its full title is *Fleta, seu Commentarius Juris Anglicani;* the name of *Fleta* being given to it, according to the author's explanation, because it was written during his confinement in the *Fleet* prison, from which circumstance it has been conjectured that he was one of those judges who fell under the displeasure of the king. *Id. ibid. Fleta*, procem. It is a general treatise on the law, in six books, written in Latin in the method of Bracton, from whom and Glanville the author copies largely. Mr. Reeves indeed calls him a mere imitator, and his work is obviously a compendium of Bracton, with considerable additions, however, showing what alterations had taken place in the law since Bracton's time. It embodies the provisions of all the important statutes of the period, but refers very sparingly to judicial decisions. It also contains much valuable historical matter, and is the source of many of the quotations contained in Lord Coke's Institutes and Reports. Mr. Selden has written a learned *Dissertation* on Fleta, which is annexed to most of the editions of this work. A large number of the errors which abound in Fleta are corrected in the errata to the edition of 1647, but many more have been left unnoticed.

FLETH, *Flet.* Sax. In old English law. Land. *Co. Litt.* 4 a.

A house. *Blount*, voc. *Flem & Fleth.*

FLETWITE. The same as *flitwite*, (q. v.)

FLITWITE, *Fletwite.* Sax. [Scotch *flichtwite;* from Sax. *flit*, strife; and *wite*, a fine.] In Saxon and old English law. A fine or mulct imposed on account of brawls and quarrels, (*mulcta ob contentiones, rixas et jurgia imposita.*) *Spelman*, voc. *Fletwite.*

FLOAT. In American land law. A certificate authorizing the entry of land. 20 *Howard's R.* 501, 504. A term peculiar to the practice of the Western States.

FLOATABLE. Used for floating. A floatable stream is a stream used for floating logs, rafts, &c. 2 *Michigan* (Gibbs,) *R.* 519. See *Navigable stream.*

FLOD, *Flud.* In old English law. Flood or high tide. *Dilationem habebit quadraginta dierum, et duorum* flodorum *et unius ebbæ;* he shall have a delay (or further time) of forty days, and two flood tides and one ebb. *Bract.* fol. 163. See *Flud.*

FLODEMARK. O. Eng. Flood-mark; high-water mark. The mark which the sea, at flowing water and highest tide, makes on the shore. *Blount.* See *Floudmarke.*

FLORENTINE PANDECTS. A copy of the Pandects discovered accidentally about the year 1137, at Amalphi, a town in Italy near Salerno. From Amalphi, the copy found its way to Pisa, and Pisa having submitted to the Florentines in 1406,

the copy was removed in great triumph to Florence. By direction of the magistrates of the town, it was immediately bound in a superb manner, and deposited in a costly chest. Formerly, these Pandects were shown only by torch-light, in the presence of two magistrates, and two Cistercian monks, with their heads uncovered. They have been successively collated by Politian, Bolognini, and Antonius Augustinus; an exact copy of them was published in 1553 by Franciscus Taurellus. For its accuracy and beauty, this edition ranks high among the ornaments of the press. Brenchman, who collated the manuscript about 1710, refers it to the sixth century. *Butler's Horæ Juridicæ*, 62, 63. And see *Id.* 64, 65, 66, note, for an account of the works from which the foregoing notice was extracted.

FLOT. L. Fr. A flow or flood; flood tide. *Un ebbe et un flot. Britt.* c. 44. *Un* flot *et un retret. Id.* c. 123.

FLOTA. L. Lat. [L. Fr. *flote.*] In old English law. A fleet. *Flota navium;* a fleet of ships. *Blount. Towns. Pl.* 68.

FLOTAGES. Such things as, by accident, *float* or swim on the top of the sea, or great rivers. *Blount.*

FLOTANS. L. Lat. Floating. *Towns. Pl.* 68.

FLOTSAM, *Floatsam, Flotson.* [from Sax. *fleoten*, to float.] Floating on the water. Goods lost by shipwreck, and which lie *floating* on the top of the water. *Cowell. Blount. Termes de la Ley.* 5 *Co.* 106. 1 *Bl. Com.* 292. 1 *Crabb's Real Prop.* 508, § 657. This barbarous and uncouth appellation, as Blackstone terms it, is supposed by Spelman to be of German origin. It is exclusively applied to such goods as are cast out of a vessel by the violence of the winds or sea, as distinguished from such as are intentionally thrown overboard. See *Jetsam.*

FLOTSON. The same with *Flotsam*, (q. v.) *Hale de Jur. Mar.* pars 1, c. 7.

FLOUD-MARKE, *Fludmerk.* O. Eng. In old English law. High-water mark; flood-mark. 1 *And.* 88, 89. *Enter le low water marke et le* floud marke *ou banke. Id.* 88. *Infra fluxum maris vulgat' dict'* flud-merk. *Id.* 89.

FLUCTUS. L. Lat. In old English law. Flood; flow; flood-tide. *Bract.* fol. 255. Called, also, *fluvius* and *flumen.*

FLUD. In old English law. Flood or flood-tide. *Dantur essoniato—quadraginta dies ad minus, et unum* Flud *et unum ebbe. Bract.* fol. 338. See *Id.* fol. 338 b, 339.

FLUMEN. Lat. In the civil law. A river. *Dig.* 43. 12. Distinguished into public and private. *Id.* 43. 12. 3. For other distinctions see *Id.* 43. 12. 2.

In old English law. Flood, or flood-tide. *Fleta*, lib. 4, c. 2, § 2.

FLUMINEÆ VOLUCRES. Lat. Wild fowl; water-fowl. 11 *East*, 571, note.

FLUVIUS. Lat. In old English law. A river. *Fluvii regales;* royal streams. Public rivers for public passage, (Fr. *haut stremes le roy.*) So called, not in reference to the propriety of the river, but to the public use; all things of public safety and convenience being, in a special manner, under the king's care, supervision and protection. *Hale de Jur. Mar.* pars 1, c. 2.

Flood or flood-tide. *Fleta*, lib. 6, c. 8, § 2.

FLUXUS. Lat. In old English law. Flow. *Per* fluxum *et refluxum maris;* by the flow and re-flow of the sea. *Dal.* pl. 10.

FLYMA, (pl. *Flymen.*) Sax. A fugitive or outlaw. *Spelman*, voc. *Flema.*

FOCALE. L. Lat. [from *focus*, a hearth.] In old English law. Firewood, or fuel. *Cowell. Towns. Pl.* 68. See *Hardr.* 38 b, arg.

FODERUM, *Foderus, Fodrum, Fodrus.* L. Lat. [Sax. *foder.*] In old English law. Food for cattle; fodder. *Spelman.* Calvin calls it a German word.

In feudal law. A contribution of corn or grain for the use of the king's army. *Spelman. Cowell. Hotoman de Verb. Feudal. Calv. Lex. Id. De Verb. Feud.*

FODINA. Lat. A mine. *Co. Litt.* 6 a.

FŒDUS. Lat. In international law. A treaty. *Grot. de Jur. Belli*, lib. 2, c. 15. *Fœdera;* treaties. *Wheaton's Intern. Law*, 342; part 3, ch. 3, § 10.

FŒNUS NAUTICUM. Lat. In the civil law. Nautical or maritime interest. An extraordinary rate of interest, agreed to be paid for the loan of money on the hazard of a voyage; sometimes called *usura maritima. Dig.* 22. 2. *Cod.* 4. 33. 2 *Bl. Com.* 458. *Molloy de Jur. Mar.* 357. *Loccen. de Jur. Mar.* lib. 2, c. 6. 3 *Kent's Com.* 354, note.

FOER, *Fower, Forer.* L. Fr. To dig. *Kelham.*

FOESA. L. Lat. In old records. Grass; herbage. 2 *Mon. Angl.* 906 b. *Cowell.*

FOGAGIUM. L. Lat. In old English law. Fogage or fog; a kind of rank grass of late growth, and not eaten in summer. *Spelman. Cowell.* Distinguished from hay. *Com.* 549, 550.

FOI. Fr. In French feudal law. Faith; fealty. *Guyot, Inst. Feod.* chap. 2. See *Foy.*

FOINESUN. L. Fr. In old English law. The fawning, or fawning time of deer. *Spelman.* See *Feonatio.*

FOIAL. L. Fr. Faithful. *Yearb.* H. 2 Edw. III. 20. *Kelham.*

FOIER. L. Fr. To do. *Kelham.* A corrupt form of *faire*, (q. v.) *Foit, foite;* done; a deed. *Id.* See *Fait.*

FOIRFAULT. Sc. In old Scotch law. To forfeit. 1 *How. St. Trials*, 927.

FOIRTHOCHT. Sc. In old Scotch law. Forethought; premeditated. 1 *Pitc. Cr. Trials*, part 1, p. 90.

FOITS, *Foitz, Fiez.* L. Fr. Times. *Un foit;* one time; once. *Autre foit;* another time; before. *Ascun foits;* sometimes. *Sovent foits;* oftentimes. *Tout foits;* at all times; always. *L. Fr. Dict. Une* foitz, *deux* foitz, *et la tierce* foitz; once, twice and the third time. *Britt.* c. 30. *Deuz fiez par an;* twice a year. *Conf. Cartar.* 25 *Edw.* I.

FOL, *Fole.* L. Fr. A fool; an idiot; *Fol nastre;* a born or natural fool. *Britt.* c. 36. *Fols nastres. Id.* c. 34.

Foolish. *Fet Assaver*, § 45.

FOLCLAND, *Folkland.* Sax. [from *folc*, people, and *land.*] In Saxon law. Land of the people or public, (*terra popularis.*) *Spelman.* So called, either because usually distributed among the common people, or because it was the property of the whole community; or, finally, because it was held by common right or law.* A species of land among the Saxons, which was not held by any assurance in writing, and in that respect distinguished from *bocland. Terra popularis quæ jure communi possidetur, vel sine scripto. Spelman.*— Land held without writing, paying an annual rent, and liable to certain services. *Somner.* See *Bocland.*

Folcland has been supposed, by Sir W. Blackstone and other writers, to have been land held in villeinage, and resumable at the discretion of the lord. 2 *Bl. Com.* 90. *Crabb's Hist.* 13. *Gilb. C. Pleas, Introd.* 15. *Cowell.* Later researches into Saxon antiquities, however, have shown that though it was subject to many burthens and exactions, it might be held by freemen of all ranks and conditions. It is now supposed to have been the property of the community, which was parcelled out to individuals in the *folc-mote*, and granted for a certain term, on the expiration of which it reverted to the community. *Wharton's Lex. Allen on the Prerogative*, 140, *et seq.* 1 *Spence's Chancery*, 8.

FOLCMOTE, *Folkmote, Folcgemote.* Sax. [from *folc*, people, and *mote*, or *gemote*, meeting.] In Saxon law. A meeting of the people; a general assembly of the people, to consider and order matters of the commonwealth. *Somner. Spelman*, voc. *Gemotum.*—Any popular or public meeting of all the *folk* or people of a place, or district. *Brande.* See *Gemote.*

A county court; an assembly of the people or freeholders of a county, (*conventus comitatûs.*) Otherwise called the *shiremote. Spelman.*

A city court; an assembly of the inhabitants of a city or borough, (*conventus civitatis seu burgi.*) Otherwise called the *burgmote. Spelman.* The folcmote or city court of London is mentioned in ancient records. *Id. Crabb's Hist.* 141. The term seems to have been generally applied to *all courts* that were adapted to the convenience of the *people* within any district. *Id.* 26. See *Cowell.*

FOLCRIGHT, *Folkright.* [Sax. *folcrihte;* from *folc*, people, and *rihte*, right; Lat. *jus commune.*] Common right; that which is equally the right of all.* This word occurs in the laws of King Edward the elder, and is thought by Lambard to be the same with *common law;* which, however, is questioned by Spelman. *LL. Edw. Senioris*, c. 1. 1 *Bl. Com.* 65. *Spelman*, voc. *Jus commuae.*

FOLDAGE. See *Faldage.*

FOLD COURSE. [L. Lat. *faldæ cursus.* In English law. Land used as a sheep walk. *Hargr. Co. Litt.* note 23, lib. 1.

Land to which is appurtenant the sole right of folding the cattle of others. *Id.*

The right of folding cattle. *Id.*

Common of foldage, or faldage. *Id.* See *Faldage, Faldæ cursus.*

FOLGARE, *Fulgare.* L. Lat. [from Sax. *folgan*, to serve or follow.] In Saxon law. To establish one's self in a friborg or frankpledge, (*prosistere se in aliquo contubernio, friborga, seu fidejussione.*) *Spelman. LL. Aluredi*, c. 33, cited *ibid.*

To become the dependent or follower of another, (*tradere se alicui in clientelam ;*) to serve or follow, (*servire, sequi, sectari.*) *Spelman.*

FOLGARII, *Folgeres.* L. Lat. [from Sax. *folger*, a follower.] In Saxon law. Followers; retainers; dependents or servants. *Spelman. LL. Hen.* I. c. 9, cited *ibid.*

FOLGHERES. Sax. In old English law. Followers or servants. *Alii qui illis deserviunt, qui dicuntur* folgheres. *Bract.* fol. 124 b.

FOLIO. [from Lat. *folium*, a leaf.] A leaf of a book or manuscript.

In old practice. A leaf or sheet of parchment or paper, containing a certain number of words.

In modern practice. A certain number of words, without reference to the paper or parchment on which they are written. In English practice, a *folio* in law proceedings is seventy-two words; in chancery, ninety words. *Wharton's Lex.* In New-York, a *folio* was formerly seventy-two words. 2 *Rev. Laws of* 1813, 15, *et seq.* It is now one hundred words, counting every figure, necessarily used, as a word. 2 *Rev. St.* [650,] 542, § 4. *Id.* [753, § 16,] 631, § 17.

The term *folio*, in this last sense, seems to have originated in the practice of writing a certain number of *words* on a *sheet*, which, becoming invariable, gave the name of the *sheet* or leaf (*folio,*) to the *number of words* written upon it. 3 *Bl. Com.* 323. Hence the expression in the New-York act first quoted above,—"each *sheet* containiug *seventy-two words.*"

FONT, *Fount.* L. Fr. [from *faire*, to make.] (They) make or made. *L. Fr. Dict.*

(They) do or did. *Id.*

FONTANA. Lat. A fountain or spring. *Bract.* fol. 233.

FOOT OF A FINE. [L. Fr. *pee.*] In old conveyancing. The conclusion of a fine, reciting the parties, day, year and place, and before whom it was acknowledged or levied. 2 *Bl. Com.* 351.

FOOTGELD. [Sax. *geld*, a payment or fine.] In old English law. An amerciament for not cutting out the balls of dogs' feet in the forest. *Termes de la Ley. Manwood*, c. 25, num. 3. *Cowell.*

FOOT-PRINTS. In the law of evidence. Impressions made upon earth, snow or other surface, by the feet of persons or by the shoes, boots or other covering of the feet. *Burr. Circ. Evid.* 264.

FOR, *Fore, Fors.* L. Fr. [from Lat. *foris.*] Out; without. See *Fors.*

FOR. Fr. [from Lat. *forum.*] In French law. A tribunal. *Le for interieur ;* the interior forum; the tribunal of conscience. *Poth. Oblig.* part 1, ch. 1, sect. 1, art. 3, § 4.

"FOR," [Lat. *pro,*] in all contracts imports a condition precedent; (*for* so much money.) *Hob.* 41, cited by Lord Ellenborough, 5 *M. & S.* 187.

FOR THAT WHEREAS. [L. Lat. *pro eo videlicet quod cum.*] In pleading. Formal words introducing the statement of the plaintiff's case, by way of recital, in his declaration, in all actions except trespass. 1 *Instr. Cler.* 170. 1 *Burr. Pr.* 127. In trespass, where there was no recital, the expression used was "For that," (*de eo quod.*) *Id.* 1 *Inst. Cl.* 202.

FOR WHOM IT MAY CONCERN. (Fr. *pour compt de qui il appartient.*) A general clause in policies of insurance, intended to embrace all persons who have an insurable interest in the property, and a lawful right to be insured. 2 *Duer on Ins.* 29, § 21. 1 *Phillips on Ins.* 152.

FORANEUS. Lat. [from *foris*, without.] One from without; a foreigner; a stranger. *Calv. Lex.*

FORATHE. [from Sax. *for*, and *athe*, oath.] In old forest law. One who could swear or make *oath* for another. *Spelman.*

FORBALCA. L. Lat. In old records. A forebalk; a balk (that is, an unploughed piece of land,) lying forward or next the highway. *Cowell.*

FORBANNITUS, *Forisbannitus.* L. Lat. [from Ital. *fore*, Lat. *foris*, without, and *bannitus*, proclaimed, proscribed.] In old European law. Banished; outlawed. *Spelman. LL. Longob.* lib. 1, tit. 25, c. 62, cited *ibid.* Spelman calls this a Lombardic word.

FORBANNUM. L. Lat. Proscription; banishment. *Spelman*, voc. *Forbannitus. LL. Longob.* lib. 1, tit. 25, l. 63, cited *ibid.*

FORBARRER. L. Fr. In old English law. To bar out; to prevent or preclude; to estop.* To bar or deprive forever. *Stat.* 9 *Ric.* II. c. 2. *Stat.* 6 *Hen.* VI. c. 4. *Cowell.*

Forbarres ; barred, prevented, or estopped. *Britt.* c. 119. *Stat. Gloc.* c. 3. *Litt.* sect. 640.

FORBATUDO, *Forbatudus.* L. Lat.

[from Sax. *fore*, before, and Fr. *batre*, to beat or strike.] In old European law. The first striker; he who struck the first blow, (*primus feriens,*) or offered the first wrong, (*primam inferens injuriam.*) A term applied to one who was slain in a quarrel of his own provoking, and by his own fault; as by one upon whom he made an assault; (*qui vim aut injuriam alteri inferens, culpâ suâ occiditur.*) *Spelman.*

FORBEARANCE. A holding from proceeding; an abstaining from the enforcement of a right, as the payment of a debt; indulgence by a creditor to a debtor. See 3 *Comstock's R.* 355.

FORCE. L. Fr. and Eng. [L. Lat. *forcia, fortia;* Lat. *vis.*] Strength; compulsory power; mere strength or power exercised without law, or contrary to law; violence.*—An offence by which violence is used to persons or things. *West's Symbol.* part 2, tit. *Indictments*, § 65. *Cowell.*

*** *Force* is now generally used in a bad sense, to denote *unlawful* force or violence, (*vis injusta.*) *Co. Litt.* 161 b. *Cowell.* Anciently, however, various kinds of force were recognized; as *simple* force, and *violent* force; violent force *without arms*, and violent force *with arms*, or armed force; *lawful* force and *unlawful* force; with many more refined distinctions now obsolete. *Bract.* fol. 162. Bracton defines *force*, (*vis,*) without any qualifying epithet, to be "the onset or pressure of a greater thing which cannot be resisted," (*majoris rei impetus cui resisti non potest.*) *Id. ibid.* The same author gives as an example of force *without violence*, that kind of force which was exerted against a thing *not* at the time in any one's *possession*, (*sicut in rem vacuam.*) *Id. ibid.* So Britton distinguishes between *force and arms*, and simple force *without arms*, giving, as an instance of the latter, force by a *multitude of people;* (*et si y ad force et armes, ou force simple sauns armes, sicome par multitude de gentz.*) *Britt.* c. 53. See *Force and arms, Vis.*

FORCE. L. Fr. and Eng. [Lat. *vis.*] Validity; efficacy; power in law to bind or coerce. An obligation or law is said to be "of *force*," or "in *force*," so long as compliance with it can be lawfully coerced. The word had the same sense in law French. *Voyde et de nul force;* void and of no force. *Britt.* c. 52. *De ci graund force;* of so great force. *Stat. Mod. Lev. Fines.*

FORCE. L. Fr. [L. Lat. *fortia.*] In old English law. A technical term applied to a species of accessory before the fact. *Stat. Westm.* 1, c. 14. See *Fortia.*

FORCE. In Scotch law. Coercion; duress. *Bell's Dict.*

FORCE AND ARMS. [L. Fr. *force et armes;* L. Lat. *vis et arma.*] A phrase in the old law of trespass and disseisin, importing that the act was committed by *multitude* of people, with *arms* or weapons of offence. Otherwise expressed as *force of arms*, and *force with arms*, and sometimes *armed force. Britt.* c. 53. *Litt.* sect. 240. See *Force.* The word *arms* had, in this connection, its full proper sense of military equipment. Thus Britton (*ub. sup.*) speaks of disseisin committed with banner displayed and horses arrayed, (*à banner despleye, ou à chivaus covertz.*)

The phrase "with force and arms," (*vi et armis,*) was also anciently a necessary phrase in pleading, and is still used in declarations for trespass and in criminal indictments, though with little of its original significance. 2 *Chitt. Pl.* 846, 850. *Wharton's Prec. of Indict.* 5, 9. In indictments it is held to be no longer essential. *Id. ibid.* See *Vi et armis.*

FORCE MAJEURE. Fr. [Lat. *vis major.*] In the law of insurance. Superior or irresistible force. *Emerig. Tr. des Ass.* ch. 12.

FORCED SALE. In practice. A sale made at the time, and in the manner prescribed by law, in virtue of execution issued on a judgment already rendered by a court of competent jurisdiction; a sale made under the process of the court, and in the mode prescribed by law. Hemphill, C. J. 6 *Texas R.* 110.

FORCELET. L. Fr. [L. Lat. *forcelettum.*] A fortress. *Stat. Westm.* 1, c. 17. *Fleta*, lib. 1, c. 20, § 119.

FORCERIUM. L. Lat. In old English law. A strong box, or chest for keeping papers. *Quare quoddam* forcerium *vel cistam—fregit. Reg. Orig.* 94 b, 95.

FORCHER. L. Fr. In old practice. To divide, in the process of essoining; to fourch. *Stat. Westm.* 1, c. 43. See *Fourcher.*

FORCIA. L. Lat. In old English law. Force. *Fleta*, lib. 1, c. 27, § 18. *Towns. Pl.* 116. More commonly written *fortia*, (q. v.)

FORCIBLE ENTRY. An entry with

strong hand, or with multitude of people, as distinguished from a peaceable entry. *Stat.* 5 *Ric.* II. c. 8. 2 *N. Y. Rev. St.* [507,] 418, § 1.—A violent actual entry into a house or land. *Termes de la Ley. Cowell.*—An offence against the public peace, committed by violently taking possession of lands and tenements with menaces, force and arms, and without the authority of law. 4 *Bl. Com.* 148. 4 *Steph. Com.* 280. 2 *Chitt. Gen. Pr.* 231, 233, *et seq. Lewis' U. S. Crim. Law*, 274, *et seq. United States Digest*, Forcible Entry and Detainer.

FORCIBLE DETAINER. The offence of violently keeping possession of lands and tenements, [either after a peaceable or forcible entry,] with menaces, force and arms, and without the authority of law. 4 *Bl. Com.* 148. 4 *Steph. Com.* 280. See *Forcible entry*, and the authorities *ibid.* To constitute a forcible detainer, there must be actual force, with strong hand, except where the parties stand in the relation of landlord and tenant. 3 *A. K. Marshall's* (Ky.) *R.* 1145, [296.]

FORCLORRER, *Foreclore.* L. Fr. [from *for*, out, and *clore*, to shut.] To shut out, or exclude; to foreclose. *Et* forclorra *le frere et la soer;* and shall shut out the brother and the sister. *Britt.* c. 119.

Forclos, foreclose; shut out, barred or foreclosed. *Britt.* c. 5, 73. *Stat. Gloc.* c. 3. *Forecloses. Stat. Mod. Lev. Fin.* 2 *Inst.* 510.

FORDA. L. Lat. In old records. A ford or shallow, made by damming or penning up the water. *Cowell.*

FORDAL. Sax. [L. Lat. *fordalia, fordalis;* from Sax. *for*, before, and *dæl*, a part or portion.] In old records. A front piece or head of land; a headland or butt.* *Cowell.*

FORDANNO. [from Germ. ƀor, or Sax. *fore*, before, and ƀannan, to assault.] In old European law. He who first assaulted another. *Spelman.*

FORDIKA. L. Lat. In old records. Grass or herbage growing on the edge or bank of dykes or ditches. *Cowell.*

FORE. Sax. Before.

FORE. L. Fr. Out. See *For.*

FORECHEAPUM. L. Lat. [from Sax. *fore*, before, and *ceapan*, to buy.] In old records. Pre-emption. *Blount.*

FORECLOSE. [from L. Fr. *forclorer*, q. v.] To shut out or exclude; to bar. 2 *Inst.* 298. *Stat.* 33 *Hen.* VIII. c. 39.

In equity practice. To bar an equity of redemption. 1 *Steph. Com.* 284. 1 *Daniell's Chanc. Pr.* 262.

FORECLOSURE. In equity practice. The process of barring the equity of redemption of a mortgagor, by filing a bill for that purpose, called a bill of foreclosure. 2 *Barbour's Chanc. Pr.* 171, 186. 2 *Crabb's Real Prop.* 918. 4 *Kent's Com.* 180.

FOREFAULT. Sc. In Scotch law. To forfeit; to lose; (Scotticè, to tyne.) *Skene de Verb. Sig.* voc. *Recognition.*

FOREGIFT. See *Forehand rent.*

FOREHAND RENT. In English law. A kind of premium paid by a tenant on taking a lease. Sometimes called *foregift*, but more usually a *fine.* 1 *Crabb's Real Prop.* 171, § 155.

FOREIGN, *Forein, Forrein.* [from L. Fr. *forein, foreyn, forain;* Lat. *forinsecus;* from *foris*, without, on the outside.] Without or beyond the limits of a particular territory, district or jurisdiction; as a *foreign nation*, a *foreign state*, a *foreign county*, (qq. v.)

Belonging without, or to another jurisdiction; as *foreign matter*, a *foreign answer*, (qq. v.)

Originating or coming from without or abroad; subject to another jurisdiction; as a *foreigner*, (q. v.)

Made, done or transacted without, or in another territory or jurisdiction; as a *foreign assignment*, a *foreign judgment*, a *foreign marriage*, (qq. v.)

Operating without, or in another territory or jurisdiction; going abroad; as a *foreign bill of exchange*, (q. v.)

Extrinsic or irrelevant; belonging elsewhere; (L. Fr. *dehors.*)

Extraordinary or *extra.* See *Foreign apposer.*

*** It was argued in Spratt *v.* Spratt, (1 *Peters' R.* 343,) that *foreign* properly signified that which had an *origin* abroad; and the derivation of the word from *foris*, (without,) and *origo*, (origin,) was relied on. But this seems hardly so good an etymology as *foris* and *regnum*, which has also been given. Both these conjectures appear to be based entirely on the presence of the letter *g*, which, however, is a mere variation of spelling *forein*, (as *darreign* was of *darrein*,) the word itself being essentially French. *Foreign* or *forein* (as it is written by Blount) seems clearly derived, by the simple process of contraction, from the

Lat. *forinsecus*, the signification of which was by no means limited to the idea of *origin*. See *Forinsecus*.

Foreign, in common speech, has, in most of its applications, the sense of remoteness. But this idea does not necessarily enter into its legal meaning. Hence, in American law, the several states of the Union are, in certain points of view, *foreign* states to each other, though the states to which the term is applied may be immediately adjacent. See *Foreign state*. So each county in a state, considered with reference to the others, is a *foreign county*. See *Foreign county*. And, in old English law, the term was applied to still smaller subdivisions, as a lord's fee; and even to an outside ridge or furrow of land. See *Foreign service*, *Forinsecus*.

FOREIGN ANSWER. [L. Lat. *forinseca responsio*.] In old English practice. An answer which was not triable in the county where it was made. *Stat.* 15 *Hen.* VI. c. 5. *Cowell*, voc. *Foreign*.

FOREIGN APPOSER, (or OPPOSER.) [L. Lat. *forinsecus oppositor*.] In old English law. An officer in the exchequer whose business was to examine sheriffs' estreats with the record. So called, according to Cowell and Blount, (who write the word *apposer*,) because he *apposed*, that is, questioned or interrogated the sheriff as to every particular sum specified. Lord Coke, however, very distinctly writes the word *opposer*. "*Forinsec' oppositor*, the forein *opposer*; he doth *oppose* all sheriffs and bailiffs of liberties, of their green wax." 4 *Inst.* 107. See 2 *Vern.* 83. This word may be essentially the same with *controller* (*contra-rotulator*) the radical idea of which was opposition.

From Coke's explanation of the duties of this officer, it may be gathered that he was denominated *foreign* because he dealt with such items as were not within the ordinary accounts of the sheriff; it being the province of the escheator to deal with such matters as were "*within* the sheriff's accounts." *Foreign opposer* may therefore not inaptly be defined, an *extraordinary* or special *controller* or auditor.

FOREIGN ASSIGNMENT. An assignment made in a foreign country, or in another state. 2 *Kent's Com.* 405—408, and notes.

FOREIGN ATTACHMENT. [L. Lat. *attachiamentum forinsecum*.] In English practice. An attachment of the property of a foreign or absent debtor.* A judicial proceeding peculiar to certain cities and towns in England, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer to an action; and afterwards, upon his continued default, of obtaining the goods or property absolutely, in satisfaction of the demand. *P. Cyclopædia.* Called *foreign*, because it operates against a *foreign* debtor, or a debtor *out* of the jurisdiction within which the property is found. See *Foreign*. Cowell defines it "an attachment of a *foreigner's* goods found within a liberty or city, in the hands of a third person, for the satisfaction of some citizen to whom the said *foreigner* oweth money."

The proceedings, as carried on in the Mayor's Court of London, are in the form of an action supposed to be commenced by summons against the debtor, on the return of which, a suggestion is supposed to be made by the plaintiff to the court, that some third person within the city has goods of the defendant in his possession, or owes him debts, by which goods or debts the plaintiff prays that the defendant may be *attached* until he appears to answer the action brought against him. In point of fact, the first proceeding is an affidavit of the debt, made by the plaintiff or creditor, upon which an entry of the supposed action is made in the action book kept in the Mayor's Court office, and then the plaintiff's attorney proceeds immediately against the third party, or *garnishee*, as he is called, by attachment and summons. See the proceedings described at length, in Magrath *v.* Hardy, 4 *Bing. N. C.* 782. The English foreign attachment is founded entirely upon local customs, and is an exception to the general law of the land. See *Drake on Attachment*, chap. 1. *Id.* ch. 18. *Locke on Foreign Attachment*.

In the United States, a similar process has been adopted against the property of absent, non-resident and absconding debtors, a species of which is called in some states, *trustee*, and in others, *garnishee process*. The practice, however, is, in many respects, different from the English, being regulated by the statute and local law of each state. See 2 *Kent's Com.* 401, 403, note. *United States Digest*, Absent and Absconding Debtors. Story, J. 4 *Ma-*

son's R. 447. *Drake on Attachment*, per tot.

FOREIGN BILL OF EXCHANGE. A bill of exchange drawn in one state or country, upon a foreign state or country. *Story on Bills*, § 22.

A bill of exchange drawn in one country, upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. *Id. ibid.* A bill of exchange drawn in one of the United States, upon a person residing in another state, is a foreign bill. 2 *Peters' R.* 586. 10 *Id.* 572, 579. 12 *Id.* 54. 3 *Kent's Com.* 94, note.

FOREIGN CORPORATION. A corporation created by or under the laws of another state, government or country.* 2 *N. Y. Rev. Stat.* [459,] 375, § 15.

FOREIGN COUNTY. In practice. Another county in the same kingdom or state; whether remote or adjacent.* *Stat. Westm.* 1, c. 45. "Forrein countie." *Yearb.* II. 10 Edw. III. 23. *Keilw.* 67. "A forrain shire." *Brownl. & Golds.* 35. See *Foreign answer*, *Foreign matter*, *Foreign jury.*

FOREIGN DIVORCE. A divorce obtained out of the state or country where the marriage was solemnized. 2 *Kent's Com.* 106, *et seq.*

FOREIGN ENLISTMENT ACT. The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 *Steph. Com.* 226.

FOREIGN JUDGMENT. A judgment obtained in a foreign court, or in the court of a foreign country.* 2 *Kent's Com.* 118—121, and notes.

FOREIGN JURY. In practice. A jury from another, or foreign county. 1 *Burr. Pr.* 211, 442.

FOREIGN LAW. The law of a foreign country or state. The municipal laws of the respective states of the United States are *foreign* in respect to the sister states. 2 *Wash.* (Va.) *R.* [282,] 359. The laws of another state are to be proved, like foreign laws. 1 *Rawle's R.* 386. *United States Digest*, Foreign laws.

FOREIGN MATTER. In old practice. Matter triable or done in another county. *Cowell*, voc. *Foreign.*

FOREIGN PLEA. [L. Lat. *forinsecum placitum.*] In old pleading. A plea objecting to a judge as incompetent, because the matter in hand was not within his precinct. *Kitch.* 75. *Stat.* 4 *Hen.* VIII. c. 2. *Stat.* 22 *Hen.* VIII. c. 2, 14. *Cowell*, voc. *Foreign.* A plea to the jurisdiction.

FOREIGN PORT. A port exclusively within the sovereignty of a foreign nation. 2 *Gallison's R.* 4, 7. *Id.* 501. Marshall, C. J. 1 *Brock. R.* 235, 239. A foreign port or place is a port or place without the United States. 19 *Johns. R.* 375.

FOREIGN SERVICE. [L. Lat. *forinsecum servitium.*] In old English law. The service by which a mesne lord held over of another, without (*foris*) the compass of his own fee. *Bro. Abr.* Tenures, fol. 28, 95, 251. *Kitch.* 209. *Cowell*, voc. *Foreign.*

The service which a tenant performed either to his own lord, or to the lord paramount, out of his fee. Called *foreign*, (*forinsecum*,) because it was done and taken without, (*foris*,) or besides, (*extra*) the service done to the lord paramount. *Bract.* fol. 36. See *Forinsecus*, *Forinsecum servitium.*

FOREIGN STATE. A state occupying a foreign territory, or not comprised within the limits of another state or nation.* An Indian nation occupying a territory within the acknowledged boundaries of the United States, is not a *foreign state*, in the sense in which that term is used in the constitution of the United States. Marshall, C. J. 5 *Peters' R.* 1, 17. See 6 *Id.* 515.

A state governed by local or municipal laws different from those of another state.* *Story on Bills*, § 22. The several states of the American Union are, in certain respects, foreign states to each other. See *Foreign bill of exchange*, *Foreign law.*

FOREIGN VOYAGE. A voyage to some port or place within the territory of a foreign nation. 3 *Kent's Com.* 177, note. 1 *Gallison's R.* 55. The *terminus* of a voyage determines its character; if it be within the limits of foreign jurisdiction, it is a foreign voyage, and not otherwise. 1 *Story's R.* 1.

FOREIGNER. In old English law. A person not an inhabitant of a city. 1 *H. Bl.* 213, note; citing *Harg. Law Tr.* 128. See *Forein.*

FOREIGNER. In American law. An alien; the opposite of citizen. 1 *Peters' R.* 343. A person born in and owing allegiance to a foreign state or country.* A foreigner who becomes a citizen is no longer a foreigner. Marshall, C. J. 1 *Peters' R.* 349. See *Alien.*

FOREIN. An old form of *foreign*, (q. v.) *Blount.*

FOREIN, *Forrein, Forreine, Foreyn.* L. Fr. [from Latin *forinsecus*, q. v.] Foreign; belonging without. A foreigner or stranger. A person not an inhabitant of a city. *Foreins* are distinguished from *gens de la citie. Yearb.* T. 10 Edw. III. 3. *Auxibien des* forcins *come de denizens.* II. 6 Edw. III. 15. A non-resident, as distinguished from *resiant.* M. 11 Hen. VI. 7. *Home forein;* a foreign person. *Stat. Westm.* 1, c. 23. *Forreine counties. Id.* c. 45. *Et vouch* forrein *a garranty. Stat. Gloc.* c. 12. *En foreyn;* out of a lord's jurisdiction. *Britt.* c. 15.

FOREJUDGE, *Forjudge.* [L. Fr. *forjuger*, from *for*, out, and *juger*, to adjudge; L. Lat. *forisjudicare*, q. v.] In old English law and practice. To expel from court, for some offence or misconduct. When an officer or attorney of a court was expelled for any offence, or for not appearing to an action by bill filed against him, he was said to be *forejudged the court. Cowell. Stat.* 2 Hen. IV. c. 8. See 9 *East*, 424. See *Forjudicare.*

To deprive or put out of a thing by the judgment of a court. See *Forjudicare.* To condemn to lose a thing. King John, as Duke of Normandy, was, by King Philip of France, *forjudged* of his duchy. *Hale's Hist. Com. Law*, 146.

To expel or banish. See *Forjudicare.*

FOREJUDGER, *Forjudger.* [L. Lat. *forisjudicatio.*] In English practice. A judgment by which a man is deprived or *put out* of a thing; a judgment of expulsion or banishment. See *Forejudge.*

FOREMAN. The presiding member of a grand or petty jury, who speaks or answers for the jury.

FORENSIS. Lat. [from *forum*, a court.] In the civil law. Belonging to, or connected with a court; forensic. *Forensis homo;* an advocate; a pleader of causes; one who practices in court. *Calv. Lex.*

FORENSIS. L. Lat. [from Fr. *foraine.*] In old Scotch law. A strange man or stranger; an out-dwelling man; an "unfree-man," who dwells not within burgh. *Skene de Verb. Sign.*

FOREPRISE. See *Forprise, Forsprise.*

FORERA. L. Lat. [from Sax. *fore*, before, or in front.] In old English law. Land lying *before*, or in front of other land; a foreland;* a headland, (*terra capitalis.*) *Cowell. Spelman.* A piece of land lying crosswise of another, (*terra transversalis,*) and opposing its side to the end, front or head of the other piece. *Spelman.* See *Headland.*

FORESAID is used in Scotch law, as *aforesaid* is in English, and sometimes in a plural form, *foresaids.* 2 *How. St. Trials*, 715. *Forsaidis* occurs in old Scotch records. "The Loirdis assesouris forsaidis." 1 *Pitc. Cr. Trials*, part 1, p. 107.

FORESCHOKE, *Forschoke.* Forsaken. *Cowell.*

FOREST. [L. Lat. *foresta, forestis, forestum;* from *foris*, or *foras*, without, according to Spelman; that is, *out* land, or *outer* land, (*pars forastica, seu exterior,*) as lying *out of* the cultivated or inhabited country.] In English law. A large extent or precinct of country, generally waste and woody, belonging to the sovereign, set apart and privileged for the keeping of game for his use and diversion, (*alendis feris regiis exposita;*) not enclosed, but distinguished by certain limits and peculiarly protected by certain laws, courts and officers of its own.* *Spelman*, voc. *Foresta. Manwood*, part 2, c. 1. *Termes de la Ley.* 2 *Steph. Com.* 17. 1 *Bl. Com.* 289. 1 *Crabb's Real Prop.* 91, § 97. *Id.* 484, § 624.—A royal chase, or hunting ground.*

The right or franchise enjoyed by a subject, of having a forest. 2 *Steph. Com.* 17. *Cro. Jac.* 155. 1 *Crabb's Real Prop.* 484, § 624. This, however, according to Spelman, is an improper use of the word; a forest in the hands of a subject being properly a *chase. Spelman*, voc. *Foresta.* 2 *Bl. Com.* 38. See *Chase.*

*** Lord Coke, following the Black Book of the Exchequer, makes the Lat. *foresta*, to be as it were *feresta*, from *ferarum statio*, a station or safe abiding place for wild animals; and the same derivation is essentially adopted by Calvin. *Co. Litt.* 233 a. *Calv. Lex.* But Spelman much more reasonably supposes it to be derived from *foris*, or *foras*, without, as lying *without* and separate from the cultivated and inhabited country; being indeed abandoned to a state of nature, for the more effectual preservation and increase of the wild animals harbored within its precincts; (*extraneum quiddam, et feris datum.*) *Spelman*, voc. *Foresta. Tuta ferarum mansio. Lib. Nig. Scacc.* cited *ibid.* Hence a forest was deemed to be not of the body of any county. Spelman supposes the word

foresta to have been introduced by the Normans. The Danes and Saxons made use of the terms *buc-holt*, (buck-wood,) and *dere-fald*, (deer-fold.) *Spelman*, *ub. sup.* For a very recent case involving the definition of a forest, see 1 *Welsby, H. & Gordon*, 211.

FOREST COURTS. Certain courts in England, instituted for the government of the king's *forests* in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or venison, to the vert or greensward, and to the covert in which such deer are lodged. They consist of the courts of attachments, of regard, of swein-mote, and of justice-seat. 3 *Bl. Com.* 71. 3 *Steph. Com.* 439. They are said to be now fallen into absolute desuetude. *Id. ibid.* But see the case of Regina *v.* Conyers, 8 *Ad. & Ell.* (N. S.) 981. See *Attachments*, *Regard*, *Swein-mote*, *Justice seat.*

FOREST LAW. A system of law anciently established in England, for the government of the royal forests, and administered by courts and officers of its own. That it existed before the Norman Conquest appears from the laws or constitutions of Canute, which have been preserved; but it was first established with all its oppressive peculiarities by the princes of the Norman line. *Spelman*, voc. *Foresta.* 2 *Steph. Com.* 18. Its severities and abuses were mitigated by the *Carta de Foresta*, 9 Hen. III. and a variety of subsequent statutes; and since the era of the Revolution it is said to have fallen into total disuse. 2 *Bl. Com.* 415. 3 *Id.* 73. 2 *Steph. Com.* 18, 19. 1 *Reeves' Hist. Eng. Law*, 254, *et seq.* But see 8 *Ad. & Ell.* (N. S.) 981. Manwood is the principal authority in forest law, and was extensively quoted in the case last cited.

FORESTA, *Forestis*, *Forestum*, *Forasta.* L. Lat. In old English law. A forest. *Spelman. Lib. Nig. Scacc.* cited *ibid. Cart. de Forest. passim.* See *Forest.* Skene defines *foresta*, a large wood, without dike or closure, which has no water. *De Verb. Sign.* voc. *Forestarius.*

FORESTAGIUM. L. Lat. [from *foresta*, q. v.] In old English law. A duty or tribute payable to the king's foresters. *Cowell. Blount. Chart.* 18 *Edw.* I. cited *ibid.*

FORESTALL, *Forstall*, *Forestal*, *Forstal.* Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stæl*, a standing or stopping; L. Lat. *forstallare.*] In English law. To obstruct or stop up a way, (*viam præpedire ;*) to stop the passage of a person or thing on the highway; to intercept on the road. *Spelman*, voc. *Forstall.* 3 *Bl. Com.* 170. *Co. Litt.* 161 b. See *Forestalling.*

FORESTALLER. [L. Lat. *forstallatio.*] In English law. The obstruction of a way or road, or the hindering a person or thing from passing. The besetting of a way by a tenant, in order to prevent his lessor from coming on the premises. 3 *Bl. Com.* 170. The lying between a deer and the forest, in the way he was to return, so as to stop him from returning. *Crompt. Jurisd.* 153.

FORESTALLER, *Forstaller.* [L. Lat. *forstallator*, *forstallarius.*] One who forestalls, or is guilty of the offence of forestalling. See *Forestalling*, *Forstallarius.*

FORESTALLING. [L. Lat. *forstallatio.*] The obstructing of a way; the interception of a person or thing on a road. See *Forestaller*, *Forstal.*

Forestalling the market is the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 *Bl. Com.* 158. This was formerly an indictable offence in England, but is now abolished by statute 7 & 8 Vict. c. 24. 4 *Steph. Com.* 291, note.

FORESTARIUS. L. Lat. [from *foresta*, a forest.] In old English law. A forester; an officer appointed to take care of a wood or forest. *Cart. de Forest.* c. 7, 8, 14. Where a tenant in dower had committed waste in a wood, there was an old writ *de forestario apponendo*, which lay for the appointment of a forester to take charge of the wood, and see that no further waste was done. *Bract.* fol. 316.

In Scotch law. A forester or keeper of woods, to whom, by reason of his office, pertains the bark and the hewn branches. And when he rides through the forest, he may take a tree as high as his own head. *Skene de Verb. Sign.*

FORESTER. [L. Lat. *forestarius.*] In English law. A sworn officer of the forest, appointed by the king's letters patent, to walk the forest both early and late, watching both the vert and the venison, attaching and preventing all trespasses

against them within his bailiwick or walk. *Cowell. Blount.*

FORETHOUGHT FELONY. In Scotch law. Murder committed in consequence of a previous design. *Bell's Dict.*

FOREVER. [Lat. *in perpetuum.*] This word in a devise of land will pass a fee. *Co. Litt.* 9 b. See 11 *East*, 518.

FORFACERE. L. Lat. To forfeit. *Spelman*, voc. *Forisfacere.* See *Forisfacere.*

FORFACTUM. See *Forisfactum*, *Forfactus.*

FORFACTURA. L. Lat. A forfeiture. *Spelman*, voc. *Forisfacere.* See *Forisfactura.*

FORFACTUS, *Forfactum.* L. Lat. [L. Fr. *forfaict.*] In old European law. Forfeited. *De rebus* forfactis *quæ per diversos comitatus sunt, volumus ut ad palatium pertineant, transacto anno et die;* concerning things forfeited, which are in different counties, we will that they belong to the palace, [or fisc, that is, that they be confiscated,] after a year and a day. *LL. Longobard.* lib. 3, tit. 33. *Spelman*, voc. *Forisfacere.* See *Forisfactus.*

FORFAIRE. L. Fr. [from Lat. *forisfacere*, q. v.] In old English law. To forfeit. *Forface;* shall forfeit. *Britt.* c. 12. *Forfist;* forfeited. *Et issi* forfist *ele dower;* and so she forfeited dower. *Id.* c. 110. *Forfait, forfaict;* forfeited. *Id. ibid. Kelham.*

FORFANG, *Forfeng, Forefeng.* Sax. [from *fore*, before, and *fangen*, to take; L. Lat. *antecaptio, preventio, prior prisa.*] In Saxon law. A previous taking; a taking of provisions from any person in fairs or markets, before the king's purveyors were served with necessaries for the sovereign. *Spelman. LL. Inæ*, cited *ibid. Cowell. Fleta*, lib. 1, c. 47, § 15.

FORFEIT. [L. Fr. *forfait, forfaict;* L. Lat. *forfactum, forisfactum.*] Lost by one's fault or misconduct; forfeited. See *To Forfeit.*

To FORFEIT. [from L. Fr. *forfaire;* O. Sc. *foirfault;* L. Lat. *forisfacere, forfacere;* from *foris*, without, and *facere*, to make.] To lose what belongs to one by some fault, misconduct or crime, (*rem suam ex delicto amittere;*) to make it *foreign* to one's self, (*sibi extraneum facere,*) or put one's self *out* of it; to lose it to another, (*rem culpa abdicere, alterique abjudicare;*) to transfer involuntarily, as the consequence of one's own wrongful act, and by operation of law.* *Spelman*, voc. *Farisfacere.* Forfeiture involves the ideas not only of *loss* by the delinquent party, but of *transfer* or *surrender* to some other, whether it be an individual or the state. Thus, lands are *forfeited* by one individual to another, as by a wrongful alienation, by breach of some condition, &c. In the feudal law, they were *forfeited* to the lord by the misconduct of the tenant. See *Forfeiture.* Lands and goods are *forfeited* to the state as the consequence of crime; office is *forfeited* to the state as the consequence of misconduct, and life itself is sometimes *forfeited* to the law, as the penalty of its violation.

To incur a penalty, (*mulctum incurrere.*) *Spelman*, voc. *Forisfacere.* To become liable to the payment of a sum of money, as the consequence of a certain act. Penal statutes frequently provide that a party found guilty of violating their provisions shall *forfeit* a sum of money, or article of property.

To confiscate. *Id. To forfeit* and *to confiscate, forfeited* and *confiscated,* have sometimes been used as synonymous terms. Thus, in Virginia, a law or statute is spoken of as "forfeiting lands." 10 *Grattan's R.* 402, 405. There seems, however, to be an obvious distinction between them, though it has been differently expressed by different writers. According to Staundford, goods are properly said to be *forfeited* where they have a known owner, who has committed some offence whereby he loses them; and *confiscated* when they are disavowed by an offender, as not his own, nor claimed by any. *Staundf. Pl. Cor.* fol. 186. See another distinction in *Finch's Law*, b. 3, c. 17. Cowell makes *forfeiture* to be the more general term, and *confiscation* to be the particular forfeiture to the king's exchequer. The true distinction, however, appears to be, that *forfeiture* is the act of the individual, *confiscation* that of the state. The individual forfeits his property, the state confiscates it as forfeited. That the terms are not convertible is shown in the absurdity of saying that the state forfeits, or the individual confiscates. The property is *forfeited* the instant the illegal or wrongful act of which forfeiture is declared to be the punishment, is committed; but it is not *confiscated*, that is, it does not vest in the government, until formally claimed or taken possession of. 1 *Story's R.* 109. But see 10 *Grattan's R.* 400. See *Confiscate.*

FORFEITURE. [L. Fr. *forfaicture*, from *forfaire;* L. Lat. *forisfactura, forfactura.*] The loss of what belongs to one, by some fault, misconduct or transgression of law. An involuntary or compulsory transfer or surrender, consequent upon one's own unlawful or wrongful act.* See *To Forfeit.* Of this the following are the principal varieties:

The loss of land, or an estate in land, by one individual to another, as a punishment for some illegal act or negligence in relation to it; as for some alienation contrary to law, or the breach of some condition. 2 *Bl. Com.* 267, 274, 284. 1 *Steph. Com.* 421. 4 *Kent's Com.* 123. 2 *Crabb's Real Prop.* 89, § 1061, (Am. ed. note.)

The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 *Steph. Com.* 166.

The loss of goods or chattels, as a punishment for some crime or misdemeanour in the party forfeiting, and as a compensation for the offence and injury committed against him to whom they are forfeited. 2 *Bl. Com.* 420.

The loss of lands and goods to the state, as the consequence of crime. 4 *Bl. Com.* 381, 387. 4 *Steph. Com.* 447, 452. 2 *Kent's Com.* 385. 4 *Id.* 426.

The loss of a certain sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law.

The loss of office, by abuser, non-user, or refusal to exercise it. 1 *Crabb's Real Prop.* 456, § 576, *et seq.*

The loss of life, as the consequence of the commission of some capital crime.

For the American law of forfeiture in general, see the statutes of the several states, and of the United States, and see *United States Digest*, Forfeiture.

FORFEITURE. A thing or sum of money forfeited. Something imposed as a punishment for an offence or delinquency. Phelan, J. 21 *Alabama R.* 672. And see 10 *Grattan's R.* 700. The word in this sense is frequently associated with the word *penalty.* 2 *N. Y. Rev. St.* [480,] 394.

FORFENG. Sax. [from *fore*, before, and *fangen*, to take.] In old English law. An acquittance for a previous taking. *Fleta*, lib. 1, c. 47, § 15.

FORGABULUM. L. Lat. In old records. Forgavel; a quit rent. *Cowell.* See *Forgavel.*

FORGAVEL. Sax. [from *fore*, before, and *gafel*, rent.] In old English law. A small reserved rent in money; a quit rent. *Cowell*, voc. *Forgabulum.*

FORGE. [L. Fr. *fauxer, fauser, faucher, forger;* L. Lat. *falsare, fabricare.*] In criminal law. To make or fabricate a thing in imitation of another, with a view to deceive and defraud; to make falsely; to counterfeit.* To forge (a metaphorical expression, borrowed from the occupation of the smith,) means, properly speaking, no more than *to make* or *form*, but in our law it is always taken in an evil sense. 2 *East's P. C.* 852, c. 19, § 1. The French *fauxer* or *fauser*, however, (from *faux*, false,) which is a term employed by Britton, always radically imported a *false* making, and may have been the origin of the English word, instead of *forger*, to fashion, (q. v.)

To forge and to *counterfeit* are constantly used both in ancient and modern law, as synonymous terms. Thus, *de fauseours qui ount nostre monoy countrefait;* of forgers who have counterfeited our money. *Britt.* c. 4. See *Forgery.* The former, however, is usually applied to *writing* or written instruments, the latter to other subjects of imitation, especially money. Thus, we say "a *forged* deed," "a *forged* check," "a *forged* signature," "a *forged* endorsement;" and "a *counterfeit* coin," "a *counterfeit* bank note."

FORGEMENT. L. Fr. Forgery. *Yearb.* M. 10 Hen. VI. 82.

FORGER. L. Fr. To frame or fashion; to contrive; to fabricate; to forge. *Yearb.* T. 4 Hen. VI. 4. *L. Fr. Dict. Kelham. Brief de* forger *de faux faits;* writ for forging false deeds. *Yearb.* M. 19 Hen. VI. 52. This word is commonly supposed to be the origin of the English *forge*, (q. v.)

FORGERY. [L. Fr. *fausinerie, forgement;* Lat. *crimen falsi.*] In criminal law. The fraudulent making or alteration of a writing, to the prejudice of another's right. 4 *Bl. Com.* 247.—A false making, [which includes every alteration of, or addition to a true instrument;] a making, *malo animo*, of any written instrument, for the purpose of fraud and deceit. 2 *East's P. C.* 852, c. 19, § 1. Mr. East says of this definition, that it results from all the authorities, ancient and modern, taken together. *Id. ibid.* See 2 *Russell on Crimes*, 318. *Wharton's Am. Crim. Law*, § 1418.

The making a thing in imitation of

another thing, with a view to deceive and defraud; such as the imitation of the signature, stamp, brand, or mark of another, the imitation of a seal. But this is more commonly termed *counterfeiting.*

The thing itself, so falsely made, imitated or forged; especially a forged writing. A forged signature is frequently said to be "a *forgery.*" For the American law of forgery, see 2 *Russell on Crimes*, (Am. ed. 1850,) 318, notes. *United States Digest*, Forgery and Counterfeiting. *Wharton's Am. Crim. Law*, §§ 1296—1418. *Lewis' Crim. Law*, 290—332.

FORGERY. In the law of evidence. False making; fabrication. The production of false appearances by means of physical objects. The employment or arrangement of physical objects and appearances for the purpose of deceiving or misleading the senses or conclusions of observers. *Burr. Circ. Ev.* 131, 420. 3 *Benth. Jud. Ev.* 49. *Best on Pres.* § 220, *et seq.* See *Fabrication.*

FORGIA. L. Lat. In old records. A forge; a smith's forge. *Cowell.*

A furnace for melting ore. *Fleta*, lib. 2, c. 41, § 8.

FORHERDA. L. Lat. In old records. A herdland, headland or foreland. *Cowell.*

FORI DISPUTATIONES. Lat. In the civil law. Discussions or arguments before a court. 1 *Kent's Com.* 530.

FORINSECUS, *Forinsecum.* Lat. [from *foris*, without.] In old English law. Outward; without; external; extrinsic; forinsic; foreign; extraordinary. *Selio forinsecus;* an outside ridge or furrow. *Kennett's Gloss. Cowell. Pastura forinseca;* foreign pasture. *Fleta*, lib. 2, c. 71, § 4. *Forinsecum servitium;* forinsic, foreign, or extraordinary service. *Bract.* fol. 36. *Fleta*, lib. 3, c. 14, § 7. See *Foreign service, Forinsic.*

Forinsecus; a foreigner, one from another jurisdiction. *Fleta*, lib. 2, c. 55, § 4. *Forinseci tenentes;* foreign tenants, as distinguished from a lord's own tenants. *Stat. Westm.* 2, c. 46. *Marescallus forinsecus;* the foreign marshal. *Fleta*, lib. 2, c. 4.

FORINSIC. [L. Lat. *forinsecus*, q. v.] In old English law. Outward; without; foreign; extraordinary. *Forinsic* service, was the payment of aid, scutage and other extraordinary burdens of military service, and was the opposite of *intrinsic* service. 1 *Reeves' Hist. Eng. Law*, 273. See 3 *How. St. Trials*, 866.

FORIS. Lat. Abroad; out of doors; on the outside of a place; without; extrinsic.

FORISBANNITUS. See *Forbannitus.*

FORISFACERE, *Forfacere.* L. Lat. [from *foris*, without, and *facere*, to make.] In old English law. To forfeit; to lose what belonged to one by some fault or crime; to *make* it *foreign* to one's self, (*sibi extraneum facere.*) *Spelman.* See *To Forfeit. Forisfacit patriam et regnum, et exul efficitur;* he forfeits country and kingdom, and is made an exile. *Bract.* fol. 128 b. *Forisfacit amicos;* he forfeits friends. *Id. ibid. Forisfacit utlagatus omnia quæ pacis sunt;* the outlaw forfeits all the privileges of a state of peace. *Id. ibid. Forisfacit omnia quæ juris sunt;* he forfeits all his lawful rights. *Id.* fol. 129.

To incur a penalty; to confiscate. *Spelman.*

To commit, or be guilty of an offence; to transgress a law; to do an injury. *Spelman. LL. Edw. Conf.* c. 32, cited *ibid.*— To do a thing against or without law or custom, (*extra legem seu consuetudinem facere.*) *Co. Litt.* 59 a.

FORISFACTUM, *Forfactum.* L. Lat. [from *forisfacere*, (q. v.;) L. Fr. *forfaict, forfait.*] In old English law. Forfeit; forfeited. *Bona forisfacta;* forfeited goods; forfeitures. 1 *Bl. Com.* 299. See *Forfactus.*

A crime. *Si quispiam proposcerit regis misericordiam pro* forisfacto *suo;* if any one pray the king's mercy for his crime. *LL. Edw. Conf.* c. 18. *Spelman*, voc. *Forisfacere.*

In old Scotch law. An amerciament; an unlaw. *Skene de Verb. Sign.*

FORISFACTUS. L. Lat. [from *forisfacere*, q. v.] In old European law. Forfeited. See *Forisfactum.*

One who has forfeited his life, as being found guilty of a capital offence. *De vita* forisfactum *interficere;* to slay one who had forfeited his life. *LL. Ripuar.* tit. 77. *Spelman*, voc. *Forisfacere.*

FORISFACTURA, *Forfactura.* L. Lat. [from *forisfacere*, (q. v.;) L. Fr. *forfaicture.*] In old English law. Forfeiture; the losing one's property or life, as the consequence of some fault, misconduct or crime. *Spelman*, voc. *Forisfacere. Bonorum forisfactura;* forfeiture of goods. *Fleta*, lib. 2, c. 65, § 8. See *Forfeiture.*

A crime, offence, transgression or in-

jury by which one loses property or life. *LL. Edw. Conf.* c. 32. *Spelman, ub. sup.*

A mulct, fine or pecuniary punishment. *LL. Edw. Conf.* c. 10. A were or weregild. *Id.* c. 36. The thing itself, lost or forfeited.* *Forisfactura plena;* a full forfeiture, (Sax. *fulwite;*) the whole of a penalty without diminution, or the forfeiture of all that a man had. *Spelman, ub. sup. Manwood*, c. 9.

FORISFAMILIARE. L. Lat. [from *foris*, without, and *familia*, a family.] In old English and Scotch law. Literally, to put out of a family, (*foris familiam ponere.*) To portion off a son, so that he could have no further claim upon his father. *Glanv.* lib. 7, c. 3. *Reg. Maj.* lib. 2, c. porro, 33, § 8.

To emancipate, or free from paternal authority. See *Forisfamiliatus.*

FORISFAMILIATED. [from *forisfamiliare*, q. v.] In old English law. Portioned off. A son was said to be forisfamiliated, (*forisfamiliari,*) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request, or with the free consent of the son himself, who expressed himself satisfied with such portion. *Glanv.* lib. 7, c. 3. *Reg. Maj.* lib. 2, c. porro, 33, § 8. 1 *Reeves' Hist. Eng. Law*, 42, 110. See *Forisfamiliare.*

FORISFAMILIATUS. L. Lat. [from *forisfamiliare*, q. v.] In old English law. Put out of a family; portioned off; emancipated; forisfamiliated. *Bract.* fol. 64.

FORISJUDICARE. L. Lat. [from *foris*, without, and *judicare*, to judge.] In old English law. To deprive or put out of a thing by the judgment of a court; to forjudge. *In prædicta curia nostra* forisjudicatur *de custodia illa;* in our said court he is forjudged of that wardship. *Bract.* fol. 256 b.

FORISJUDICATIO. L. Lat. [from *forisjudicare*, q. v.] In old English law. Forjudgment; forjudger. *Co. Litt.* 100 b. *Towns. Pl.* 116. Called by Fleta, *abjudicatio*, (q. v.)

FORISJUDICATUS. L. Lat. [from *forisjudicare*, q. v.] In old English law. Deprived or put out of a thing by the judgment of a court; forjudged. *Co. Litt.* 100 b. *Forisjudicatus est de eadem custodia. Bract.* fol. 256 b. The same as *abjudicatus. Id. ibid.*

FORISJURARE. L. Lat. [from *foris*, out, and *jurare*, to swear.] In old English law. To forswear; to renounce or relinquish by or under oath, (*rem negative dejerare;*) to abjure. *Spelman. Provinciam forisjuraret;* he shall forswear the county; that is, he shall swear that he will not return. *LL. Edw. Conf.* c. 6. *Crabb's Hist. Eng. Law*, 43, ch. 4. This, when applied to the kingdom, was afterwards called *abjuring* the realm. *Id. ibid.*

FORISTEL. The same as *Forestal, Forstal*, and *Forestall.* Used in Domesday Book. *Spelman*, voc. *Forstall.*

FORJUDGER. See *Forejudger.*

FORJUDGMENT. See *Abjudicatio, Forisjudicatio.*

FORJUDICARE, *Forisjudicare.* L. Lat. [from *foris*, without, and *judicare*, to judge; L. Fr. *forjugèr.*] In old European law. To deprive or put out of a thing by the judgment of a court. *Spelman.* See *Forisjudicare.*

To expel, or put out of court; (*foris judicium ponere.*) See *Forejudge.*

To expel or banish; to proclaim one an outlaw. *Forjudicari bannitus debebit per justitiarium, qui bannitionis et forjudicationis pœnam edixit. Const. Sic.* lib. 2, tit. 3. *Spelman.*

FORJUDICATUS. L. Lat. [from *forjudicare*, q. v.] In old European law. Proscribed; outlawed; denied all access to the courts, (foris *omnem aditum* judicii *constitutus.*) *Spelman*, voc. *Forjudicare. Const. Neap. Fred. Imp.* lib 2, tit. 3.

FORJUGER. L. Fr. In old English law. To forjudge, or expel. *Il perde soun office, et soit* forjugge *la court;* he shall lose his office, and be forjudged the court. *Stat.* 2 *Hen.* IV. c. 8.

To deprive of; to condemn; to lose. *Forjuges de fraunche ley;* forjudged of their frank-law. *Britt.* c. 52.

FORJURER. L. Fr. In old English law. To forswear; to abjure. *Forjurer royalme;* to abjure the realm. *Britt.* c. 1, 16. *Stat. Westm.* 1, c. 15, 20.

FORLANDUM, *Forlanda.* L. Lat. In old records. Land extending beyond, or lying before other land; a foreland. *De* forlando *quod jacet ante terram ecclesiæ.* 2 *Mon. Angl.* fol. 332. *Blount.*

Land bordering or lying outward. *Cowell.* An extra allowance of land; an allowance in meting and bounding, otherwise called *freebord. Id.*

FORMA. Lat. [L. Fr. *forme, fourme.*] Form; the prescribed form of judicial proceedings. *Forma et figura judicii;* the form and shape of judgment or judicial action. 3 *Bl. Com.* 271.

A form prescribed by statute. According to Lord Coke, there are two manner of forms, *forma verbalis*, (verbal form) and *forma legalis*, (legal form.) *Forma verbalis* stands upon the letters and syllables of the act; *forma legalis* stands upon the substance of the thing to be done, and upon the sense of the statute. 10 *Co.* 100 a.

Forma dat esse. Form gives being. Called "the old physical maxim." Lord Henley, C. 2 *Eden*, 99.

Forma legalis forma essentialis. Legal form is essential form. 10 *Co.* 100.

Forma non observato, infertur adnullatio actus. Where form is not observed, a nullity of the act is inferred. 12 *Co.* 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. *Best on Evid.* Introd. § 59.

FORMA PAUPERIS. See *In forma pauperis.*

FORMATA. L. Lat. In canon law. Canonical letters. *Spelman.*

FORMATA BREVIA. L. Lat. Formed writs; writs of form. See *Brevia formata.*

FORME, *Fourme.* L. Fr. Form. *Forme de don;* the form of the gift. *Britt.* c. 119. *Fourme de don. Id. ibid.*

FORMED ACTION. An action for which a set form of words is prescribed, which must be strictly adhered to. 10 *Mod.* 140, 141.

FORMEDON, *Formdon.* L. Fr. [contracted from *forme de don;* L. Lat. *forma donationis;* the form of the gift.] In old English practice. An action, in the nature of a writ of right, given by the statute Westm. 2, (13 Edw. I.) c. 1, as the peculiar remedy of a tenant in tail, in case of a discontinuance of the estate tail; and therefore called his writ of right. 3 *Bl. Com.* 191. Called *formedon*, because the writ comprehended the *form of the gift. Co. Litt.* 326 b. It was of three kinds, in the *descender*, in the *remainder*, and in the *reverter.* See *infra.*

Writs of formedon were specific remedies to carry into effect the statute *de donis*, which provided *quod voluntas donatoris*, secundum formam *in charta* doni *sui manifeste expressam, de cætero observetur;* that the will of the donor, according to the *form* clearly expressed in the charter of his *gift*, shall in future be observed; [their object, in other words, being to enforce the *gift* in tail according to its *form.*] 2 *Reeves' Hist. Eng. Law*, 320. 3 *Id.* 41. They were abolished in England, with other real actions, by statute 3 and 4 Will. IV. c. 27, § 36. 3 *Steph. Com.* 489, note.

FORMEDON IN THE DESCENDER. [L. Fr. *formedon en le discender;* L. Lat. *forma donationis in le descendere.*] A writ of formedon which lay where a gift in tail was made, and the tenant in tail aliened the lands entailed, or was disseised of them, and died; in this case, the heir in tail was entitled to this writ, to recover these lands so given in tail, against him who was the actual tenant of the freehold. 3 *Bl. Com.* 192. *F. N. B.* 211 L. 212. *Roscoe's Real Act.* 43, 54. *Litt.* sect. 595. *Reg. Orig.* 238 b. The form in the Register recites that the premises claimed ought to *descend* to the demandant *per formam donationis*, (by the form of the gift.) *Reg. Orig. ub. sup.*

FORMEDON IN THE REMAINDER. [L. Fr. *formedon en le remainder;* L. Lat. *forma donationis in le remanere.*] A writ of formedon which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in *remainder*, or his heir, was entitled to this writ. 3 *Bl. Com.* 192. *F. N. B.* 217. *Roscoe's Real Act.* 57. *Reg. Orig.* 243. *Litt.* sect. 597.

FORMEDON IN THE REVERTER. [L. Fr. *formedon en le revertur;* L. Lat. *forma donationis en le reverti.*] A writ of formedon which lay where there was a gift in tail, and afterwards, by the death of the donee, or his heirs without issue of his body, the reversion fell in upon the donor, his heirs, or assigns; in such case, the *reversioner* had this writ to recover the lands. 3 *Bl. Com.* 192. *F. N. B.* 219 E. *Roscoe's Real Actions*, 59. *Reg. Orig.* 242. *Litt.* sect. 596.

FORMELLA. L. Lat. In old English law. A weight of lead, described in the statute of weights and measures, 51 Hen. III. as containing six stone, all but two pounds. *Spelman. Cowell.* It seems to have been the same with *fotmellus*, (q. v.)

FORMER RECOVERY. A recovery in a former action. See *Res judicata.*

FORMIDO PERICULI. Lat. Fear of danger. 1 *Kent's Com.* 23. *Huber de Jur. Civ.* lib. 3, c. 7, sec. 4.

FORMULA. Lat. [dimin. of *forma*, a

form.] In practice. A form of words used in judicial proceedings, generally written, always consisting of the same parts, and expressed in precisely the same language, except where variation is necessary to accommodate it to a particular case. The writs, pleadings and records of the common law system of practice furnish the best examples of written formulæ.

In the civil law. An action. *Calv. Lex.*

FORMULARIES. [L. Lat. *formularia*, from *forma*, a form.] Collections of *formulæ*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Of these, the formulary of Marculphus is the most curious. *Butler's Co. Litt.* Note 77, lib. 3. *Butler's Hor. Jur.* 87, 88.

FORNAGIUM. See *Furnagium.*

FORNO. Span. [from Lat. *furnus.*] In Spanish law. An oven. *Las Partidas*, part 3, tit. 32, l. 18.

FOROS. Span. In Spanish law. Emphyteutic rents. *Schmidt's Civ. Law*, 309.

FORPRIS. L. Fr. Except. *Britt.* c. 5, 34.

FORPRISA, *Forprisum.* L. Lat. Forprise, (q. v.)

FORPRISE, *Foreprise*, *Forsprise.* L. Fr. and Eng. [from Fr. *for*, out, and *prise*, a taking; L. Lat. *forprisa*, *forprisum.*] In old English law. An exception, or taking out; a reservation; excepted; reserved; excepting. A term formerly used in conveyances and leases, in which "*excepted and foreprised*" was an usual expression. *Cowell. Blount. Old deed, ibid.* See *Forsprise.* Written *horsprise* in the *Stat. Exon.* 14 Edw. I.; a form not explained by either Spelman, Cowell or Blount, but readily accounted for by the circumstance of *f* and *h* being convertible letters. See *Hors*, *Horca*, *Hurto.*

FORREIN. See *Forein.*

FORS. L. Fr. [from Lat. *foris.*] Out. *Kelham.*

FORS, *Force.* L. Fr. Force. *Amys coiller et fors;* to collect friends and force. *Britt.* c. 44.

FORSCHET. [from Sax. *for*, before, and *sceat*, a part or portion; L. Lat. *forscheta.*] In old records. The outer or forepart of a furlong; the skirt, or slip, or small piece that lay next the highway. *Kennett's Par. Ant.* 531, 535. *Cowell.*

FORSOKNE. Sax. In old English law. The liberty of having a view of frank-pledge. *Fleta*, lib. 1, c. 47, § 11. See *Frithsocne.*

FORSPEAKER. An attorney or advocate in a cause. *Blount. Whishaw.*

FORSPRISE, *Forspris.* L. Fr. Except. *Litt.* sect. 19. *Kelham.*

FORSQUE, *Forke*, *Furk.* L. Fr. But; only. *Litt.* sect. 1, 26. *Britt.* c. 26. *Kelham.*

FORSTAL, *Forestal*, *Forstall;* in Domesday, *Foristel*, *Faristel.* Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stæl*, a standing; L. Lat. *forstallatio*, *forstallamentum.*] In old English law. A standing before, or stopping; a stopping of the way, (*viæ obstructio;*) a stopping or intercepting on the road; forstalment, forstaller, or forestalling, (qq. v.) The stopping of a deer broken out of the forest, from returning home again, or lying between him and the forest, in the way he was to return. *Crompt. Jur.* fol. 153. (*Impedimentum transitûs et fugæ averiorum.*) *Fleta*, lib. 1, c. 47, § 19. The stopping or assaulting of a person on the highway. *Plac. Parl.* 18 *Edw.* I. The stopping of merchandise on its way to market. See *Forestalling.*

FORSTALER. L. Fr. To stop; to obstruct; to forestall. *Litt.* sect. 240.

FORSTALL. See *Forstal*, *Forestall.*

FORSTALLARE. L. Lat. In old English law. To stop a way; to stop on the way; to forestall. *Spelman.*

Forstallarius; (in Domesday, *Foristellarius.*) A forestaller. *Stat.* 13 *Edw.* I. *Reg. Orig.* 271 b. *Spelman*, voc. *Forstallator.*

Forstallator, *Forstellator.* A forestaller. *Spelman. Reg. Orig.* 279 b.

Forstallamentum. A forestalment, or forestalling. *Reg. Orig.* 271 b.

Forstallatio. A forestalling.

FORSTALLER, *Forstallour.* L. Fr. A forestaller. *Britt.* c. 20, 30.

FORSTALMENT. [L. Lat. *forstallamentum.*] An obstruction or stopping of a way; (*obstructio viæ*, *impedimentum transitûs.*) *Co. Litt.* 161 b. *Fleta*, lib. 1, c. 47, § 19.

FORSWEAR. [L. Lat. *forisjurare.*] To abjure, or renounce by oath. See *Forisjurare.*

To swear falsely. But the word, in this sense, does not in itself import perjury. Tompkins, J. 2 *Johns. R.* 10, 11. *Cro. Jac.* 190, 436.

FORTALITIUM. L. Lat. In old Scotch law. A fortalice; a castle. Properly a house or tower which has a battlement ("*ane batelment, an barmekin*") or a ditch or moat, ("*ane fowsie*") about it. Lord Fleming *contrair* James Rosse, 7th Feb. 1566. *Skene de Verb. Sign.*

FORTESCUE. The author of a celebrated treatise on English law, written in Latin, in the reign of Henry VI. under the title of *De Laudibus Legum Angliæ.* Sir John Fortescue, who had been some time Chief Justice of the King's Bench, is said to have written this work while enduring an exile with the Prince of Wales, and others of the Lancastrian party in France. Sir John was then made chancellor, and in that character he supposes himself holding a conversation with the young prince, on the nature and excellence of the laws of England, compared with the civil law, and the laws of other countries. 4 *Reeves' Hist. Eng. Law*, 112, 113. *Crabb's Hist.* 424, (Am. ed.) 1 *Kent's Com.* 501, 502.

FORTHCOMING, *process or decree of.* In Scotch law. A decree and process following the process of arrestment, by which the creditor is entitled to demand the sum arrested to be applied for payment of the debt upon which the arrest and forthcoming proceeded. 2 *Kames' Equity*, 177, 178. —The action by which the arrestment is made effectual. *Bell's Dict.* See *Arrestment.*

FORTHCOMING BOND. In American practice. A bond to the sheriff conditioned to deliver property levied on, when demanded. 2 *Wash.* (Va.) *R.* [189,] 243. 11 *Grattan's R.* 522. 8 *Id.* 179, 560.

FORTHWITH. In practice. A term sometimes used in rules and other proceedings; which, according to Mr. Chitty, seems to import that the requisite act shall be performed as soon as, by reasonable exertion confined to that object, it might be; and which must consequently vary according to the circumstances of each particular case. 3 *Chitt. Gen. Pr.* 112. Recently held to mean "within a reasonable time." 36 *Eng. Law & Eq. R.* 358. See *Immediately, Statim.*

FORTIA, *Forcia.* L. Lat. In old European law. Force, usually of an unlawful character; (*vis plerumque injusta.*) *Spelman.* The word occurs in this sense in the laws of the Bavarians and Ripuarians. *L. Boior.* tit. 2, c. 10, § 1. *L. Ripuar.* tit. 11, § 3, cited *ibid.*

In old English law. Force used by an accessary, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counselling in any way, or commanding the act to be done. *Bract.* fol. 138, 138 b. Thus one might be appealed, that is, accused, of the force, (*appellatus de fortia,*) and another of the fact, or act, (*appellatus de facto.*) *Id.* fol. 127 b, 128, 138 b, 139. *Ubi factum, ibi poterit esse* forcia *quandoque, sed nunquam* forcia *sine facto. Id.* fol. 128. According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 *Inst.* 182.

FORTIA FRISCA. L. Lat. In old English law. Fresh force. See *Fresh force.*

FORTIOR. Lat. Stronger. A term applied, in the law of evidence, to that species of presumption arising from facts shown in evidence, which is strong enough to shift the burden of proof to the opposite party. *Huberus Præl. Jur. Civ.* lib. 22, tit. 3, n. 4, 16. *Burr. Circ. Evid.* 64, 66. See *Fortis.*

FORTIS. Lat. Strong. *Fortis et sana;* strong and sound; staunch and strong; as a vessel. *Towns. Pl.* 227.

Powerful or effective; of weight, force or effect.

Fortior. Stronger, more effectual. **Fortior et potentior est dispositio legis quam hominis.** The dispositiou of the law is of greater force and effect than that of man. *Co. Litt.* 234 a. *Shep. Touch.* 302. 15 *East's R.* 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. *Broom's Max.* 309, [545.]

Fortissimum. Strongest; of the greatest force, or weight. **Argumentum ab authoritate est fortissimum in lege.** The argument from authority is of the greatest force in law. *Co. Litt.* 254 a.

FORTUIT. Fr. [from Lat. *fortuitus*, q. v.] Accidental. See *Cas fortuit.*

FORTUITOUS. [from Lat. *fortuitus*, q. v.] Accidental.

FORTUITOUS COLLISION. [Fr. *abordage fortuit.*] In maritime law. The accidental running foul of vessels. 14 *Peters' R.* 112.

FORTUITUS. Lat. [from *fors*, chance.] In the civil law. Accidental. *Fortuitus casus;* a fortuitous event; an accident. *Inst.* 3. 15. 2. See *Cases fortuitus.*

FORTUNA. Lat. Fortune; chance. Fortunam *faciant judicem, ut quilibet habeat partem illam quæ per sortem ei acciderit;* they shall make fortune or chance the judge, that each one may have that part which shall fall to him by lot. *Bract.* fol. 75 b.

FORUM. L. Lat. A court, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. Story, J. 3 *Story's R.* 347. So called from the Roman *forum*, where the courts were held. *Lex fori;* the law of the place where a remedy is sought, or action instituted. 2 *Kent's Com.* 462, 463, and notes. See 3 *Bl. Com.* 436. *Story's Confl. of Laws*, § 325 h, 325 k. Story, J. 2 *Gallison's R.* 440.

FORUM CONSCIENTIÆ. L. Lat. The forum or tribunal of conscience. See *In foro conscientiæ.*

FORUM CONTENTIOSUM. L. Lat. A contentious forum or court; a place of litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 *Bl. Com.* 211.

FORUM CONTRACTUS. L. Lat. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

FORUM DOMESTICUM. L. Lat. A domestic forum or tribunal. The visitatorial power is called a *forum domesticum*, calculated to determine *sine strepitu*, all disputes that arise within themselves. Lord Mansfield, C. J. 1 *W. Bl.* 82.

FORUM DOMICILII. L. Lat. The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

FORUM ECCLESIASTICUM. L. Lat. An ecclesiastical or spiritual court, as distinguished from a secular one. *Si de testamento oriatur contentio, in* foro ecclesiastico *debet placitum terminari;* if a contest arise about a will, the plea or suit should be determined in an ecclesiastical court. *Bract.* fol. 61. *Artic. Cleri*, c. 6. Called also *judicium ecclesiasticum. Bract.* fol. 175, 401.

FORUM ORIGINIS. L. Lat. The forum or court of nativity; the domicile of nativity, or place of a person's birth, considered as a place of jurisdiction. 5 *Vesey, Jr.* 750, 760. 2 *Kent's Com.* 430, 431, note.

FORUM REGIUM. L. Lat. The king's court. *Stat. Westm.* 2, c. 43.

FORUM REI, or REI SITÆ. L. Lat. The forum or court of the thing, [*res, rei;*] the court of the place where a thing claimed is; the tribunal where the property is. *Story's Conflict of Laws*, § 325 k. The place where a thing in controversy is situated, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

FORUM REI GESTÆ. L. Lat. The forum or court of a *res gesta*, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

FORUM REI. L. Lat. The forum or court of the defendant, [*reus, rei;*] the court of the place where the defendant is, or resides. *Bract.* fol. 401. The same with *forum domicilii*, (q. v.) See **Actor sequitur forum rei.—Forum sequitur reum.** The court follows the defendant. 2 *Salk.* 549. In transitory cases, a party may be sued anywhere.

FORUM SÆCULARE. L. Lat. The secular forum or court, as distinguished from the spiritual or ecclesiastical. *Videtur prima facie quod cognitio super catallis et debitis pertineat ad* forum sæculare. It seems *prima facie*, that jurisdiction over chattels and debts should belong to the secular court. *Bract.* fol. 175. Called also *forum laicale. Id. ibid. Id.* fol. 401.

FORURTH. In old records. A long slip of ground. *Cowell.*

FOS. L. Fr. Fosse; the Fosse. *LL. Gul. Conq.* l. 30. See *Fosse.*

FOS. stag. sepe. que vi. diversi cursus aquarum,
Poscunt assisam; mercatum, feria, bancum.

A Latin couplet, artificially constructed of words and parts of words, anciently used as an aid to the memory, to show in what courts certain kinds of disseisin by nuisance were cognizable. By writing the abbreviated words at length, the following sentence is produced: *Fossatum, stagnum, sepesque, via, diversi cursus aquarum*, poscunt assisam; *mercatum feria*, bancum. In literal English,—ditch, pool, hedge, way, diverted water-courses, require the assise; market and fair, the bench; that is, disseisins by digging a ditch, raising or lowering a pond, building or throwing down a hedge, obstructing or narrowing a road, and di-

verting a water-course, must be determined before the justices of assise; disseisins of a market and fair, before the bench, (that is the Court of Common Bench, or Common Pleas.) *Reg. Orig.* 199, *nota.*

FOSDIKE. A canal seven miles in length, made by King Henry I. leading to the river Trent, in Lincolnshire. *Callis on Sewers*, [81,] 101. See *Cowell*, voc. *Fossatum.*

FOSSA. Lat. In the civil law. A ditch, a receptacle of water, made by hand, (*receptaculum aquæ manu facta.*) *Dig.* 43. 14. 1. 5.

FOSSA. Lat. In old English law. A ditch. See *Fossatum.*

A pit full of water, in which women committing felony were drowned. See *Furca.*

A grave or sepulchre. *Spelman.*

FOSSATUM. L. Lat. [from *fossa*, q. v.] In old English law. A dyke; a bank of earth thrown up out of a ditch. *Glanv.* lib. 13, c. 34. *Bract.* fol. 115. *Fleta*, lib. 1, c. 24, § 8. *Stat. Westm.* 2, c. 46.

A ditch or trench. The same with *fossa. Spelman. Reg. Orig.* 92 b, 198 b, 199.

A moat or fosse around an encampment or fortified place. *Spelman.*

A canal or cut from a river. *Cowell. Cart.* 20 *Hen.* III. cited *ibid.*

A place fenced with a ditch. *Cowell.*

FOSSATORUM OPERATIO. L. Lat. In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the *ditches* around a city or town, for which some paid a contribution, called *fossagium. Cowell. Kennett's Glossary*, cited *ibid.*

FOSSE. L. Fr. A dyke or ditch. *Britt.* c. 20.

FOSSELLUM. L. Lat. [from *fossa*, q. v.] In old records. A small ditch. *Cowell.*

FOSSE WAY, or FOSSE. [L. Fr. *fos.*] One of the four ancient Roman Ways through England. *Spelman. Id.* voc. *Ikenild Street.*

FOSTERLAND. Land given, assigned or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, &c. *Cowell. Blount.*

FOTMEL. [L. Lat. *fotmellus.*] In old English law. A weight of lead of seventy pounds; a pig of lead. *Cowell.* See *Charrus.*

FOTMELLUS. L. Lat. In old English law. A fotmel or pig of lead. In Fleta, this word is repeatedly mis-printed *fotinellus. Fleta*, lib. 2, c. 12, § 1.

FOUNDER. [L. Lat. *fundator.*] One who endows a corporation, or gives the revenues or funds for its establishment.* 1 *Bl. Com.* 481. 2 *Kent's Com.* 303.

One who gives a corporation its existence by incorporating it.* In England, the king is the general *founder* of all colleges and hospitals. 1 *Bl. Com.* 481. See *Fundator.*

FOUNDEROSA. L. Lat. Founderous; out of repair, as a road. *Cro. Car.* 366.

FOUNINARE. L. Lat. In old forest law. To fawn; to bring forth the young of the deer. *Fleta*, lib. 2, c. 41, § 33. A corruption or misprint for *feonare*, or *foinisare.*

FOUNT. L. Fr. [from *faire*, q. v.] (They) do or did; (they) make. *L. Fr. Dict. Que* fount *defaute;* who make default. *Fet Assaver*, § 19.

FOUR. Fr. [from Lat. *furnus*, q. v.] In old French and Canadian law. An oven. *Four banal;* a banal oven. The oven of a lord at which his tenants were required to bake their bread. *Dunkin's Address*, 17. The exclusive right of keeping an oven in the seigniory.

FOUR CORNERS. To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 *Smith's Lead. Cas.* 295.

FOUR SEAS. [L. Fr. *quater meres;* Lat. *quatuor maria.*] In English law. A term applied to the seas formerly considered as encompassing either the whole island of Great Britain, or England only. According to Selden, the four seas surrounding the whole island of Great Britain were, 1. The Western, called *Vergivian*, including the Irish and Scottish seas; 2. The Northern, the *Scottish* or North sea; 3. The Eastern, the *German Ocean;* and 4. The Southern, or *British Channel. Seld. Mare Claus.* lib. 2, c. 1. But the extent of these seas has not been precisely limited. As to the four seas which encompassed England only, see *Meadows' Obs. on the Dominion of the Seas*, 11. *Seld. Mar. Claus.* lib. 2, c. 31. *Hargr. Co. Litt.* Note 115, lib. 2. Britton mentions three seas; the Sea of France, of Ireland and of Scotland, (*la mere de Fraunce, de Irland ou de Escoce.*) *Britt.* c. 123, The term *four seas* is used in the books as a term of territorial limitation. Thus, a fine was said to bar all persons of full age, out of prison and of good memory, within

the *four seas* the day it was levied. 4 *Co.* 125. Within the *four seas* is as much as to say, within the jurisdiction of the king of England. 2 *Inst.* 253.

FOURCHER, *Forcher, Foercher.* L. Fr. [from *fourcher*, to divide, or fork.] In old English practice. A term applied to a particular mode of casting essoins by two or more tenants, *simul et vicissim;* that is, alternately, and in succession, so as to prolong the proceedings, and thereby delay the demandant. For this purpose, when a *præcipe* was brought against A. and B., A. was essoined and B. appeared, and had *idem dies* (the same day) given him; at which day A. appeared, but B. cast an essoin; at the *dies datus*, A. was essoined again and B. appeared, and so alternately. This was called *fourcher* (that is, to divide,) by essoin, because they divided themselves in delay of the demandant, by essoins and appearances interchangeably. 2 *Reeves' Hist. Eng. Law*, 122. 2 *Inst.* 250. *Termes de la Ley.* This practice was abolished by statute Westminster 1, ch. 43.

FOURME. L. Fr. Form. *Yearb.* T. 1 Edw. II. 9.

FOUS. L. Fr. Fools. *Fous nastres;* natural or born fools. *Britt.* c. 10.

FOVEA. Lat. A grave. *Cowell.*

FOWER. L. Fr. To dig; to cut; to cut down. *Yearb.* M. 7 Edw. III. 1. *Kelham.*

FOWLS OF WARREN. In English law. Birds of game;* which are divided by Lord Coke into three kinds: *campestres*, [field birds,] as the partridge, quail, rail, &c.; *silvestres*, [wood birds,] as the pheasant, woodcock, &c.; and *aquatiles*, [water fowl,] as mallard, heron, &c. *Co. Litt.* 233 a. But according to Manwood (who supports his opinion by referring to the Register) there are but two fowls of warren, the pheasant and the partridge. *Manwood, Forest Law*, c. 4, s. 3. *Reg. Orig.* 93 b. 2 *Bl. Com.* 38, note (b.) See *Free warren.*

FOY, *Foi.* L. Fr. Faith; fidelity. *Litt.* sect. 85. *Britt.* c. 29. *En bonne foy;* in good faith. *Kelham.*

Oath. *Par sa mayne et par sa foy;* by his hand and by his faith. *Britt.* c. 70.

FOYABLE. L. Fr. Faithful. *Kelham.*

FOYAL, *Foial.* L. Fr. Faithful. *Litt.* sect. 85.

FRA. L. Fr. [from *faire*, q. v.] Shall do or make. *Et que le fra;* and whoever shall do so. *Stat. Westm.* 1, c. 26. *Frons nostre brefe;* we will make our writ. *Britt.* c. 45.

FRACTIO. Lat. [from *frangere*, to break.] A breaking; a breach. *Fractio fidei;* a breach of promise or of trust. 1 *Rep. in Ch.* Appendix, 8.

FRACTION. [from Lat. *fractio*, q. v.] A breaking, or breaking up; a fragment or broken part; a portion of a thing, less than the whole. "The law loves neither *fractions* of estates, nor *fractions* of constructions." *Bacon's Arg.* Case of Revocation of Uses.

FRACTION OF A DAY. The division or breaking up (Lat. *fractio*, from *frangere*, to break,) of a day into smaller portions of time.* In general, the law does not allow of the fraction of a day, or, as it is otherwise expressed, the law rejects all fractions of a day, in order to avoid disputes. 2 *Bl. Com.* 141. *Co. Litt.* 135 b. 9 *East*, 151, 154. **Fractionem diei non recipit lex.** *Lofft's R.* Appendix 572. Therefore, where an act is to be done, as money to be paid on a certain day, it is sufficient if it be paid at any time during the day, that is, before twelve o'clock at night. 2 *Bl. Com.* 141. The law, however, does admit of the fraction of a day in certain cases, where it is necessary to distinguish for the purposes of justice, [as where two acts are done on the same day, and it is important to show which was actually done first;] and according to Lord Mansfield, an hour may admit of a similar division, where it is necessary, and can be done, for it is not like a mathematical point which cannot be divided. 3 *Burr.* 1434. See 4 *Kent's Com.* 95, note. 11 *Howard's R.* 411.

FRACTOR. Lat. [from *frangere*, to break.] In old English law. A breaker. *Fractores gaolarum;* gaol or prison-breakers. *Fleta*, lib. 2, c. 52, § 12.

FRACTURA NAVIUM. Lat. The breaking, or wreck of ships; the same as *naufragium*, (q. v.) See *Shipwreck.*

FRANC. L. Fr. Free. See *Frank, Fraunc, Fraunche.*

FRANC ALEU, or ALLEU. Fr. In French law. Free land; allodial land; an estate entirely free, and not holden of any superior, and wholly exempt from all seigniorial rights and services. *Argou, Inst. au Droit Francais*, tom. i. 194; cited 3 *Kent's Com.* 498, note. *Hargr. Co. Litt.* Note 3, lib. 2. *Guyot, Inst. Feod.* ch. 28. A term used, in Lower Canada, to denote

an absolute right to real estate, as distinguished from a tenure. *Brande.* In old French law, it is often simply called *aleu*, or *alleu*. *Esprit des Lois*, liv. 31, c. 8. See *Alleu*.

FRANCHIARE. L. Lat. In old English law. To enfranchise; to make free. *Liber fuit quia* franchiatus *est;* he was free because he was enfranchised. *Bract.* fol. 277 b.

FRANCHILANUS. L. Lat. [from Fr. *franche*, or *frank*, free.] In old English law. A freeman. *Sciatis me dedisse—cum villanis et* franchilano, *nomine, Hamone*, &c.: Know ye that I have given—with the villeins and the freeman, named Hamon, &c. *Blount.* 1 *Mon. Angl.* fol. 442 b. *Carta Hen.* IV. cited *ibid.*

A freeholder or free tenant; a franclaine, frankleyne or frankelein. *Spelman, Reliq.* 167. *Fortescue de L. L. Angliæ*, c. 20, note (m.)

FRANCHISE. L. Fr. and Eng. [L. Fr. *fraunchise*, from *fraunch*, free; L. Lat. *franchesia, francisia.*] In English law. A liberty; a privileged place, (*locus immunis.*) *Spelman. Pur encheson des* franchises *ou les felons sont resceves;* by reason of the liberties where the felons are harbored. *Stat. Westm.* 1, c. 9. An immunity or exemption from ordinary jurisdiction. *Termes de la Ley. Blount.* See *Liberty.*

A royal privilege, or a branch of the prerogative subsisting in the hands of a subject, and arising either from royal grant, or from prescription, which presupposes a grant; a species of incorporeal hereditament. *Finch's Law*, b. 2, ch. 14. 2 *Bl. Com.* 37. 2 *Steph. Com.* 14. Such as the privileges to be a county palatine; to be a corporation; to have a bailiwick or liberty exempt from the sheriff of the county; to hold a court leet; to have waifs, wrecks, estrays, treasure trove, royal fish, forfeitures and deodands; to have a fair or market, or ferry, or the like, with the right of taking toll there; or to have a forest, chase, park, warren or fishery. 2 *Steph. Com.* 14, 15. 1 *Crabb's Real Prop.* 483—541, §§ 623—697.

In American law. A particular privilege conferred by grant from government and vested in individuals. 3 *Kent's Com.* 458. As, to be a corporation; to have a ferry, bridge, turnpike or rail-road. *Id.* 458, 459, and notes. Corporations are the most usual franchises known in our law. *Id.* 459. See 2 *Hilliard's Real Prop.* 45—74.

Franchise is a slight variation from the law French *fraunchise* used in Britton. *Frankise* is a corrupted form given by Kelham, which indicates the old pronunciation of the word.

FRANCIA. L. Lat. France. *Bract.* fol. 427 b.

FRANCIGENA. L. Lat. [from *Francus*, French, and *genitus*, born.] In old English law. A Frenchman; one born in France. *Sunt aliqui* Francigenæ *in Francia, qui sunt ad fidem utriusque* [*regis;*] there are some Frenchmen born in France, who owe allegiance to both kings. *Bract.* fol. 427 b.

Any alien, as distinguished from an Englishman. *Utrum sit Anglicus, vel* Francigena. *Bract.* fol. 135 b.

FRANCISIA. L. Lat. A franchise. *Spelman.*

FRANCLAINE, *Franclein, Frankleyne.* L. Fr. and O. Eng. [L. Lat. *franchilanus.*] In old English law. A freeholder, freeman or gentleman, (*libertus, libertinus, municeps;*) the opposite of a villein. *Fortescue de L. L. Angliæ*, c. 29, note (m.) *Dufresne*, voc. *Franchilanus.*

FRANCLING, *Franclin.* [L. Fr. *fraunclein;* L. Lat. *franchilanus.*] In old English law. A freeman, (*libertus;*) a freeholder, or free tenant, (*qui libere tenet.*) *Spelman.*

FRANCUS. L. Lat. [from L. Fr. *franc.*] In old European law. Free. See *infra.*

A freeman, (*liber.*) *Spelman.* A powerful man, (*un homme puissant,*) as distinguished from *debilior persona*, in the capitularies of the French kings. *Esprit des Lois*, liv. 30, c. 25.

A Frank. *Spelman.*

A Frenchman. *Omnibus hominibus suis*, Francis *et Anglis;* to all his subjects. French and English. A common expression in charters of the Anglo-Norman kings.

FRANCUS BANCUS. L. Lat. [L. Fr. *frank bank.*] In old English law. Free bench. *Consuetudo est in partibus illis quod uxores maritorum defunctorum habeant* francum bancum *suum de terris sockmannorum. Bract.* fol. 309. See *Free bench.*

FRANCUS HOMO. L. Lat. In old European law. A free man. *Domesday. Apud duodecim homines bene* francos *Sali-*

cos; before twelve good free Salic men. *Spelman. Form. Solenn.* c. 168, cited *ibid.*

FRANCUS PLEGIUS. L. Lat. In old English law. A frank pledge, or free pledge. *Spelman*, voc. *Francus.* See *Frank pledge.*

A decennary or friborg, (properly *francum plegium.*) *Alium recipere in* franco plegio,—*illum à* franco plegio *dimittere;* to receive another in a frank pledge,—to send him out of a frank pledge. *Bract.* fol. 124 b.

FRANCUS TENENS. L. Lat. In old English law. A frank or free tenant; a freeholder; (*liberè tenens.*) *Spelman*, voc. *Francus.* One who freely holds lands or estates of his lord. *Id. Si quis obierit* francus tenens, &c.; if any free tenant die, &c. *Assis. de Clarendon*, cited *ibid.*

FRANK, *Franc, Franche, Fraunc, Fraunche.* L. Fr. Free. *Et pur ceo que elections doient estre* franks, *cy defend le roy sur la greeve forfeiture que nul haute home, ne auter, per poyer des armes, ne per malice ou menaces, ne disturbe de faire* franke *election*; and inasmuch as elections ought to be *free*, the king commands, under a grievous forfeiture, that no great man, nor other, by force of arms, nor by malice or menaces, shall disturb any to make *free* election. *Stat. Westm.* 1, c. 5. *Frank et de* frank *estate. Yearb.* M. 3 Edw. III. 14.

Finch uses *frank* as an English word. "The demandant saith he is *frank*, &c. and he is found *frank* by the jury." *Law*, b. 2, ch. 10.

FRANKALMOIGN. L. Fr. and Eng. [L. Fr. *fraunche aumone;* L. Lat. *libera eleemosyna.*] In English law. Free alms. A spiritual tenure whereby a religious corporation, aggregate or sole, holds lands of the donor to them and their successors forever. *Litt.* sect. 133. 2 *Bl. Com.* 101. 1 *Steph. Com.* 213. This was anciently an ordinary kind of tenure in England, the peculiarity of which was its exemption from all *secular* or temporal service; the service to be performed being of a *religious* character, usually to pray for the soul of the donor and his heirs, dead or alive, and even that not certainly defined; hence it was called *frank* or *free. Britt.* c. 66. 2 *Bl. Com.* 101, 102. It is the tenure by which the parochial clergy, and very many ecclesiastical and eleemosynary foundations hold their land at this day; having been expressly reserved by the statute 12 Car. II. c. 24. *Id.* 101. See *Eleemosyna.*

"Frank almoign *or* lay fee," was a common issue in the old books. *Yearb.* T. 1 Edw. II. 11.

FRANK BANK. L. Fr. [L. Lat. *francus bancus.*] In old English law. Free bench. *Litt.* sect. 166. *Co. Litt.* 110 b. *Calthrop's R.* 165. See *Free bench.*

FRANK CHASE. [L. Lat. *libera chacea.*] In English law. Free chase. The liberty or franchise of having a chase.

FRANK FEE. [L. Lat. *liberum feodum*, or *feudum.*] In English law. A species of tenure in fee simple, being the opposite of ancient demesne, or copyhold. *Termes de la Ley.* 2 *Bl. Com.* 368. 3 *Id.* 166. All land that was not ancient demesne was considered as *frank fee. Reg. Orig.* 14 b. *Id.* 12. *F. N. B.* 16 D. Where a fine was had of copyhold lands, or lands in ancient demesne, it altered the tenure, and converted them into *frank fee.* 2 *Bl. Com.* 368. 3 *Id.* 166. In feudal law, *feudum francum* was a free fee or fief, for which no service was due. *Cowell. Fachineus & Zasius de Feudis*, cited *ibid.*

FRANK FERM. [. Fr. *fraunk ferme;* L. Lat. *libera firma.*] In English law. Lands in socage tenure, described by Britton as lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof, neither homage, ward, marriage nor relief can be demanded. *Britt.* c. 66. 2 *Bl. Com.* 80.

FRANK-FOLD, *Frank-faulde.* [L. Fr. *franche faude;* L. Lat. *falda libera.*] In old English law. Free fold; a privilege for the lord to have all the sheep of his tenants and the inhabitants within his seigniory, in his fold, in his demesnes, to manure his land. *Keilw.* 198. *Yearb.* H. 1 Edw. III. 4. See *Faldage.*

FRANK LAW. [L. Fr. *fraunche ley;* L. Lat. *libera lex, lex terræ.*] In old English law. The liberty of being sworn in courts, as a juror or witness; one of the ancient privileges of a freeman, or free and lawful man, (*liber et legalis homo.*) Otherwise called *the law of the land*, (*lex terræ,*) or simply, *law*, (*lex.*)* The nature of this privilege may be understood from Bracton's description of the consequences of losing it, among which the principal one was, that the parties incurred perpetual infamy, so that they were never afterwards to be admitted to oath, because they were

not deemed to be *othesworth*, (that is, not worthy of making oath,) nor allowed to give testimony. *Perpetuam infamiam incurrant, et* legem terræ *amittant, et ita quod nunquam postea ad sacramentum admittantur, quia de cætero non erunt* othesworth, *nec ad testimonium recipientur.* *Bract.* fol. 292 b. This was one of the punishments of jurors who had been convicted of perjury. *Id. ibid.* See *Amittere liberam legem*, *Othesworth*, *Liber et legalis homo*, *Law-worth.*

*** This term has been very generally defined, "the privilege of the law's protection," and "the benefit of the free and common law of the land." *Holthouse. Wharton's Lex.* But that it had a more particular and determinate meaning is clear both from the testimony of the ancient writers, and from the peculiar signification of the word *law*, which, from a very early period, denoted an *oath*, or the taking or making of an *oath;* as in the common expressions *wager of law*, and *making law.* A *lawful* man, (*legalis homo*,) was one who was competent to be *sworn* as a juror or witness; and the word *lawful* is used in this sense in jury process, to this day. 3 *Bl. Com.* 340, 341, 352. See *Law-worth.*

FRANKLEYNE. [L. Lat. *franchilanus*, q. v.] In old English law. A substantial householder; a freeman or gentleman. *Fortescue de LL. Angliæ*, c. 29, and note (m). In modern spelling, a franklin.

Franclaine (q. v.) is another form of this word, used in the note last referred to; where Chaucer's description of the Franklin is given at length. And see *Francling.*

FRANK MARRIAGE. [L. Lat. *liberum maritagium.*] In English law. A species of entailed estate now grown out of use, but still capable of subsisting. It is defined to be, where tenements are given by one man to another, together with a wife, who is the daughter or cousin [that is, of the blood] of the donor, in frank marriage. *Litt.* sect. 17. By such gift, the donees have the tenements to them and the heirs of their two bodies begotten, that is, they are tenants in special tail. 2 *Bl. Com.* 115. 1 *Steph. Com.* 232. The land itself so given in consideration of marriage (*propter nuptias*,) was called *maritagium*, and it was called *free*, because it was free and quit from all secular service until the third heir inclusive, (*terra sic data quieta sit et libera ab omni seculari servitio—usque ad tertium hæredem.*) *Bract.* fol. 21, 21 b. *Cowell. Blount.* "Hereditaments given in frank marriage, that is to say, *freely in marriage* with one's kinswoman." *Finch's Law*, b. 2, ch. 3, p. 123.

FRANK PLEDGE. [L. Fr. *fraunk plegge;* L. Lat. *francus plegius, francum plegium, franciplegium.*] In English law. A free pledge; a decennary, tithing or friborg; so called because every *freeman* composing it was a *pledge* or security for the good conduct of the others, for the preservation of the public peace. *Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, §§ 4—8. *Crabb's Hist. Eng. Law*, 18.

A free surety; an inhabitant or member of a decennary, or friborg. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 114. 4 *Bl. Com.* 252. 2 *Inst.* 73. See *Francus plegius*, *Friborg.*

FRANK TENANT. L. Fr. A freeholder. *Litt.* sect. 91.

FRANK TENEMENT. L. Fr. [L. Lat. *liberum tenementum.*] In English law. A free tenement, freeholding or freehold. 2 *Bl. Com.* 61, 62, 104. 1 *Steph. Com.* 207. *Bract.* fol. 207. Used to denote both the tenure and the estate. See *Freehold.*

FRASSETUM. L. Lat. In old English law. A wood, or ground that is woody. *Co. Litt.* 4 b. *Shep. Touch.* 95. Blount considers it a corruption of *fraxinetum*, a wood where ashes grow.

FRATER. Lat. [Fr. *frere.*] A brother. *Frater consanguineus;* a brother by the father's side. 2 *Bl. Com.* 232.

Frater uterinus; a brother by the mother's side; a uterine brother. *Id.*

Frater nutricius; a bastard brother. *Blount.*

Frater fratri uterino non succedet in hæreditate paterna. A brother shall not succeed a uterine brother in the paternal inheritance. 2 *Bl. Com.* 223. *Fortescue de Laudibus LL. Angliæ*, c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Will. IV. c. 106, § 9.

FRATERIA. L. Lat. [from *frater*, a brother.] In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, &c. of their living brethren, and the souls of those that were dead. *Cowell.*

FRAUD. [L. Fr. *fraude;* Lat. *fraus, dolus malus, dolus.*] Any cunning, deception or artifice, used to circumvent, cheat

or deceive another; (*omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam.*) *Dig.* 4. 3. 1. 2. *Id.* 2. 14. 7. 9.—Every kind of artifice made use of by one person for the purpose of deceiving another; (*toute espece d'artifice, dont quelque un se sert pour entromper un autre.*) *Pothier, Traite des Oblig.* part 1, c. 1, sec. 1, art. 3, § 3.

Both these definitions are quoted with approval by Mr. Justice Story, who observes of the former, "This definition is, beyond doubt, sufficiently descriptive of what may be called positive, *actual* fraud, where there is an intention to commit a cheat or deceit upon another, to his injury. But it can hardly be said to include the large class of *implied* or constructive frauds which are within the remedial jurisdiction of a court of equity. Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another." 1 *Story's Equity Jur.* § 187. See 2 *Kent's Com.* 483, note.

The difficulty of giving any precise definition of fraud has been frequently admitted. See observations of Ware, J. 3 *Story's R.* 611, 634. See *Jeremy's Equity Jurisd.* 383, and the opinion of Lord Chancellor Hardwicke, in Chesterfield *v.* Janssen, in which the different species of frauds against which equity will give relief, were classified. 2 *Vesey*, 125. 1 *White's Equity Cases*, 344. As to fraud in sales or mortgages of chattels, see 2 *Kent's Com.* 512—532, and notes. As to fraud in voluntary assignments for the benefit of creditors, see *Id.* 532—536. *Burrill on Assignments*, chap. xxxii.

FRAUD IN FACT. Fraud which consists in, or appears from matter of fact as found by a jury; as distinguished from fraud *in law*, (q. v.) *Actual* or positive fraud, which must be proved; as distinguished from *constructive* fraud, which may be presumed, implied or inferred by law.* Fraud is sometimes mere *matter of fact*, and sometimes the *conclusion of law* from facts. Lord Mansfield, 2 *Burr.* 937. Fraud in fact seems to answer to that species of *dolus* which the Roman law expressively distinguished as *bad*, (*malus.*) See *Dolus malus.*

FRAUD IN LAW. Fraud, in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud, (q. v.) See 2 *Kent's Com.* 512—532, and notes. Fraud is never presumed, that is, without proof. 11 *Wendell's R.* 187, 192. 2 *Texas R.* 365. But fraud is often a conclusion of law, which courts will infer from acts and circumstances, whether the existence of a fraudulent purpose, in the strict sense, be proved, or not. 24 *Connecticut R.* 94.

FRAUDARE. Lat. [from *fraus*, q. v.] In the civil law. To deceive, cheat or impose upon; to defraud. **Nemo videtur fraudare eos qui sciunt et consentiunt.** No one seems [is supposed] to deceive those who know and consent. *Dig.* 50. 17. 145. [187.] Where a party has full knowledge of facts, and consents to what another does, he is not considered to have been deceived by him.

FRAUDE. L. Fr. Fraud. *Sauns* fraude *faire;* without committing fraud. *Britt.* c. 16.

FRAUDS, STATUTE OF. The celebrated statute of 29 Charles II. c. 3, passed A. D. 1677, otherwise called the *Statute of Frauds and Perjuries;* styled, by an eminent commentator, "the most comprehensive, salutary and important legislative regulation on record, affecting the security of private rights." 2 *Kent's Com.* 494, note. It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins. The chief object of passing this statute was to prevent the facility to *frauds* and the temptation to *perjury*, held out by the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses. Hence its leading feature is the requirement of some instrument or note *in writing, signed* by the parties to be charged, or their authorized agents, to render contracts, in certain specified cases, valid. See a summary of the provisions of this statute, in 2 *Kent's Commentaries*, 494, note. And see *Smith on Contracts*, 32, *et seq.*

FRAUDULENT CONVEYANCE. A conveyance, the object, tendency or effect of which is to defraud another, or the intent of which is to avoid some debt or duty due by, or incumbent on the party making it.* See 2 *Kent's Com.* 440. 4 *Id.* 462. An immoral and corrupt motive is not es-

sential to render the act fraudulent as to creditors. It is constructively so, if it necessarily leads to the injury of the creditor. 1 *B. Monroe's R.* 157. 2 *Kent's Com.* 441, note.

FRAUDULENT CONVEYANCES, *Statutes of, (or against.)* The name given to two celebrated English statutes,—the stat. 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5; and the stat. 27 Eliz. c. 4, made perpetual by 29 Eliz. c. 18. By the first of these statutes, (13 Eliz. c. 5,) after declaring its object to be "for the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, which feoffments, &c. have been and are devised and contrived of malice, fraud, covin, collusion or guile *to the end, purpose and intent to delay, hinder or defraud creditors* and others of their just and lawful actions, suits, debts, &c.;" it is enacted that every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, &c. *to or for any intent or purpose before declared or expressed*, shall be deemed and taken (only as against that person, his heirs, &c. whose actions, debts, &c. are or may be in any wise disturbed, hindered, delayed or defrauded,) to be utterly void and of no effect. See *Roberts on Fraud. Conv.* 2, 3. *Burrill on Assignments*, 397—399.

This statute has been universally adopted in American law, as the basis of our jurisprudence on the subject of conveyances, or assignments, to defraud creditors. *Id.* 399, 402, *et seq.* 1 *Story's Eq. Jur.* § 353. 4 *Kent's Com.* 462, 463.

The stat. 27 Eliz. c. 4, § 2, enacts that every conveyance of lands, tenements or other hereditaments whatsoever, made with the intent and purpose to defraud and deceive any person or persons, bodies politic or corporate, who shall purchase the same, shall be deemed and taken (only as against that person or persons, body politic or corporate, his and their heirs, successors, executors, administrators and assigns,) to be utterly void, frustrate and of none effect.

FRAUNCHE, *Fraunch.* L. Fr. Free. *Fraunche ley;* frank-law. *Britt.* c. 52. *Ascuns* fraunches, *et ascuns enserves;* some free and some bound. *Id.* c. 54. *Fraunch pescherie;* free fishery, (q. v.)

FRAUNCHISE. L. Lat. A franchise; a liberty; a place of exclusive jurisdiction. *Britt.* c. 19.

An exclusive privilege. *Id. ibid.*

Freedom; liberty, as distinguished from bondage. *En favour de* franchise; in favor of liberty. *Id.* c. 49.

FRAUNK, *Fraunck.* L. Fr. Free; frank. *Fraunck estate;* a free estate. *Britt.* c. 31.

Fraunk home; a freeman. *Id. ibid.*

Fraunk ferme; frank or free farm. *Id.* c. 66.

Fraunk tenement; a free tenement; a freehold. *Id.* c. 31.

Fraunck plegge; frank pledge. *Id.* c. 20.

FRAUS. Lat. Fraud. More commonly called, in the civil law, *dolus* and *dolus malus*, (qq. v.) A distinction, however, was sometimes made between *fraus* and *dolus;* the former being held to be of the most extensive import. *Calv. Lex.* See *Dolus.* Calvin derives *fraus* from *ferre*, (or Gr. φερειν,) to bear, to bear away or take away; its object usually being to take away another's right of property.

Fraus est celare fraudem. It is a fraud to conceal a fraud. 1 *Vern.* 240. 1 *Story's Eq. Jur.* §§ 389, 390.

Fraus est odiosa et non præsumenda. Fraud is odious and not to be presumed. *Cro. Car.* 550. But see *Fraud in law.*

Fraus et dolus nemini patrocinari debent. Fraud and deceit should defend or excuse no man. 3 *Co.* 78. *Fleta*, lib. 1, c. 13, § 15. *Id.* lib. 6, c. 6, § 5.

Fraus et jus nunquam cohabitant. Fraud and justice never dwell together. See **Jus et fraus**, &c.

Fraus meretur fraudem. Fraud merits fraud. *Branch's Princ.*

FRAUS LEGIS. Lat. In the civil law. Fraud of law; fraud upon law. See *In fraudem legis.*

FRAXINETUM. L. Lat. [from *fraxinus*, an ash.] In old English law. A wood of ashes; a place where ashes grow. *Co. Litt.* 4 b. *Shep. Touch.* 95.

FREA. L. Lat. In old European law. A female ward, (*quæ sub alterius potestate est; pupilla.*) *Spelman. LL. Longob.* lib. 2, tit. 2, l. 4, cited *ibid.*

FRECTA. L. Lat. Fretwork. *Cowell.*

FRECTARE, *Fretare.* L. Lat. In old English law. To freight or load a vessel. *Frectatus;* freighted. *Navis frectata seu fretata;* a ship freighted, a laden vessel. *Cowell. Fretati fuerunt cum vinis;* they were freighted with wines. *Id.*

FRECTUM, *Frettum.* L. Lat. In old English law. Freight. *Quoad frectum navium suarum;* as to the freight of his vessels. *Blount. Plac. Parl.* 21 *Edw.* I. cited *ibid.*

FREDUM, *Freda, Fredus.* L. Lat. [from Sax. *fred, fride,* peace.] In old European law. A sum or price paid to the magistrate, as a recompense for the protection which he afforded against the right of revenge. 1 *Robertson's Charles* V. Appendix, Note xxiii. *Esprit des Lois,* liv. 30, c. 20. This was in addition to the composition paid to the injured party, or his relatives, as a satisfaction for the injury committed, and it was usually equal to the third part of the composition. *Id. ibid.* See *Composition.* Spelman considers it to have been a fine paid for violation of the public peace, (*propter pacem violatam,*) or as the price of obtaining peace, (*ob impetrandam pacem;*) but this idea is combated by Dr. Robertson, who follows the opinion of Montesquieu. See *supra.* The *fredum* is supposed by Spelman to be the origin of the fines or amercements imposed upon parties to actions under the old English practice.

FREDWITE, *Fridwite, Frithwite.* Sax. [from *fred,* or *frith,* peace, and *wite,* a fine.] In Saxon law. A sum of money paid to obtain peace, or exemption from prosecution. The same as *fredum,* (q. v.) *Spelman,* voc. *Fredum.*

FREE. [Sax. *freo;* Lat. *liber;* L. Lat. *francus;* L. Fr. *fraunc, fraunck, fraunche.*] Not bond or servile; not subject to servitude; as a *freeman,* (q. v.)

Certain or honorable; the opposite of base; as *free* service, *free* socage, (qq. v.)

Privileged or exclusive; the opposite of common; as a *free* chapel, a *free* fishery, a *free* warren, (qq. v.)

*** The word *free,* as used in the old common law, imported something very different from its prevalent modern meaning. Thus, as applied to *persons,* it had not the sense of absolute *independence* now generally annexed to it; no person, though distinguished as a *freeman,* being exempt from service of some kind or other. See *Liber homo.* So, in its application to *rights,* it had by no means its present popular sense of *common, unrestricted, open to all,* but directly the reverse,—importing either an exclusive right, as in the case of a free fishery and a free warren, (qq. v.) or a special exemption from some general duty or burden, as from a tax, toll, tribute, &c. This very strikingly appears in the use of the word *franchise* itself, which, though properly translated *freedom* or *a freedom,* always denoted, as it still does, either an *exempt* jurisdiction, or an *exclusive* privilege, and it has the latter sense even in American law. So, in English law at this day, a *liberty* is a place of exclusive jurisdiction; a district exempt from the sheriff of the county. 2 *Steph. Com.* 14, 15. This technical meaning (as it may be called) of the word *free* seems more aptly expressed by the L. Latin *francus,* and L. Fr. *fraunck,* than the pure Latin *liber.*

FREE BENCH. [L. Fr. *frank bank;* L. Lat. *francus bancus, liber bancus, libera sedes.*] In English law. Dower in copyhold lands. 2 *Bl. Com.* 129.—That estate in copyhold lands which a wife has after the death of her husband, for her dower, according to custom. *Kitch.* fol. 102. *Termes de la Ley.*

*** This appears to have been, from the earliest period, a customary estate, peculiar to certain lands, and held by the widow on the condition of remaining chaste and unmarried. *Id. ibid.* Bracton cites a case before Martin [de Pateshull] in the Bench, in the second year of Henry III. in which, to a demand of dower the defendant pleaded that the demandant ought not to have dower, because, after the death of her husband, she married again; and it is a custom in those parts that the wives of deceased husbands shall have their *free bench* of the lands of socmen, (*consuetudo est in partibus illis quod uxores maritorum defunctorum habeant* francum bancum *suum de terris sockmannorum;*) and shall hold it as dower for their lives; but if, after the death of their husbands, they married any one, the custom is, in that county, that they shall lose the dower they held in the name of the first husband. *Bract.* fol. 308 b, 309. This custom of *free bench* still prevails in the manors of East and West Enborne, and Chadleworth, in the county of Berks, at Torr, in Devonshire, Kilmersdon in Somersetshire, and other places in the west of England. 2 *Chitty's Bl. Com.* 129, note. In some places, the widow is entitled to half, and in others, to the whole of the husband's land, or otherwise, according to the custom, but it is always confined to lands of which the husband *died seised. Id. ibid. Litt.* sect. 166. *Co. Litt.* 110 b.

FREEBORD. [L. Lat. *francbordus.*] In old records. An allowance of land over and above a certain limit, or boundary, as so much beyond, or without a fence. *Cowell. Blount.* 2 *Mon. Angl.* fol. 241 a.

The right of claiming that quantity. *Termes de la Ley.*

FREEBOROUGH. See *Freoborh, Friborg.*

FREE CHAPEL. [L. Lat. *libera capella.*] In English law. A chapel, or place of worship, so called, because *exempted* from the jurisdiction of the ordinary or diocesan. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. *Wharton's Lex. Termes de la Ley. Reg. Orig.* 40 b, 41.

FREE FISHERY. [L. Fr. *fraunche pescherie ;* L. Lat. *libera piscaria.*] In English law. An exclusive right of fishing in a public river, being a species of royal franchise. 2 *Bl. Com.* 39. 2 *Steph. Com.* 22.—An exclusive right of fishery in a public navigable river, or sometimes in an arm of the sea, originating in a grant from the king. 1 *Chitt. Gen. Pr.* 224.—An exclusive right to fish in any public water, as in an arm of the sea. 1 *Crabb's Real Prop.* 114, § 108. See 3 *Kent's Com.* 410.

In American law, the definition of a free fishery does not seem to be settled. In Massachusetts, it has been held not to be an exclusive right. 7 *Pick. R.* 79. See *Angell on Water-Courses*, §§ 75, 76.

*** That *free fishery* properly imports an exclusive right, seems apparent from the well-settled meaning of the term *free* in the common law, as explained under that head. See *Free.* By using *free*, however, in its popular sense of *common*, free fishery has sometimes been made identical with *common* fishery, or a right of fishery common to all. This opinion is maintained by Mr. Schultes, in his *Essay on Aquatic Rights*, in which he also endeavors to show that free fishery and *common of* fishery (a still different species of the right,) import the same thing. Lord Coke is relied on in support of this last view, and Mr. Hargrave supposes the following passage from Coke Littleton to establish it: "So a man may prescribe to have *separalem pischariam*, [a several fishery] in such a water, and the owner of the soil shall not fish there ; but if he claim to have *communiam pischariæ*, [common of fishery,] or *liberam pischariam*, [a free fishery,] the owner of the soil shall fish there." *Co. Litt.* 122 a. The passage hardly seems to warrant the inference drawn from it. The opinion of Lord Mansfield, in Seymour *v.* Lord Courtenay, is also considered by Mr. Schultes as favoring his view that free fishery and common of fishery are alike. But that opinion only went the length of distinguishing a *several* from a *free* fishery, and the remark of Lord Mansfield, at the conclusion, shows that he regarded a *common of* fishery as quite a different thing from either. 5 *Burr.* 2814, 2817. See *Yearb.* M. 4 Edw. III. 38.

That a free fishery signifies an exclusive right, seems to have been assumed by the court, (Lord Holt, C. J.) in Smith *v.* Kemp, where it is clearly distinguished from a common fishery. 1 *Salk.* 637. What is said by Lords Coke and Mansfield, (*ubi supra,*) merely goes to show that it is not so absolutely and rigidly exclusive as a *several* fishery, (the owner of which had it literally to himself,) but that it might or must be shared by another. The true idea of a free fishery seems to be, a franchise or monopoly which may be held by *two or more*, as well as a *single* individual, but which, in either case, is equally *exclusive* of the common right.

FREE-FOLD. See *Frank-fold, Foldage.*

FREEHOLD. [L. Lat. *liberum tenementum ;* L. Fr. *frank tenement.*] In English law. An estate either of inheritance or for life, in lands or tenements of free tenure. 1 *Steph. Com.* 217.—A possession of the soil which a *freeman holds* in fee, or at least for term of life. *Britt.* c. 32.

In American law. An estate of inheritance, or for life, in real property. 4 *Kent's Com.* 24. 1 *Hilliard's Real Prop.* 77.

*** *Freehold* is used in the common law to denote both the *tenure* by which an estate is held, and the *estate* itself. 1 *Steph. Com.* 197, note (*e*). *Id.* 217, note (*f*). As a tenure, it was called *free*, to distinguish it from villeinage. (*Dicitur* liberum tenementum, *ad differentiam ejus quod est* villenagium; *quia tenementorum, aliud liberum, aliud villenagium.*) *Bract.* fol. 207. It is equivalent to tenure in free socage, and is the opposite of copyhold in modern English law. 1 *Steph. Com.* 197. As an estate, it seems originally to have properly denoted an estate of inheritance; an estate for life being, according to Bracton, only a *quasi* freehold. Liberum tenementum *est id quod quis tenet* sibi et hæredibus suis *in feodo, et hæreditate ; vel in feodo tantum,*

sibi et hæredibus suis. Item UT liberum tenementum, sicut ad vitam tantum, *vel eodem modo, ad tempus indeterminatum, absque aliqua certa temporis præfinitione;* freehold is that which one holds to him and his heirs, in fee, and inheritance; or in fee only, to him and his heirs. Also *as* freehold, as for life only, or in the same way for an indeterminate period, without any fixed limitation of time. *Bract.* fol. 207. The quality of an *indefinite duration*, here mentioned by Bracton, has always been the quality of a freehold estate. A term for years, for however long a period, and though far exceeding the duration of human life, is no freehold. *Bract.* fol. 27. 2 *Bl. Com.* 143.

FREEHOLD IN LAW, is where lands or tenements are descended to a man, and he may enter into them when he will; before his entry he has a *freehold in law;* after entry, he has a freehold in deed or fact. *Termes de la Ley.*

FREEHOLDER. [L. Lat. *liber tenens;* L. Fr. *frank tenant.*] He who possesses a *freehold* estate.

A free tenant; one who *holds freely*, (*qui libere tenet.*) This was anciently the peculiar right of a freeman. Hence, where a man gave lands to his villein, "*to hold freely* to him and his heirs," it made him a freeman. *Bract.* fol. 24 b.

FREELY. [Lat. *liberè.*] A common word in conveyancing. See *Liberè.*

FREEMAN. [Lat. *liber homo.*] In civil and general law. One born or made free; the opposite of a slave. *Inst.* 1. 3, 4, 5. *Omnis homo aut est* liber *aut est servus. Bract.* fol. 4 b. See *Liber homo.*

In old European law. An allodial proprietor; the opposite of a vassal or feudal tenant, (*vassus* or *vassallus.*) *Esprit des Lois*, liv. 30, c. 17. 1 *Robertson's Charles* V. Appendix, Note viii.

In early English law. A free tenant, or freeholder; one who held land freely, as distinguished from a villein. *Mag. Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 20. *Bract.* fol. 24 b. 2 *Inst.* 27. See *Liber homo.*

In modern law. A member of a corporation, company or city, possessing certain privileges.* 3 *Steph. Com.* 196, 197. A member of a borough, having the right to vote at elections. *Com.* 240.

FREEMEN'S ROLL. In English law. A list of all persons admitted burgesses or freemen for the purpose of those rights which are reserved by the Municipal Corporation Act, (5 & 6 Will. IV. c. 76,) as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers, who are entered on the burgess roll. 3 *Steph. Com.* 197. *Cole on Crim. Inform.* 224.

FREE PLEDGE. See *Frank pledge.*

FREE SERVICES. [L. Lat. *libera servitia.*] In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 *Bl. Com.* 60, 61.

*** Bracton makes a wide distinction between holding *freely* and holding by *free service. Est longe aliud* tenere liberè, *et aliud* tenere per liberum servitium; *quia quamvis quis teneat per liberum servitium, non tamen propter hoc tenet liberè, quia tenementum quod conceditur villano, tenendum per liberum servitium, non facit villanum liberum, nisi teneat liberè, non magis quam villenagium facit liberum hominem villanum, si liber homo teneat per villanas consuetudines; quia tenementum nihil confert nec detrahit personæ, &c.;* it is one thing to hold freely, and a far different thing to hold by free service; because, though one may hold by free service, yet he does not on this account hold freely; because a tenement which is granted to a villein to hold by free service, does not make the villein a freeman, unless he hold freely, any more than villeinage makes a freeman a villein, if a freeman hold by villein customs; because the tenement neither adds to nor takes from the person, &c. *Bract.* fol. 24 b. See *Fleta*, lib. 3, c. 13, § 1.

FREE SHIPS. In international law. Neutral vessels, sometimes so called. It is sometimes stipulated in treaties that *free ships shall make free goods;* that is, that enemy's property on board of neutral ships shall be protected from seizure and confiscation. 1 *Kent's Com.* 126—128, and note. See *Wheaton's Intern. Law*, 507—532.

FREE SOCAGE. [L. Lat. *liberum socagium.*] A tenure by some certain and determinate service, (usually in England, fealty and rent;) called *free*, because the service was not only certain but honorable, and thus distinguished from *villein* socage, where the services, though certain, were of a baser nature. 2 *Bl. Com.* 79. 1 *Steph. Com.* 192, 194. *Termes de la Ley*, voc. *Socage.* This is the tenure by which the

great bulk of real property in England is now holden, having absorbed and swallowed up almost every other species of tenure. 2 *Bl. Com.* 79, 89. 1 *Steph. Com.* 197. Called also *common socage*, and in the statute 12 Car. II. c. 24, *free and common socage*. See *Socage*.

FREE SOCMEN. [L. Lat. *liberi sokemanni.*] In old English law. Tenants in free socage. *Glanv.* lib. 3, c. 7. 2 *Bl. Com.* 79.

FREE or FRANK TENURE. [L. Lat. *liberum tenementum.*] Freehold; the opposite of the ancient villeinage, and modern copyhold. 2 *Bl. Com.* 89, 90. See *Freehold*.

FREE WARREN. [L. Lat. *libera warrena.*] In English law. A royal franchise granted to a subject for the preservation or *custody*, (which the word *warren* signifies,) of certain animals called beasts and fowls of warren; being the exclusive right of taking and killing game within certain limits.* 2 *Bl. Com.* 39, 417. 2 *Steph. Com.* 21. 1 *Chitt. Gen. Pr.* 223. See *Warren*. Called *free garren*. *T. Jon.* 5.

FREIGHT. [Lat. *naulum, vectura;* L. Lat. *frectum;* Fr. *fret, nolis;* L. Fr. *freit.*] In maritime law. The price or sum paid for the actual transportation of goods by sea, from one place to another. 3 *Kent's Com.* 219.

In a larger sense. Any reward or compensation paid for the use of ships, including the transportation of passengers. *Id. ibid.*

Freight is the mother of wages. 2 *Show.* 283. 3 *Kent's Com.* 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due. *Id. ibid.*

FREIGHTER. In maritime law. The party by whom a vessel is engaged or chartered; otherwise called the *charterer*. 2 *Steph. Com.* 148. In French law, the owner of a vessel is called the freighter (*freteur;*) the merchant who hires it is called the affreighter (*affreteur.*) *Emerig. Tr. des Ass.* ch. 11, sect. 3.

FREINE. L. Fr. [Lat. *fraxinus.*] An ash-tree. *Freines;* ashes. *Dyer*, 35 b, (Fr. ed.)

FREIT. L. Fr. Freight. *Kelham.*

FR'EM. A contraction of *fratrem*. 1 *Inst. Cler.* 10.

FRENDLESMAN. Sax. The ancient name of an outlaw (*utlaughe,*) in England; so called, according to Bracton, because he forfeited his *friends*, (*quod forisfacit amicos;*) all persons being forbidden to give him food or shelter, or to have any communication with him. *Bract.* fol. 128 b.

FRENDWITE. Sax. [from *freond*, a friend, and *wite*, a penalty.] In old English law. A fine exacted of one who harbored an outlawed friend. *Wharton's Lex.*

An acquittance or immunity from forefang, (*quietantia prioris prisæ.*) An acquittance from the penalty for taking provisions before the king's purveyors. *Fleta*, lib. 1, c. 47, § 15. *Cowell.*

FRENETICUS. L. Lat. In old English law. A madman, or person in a frenzy. *Fleta*, lib. 1, c. 36.

FRENTIKE. L. Fr. [L. Lat. *freneticus.*] Furiously insane; a madman. *Frentikes en lour rage. Britt.* c. 28. Hence *frantic*.

FREO. Sax. Free. *Spelman*, voc. *Friborga.*

FREOBORGH, *Freoborghes, Freoborhes.* Sax. [from *freo*, free, and *borh*, or *borhes*, a pledge.] In Saxon law. A free surety, or free pledge. *Spelman*, voc. *Friborga.* 2 *Inst.* 73. Lord Coke observes that the term *free-barrow* continued to be used in his day, in some places. *Id. ibid.*

FREOBORHESHEOFOD. Sax. [from *freoborhes*, a free pledge, and *heofod*, head.] In Saxon law. The head of a friborg or free pledge; a chief pledge. *Spelman*, voc. *Friborga.*

Frequentia actus multum operatur. The frequency of an act effects much. 4 *Co.* 78. *Wingate's Max.* 719, max. 192. A continual usage is of great effect to establish a right.

FRERE. L. Fr. A brother. *Frere eyne;* elder brother. *Frere pusne;* younger brother. *Britt.* c. 75.

FRESCA. L. Lat. In old records. Fresh water, or rain and land flood. *Cowell. Somner Gavelkind*, p. 132, cited *ibid.* See *Frisca.*

FRESCHE. L. Fr. Fresh or new. *Britt.* c. 5. *Freschement;* freshly, newly. *Id.* cc. 15, 43. *Yearb.* P. 8 Edw. III. 1.

FRESH. [L. Lat. *friscus;* L. Fr. *fresche;* Lat. *recens.*] In old English law. Recent, or new. See *Fresh disseisin, Fresh force.*

Without profit; a term applied in the old books to land. *Celuy que la terre tient issint charge, la lessest giser* fresh, *issint que home ne puit trover distress*, &c.; he who

holds the land so charged lets it lie *fresh*, so that the party cannot find a distress. *Stat. Gloucest.* c. 3. See *Yearb.* H. 3 Edw. II. 68. T. 2 Hen. VI. 1. Land was said to *lie fresh*, not only when there was no cattle, or thing distrainable upon the land, of the value of the rent, or other profit behind, but also, though there was a sufficient distress to be taken, yet if the land were so enclosed about as that the lord could not come to take and carry away the distress to the pound, it was said to *lie fresh*, that is, without profit to the lord. 2 *Inst.* 296.

FRESH DISSEISIN. [L. Fr. *fresche disseisine ;* L. Lat. *frisca seu recens disseisina.*] By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*, (*flagrante disseisina.*) *Bract.* fol. 162 b. No particular time was limited for doing this, but Bracton suggested it should be fifteen days. *Id.* fol. 163. See *Britt.* cc. 32, 43, 44, 65.

FRESH FINE. In old English law. A fine that had been levied within a year past. *Stat. Westm.* 2, c. 45. *Cowell.*

FRESH FORCE. [L. Fr. *fresche force ;* L. Lat. *frisca fortia.*] In old English law. Force (that is, disseisin or deforcement) newly done. *Britt.* c. 32. *F. N. B.* 7 C. A term applied to force committed in any city or borough, and for which a peculiar remedy, called an assise or bill of *fresh force*, was provided. See *Assise of fresh force.*

FRESH SUIT. [L. Lat. *recens insecutio.*] In English law. Immediate or speedy pursuit, or prosecution. The pursuit of an offender, or felon, as a thief, immediately, or as soon as possible after the robbery, including the prosecution of such pursuit until the apprehension and conviction of the offender. The object of this was to enable the party to recover his goods, which otherwise would belong to the king.* *Britt.* c. 15.

The early and speedy prosecution of a suit. *Stat. Gloc.* c. 9.

FRET. Fr. In French marine law. Freight. *Ord. Mar.* liv. 3, tit. 3.

FRETER. Fr. In French marine law. To freight a ship; to let it. *Emerig. des Ass.* ch. 11, sect. 3.

FRETEUR. Fr. In French marine law. Freighter. The owner of a ship, who lets it to the merchant. *Emerig. des Ass.* ch. 11, sect. 3.

FRETTUM. L. Lat. In old English law. Freight money. *Cowell. Rot. Claus.* 17 Johan. m. 16, cited *ibid.*

FRETUM. Lat. A strait. *Fretum Britanicum ;* the strait between Dover and Calais, otherwise called *Fretum Gallicum*, and *Fretum Morinorum. Cowell*, Appendix.

FRIBORG, FRIBORGH. [L. Lat. *friborga*, *friborgus*, from Sax. *freo*, free, and *borh* or *borhes*, a pledge.] In Saxon and old English law. A free pledge, or frank pledge; one of the ancient Saxon names of the tithing or decennary; and also of the individuals who composed it; the chief of whom was called *friborgesheofod*, or *freoborhesheofod*, (qq. v.) *Spelman*, voc. *Friborga.* See *Tithing*, *Decennary.* Called in Fleta, *frichborgh. Fleta*, lib. 1, c. 47, § 10.

FRIBORGESHEOFOD. Sax. [from *friborgh*, a free pledge, and *heofod*, head.] A chief pledge, or head of a friborg. *LL. Edw. Conf.* c. 19.

FRIDHBURGUS, *Frithburgus.* [from Sax. *frith*, peace, and *borg*, a pledge.] In old English law. A kind of frank pledge, by which the lords or principal men were made responsible for their dependents or servants. *Bract.* fol. 124 b. It is usually confounded with the ordinary frank pledge, but seems to have been of a peculiar character. See *Frithborg.*

FRIDSTOLL, *Fridstow*, *Frithstow.* Sax. [from *frid*, or *frith*, peace, and *stol*, a seat, or chair, or *stow*, a place.] In Saxon law. A seat, chair or place of peace, (*cathedra pacis ;*) an asylum, refuge or sanctuary for offenders. *Spelman. Cowell.* Called *Grithstole*, in an old rhyming charter of King Athelstan. *Blount*, voc. *Frodmortel.*

FRILAZIN. [from Anglo-Germ. *fre*, Sax. *freo*, free, and *laschen*, to let go.] In old European law. A freedman; one emancipated from bondage, (*manumissus*, *libertus*, *libertinus.*) *Spelman. Crabb's Hist.* 9.

FRILINGI. L. Lat. [from Anglo-Sax. *fre*, free, and *ling*, offspring.] Persons of free descent, or freemen born; the middle class of persons among the Saxons. *Spelman.*

FR'IS. A contraction of *fratris.* 1 *Inst. Cler.* 10.

FRISCUS. L. Lat. [from Fr. *fresche.*]

In old English law. Recent or new. *Frisca fortia;* fresh force; force recently committed, (*vis nupera et recenter illata.*) *Spelman. Reg. Orig.* 108 a.

Fresh, as distinguished from salt. *Mariscus friscus;* fresh marsh. *Spelman. Aqua frisca;* fresh water. *Reg. Orig.* 97.

Uncultivated, as ground. *Terra jacens frisca et ad warect';* land lying fresh and fallow. *Towns. Pl.* 69. See *Fresh.*

FRITH, *Fridh.* Sax. Peace. *Spelman.*

FRITHBORG. Sax. [from *frith*, peace, and *borg*, a pledge; L. Lat. *frithborga, frithborgus.*] In Saxon law. A pledge or surety for the peace, (*pacis securitas.*) Sometimes confounded with *friborg*, (*friborga, friborgus.*) *Spelman.*

FRITHBOTE. Sax. [from *frith*, peace, and *bote*, compensation.] In Saxon law. A compensation, satisfaction or fine for breach of the peace. *LL. Inæ*, c. 23. *Crabb's Hist. Eng. Law*, 39. Otherwise called *fridwite.* The same as *fredum*, according to Spelman. See *Fredum.*

FRITHBRECH. Sax. [from *frith*, peace, and *brech*, a breaking.] In Saxon law. A breach or violation of the peace. *LL. Ethelred*, c. 6. *Cowell.*

FRITHSOCNE, *Frithsocen.* Sax. [from *frith*, peace, and *socne*, a liberty or franchise.] In Saxon and old English law. A liberty, franchise, or jurisdiction to keep the peace, (*tuendæ pacis jurisdictio.*) According to Fleta, the liberty of having a view of frank-pledge. But to authorize this meaning, the word, according to Spelman, should be written *frisocne.*

FRODMORTEL, *Freomortel.* Sax. [from *freo*, free, and *mortdæl*, murder.] In Saxon law. An immunity or freedom granted for committing murder, or manslaughter. This word occurs in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon, quoted by Blount.

> Ilkan of yis stedes sal have pees
> Of *Frodmortel*, and ils deeds
> Yat yair don is ———

FROM, (Lat. *a, ab,*) as a word expressive of *time*, is construed both inclusively and exclusively, though generally in the latter sense. The old rule was, that when used to denote the commencement of a term, as a lease *from* such a day, it was to be taken exclusively. *Co. Litt.* 46 b. 5 *Co.* 1, *Clayton's case. Id.* 94 b, *Barwick's case.* But the day of a demise is now ordinarily considered as inclusive. 4 *Kent's Com.* 95, note. In other cases, however, as where a party is allowed a certain time *from* such a day, the old rule prevails, and the day is excluded. 4 *Wash. C. C. R.* 232. See 9 *N. Hamp. R.* 304. See *Computation, Time.* A distinction was formerly made between the expressions in a lease "from the date," (*à datu,*) and "from the day of the date," (*à die datûs;*) the former being held to include the day of date, the latter to exclude it. 2 *Salk.* 413, 625. 1 *Ld. Raym.* 473, 480. 2 *Id.* 1242. *Hargr. Co. Litt.* Note 281, lib. 1. But this distinction is not now observed, it having been held that the words "from the date," or "from the day of the date," mean either inclusive or exclusive, according to the context or subject matter. 5 *Co.* 2. *Cowp.* 714. 5 *Term R.* 287. 2 *Crabb's Real Prop.* 248, § 1301. See 1 *Hilliard's Real Prop.* 218.

From, as expressive of *place*, is always taken exclusively. Thus, "*from* a port" is exclusive of the port. The *terminus à quo* is the boundary line of the port, and when a vessel passes from that, she sails *from* the port, and is on the high seas. Story, J. 2 *Mason's R.* 130, 131. See *At and from.*

FRUCTUARIUS. Lat. [from *fructus*, fruit, or increase.] In the civil law. One who had the usufruct of a thing; i. e. the the use of the fruits, profits, or increase, as of land or animals. *Inst.* 2. 1. 36, 38. *Id.* 2. 9. 4, 5. Bracton applies it to a lessee, fermor or farmer of land, or one who held lands *ad firmam*, for a farm, or term. *Bract.* fol. 261. So *firmarius sive usufructuarius. Id.* fol. 165.

FRUCTUS. Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing. 1 *Mackeld. Civ. Law*, 156, § 154. *Fructus fundi;* the fruits of land. *Inst.* 2. 1. 35. *Fructus pecudum;* the produce of flocks, or herds. *Inst.* 2. 1. 37. This included milk, hair and wool. *Dig.* 22. 1. 28.

The right to the fruits of a thing belonging to another. *Dig.* 7. 1. 33.

The compensation which a man receives from another for the use or enjoyment of a thing, such as interest or rent. *Dig.* 5. 3. 29. *Id.* 22. 1. 34. 1 *Mackeld. Civ. Law, ub. sup.* But see *Dig.* 50. 16. 121.

FRUCTUS CIVILES. Lat. In the civil law. Civil fruits; the profits, returns or compensation which a man receives from another, for the use or enjoyment of a

thing. 1 *Mackeld. Civ. Law*, 157, § 154. *Calv. Lex.* See *Fructus.*

FRUCTUS INDUSTRIALES, (or FRUCTUS INDUSTRIÆ.) Lat. Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. 1 *Mackeld. Civ. Law*, 156, § 154, Kaufmann's note. 2 *Kames' Equity*, 139. Emblements are so called in the common law. 2 *Steph. Com.* 258. 1 *Chitt. Gen. Pr.* 92. See *Fructus naturales.*

FRUCTUS NATURALES. Lat. In the civil law. Natural fruits. Those fruits or profits of land, or other thing, which are produced solely by the powers of nature, as the fruit of trees, the young, milk and wool of animals. 1 *Mackeld. Civ. Law*, 156, § 154. *Calv. Lex.*

FRUCTUS PENDENTES. Lat. In the civil law. The fruits of a thing, while united with the thing which produces them. Called also *fructus stantes. Dig.* 47. 2. 26. 1. *Id.* 24. 3. 7. 15. *Id.* 7. 1. 27, pr. 1 *Mackeld. Civ. Law*, 156, § 154. Considered to be part of the land, (*pars fundi.*) *Dig.* 6. 1. 44.

FRUCTUS SEPARATI. Lat. In the civil law. Separate fruits; the fruits of a thing when they are separated from it. *Dig.* 7. 4. 13. 1 *Mackeld. Civ. Law, ub. sup.*

FRUGES. Lat. In the civil law. Fruits; produce of lands. The Roman writers differed in opinion as to the meaning of this word. Julianus held that it included all things used as the food of man, (*quibus homo vescatur ;*) which Paulus pronounces to be a mistake, as flesh, birds, wild animals and tree-fruits, (*poma,*) were not *fruges. Dig.* 50. 16. 77.

In the sense of *reditus,* (return from land,) *fruges* included the profits of vines, underwood, (*silva cædua,*) chalk-pits and stone-quarries. *Id. ibid.*

As distinguished from *frumentum, fruges* signified esculents which grew in a pod, (*siliqua,*) such as lupines and beans. *Id. ibid.*

FRUITS OF CRIME. In the law of evidence. Material objects acquired by means and in consequence of the commission of crime, and sometimes constituting the subject matter of the crime. *Burr. Circ. Evid.* 445. 3 *Benth. Jud. Evid.* 31.

FRUMENTUM. Lat. In the civil law. Grain. That which grows in an ear, (*arista.*) *Dig.* 50. 16. 77.

FRUMGYLD. Sax. [from *form,* or *formam,* first, and *gyld,* a payment.] In Saxon law. The first payment made to the kin of a slain person, in recompense of his murder. *LL. Edmundi,* c. ult. *Termes de la Ley. Cowell.*

FRUMSTOLL. Sax. [from *form,* or *formam,* first, and *stol,* a seat.] In Saxon law. A chief seat, or mansion-house. *LL. Inæ,* c. 38. *Cowell.*

FRUSCA TERRA. L. Lat. In old records. Uncultivated and desert ground. 2 *Mon. Angl.* 327. *Cowell.*

FRUSSARE. L. Lat. In old records. To break up. *Frussare terram ;* to break or plough up new ground. *Cowell.*

FRUSSURA. L. Lat. [from Fr. *froissure.*] In old records. A breaking, or breaking up. *Frussura domorum ;* house-breaking. *Gervas. Dorobern.* A. D. 1195. *Cowell. Frussura terræ ;* new broke land, or land lately ploughed up. 2 *Mon. Angl.* 394. *Cowell. Blount.*

FRUSTRA. Lat. In vain; to no purpose. **Frustra [vana] est potentia quæ nunquam venit in actum.** That power is to no purpose which never comes into act, or which is never exercised. 2 *Co.* 51.

Frustra agit qui judicium prosequi nequit cum effectu. He sues to no purpose, who cannot prosecute his judgment with effect, (who cannot have the fruits of his judgment.) *Fleta,* lib. 6, c. 37, § 9.

Frustra feruntur leges nisi subditis et obedientibus. Laws are made to no purpose, except for those that are subject and obedient. *Branch's Princ.*

Frustra fit per plura, quod fieri potest per pauciora. That is done to no purpose by many things, which can be done by fewer. *Jenk. Cent.* 68, case 28. The employment of more means or instruments for effecting a thing than is necessary, is to no purpose.

Frustra legis auxilium invocat [quærit] qui in legem committit. He vainly invokes the aid of the law, who transgresses the law. *Fleta,* lib. 4, c. 2, § 3. 2 *Hale's P. C.* 386. *Broom's Max.* [209.]

Frustra petis quod mox es restituturus. In vain you ask that which you will have immediately to restore. 2 *Kames' Equity,* 104. 5 *Man. & Gr.* 757. A maxim of the Roman law, another form of which is, **Frustra petis quod statim alteri reddere cogeris.**

Vainly you ask that which you will immediately be compelled to restore to another. *Jenk. Cent.* 256, case 49. 1 *Story's Equity Jur.* § 664. A party will not be aided to recover money which he may be immediately compelled to refund to those from whom he claims it. This maxim has been applied to the case of a partner seeking to recover a demand against the partnership firm of which he is a member. *Story on Partn.* § 221. 5 *Man. & Gr.* 757, arg.

Frustra probatur, quod probatum non relevat. That is proved to no purpose, which, when proved, does not help. *Halkerst. Max.* 50.

FRUSTRUM TERRÆ. L. Lat. In old English law. A piece or fragment of land. A piece of land left over, after the measurement of a field, (*residuum quiddam præter campum mensuratum.*) *Spelman.*

A large piece of land lying by itself, and unconnected with any field, town or manor. *Domesday.* Spelman thinks it should be *frustum. Co. Litt.* 5 b.

FRUTECTUM. Lat. In old records. A place overgrown with shrubs and bushes. *Spelman. Blount.*

FRUTOS. Span. [from Lat. *fructus*, q. v.] In Spanish law. Fruits; products; produce; grains; profits. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

FRYMTH, *Fyrmth.* Sax. In Saxon law. A taking in; the affording harbor and entertainment to any one. *Wharton's Lex.* Properly *firm* or *firma.* See *Flemenfirma.*

FRYTHE. Sax. In old English law. A plain between woods. *Co. Litt.* 5 b. *Domesday.*

An arm of the sea, or a strait between two lands, (from Lat. *fretum*, a strait.) *Cowell. Camd. Brit.* cited *ibid.*

FU. L. Fr. I was. *Kelham.*

FU, *Fue.* L. Fr. Fire. *Kelham.*

FUAGE. [from Fr. *fouage;* L. Lat. *focagium*, from *focus*, a hearth.] In old English law. A tax laid upon the fireplace, hearth, or chimney. Mentioned in Domesday as paid by custom to the king, for every chimney in the house. 1 *Bl. Com.* 324. Afterwards called hearth money, or hearth silver, and chiminage. *Id. ibid. Spelman.*

FUAYL, *Fouoyle, Fowalles.* L. Fr. Fuel. *Kelham.*

FUER. L. Fr. [from Lat. *fugere.*] In old English law. To fly or flee; to chase or drive. *Kelham. L. Fr. Dict.*

Flight. *Fuer en fait;* flight in fact, was when a man did apparently and corporally flee. *Fuer en ley;* flight in law, was when, being called in the county court, he failed to appear; for this was flight in interpretation of law. *Staundf. Pl. Cor.* lib. 3, c. 22. *Cowell.*

FUERINT. Lat. [*sum, esse*, to be.] In old English law. This word, in the phrase *si quæ fuerint*, was sometimes understood in the present and sometimes in the future tense. *Perk.* ch. 12, ss. 741—743.

FUERO. Span. [from Lat. *forum*, q. v.] In Spanish law. A law; a code. See *Fuero Juzgo.*

A general usage or custom of a province, having the force of law. *Las Partidas*, part. 1, tit. 2, l. 7. *Ir contra fuero;* to violate a received custom. *Schmidt's Civ. Law*, Introd. 64.

A grant of privileges and immunities. *Conceder fueros;* to grant exemptions. *Id.*

A charter granted to a city or town. Also designated as *cartas pueblas. Id.*

An act of donation made to an individual, a church, or convent, on certain conditions. *Id.*

A declaration of a magistrate, in relation to taxation, fines, &c. *Id.*

A charter granted by the sovereign, or those having authority from him, establishing the franchises of towns, cities, &c. *Id.*

A place where justice is administered. *Id.*

A peculiar *forum*, before which a party is amenable. *Id.*

The jurisdiction of a tribunal, which is entitled to take cognizance of a cause; as *fuero ecclesiastico, fuero militar. Id.*

FUERO JUZGO. Span. [Lat. *Forum Judicium.*] The title of the most ancient code of the laws of Spain, composed in the seventh century, during the empire of the Visigoths in that country. It is the oldest code of Teutonic origin which has preserved its influence to this day. *Schmidt's Civ. Law*, Introd. 28, 29. *Barringt. Obs. Stat.* 8, note [*r*]. For an analysis of this code, see *Schmidt's C. L.* 30, *et seq.*

FUERO REAL. Span. The title of a code of Spanish law promulgated by Alphonso the Learned, (*el Sabio,*) A. D. 1255. It was the precursor of the *Partidas. Schmidt's Civ. Law*, Introd. 67.

FUERO VIEJO. Span. The title of a compilation of Spanish law, published about A. D. 992. *Schmidt's Civ. Law*, Introd. 65.

FUGA. Lat. In old English law. Flight. *Fugam facere;* to make flight; to flee. *Fugam fecit;* he has made flight; he has fled. *Si aliquo prædictorum modorum* fugam fecerint; if they shall have fled in any of the aforesaid ways. *Bract.* fol. 6 b. See *Fleta*, lib. 1, c. 25, § 7.

FUGA CATALLORUM. L. Lat. In old English law. A drove of cattle. *Blount.*

FUGACIA. L. Lat. [from *fugare*, q. v.] In old English law. A chase. The same as *chacea*, (q. v.) *Spelman. Blount.*

FUGACIO, *Fugatio.* L. Lat. [from *fugare*, q. v.] In old English law. The hunting of wild animals in forests, chases and parks. The liberty of hunting. *Et cives habeant* fugaciones *suas ad fugandum*, &c. *Chart. Libert. Hen.* I. *Civ. Lond. Spelman. Fugatio forestæ;* the drift of the forest. *Blount.*

FUGAM FECIT. L. Lat. (He made flight; he fled.) In old English law. A flying for fear of an offence, and which was the occasion of forfeiting the party's chattels. *Finch's Law*, lib. 3, c. 15. See, in record, 4 *Mod.* 288. An inquisition finds a *fugam fecit. Freem.* 419. See *Fuga.*

FUGARE. L. Lat. [from *fuga*, flight.] In old English law. To chase or hunt; to course a deer; to drive; (*feras cursu premere et venari.*) *Spelman*, voc. *Fugacia.* 2 *Show.* 489. *Fugare et refugare catalla;* to drive cattle to and fro. *Blount.*

FUGATOR. L. Lat. [from *fugare*, q. v.] In old English law. A driver. *Fugatores carucarum;* drivers of wagons. *Fleta*, lib. 2, c. 78. See *Caruca.*

FUGITATE. In Scotch practice. To outlaw, by the sentence of a court; to outlaw for non-appearance in a criminal case. 2 *Alison's Crim. Pr.* 350.

FUGITATION. In Scotch practice. Outlawry. 2 *Alison's Crim. Pr.* 350. 1 *Swinton's R.* 302. See *Fugitate.*

FUGITIVUS. Lat. [from *fugere*, to fly.] In the civil law. A fugitive; a runaway slave. *Dig.* 11. 4. *Cod.* 6. 1. See the various definitions of this word, in *Dig.* 21. 1. 17. And see *Id.* 50. 16. 225.

FUGITIVUS. Lat. [L. Fr. *futyf;* Sax. *flyman.*] In old English law. A fugitive. *Fugitivi;* (Sax *flymen,*) fugitives. One who fled after committing a felony. See *Bona fugitivorum.*

A villein or bondman who left his lord without the intention of returning. *Cum consuetudinem revertendi habere desierint, incipiunt esse* fugitivi, *ad similitudinem cervorum domesticorum;* when they have discontinued the habit of returning, they begin to be fugitives, like tamed deer. *Bract.* fol. 6 b.

FUGITIVE. [from Lat. *fugitivus.*] One who, after committing an offence, flees from justice, that is, takes to flight in order to escape punishment. *Constit. U. States*, Art. IV. Sect. II. 1 *Kent's Com.* 36—38, and notes. 2 *Id.* 32, note. See *United States Digest*, Fugitives from justice.

A slave who has escaped from his master. 2 *Kent's Com.* 32, and notes. 1 *Id.* 404, note. See *Fugitivus.*

FUIZ. L. Fr. Son. *Yearb.* T. 1 Edw. II. 14, 15.

FULBORAN. Lomb. Legitimate; one born without defect; full born. *Si quis dereliquerit filium legitimum unum, quod est* fulboran, *et filios naturales unum aut plures. LL. Longob.* lib. 2, tit. 14, l. 2. *Spelman.*

FULFREA, *Fulfreal.* Lomb. Absolutely or entirely free; full free. *Vadant liberi absoluti et* fulfreales; they shall go absolutely free, and fulfreal. *LL. Longob.* lib. 1, tit. 32, l. 5. *Spelman.*

"FULL," held to be synonymous with *complete.* A "full" answer is as extensive a term, in describing one which is ample and sufficient, as though the term "complete" had been superadded. Ligon, J. 22 *Alabama R.* 817.

FULL AGE. [L. Fr. *pleine age;* L. Lat. *plena ætas.*] In common law. The age of twenty-one years, in males and females. *Litt.* sect. 259. 1 *Bl. Com.* 463. Sometimes simply called *age.* See *Age.*

In the civil law. The age of twenty-five years, in males and females. *Inst.* 1. 23, pr.

*** The common law period of full age is generally adopted in the United States. In Vermont and Ohio, however, females are deemed of age at eighteen. 2 *Kent's Com.* 233. 9 *Vermont R.* 42, 79. It is followed, also, in Louisiana and France. *Code Civil*, Art. 388, 488. *Civil Code of Louisiana*, Art. 41. 93. The rule of the civil law is followed, as to males, in Spain and Holland. *Institutes of Civil Law of Spain*, b. 1, tit. 1, ch. 1, sec. 3. *Vander Linden's Institutes of the Laws of Holland*, b. 1, ch. 5, sec. 7. Full age is deemed to be completed on the beginning of the day preceding the anniversary of the person's birth. 1 *Salk.* 44. 1 *Ld. Raym.* 480. 2 *Salk.* 625. 1 *Bl. Com.* 463. 2 *Steph. Com.* 332. 2 *Kent's Com.* 233. Anciently, however, the heir of a knight's fee was not deemed of age

until he had *completed his twenty-first year*, and had *reached the twenty-second.* (*De feodo militari habebit hæres plenam ætatem* cum xxi. annum impleverit et xxii. attigerit.) *Bract.* fol. 86, 86 b. The son and heir of a socman, on the other hand, was deemed of age when he had completed fifteen years. *Id. ibid.* The reason of this difference was that greater maturity and strength, both of mind and body, were requisite for bearing arms, and performing the other duties of military or knight's service. *Id. ibid.* *Litt.* sect. 103, 104. *Co. Litt.* 78 b.

FULL BLOOD, (or WHOLE BLOOD.) A term of relation, denoting descent from the same couple. Brothers and sisters of *full blood* are those who are born of the same father and mother, or, as Justinian calls them, *ex utroque parente conjuncti.* *Nov.* 118, c. 2, 3. 1 *Mackeld. Civ. Law*, 140, § 132. The more usual term in modern law is *whole blood*, (q. v.)

FULL COURT. In practice. A term applied to a court sitting *in banc*, and implying, strictly, the presence of all the judges.* 3 *Chitt. Gen. Pr.* 2. The term *full bench* is frequently used.

FULL DEFENCE. In pleading. The formula of defence in a plea, stated at length and without abbreviation, thus: "And the said C. D. by E. F. his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," &c. *Steph. Pl.* (Am. ed. 1824,) ch. i. sect. vii. rule v.

FULL LIFE. Life in fact and in law. See *In full life.*

FULL PROOF. [Lat. *plena probatio.*] In the civil law. Proof by two witnesses, or a public instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25, 30. 3 *Bl. Com.* 370.

FULLO. Lat. In the civil law. A fuller. *Si* fullo *polienda curandave—vestimenta mercede certa constituta acceperit;* if a fuller have received garments to smooth [scour] or dress, for a certain fixed price. *Inst.* 4. 1. 15. *Dig.* 4. 9. 5, pr. *Id.* 19. 2. 13. 6.

FULLUM. L. Lat. In old English law. *Fullum aquæ;* a stream of water; a fleam, [flume,] such as comes from a mill. *Blount.*

FUMAGE. [L. Lat. *fumagium*, from *famus*, smoke.] In old English law. The same as *fuage*, or smoke farthings. 1 *Bl. Com.* 324. See *Fuage.*

FUNCTUS. Lat. [from *fungor*, to discharge an office.] One who has performed or discharged some function. *Functus officio;* one who has performed some office assigned to him. Platt, J. 15 *Johns. R.* 446. One whose official authority has ceased. Story, J. 1 *Gallison's R.* 69, 74. Lord Ellenborough, 11 *East*, 194. *Cum semel* officio *tali* functus *fuerit;* when he shall have once discharged such office. *Fleta*, lib. 6, c. 37, § 14. This phrase strictly is applicable only to persons, but is sometimes applied to things, as to the seal of a writ, the endorsement of a commercial instrument, and the like. 19 *Johns. R.* 170. Mills, J. 3 *A. K. Marshall's* (Ky.) *R.* [324,] 1166. Wilde, J. 4 *Metcalf's R.* 343, 345. 3 *Jones' Law R.* 492.

FUNDAMUS. L. Lat. [from *fundare*, to found.] We found. One of the words by which a corporation may be created in England. 1 *Bl. Com.* 473. 3 *Steph. Com.* 173.

FUNDARE. Lat. In old pleading. To found, or establish. A term formerly used to denote the supporting a plaintiff's or demandant's count or declaration, (*intentio* or *querela,*) by showing the facts and circumstances upon which his demand was founded. *Debet petens proponere intentionem suam, secundum formam brevis, et fundare eam sic: quod pater vel mater vel alius antecessor suus fuit seysitus, &c.;* the demandant ought to propound his count, according to the form of the writ, and to *establish* it thus: that his father or mother or other ancestor was seised, &c. *Bract.* fol. 255 b. *Non sufficit simpliciter proponere intentionem suam, sic dicendo, Peto tantam terram ut jus meum, nisi sic illam* fundaverit *quod doceat ad ipsum jus pertinere, et per quam viam et per quos gradus jus ad ipsum debeat descendere;* it is not enough to simply propound his count, by saying thus: "I demand so much land as my right," unless he so *found* or establish it as to show that the right belongs to him, and by what way and by what degrees the right ought to descend to him. *Id.* fol. 372 b. And see *Id.* fol. 183 b, 184, 214, 224 b, 261 b, 319 b.

To found a corporation; to give the necessary revenues for that purpose; to incorporate. 10 *Co.* 33, *The case of Sutton's Hospital.* See *Fundamus, Fundator.*

FUNDATIO. Lat. [from *fundare*, to found.] A founding, or foundation. *Fun-*

datio incipiens; the incipient foundation; the incorporation of a college or hospital. *Fundatio perficiens;* the perfecting foundation; the dotation or endowment of it with funds. 10 *Co.* 33. 1 *Bl. Com.* 481.

FUNDATOR. Lat. [from *fundare*, to found.] A founder. *Fundator incipiens;* the incipient founder of a corporation; the king or state by whom it is incorporated. *Fundator perficiens;* the perficient founder, the donor or endower of the institution with funds. 2 *Kent's Com.* 303.

FUNDATOR. Lat. [from *fundere*, to pour or fuse.] In old English law. A founder; a caster or melter of metals. *Fleta*, lib. 1, c. 20, § 132.

FUNDUS. Lat. In civil and old English law. Land or ground generally; (*omne quidquid* solo *tenetur—quod* terra *se tenet.*) *Dig.* 50. 16. 115. *Id.* 50. 16. 60. *Id.* 19. 1. 17. *Qui alienum* fundum *ingreditur, venandi aut aucupandi gratiâ, potest à domino, si is præviderit, prohiberi ne ingrediatur;* he who enters [or offers to enter] another's ground for the purpose of hunting or fowling, may be prevented by the owner from entering, if he foresee the act. *Inst.* 2. 1. 12. *Dig.* 41. 1. 3. 1. *Bract.* fol. 56. 3 *Bl. Com.* 209. *Si arbor mea in vicini* fundo *radices egerit;* if my tree throws out roots into my neighbor's land. *Bract.* fol. 10.

Land, including buildings generally. Fundi *appellatione omne ædificium et omnis ager continetur. Dig.* 50. 16. 211. This passage is quoted by Lord Coke. 4 *Co.* 87.

A farm. *Co. Litt.* 5 a.

The bottom, or foundation of a thing. *Fundus maris;* the bottom of the sea. *Schultes' Aquatic Rights*, 85, 127.

FUNGIBLE THINGS. [Lat. *res fungibiles.*] In the civil law. Things which may be furnished or restored in kind (*quæ functionem recipiunt in genere;*) as distinguished from specific things. A barbarous term, supposed to have originated in the use of the words *functionem recipere*, in the Digests. *Dig.* 12. 1. 2. 1 *Mackeldey's Civil Law*, 153, § 148. Sometimes confined to movable things which may be weighed, counted or measured, or which consist in, or may be estimated by weight, number or measure, (*quæ pondere, numero, vel mensura constant.*) *Id. ibid.* In this sense, the word *fungible* is still used in Scotch law. 1 *Bell's Com.* 255, (5th ed.) *Story on Bailm.* § 284. *Bell's Dict.* Dr. Hallifax describes *res fungibiles* as consumable goods, or things that perish in the using. *Hallifax, Anal.* b. 2, c. 3, 15. According to Dr. Taylor, they are called *fungibiles, quia una alterius vice* fungitur; because one takes or occupies the place of another. *Tayl. Civ. Law*, 476.

FUNUS. Lat. In the civil and old English law. A funeral. *Dig.* 11. 7. *Impensa funeris;* funeral expenses. *Id.* 11. 7. 18. Called *expensæ circa funus. Fleta*, lib. 2, c. 57, § 10.

FUR. Lat. In civil and old English law. A thief. *Inst.* 4. 1. 3. *Bract.* fol. 105. *Fur diurnus;* a day thief. *Bract. ub. sup. Fleta*, lib. 1, c. 16, § 6. *Fur nocturnus;* a night thief. *Id. ibid. Bract. ub. sup.* Thieves (*fures*) are defined to be those who steal secretly and without arms. *Nov.* 134, c. 13.

FUR MANIFESTUS. Lat. In the civil law. A manifest thief. A thief who is taken in the very act of stealing, (*qui in ipso furto*, Gr. ἐπ' αὐτοφώρῳ, *deprehenditur;*) or in the place where he committed it, (*eo loco quo furtum fit.*) *Inst.* 4. 1. 3. *Dig.* 47. 2. 3. See *Furtum.*

FURCA. [L. Fr. *furche.*] A fork. See *Furcare.*

A gallows or gibbet. *Bract.* fol. 56. See *infra.*

FURCA ET FLAGELLUM. L. Lat. In old English law. Gallows and whip. *Tenure ad furcam et flagellum;* tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. *Cowell. Placit.* M. T. 2 *Johan.* Rot. 7, cited *ibid.*

FURCA ET FOSSA. L. Lat. In old English law. Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves; viz. men by hanging, women by drowning. *Spelman. Cowell.* See *Fossa.*

FURCARE. L. Lat. [from *furca*, a fork; L. Fr. *fourcher, forcher.*] In old practice. To fork or divide. To divide in casting essoins. *Hengham, Magna*, c. 9. *Cowell.*

To move or pitch with a fork. *Furcare ad tassum. Cowell.*

FURCHE. L. Fr. A gallows. *Britt.* c. 20.

FURFUR. L. Lat. In old English law. Bran. *Fleta*, lib. 2, c. 10; c. 73, § 19; c. 83.

FURIER. L. Fr. February. *Kelham.*

FURIGELDUM. L. Lat. [from *fur*, a thief, and *geldum*, a payment.] A fine or mulct paid for theft.

FURIOSITY. In Scotch law. Madness. *Bell's Dict.*

FURIOSUS. Lat. [from *furere*, to rage.] A madman or lunatic; one violently insane. Furiosus *nullum negotium gerere potest, quia non intelligit quod agit;* a madman can transact no business, because he does not understand what he does. *Inst.* 3. 20. 8. See *Fleta*, lib. 2, c. 56, § 19. *Tales* [furiosi] *non multum distant à brutis quæ ratione carent;* such are not far removed from brutes, who have no reason. *Bract.* fol. 420 b. 4 *Co.* 126. See *Fleta*, lib. 6, c. 50, § 1.

Furiosi nulla voluntas est. A madman has no will. *Dig.* 50. 17. 40. *Broom's Max.* [231.]

Furiosus absentis loco est. A madman is the same with an absent person, (that is, his presence is of no effect.) *Dig.* 50. 17. 24. 1.

Furiosus nullum negotium contrahere potest. A madman can contract nothing, (can make no contract.) *Dig.* 50. 17. 5.

Furiosus solo [or **solum,**] **furore punitur.** A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. *Co. Litt.* 247 b. 4 *Bl. Com.* 24, 396. *Broom's Max.* 9, [11.]

FURK. L. Fr. But. *Kelham*

FURMENT. L. Fr. Wheat. *Yearb.* M. 10 Edw. III. 50.

FURNAGIUM. L. Lat. [from *furnus*, an oven; L. Fr. *fournage.*] In old English law. A tribute or tax paid to a lord by his tenants, for the use of his oven. *Blount. Spelman.*

A baker's fee. *Fleta*, lib. 2, c. 10.

FURNITURE. See *Household furniture.*

FURNUS. Lat. An oven. See *Secta ad furnum.*

FURST AND FANDONG. Sax. Time to advise or take counsel. *LL. Hen.* I. c. 46. *Whishaw.* Spelman gives this phrase without explanation.

FURTA. A word used in old records, which Cowell thinks should be *furca*, (q. v.)

FURTHER ASSURANCE, *Covenant for.* One of the usual covenants entered into by a vendor, for the protection of the vendee's interest in the subject of the purchase. It seems to be confined to an assurance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant. 2 *Sugden on Vendors*, 98, 108. *Wharton's Lex.* It is one of the usual covenants in common warranty deeds, and imports that the grantor will execute any such further instruments as may be found necessary to assure the title.

FURTIVE. Lat. In old English law. Stealthily; by stealth. *Fleta*, lib. 1, c. 38, § 3.

FURTUM. Lat. In civil and old English law. Theft. Furtum *est contrectatio fraudulosa, lucri faciendi gratiâ, vel ipsius rei, vel etiam usus ejus, possessionisve;* theft is the fraudulent handling or meddling with a thing, or the use or possession of it, for the sake of making gain. *Inst.* 4. 1. 1. *Dig.* 47. 2. 1. 3. Bracton has borrowed some of the terms of this definition, but has otherwise considerably modified it. Furtum *est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerit;* theft is the fraudulent handling of another's property, with the intention of stealing it, against the will of its owner. *Bract.* fol. 150 b. This has been copied by *Fleta*, (with the omission of the single word *illo*,) and is quoted from the latter writer by Lord Coke. *Fleta*, lib. 1, c. 38. 3 *Inst.* 107. See *Theft, Contrectatio.*

A thing stolen. *Si* furtum *in manu, vel sub potestate alicujus inveniatur;* if the thing stolen be found in the hand or under the power of another. *Bract.* fol. 151 b.

Several derivations of the word *furtum* are given in the civil law, viz.: from *furvum*, black or dark, because theft is committed privately, and generally in the night; or from *fraus*, fraud; or from *ferendo* or *auferendo*, taking away; or from the Gr. φῶρα, theft. *Inst.* 4. 1. 2. *Dig.* 47. 2. 1.

FURTUM GRAVE. In Scotch law. An aggravated degree of theft, anciently punished with death. It still remains an open point, what amount of value raises the theft to this serious denomination. 1 *Brown's R.* 352, note. See 1 *Swinton's R.* 467.

FURTUM MANIFESTUM. Lat. In civil and old English law. Manifest theft, (Sax. open theft.) Furtum manifestum *est ubi latro deprehensus est, seysitus de aliquo latrocinio, scilicet* hondhabende *et* bacberende; manifest theft is where a thief is

caught with any thing stolen in his possession, that is to say, having it in his hand, or carrying it on his back. *Bract.* fol. 150 b. See *Fleta*, lib. 1, c. 38, § 1. According to the civil law, the thief must be taken before he reached the place where he intended to carry or deposit the thing stolen, in order to constitute manifest theft. *Inst.* 4. 1. 3. See *Fur manifestus.*

FURTUM CONCEPTUM. Lat. In the civil law. Received theft; the offence of receiving stolen goods. Conceptum furtum *dicitur cum apud aliquem, testibus præsentibus, furtiva res quæsita et inventa sit;* theft is called *conceptum*, when a thing stolen is searched for, and found upon some person, in the presence of witnesses. *Inst.* 4. 1. 4.

FURTUM OBLATUM. Lat. In the civil law. Offered theft. Oblatum furtum *dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit;* theft is called *oblatum*, when a thing stolen is offered to you by any one, and found upon you. *Inst.* 4. 1. 4.

FUSTIS. Lat. In old English law. A staff, used in making livery of seisin. *Bract.* fol. 40.

A baton, club or cudgel. *Fuste et scuto defendere;* to defend with baton and buckler; that is, in the *duellum*, or combat. *LL. Longob.* lib. 1, tit. 25, l. 76. *Spelman.*

FUSTIGATIO. L. Lat. [from *fustis*, q. v.] In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. *Bract.* fol. 104 b, lib. 3, tr. 1, c. 6. See *Spelman*, voc. *Fustuarium supplicium.*

FUTURE DEBT. In Scotch law. A debt not yet due. *Bell's Dict.*

FUTURE ESTATE. An estate to which a person is entitled *in futuro;* an estate in expectancy.* 1 *Steph. Com.* 289. Of expectancies, there are at the common law two sorts; one called a *reversion*, the other called a *remainder*. *Id. ibid.*

In New-York, estates in expectancy have been divided into future estates and reversions; a future estate being defined "an estate commencing at a future day," or more fully, "an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time." 1 *Rev. St.* [723,] 718, §§ 9, 10.

FUTURELY is used in opposition to "presently," by Treby, C. J. 12 *Mod.* 286.

FUTURI. Lat. In old conveyancing. Future persons; those who are to be, or are hereafter to live. *Sciant præsentes et futuri, quod ego*, &c.; Know present and future persons, (Know those who are present, and those who are to be,) that I, &c. *Bract.* fol. 34 b. This reference to the future is of constant occurrence in ancient deeds, and variously expressed; as, *Noverint omnes* visuri vel audituri, &c.; Know all men that shall see or hear, &c. *Blount*, voc. *Covenant. Old covenant, ibid.* So, in modern deeds poll, "To all to whom these presents shall come," &c.

FUTYF, *Futyfe, Futife, Fuy.* L. Fr. [from Lat. *fugitivus*, q. v.] A fugitive from justice. *Britt.* c. 1.

A fugitive or runaway bondman, or villein. *Id.* c. 31.

FYLE, *Ffyle.* Sc. In old Scotch practice. To declare or find guilty; literally, to defile; to make or declare foul; as *clenge* was to acquit, literally to clean or cleanse. "Swa that he quha, of his conscience can nocht clenge, he of necessitie mon fyle." 1 *Pitcairn's Crim. Trials*, part 1, p. 314. "The assyise in ane voce ffylis the said R. W." 2 *Id.* 73.

FYLIT. Sc. In old Scotch practice. Fyled; found guilty. See *Fyle.*

FYN, *Feyn.* L. Fr. Fine; a fine. *Britt.* cc. 11, 21. End. *Kelham.*

FYNDERINGA. L. Lat. or Sax. In old English law. An offence mentioned in the laws of King Henry I. (c. 11,) the fine or compensation for which was reserved to the king. Spelman conjectures it to have been the *finding* of treasure, or concealment of treasure trove. But Cowell says the true reading is *fyrderinga*, or *firdering*, which signified a going out to war, or a military expedition at the king's command, the refusal or neglect of which was punished with a *firdwite*, or mulct, at the king's pleasure. But *fynderinga*, in the passage above referred to, is clearly enumerated among crimes, (*incendium, hamsocne, forstall, fynderinga, flemen firma,*) as a distinct thing from the offence of one *qui firdfare supersederit*, (who neglected to go out to war,) which is mentioned afterwards in the same chapter. *Spelman*, voc. *Fird.*

FYRD, *Fird, Ferd.* Sax. In Saxon law. An army; a military expedition; military service. *Fyrd* ships. *LL. Ethel-*

red. v. § 27. 1 *Spence's Chancery*, 9, note. See *Firdfare*, *Firdwite*.

FYW. L. Fr. Fire. *Kelham.*

G.

G, in Law French, is frequently used at the beginning of words, to express the English W; as *Gage* for *Wage*, *Gainage* for *Wainage*, *Gales* for *Wales*, *Gard* for *Ward*, *Garranty* for *Warranty*, *Garrene* for *Warren*, *Gast* for *Waste*, and the like.

GABEL, *Gavel.* [L. Lat. *gabella*, *gabellum*, *gablum*; from Sax. *gafol*, *gafel*, qq. v.] In old English law. A tax, duty, impost, custom or tribute; a rent or service. *Cowell.*

GABELLA. L. Lat. [Fr. *gabelle.*] In old European law. A tax or duty on merchandise, or personal property. *Spelman. Cowell.*

A tax on salt in France. *Spelman. Brande.*

Gabellatus. A collector of taxes or customs. *Spelman.*

GABLUM, *Gabellum.* L. Lat. [from Sax. *gafol*, *gafel*, qq. v.] In old English law. A rent. *Domesday. LL. Inæ*, c. 66. *Hagas reddentes novem libras de gablo*; houses paying nine pounds of rent. *Camd. Brit.* 213. Cowell thinks it was a rent imposed by the power and will of the lord, as distinguished from a rent paid by agreement.

Interest, or usury; the profit of money. *Spelman.*

Gablatores. Persons who paid *gabel*, rent or tribute. *Domesday. Cowell.*

GABLUM, *Gabulum*, *Gabula.* L. Lat. In old records. The head, end or extreme part of a house or building; the *gable*, or gable end. *Kennett's Gloss. Cowell.*

GAFOL, *Gafole*, *Gafel*, *Gaful.* Sax. Rent, or income; tax, tribute or custom. *Bere gafol*; a rent payable in barley. *Gafol land* or *gaful land*; rented land; land letten for rent, (*terra censa.*) *Spelman.*

The profit or gain of money; interest or usury. *Sax. Evang. S. Matt.* xxv. 27.

GAFOLGILD. Sax. [from *gafol*, rent, and *gild*, payment.] The payment of rent or income. *Gafolgildenhuse*; a house paying an annual rent. *Spelman*, voc. *Gabella.*

GAGE. L. Fr. and Eng. [from Fr. *gager*, (q. v.) L. Lat. *vadium.*] In old English law. Security; something given to secure the performance of an act. *Mys par* gage *et plegge*; put by gage and pledge. *Britt.* c. 27. *Encontre* gage *et plegge*; against gage and pledge. *Id. ibid.* To put by *gage*, or take *gage*, was to take certain goods of a defendant, which he forfeited if he did not appear. 3 *Bl. Com.* 280. *Pledge* was a *person* taken as a surety. *Id. ibid.* See *Vadium.*

Gage is not generally used in English as a verb, (like the Fr. *gager*,) being converted into *wage* by the common change of *g* into *w*. See *Wage.*

GAGE, *Estates in.* Estates held as security; of which mortgages are the most common examples. See *Mortgage.*

GAGER. L. Fr. [L. Lat. *vadiare.*] In old English law. To give or find security or surety for doing a thing; to wage. *Gager ley*; to wage law; to give security for making it. *Britt.* c. 27. *Thel. Dig.* lib. 12, c. 27. *Et gagea ley de non som'*; and waged his law of non-summons. *Yearb.* 14 Hen. VI. 22. *Gager deliverance*; to gage or wage deliverance; to give security for the delivery. *F. N. B.* 67, 74.

The giving of security; wager. *Gager de ley*; wager of law. *Crabb's Hist.* 295. See *Wager of law*, *Ley gager.*

GAGES, *Gaies.* L. Fr. Wages. *Britt.* c. 30. *T. Jon.* 47.

GAHIN, *Gaing*, *Gaaing.* L. Fr. Autumn. *Kelham.*

GAIGNAGE, *Gaignere.* L. Fr. Wainage. *Kelham.* See *Gainage.*

GAIGNARIE. L. Fr. Gainery; husbandry. *Kelham.*

GAIGNER. L. Fr. To till or cultivate; to obtain by husbandry. *Kelham.*

GAILLE. L. Fr. An old form of *Gaole*, (q. v.) *Kelham.*

GAIN. [L. Fr. *gainer*, q. v.] In old English law. To cultivate or till. See *Gainer*, *Gainage.* Arable land was called *hyde and gain. Co. Litt.* 85 b.

GAINAGE. L. Fr. and Eng. [L. Lat. *gainagium*, *wainagium*; L. Fr. *gaignage*, from Fr. *gainer*, to cultivate; or Sax. *wæn*, a wain or wagon.] In old English law. Implements of husbandry or plough tackle, including wains or wagons and their furniture for carrying on the work of tillage. *Cowell. Blount. Et villein savant son gainage*; and the villein, saving his wainage. *Stat. Westm.* 1, c. 6.

The profit arising from the tillage of land. *Cowell. Termes de la Ley.* See *Wainage.*

GAINER, *Gaigner*, *Gayner.* L. Fr. To cultivate, plough or till. *Beasts queux*

gainont *son terre;* beasts which *gain* or till his land. *Stat.* 51 *Hen.* III. cited 2 *Inst.* 132. *Barringt. Obs. Stat.* 58. See *Gayner.*

GAINER, *Gainor, Gainure.* L. Fr. Tillage or agriculture; the profit accruing thereby. *Cowell. O. N. B.* fol. 117.

GAINERY. [L. Fr. *gaignarie.*] In old English law. Tillage, or the profit of tillage. *Blount.* See *Gainer.*

GAINOR. In old English law. A sokeman; one who occupied or cultivated arable land. *O. N. B.* fol. 12.

GAIUS. A celebrated Roman jurist, whose Institutes formed the foundation for the Institutes of Justinian. An entire copy of this work was discovered by Niebuhr in 1816. 1 *Mackeld. Civ. Law,* 34, 35. 1 *Kent's Com.* 538, and note.

GAJUM, *Gagium.* L. Lat. In old European law. A thick wood. *LL. Longob.* lib. 1, tit. 25, l. 38. *Spelman.*

GALEA, *Galeia, Galeida.* L. Lat. In old records. A piratical vessel; a galley. *Spelman. Phranzes,* lib. 1, c. 36, cited *ibid. Pyratæ cum* galeiis *alta maris custodientes;* pirates keeping the high seas with their gallies. *Matt. Paris,* A. D. 1243.

GALENES. In old Scotch law. A kind of amends, assithment, or satisfaction for slaughter. *Reg. Maj.* lib. 4, c. si quis, 37; c. statuit, 66. *Skene de Verb. Sign.*

GALES. L. Fr. Wales. *Stat. Westm.* 1, c. 17. Called, also, *Galis* and *Galiz. Yearb.* M. 7 Edw. III. 19. *Keilw.* 154. *North Gales;* North Wales. *Litt.* sect. 265.

GALLIHALPENS, *Gallyhalfpence.* A kind of coin which, with suskins and dotkins, was prohibited by the statute 3 Hen. V. c. 1. 4 *Bl. Com.* 99. 3 *Reeves' Hist.* 261. Said to have been a Genoa coin, brought into England by the Genoese merchants, who trading in *gallies* were called *galley-men,* and the small silver coin they used, *galley* halfpence. *Cowell.* Otherwise interpreted to mean *Gaul's half-pence. Blount. Bacon's Works,* iv. 373. According to Mr. Crabb, it was money brought by the Venetians in their gallies. *Crabb's Hist.* 356.

GALLON. [L. Fr. *galon;* L. Lat. *galo, jalo,* qq. v.] A measure of capacity, adopted in New-York, as the unit or standard from which all other measures of capacity are to be derived and ascertained. 1 *Rev. St.* [608,] 617, § 11. The gallon for liquids is declared to be a vessel of such capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, eight pounds of distilled water, at its maximum density. *Id. ibid.* § 13. This is the same as the old English gallon. See *Galo.* The gallon for dry measure is declared to be a vessel of such capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, ten pounds of distilled water, at its maximum density. *Id. ibid.* § 14.

In Pennsylvania, the gallon is made the standard unit of liquid measure, to contain two hundred and thirty-one cubic inches. *Purdon's Dig.* 838, § 2, (ed. 1857.)

GALO, *Galona.* L. Lat. In old English law. A gallon. *Octo libræ faciunt* galonem *vini, et octo* galones *vini faciunt bussellum, London;* eight pounds make a gallon of wine, and eight gallons of wine make a bushel, London. *Compositio Mensur.* 51 *Hen.* III. See *Stat. de Pistoribus,* c. 8. *Spelman.* 2 *Ld. Raym.* 824. In Fleta, the word is written *jalo,* (q. v.) *Fleta,* lib. 2, c. 12, § 1, 14.

GAMACTA. L. Lat. In old European law. A stroke or blow. *L. Boior.* tit. 2, c. 4, § fin. *Spelman.*

GAMALIS. L. Lat. In old European law. A son or child born in lawful marriage. *LL. Longob.* lib. 2, tit. 55, l. 7. *Spelman.*

A child born of persons betrothed, but not actually married. *Id.*

GAME. All such animals as are *feræ naturæ* and objects of the chase.* 2 *Bl. Com.* 410. *Wharton's Lex.* Defined by a late English statute, (1 & 2 Will. IV. c. 32,) as including hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. 2 *Steph. Com.* 82, 83.

In New-York, *game* includes pheasants, partridges, heath-hens, quails and woodcock. 1 *Rev. St.* [701, 702,] 698, 699.

GAME LAWS. Laws for the preservation of game; usually specifying at what times, by what means, (and, in some cases, by what persons,) certain descriptions of game shall be pursued and taken.* The English game laws have recently been materially modified by statute 1 & 2 Will. IV. c. 32. 2 *Steph. Com.* 82, 83.

GAMING, (or GAMBLING.) The act or practice of playing any game, particularly games of hazard; which in certain cases is an indictable offence. *Lewis' U. S. Crim. Law,* 335—348. *Wharton's*

Am. Crim. Law, § 2446, *et seq.* 1 *Russell on Crimes*, 323. See 1 *N. Y. Rev. St.* [662—664,] 666—668. A professional gambler is incompetent to discharge the duties of executor or administrator. 2 *Selden's R.* 443.

GAMURDRIT. In old European law. Murdered; secretly slain or made away with. *Si servus furtivo modo, supradicto more occisus fuerit, et ita absconsus, quod* gemurdrit *dicunt;* if a slave be secretly slain in manner aforesaid, and so hid, which they call *gemurdrit. L. Boior,* tit. 18, c. 2, § 3.

GANANCIAL PROPERTY. [Span. *bienes de ganancias.*] In Spanish law. That species of property held by husband and wife in common, which is increased or multiplied during marriage. *White's New Recop.* b. 1, tit. 7, c. 5, §§ 1, 2. See 7 *Texas R.* 6, 7. 15 *Id.* 147.

GANANCIAS. Span. In Spanish law. Gains or profits resulting from the employment of property, held by husband and wife in common. *White's New Recop.* b. 1, tit. 7, c. 5.

GAOL. [L. Fr. *gaole;* L. Lat. *gaola,* qq. v.] A place of confinement or safe keeping.* Commonly defined also as a *prison,* from which, however, it seems properly to be distinguishable; a *gaol* being a place of temporary confinement, or of confinement for minor offences, or for debt; a *prison* being a place of permanent confinement, and a place of punishment for crimes. Confinement in a *gaol* is, in most cases, with reference to some further proceeding, and does not always import guilt in the party confined. Thus, *gaols* are used for the detention of witnesses, in order to secure their attendance in criminal cases, and for the confinement of persons charged with crime and committed for trial. See 2 *N. Y. Rev. St.* [754,] 632. The same idea of *temporary* or *preliminary* confinement is the radical one of the phrase *gaol delivery,* which has been used in criminal law from a very remote period; the *gaols* being by the process of trial *delivered* of their occupants, who are either wholly discharged if innocent, or punished according to law, if found guilty. See *Gaol delivery.* An essential difference between the terms is also imported in the common expressions "*county gaol,*" and "*state prison.*" The distinction, however, is by no means strictly observed in statute law, *gaol* and *prison* being frequently used as synonymous. *Jail* is preferred by Webster as the orthography of this word, *gaol* being considered by him as a corruption. The reverse of this, however, seems to be the truth; *gaole* and *gaola* (qq. v.) being the Law French and the Law Latin forms used constantly and by the earliest writers, while nothing approaching *jail* is to be met with. The forms *geaule* and *gaille,* given by Kelham, enable us to trace the corruption from *gaol* to *jail* without much difficulty. See *Gaoler.*

GAOLA. L. Lat. In old English law. A gaol. *Bract.* fol. 109, 110. *Fleta,* lib. 1, c. 26, § 4. *Ad* gaolam *deliberandam; ad* gaolas *deliberandas;* for delivering a gaol or gaols. *Bract. ubi supra. Reg. Jud.* 30. *Committatur* gaolæ *de Fleete;* shall be committed to the gaol of the Fleet. *Stat. Westm.* 2, c. 11.

GAOLE. L. Fr. In old English law. A gaol. *Envoye à nostre* gaole; sent to our gaol. *Britt.* c. 15. *Le pleyntyfe soit mys en la* gaole, *et illonqs puny par prison et par fin;* the plaintiff shall be put in the gaol, and there punished by imprisonment and by fine. *Id.* c. 100.

GAOLER. The keeper of a gaol. *Finch's Law,* b. 1, c. 3, num. 62. The sheriff is considered as the keeper of the gaol of his county; the actual keeper being, in contemplation of law, only the sheriff's deputy. 3 *Steph. Com.* 249. 1 *Bl. Com.* 346. 1 *N. Y. Rev. St.* [380, § 75,] 372, § 86. 2 *Id.* [754,] 632.

GAOL DELIVERY. [L. Fr. *deliveraunce de gaole.*] In criminal law. The delivery or clearing of a gaol of the prisoners confined therein, by trying them; the gaol being considered as delivered by their acquittal or punishment. *Ad* gaolam deliberandam *de illis qui in prisona—inveniuntur. Bract.* fol. 110. A commission of general gaol delivery is one of the four commissions under which the judges in England sit at the assizes; and it empowers them to try and *deliver* every prisoner who shall be in the *gaol,* (that is, either in actual custody, or out on bail,) when the judges arrive at the circuit town. 4 *Chitt. Bl. Com.* 270, and notes. 4 *Steph. Com.* 333. 1 *Chitt. Crim. Law,* 145, 146. The higher criminal courts in England and the United States, are called courts of *Oyer and Terminer,* and *general gaol delivery.*

GAOL LIBERTIES (or LIMITS.) A certain extent of ground around or contiguous to a gaol, and designated by certain

lines or boundaries, within which the persons confined are allowed to go at large on giving security not to escape; being, in contemplation of law, a mere extension of the gaol itself, as a matter of indulgence to the prisoners.* 6 *Johns. R.* 121. 2 *Term R.* 26.

GARANDIA. L. Lat. A warranty. *Spelman.* See *Garantia.*

GARANTER. L. Fr. To warrant. *Fet Assaver*, §§ 45, 46.

GARANTIA, *Garandia, Garantum.* L. Lat. [In English law, *warrantia, warrantum;* Lomb. *warens;* Sax. Spec. *warenda, warendatio;* all from the Sax. *wæren*, to keep or protect.] In Norman law. A warranty. *Spelman.*

Garantizare. To warrant. *Id.*

Garantus. A warrantor. (Lomb. *warens;* Sax. *warendator.*) *Id.*

GARATHINX. Lomb. In old Lombardic law. A gift; a free or absolute gift; a gift of the whole of a thing. *LL. Longob.* lib. 2, tit. 17, l. 1. *Id.* tit. 15, ll. 1, 3. *Spelman.*

GARAUNT, *Garraunt, Garant.* L. Fr. In old English law. A party called upon, or who might be called upon to warrant another; a vouchee; a party warranting. *De* garaunt *vocher;* of warrant voucher; of vouching to warranty. *Britt.* c. 75. *Garaunt que luy est tenu à garaunter;* a warrantor who is bound to him to warrant. *Id. ibid. Le* garaunt *se fist per sa garaunty sicome principal tenaunt;* the warrantor makes himself by his warranty the principal tenant. *Id. ibid.*

GARAUNTER, *Garraunter.* L. Fr. To warrant. Garaunter *en un sen signyfie à defendre le tenaunt en sa seisine, et en un autre sen signifie que si il ne le defende, que le garaunt luy soit tenu à eschaunges, et de faire son gree à la vaillaunce;* to warrant signifies, in one sense, to defend the tenant in his seisin, and in another sense, it signifies that if the party called upon to warrant do not defend him, he shall be bound to exchange (or recompense) and to make him satisfaction to the value. *Britt.* c. 75.

GARAUNTIE, *Garaunty.* L. Fr. Warranty. *Britt.* c. 39, 75.

GARAUNTOR. L. Fr. A warrantor; a vouchee. *Britt.* c. 24. *Garaunte;* a warrantee; a person warranted. *Id. ibid.*

GARBA. L. Lat. [L. Fr. *garbe.*] In old English law. A bundle or sheaf. *Blada in garbis;* corn or grain in sheaves. *Reg. Orig.* 96. *Bract.* fol. 209. See *Charta de Foresta*, c. 7. *Fleta*, lib. 2, c 81, § 2. See 1 *Eden*, 336, arg. *Id.* 393, arg. *Garba* means and refers to such grains as, when come to maturity, were usually, or might be bound together, and does not extend to things improper to be bound. Lord Keeper, *Id.* 401, 402.

Garba sagittarum; a sheaf of arrows, containing twenty-four. Otherwise called *schaffa sagittarum. Stat.* 2 *Rob. Br.* c. ordinatum est, 27. *Skene de Verb. Sign.*

GARBALES DECIMÆ. Lat. In Scotch law. Tithes of corn, [grain.] *Bell's Dict.*

GARBLE. In old English statutes. To sort or cull out the good from the bad in spices, drugs, &c. *Cowell. Blount.* vocc. *Garbling, Garbler.*

GARCIO, *Gartio.* L. Lat. [Fr. *garcon.*] In old English law. A servant boy. *Fleta*, lib. 2, c. 20; c. 41, § 29.

GARD, *Garde.* L. Fr. In old English law. Ward; a ward of a city. *En le* gard *de Faringdon-extra;* in the ward of Faringdon-without. *Yearb.* P. 3 Hen. VI. 1. *Garde en Londres est come hundred en county;* a ward in London is the same as a hundred in a county. P. 7 Hen. VI. 42.

GARDE, *Gard.* L. Fr. [Lat. *custodia.*] Custody; care or keeping; ward. *Que eit* garde *de prisons;* who has the keeping of prisons. *Stat. Westm.* 1, c. 15. *La* garde *de cors;* custody of the body. *Britt.* c. 11.

Ward, or wardship of a minor. *Britt.* c. 66.

A ward. *Id.* c. 21.

GARDEIN, *Gardeyn.* L. Fr. [from *garde* or *garder*, qq. v.] A guardian. *Britt.* c. 35, 81. *Litt.* sect. 48, 116. *Gardein* is used as an English word in Coke Littleton. *Co. Litt.* 38 b.

A keeper. *Britt.* cc. 1, 11.

A warden. *Artic. sup. Chart.* c. 20.

GARDEN. [L. Lat. *gardinum.*] A piece of ground (usually near a dwelling-house) appropriated to the cultivation of herbs or plants, fruits and flowers. Distinguished from a curtilage. See *Curtilage.* It has been held that trees in boxes in a garden will not pass by a grant of the garden. 6 *Mod.* 170. And see 1 *Chitt. Gen. Pr.* 177.

GARDER. L. Fr. To keep. *Sauvement gardes;* safely kept. *Britt.* c. 87.

GARDEROBA. L. Lat. In old English law. A wardrobe. *Fleta*, lib. 2, c. 6, § 1.

GARDEROBARIUS. L. Lat. In old

English law. Keeper of the wardrobe. An officer of the royal household. *Fleta*, lib. 2, c. 6, § 1. See *Id.* c. 5, § 1; c. 14, § 1.

GARDEYN. L. Fr. A guardian. *Britt.* c. 35. See *Gardein.*

A garden. *Britt.* c. 53.

GARDIAN, *Gardeyne.* Old forms of *Guardian*, (q. v.) *Cowell.*

GARDIANUS. L. Lat. [from Fr. *gardein.*] In old English law. A guardian, defender or protector. In feudal law, *gardio. Spelman.*

A warden. *Gardianus ecclesiæ;* a church-warden. See *Defensor. Gardianus quinque portuum;* Warden of the Cinque Ports. *Spelman.*

GARDIEN. L. Fr. Warden. *Gardien de Fleete;* Warden of the Fleet. *Yearb.* M. 7 Hen. VI. 9.

GARDINUM. L. Lat. In old English law. A garden. *Reg. Orig.* 1 b, 2. *Fleta*, lib. 4, c. 19, § 8.

GARENE. L. Fr. A warren; a privileged place for keeping animals. *Britt.* c. 19. *Bestes sauvages pris hors de place defendue et garene;* wild animals taken out of a place prohibited and protected. *Id.* c. 33.

GARIOFILLI. L. Lat. In old records. Cloves. *Cowell.* See *Garyophilli.*

GARNER, *Garnir.* L. Fr. To warn, or give notice; to summon; to give time for preparation. *Reasonablement garny;* reasonably warned. *Stat. Westm.* 1, c. 44. *De soy* garner *de ses respons;* to prepare his answer. *Britt.* c. 121.

To furnish or provide; to clothe. See *Garnisher, Garnement.*

GARNEMENT. L. Fr. [from *garner*, q. v.] Furniture; clothing; a garment. *Obligacion doit estre vestue de v. maneres de* garnementz; obligation may be clothed in five kinds of garments. *Britt.* c. 28. *Id.* c. 39.

GARNISH. [L. Lat. *pensiuncula carceraria.*] In English law. Money paid by a prisoner on his entrance into gaol. Forbidden by statute 4 Geo. IV. c. 43, § 12, r. 23. *Wharton's Lex. Holthouse.*

To GARNISH. [L. Fr. *garnisher.*] To warn or give notice. *Cowell.*

GARNISHEE. [from L. Fr. *garnir*, to warn.] A person warned. A party in whose hands money or property is attached by the creditor of another, and who has had *warning* or *garnishment* not to pay or deliver it to the defendant. *Drake on Attachment*, § 451. A person indebted to a party sued, or having in his possession, belonging to the defendant, property, money, credits or effects. 24 *Mississippi R.* 638. 1 *Wisconsin R.* 447. See *Garnishment, Foreign Attachment.*

GARNISHER. L. Fr. To warn or summon. *Kelham.*

GARNISHMENT. [L. Fr. *garnissement, garnement*, from *garnir*, to warn or furnish.] In old English law. A warning; a furnishing. A *warning* given to one for his appearance, for the better *furnishing* the court and cause. *Cowell. Blount.*— A warning or summons to a party to appear and give the court instruction on any matter. *Crabb's Hist. Eng. Law*, 422.

*** In the old action of detinue of charters, the defendant might say that the charters were delivered to him by the plaintiff and another, upon certain conditions, and pray that the other might be *warned* to plead with the plaintiff whether the conditions were performed or not; the object of the warning or *garnishment* thus prayed for being, to *furnish* the court with all parties to the action, so that it might the more advantageously determine the cause. *Termes de la Ley. Cowell. Blount.* It was nearly allied to the proceedings in interpleader. 3 *Reeves' Hist.* 448. The definition of Cowell, above given, is intended to embrace both the significations of garnishment.

GARNISHMENT. In the process of attachment. A warning to a person in whose hands the effects of another are attached, not to pay the money or deliver the property of the defendant in his hands to him, but to appear and answer the plaintiff's suit. *Cowell. Blount*, voc. *Garnishee. Wharton's Lex. Drake on Attachment*, chap. 18.

GARNISTURA, *Garnestura.* L. Lat. [L. Fr. *garnesture.*] In old English law. A furnishing or providing; garniture; furniture; provision, ammunition and other implements of war. *Cowell. Blount. Matt. Paris*, A. D. 1250.

GARRANT, *Garrante.* L. Fr. Warrant or authority. *Sans especial* garrant; without special warrant. *Stat. Westm.* 1, c. 24. *Eient lour* garrante; shall have their warrant. *Artic. sup. Chart.* c. 2.

GARRANTER, *Garrantir.* L. Fr. To warrant. *Co. Litt.* 365 a. See *Garaunter.*

GARRANTIE, *Garranty.* L. Fr. Warranty. *Litt.* sec. 145, 697. *Stat. Gloc.* c. 12.

GARRANTOR. L. Fr. A warrantor, or person called upon to warrant. *Stat. Gloc.* c. 12.

GARREN. An old form of warren. *Free garren. T. Jon.* 5.

GARRENA, *Garrenna.* L. Lat. In old English law. A warren. *Cowell. Spelman.* See *Warren.*

GARRENE, *Garren, Garreyn.* L. Fr. A warren; a place for keeping and preserving animals. *Britt.* c. 33, 42, 53. *Barrington, Obs. Stat.* 47, 48, note [*d.*] *Kelham.* See *Garene.*

GARSUMME. In old English law. A fine or amerciament. *Cowell.* Written also *Gressume* and *Grossome*, but properly *Gersuma*, (qq. v.) *Blount's Nomolex.* Advertisement.

GARTH. In English law. A yard; a little close or homestead in the north of England. *Cowell. Blount.*

A dam or wear in a river, for the catching of fish. *Id.*

GARYOPHILLI. L. Lat. In old records. Cloves. *Cowell*, voc. *Gariofilli.*

GARYTOUR. In old Scotch law. Warder. 1 *Pitc. Cr. Trials*, part 1, p. 8.

GASACHIO, *Gasachius.* L. Lat. [from Sax. *sac*, a cause.] In old European law. An adversary in a cause. *L. Salic.* tit. 52, § 2. *Spelman.*

GASINDUS, *Gasindius.* L. Lat. [from Fr. *case*, a house, and Sax. *hynde*, a servant.] In old European law. A house or domestic servant. *Marculf.* lib. 2, form. 26. *Spelman.*

A family or household, (*gasindium.*) *LL. Longob.* lib. 2, tit. 14, l. 17. *Spelman.*

GAST. L. Fr. Waste. *Britt.* c. 51.

GASTALDUS, *Gastaldius, Gastaldio, Guastaldus.* L. Lat. and Lomb. [from Sax. *gast*, a guest, and *haldian*, to keep or take care of.] In old European law. A steward, seneschal, bailiff or major-domo. *Spelman.* Applied also to higher officers, as the governor of a city or province. *Id. ibid.*

In the Books of Feuds, it seems to have the sense of warden or warder. *Feud. Lib.* 1, tit. 2.

GASTEL. L. Fr. Wastel; wastel bread; the finest sort of wheat bread. *Britt.* c. 30. *Kelham.*

GASTER. L. Fr. To waste. *Britt.* c. 5. *Gaster le boys;* to waste the woods. *Id. ibid.*

GASTINE. L. Fr. Waste or uncultivated ground. *Britt.* c. 57.

GATE. In English law. A right in land for the use of cattle.* Literally, a going (of cattle over ground.) The term *beast-gate* (q. v.) is used in Suffolk, and *cattle-gate* (q. v.) in Yorkshire. It is a corporeal interest in land, distinguishable from the mere right of common of pasture. 1 *Chitt. Gen. Pr.* 182.

GAUDERE. Lat. To enjoy. *Nisi* gaudeat *lucidis intervallis;* unless he enjoys lucid intervals. *Bract.* fol. 12. *Nullo privilegio libero gaudebunt;* shall enjoy no free privilege. *Fleta*, lib. 3, c. 16, § 3.

GAUGEATOR. L. Lat. In old English law. A gauger or gager. *Cowell.*

GAUGETUM. L. Lat. In old English law. A gauge, or gauging. *De recto* gaugeto *Anglicano;* of the true English gauge. *Rot. Parl.* 35 *Edw.* I. *Blount.*

GAVEL. [from Sax. *gafol, gafel*, qq. v.] In English law. Custom, tribute; toll; yearly rent; payment or revenue; of which there were anciently several sorts; as *gavel-corn, gavel-malt, oat-gavel, gavel-fodder*, &c. *Termes de la Ley. Cowell. Co. Litt.* 142 a.

GAVELBRED. In English law. Rent reserved in bread, corn or provision; rent payable in kind. *Cowell.*

GAVELET, *Gavelate.* [L. Lat. *gaveletum, gavelectum, gavilettum;* from *gavel*, rent or custom, and the old word *let*, to cease or hinder.] In English law. A rent. *Co. Litt.* 142 a.

A process for the recovery of rent. *Hargrave's Note*, 231, lib. 2. A customary process, (called *consuetudo de gaveleto,*) for the recovery of rent or service withheld by a tenant in gavelkind, whereby the lord might seize the land in the nature of a distress, to be returned to the tenant in case he paid the rent. *Termes de la Ley. Cowell.* It was a species of *cessavit*, originally peculiar to the tenure in gavelkind, and confined to Kent, but by the Statute of Gavelet, 10 Edw. II. was extended to the city of London. *Crabb's Hist. Eng. Law*, 203. See *Fleta*, lib. 2, c. 55, § 2.

GAVELET, *Statute of.* The statute of 10 Edw. II. by which the proceeding by gavelet, or a similar proceeding, was extended to the city of London, and the law on that subject otherwise modified. 2 *Reeves' Hist. Eng. Law*, 298. *Crabb's Hist.* 203. *Fleta*, lib. 2, c. 55, § 2.

GAVELGELD, *Gavelgild.* Sax. [from *gavel* or *gafel*, rent or income, and *geld*, payment; L. Lat. *gavelgilda.*] In old English law. That which yields a rent or

annual profit. *Si in* gavelgilda, *id est, in gablum reddente domo pugna fiat;* if the fight be in a gavelgild, that is, a house paying a rent. *LL. Inæ*, c. 6. *Cowell. Spelman*, voc. *Gavelgilda.* See *Gafolgild.*

That which pays a tribute or toll; the tribute or toll itself. 3 *Mon. Angl.* 155. *Cowell. Blount.*

GAVELHERTE, *Gavelerth.* Sax. In old English law. The duty or work of ploughing so much earth or ground, done by the customary tenant for his lord. *Cowell.* A rent or customary service, paid or performed by ploughing.*

GAVELING MEN. Tenants who paid a reserved rent, besides some customary duties to be done by them. *Cowell.* See *Gavelman.*

GAVELKIND, *Gavelkynd, Gavelkende.* A customary tenure in England, peculiar for the most part to the county of Kent, by which the land of the father is equally divided at his death among all his sons, or the land of the brother among all his brethren, if he have no issue of his own. *Kitch.* fol. 107. *Cowell. Blount.* 2 *Bl. Com.* 84. 1 *Steph. Com.* 53, 201. *Litt.* sect. 210, 265. The other distinguishing properties of this tenure are, that the tenant is of age sufficient to alien his estate by feoffment at the age of fifteen; and that the estate does not escheat in case of an attainder for felony. *Camd. Brit.* 239. *Bract.* fol. 276 b. *Fleta*, lib. 6, c. 17, § 1. 2 *Bl. Com.* 84. 1 *Steph. Com.* 200. 1 *Crabb's Real Prop.* 596, § 753.

*** Gavelkind is supposed to have been a part of those ancient liberties which the Kentish men were allowed by the Conqueror to retain without change; and it is the opinion of Selden that, before the Norman Conquest, it was the general custom of the realm. *Seld. Analect.* l. 2. c. 7. *Spelman*, in voc. *Camd. Brit.* cited in *Cowell. T. Raym.* 76. It still prevails over almost the whole of the county of Kent, and, in a qualified manner, over copyhold lands in various parts of the kingdom. *Third Real Property Report*, p. 8. 1 *Steph. Com.* 200, note. 1 *Crabb's Real Prop.* 596—602. *Lee on Abstracts*, 25, 84, 85.

The etymology of the word itself has been variously given. Spelman derives it from the Sax. *gafel*, a tribute, or thing due or belonging, and *cyn*, kindred, or *kynd*, offspring; something due or belonging to all the children or kindred. Mr. Hargrave prefers the derivation from *gavel*, rent, and *kind;* of such a kind as to yield rent. *Hargr. Co. Litt.* Note 224, lib. 2. Mr. Crabb adopts the latter, defining it, however, to mean a *kind* of *service. Crabb's Hist. Eng. Law*, 87. Lambard, on the other hand, considers it as composed of three Saxon words, *gif, eal, cyn; given* to *all* the *kin;* which Spelman adopts as the alternative of his own derivation.

GAVELMAN. In old English law. A tenant liable to the payment of gavel or tribute. *Somner on Gavelkind*, 23.

GAVELMED. In old English law. A duty, work or service of mowing grass, or cutting meadow land, required by a lord from his customary tenant. *Consuetudo falcandi quæ vocatur* gavelmed. *Somner, Gavelk.* Appendix. *Cowell.*

GAVELREP, *Gavelryp.* In old English law. Bed-reap or bid-reap; the duty of reaping at the bid or command of the lord. *Somner, Gavelk.* 19, 21. *Cowell.*

GAVELSESTER. [L. Lat. *sextarius vectigalis.*] In old English law. A certain measure of rent-ale. *Cowell.* That is, a rent, tribute or *gavel*, payable in a certain measure, (a sextuary or sexter) of ale.* Otherwise called *Tolcester.*

GAVELWERK. In old English law. A rent or tribute paid in work, either by the person of the tenant, called *manu-opera*, or by his carts or carriages, called *carr-opera. Blount.*

GAYLE. L. Fr. Gaol. *Yearb.* Additions, T. 2 Edw. III. 15.

GAYNAGE. L. Fr. Plough tackle, or implements of husbandry; wainage. *Kelham.*

GAYNE. L. Fr. Gain. *Britt.* c. 30.

GAYNER. L. Fr. To till or cultivate. *Si tu* gaynes *ma terre sauns mons conge;* if you till my land without my leave. *Britt.* c. 54.

To gain. *Pur* gayner *ne per perdre;* to gain nor to lose. *Id.* c. 122.

GAYNERIE. L. Fr. Acquisition. *Britt.* c. 53.

GE, *Gie, Gi.* L. Fr. I. *Kelham.* Corrupt forms of *Jeo.*

GEBOCIAN. Sax. [from *boc*, a writing.] To convey by writing. 1 *Reeves' Hist. Eng. Law*, 10. See *Boc, Bocland, Landboc.*

GEBURSCIP. Sax. [L. Lat. *geburscipa.*] In Saxon law. Neighborhood or adjoining district. *Nominentur ei sex homines de eadem* geburscipa *in qua ille residens est;* there shall be named to him six men of the same *geburscip* in which

he is a resident. *LL. Edw. Conf.* c. 1. *Cowell.*

GEBURUS. L. Lat. [Sax. *gebure.*] In old English law. A country neighbor; an inhabitant of the same *geburscip*, or village. *Cowell.*

GEIGNEUR. L. Fr. [from *gainer*, to plow.] In Norman law. A husbandman or cultivator of the soil. *Grand Custum.* c. 32.

GELD, *Gild.* Sax. [from *geldan*, *gyldan*, to pay; L. Lat. *geldum*, *geldus*, *geltum*, *gilda*; Græco-barb. γέλτον.] In Saxon and old English law. A payment, (*solutio*, *redditus*,) tax or tribute, (*tributum*;) a sum of money exacted of a subject, (*exactio*, *pecunia.*) *Vicinos werra*, *suos exercitibus frequentissimis*, *et* geldis *continuis vexabat*; he harassed his neighbors with war, and his own subjects with frequent military expeditions, and continual exactions. *Henr. Huntington*, *Hist.* lib. 7, *de Will. Rufo*, A. D. 1100. *Spelman.* There were various kinds of geld, as *Danegeld*, *wodegeld*, *senegeld*, *horngeld*, *fotgeld*, *penigeld*, &c. (qq. v.) In Domesday *geldum*, or *geltum*, is generally used for *Danegeld*, which was a tribute regularly imposed upon every town in the time of the Saxons. *Spelman.*

A mulct or fine; a satisfaction or compensation for a crime, (*compensatio delicti*;) the price or value of a thing; (*pretium rei.*) *Spelman.* *Wergild*, the value or price of a man slain; *orfgild*, the value of a beast slain; *angild*, the single value; *twigild*, double the value; *trigild*, triple, &c. *Id.* See *Gild*, *Wergild*, *Orfgild*, *Angild*, *Twigild*, *Trigild*, *Octogild*, *Novigild.*

GELDABILIS. L. Lat. In old English law. Taxable; geldable. *Mem. in Scacc.* M. 10 Edw. I.

GELDABLE. L. Fr. Liable to pay geld; liable to be taxed. *Kelham.* See *Gildable.* *Croft est en geldable.* M. 7 Edw. III. 37.

GELDUM, *Geltum*, *Geldus.* L. Lat. In old English law. Geld, or gild. *Spelman.* See *Geld.*

GELINA. L. Lat. In old records. A bundle or sheaf of grain. *Spelman.*

GELINE. L. Fr. [from Lat. *gallina.*] A hen; a fowl. *Yearb.* M. 11 Hen. VI. 4.

GEMMA. Lat. In the civil law. A gem; a precious stone. Gems were distinguished by their transparency; such as emeralds, chrysolites, amethysts. *Dig.* 34. 2. 19. 17.

GEMOT, *Gemote*, or *Mote.* Sax. [from *gemettan*, to meet or assemble; L. Lat. *gemotum.*] In Saxon law. A public meeting or assembly, (*conventus publicus*;) a court, or judicial tribunal, (*mallum*, *placitum*, *forum juridicum.*) *Spelman*, voc. *Gemotum.* Used in various combinations, as *wittenagemot*, a meeting of the wise men; *folcgemot*, *or folcmote*, a meeting of the people; *sciregemot*, a meeting of the shire, a county meeting, or court; *hundredgemot*, a meeting of the hundred, or hundred court; *wardegemot*, a ward meeting; *haligemot*, an ecclesiastical meeting or court; *halmot*, a hall meeting, or court, a court baron; *swainegemot*, a forest court. See these words. *Ge*, in this word, is merely a particle, frequently prefixed to Saxon nouns and verbs. *Spelman*, *ub. sup.* See *Mote.*

GEMOTUM. L. Lat. [Sax. *gemote*, *mote.*] In Saxon law. A public meeting, or court. *Si quis* gemotum, *id est placitum*, *supersedeat ter*, &c.; if any one shall absent himself from court three times, &c. *LL. Athelstan*, c. 20. *Omnis homo pacem habeat eundo ad* gemotum, *et rediens de* gemoto, *nisi probatus fur fuerit*; every man shall have peace, (that is, privilege from arrest,) while going to court, and returning from court, unless he is proved to be a thief. *LL. Edw. Conf.* c. 35. *Spelman.*

GEN'. An abbreviation of *generosus*, (q. v.) 1 *Instr. Cler.* 10.

GEN'AL'. A contraction of *generalis*, (q. v.) 1 *Instr. Cler.* 10.

GENEATH. Sax. In Saxon law. A villein, or agricultural tenant, (*villanus*, *villicus*;) a hind or farmer, (*firmarius*, *rusticus.*) *LL. Inæ*, c. 19. *Spelman.*

GENER. Lat. In the civil law. A son-in-law; a daughter's husband, (*filiæ vir.*) *Dig.* 38. 10. 4. 6. And see *Id.* 50. 16. 136.

GENERAL. That which comprehends all, the whole; as distinguished from *special*, which signifies something designed for a particular purpose. These terms, applied to jurisdiction, indicate the difference between a legal authority extending to the whole of a particular subject, and one limited to a part; and, when applied to the terms of court, the occasion upon which these powers can be respectively exercised. Gardiner, J. 1 *Comstock's R.* 232.

GENERAL (or PUBLIC) ACT. An act of the legislature which regards the whole community; a universal rule; of

which the courts of law are bound to take notice judicially and *ex officio*. 1 *Bl. Com.* 85, 86.

GENERAL AGENT. A person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. *Story on Agency*, § 17.

In another sense, a person who has a general authority in regard to a particular object or thing. *Id.* § 18.

GENERAL AVERAGE. In commercial law. A contribution made by the proprietors in general of a ship or cargo, towards the loss sustained by any individual of their number, whose property has been voluntarily sacrificed for the common safety; as where in a storm, jettison is made of any goods, or sails or masts are cut away *levandæ navis causâ*, (to lighten the vessel.) 2 *Steph. Com.* 179. See *Average*. To constitute a case for general average, these things must concur: 1. An imminent common peril; 2. A voluntary jettison to avoid this peril; and 3. The success of the attempt. See the opinion of Grier, J. 10 *Howard's R.* 303. See, also, the opinion of Lowrie, J. 25 *Penn. St. R.* 372.

GENERAL CHARACTER. See *Character*.

GENERAL DAMAGES. In pleading and practice. Such damages as necessarily result from the injury complained of, and which may be shown under the *ad damnum*, or general allegation of damages at the end of the declaration. 2 *Greenleaf on Ev.* § 254.

GENERAL DEMURRER. In pleading. A demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to, where the objection is to matter of substance. *Steph. Plead.* 140—142. 1 *Chitt. Pl.* 663. See *Demurrer*.

GENERAL ISSUE. In pleading. A short general plea, in actions at law, denying the allegations contained in the plaintiff's declaration, in summary terms, and concluding with a tender of issue.* *Steph. Pl.* 155. 3 *Steph. Com.* 576. 1 *Chitt. Pl.* 472. It is called the *general* issue, according to Mr. Stephen, because the issue that it tenders, involving the whole declaration, or the principal part of it, is of a more *general* and comprehensive kind than that usually tendered by a common traverse. *Steph. Pl. ub. sup.* See *Issue*, *Traverse*.

GENERAL LAND OFFICE. A department of the government of the United States, under the supervision of an officer called the commissioner of the general land office, having charge of the surveying and sale of the public lands of the United States, and the issuing of patents for all grants of land under the authority of the government. See *Act of Congress*, July 4, 1836, sess. 1, ch. 352. And see Acts of April 25, 1812, and March 24, 1824.

GENERAL LEGACY. A pecuniary legacy, payable out of the general assets of a testator. 2 *Bl. Com.* 512. *Ward on Legacies*, 1, 16.

GENERAL LIEN. The right which the bailee of a chattel has to retain possession of it from the owner, until payment be made not only for the particular article, or some labor, service or expense performed, incurred or laid out upon or in relation to it, but of any balance that may be due on general account in the same line of business.* 2 *Steph. Com.* 132. See *Lien*.

GENERAL OCCUPANT. At common law, where a man was tenant *pur auter vie*, or had an estate granted to himself only, (without mentioning his heirs,) for the life of another man, and died without alienation during the life of *cestuy que vie*, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as *cestuy que vie* lived, by right of occupancy, and was hence termed a *general* or common *occupant*. 2 *Bl. Com.* 258. 1 *Steph. Com.* 415. 2 *Crabb's Real Prop.* 70, § 1049. But this right of general occupancy was taken away by the statutes 29 Car. II. c. 3, and 14 Geo. II. c. 20. *Id. ibid.*

GENERAL PARTNERSHIP. A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. *Story on Partn.* § 74.

GENERAL SHIP. In maritime law. A ship employed as a general carrier. *McCulloch's Dict.*—A ship open to all merchants; as distinguished from a *chartered* ship, which is contracted for by one or more exclusively. When the goods of several merchants, unconnected with each other, are laden on board without any particular contract of affreightment with any

individual for the entire ship, the vessel is called a general ship. 3 *Kent's Com.* 202. 2 *Steph. Com.* 184. *Smith's Merc. Law*, 175.

GENERAL (or PUBLIC) STATUTE. A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute. 4 *Co.* 75 a, *Holland's case.* 1 *Bl. Com.* 85, 86. *Dwarris on Statutes*, 629.

GENERAL VERDICT. In practice. The ordinary verdict delivered orally by a jury in civil actions, in which they *find* generally "for the plaintiff," or "for the defendant," and which is entered on record in the terms of the issue or issues referred to them. 2 *Tidd's Pr.* 869. 1 *Arch. Pr.* 213.

GENERAL WARRANT. A process which formerly issued from the state secretary's office in England, to take up, (without naming any persons in particular,) the author, printer and publisher of certain libels specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons. *Com. Journ.* 22, April, 1766.

GENERALE. L. Fr. General. *Generale rule de ley est que, &c. Britt.* c. 121. *Generalement;* generally. *Id.* fol. 3.

GENERALE. Lat. General; a general thing.

Generale nihil certum [certi] implicat. A general expression implies nothing certain. 2 *Co.* 34 b, *Doddington's case.* A general recital in a deed has not the effect of an estoppel. *Best on Evid.* 408, § 370.

Generale tantum valet in generalibus, quantum singulare in singulis. What is general is of as much force among general things, as what is particular is among things particular. 11 *Co.* 59 b, *Foster's case.*

Generale dictum generaliter est interpretandum. A general expression is to be interpreted generally. 8 *Co.* 116 a, *Bonham's case.*

GENERALIA. Lat. (pl. of *generale.*) General things.

Generalia sunt præponenda singularibus. General things are to be put before particular things. *Branch. Princ.* **Generalia præcedunt, specialia sequuntur.** General things precede, special things follow. *Id.*

Generalia specialibus non derogant. General things do not derogate from, or affect things special. *Jenk. Cent.* 120, case 41. Applied to a general statute passed after a special one. *Id. ibid.* See *Genus.*

Generalia verba sunt generaliter intelligenda. General words are to be understood generally, or in a general sense. 3 *Inst.* 76. *Broom's Max.* [502.]

Generalibus specialia derogant. Special things take from generals. *Halkerst. Max.* 51.

GENERALIS. Lat. General. *Generalissimum;* most general. 2 *Bl. Com.* 19.

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa. A general clause does not extend to those things which are previously provided for specially. 8 *Co.* 154 b, *Altham's case.* Therefore, where a deed at the first contains special words, and afterwards concludes in general words, both words, as well general as special, shall stand. *Id. ibid.*

Generalis regula generaliter est intelligenda. A general rule is to be understood generally. 6 *Co.* 65.

GENERALITER. Lat. [from *generalis*, q. v.] Generally. *Dig.* 50. 17. 78.

Generaliter dicta generaliter sunt interpretanda. Things expressed in general terms, are to be interpreted generally. *Shep. Touch.* 88. Another form of this maxim is, **Generaliter dictum generaliter interpretandum.** 1 *Eden*, 96.

GENEROSUS. L. Lat. Gentleman; a gentleman. *Spelman.* 7 *East*, 389, arg.

GENEROSA. L. Lat. Gentlewoman. *Cowell.* 2 *Inst.* 668.

GENICULUM. L. Lat. In old feudal law. A generation; a degree of consanguinity. *Feud. Lib.* 1, tit. 1, § 5. *L. Longob.* lib. 2, tit. 14, l. 1. *Spelman.*

GENS. Lat. In Roman law. A class or clan; a subdivision of the Roman people next in order to the *curia*, (q. v.) and which was again subdivided into *familiæ. Adam's Rom. Ant.* 34. *Calv. Lex. Brande.* See *Familia.*

A people or nation. See *Gentes.*

GENTES, (pl. of *gens.*) L. Lat. People. *Contra omnes gentes;* against all people. *Bract.* fol. 37 b. Words used in the clause of warranty in old deeds.

GENTLEMAN. [L. Fr. *gentil-homme;* L. Lat. *generosus.*] A title in England, ranking next below esquire. 1 *Bl. Com.* 405, 406. *Spelman*, voc. *Generosus.* Mr. Barrington conjectures that the term *gentleman* properly signifies he who has a sur-

name, or family name, [from *gens*, a family,] or distinguished from the *simple-homme*, who had no surname. *Obs. Stat.* 288.

GENTLEWOMAN. A title given to women in England, corresponding with gentleman. See *Generosa.*

GENTS, *Gentes, Gentz, Gentez, Geans, Gienz.* L. Fr. [L. Lat. *gentes*, q. v.] In old English law. People; persons; folk. *Des* gents *de la ville;* the people of the town. *Stat. Westm.* 1, c. 7. *Les lays* gents *que ne sont apprises en la ley;* the common people who are not learned in the law. *Litt.* sect. 331. *Artic. sup. Chart.* c. 2. *Touts auters* gentes *de mound;* all other people of the world. *Stat. Mod. Lev. Fines.* Gentz *malades;* sick people. *Britt.* c. 21. Gentz *arrages;* insane persons. *Id.* c. 34. Gentz *nient demorauntz en pays;* persons not residing in the country or neighborhood. *Id.* c. 21. Used by Britton in the same sentence with *people. Id. ib.* fol. 36.

The singular *gent* also sometimes occurs in the books. *Ceux que endorment la* gent; those who charm the people. *Britt.* c. 15. *Desgarny de forte* gent; unprovided with brave people. *Id.* c. 123.

GENUS. Lat. In the civil law. A general class or division, comprising several species. *In toto jure* generi *per speciem derogatur, et illud potissimum habetur quod ad speciem directum est;* throughout the law, the species takes from the genus, and that is most particularly regarded which refers to the species. *Dig.* 50. 17. 80.

A man's lineage, or direct descendants. *Blackst. Law Tr.* 4. See *Calv. Lex.*

GENUS. Lat. A general word. 4 *Co.* 76 a.

GEOLE. L. Fr. A prison. *Kelham.*

GEREFA, *Grefa, Refa.* Sax. [from *gerefen* or *reafen*, to exact or take away.] In Saxon law. Greve, reve or reeve; a ministerial officer of high antiquity in England; answering to the *grave* or *graf* (*grafio,*) of the early continental nations. The term was applied to various grades of officers, from the *scyre-gerefa, shire-grefe* or *shire-reve*, who had charge of the county, (and whose title and office have been perpetuated in the modern *sheriff,*) down to the *tun-gerefa*, or town-reeve, and lower. Spelman (voc. *Grafio,*) supposes it to have properly denoted an officer employed to collect taxes, or public dues, (*ad jura fiscalia exigenda.*) 1 *Spence's Chancery*, 60. See *Grafio, Greve, Reeve.*

A steward or superintendent. *Sax. Evang. Matt.* xx. 8.

GERECHTSBODE. Belg. In old New-York law. A court messenger or constable. *O'Callaghan's New-Netherlands*, i. 322.

GERENS. Lat. [from *gerere*, to bear.] Bearing. *Gerens datum;* bearing date. 1 *Ld. Raym.* 336. *Hob.* 19.

GERERE. Lat. To bear or carry; to behave or conduct; to act, strictly, without words. See *Dig.* 50. 16. 19. *Pro hærede gerere;* to act as heir. *Inst.* 2. 19. 6. *Pro hærede* gerere *est pro domino* gerere; to act as heir is to act as owner. *Id. ibid. Calv. Lex. Gerit pro hærede. Bract.* fol. 70 b.

To manage, or administer. *Calv. Lex.*

GERMAN. [Lat. *germanus*, q. v.] Of the whole blood; of the nearest degree.

GERMANUS. Lat. Descended of the same stock, or from the same couple of ancestors; of the whole or full blood. 1 *Mackeld. Civ. Law*, 140, § 132.

GERMEN TERRÆ. Lat. A sprout of the earth. A young tree, so called. *Bacon's Works*, iv. 218.

GERMINS. Young trees. *Ambl.* 133.

GERONTOCOMIUM. Græco-Lat. [from Gr. γεροντοκομειον, from γέρων, old, and κομέω, to nurse or take care of.] In the civil law. An institution or hospital for taking care of the old. *Cod.* 1. 3. 46. 1. *Calv. Lex.*

GERSUMA. Sax. and L. Lat. In old English law. A price, reward or sum of money; (*sumptus, præmium;*) the greater and better part of goods. *Spelman. Chron. Sax.* A. D. 1035, 1065, cited *ibid.*

A fine or consideration paid for a thing. The word is used very frequently in this sense in old charters. *Sciatis me pro tot libris quas N. mihi dedit in* gersumam, *dedisse, concessisse*, &c.; Know ye that I, for so many pounds which N. has given me for a *gersume*, have given, granted, &c. *Spelman.*

A fine, amerciament or compensation for an offence. *Spelman.*

This word is written by Matthew Paris *gersoma. Gressume, grossome* and *garsumme* are other forms of it; but these are pronounced by Mr. Blount to be corruptions. *Blount's Nomolex.* (ed. 1691,) Advertisement.

GERSUMARIUS. L. Lat. [from *ger-*

suma, q. v.] In old English law. Finable, or liable to be mulcted, fined or amerced at the discretion of the lord. *Cowell.*

GESKERECH. L. Fr. The month of August. *Kelham.*

GEST. Sax. In Saxon law. A guest. A name given to a stranger on the *second night* of his entertainment in another's house. *Twa night gest. LL. Edw. Conf.* c. 17, *apud Spelman*, voc. *Homehyne.* Bracton writes the word *gust. Bract.* fol. 124 b. *Geste* is the form in Britton. *Britt.* c. 12.

GESTIO. L. Lat. [from *gerere*, to behave, act or do.] In the civil law. Behaviour, or conduct. See *Gestio pro hærede.*

Management or transaction. *Negotiorum gestio;* the doing of another's business; an interference in the affairs of another in his absence, from benevolence or friendship, and without authority. *Dig.* 3. 5. 45. 2 *Kent's Com.* 616, note.

GESTIO PRO HÆREDE. L. Lat. In the civil law. Behaviour as heir; that conduct by which an heir renders himself liable for his ancestor's debts; as by taking possession of title deeds, receiving rents, cultivating land, &c. *Bell's Dict.* 1 *Forbes' Inst.* part. 3, b. 2, p. 100. See *Gerere.*

GESTOR. Lat. [from *genere*, to act.] In the civil law. One who acts for another, or transacts another's business. *Calv. Lex.* See *Negotiorum gestor.*

GESTUM. Lat. [from *gerere*, to do.] Done; a thing done; a transaction. *Cod.* 7. 52. 6. Strictly, a thing done without words, and so distinguished from *actum*, (q. v.) A distinction was sometimes made in the civil law, between this word and *factum.* Gaius, however, in the Digests, pronounces this to be subtle, (*subtilis*) and holds that practically there was no difference between them. *Dig.* 50. 16. 58.

GESTUM, *Gesta.* L. Lat. In old English law. Yeast; barm; the flower or froth of ale or beer. *Stat. Assis. Pan. et Cervis.* 51 Hen. III. *Spelman. Fleta*, lib. 2, c. 10. Otherwise called *levanum*, leaven. *Id.*

GESTUS. Lat. [from *gerere*, to conduct; L. Fr. *gest, gette.*] In old English law. Behaviour; conduct. See *De gestu et fama.*

GETTER. L. Fr. To throw or cast. *Gette;* cast, (as an essoin.) *Britt.* c. 74. 123.

To bring. *Et getta les faits en court. Yearb.* M. 19 Hen. VI. 6.

GEVILLOURIS. Sc. In old Scotch law. Gaolers. 1 *Pitc. Crim. Trials*, part 2, p. 234.

GEWITNESSA. Sax. In Saxon law. The giving of evidence. *LL. Ethelred.* c. 2, *apud Brompton.*

GEWRITE. Sax. Writings. Deeds or charters were so called among the Saxons. 1 *Reeves' Hist. Eng. Law*, 10. *Crabb's Hist.* 14. See *Landboc.*

GIEU, *Geu.* L. Fr. A Jew. *Kelham.*

GIFT. [L. Lat. *donatio;* L. Fr. *don, done.*] A voluntary and gratuitous conveyance, or transfer of lands or goods from one to another, not founded on the consideration of money or blood.* 2 *Bl. Com.* 440. 2 *Steph. Com.* 102. 2 *Kent's Com.* 437.

In English law. A conveyance of lands in tail; a conveyance of an estate tail, in which the operative words are "I give," (*do,*) or "I have given," (*dedi.*) 2 *Bl. Com.* 316. 1 *Steph. Com.* 473. See *Donatio, Done.*

*** In a general sense, a *gift* is the most comprehensive kind of transfer in law. The ancient conveyances of land in England were nearly all *gifts.* Bracton calls *donatio* (*gift*) the most important and distinguished, as well as the most ordinary method by which property could be acquired. *Inter alias causas acquisitionis magna, celebris et famosa est causa* donationis, &c. *Quia per eam magis acquiritur et sæpius quam per aliam*, &c. *Bract.* fol. 11. *I give*, (*do,*) is the term constantly employed by the same writer in his examples of the most free, large and absolute kind of conveyance. *Id.* fol. 17. Gifts indeed, at this time, expressly included conveyances in fee simple, as well as fee tail. *Donationum, quædam absoluta et larga, et quædam stricta et coarctata, sicut certis hæredibus. Id.* fol. 11 b. Afterwards, the term *gift* came to acquire the peculiar and technical meaning now appropriated to it in the English law of real estate, being restricted in its application to estates tail; the distinction being made between a *gift in tail* and a *feoffment in fee.* The latter conveyance, however, continued to be called a gift (*donatio feudi,*) and its aptest word was *do*, (I give,) or *dedi*, (I have given.) 2 *Bl. Com.* 316, 310. See *Gratuitous.*

GIFT OF PERSONAL PROPERTY. A voluntary and gratuitous transfer of a chattel or chose in action; which, to be valid and binding, must either be accompa-

nied by the solemnity of a deed, or by that of actual delivery of possession. 2 *Steph. Com.* 102. 2 *Bl. Com.* 440, 441. 2 *Kent's Com.* 437—443. *United States Digest*, Gift. See *Donatio.*

GIFTA AQUÆ. L. Lat. In old records. A stream of water. *Blount.* 3 *Mon. Angl.* cited *ibid.*

GILD, *Guild*, *Geld.* Sax. [from *geldan*, or *gyldan*, to pay; L. Lat. *gilda*, *gildum.*] In Saxon law. A tax or tribute. *Spelman*, voc. *Geldum.* *Camd. Brit.* 135, 139, 159, &c. See *Geld.* Hence *gildable*, taxable.

A fine, mulct, or amerciament; a satisfaction or compensation for an injury. *Crompton, Jurisd.* 191. *Spelman*, voc. *Geldum.* See *Wergild*, *Orfgild*, *Angild*, &c.

A fraternity, society, or company of persons combined together, under certain regulations, and with the king's license, and so called because its expenses were defrayed by the *contributions*, (*geld*, *gild*, Sax. a payment,) of its members, (*quod ex conjectis pecuniis sodalitii impendio subministratur.*) *Spelman, ub. sup.* *Termes de la Ley.* In other words, a corporation; called in Latin *societas*, *collegium*, *fratria*, *fraternitas*, *sodalitium*, *adunatio;* and in foreign law, *gildonia.* *Spelman, ub. sup.* There were various kinds of these *gilds*, as merchant, or commercial *gilds*, religious *gilds*, and others. 3 *Turner's Hist. Anglo-Sax.* 98. 3 *Steph. Com.* 173, note (*u*). See *Gilda Mercatoria.*

A friborg, or decennary; called by the Saxons *gyldscipes*, and its members *gildones*, and *congildones.* *Spelman, ub. sup.*

GILDA, *Guilda.* L. Lat. In old English law. A gild or guild; a company or corporation. *Spelman*, voc. *Geldum.* *Brownl.* part 2, 286.

GILDA MERCATORIA. L. Lat. A gild merchant, or merchant gild; a gild, corporation, or company of merchants. *Reg. Orig.* 219 b. 2 *Ld. Raym.* 1134. 1 *Spence's Chancery*, 55. 8 *Co.* 125 a. If the king grants to a set of men to have *gildam mercatoriam*, this alone is sufficient to incorporate and establish them forever. 10 *Co.* 30. 1 *Roll. Abr.* 513. 1 *Bl. Com.* 473, 474.

GILDABLE, *Guildable*, *Geldable.* [from Sax. *gild*, or *geld*, qq. v.] In old English law. Taxable, tributary or contributory; liable to pay tax or tribute. *Cowell.* *Blount.* *Stat.* 27 *Hen.* VIII. c. 26. 8 *Co.* 125 a.

GILDALE. [from Sax. *geld*, a payment.] In old English law. A compotation, where every one paid his share. *Cowell.* *Blount.*

GILD-HALL. See *Guild-hall.*

GILDHALLA, *Guildhalda.* L. Lat. [*gildæ aula* or *halla.*] In old English law. The hall or place of meeting of a gild; a guild-hall. *Spelman*, voc. *Geldum.* *Gildhalla Teutonicorum;* the hall or place of meeting of the fraternity of Easterling merchants, (or merchants of the Hanse-towns,) in London; called the Stilyard. *Spelman, ub. sup.* *Cowell*, voc. *Gild.* *Stat.* 22 *Hen.* VIII. c. 8.

GILD MERCHANT. A company of merchants. See *Gilda mercatoria.*

GILDO. L. Lat. In Saxon law. A member of a gild or friborg. *Spelman*, voc. *Geldum.*

GILDRENT. A rent payable by any gild or fraternity. *Blount.*

GILDONIA. L. Lat. In old European law. A gild or company. *Spelman*, voc. *Geldum.* This word is of frequent occurrence in the laws of the Franks, Lombards, and other early nations of Europe. *Id. ibid.*

GILOUR. L. Fr. A cheat or deceiver. Applied in Britton, to those who sold false or spurious things for good, as pewter for silver or latten for gold. *Britt.* c. 15.

GIPPEWICUS, *Gipwicus*, *Gippus.* L. Lat. Ipswich, in England. 2 *Ld. Raym.* 1239. 2 *Salk.* 434.

GIRTH AND SANCTUARY. In old Scotch law. An asylum given to murderers, where the murder was committed without any previous design, and in *chaude mella*, or heat of passion. *Bell's Dict.*

GISARMES, *Guisarmes.* L. Fr. [L. Lat. *gisarma.*] In old English statutes. A kind of axe or halbert; a bill. *Stat. Winton.* 13 *Edw.* I. *Spelman.* See *Fleta*, lib. 1, c. 24, § 12. Kelham describes it as "a military weapon like a lance or long bayonet."

GISER, *Gyser.* L. Fr. [from Lat. *jacere.*] In old English law. To lie. *Giser à meason;* to lie or lodge at a house. *Stat. Westm.* 1, c. 1. *Giser en langour;* to lie sick. *Britt.* c. 115. *Gisaunte au founs;* lying at the bottom. *Id.* c. 1. *Ne gist en le bouche;* it does not lie in the mouth. *Litt.* sect. 58, 149. Literally rendered in the Latin of the statute of Westminster 2, (c. 9,) *non jacet in ore.* The English of this phrase is still used. *Gisont;* (they) lie. *Litt.* sect. 10.

To lie, as an action; to be competent. *Ou assise ne* gist *point;* when an assise does not lie. *Britt.* c. 43. *Ou* gist *atteynte. Id.* c. 98. *Le action* bien gist; the action well lies. *Freem.* 1.

GISSANE. Sc. In old Scotch law. Child-bed. Usually written *gizzene*, or *jizzen*, from O. Fr. *gisante*, a woman lying in the straw. 1 *Pitc. Cr. Trials*, part 1, p. 51, note.

GIST (or GIT) OF AN ACTION. The material point on which the action *lies.* 5 *Mod.* 305. 1 *Stra.* 574. "The escape is the *gist* of the action." Holt, C. J. 5 *Mod.* 9.

GISIL, *Gisilis.* L. Lat. and Lomb. In old European law. A witness; a pledge or hostage. *LL. Longob.* lib. 2, tit. 15, l. 1. *Spelman.*

GIT. See *Gist.* "The *per quod* makes the *git* of the action." Holt, C. J. 12 *Mod.* 266.

To GIVE. [Lat. *dare.*] I give, (*do;*) I have given, (*dedi.*) The emphatic and apt words of ancient deeds of gift. See *Gift*, *Do*, *Dare*, *Dedi.* The word *give*, in a conveyance, no longer implies or imports in England a covenant in law, as it formerly did. *Stat.* 8 & 9 *Vict.* c. 10, § 6. *Archbold's Land. & Ten.* 67, 68. The old English rule is still followed in some of the United States. See 2 *Hilliard's Real Prop.* 365, 366.

The word *give*, in a contract, does not import a mere gratuity. "To give flour for wheat," is to give it in consideration and as an equivalent. See 2 *Comstock's R.* 156.

GIVEN. [Lat. *datum*, Fr. *done*, qq. v.] Anciently written *yeoven*, and *yeuen*, (qq. v.)

GLADIUS. Lat. A sword. An ancient emblem of defence. *Gladius significat defensionem regni et patriæ. Bract.* fol. 5 b. Hence the ancient earls or *comites*, (the king's attendants, advisers, and associates in his government,) were made by being girt with swords. *Id. ibid.*

The emblem of the executory power of the law in punishing crimes. 4 *Bl. Com.* 177. See *Jus gladii.*

GLANS. Lat. In the civil law. Acorns or nuts of the oak or other trees. *Brissonius.*

In a larger sense, all fruits of trees. Glandis *nomine omnes fructus continentur. Dig.* 43. 28. *Id.* 50. 16. 236. 1. *Glans caduca;* fruit which falls from the tree. *Dig.* 50. 16. 30. 4.

GLANS. Lat. In old English law. Acorns, nuts or mast of the oak and other trees, as the chestnut and beech. It seems to have included any produce of trees that might be fed upon by animals, as distinguished from herbage. Glandis *nomine continetur glans castanea, fagina, ficus et nuces, et alia quæque quæ edi vel pasci poterunt præter herbam. Bract.* fol. 226 b. 2 *Inst.* 411.

GLANVILLE. The author of the most ancient treatise on English law, written in Latin, about A. D. 1181, under the title of *Tractatus de Legibus et Consuetudinibus Angliæ;* (A Treatise of the Laws and Customs of England.) The older writers are generally agreed that this was *Ranulphus de Glanvilla*, chief justitiary of England, to Henry II. who was equally eminent as a soldier and a judge, and died at the seige of Acre, in 1190. *Hoveden in Hen.* II. *Staunf. Prær.* c. 1, fol. 5. Catlin, C. J. *Plowden*, 368 a. *Cowell.* 8 *Co.* pref. *Crabb's Hist. Eng. Law*, 70. The same opinion is adopted by Spelman and Sir Matthew Hale. *Hist. Com. Law*, c. 7. Lord Coke gives the arms and genealogy of Glanville, and speaks with the greatest confidence on the subject. 8 *Co. ub. sup.* Mr. Reeves, however, doubts the identity of these individuals, and thinks that the Glanville who wrote the treatise might have been a person of that name who was a justice itinerant. 1 *Reeves' Hist. Eng. Law*, 223.

As to the work itself, there is little doubt of its being the most ancient treatise on English law. Spelman remarks that Glanville was the first who attempted to make that law a *lex scripta*, or written law. *Hic cum ad suam usque ætatem, ἄγραφος, id est, non scripta, mansisset maxima pars juris nostri, omnium primus ἔγγραφον reddere aggressus est. Spelman*, vocc. *Justitia, Justitiarius.* But it possesses a higher interest even than this, from the fact of its being the oldest work of the kind in Europe. Dr. Robertson observes that it was the first undertaking in any country in Europe, to collect into one body the customs which then regulated the administration of justice, and thus to render the law fixed. 1 *Robertson's Charles* V. Appendix, Note xxv. Defontaines, the oldest law writer in France, composed his *Conseil* about half a century afterwards. See *Defontaines.*

GLEANING. The gathering of grain after reapers, or of grain left ungathered by reapers. Held not to be a right at common law. 1 *H. Bl.* 51.

GLEBA. Lat. In the civil law. A turf, sod or clod of earth.

The soil or ground; cultivated land in general. *Cod. Theodos.* See *Adscriptitius.*

In old English law. Church land; (*solum et dos ecclesiæ.*) *Spelman.* See *Glebe.* Land to which the advowson of a church is annexed. *Fleta*, lib. 3, c. 2, § 18.

GLEBARIÆ. L. Lat. [from *gleba*, q. v.] In old records. Turfs or peat; peat lands. 1 *Mon. Angl.* 920. *Cowell.*

GLEBE, *Glebeland.* [L. Fr. *glebe;* L. Lat. *gleba.*] In ecclesiastical law. Church land; land belonging to a parish church. *Cowell. Blount.* A portion of land attached to the benefice of a rector or vicar, in addition to the parsonage or vicarage house, as part of its endowment. 3 *Steph. Com.* 113. Anciently called *dos ecclesiæ. Lyndewode, Prov.* lib. 3, tit. *de eccles. ædific.* § 1. *Spelman. Com. Dig.* Dismes, B. 2. "The four aickers of land, quhilk is graunted to the ministers of the evangell within this land, is called *ane glecbe.*" *Skene de Verb. Signif.* voc. *Mansus.*

GLOS. Lat. In the civil law. A husband's sister. *Dig.* 38. 10. 4. 6.

GLOSS. [L. Lat. *glossa*, q. v.] An annotation or comment on any passage in the text of a work, for the purpose of explanation. Particularly applied to the comments on the Roman law. See *Glossa.*

GLOSSA. L. Lat. [from Gr. γλῶσσα, a tongue.] A gloss, explanation or interpretation. The *glossæ* of the Roman law are brief illustrative comments or annotations on the text of Justinian's collections, made by the professors who taught or lectured on them about the twelfth century, and were hence called *glossators.* 1 *Mackeld. Civ. Law*, 66, § 80. These glosses were at first inserted in the text with the words to which they referred, and were called *glossæ interlineares;* but afterwards they were placed in the margin, partly at the side, and partly under the text, and called *glossæ marginales.* A selection of them was made by Accursius, between A. D. 1220, and 1260, under the title of *Glossa ordinaria*, which is of the greatest authority. *Id. ibid.*

Glossa viperina est quæ corrodit viscera textus. That is a viperous gloss which eats out the bowels of the text. 10 *Co.* 70, *Case of the Marshalsea.* Otherwise expressed, **Viperina est expositio quæ corrodit viscera textus.** 11 *Id.* 34 a, *Powlter's case.* 2 *Bulstr.* 79.

GLOSSATOR. L. Lat. [from *glossa*, q. v.] In the civil law. A commentator or annotator. A term applied to the professors and teachers of the Roman law in the twelfth century, at the head of whom was Irnerius. 1 *Mackeld. Civ. Law*, 66, § 80.

GLOUC'. An abbreviation of *Gloucestria*, (Gloucester,) in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

GLOUCESTER or GLOCESTER, *Statute of.* A celebrated English statute, passed in the sixth year of the reign of Edward I. It is composed of fifteen chapters, in Law French, and is commented on by Lord Coke in his second Institute. It was the first statute that gave costs in actions. 2 *Reeves' Hist. Eng. Law*, 144, *et seq.*

GLYN. In old English law. A valley. *Co. Litt.* 5 b.

GO. [Lat. *ire;* L. Fr. *aler.*] In practice. To be dismissed from court. "To *go* without day," applied to a defendant, is is to be finally dismissed, or discharged from the action. See *Day, Eat inde sine die.*

To issue from a court. "The court said a mandamus must *go.*" 1 *W. Bl.* 50. "A mandamus had *gone.*" *Id.* 63. "I think the mandamus ought not to *go.*" Lawrence, J. 2 *East*, 213. "Let a *supersedeas* go." 5 *Mod.* 421. "The writ may *go.*" 18 *C. B.* (9 *J. Scott,*) 35.

To rest; to proceed. "The case of Buckland *v.* Tankard *goes* on the ground of more or less difficulty," &c. Lord Ellenborough, 2 *East*, 458.

GOAT, *Gote.* In old English law. A contrivance or structure for draining waters out of the land into the sea. Callis describes *goats* as "usual engines erected and built with portcullises and doors of timber and stone or brick, invented first in Lower Germany." *Callis on Sewers*, [91,] 112, 113. Cowell defines *gote*, a ditch, sewer or gutter.

GODBOTE. Sax. [from *God*, and *bote*, a fine, or amend.] In old English law. A fine, or amercement anciently imposed for offences against religion; an ecclesiastical or church fine. *Cowell. Blount.*

GODGILD, *Godgeld.* Sax. [from *God*, and *gild* or *geld*, a payment.] In Saxon law. That which is paid or offered to God, or his service. *LL. Alured.* præf. *Spelman*, voc. *Geldum.*

GOD'S PENNY. In old English law. Earnest money. See *Denarius Dei.*

GOGINGSTOLE. An old form of the word *cuckingstool*, (q. v.) *Cowell.*

GOLDA. L. Lat. In old records. A sink or passage for water. 2 *Mon. Angl.* 619. *Cowell.*

GOLDSMITHS' NOTES. In English law. Bankers' notes. Originally so called, because the bankers of London were originally goldsmiths also. *Wharton's Lex.*

GOLIARDUS. L. Lat. A jester, buffoon or juggler. *Spelman*, voc. *Goliardensis.*

GOOD. [L. Fr. *bon bien.*] Valid; sufficient in law; effectual; unobjectionable.

Responsible; solvent; able to pay an amount specified.

Of a value corresponding with its terms; collectable. A note is said to be *good*, when the payment of it at maturity may be relied on. See 26 *Vermont R.* 406–413.

GOOD IN PART, BAD IN PART. An instrument may be good in part, though void for the residue. See 8 *East*, 231, 236. As to the application of this rule to voluntary assignments, see *Burrill on Assignments*, 442—448.

GOOD ABEARING, (or ABEARANCE.) [Lat. *bonus gestus.*] In old English law. The exact carriage or behaviour of a subject to the king and his liege people, to which men were sometimes anciently bound, upon their evil course of life or loose demeanor. He who was bound to this was more strictly bound than to the peace; for the peace was not broken without an actual affray, battery, &c.; but this might be forfeited by the number of a man's company, or by his or their weapons. *Lamb. Eirenarch.* lib. 2, c. 2. *Cowell. Termes de la Ley.*

By the statute 34 Edw. III. c. 1, justices of the peace were empowered to bind over to the good behaviour towards the king and his people, all them *that be not of good fame*, wherever they be found. Blackstone refers to the provisions of this statute as still in force. 4 *Bl. Com.* 256. But according to Mr. Stephen, in what manner and to what extent they ought at the present day to be enforced, may be doubtful. 4 *Steph. Com.* 317.

GOOD CONSIDERATION. A consideration of blood, or of natural love and affection; as where a man grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty. 2 *Bl. Com.* 297, 444. It is technically distinguished from a *valuable* consideration, (q. v.)

GOOD COUNTRY. In Scotch law. Good men of the country. A name given to a jury. See *Bona patria.*

GOOD MAN. [L. Lat. *probus homo.*] A good and lawful man; (*probus et legalis homo.*) 3 *Bl. Com.* 102. Good men; (*probi* or *boni homines*, L. Fr. *bones gents.*) Good and lawful men; (*probi et legales homines.*) *Mag. Chart.* 9 Hen. III. c. 14. Terms applied, in old English and feudal law, to persons of unexceptionable character, and especially such as were qualified to act as jurors or witnesses in courts. See *Boni homines, Legalis homo, Probus homo.* The expression "*good* and lawful *men*" continues to be used in modern law, and criers in American courts ordinarily address a jury as "You *good men*," &c.

GOOD WILL. The custom of any trade or business. The benefit or advantage attending a particular business, in consequence of the patronage it receives from constant or habitual customers. See *Story on Partn.* § 99. 1 *Hoffman's R.* 68, 69.

GOODS. [Lat. *bona;* Fr. *biens.*] A term applied to certain descriptions of things movable, and said to be one "of large signification." Wilde, J. 3 *Metcalf's R.* 367. In some of its connections, however, it is of more extensive import than in others. Story, J. 2 *Story's R.* 52. Strictly, it seems to be applicable only to *inanimate* movables, being in this respect less comprehensive than *chattels*, which include animals. 1 *Chitt. Gen. Pr.* 89, 90. 2 *Chitt. Bl. Com.* 384, note. Nor does it, according to Blackstone, embrace every variety even of inanimate property, *goods* being classed by him with plate, money, jewels, implements of war, garments and vegetable productions, as so many species of inanimate things. 2 *Bl. Com.* 389. So it has been held that the term "*goods*" in a deed or contract will not, in general, include fixtures. 1 *Chitt. Gen. Pr.* 90. In the United States, *goods* have been held to include money, bank notes and coin, promissory notes and the stock or shares of an incorporated company. 5 *Mason's R.* 537. See 2 *Story's R.* 52. 3 *Metcalf's R.* 365. 20 *Pick. R.* 9. See *Bona, Chattels.*

In wills, the term *goods* is taken in a large sense, and will comprise the entire personal estate of a testator, unless restrained by the context within narrower

limits. 1 *Jarman on Wills*, 692, (594, Perkins' ed. 1849.) It is called *nomen generalissimum*, and when construed in the abstract will embrace all the personal estate of a testator, as stock, bonds, notes, money, plate, furniture, &c. 1 *Roper on Legacies*, 250. *Ward on Legacies*, 208, 209. Story, J. 2 *Story's R.* 53. See *Household goods.*

Good, in the singular, is rarely used. 2 *Bl. Com.* 424, 425.

GOODS AND CHATTELS. [L. Lat. *bona et catalla;* L. Fr. *biens et cateux.*] A phrase very commonly used to designate personal property; the word *chattels* serving to extend its application to subjects which the word *goods* alone would not embrace. It includes not only personal property in possession, but also choses in action, and, by force of the word *chattels*, all animate as well as inanimate property, emblements and other vegetable productions, and leases for years of houses or lands. 12 *Co.* 1. 1 *Atk.* 182. 1 *Chitt. Gen. Pr.* 89, 90.

In wills, the term *goods and chattels* will, unless restrained by the context, pass all the personal estate, including leases for years, cattle, corn, debts and the like. *Ward on Legacies*, 208, 211.

GOODS AND MERCHANDIZE. [L. Lat. *bona et merchandisæ.*] A phrase used to designate personal property. See *Vaugh.* 170, arg.

GOODS, WARES AND MERCHANDIZE. A phrase of frequent occurrence in statutes, pleadings and other instruments. In the Statute of Frauds, it has been held in Massachusetts, to include the stock of an incorporated company, but the point is not settled in England. 20 *Pick. R.* 9. 2 *Kent's Com.* 510, note. In Georgia, the words have been held not to include treasury checks. *Id. ibid. Dudley's R.* 28. See *Merchandize.*

GOOLE. [from Fr. *goulet*, or Lat. *gula.*] In old English law. A breach in a bank or sea-wall, or a passage worn by the flux and reflux of the sea. *Stat.* 16 and 17 *Car.* II. c. 11.

GORE. A small narrow slip of ground. *Kennett's Par. Ant.* 534, 393. *Cowell.*

GORS, *Gorse, Gorce, Gort, Guort.* L. Fr. and Eng. In old English law. A wear; a pool or pit of water, or confined place in a river, to take or keep fish in. *Domesday. Spelman. Britt.* c. 20, 62. *Co. Litt.* 5 b.

GOT. L. Fr. A sluice, drain or ditch. *Kelham.* See *Goat.*

GOULE D'AOUST. L. Fr. The gule of August, or the first of August. *Kelham.*

GRA'. An abbreviation of *gratia.* 1 *Inst. Cler.* 10.

GRACE. L. Fr. and Eng. [Lat. *gratia.*] Favor or indulgence, as distinguished from right. Acts of parliament granting pardons are called acts of *grace.* 1 *Bl. Com.* 184. *Plus de* grace *q' de droit;* more of favor than of right. *Britt.* c. 69.

GRACE, *Days of.* See *Days of grace.*

GRADALE, *Graduale.* L. Lat. In canon law. A book pertaining to the offices of the Romish church, and enumerated among its furniture in the Provinciale Anglicanum. *Lyndewode Prov. Angl.* lib. 3, tit. *de eccles. ædific.* c. 2. *Spelman. Plowd.* 542.

GRADATIM. Lat. [from *gradus*, q. v.] In old English law. By degrees or steps; step by step; from one degree to another. *Bract.* fol. 64.

GRADUS. Lat. In civil and canon law. A degree in relationship. *Inst.* 3. 6. *Dig.* 38. 11. The word properly denotes a *step*, and is figuratively used, like the Gr. βαθμός, to express the course of relationship upwards, downwards, or collaterally, stepping, as it were, (*gradiendo,*) from one person to another in the series. *Gradus dicti sunt à similitudine scalarum locorumve proclivium. Dig.* 38. 10. 10. 10. See *Degree. De gradu in gradum;* from degree to degree, or from step to step. *Bract.* fol. 374. *A gradu in gradum. Fleta*, lib. 6, c. 2, § 1. Bracton uses the word to signify the place occupied by a person in a scale or scheme of consanguinity; and where such place was left vacant by the death of such person, he calls it *gradus vacuus*, (*a vacant or void degree.*) *Bract.* fol. 134, 374. See *Fleta*, lib. 6, c. 17, § 4.

GRADUS. Lat. In old English law. Degree; rank; grade. Applied to the rank of a master in chancery, and of a serjeant at law. *Status et gradus;* the state and degree. *Treatise of the Maisters of the Chauncerie*, III.

GRAFFARIUS, *Grapharius.* L. Lat. In old English law. A graffer, notary or scrivener. *Stat.* 5 *Hen.* VIII. c. 1.

GRAFIO, *Graphio, Gravio, Gravius, Graphius.* L. Lat. In early European law. A fiscal judge: and derivatively, a count, (*comes;*) a count's deputy, or vis-

count, (*vice comes*, reeve or sheriff;) a judge; a chief or presiding magistrate. Answering to the Anglo-Saxon *gerefa*, which Spelman supposes to be from the same root *gerefan*, or *reafen*, to take or exact; the proper meaning of the word, in his opinion, being an exactor, or collector of taxes, or public dues. *Spelman, in voce.* The word *grafio* is confined to the laws of the early continental nations, and is generally used to denote a fiscal judge or count. *L. Salic.* titt. 33, 55. *L. Ripuar.* titt. 34, 84. See *Judex fiscalis, Comes.* It occurs, however, in a charter of Kenulph, king of the Mercians, quoted in the *Monasticon Anglicanum*, tom. 1, p. 100. *Cowell.* See *Gravius, Greve.*

GRAFIUM, *Graffium.* L. Lat. In old records. A writing book or register; a cartulary of deeds and evidences. *Cowell.*

GRAILE. The same as *Gradale*, (q. v.)

GRAIN. [Lat. *granum.*] The twenty-fourth (anciently the thirty-second) part of a pennyweight, or weight of an English penny. By the statute *Compositio Mensurarum*, 51 Hen. III., it was ordained that the penny sterling should weigh thirty-two grains of corn from the middle of the ear; (*ponderabit triginta et duo grana frumenti in medio spicæ.*) These natural grains were afterwards reduced to twenty-four artificial grains. *Cowell. Spelman*, voc. *Denarius. Stow's Ann.* cited *ibid.*

GRAMMATOPHYLACIUM. Græco-Lat. [from Gr. γράμματα, writings, and φύλαξ, a keeper.] In the civil law. A place for keeping writings or records. *Dig.* 48. 19. 9. 6.

GRANATARIUS. L. Lat. In old English law. An officer having charge of a granary. *Fleta*, lib. 2, c. 82, § 1; c. 84.

GRAND. L. Fr. Great; large. *Grand arbres;* large trees. *Dyer*, 79, (Fr. ed.)

GRAND. [L. Fr. *graund;* Lat. *magnus.*) Great; large; high. A word formed from the French, and still in use; contrasted generally with *petty*, (Fr. *petit*,) and denoting superiority either in magnitude, number or quality, as *grand* jury, *grand* larceny; or in point of precedence, dignity, importance or legal efficacy, as *grand* assize, *grand* cape, *grand* distress, (qq. v.)

GRAND ASSIZE. [L. Lat. *magna assisa.*] In practice. A special or extraordinary kind of jury, introduced by king Henry II. for the trial of writs of right, the tenant or defendant being allowed the choice of this mode of trial instead of that by battel, which previously was the only method in use. 3 *Bl. Com.* 341, 351. *Glanv.* lib. 2, cc. 6, 7. It consisted of four knights, returned by the sheriff, who chose twelve others to be joined with them; the whole assise thus being composed of sixteen jurors, or recognitors, as they were otherwise called. 3 *Bl. Com.* 351. *Glanv.* lib. 2, cc. 11, 12. 1 *Reeves' Hist. Eng. Law*, 86. See *De magna assisa eligenda.*

*** This kind of assise and the manner of choosing it are very fully described by Glanville, who is supposed by Sir William Blackstone to have advised the measure itself. 3 *Bl. Com. ub. sup.* The assise was called *grand*, according to Mr. Reeves, because the jurors were all knights, and were brought together also with more ceremony than those who composed the ordinary, minor or petit assise. 1 *Reeves' Hist. Eng. Law*, 86. *Spelman*, voc. *Assisa.* It continued in use in England down to a recent period, being abolished by statute 3 & 4 Will. IV. c. 42, § 13. A similar kind of jury was also formerly in use in the state of New-York, when writs of right were authorized forms of procedure. 1 *Rev. Laws* of 1813, 50.

GRAND BILL OF SALE. In maritime law. The German *bielbrief* has been sometimes so called. *Jacobsen's Sea Laws*, 12. The English, French and American register of a vessel commences with the contents of the bielbrief. *Id.* 13. See *Bielbrief.* The English cases speak of the transfer of a ship at sea by the assignment of the *grand bill of sale;* an expression which is understood to refer to the instrument whereby the ship was originally transferred from the builder to the owner, or first purchaser. 3 *Kent's Com.* 133.

GRAND CAPE. In practice. A judicial writ in the old real actions, which issued for the demandant, where the tenant, after being duly summoned, neglected to appear on the return of the writ, or to cast an essoin, or, in case of an essoin being cast, neglected to appear on the adjournment day of the essoin; its object being to compel an appearance. *Roscoe's Real Act.* 165, *et seq.* It was called a *cape*, from the word with which it commenced, and a *grand cape* (or *cape magnum*,) to distinguish it from the *petit cape*, which lay after appearance. *Id. ibid.* See *Cape.*

GRAND CAPE AD VALENTIAM. L. Lat. A species of grand cape which

issued against a vouchee, or person vouched to warranty in a real action. *Roscoe's Real Actions*, 268.

GRAND COUTUMIER, or *Coutumier de France.* In early European law. A collection of the customs, usages and forms of practice which had been in use from time immemorial in the kingdom of France, first projected by Charles VII. in 1453, but not completed until 1609. *Crabb's Hist. Eng. Law*, 69. It consisted of the *coutumiers*, (or collections of customs,) of the various provinces and places in France. The best edition of this is by Richebourg, in four volumes folio. It contains near one hundred collections of the customs of provinces, and two hundred collections of the customs of cities, towns and villages. *Butler's Co. Litt.* Note 77, Lib. 3.

GRAND COUTUMIER DE NORMANDIE. L. Fr. A collection of the laws and ducal customs of Normandy, composed about A. D. 1229, in the reign of Henry II. of England. *Hale's Hist. Com. Law*, c. 6. This, from its high antiquity, and the relation it bears to the feudal jurisprudence of England, is particularly interesting to an English reader. The most esteemed edition is that by Basnage, A. D. 1678. *Crabb's Hist. Eng. Law*, 69. *Butler's Co. Litt.* Note 77, Lib. 3. 1 *Reeves' Hist. Eng. Law*, 224, 225. *Butler's Hor. Jur.* 92. 3 *Kent's Com.* 501—503, note, *ad fin.*

GRAND DAYS. In English practice. Certain days in the terms, which are solemnly kept in the inns of court and chancery, viz. Candlemas day in Hilary Term, Ascension day in Easter, St. John the Baptist's day in Trinity, and All Saints in Michaelmas; which are *dies non-juridici. Termes de la Ley. Cowell. Blount. Wharton.* According to Mr. Holthouse, they are days set apart for peculiar festivity; the members of the respective inns being on such occasions regaled at their dinner in the hall, with more than usual sumptuousness. *Holthouse, in voc.*

GRAND DISTRESS. [L. Fr. *graund destresse;* L. Lat. *magna districtio.*] In English practice. A process which formerly issued in actions, where the tenant or defendant, after being attached, and so returned, neglected to appear; its object being to compel an appearance by distraining his goods and the profits of his lands. *Cowell. Britt.* c. 26. 3 *Bl. Com.* 280. It is called *grand* from its extent and stringency, and is still retained in the action of *quare impedit. Blount.* 3 *Steph. Com.* 662.

GRAND JURY. In criminal law. A jury of inquiry, summoned at courts of sessions and oyer and terminer, whose duty it is, after being duly sworn and charged by the presiding judge, to receive and hear complaints or accusations in criminal cases, and if they find them sustained by evidence, (which is presented on the part of the prosecution alone,) to find bills of indictment against the persons complained of.* 4 *Bl. Com.* 302, 303. 4 *Steph. Com.* 369, 370. It is called *grand*, to distinguish it from the ordinary or *petit* jury, being composed of a larger number of jurors, varying from twelve to twenty-three. *Id. ibid.* In New-York, it is composed of a number varying from sixteen to twenty-three. 2 *Rev. St.* [724,] 605, § 26. It is sometimes termed the *grand inquest.*

GRAND LARCENY. In English criminal law. A stealing of property of above the value of twelve pence. 4 *Bl. Com.* 241. So distinguished from *petit* larceny, which was theft of property to the value of twelve pence or under. The distinction between these two kinds of larceny is of great antiquity, and was only recently abolished in England by statute 7 & 8 Geo. IV. c. 29, ss. 2, 3, 4. *Fleta*, lib. 1, c. 38, § 10. 4 *Steph. Com.* 159. 2 *Russell on Crimes*, 1. In the United States it is generally retained, although the sum adopted as its basis is much above the old English standard. *Wharton's Am. Crim. Law.* b. 5, ch. 5, § 1705, *et seq. Lewis' U. S. Crim. Law*, 442, 444. 2 *Russell on Crimes*, 1, (Am. ed. 1850, note.) In New-York, grand larceny is the felonious taking of personal property of the value of more than twenty-five dollars. 2 *Rev. St.* [679,] 566, § 63.

GRAND SERJEANTY. [L. Fr. *graund serjeantie;* L. Lat. *magna serjeantia* or *serjanteria*, or *magnum servitium.*] In English law. A species of tenure *in capite*, (called, though improperly, a species of knight service,) whereby the tenant was bound, instead of serving the king generally in his wars, to do some special honorary service to the king in person; as to carry his banner, his sword, or the like, or to be his butler, champion, or other officer, at his coronation. 2 *Bl. Com.* 73. *Litt.* sect. 153. *Britt.* c. 66. *Fleta*, lib. 2, c. 4. 1 *Steph. Com.* 188. It was called *grand* serjeanty, as well in respect of the excellency

and greatness of the person to whom it was to be done, as of the honor of the service itself. *Co. Litt.* 105 b. The services of this tenure are still reserved by the statute 12 Car. II. c. 24, though the tenure, in other respects, is converted into free socage. 1 *Steph. Com.* 197, 198. 1 *Crabb's Real Prop.* 591, 592, § 747.

GRANGE. L. Fr. and Eng. [L. Lat. *grangia, grangea.*] A building where corn or grain is kept and stored; a barn or granary. *Co. Litt.* 5 a. *Spelman*, voc. *Granarium. Reg. Orig.* 289 b.

The term also includes other outbuildings necessary for husbandry, as stables for horses, stalls for oxen, and other animals, &c. *Id. ibid. Lyndewode, Prov. Angl.* lib. 2, tit. *De judiciis*, c. *Item omnes. Spelman.* It is used, in England, as an ordinary term for a farm-yard or farmery. *Brande.*

GRANGEA, *Grangia.* L. Lat. In old English law. A grange; a barn where grain is threshed and kept. *Fleta*, lib. 2, c. 82. *Reg. Orig.* 289 b. *Stat. Westm.* 2, c. 39. *Spelman*, voc. *Granarium.* See *Grange.*

GRANGIARIUS, *Grangerus.* L. Lat. In old English law. A granger, or grange-keeper. *Fleta*, lib. 2, c. 82, § 1. *Cowell.*

GRANT. L. Fr. Great. *Desuth le grant seal le roy;* under the great seal of the king. *Stat. Conf. Cart.* 25 Edw. I. *in not. La* grant *chartre des franchises de Engleterre. Art. sup. Chart.*

GRANT. [L. Lat. *concessio.*] In a large sense—the passing of a thing from one person to another. In this sense, it comprehends feoffments, bargains and sales, gifts, leases, &c., for he that gives or sells grants also. *Shep. Touch.* 228. Story, J. 4 *Mason's R.* 69.

In a more strict and proper sense—a species of common law conveyance, appropriate to the transfer of incorporeal hereditaments, (as rents, &c.) and of estates in expectancy, (as reversions and remainders,) in corporeal hereditaments, of which no livery, (that is, delivery,) can be made. 2 *Bl. Com.* 317. 1 *Steph. Com.* 474. Hence these hereditaments and estates are said to *lie in grant*, while corporeal hereditaments in possession are said to *lie in livery. Id. ibid. Co. Litt.* 172 a. *Shep. Touch*, 228. *Watkins' Conv.* 193. 4 *Kent's Com.* 490. The appropriate and operative words of a grant are, "have given and granted," (anciently, *dedi et concessi.*) 2 *Bl. Com. ub. sup.* 1 *Steph. Com. ub. sup.*

In the United States, the term *grant* continues, in general, to be specifically applied to the conveyance of incorporeal hereditaments, and to letters patent from government. In New-York, however, by the Revised Statutes, this ancient and distinctive meaning of the word has been abrogated, and deeds of bargain and sale, and of lease and release, including all conveyances of the inheritance or freehold, are declared to be deemed *grants.* 1 *Rev. Stat.* [738,] 731, §§ 137, 138, 142. 4 *Kent's Com.* 491, 492. So, in Masachusetts, the term *grant* in a statute, means the transfer of lands or houses by deed or other effectual conveyance, and does not apply exclusively to incorporeal hereditaments. 2 *Hilliard's Real Prop.* 297. So, in New-Hampshire and Maine. *Id. ibid.* See *United States Digest*, Grant.

GRANT OF PERSONAL PROPERTY. A method of transferring personal property, distinguished from a gift by being always founded on some consideration or equivalent. 2 *Bl. Com.* 440, 441. Its proper legal designation is an *assignment*, or *bargain and sale.* 2 *Steph. Com.* 102.

To GRANT. [L. Lat. *concedere.*] An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases. See *Grant, Bargain and Sale, Lease.* According to Lord Coke, the word *concessi* (I have granted) may amount to a grant, a feoffment, a gift, a lease, a release, a confirmation, a surrender, &c.; and it is in the election of a party to use it to which of these purposes he will. *Co. Litt.* 301 b. It is the general operative word of conveyance in New-York. 4 *Kent's Com.* 491. It was formerly held, in England, to amount to a covenant in law. See *Concessi.* But by a late act of parliament, it is declared not to imply any covenant in law in respect of any tenements or hereditaments, except in cases where, by act of parliament, it is declared that it shall have such effect. *Stat.* 8 & 9 *Vict.* c. 10, s. 6. In Pennsylvania, the words "grant, bargain and sell," in a conveyance, have been held not to amount to a general warranty, but merely to a covenant that the grantor has not done any act, nor created any incumbrance whereby the estate granted by him may be defeated. 2 *Binney's R.* 95. And the same rule prevails in Delaware and Missouri. *Holthouse's Law Dict.* (Am. ed.)

See 2 *Hilliard's Real Prop.* 365. In Mississippi it is otherwise. See 26 *Mississippi R.* 599.

GRANTEE. [L. Lat. *concessus.*] The person to whom a grant is made.

GRANTOR. [L. Lat. *concessor.*] The person by whom a grant is made.

GRANTZ, *Graunts, Grauntez, Graints.* L. Fr. Grandees, or great men. *Parl. Rot.* 6 *Edw.* III. n. 5, 6. *Kelham.*

GRAPHIA. L. Lat. [from Gr. γραφη.] In old European law. A writing. *Spelman.*

The office or territorial jurisdiction of a *graphio* or *grafio.* *Id.* See *Grafio.*

GRASS-HEARTH. [q. d. *graze earth.*] In old records. The grazing or turning up the earth with a plough. The name of a customary service for inferior tenants to bring their ploughs, and do one day's work for their lords. *Kennett's Par. Ant.* 496, 497. *Cowell.*

GRASSUM. See *Gressume.*

GRATIS. Lat. In old English law. Freely; gratuitously; without fee. *Mag. Cart.* 9 Hen. III. c. 26. *Id. Johan.* c. 35. The original articles (c. 26) have *liberè.*

GRATIS DICTUM. Lat. A voluntary assertion; a statement which a party is not legally bound to make, or in which he is not held to precise accuracy. 2 *Kent's Com.* 486. 6 *Metcalf's R.* 260.

GRATUITOUS. [Lat. *gratuitus*, from *gratis*, freely.] Without valuable or legal consideration. A term applied to deeds of conveyance. See *Gift.*

In old English law. Voluntary; without force, fear or favor. *Bract.* fol. 11, 17.

GRAUND, *Graunde.* L. Fr. [from Lat. *grandis*, great.] Great; high. *A la* graunde *grevaunce;* to the great grievance. *Britt.* c. 21. *Graund treson;* great or high treason. *Id.* c. 8.

GRAUNT, *Graunte.* L. Fr. Great. *Graunt durese;* great hardship. *Yearb.* P. 2 Edw. II. 39.

GRAUNTE. L. Fr. Grant. *Britt.* c. 30.

GRAVA, *Grova.* L. Lat. In old English law. A grove; a small wood; a coppice or thicket. *Co. Litt.* 4 b. *Cowell. Blount. Spelman.*

A thick wood of high trees. *Dugdale's Warwickshire*, 503 b. *Blount.*

GRAVAMEN. L. Lat. [from *gravare*, q. v.] In old English law. Injury; oppression. *Ad* gravamen *tenentis sui. Fleta*, lib. 2, c. 47, § 10.

A grievance, or thing complained of; the essence of a complaint. A cause of complaint. Lee, C. J. 1 *W. Bl.* 25.

GRAVARE. Lat. In old English law. To grieve or aggrieve; to injure or oppress. *Stat. Westm.* 2, c. 36, 37. *Gravati;* aggrieved. *Id. ibid.*

GRAVIS. Lat. Grievous; great. *Ad* grave *damnum;* to the grievous damage. 11 *Co.* 40.

GRAVIUS, *Gravia.* L. Lat. In old European law. A grave; a chief magistrate or officer. A term derived from the more ancient *grafio*, and used in combination with various other words, as an official title in Germany; as *Margravius, Rheingravius, Landgravius*, &c. *Spelman*, voc. *Grafio.*

GR'E. A contraction of *Grave.* 1 *Inst. Cl.* 10.

GREAT TITHES. In English ecclesiastical law. Tithes of corn, peas and beans, hay and wood. 2 *Chitt. Bl. Com.* 24, note. 3 *Steph. Com.* 127.

GREE, *Gre.* L. Fr. Satisfaction; contentment. *A faire gree;* to make satisfaction. *Artic. sup. Chart.* c. 12. *Soit* gre *maintenant* fait. *Id.* c. 2. *Fra* gree *al defendaunt;* shall make satisfaction to the defendant. *Britt.* c. 25. *Cowell.*

Agreement; will; consent. *Per le* gree, *ou sans le* gree; by the consent, or without the consent. *Stat. Westm.* 1, c. 1. See *Id.* c. 22. *Bon* gree *ou mal* gree *le tenant;* whether the tenant be willing or unwilling. *Britt.* c. 41. *De lour gree;* of their own accord. *Id.* c. 27.

Cowell treats this as an English word, and it may have anciently been used as such; but the passages above quoted show it to be French. It seems to be the root of the word *agree.*

GREEK. An important language in law, being the language of a large portion of the Corpus Juris Civilis. The Novels of Justinian and his successors are, almost without exception, written in Greek; several of the constitutions in the Code are in the same language; and extracts from Greek writers, with numerous detached words and phrases, are scattered through the Pandects. The compilation called the Basilica, (q. v.) embracing the whole of Justinian's collections, is also written in the same language.

This Greek of the civil law, however, is, to a great extent, a corrupt and barbarous dialect, resembling in its uncouth combinations those varieties of the Latin and

French, known as Law Latin and Law French, which were for so long a period the languages of the law and practice of England, and obviously framed on the same principles. Its peculiarities are (1) the conversion of Latin words into Greek, by simply writing them in Greek letters; (2) the mixture of Latin and Greek words together; and (3) the formation of new words by giving to Latin words Greek terminations.

Of the first of these peculiarities, (Latin in Greek letters,) Sir William Blackstone has given a few examples in his commentaries. 3 *Bl. Com.* 321. The following may be added:

δοῦξ, (*dux.*) *Cod.* 1. 46. 5. *Nov.* 103, c. 2, 3.
εξηρεδάτους, (*exheredatus.*) *Nov.* 1, c. 1, § 4.
κάσσου, (*casu.*) *Nov.* 2, c. 4.
κονσουλάριος, (*consularis.*) *Nov.* 8.
ληγάτα, (*legata.*) *Cod.* 6. 4. 18.
μοδεράτωρ, (*moderator.*) *Nov.* 28, tit.
ούγκία, (*uncia.*) *Nov.* 18, in tit.
ούσούφρουκτος, (*usufructus.*) *Nov.* 22, c. 33.
ταβουλαρίος, (*tabularius.*) *Nov.* 1, c. 2, § 1.
πραιπόσιτος, (*præpositus.*) *Cod.* 11. 7. 16.
φάκτοις, (*factis.*) *Nov.* 68, in tit.

The following present examples of Greek and Latin words, intermixed:

τοῦ mortis causâ δωρεὰν. *Nov.* 1, c. 1, § 4.
εἴτε bona gratia σταλέντος. *Nov.* 22, c. 30.
εἰ μὴ κωλύσειε ὁ testator. *Nov.* 18, in tit.

And the following exhibit the still more barbarous combinations produced by adding to Latin words Greek terminations:

abstinarευειν. *Nov.* 89, c. 3.
calumniας. *Nov.* 49.
consistorianῶν. *Nov.* 44, c. 2. Nov. 105.
damnatον. *Nov.* 12.
emancipationος. *Nov.* 81, pr.
intercessionος. *Nov.* 61, c. 1.
latercul ον. *Nov.* 8, c. 1.
legis actionας. *Nov.* 81, pr.
privatων. *Nov.* 8, c. 7.
Quintος Mutiος Scævolας. *Nov.* 22, c. 43.
sportulοις. *Nov.* 82, c. 7.

In contrast with the practice of writing Latin words in Greek characters, may be mentioned the still more common one of writing Greek words in Latin letters: such as *chirographum*, *grammatophylacium*, *ergolabi*, *idiochira*, *irenarcha*, *logographi*, *nauclerus*, and others. These words are of constant occurrence throughout the *Corpus Juris Civilis*, and present additional evidences of the extent to which the law of the Roman empire has been indebted to the language of Greece.

GREEN CLOTH. In English law. A board or court of justice held in the counting-house of the king's [or queen's] household, and composed of the lord steward and inferior officers. It takes its name from the green cloth spread over the board at which it is held. *Wharton's Lex. Cowell*, voc. *Counting-house.*

GREENHEW, *Grenehugh.* In forest law. The same as *vert*, (q. v.) *Manwood*, part. 2, c. 6, nu. 5. *Termes de la Ley.*

GREEN WAX. [L. Lat. *viridis cera.*] In old English law. The estreats of issues, fines and amerciaments in the exchequer, delivered out to the sheriffs under the seal of that court made in *green wax*, to be levied by them in their several counties. *Stat.* 42 *Edw.* III. c. 9. *Stat.* 7 *Hen.* IV. c. 3. *Termes de la Ley. Cowell.* 4 *Inst.* 107. See *Estreat.*

GREEVE. L. Fr. Grievous. *Stat. Westm.* 1, c. 5. See *Greve.*

GREGORIAN CODE. The code or collection of constitutions made by the Roman jurist Gregorius. See *Codex Gregorianus.*

GREINDER. L. Fr. Greater. *Greinder ou meinder;* greater or less. *Litt.* sect. 120. *Greignour* and *greynour* are old forms of the word. *Kelham.*

GREMIUM. Lat. Bosom. *De* gremio *mittere;* to send from the bosom. A term formerly used to denote the sending of a person as a delegate from a conventual church, monastery, or other body of persons; *à latere legere* being the proper phrase where the delegate was sent by an individual. *Spelman.*

GRESSUME, *Gressum.* In English law. A customary fine due from a copyhold tenant on the death of the lord. 1 *Stra.* 654. 1 *Crabb's Real Prop.* 115, § 778. Called also *grossome*, (q. v.) and in Scotch law *grassum. Bell's Dict.* voc. *Teinds.*

This word seems to be a derivation or corruption of the Lat. *ingressus*, (entry.) *Et dant domino de fine pro* ingressu *suo habendo in dicto messuagio;* and they give to the lord as a fine for having his entry in the said messuage. *Chartuary*, quoted *Blackst. L. Tr.* 108, note.

GREVA. L. Lat. [Fr. *greve.*] In old records. The sea-shore, sand or beach. 2 *Mon. Angl.* 625. *Cowell.*

GREVE, *Gereve.* Sax. [from Sax. *gerefa*, q. v.] The contracted form of *gerefa* or *grefa*, used in the time of Edward the

Confessor, to denote a chief magistrate or lord, (*præfectus, præpositus.*) *LL. Edw. Conf.* c. 35. *Spelman*, voc. *Grafio.* Answering to the Germ. *grave*, from *grafio*, (q. v.) Afterwards still further shortened by the Anglo-Normans into *reve* or *reeve*, which continues to be used in English law. *Spelman, ub. sup. Cowell. Blount.* There were various compounds of this word, as *shire-greve*, or *shire-reve*, the chief officer of the shire or county, now *sheriff; port-greve*, the chief magistrate of a port; *led-greve*, of a lathe; *hundred-greve*, of a hundred; *tun-greve*, of a town or vill, and the like. *Spelman, ub. sup.* See *Reve, Reeve.*

GREVE, *Greeve, Gref.* L. Fr. [from Lat. *gravis.*] Grievous; severe. *Et serra en le* greve *mercy le roy;* and shall be in the grievous mercy of the king; shall be heavily amerced. *Stat. Westm.* 1, c. 15.

GREVEMENT. L. Fr. Grievously; heavily, or severely. *Soit* grevement *rente;* he shall be grievously fined. *Stat. Westm.* 1, c. 16. See *Britt.* c. 30.

GREVER. L. Fr. To hurt or harm. *Britt.* c. 22.

To prejudice or injure. *Id.* cc. 28, 39.

GRIEVED. Aggrieved. 3 *East*, 22.

GRITH. Sax. Peace.

GRITHBRECH. Sax. [from *grith*, peace, and *brych*, a breach or breaking.] In Saxon and old English law. A breach or violation of the peace. *In causis regiis* grithbrech, 100 *sol.—emendabit. LL. Hen.* I. c. 36. *Spelman.* Sometimes called *frithbrech. LL. Ethelred.* c. 6.

GRITHSTOLE. Sax. [from *grith*, peace, and *stol*, a seat or chair.] In Saxon law. A seat, chair, or place of peace; a sanctuary; a stone within a church gate, to which an offender might flee. So called in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon:

> And within yair Kyrke yate,
> At ye stan yat *Grithstole* hate.

Skene writes the word *girtholl.*

GROCER. In old English law. A merchant or trader who *engrossed* all vendible merchandise; an engrosser. *Stat.* 37 *Edw.* III. c. 5. See *Engrosser.*

GRONNA. L. Lat. In old records. A deep hollow or pit; a bog or miry place. *Cowell.* Spelman doubts as to the meaning of this word.

GROS. L. Fr. Substance. *En gros;* in substance. *Britt.* c. 22.

Substantial; material; essential. *Sur ascun* gros *point;* upon any material point. *Id.* c. 98.

Great; large. *Gros mereme;* large wood. *Yearb.* P. 7 Hen. VI. 47.

The whole of a thing. *Mettes le* gros *avant le parcel;* put the whole before the part. T. 5 Edw. III. 29.

GROSS. [L. Fr. *grosse, gros;* L. Lat. *grossus.*] Great or large. See *infra.*

In large quantities. *In grosso;* in the gross, by the wholesale. See *Grossus.*

Whole or entire; absolute or independent; the opposite of *appendant. Cowell.* See *Common in gross.*

GROSS AVERAGE. [L. Lat. *avaria grossa.*] In maritime law. That kind of average which falls upon the *gross* amount of ship, cargo and freight. 3 *Kent's Com.* 232. More commonly termed *general* average, (q. v.)

GROSS NEGLIGENCE or NEGLECT. [Lat. *magna*, or *crassa negligentia.*] In the law of bailment. The want of slight diligence. *Story on Bailm.* § 17. The want of that care which every man of common sense, how inattentive soever, takes of his own property. *Jones on Bailm.* 118. 2 *Kent's Com.* 560.—The omission of that care which even inattentive and thoughtless men never fail to take of their own property. Clifford, J. 20 *Howard's R.* 367. Gross negligence imports not a malicious intention or design to produce a particular injury, but a thoughtless disregard of consequences; the absence rather than the actual exercise of volition with reference to results. Sanford, J. 23 *Connecticut R.* 443. And see 16 *Howard's R.* 469.

GROSSA. L. Lat. In old English law. A groat. *Cowell.*

A gross. 1 *Mon. Angl.* 118. *Towns. Pl.* 173.

GROSSE, *Gros.* L. Fr. Great; large. *Grosses dismes;* great tithes. *Yearb.* P. 5 Edw. III. 18.

GROSSE AVANTURE. Fr. In French marine law. The contract of bottomry. *Ord. Mar.* liv. 3, tit. 5. See *Bottomry.*

GROSSE BOIS, *Gros bois, Grosse boys, Grosse boyes.* L. Fr. Great or large wood; timber. *Cowell.* 2 *Inst.* 642. *Ambl.* 133. *Gros bois* is not merely *haut bois* as distinguished from *sub-bois*, but is a distinct subject from both. Lord Ellenborough, 4 *M. & S.* 136.

GROSSEMENT. L. Fr. Largely, greatly. *Grossement enseint;* big with child. *Plowd.* 76. 2 *Mod.* 8.

GROSSOME. In old English law. A fine, or sum of money paid for a lease. *Plowd.* 270, 271. Supposed to be a corruption of *gersuma*, (q. v.) See *Gressume.*

GROSSUS. L. Lat. In old English law. Large. *Grossus piscis;* large or great fish. *Bract.* fol. 14, 120. *Grossas quercus;* large oaks. *Fleta*, lib. 1, c. 24, § 8. *Grossi arbores;* great trees or wood. *Cro. Eliz.* 244.

In large quantities. *Tam in grosso, quam in retallia;* as well by the wholesale as by retail. *Reg. Orig.* 184.

Important or material. *Stat. Westm.* 2, c. 30.

Excessive; extreme. *Ignorantia grossa;* gross ignorance. *Fleta*, lib. 4, c. 17, § 11.

GROUND ANNUAL. In Scotch law. A ground rent payable out of the ground before the tenement in a burgh is built; used in contradistinction to the term *feu-annual. Scotch Dict. Skene de Verb. Sig.* voc. *Annuell.*

GROUND RENT. Rent paid for the privilege of building on another's land. *Webster.* A rent paid by a lessee who has built on the *ground* leased; and thus distinguished from the rent paid to him by the tenants of the *buildings.**

In Pennsylvania, this term is used to denote a fee farm rent. 1 *Hilliard's Real Prop.* 239.

GROVA, *Grava.* L. Lat. In old records. A grove. *Spelman*, voc. *Grava.*

GROWING CROPS of grain, and other annual productions raised by cultivation of the earth and industry of man, are personal chattels. 1 *Denio's R.* 550. Growing trees, fruit or grass, and other natural products of the earth, are parcel of the land. *Id. ibid.*

GROWING, (WOOD,) although it sounds in the present tense, to be taken in the future, unless stated to be (*nunc*) now growing. 3 *Leon.* 54, 55. *Id.* 29, 30.

GRUME. L. Fr. Grain. *Kelham.*

GUADAGIUM, *Guidagium.* L. Lat. [Fr. *guydage;* from Sax. *wæg*, way; quasi *waidagium.*] In old law. Guidage or conduct; the compensation given therefor. That which is given for safe conduct through another's territory. *Spelman. Prateus.*

GUADIA, *Wadia.* L. Lat. In old European law. A pledge. *Spelman. Calv. Lex.*

A custom. *Spelman.*

GUARANTEE is used both as a noun and verb, as another form of *guaranty*, (q. v.)

GUARANTOR. A person who undertakes to guaranty; a warrantor; a surety.

GUARANTY, *Guarantee.* L. Fr. and Eng. A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who, in the first instance, is liable to such payment or performance. *Fell on Guaranties*, 1. 3 *Kent's Com.* 121.—An engagement to be responsible for the debts or duty of a third person, in the event of his failure to fulfil his engagement. *Story on Contracts*, § 852. The primary meaning of guaranty is an undertaking to pay the debt of another in case he does not pay it. 24 *Pick. R.* 250, 252. See *United States Digest*, Guaranty.

This word seems to be essentially the same with *warranty;* being scarcely distinguishable from *garrantie* and *garranty*, (qq. v.) the old French forms of that word. *Guarantie* is the form used by Mr. Fell in his Treatise.

To GUARANTY (or GUARANTEE.) [L. Lat. *guarentare, guarentisare.*] To become responsible for the payment of money or the performance of a duty by another person; to warrant the payment of a debt or performance of a duty by another, who is primarily and properly liable to pay or perform it; to undertake that a person shall pay a certain debt or perform a certain duty to another, *or*, in case of failure on his part, that the party guaranteeing will himself pay the debt, or answer for the default. The obligation of a guaranty is essentially in the *alternative*, as is noticed by Britton in his definition of *garaunter*, (to warrant.) *Britt.* c. 75. See *Guaranty.*

GUARDIA, *Wardia, Warda.* L. Lat. [from Fr. *garder*, to keep.] Ward; custody; safe keeping; protection. *Spelman. Feud. Lib.* 1, tit. 2. See *Ward.*

GUARDIAN, *Gardian, Gardeyne.* [from Fr. *gardein*, (q. v.;) L. Lat. *gardianus, guardianus;* Lat. *custos, tutor, curator.*] A keeper or protector; one who has the charge or custody of any person or thing. *Cowell. Spelman*, vocc. *Guardianus, Guardia.*

In a stricter sense, one who has or is entitled to the custody of the person or property of an infant; answering to the *tutor* and *curator* of the civil law. *Cowell*, voc. *Gardeyne.* 1 *Bl. Com.* 460.

GUARDIAN BY NATURE. The father, and, on his death, the mother of a child. 1 *Bl. Com.* 461. 2 *Kent's Com.* 219. This guardianship extends only to the custody of the person of the child, to the age of twenty-one years. *Id. ibid.* Sometimes called *natural* guardian, but this is rather a popular than a technical mode of expression. 2 *Steph. Com.* 337. Guardianship by nature, in the correct and technical meaning of the term, is that which belongs to the ancestor in respect of his heir apparent, male or female. *Id. ibid. Harg. Co. Litt.* Notes 63—71, lib. 2.

GUARDIAN FOR NURTURE. The father, or, at his decease, the mother of a child. 2 *Steph. Com.* 338. This kind of guardianship extends only to the person, and determines when the infant arrives at the age of fourteen. *Id. ibid.* 2 *Kent's Com.* 221. 1 *Bl. Com.* 461. Supposed to be obsolete in the United States. 2 *Kent's Com. ub. sup.*

GUARDIAN IN SOCAGE. A species of guardian who has the custody of the infant's lands as well as of his person, until the age of fourteen. This kind of guardianship springs wholly out of tenure, and applies only to lands which the infant acquires by descent. By the common law, it devolves to the next of blood to whom the inheritance cannot possibly descend, and for this reason it is supposed that it can hardly be said to exist in this country. 1 *Bl. Com.* 461, 462. 2 *Steph. Com.* 338. 2 *Kent's Com.* 221, 223.

GUARDIAN BY STATUTE, or *Testamentary Guardian.* A guardian appointed for a child by the deed or last will of the father, and who has the custody both of his person and estate until the attainment of full age. This kind of guardianship is founded on the *statute* of 12 Car. II. c. 24, and has been pretty extensively adopted in this country, with the exception of New-England. 1 *Bl. Com.* 462. 2 *Steph. Com.* 339, 340. 2 *Kent's Com.* 224—226. See *United States Digest*, Guardian and Ward.

GUARDIAN BY APPOINTMENT OF THE COURT OF CHANCERY. The most important species of guardian in modern law, having custody of the infant until the attainment of full age. It has, in England, in a manner superseded the guardian in socage, and in the United States the guardian by nature also. 2 *Steph. Com.* 341. 2 *Kent's Com.* 226. Under this title are included guardians appointed by all courts having chancery or equity powers, as orphans' courts, surrogates' courts, courts of probate and the like. *Id. ibid.* note. See *United States Digest*, Guardian and Ward.

GUARDIAN AD LITEM. A guardian appointed by a court of justice to prosecute or defend for an infant, *in* any *suit* to which he may be a party. 2 *Steph. Com.* 342. Most commonly appointed for infant *defendants;* infant plaintiffs generally suing by *next friend.* See *Next friend, Prochein ami.* This kind of guardian has no right to interfere with the infant's person or property. 2 *Steph. Com.* 343. See *Ad litem.*

GUARDIAN (or GARDEYNE) DE L'EGLISE. L. Fr. A churchwarden, (q. v.) *Cowell.*

GUARDIAN (or GARDEYNE) OF THE PEACE. See *Conservator of the peace.*

GUARDIAN OF THE CINQUE PORTS. See *Warden of the Cinque Ports.*

GUARDIAN OF THE POOR. An officer appointed, in England, to act in lieu of an overseer. *Wharton's Lex.*

GUARDIAN OF THE SPIRITUALTIES. [L. Lat. *custos spiritualium.*] In English ecclesiastical law. The person to whom the spiritual jurisdiction of a diocese is committed, during the vacancy of the see. *Stat.* 25 *Hen.* VIII. c. 21. *Cowell. Blount. Termes de la Ley.*

GUARDIAN OF THE TEMPORALTIES. [L. Lat. *custos temporalium.*] In English ecclesiastical law. The person to whose custody a vacant see or abbey was committed by the king, who, as steward of the goods and profits thereof, was to give an account to the escheator, and he into the exchequer. *Tomlins.*

GUARDIANUS. L. Lat. A guardian, keeper, or warden. *Spelman*, voc. *Guardia.* 3 *Salk.* 176. *Guardianus prisonæ de le Fleet;* Warden of the Fleet. 3 *How. St. Trials*, 11, 12. More commonly written *Gardianus*, (q. v.)

GUARENTISARE. *Garentizare.* L. Lat. To warrant. *Spelman.* More commonly written *Warrantizare*, (q. v.)

GUARNIMENTUM. L. Lat. [from Fr. *garnement.*] In old European law. A provision of necessary things. *Spelman.* A furnishing or garnishment.

GUARRA. L. Lat. War. See *Guerra.*

GUBERNATOR. Lat. In Roman law. The pilot or steersman of a ship. 2 *Peters'*

Adm. Dec. Appendix, lxxxiii. *Molloy de Jur. Mar.* 243.

GUERPI, *Guerpy.* L. Fr. Abandoned; left; deserted. *Britt.* c. 33.

GUERRA, *Guarra, Gwerra, Werra.* L. Lat. [from Sax. *gar*, a weapon.] In old English law. War, either public or private. *Spelman*, voc. *Guarra. In tempore guerræ;* in time of war. *Mag. Chart.* 1 Hen. III. c. 34. The charters of John, (c. 41,) and of 9 Hen. III. (c. 30,) have *gwerræ. Si tempore* guerræ *illata fuerit violentia, statim post* guerram *reclamet*, &c. if the violence was offered in time of war, immediately after the war he may reclaim, &c. *Bract.* fol. 16 b. See *Feud. Lib.* 2, tit. 27, § 18; tit. 28, § 1.

GUERRE, *Gurre, Gwer, Gere.* L. Fr. War. *Kelham.*

GUERROIER, *Guerryer.* L. Fr. To wage war; to go to war with. *Kelham.*

GUERRINUS. L. Lat. [from *guerra*, war.] Of, or relating to war; warlike; at war; hostile. *Spelman*, voc. *Guerra. Mag. Cart.* 1 Hen. III. c. 34. The charters of John, (c. 41,) and of 9 Hen. III. (c. 30,) have *guerriva* in this passage.

Tempus guerrinum; time of war. *Fleta*, lib. 5, c. 14, § 4.

GUEST. [Sax. *gest, gust.*] A lodger or stranger in an inn. *Jacob.*—A traveller or wayfarer, who takes temporary lodgings at an inn.* To be a *guest*, a person must be a *traveller;* an inhabitant or townsman who resides permanently at an inn, is a *boarder.* Redfield, C. J. 26 *Vermont R.* 343. See 26 *Alabama R.* 377. Goldthwaite, J. *Id.* 378.

One becomes a *guest*, by going to an inn for mere temporary refreshment, either food or drink. 5 *Term R.* 273. 5 *Barbour's R.* 560. The length of time he remains at the inn is not important, if he remain there in the transitory character of a guest. Redfield, C. J. 26 *Vermont R.* 332. As to the liability of an inn-keeper for the goods of his guest, see 2 *Kent's Com.* 592—597, and notes.

In the case of McDaniels *v.* Robinson, (26 *Vermont R.* 316,) it was held that the relation of *guest* is created by a person's putting his horse at an inn; and it will be extended to all his goods left at the inn, by his taking a room, and taking some of his meals at the inn, and lodging there a portion of the time. And that it is not necessary that the traveller should take all his meals at the inn, or lodge there every night, in order to create the relation or constitute himself a guest.

GUEST TAKER, or GIST TAKER. In old English law. An agister. See *Agistator.*

GUET. In old French law. Watch. *Ord. Mar.* liv. 4, tit. 6.

GUIA. Span. [from Lat. *via?*] In Spanish law. The right of way for narrow carts. *White's New Recop.* b. 2, tit. 6, § 1. Called *carrera. Id.* note.

GUIDAGE, *Guydage.* [L. Lat. *guidagium.* In old law. That which was given for safe conduct through a strange territory, or another's territory. *Cowell.*

The office of guiding of travellers through dangerous and unknown ways. 2 *Inst.* 526.

GUIDON. An old French work on insurance, more commonly known as *Le Guidon*, (q. v.)

GUIFARE. *Guiphare, Huifare, Wifare.* L. Lat. and Lomb. In Lombardic law. To take possession or seisin of land, by fixing a staff in it, or making use of any other symbol of the act. *Spelman.*

GUILD. [L. Lat. *gilda.*] A company or corporation. See *Gild.*

GUILDHALL. The *hall* or place of meeting of a *guild*, or gild. See *Gildhalla.*

The place of meeting of a municipal corporation. 3 *Steph. Com.* 173, note. The mercantile or commercial *gilds* of the Saxons are supposed to have given rise to the present municipal corporations of England, whose place of meeting is still called the *Guildhall. Id. ibid.*

GULD. Sc. In old Scotch law. A noxious herb growing among corn. *Skene de Verb. Sign.* voc. *Maneleta.*

GULE OF AUGUST. [L. Lat. *gula Augusti;* L. Fr. *goule de August.*] In old English law. The first of August; the same with St. Peter's day *ad vincula. Stat. Westm.* 2, c. 30. *Stat.* 27 *Edw.* III. st. 3. *Spelman. Cowell.*

GURGES. Lat. In old English law. A gulf, or deep pit of water. *Co. Litt.* 5 b. The same, according to Lord Coke, with a *gors*, or wear; in Domesday, *guort* or *gort. Id. ibid.* A place for taking fish. *Reg. Orig.* 103 b. *F. N. B.* 95 A. *Vaugh.* 108.

GUST, *Gest.* Sax. [Lat. *hospes.*] In old English law. A guest; a person who lodged a second night with another was so called, among the ancient Saxons. *Item secundum antiquam consuetudinem, dici po-*

terit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, quia prima nocte dici poterit uncuth, *secunda vero* gust, *tertia nocte,* hogchenehyne; also, according to ancient custom, it may be said of the family of one who has been lodged with another for three nights, that on the first night he may be called *uncuth*, (unknown,) on the second night *gust*, (or guest,) on the third night, *hogchenehyne*, (a domestic, or one of the household.) *Bract.* fol. 124 b.

GUTI, *Jutæ.* L. Lat. Jutes; one of the three nations who migrated from Germany to Britain at an early period. According to Spelman, they established themselves chiefly in Kent, and the Isle of Wight.

GUTTER. [L. Lat. *guttura.*] The diminutive of a sewer. *Callis on Sewers,* [80,] 100.

GUTTURA. L. Lat. In old English law. A gutter, or drain. *Reg. Orig.* 104 b.

GWABR MERCHED. Brit. Maid's fee. A payment or fine made to the lords of some manors in England, upon the marriage of their tenant's daughters, or otherwise on their committing incontinency. *Cowell. Blount.* See *Marchet, Lairwite.*

GWALSTOW. Sax. [from *gwal*, a gallows, and *stow*, a place; L. Lat. *gwalstowum.*] In old English law. A place of execution, (*locus occidendorum.*) *LL. Hen.* I. c. 11. *Spelman.*

GWAYF. The same as *waif*, (q. v.) *Par. Ant.* p. 196. *Cowell.*

GWELI. Brit. A gavel or well. 13 *Mees. & W.* 521.

GWERRA. L. Lat. In old English law. War. See *Guerra.*

GYLOUR. L. Fr. A deceiver. *Fet Assaver*, § 16.

GYLTWITE. Sax. In Saxon law. A fine, compensation or amends for a trespass or fraud. *Cowell. Blount.*

GYSARUM. In old Scotch law. A hand-axe. *Skene de Verb. Sign.*

GYVU, *Gyu, Gieu, Geu.* L. Fr. A Jew. *Et qe nul* Gyvu, *de ceo jour en avant;* and that no Jew, from this day forward. *Provis. de Judaismo,* 53 *Hen.* III. *Blount.*

END OF VOLUME I.

A

LAW DICTIONARY

AND

GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL

TERMS OF THE COMMON AND CIVIL LAW,

TOGETHER WITH TRANSLATIONS AND EXPLANATIONS OF THE VARIOUS

TECHNICAL PHRASES

IN DIFFERENT LANGUAGES, OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND STANDARD TREATISES.
EMBRACING, ALSO, ALL THE PRINCIPAL COMMON AND CIVIL

LAW MAXIMS.

COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY, AND ADAPTED TO THE

JURISPRUDENCE OF THE UNITED STATES;

WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.

BY

ALEXANDER M. BURRILL,

COUNSELLOR AT LAW.

AUTHOR OF A TREATISE ON VOLUNTARY ASSIGNMENTS, A TREATISE ON CIRCUMSTANTIAL EVIDENCE, AND A TREATISE ON PRACTICE, &C.

Vocum origines rationesque [Labeo] percalluerat; eaque præcipue scientia ad enodandos plerosque juris laqueos utebatur.—A. Gellius, Noct. Att. xiii. 10.

SECOND EDITION.

VOL. II.

NEW-YORK:

JOHN S. VOORHIES, LAW BOOKSELLER AND PUBLISHER,

No. 20 Nassau Street.

MDCCCLX.

Entered according to Act of Congress, in the year 1850, by
ALEXANDER M. BURRILL,
In the Clerk's office of the District Court of the United States for the Southern District of New-York.

Entered according to Act of Congress, in the year 1860, by
ALEXANDER M. BURRILL,
In the Clerk's office of the District Court of the United States for the Southern District of New-York.

JOHN W. AMERMAN, LAW PRINTER,
47 CEDAR-STREET, N. Y.

A

LAW DICTIONARY

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H.

H is sometimes used in some Law Latin words in which it is more generally and properly omitted; thus, *Ostium* is sometimes written *Hostium; Coercio, Cohertio; Abundanti, Habundanti;* and the like. So, on the other hand, it is sometimes omitted where it should properly be used; thus, *Hutesium* occurs occasionally in the form *Utesium, Hypotheca* as *Ypotheca, Horreum* as *Orreum, Hordeum* as *Ordeum,* and the like.

HABE, (or HAVE.) Lat. A form of the salutatory expression *Ave,* (hail,) in the titles of the constitutions of the Theodosian and Justinianean codes. *Prateus. Calv. Lex. Spelman.* See *Have.*

HABEAS CORPUS. L. Lat. (You have the body.) The name given to a variety of writs, (of which these were anciently the emphatic words,) having for their object to bring a party before a court or judge. The common *capias* is, in this general sense, a *habeas corpus,* the writ in the original Latin commanding the sheriff to take the defendant, "so that you *have his body,*" &c., (*ita quod* habeas corpus *ejus,* &c.;) and, according to Mr. Reeves, it was originally so called. 2 *Reeves' Hist. Eng. Law,* 439. The term, however, is now exclusively used to designate a few special writs, employed in English and American practice, among which the writ to inquire into the cause of a person's imprisonment or detention by another, with the view to obtain his or her liberation, (technically called a *habeas corpus ad subjiciendum,*) is the most celebrated. See *infra.*

HABEAS CORPUS AD RESPONDENDUM. L. Lat. (You have the body, to answer.) In English practice. A writ which issues where one has a cause of action against another, who is confined by the process of some inferior court, in order to remove the prisoner, and charge him with this new action in the court above. 3 *Bl. Com.* 129. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 349.

HABEAS CORPUS AD FACIENDUM ET RECIPIENDUM. L. Lat. (You have the body, to do and receive.) In practice. A writ which issues out of any of the courts of Westminster Hall in England, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court; commanding the inferior judges to *produce the body* of the defendant, together *with* the day and *cause* of his caption and detainer; (whence the writ is frequently denominated a *habeas corpus cum causa,*) *to do and receive* whatsoever the king's [or queen's] court shall consider in that behalf. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694, and notes *ibid.* 1 *Tidd's Pr.* 404. A similar writ has been sometimes used in American practice. See *United States Digest,* Habeas corpus.

HABEAS CORPUS AD PROSEQUENDUM. L. Lat. (You have the body, to prosecute.) In English practice. A writ which issues when it is necessary to

remove a prisoner, in order to be tried in the proper jurisdiction wherein the fact was committed. 3 *Bl. Com.* 130. 3 *Steph. Com.* 694.

HABEAS CORPUS AD SATISFACIENDUM. L. Lat. (You have the body, to satisfy.) In English practice. A writ which issues when a prisoner has had judgment against him in an action, and the plaintiff is desirous to bring him up to some superior court, to charge him with process of execution. 3 *Bl. Com.* 129, 130. 3 *Steph. Com.* 693. 1 *Tidd's Pr.* 350.

HABEAS CORPUS AD SUBJICIENDUM. L. Lat. (You have the body, to submit to.) In practice. A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, [or person detained,] with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, to do, submit to and receive whatsoever the judge or court awarding the writ shall consider in that behalf. 3 *Bl. Com.* 131. 3 *Steph. Com.* 695. This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law. 3 *Bl. Com.* 129. 1 *Id.* 135. 1 *Steph. Com.* 135. It was a common law writ, but was confirmed and extended by the statute 31 Car. II. c. 2, commonly called the Habeas Corpus Act. *Crabb's Hist.* 525. In modern practice, it is extensively used as a means of obtaining the possession of the persons of women and infants, by parties claiming to be entitled to their legal custody. *Macpherson on Infants*, 152—163, part i. c. xv. See *United States Digest*, Habeas corpus.

HABEAS CORPUS AD TESTIFICANDUM. L. Lat. (You have the body, to testify.) In practice. A writ to bring a witness into court, when he is in custody at the time of a trial, commanding the sheriff to have his body before the court, to testify in the cause. 3 *Bl. Com.* 130. 2 *Tidd's Pr.* 809.

HABEAS CORPUS CUM CAUSA. L. Lat. (You have the body, with the cause.) In practice. Another name for the writ of *habeas corpus ad faciendum et recipiendum*, (q. v.) 1 *Tidd's Pr.* 348, 349.

HABEAS CORPUS ACT. The English statute of 31 Charles II. c. 2, providing the great remedy for the violation of personal liberty, by the writ of *habeas corpus ad subjiciendum*, and which is frequently considered as another *Magna Charta* of the kingdom. 3 *Bl. Com.* 135—137. 1 *Id.* 137. For a summary of its provisions, see 3 *Steph. Com.* 699, 702. This statute has been re-enacted or adopted, if not in terms, yet in substance and effect, in all the United States. 2 *Kent's Com.* 27, and note. *Id.* 28—31.

HABEAS CORPORA JURATORUM. L. Lat. (You have the bodies of the jurors.) In English practice. A compulsive process awarded against jurors in the Court of Common Pleas, commanding the sheriff to *have their bodies* before the court on the day appointed. It is the same with the *distringas*, issued in the Queen's Bench. 3 *Bl. Com.* 354. 3 *Steph. Com.* 590. 3 *Chitt. Gen. Pr.* 796, 797. See *Distringas juratores.*

Habemus optimum testem confitentem reum. We have the best witness—a confessing defendant. 1 *Phill. Evid.* 397. *Burr. Circ. Evid.* 496. "What is taken *pro confesso* is taken as indubitable truth. The plea of guilty by the party accused, shuts out all further inquiry. *Habemus confitentem reum* is demonstration, unless indirect motives can be assigned to it." Lord Stowell, 2 *Hagg.* 315.

HABENDUM. L. Lat. [L. Fr. *à aver.*] (To have.) In conveyancing. One of the eight formal and orderly parts of a deed, following immediately after the premises; so called from the Latin word *habendum*, with which it commenced, and literally translated and retained in modern deeds, in the clause beginning with the words "*To have* and to hold." Its original object was to determine the interest granted, or to lessen, enlarge, explain or qualify the premises; or, according to Lord Coke, to name again the feoffee, and to limit the certainty of the estate. 2 *Bl. Com.* 298. 4 *Kent's Com.* 468. *Co. Litt.* 6 a. *Hale's Anal.* sect. xxxv. *Shep. Touch.* 75. See *infra.* In modern deeds, the premises usually contain the specification of the estate granted, and hence the *habendum* has become in most cases a mere form; but where no estate is mentioned in the premises, the *habendum* continues to retain its original importance. 4 *Kent's Com.* 468. See *Shep. Touch.* (by Preston,) 76.

*** The following form of an ancient deed, from Bracton, will serve to illustrate the original use and importance of the *habendum*. *Sciant præsentes et futuri, quod*

ego talis, dedi et concessi, et hac præsenti cartâ meâ confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa: HABENDAM *et tenendam tali et hæredibus suis, generaliter vel cum coarctatione hæredum, liberè et quiete, &c.* Know [all] men, present and future, that I, (such a one,) have given and granted, and by this my present charter have confirmed to (such a one,) in consideration of his homage and service, (so much land,) with the appurtenances, in (such a town:) To HAVE and to hold to (such a one,) and his heirs, (generally, or with a limitation of heirs,) freely and quietly, &c. *Bract.* fol. 34 b, 35. See *Fleta*, lib. 3, c. 14, § 5. See also the forms in Littleton, sect. 371, 372. It will be seen that, in this example, Bracton uses the word *habendam*, agreeing grammatically with *terram;* but this is disregarded in other instances, (see *infra*,) and *habendum*, as a word of more general application, has become established in the later forms.

HABENDAS ET TENENDAS. L. Lat. In old English law. To have and to hold. *Concessimus etiam omnibus liberis hominibus regni nostri, pro nobis et heredibus nostris in perpetuum, omnes libertates subscriptas,* habendas et tenendas, *eis et heredibus suis, de nobis et heredibus nostris in perpetuum;* we have also granted to all the freemen of our realm, for us and our heirs forever, all the liberties underwritten; to have and to hold to them and their heirs, of us and our heirs forever. *Mag. Cart.* 9 *Hen.* III. c. 1.

HABENDUM ET TENENDUM. L. Lat. In old conveyancing. To have and to hold. Formal words in deeds of land from a very early period. *Bract.* fol. 17 b.

HABENTES HOMINES. L. Lat. In old English law. Rich men; literally, having men. 1 *Mon. Angl.* 100. *Dufresne.* The same with *fæsting-men*, (q. v.) *Cowell.*

HABERE. Lat. In the civil law. To have. Sometimes distinguished from *tenere*, (to hold,) and *possidere*, (to possess;) *habere* referring to the right, *tenere* to the fact, and *possidere* to both. *Calv. Lex. Habetur, quod peti potest;* that is had, which can be demanded. *Dig.* 50. 16. 143. See *Id.* 50. 16. 164. 2. *Id.* 50. 16. 188. So *habere* was otherwise distinguished as referring to incorporeal things, *tenere* to corporeal, and *possidere* to both. *Calv. Lex. Prateus.*

Habere contractum; to have a contract; to contract. *Calv. Lex.*

Habere in procinctu; to have in readiness. *Id.*

Habere venale; to sell. *Id.*

HABERE. Lat. In old English law. To have. *Habere ad rectum;* to have one [forthcoming] to [answer] an accusation. *Bract.* fol. 124 b.

This term frequently occurs in the Year Books, as used by the court in granting any relief prayed. *Habeant auxilium;* let them have aid. M. 3 Edw. III. 37. *Habeat etatem;* let him have his age. *Id.* 38.

HABERE FACIAS POSSESSIONEM. L. Lat. (You cause to have possession.) In practice. A writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. 3 *Bl. Com.* 412. 2 *Tidd's Pr.* 1244. *Chitt. Archb. Pr.* 765.

HABERE FACIAS SEISINAM. L. Lat. (You cause to have seisin.) In practice. A writ of execution for giving seisin of a freehold, as distinguished from a chattel interest. 3 *Bl. Com.* 412. *Cowell.*

HABERE FACIAS VISUM. L. Lat. (You cause to have view.) In old practice. A writ that lay in divers cases, as in dower, formedon, &c., where a view was to be taken of the lands in question. *Bract.* fol. 379. See *View.*

HABERJECTS, *Haubergects.* [L. Lat. *haubergetta.*] A kind of cloth mentioned in Magna Charta. *Cap.* 25. See *Haubergetta.*

HABETO TIBI RES TUAS. Lat. Have, or take your effects to yourself. One of the old Roman forms of divorcing a wife. *Calv. Lex.* See *Tuas res*, &c.

HABILIS, (pl. *Habiles.*) Lat. Able; fit; competent; suitable. *Habiles ad matrimonium;* constitutionally fit for matrimony. 1 *Bl. Com.* 436. *Habilis* and *inhabilis. Shelf. Marr. & Div.* 55. *Admitto te habilem;* I admit thee able. *Co. Litt.* 344 a.

Good; sound; merchantable. Applied to merchandize warranted. *Yearb.* M. 9 Hen. VI. 37.

HABITANT (pl. *Habitans.*) Fr. In French and Canadian law. A resident tenant; a settler; a tenant who kept hearth and home on the seigniory. *Dunkin's Address*, 17.

HABITARE. Lat. To inhabit; to dwell or reside. In the civil law, *habitare*

properly signified to dwell permanently, as distinguished from *commorari*, (to stop for a while.) But it had the latter sense also. *Calv. Lex. Prateus. Spiegelius*, cited *ibid.*

HABIT AND REPUTE. In Scotch law. Held and reputed. Terms used to express whatever is generally understood and believed to have happened. *Bell's Dict.*

HABITATIO. Lat. [from *habitare*, q. v.] A habitation, or dwelling. *Towns. Pl.* 116. 2 *Inst.* 702.

In the civil law. The right of dwelling; the right of free residence in another's house. *Inst.* 2. 5. *Dig.* 7. 8. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 5.

"HABITATION," held to mean a dwelling-house or home. 10 *Grattan's R.* 64.

HABITUS. Lat. In old English law. Habit; apparel; dress or garb. *Habitus religionis;* the habit of religion. *Fleta*, lib. 5, c. 5, § 32. *Habitus et tonsura clericalis;* the clerical habit and tonsure. 4 *Bl. Com.* 367. 2 *Hale's P. C.* 372.

HABLE. L. Fr. In old English law. A port or harbor; a station for ships. *Stat.* 27 *Hen.* VI. c. 3.

HABLE. L. Fr. Able; competent. *Dyer*, 70 b, (Fr. ed.)

HABUNDA. L. Lat. In old records. Abundance; plenty. *Paroch. Ant.* 548. *Cowell.*

HACCHE. [Sax. *hæca*, a hatch or bolt.] A hatch; a gate or door. *Cowell.*

HACHIA. L. Lat. In old records. A hack; a pick, or instrument for digging. *Placita*, 2 *Edw.* III. *MS. Cowell.*

HACIENDA. Span. In Spanish law. Real estate. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

HADBOTE. In Saxon law. A recompense or satisfaction for the violation of holy orders, or violence offered to persons in holy orders. *Cowell. Blount.* Perhaps this word should be written *haelbote*, or *halibote*, from the Sax. *halg*, holy.

HADE. [L. Lat. *hada.*] In old records. A piece of land; a head of land, or headland. *Cowell.* See *Butts, Caput terræ, Caputia, Headlands.*

HADERUNGA. L. Lat. and Sax. Hatred; ill-will; prejudice, or partiality. *LL. Ethelred. Spelman. Cowell.*

HÆC. Lat. This; these. *Hæc sunt instituta quæ Edgarus rex consilio sapientum suorum instituit;* these are the establishments which King Edgar, with the advice of his wise men, established. 1 *Bl. Com.* 148. *Hæc sunt judicia quæ sapientes consilio regis Ethelstani instituerunt;* these are the judgments which the wise men, with the advice of King Athelstan, established. *Id. ibid.*

HÆC EST CONVENTIO. L. Lat. This is an agreement. Words with which agreements anciently commenced. *Yearb.* H. 6 Edw. II. 191.

HÆC EST FINALIS CONCORDIA. L. Lat. (This is the final agreement.) The words with which the foot of a fine commenced. 2 *Bl. Com.* 351.

HÆREDA. In Gothic law. A tribunal answering to the English court leet, and of which it was said, *de omnibus quidem cognoscit, non tamen de omnibus judicat;* it takes cognizance of all matters, but does not finally determine all. *Stiernh. de Jur. Goth.* l. 1, c. 2. 4 *Bl. Com.* 274.

HÆREDES, *Heredes.* Lat. (pl. of *Hæres*, q. v.) Heirs. *Bract.* fol. 17, 20 b.

HÆREDES NECESSARII. Lat. In the civil law. Necessary heirs; a term applied to the slaves of a testator. A slave made heir by his master was called *necessarius hæres*, because, whether he would or not, (*sive velit sive nolit,*) he became, immediately after the death of the testator, absolutely free and a necessary heir. *Inst.* 2. 19. 1. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 19, § 587.

HÆREDES SUI ET NECESSARII. Lat. In the civil law. One's own (or proper) and necessary heirs. A term applied to the sons, daughters, grandsons or grand-daughters by a son or other direct descendants of a party deceased. *Inst.* 2. 19. 2. Called *sui*, because they were domestic, and even during the life of the father were considered, in a certain sense, owners of the estate, (*quodammodo domini existimantur.*) *Id. ibid.* And called *necessarii*, because they became heirs by the operation of law, (The Twelve Tables,) whether they would or not, as well in case of intestacy as where there was a will. *Id. ibid. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 19, § 588. See *Sui hæredes.*

HÆREDES EXTRANEI. Lat. In the civil law. Extraneous, strange or foreign heirs; those who were not subject to the power of the testator. *Inst.* 2. 19. 3.

HÆREDIPETA. Lat. In old English law. The next heir to lands. *LL. Hen.* I. c. 70. Properly, one who endeavored to get the good will of others, in order to

be made their heir; (*qui petit hæreditatem;*) an inheritance seeker. *Co. Litt.* 88 b.

HÆREDITAMENTUM. L. Lat. In old English law. A hereditament, (q. v.) *Spelman.*

HÆREDITAS, *Hereditas.* Lat. [from *hæres*, an heir; L. Fr. *enheritance.*] In civil and old English law. An inheritance; an estate by succession; an estate transmissible by descent. *Heræditas alia corporalis, alia incorporalis;* one kind of inheritance is corporeal, another incorporeal. *Co. Litt.* 9. *Divisio hæreditatis;* the division of an inheritance. *Inst.* 3. 1. 6. *Hereditas* occurs in the civil law.

Inheritance; hereditary succession. *Hereditas nihil aliud est quam successio in universum jus quod defunctus habuit, [habuerit;]* inheritance is nothing else than succession to the whole right which the deceased had. *Dig.* 50. 16. 24. *Id.* 50. 17. 62. Bracton has adopted and amplified this definition of the civil law, in the following terms: *Hæreditas est successio in universum jus quod defunctus antecessor habuit, ex quacunque causâ acquisitionis, vel successionis, cum seysinâ sive sine,* &c.; inheritance is the succession to the whole right which the deceased ancestor had, by whatever title of acquisition, or succession, with seisin or without, &c. *Bract.* fol. 62 b. *In feodo et hæreditate;* in fee and inheritance. *Bract.* fol. 207. *Hæreditas ab intestato;* succession from an intestate. *Inst.* 2. 9. 7.

Bracton contends that the word *hæreditas* is not derived from *hæres;* but that *hæres*, on the contrary, is from *hæreditas.* Hæres *dicitur ab hæreditate, et non* hæreditas *ab* hærede. *Bract.* fol. 62 b, 265.

Hæreditas nunquam ascendit. Lat. An inheritance never ascends. *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 211. A maxim of feudal origin, and which invariably prevailed in the law of England down to the passage of the statute 3 & 4 *Will.* IV. c. 106, § 6, by which it was abrogated. 1 *Steph. Com.* 378. *Broom's Max.* [400.] See *Descent.*

HÆREDITAS DAMNOSA. See *Damnosa hæreditas.*

HÆREDITAS JACENS. Lat. In civil and common law. A fallen or prostrate inheritance; the inheritance of a person deceased, while it *lay* unacquired by the heirs; an inheritance before it was entered upon by the heir, (*antequam adita fuerit ab hærede.*) *Bract.* fol. 160. *Id.* fol. 227.

An inheritance in abeyance or expectation; *lying* waiting, as it were, for the heir to take it up; (*donec relevetur in manum hæredis.*) *Co. Litt.* 342 b. *Bract.* fol. 84. *Fleta*, lib. 3, c. 17, § 1.

An inheritance or estate left without a legal owner. 2 *Bl. Com.* 259. The estate of a person deceased, where the owner left no heirs or legatee to take it, called also *caduca;* an escheated estate. *Cod.* 10. 10. 1. 4 *Kent's Com.* 425.

HÆREDITAS LUCTUOSA. Lat. In the civil law. A sad or mournful inheritance, or succession; as that of a parent to the estate of a child, which was regarded as disturbing the natural order of mortality, (*turbato ordine mortalitatis.*) *Cod.* 6. 25. 9. 4 *Kent's Com.* 397.

HÆRERE. Lat. To adhere; to be close or immediately next to. See *Hæres.*

To stop; to go no farther. **Qui hæret in litera hæret in cortice.** He who stops in the letter, stops in the bark, rind or exterior. *Co. Litt.* 283 b. He who goes no farther than the letter, stops in the mere exterior covering of the law, without reaching its substance. "*Hæret in litera;* the objection is hypercritical." Grier, J. 12 *Howard's R.* 268.

To hesitate; to stick; to be in doubt. "*In hoc dubio*, Bromeley, C. J. *hærebat.*" *Dyer*, 77.

HÆRES, *Heres.* Lat. [from *hærere*, to adhere, to be close or next to.] In the common law. An heir; he to whom lands, tenements or hereditaments, by the act of God and right of blood do descend, of some estate of inheritance. *Co. Litt.* 7 b. See *Heir.*

Hæredem Deus facit, non homo. God makes the heir, not man. *Co. Litt.* 7 b. **Solus Deus hæredem facit.** God alone makes the heir. *Bract.* fol. 62 b. See *Fleta*, lib. 6, c. 1, § 4.

Hæres est nomen collectivum. Heir is a collective name or noun. 1 *Ventr.* 215.

Hæres est nomen juris; filius est nomen naturæ. Heir is a name or term of law; son is a name of nature. *Bacon's Max.* 52, in *reg.* 11.

Hæres hæredis mei est meus hæres. The heir of my heir is my heir. *Wharton's Lex.*

Hæres est aut jure proprietatis aut jure representationis. An heir is either by right of property, or right of representation. 3 *Co.* 40 b.

According to Lord Coke, the words

hæreditas and *hæres* are both derived from *hærendo*, (adhering,) that is, from closely resting upon; for he who is heir *hæret*, (adheres, that is, to the ancestor;) or he is so called from *hærendo*, because the inheritance *hæret*, adheres to him. (*Hæreditas et hæres dicuntur ab* hærendo, *quod est arcte insidendo, nam qui hæres est*, hæret; *vel dicitur ab* hærendo, *quia hæreditas sibi* hæret.) *Co. Litt.* 7 b. This idea of the close connection between heir and ancestor is carried still farther in the following maxims:

Hæres est alter ipse, et filius est pars patris. An heir is another self, and a son is part of the father. 3 *Co.* 12 b, *Harbert's* case.

Hæres est eadem persona cum antecessore. An heir is the same person with his ancestor. *Co. Litt.* 22. *Branch's Princ.* See *Nov.* 48, c. 1, § 1.

Hæres est pars antecessoris. An heir is a part of the ancestor. *Id. ibid.* So said, because the ancestor, during his life, bears in his body (in judgment of law) all his heirs. *Id. ibid.*

HÆRES. Lat. In feudal law. An heir. *Nomen* hæredis, *in prima investitura expressum, tantum ad descendentes ex corpore primi vasalli extenditur; et non ad collaterales, nisi ex corpore primi vasalli sive stipitis descendant;* the name of *heir*, expressed in the first investiture, extends only to the descendants of the body of the first feudatory; and not to collaterals, unless they descend from the body of the first feudatory, or stock (of descent.) *Craig, Jus. Feud.* lib. 1, tit. 9, § 36. 2 *Bl. Com.* 221. Hence an heir is said properly to mean a son. *Calv. Lex. Id. de Verb. Feudal.*

HÆRES, (more commonly HERES.) Lat. In the civil law. An heir; one who succeeds to the whole right or estate of the testator; (*successor in universum jus quod defunctus habuit.*) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 14. *Calv. Lex. Dig.* 50. 16. 24. *Id.* 50. 17. 62. *Id.* 50. 17. 128. 1. Heredis *appellatio non solum ad* proximum heredem, *sed et ad* ulteriores *refertur; nam et* heredis heres, *et deinceps*, heredis *appellatione continetur;* the appellation of *heir* belongs not only to the next heir, but to more remote persons also; for the heir of an heir, and so on in succession, is included in the term heir. *Dig.* 50. 16. 65. See *Id.* 50. 16. 170.

*** The term *hæres* or *heres* in the civil law, scarcely corresponds with the "*heir*" of the common law, or rather it is used in senses which do not at all belong to the latter word. Thus, in the civil law, a person was said to be appointed, instituted (*institutus*) or made (*factus*) an *hæres* by another. *Inst.* 2. 14. But the maxim of the common law has always been that no man can make an heir. **Hæredem Deus facit, non homo.** The term *hæres* had, in some of its applications, nearly or quite the sense of the modern "*devisee*," and in others that of "*executor*," or "*trustee*." Thus, it was an essential formality in making a testament, that some person should be appointed heir, (*hæres*,) to whose faith it should be committed that he should convey the inheritance to another person; (*ut aliquis* hæres *instituatur, ejusque fidei committatur ut eam hæreditatem alio restituat.*) *Inst.* 2. 23. 2.

HÆRES ASTRARIUS. L. Lat. In old English law. An heir in actual possession. See *Astrarius.*

HÆRES DE FACTO. L. Lat. In old English law. Heir from fact; that is, from the deed or act of his ancestor, without, or against right. Applied to an heir whose title originated in the wrongful act, such as the disseisin of his ancestor. *Bract.* fol. 172. An heir in fact, as distinguished from an heir *de jure*, or by law. See *De facto.*

HÆRES EX ASSE. Lat. In the civil law. An heir to the whole estate; a sole heir. *Inst.* 2. 23. 9. See *As.*

HÆRES EXTRANEUS. Lat. In the civil law. A strange or foreign heir; one who was not subject to the power of the testator, or person who made him heir. *Inst.* 2. 19. 3. *Qui testatoris juri subjecti non sunt*, extranei hæredes *appellantur. Id. ibid.*

HÆRES FACTUS. Lat. In the civil law. An heir made by will; a testamentary heir; the person created universal successor by will. *Story's Conflict of Laws*, § 507. 3 *Bl. Com.* 224. Otherwise called *hæres ex testamento*, and *hæres institutus. Inst.* 2. 9. 7. *Id.* 2. 14. *Hæredes facti.* 3 *P. Wms.* 22.

Applied by Blackstone to an heir to the crown, where the inheritance is under a particular settlement. 1 *Bl. Com.* 196.

HÆRES FIDUCIARIUS. Lat. In the civil law. A fiduciary heir, or heir in trust; a person constituted heir to an estate by will, in trust for the benefit of an-

other who was called *fidei commissarius*, (q. v.) *Inst.* 2. 23. 1, 2. Corresponding nearly to the *trustee* of the English law. *Crabb's Hist. Eng. Law*, 391.

HÆRES FIDEICOMMISSARIUS. Lat. In the civil law. The person for whose benefit an estate was given to another (termed *hæres fiduciarius*, q. v.) by will. *Inst.* 2. 23. 6, 7, 9. Answering nearly to the *cestui que trust* of the English law. *Cooper's Just. Inst.* Notes, *ibid.* *Crabb's Hist.* 391, note.

HÆRES LEGITIMUS. Lat. A lawful heir. *Cod.* 6. 58. **Hæres legitimus est quem nuptiæ demonstrant.** He is a lawful heir whom marriage points out as such; who is born in wedlock. *Co. Litt.* 7 b. *Bract.* fol. 88. *Fleta*, lib. 6, c. 1. *Broom's Max.* [388.]

HÆRES NATUS. Lat. In the civil law. An heir born; one born heir, as distinguished from one made heir, *hæres factus*, (q. v.) an heir at law, or by intestacy, (*ab intestato;*) the next of kin by blood, in cases of intestacy. *Story's Conflict of Laws*, § 507. 3 *Bl. Com.* 224.

HÆRES NECESSARIUS. Lat. In the civil law. A necessary heir; a slave made an heir was so called, because, on the death of the testator, whether he would or not, he became instantly free and a necessary heir. *Inst.* 2. 19. 1. See *Hæredes necessarii.*

This term is applied by Sir William Scott to the mate of a vessel. "The mate is *hæres necessarius* to the employment of master, in case of necessity." The Favorite, 2 *Rob. Adm. R.* 237. That is, the duties of master devolve by necessity upon him.

HÆRES RECTUS. L. Lat. In old English law. A right heir. *Fleta*, lib. 6, c. 1, § 11.

HÆRES SUUS. Lat. In the civil law. A proper heir; literally, one's own heir. A term applied to the children and grand-children of a deceased person. *Inst.* 3. 1. 4, 5. See *Hæredes sui.*

HÆRET. See *Hærere.*

HÆRETARE. L. Lat. In old English law. To give a right of inheritance, or make the donation hereditary to the grantee and his heirs. *Cowell.* *Histor. Eliensis*, c. 41, cited *ibid.*

HÆSITARE. L. Lat. In old practice. To hesitate. A term used in the reports. "Anderson *hæsitavit* in the words of the limitation." 1 *Leon.* 74. "Powell, J. recanted *instanter*, and Gould, J. *hæsitabat.*" 6 *Mod.* 287.

HAFNE COURTS. [*hafne*, Dan. a haven, or port.] In old English law. Haven courts, (*curiæ portûs;*) courts anciently held in certain ports in England. *Lit. Pat. Ric. Duc. Gloc. Admir. Angl.* 5 *Edw.* IV. *Spelman.*

HAGA. L. Lat. [from Sax. *hægh* and *hagh*, an enclosure or hedge.] In old English law. A house. *Radulfus tenet unam* hagam *de xii denar'; Willielmus v* hagas *de v sol; Nigellus v* hagas *quæ faciunt servitium;* Ralph holds one house of twelve pence; William five houses of five shillings; Nigel five houses which do service. *Domesd.* titt. *Sussex, Terra Rogerii*, nu. 11. *Spelman.* Defined by an anonymous author to be a *house with shops*, (*domus cum shopis.*) *Spelman.* A house in a city or borough. *Co. Litt.* 5 b, 55 b. *Cowell.* *Cum novem præfatæ civitatis habitaculis quæ patria lingua* hagan *appellari solent;* with nine small dwellings of the said city, which in the native language are called *hagan.* *Chart. Ethelred. Regis, in auct. Mat. Par.* fol. 240. *Blount.*

A hedge. *Fossato et haga;* with a ditch and hedge. 2 *Mon. Angl.* 273.

A military enclosure; (*sepimentum militare.*) *Spelman.*

HAIA, *Haya.* L. Lat. [from Fr. *haie*, *haye.*] In old English law. A hedge, or enclosure. *Inclusum fossato*, haya *vel palatio;* inclosed with a ditch, hedge or paling. *Bract.* fol. 97 b. *Parvo fossato et bassa* haia *includere;* to enclose with a small ditch and low hedge. *Reg. Orig.* 257 b. 8 *Co.* 138 a. See *Haya.*

A park, or enclosed ground. *Spelman.* See *Hay.*

HAIE, *Haye.* L. Fr. A hedge. *Kelham.*

HAIEBOTE. Fr. and Sax. [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] In old English law. A permission or liberty to take thorns, &c., to make or repair hedges. *Blount.* See *Haybote.*

HAILL. Sc. In Scotch law. Whole; the whole. "All and haill" are common words in conveyances. 1 *Bell's App. Cas.* 499.

HAIMSUCKEN. Sc. In Scotch law. The crime of beating or assaulting a person in his own house. *Bell's Dict.* See *Hamesecken.* Skene calls this "ane Dutch word," and derives it from *haim*, home, and suchen, to seek.

HAIMHALD. Sc. In Scotch law. That which grows at home. *Skene de Verb. Sign.* voc. *Haimhaldare.*

HAIMHALDARE. L. Lat. In old Scotch law. To seek restitution of one's own goods and gear, and bring the same *home* again. *Skene de Verb. Sign.*

HAISTERAHANDI. In old European law. An armed hand; a hand armed against the law. *L. Alam.* tit. 10. *Spelman.*

HALBER. L. Fr. A coat of mail. *LL. Gul. Conq.* ll. 22, 23.

HALF BLOOD. [L. Fr. *demy-sangue, demy-sanke.*] In the law of descent. The blood of one parent only; blood on the father's or mother's side only.* A term applied to collateral relations, when descended from a *single person*, who is the only ancestor common to them both. Thus, brothers and sisters are of the half blood when they are born of the same father, but different mothers, and *vice versa.* 1 *Bl. Com.* 194. 2 *Id.* 227. 1 *Steph. Com.* 386. 2 *Kent's Com.* 423—428. 4 *Id.* 403, 406, notes. Persons so related are called in the civil law *unilaterales, ex uno latere juncti*, (related on one side,) *ex uno parente conjuncti*, (related by one parent only.) *Nov.* 118, cc. 2, 3. *Dig.* 38. 10. 10, 13. 1 *Mackeld. Civ. Law*, 140, § 132.

HALF DEFENCE. In pleading. The technical name of the common clause at the commencement of a defendant's plea, —"And the said defendant, by ——, his attorney, *comes and defends the wrong*, (or force,) *and injury, when*, &c." Called *half* defence from its abbreviated form. See *Defence, Full defence.*

HALFKINEG, *Healfkoning.* Sax. In Saxon law. Half-king, (*semi-rex.*) A title given to the alderman of all England. *Crabb's Hist.* 28. *Spelman.*

HALF PROOF. [Lat. *semi-plena probatio.*] In the civil law. Proof by one witness, or a private instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25. 3 *Bl. Com.* 370.

HALF SEAL. In English law. A seal used in chancery, for the sealing of commissions to delegates appointed upon any appeal in ecclesiastical or marine causes. *Stat.* 8 *Eliz.* c. 5. *Cowell.*

HALF TONGUE. [L. Lat. *medietas linguæ.*] A term anciently applied to a jury, one-half of which consisted of denizens or natives, and the other half of aliens. See *De medietate linguæ, Medietas linguæ.*

HALF YEAR. [L. Lat. *tempus semestre.*] In legal computation. The period of one hundred and eighty-two days; the odd hours being rejected. *Co. Litt.* 135 b. *Cro. Jac.* 166. *Yelv.* 100. 1 *Steph. Com.* 265. 2 *Crabb's Real Prop.* 423, § 1577. 1 *N. Y. Rev. St.* [606,] 615, § 3.

HALIGEMOT, *Halimote, Halmot.* Sax. [from *heal*, a hall, and *gemot*, or *mot*, a meeting.] In Saxon law. The meeting of a hall, (*conventus aulæ,*) that is, a lord's court; a court of a manor, or court baron. *LL. Hen.* I. c. 10. *Spelman.* So called from the *hall*, where the tenants or freemen met, and justice was administered. *Crabb's Hist. Eng. Law*, 26.

HALIMOT, *Halimote, Halmot, Halmote.* Sax. [See *Haligemot.*] In old English law. A meeting of citizens in their public hall; otherwise called *folcmot. Spelman. Cowell. Blount.* In London, every company had a hall wherein they kept their courts. 4 *Inst.* 249. See *Haligemot, Halymot.*

HALL. [Sax. *heal;* L. Lat. *aula, halla.*] In old English law. A chief mansion-house or habitation. See *Halla.* The place where a lord's court was held. See *Haligemot.* A king's palace, where his court was held. See *Aula.*

HALLA. L. Lat. In old English law. A hall or mansion house. *In Newcerct hundred, ipse Hugo tenet unam terram quam Azor Rot tenuit de R. E. sine halla;* in Newkirk hundred, the said Hugh holds one piece of land which Azor Rot held of King Edward, without a *hall*, or house. *Domesd.* titt. *Chent, Terra Hug. de Mountfort. Blount.*

HALLAGE. In old English law. A fee or toll due for goods or merchandise vended in a hall. *Jacob.*

A toll due to the lord of a fair or market, for such commoditics as were vended in the common hall of the place. *Cowell. Blount.*

HALLAZGO. Span. In Spanish law. Finding, (trover.) *Schmidt's Civ. Law*, 91.

HALMETUS. L. Lat. A halmote, or halimot, (q. v.) *Cowell.* Properly *halimotus. Spelman*, voc. *Haligemot.*

HALMOTE, *Halmot, Hallmote.* See *Haligemot, Halimot.*

HALSFANG. See *Healsfang.*

HALT. L. Fr. High. *Kelham.* See *Hault.*

HALYMOTE, *Halimot*, *Haligemot*. Sax. [from *halg*, holy, and *mot*, or *gemot*, a meeting.] In old English law. A holy or ecclesiastical court; otherwise called *circgemot*, and *chirgemot*, (qq. v.) *Spelman*. 4 *Inst.* 321.

HALYWERCFOLK. Sax. In old English law. People who held land for the service of repairing or defending a church or sepulchre; for which pious labors they were excused from feudal and military services. Particularly applied to tenants in the province of Durham. *Hist. Dunelm. apud Wharton. Cowell. Ranulphus, Dei gratia Dunelmensis Episcopus, omnibus hominibus suis, Francis et Anglis, de* Haliwercfolk, *salutem;* Ranulph, by the grace of God, bishop of Durham, to all his men, French and English, of *haliwercfolk*, greeting. 1 *Mon. Angl.* 512 b. *Blount.*

HAM. Sax. In Saxon and old English law. A house or dwelling; a home. *Æt ham;* at home. *LL. Inæ*, c. 5. Spelman supposes the radical meaning to be an enclosure or circuit, something that goes around. Hence the *hem* of a garment.

A collection of houses; a village or town. Hence the names of many places in England ending with *ham*, as Nottingham, Buckingham, &c. *Spelman.*

A piece of land; a home close, or little meadow; a narrow skirt, hem, or edge of meadow. See *Hama*, *Hamma.*

HAMA. L. Lat. In old English law. A hook; an engine with which a house on fire is pulled down. *Yelv.* 60.

A piece of land. See *Hamma.*

HAMALLARE. L. Lat. [from *mallum*, a court.] In old European law. To summon to court, (*ad mallum, seu in jus vocare;*) to go to law with; to sue or implead. *Marculf.* lib. 1, form. 36. *Spelman.* See *Admallare.*

HAMALLUS. L. Lat. [from *mallum*, a court.] In old European law. One who was summoned to court, (*in mallum vocatus.*) *L. Salic.* tit. 49. *Spelman.*

HAMBELETTUM. L. Lat. In old English law. A hamlet. *Bract.* fol. 37 b.

HAMBLING. In the forest law. The hoxing or hock-sinewing of dogs; an old mode of laming or disabling dogs. *Termes de la Ley.*

HAMEL, *Hamele*, *Hamelle*. L. Fr. A hamlet. *Thel. Dig.* lib. 11, c. 16. *Kelham.* Used also as an English word. *Spelman. Cowell.*

HAMELETA, *Hamelecta*. In old English law. A hamlet. See *Hamleta.*

HAMELETTUS. L. Lat. In old English law. A hamlet. *Fleta*, lib. 1, c. 18, § 4.

HAMELLUS. L. Lat. In old records. A hamel, or hamlet. *Cowell.*

HAMESECKEN, *Hamesucken*, *Haimsucken*. In Scotch law. The violent entering into a man's house without license or against the peace, and the seeking and assaulting him there. *Skene de Verb. Signif.* 2 *Forbes' Inst.* 139. The same with *hamsocen*, *hamsoken*, or *hamsocne*, (qq. v.)

The crime of housebreaking or burglary. 4 *Bl. Com.* 223.

HAMFARE. Sax. [from *ham*, a house.] In Saxon law. An assault made in a house; a breach of the peace in a private house. *Gloss. in X. Scriptores. Ranulf. Cestrens.* lib. 1, c. 50. *Spelman. Blount.* The same with *hamsockne*, (q. v.)

HAMLET, *Hamel*, *Hampsel*. Sax. [dimin. of *ham*, a town or vill; or from *ham*, and *let*, or *lit*, a member or part; L. Lat. *hamleta*, *hameleta.*] A little village, or vill, (*villula;*) or rather a part or member of a vill, or town; a part less than half. *Spelman.* An appendage to a town. 1 *Bl. Com.* 115. Supposed by Spelman to have consisted of less than five freemen or frank pledges. See *Vill*, *Demivill.*

From the L. Lat. forms, *hambelettum* and *hamelecta*, this word seems to have once been written or pronounced *hamblet* and *hamlect.*

HAMLETA, *Hamletta*. L. Lat. A hamlet. *Spelman.*

HAMLETTUS, *Hamelettus*. L. Lat. In old English law. A hamlet. *Fleta*, lib. 4, c. 10, § 12.

HAMMA, *Hama*. L. Lat. [from Sax. *ham*, a home or house.] In old records. A home close; a small croft; a little meadow, or ham. *Quoddam pratunculum quod vocatur* hamma. *Kennett's Paroch. Ant.* 135.

A narrow skirt, hem, or edge of meadow or grass, in a common field. *Id.* 572. *Cowell.*

HAMME. L. Fr. A helmet. *LL. Gul. Conq.* ll. 22, 23.

HAMPSEL. A hamlet. *Spelman*, voc. *Hamel. Cowell*, voc. *Hamlet.*

An old house, or decayed cottage. *Kitchin.* fol. 103. *Cowell.*

HAMSOCA. L. Lat. In Saxon law.

Hamsoken, or hamsocne. The privilege or liberty of a man's own house; a breach of such privilege by a violent entry. *LL. Edmund.* c. 6.

A fine for such entry; an immunity from such fine. *Spelman.* See *Hamsocne.*

HAMSOCNE, *Hamsokne, Hamsockne, Hamsoken, Hamsockene, Homesoken.* Sax. [from *ham*, a house, and *socne*, a liberty; L. Lat. *hamsoca, hamsocna.*] In Saxon law. The liberty, privilege, or immunity of a man's house. *Spelman*, voc. *Hamsoca.* The right to its exclusive enjoyment, undisturbed by the entry or act of another.*

A breach of the immunity of a man's house by entering it against his will; the violent entry of a house, (*invasio mansionis.*) *LL. Canuti*, c. 39. *Spelman.* Hamsokne, *quæ dicitur invasio domûs contra pacem domini* regis; Hamsokne, which is called the forcible entry of a house against the king's peace. *Bract.* fol. 144 b. The offence of burglary. 4 *Bl. Com.* 223. See *Hamesecken.*

An assault made in a house, (*insultus factus in domo;*) the same with *hamfare*, (q. v.) *Ranulf. Cestrens.* lib. 1, c. 50. *Spelman.*

A franchise or privilege granted to lords of manors, to hold pleas and take cognizance of the offence of entering a house against the will of the occupant, and of imposing and exacting fines therefor. *Spelman*, voc. *Hamsoca. Blount.*

A fine or amercement imposed for entering a house forcibly and without permission, and against the peace; an immunity or acquittance from such fine; (*quietantia misericordiæ intrationis in alienam domum vi et injuste.*) *Fleta*, lib. 1, c. 47, § 18. *Rastal, apud Spelman*, voc. *Hamsoca.*

HAMSOKEN, *Hamsokne.* See *Hamsocne.*

HANAP, *Hannap.* L. Fr. A cup. *Litt.* sect. 344. *Dyer*, 1.

A hamper. *Kelham.*

HANAPER, *Hanper, Hamper.* [L. Lat. *hanaperium.*] In old English practice. A bag or basket of larger size, (*fiscus vel sporta grandior,*) in the English chancery, in which the fees arising from the sealing of writs, charters, &c. were anciently kept. *Spelman*, voc. *Hanaperium. Gilbert's For. Rom.* 16. The *fiscus*, or exchequer of the chancery. *Stat.* 10 *Ric.* II. c. 1.

HANAPER OFFICE. An office on the common law side of the English Court of Chancery, in which the writs relating to the business of the subject, and the returns to them, were anciently kept. 3 *Bl. Com.* 48, 49. So called, according to Blackstone, because these writs were, according to the simplicity of the times, originally kept in a hamper, *in hanaperio. Id. ibid.* But the hamper or basket, as Spelman has shown, was for keeping the fees or money of the office, and not for papers. *Spelman*, voc. *Hanaperium.* See 5 *Co.* 43 b, *Bohun's case.* See *Hanaper.*

HANAPERIUM. L. Lat. In old English law. A hanaper or hamper. *Spelman.* See *Hanaper.*

HAND. [Lat. *manus;* Fr. *main, mayn.*] In old practice. An oath; so called from the use of the *hand* in making it. See *Oath, Manus.*

One who made oath, especially one who swore for another; a compurgator. *Jurabit duodecima manu;* he shall swear by twelve hands, that is, he shall establish it by the oath of twelve men. *Glanv.* lib. 1, c. 9. *Il covint aver oue luy xi* maynz *de jurer oue luy;* he must have with him eleven hands to swear with him. *Dyversite des Courts*, fol. 305. 3 *Bl. Com.* 343, 344.

*** The use of the *hand* in judicial proceedings, not only for making oath, but for the purpose of identifying parties, has been practiced in English law from the earliest period. Thus, in the ancient appeals of felony, when the parties came to make the oath required of them before engaging in the *duellum*, or combat, they took each other by *the hand*, and first the appellee or accused swore thus: "Hear this, O man *whom I hold by the hand*, (*Ceo oyes, vous home qui jeo teigne par la* mayn, or *Hoc audis, homo quem per* manum *teneo;*) who makest thyself to be called A. by the name of baptism, that I did not slay thy father or brother, &c. So help me God and these holy things." And then the appellor or accuser swore: "Hear this, O man *whom I hold by the hand*, who makest thyself to be called B. by the name of baptism, that thou art perjured, and therefore perjured, because, &c. So help me God," &c. *Bract.* fol. 141 b. *Britt.* c. 22. *Fleta*, lib. 1, c. 24, § 38. A prisoner brought to the bar of a court for arraignment, is still required to hold up his *hand*, as one of the formalities of that proceeding. See *Arraignment.*

HAND. In practice. Signature. "Some writs require a judge's hand." 10 *Mod.* 103.

HANDBOROW. In Saxon law. A hand pledge; a name given to the nine pledges in a decennary or friborg; the tenth, or chief, being called *headborow*, (q. v.) So called, as being an inferior pledge to the chief. *Spelman.*

HANDGRITH, *Hangrith.* Sax. [from *hand* or *hond*, and *grith*, peace.] In Saxon and old English law. Peace or protection given by the king with his own hand. *Compact. inter Alured. & Guthrun.* sect. 1. *LL. Hen.* I. c. 13. *Cowell.*

HAND HABEND, *Hand habbend, Hand habbinde.* Sax. [from *hand*, and *hæbbend*, having; q. d. having in hand.] In Saxon law. A thief caught with the thing stolen in his *hand*, or possession. *LL. Hen.* I. c. 59. *Bract.* fol. 150 b, 154 b. *Fleta*, lib. 1, c. 38, 1. Answering to the *fur manifestus*, (q. v.) of the civil law. Called *hæbbendre handa*, in an old record cited by Blount. *Concil. Berghamsted*, A. D. 697. Written by Bracton, *hond habend*, (q. v.)

HANDSALE. In Gothic law. A sale made or confirmed by the ceremony of the parties shaking *hands*, called *venditio per mutuam manuum complexionem. Stiernhook, de Jur. Goth.* lib. 2, c. 5. This was anciently held necessary, among all the northern nations, to bind the bargain, and the custom is still retained in some verbal contracts. 2 *Bl. Com.* 448.

The price or earnest given immediately after the shaking of hands, or instead thereof. *Id. ibid.*

HANG. In old practice. To remain undetermined. "It has *hung* long enough; it is time it were made an end of." Holt, C. J. 1 *Show.* 77.

HANGING. [Lat. *pendente.*] Pending; during the pendency. "If the tenant alien, *hanging* the præcipe." *Co. Litt.* 266 a.

HANGING. [Lat. *suspensio per collum.*] In criminal law. Suspension by the neck; the mode of capital punishment used in England from time immemorial, and universally adopted in the United States. 4 *Bl. Com.* 403.

HANGWITE, *Hangwit.* Sax. [from *hangian*, to hang, and *wite*, a fine or penalty.] In Saxon law. A fine for hanging a thief without judgment, or legal trial, (*præter juris exigentiam,*) or for his escape; an immunity or acquittance from such fine or liability. *Spelman. Cowell.* In Domesday it is written *hangwitha.*

HANSA. L. Lat. In old records. A hanse, or commercial confederacy. *Carta Hen.* VII. *apud Blount.* See *Hanse.*

HANSE. Goth. A society of merchants, combined together for the good usage and safe passage of merchandise from kingdom to kingdom. *Cowell.* A commercial confederacy.* Spelman thinks this word was originally *hause*, (with *u* for *n*,) or *ause.*

HANSE TOWNS. Certain commercial cities in Germany, which associated for the protection of commerce towards the close of the twelfth century; at the head of which were the cities of Lubec, Hamburg, and Bremen. The league formed between them was called the Hanseatic League, the most powerful commercial confederacy known in history. 1 *Robertson's Charles* V. 63, and *Appendix*, Note xxx. 3 *Kent's Com.* 14. The code of maritime law known as the Laws of the Hanse Towns, or *Jus Hanseaticum Maritimum*, was established by this confederacy. *Id.* 14, 15.

HANTELOD. Germ. [from *hant*, hand, and *lod*, or *load*, laid.] In old European law. An arrest, or attachment. *Spelman.*

HAP. [L. Fr. *happer.*] To catch or snatch; to get, gain or obtain; to get by chance.* *Cowell.* "He that can first *hap* it, shall enjoy out the term." *Finch's Law*, b. 2, c. 3, p. 115. See *Happer.*

HAPPER. L. Fr. To chance, happen or fall out; to hap; to get or obtain; to get by chance.* *Kelham. L. Fr. Dict.*

HAQUE. In old statutes. A hand gun, about three quarters of a yard long. *Stat.* 33 *Hen.* VIII. c. 6. *Stat.* 2 & 3 *Edw.* VI. 13.

HARACIUM. L. Lat. In old English law. A race of horses and mares kept for breed; a stud. *Spelman.*

HARBOUR. [L. Fr. *havre.*] In maritime law. A shelter or safe station for vessels; a haven or port.* A space of water so enclosed by the land as to be safe from the perils of the ocean. 1 *Duer on Ins.* 281. Any navigable water where ships can ride in safety. *Webster. Harbour* and *port* are very commonly used as synonymous terms. 1 *Duer on Ins. ub. sup.* Hubbard, J. 9 *Metcalf's R.* 371, 377. A distinction is, however, sometimes made between them. *Id. ibid.* Strictly, *harbour* seems to denote a place for the accommodation of *vessels; port*, a place for the

reception and delivery of *cargoes*. See *Port*, *Portus*.

To HARBOR. To shelter or secrete; to receive and secrete a person, especially a fugitive; to receive and secrete illegally, or in opposition to the claim of another.* To receive clandestinely and without lawful authority, a person for the purpose of so concealing him that another having a right to the lawful custody of such person shall be deprived of the same. *Bouvier*. Woodbury, J. 5 *Howard's R.* 215, 227. A distinction has been taken, in some decisions, between *harbor* and *conceal*. A person may be convicted of harboring a slave, although he may not have concealed her. 24 *Alabama R.* 71.

To constitute the offence of harboring or concealing a fugitive from labor, within the meaning of the Act of Congress of 1793, it must appear that the harboring or concealing was with the intention to elude the claim of the master of the alleged fugitive. 5 *McLean's R.* 65, 73.

HARDHEIDIS, *Hardies*, *Harditis*. Sc. In old Scotch law. Lions; coins formerly of the value of three half-pence. 1 *Pitc. Cr. Trials*, part 1, p. 64, note.

HARDI, *Hardy*. L. Fr. Daring; presumptuous. *Il sera trope* hardy *pleador qui pledast;* he would be a very bold pleader who should plead. *Yearb.* M. 3 Edw. III. 9.

HARDITTIS. Sc. In old Scotch law. Hardetts; lions. 1 *Pitc. Cr. Trials*, part 1, p. 82. See *Hardheidis*.

HARER, *Harier*. L. Fr. To stir up; to provoke; to importune. *Kelham*.

HARMISCARA, *Armiscara*. L. Lat. In old European law. A kind of fine. *Spelman*, voc. *Harniscara*. Supposed by some to be a species of corporeal punishment. *Id. ibid.* The etymology and meaning of this word are both very uncertain.

HARNASCA. L. Lat. In old European law. The defensive armor of a man; harness. *Spelman*.

HARNESA, *Harnesia*. L. Lat. In old English law. Harness; tackle. *Fleta*, lib. 2, cc. 21, 85.

HARNISCARA. L. Lat. In old European law. A kind of fine. The same with *harmiscara*, (q. v.)

HARO, HARROU. Fr. In Norman and early English law. An outcry, or hue and cry after felons and malefactors. *Cowell*. It seems to have been equivalent to the English "*out*." Thus, where the chamberlain of the bishop of Ely had killed one William de Holme, the sister of the deceased followed the bishop, crying out with a terrible clamor, "*harrou* upon thee, Thomas de Lylde, *harrou*, *harrou* upon thee; for thou hast slain my brother William de Holme, *harrou* upon thee, *harrou*." *Hist. Eliens.* apud *Wharton. Angl. Sacr.* par. 1, p. 658.

HARTH, (or HEARTH) PENNY. [Sax. *heorth peni*.] In ancient English law. A tax or tribute of a penny, imposed upon every hearth or house; the same with Peter-pence, or Romescot. *Spelman*.

HASP AND STAPLE. In old Scotch law. The form of entering an heir in a subject situated within a royal borough. It consisted of the heir's taking hold of the hasp and staple of the door, (which was the symbol of possession,) with other formalities. See *Bell's Dict.*

HASPA. L. Lat. In old English law. The hasp of a door; by which the livery of seisin might anciently be made, where there was a house on the premises. *Fieri debet traditio per ostium, et per* haspam, *vel annulum;*- livery should be made by the door, and by the hasp or ring, [that is, by delivering these to the party, in the name of the whole.] *Bract.* fol. 40, 398. *Per* haspam *vel annulum hostii exterioris;* by the hasp or ring of the outer door. *Fleta*, lib. 3, c. 15, § 5.

In old records. The hasp or clasp of a book. *Liber Statut. Eccl. Paul. Lond. MS.* fol. 29 a. *Cowell*.

HASTA. Lat. In the civil law. A spear; the badge of a sale by auction. *Hastæ subjicere;* to put under the spear; to put up at auction. *Calv. Lex.* In modern phrase, to put under the hammer. See *Subhastare*.

HASTA. Lat. In feudal law. A spear. The symbol used in making investiture of a fief. *Feud. Lib.* 2, tit. 2.

HASTER. L. Fr. To haste; to hasten or despatch. *Britt.* c. 99.

HASTIF, *Hastyfe*. L. Fr. Hasty; inconsiderate; immature. *Britt.* c. 99.

HAT MONEY. [Fr. *chapot*.] In maritime law. An allowance formerly made to the master of a vessel, for the purchase of winter clothing, which, according to Jacobsen, was mentioned in almost all charter parties. *Sea Laws*, 88. Supposed to be the same with the modern allowance of *primage*. *Bouvier*. But see *Molloy de Jur. Mar.* 305.

HAUBER. O. Fr. [from Fr. *haut*, or *hault*, high, and *ber*, a baron.] A high lord; a great baron. *Spelman.*

HAUBERGETTA. L. Lat. Haberjects or hauberjects; a kind of cloth mentioned in Magna Charta. *Una* [*sit*] *latitudo pannorum tinctorum, russatorum, et haubergettorum, sc. duæ ulnæ infra listas;* [there shall be] one breadth of dyed cloths, russets, and hauberjects, to wit, two ells within the lists. *Magna Charta*, 9 *Hen.* III. c. 25. The charter of King John (c. 35,) has *halbergettorum.*

HAUBERGETTUM. L. Lat. In old English law. A coat of mail or hauberk. *Fleta*, lib. 1, c. 24, § 12. It seems to have been distinguished from *lorica. Id. ibid.* Spelman writes the word *haubergellum.*

HAUBERT. L. Fr. A coat of mail; a haubergeon. *Co. Litt.* 108 a. *Spelman. Skene de Verb. Sign. Servitium hauberticum;* military service. *Co. Litt. ub. sup. Wright on Ten.* 144, and note. See *Fief d'haubert.*

HAULT, *Halt*, *Haut.* L. Fr. [from Lat. *altus*, high.] High. *Le hault strete;* the high street or highway. *Yearb.* M. 19 *Ed.* II. 842. *Thel. Dig.* lib. 10, c. 11, ¶ 8. See *Haut.*

Forcible or efficacious in law. *Ci* hault *barre;* so high a bar. *Stat. Mod. Lev. Fines.*

HAUR. In old English law. Hatred. *LL. Gul. Conq.* c. 16.

HAURIRE. Lat. In the civil law. To draw (water.) *Dig.* 8. 3. 3. 3. *Fleta*, lib. 4, c. 27, § 8.

HAUSTUS. Lat. [from *haurire*, to draw.] In the civil law. Drawing; the drawing of water; the right of drawing water. *Qui habet* haustum, *iter quoque habere videtur ad hauriendum;* he who has the right of drawing, seems also to have a right of way for the purpose of drawing. *Dig.* 8. 3. 3. 3. *Cuicunque conceditur* haustus, *ei conceditur iter ad fontem et accessus;* to whomsoever is granted the right of drawing water, to him also is granted a right of way and access to the spring. *Fleta*, lib. 4, c. 27, § 9.

HAUT, *Haute.* L. Fr. In old English law. High. *Haut et bas;* high and low. *Et de euz tailler haut et bas;* and to tax them high and low. *Yearb.* P. 1 Edw. II. 4.

HAUT CHEMIN. L. Fr. Highway. *Yearb.* M. 4 Hen. VI. 4.

HAUT ESTRET. L. Fr. High street; highway. *Yearb.* P. 11 Hen. VI. 2.

HAUT JUSTICIER. See *High Justicier.*

HAUTE JUSTICE. L. Fr. High justice. *Hault justice.* Bacon's Works, iv. 298. See *High justice.*

HAVE. Lat. A form of the salutatory expression Ave, used in the titles of some of the constitutions of the Theodosian and Justinianean codes. See *Cod.* 7. 62. 9. *Id.* 9. 2. 11.

To HAVE. [Lat. *habere.*] To possess corporally. "No one, at common law, was said to *have*, or to be in possession of land, unless it were conveyed to him by the livery of seisin, which gave him the corporal investiture and bodily occupation thereof." *Blackst. L. Tr.* 113.

To HAVE AND TO HOLD. A common phrase in conveyancing, derived from the *habendum et tenendum* of the old common law. See *Habendum et tenendum.*

HAVEDELOND. [Sax. *heafodlond?*] In old records. A headland. *Paroch. Antiq.* 537. *Cowell.*

HAVEN. A place of a large receipt and safe riding of ships, so situate and secured by the land circumjacent, that the vessels thereby ride and anchor safely, and are protected by the adjacent land from dangerous or violent winds; as Milford Haven, Plymouth Haven, and the like. *Hale de Jur. Mar.* pars 2, c. 2.

HAW. [Sax. *hagh;* L. Lat. *haga*, q. v.] In old English law. A house. *Placit. temp. Edw.* I. & II. *MS. Cowell. Blount.*

A small quantity of land lying near a house. *Cowell. Blount.*

HAWGH, *Howgh.* In old English law. A valley. *Co. Litt.* 5 b.

HAWKERS. Persons who carry goods about from place to place for sale. A term applied, from an early period, to those persons who went about from place to place, buying and selling merchandise which ought to be uttered in open market. *Stat.* 25 *Hen.* VIII. c. 6, and 33 *Hen.* VIII. c. 4. Supposed to be derived from the uncertain wanderings of such persons, like those who, with *hawks*, seek their game where they can find it. *Cowell. Blount.*

HAY. [L. Fr. *haye;* L. Lat. *haia*, *haya.*] In old English law. A hedge. *Cowell.* See *Haia.*

A piece of ground enclosed with a

hedge; an enclosure in forests and parks. *Blount.*

HAYA. L. Lat. In old English law. A hay; an enclosure, or a piece of ground enclosed. See *Hay.*

A hedge. *Fleta*, lib. 1, c. 24, § 8. See *Haia.*

HAYBOTE, *Heybote.* [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance.] Hedgebote; an allowance of wood to a tenant for repairing his hedges or fences. 2 *Bl. Com.* 35. See *Hedgebote*, *Haiebote*, *Heybote.*

HAYWARD, *Haward*, *Heyward.* [from Fr. *hay*, a hedge, and *ward* or *gard*, keeping.] In English law. An officer who *keeps* the common herd or cattle of a town; so called, because one part of his office is to see that they neither break nor crop the *hedges* of enclosed grounds. *Cowell. Blount. Kitch.* 56. See *Heyward.* A similar office is retained in the United States, but the name is generally corrupted to *howard*, as in *hog-howard.*

HAYWARE. L. Lat. In old English law. To make a hedge. *Fleta*, lib. 2, c. 48, § 3.

HAZARDOUS CONTRACT. See *Aleatory contract.*

HEAD. [Lat. *caput*, q. v.] The upper part; the beginning or source. The head of a creek means the source of the longest branch, unless general reputation had given the appellation to another. 2 *Bibb's R.* 110.

HEADBOROUGH. See *Headborow.*

HEAD OF A FAMILY need not necessarily be a husband or a father. 20 *Missouri R.* 75.

HEADBOROW, *Headborough.* [from Sax. *heafod*, head, and *borgh*, a pledge.] In Saxon law. A chief pledge, (*capitalis plegius*;) the head or principal man of a frank pledge, decennary or tithing; called also *borowhead*, *borwealder*, *borghiealder*, *borsholder*, *tithingman. Spelman.* 1 *Bl. Com.* 114. The other nine pledges were called *handborow*, (q. v.)

In modern law. A constable. *Termes de la Ley. Willcock on Constables.*

HEADLAND. [L. Lat. *caputium*, *chevitia*, *caput terræ.*] A slip of unploughed land left at the *head* or end of a ploughed field; otherwise called a *butt. Litt. R.* 13. 2 *Leon.* 70, case 93. See *Butts.* "The headlands were only large enough to turn the plough upon." *Bunb.* 284, case 260.

HEADSILVER. See *Common fine.*

HEAFOD. Sax. Head.

HEALSFANG. *Halsfang*, *Healfang.* Sax. [from *hals*, neck, and *fangen*, to grasp; L. Lat. *collistrigium*, q. v.] In Saxon law. The pillory; an engine of punishment by which the *neck* of the offender was *enclosed* and secured between two boards, so that the head could not be drawn out. *Spelman.* See *Pillory.*

A fine paid as a commutation for this kind of punishment. *LL. Canuti, MS.* c. 64. *LL. Hen.* I. c. 12. *Spelman.*

HEALTH. [Lat. *salus.*] Freedom from sickness or suffering. The right to the enjoyment of *health* is a subdivision of the right of personal security, one of the absolute rights of persons. 1 *Bl. Com.* 129, 134. As to injuries affecting health, see 3 *Id.* 122.

HEAPED MEASURE. That kind of measure in which the commodities measured are *heaped* above the top of the vessel containing them.* By the Revised Statutes of New-York, it is provided that all commodities sold by heaped measure shall be duly heaped up in the form of a cone, the outside of the measure by which the same shall be measured, to be the extremity of the base of such cone, and such cone to be as high as the articles to be measured will admit. 1 *Rev. St.* [608,] 618, § 21, [16.]

HEARING. In equity practice. That stage of proceeding in a cause, which corresponds to the *trial* of a cause at law; the hearing of the arguments of the counsel for the parties upon the pleadings, or pleadings and proofs. 2 *Daniell's Chanc. Pract.* 1176, (Perkins' ed.) 1 *Barbour's Chanc. Pr.* 316.

HEARSAY EVIDENCE. Evidence of what others have been *heard* to *say*; testimony from the relation of third persons; second-hand, as distinguished from original evidence.* 1 *Greenl. Evid.* § 98.

The term *hearsay* evidence is used with reference both to that which is written, and to that which is spoken. But, in its legal sense, it is confined to that kind of evidence which does not derive its effect solely from the credit to be attached to the witness himself, but rests also, in part, on the veracity and competency of some other person from whom the witness may have received his information. 1 *Greenl. Evid. ub. sup.* 1 *Phillipps on Ev.* 185.

HEARTH MONEY. A tax of two shillings upon every hearth in England, granted to the king by statutes 13 & 14

Car. II. c. 10. Abolished by statute 1 W. & M. st. 1, c. 10. 1 *Bl. Com.* 324, 325. See *Chimney money*, *Fuage*.

HEARTH SILVER. In English law. A species of modus or composition for tithes. *Anstr.* 323, 326.

H'EAS. The contracted form of writing *habeas*, in the old court hand, in the court of king's bench. *Towns. Pl.* 166. 1 *Inst. Cler.* 10.

HEBBERMAN. A kind of poacher, or unlawful catcher of fish on the river Thames. So called because they commonly fished at *ebbing* water. *Cowell. Blount.*

HEBBERTHEF. In Saxon law. The privilege of having the goods of a thief and the trial of him, within a certain liberty. *Cart. S. Edmundi, MS.* fol. 163. *Cowell.*

HEBDOMADA. Lat. [from Gr. ἑβδομας.] A week; a space of seven days.

Hebdomadius; a week's-man; the canon or prebendary in a cathedral church, who had the peculiar care of the choir, and the offices of it for his own week. *Cowell.*

HEDA. L. Lat. In old English law. A port or haven. *Domesday. Spelman.*

A hithe, wharf or landing place. *Id. Cartular. Abbatiæ de Radinges, MS.* fol. 5. *Cowell.*

HEDAGIUM. L. Lat. [from *heda*, q. v.] In old records. A toll or custom paid at a hithe, or wharf for landing goods. *Cartular. Abbatiæ de Radinges, MS.* fol. 7. *Cowell.*

HEDGE-BOTE. An allowance of wood for repairing hedges or fences, which a tenant or lessee has a right to take off the land let or demised to him. 2 *Bl. Com.* 35. Called *fence-bote*, in Livingston *v.* Ten Broeck, 16 *Johns. R.* 15.

HEIER. Sax. An heir. *Spelman.*

HEIMENIUM. L. Lat. A hayment, or hedge fence. *Blount.*

HEINFAR, *Heinfare*, *Hainfar*, *Hamfare*. Sax. [from *hein*, or *hine*, a servant, and *far*, or *fare*, a journey or passage.] In Saxon law. The departure, flight, escape or loss of a servant. *Spelman.*

A fine paid for killing a man. *Domesday. Spelman.*

The right of taking cognizance of such an offence. *Id. ibid.*

HEIR. [Sax. *heier;* L. Fr. *heire;* Lat. *hæres.*] One who, upon the death of another, acquires or succeeds to his estate by right of blood, and by operation of law.* The person who takes an estate in lands or tenements by descent from another, as distinguished from an *alienee*, who takes by deed, and a *devisee*, who takes by will.* He upon whom the law casts his ancestor's estate immediately on the death of the ancestor.* 2 *Bl. Com.* 201. He to whom lands, tenements or hereditaments, by the act of God and right of blood, do descend, of some estate of inheritance. *Co. Litt.* 7 b.

HEIR APPARENT. An heir whose right of inheritance is indefeasible, provided he outlive the ancestor; as, in England, the eldest son or his issue, who must, by the course of the common law, be heir to the father whenever he happens to die. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR PRESUMPTIVE. The person who, if the ancestor should die immediately, would, in the present circumstances of things, be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child. 2 *Bl. Com.* 208. 1 *Steph. Com.* 358.

HEIR AT LAW, or HEIR GENERAL. He who, after his ancestor's death, has a right to all his lands, tenements, and hereditaments. *Whishaw.* One to whom the law gives the inheritance, on account of his proximity of blood. 1 *Forbes' Inst.* part 3, p. 76.

HEIR SPECIAL. In English law. The issue in tail, who claims *per formam doni*, by the form of the gift.

HEIR BY CUSTOM. In English law. One whose right of inheritance depends upon a particular and local custom, such as *gavelkind* or *borough english*. *Co. Litt.* 140.

HEIR BY DEVISE. One to whom lands are devised by will; a devisee of lands. Answering to the *hæres factus*, (q. v.) of the civil law.

HEIR. In Scotch law. The person who succeeds to the heritage, or heritable rights of one deceased. 1 *Forbes' Inst.* part 3, p. 75. The word has a more extended signification than in English law, comprehending not only those who succeed to lands, but successors to personal property also. *Wharton's Lex.* See *Bell's Dict.* Heirs are distinguished into various kinds, as,

Heir institute. One to whom the right of succession is ascertained by disposition, or express deed of the deceased. 1 *Forbes' Inst. ub. sup.*

Heir at law. One to whom the law

gives the inheritance, on account of his proximity of blood. *Id.* 76. The person who succeeds to the property of a person deceased. So termed, because he succeeds according to the disposition of the law. *Bell's Dict.*

Heir of tailzie, in general. He on whom an estate is settled, that would not have fallen to him by legal succession. 1 *Forbes' Inst.* part 3, p. 75.

Heir male. An heir institute, who, though not next in blood to the deceased, is his nearest male relation that can succeed to him. *Id.* 76.

Heir of provision. One who succeeds as heir, by virtue of a particular provision in a deed or instrument. *Wharton's Lex.*

Heir substitute, in a bond. He to whom a bond is payable expressly in case of the creditor's decease, or after his death. 1 *Forbes' Inst.* part 3, p. 76.

Heir of line. One who succeeds lineally by right of blood; one who succeeds to the deceased in his heritage; i. e. lands and other heritable rights derived to him by succession as heir to his predecessor. *Id.* 77. An heir at law is so termed, because he succeeds according to certain *lines* of propinquity. *Bell's Dict.*

Heir of conquest. One who succeeds to the deceased in *conquest*, i. e. lands or other heritable rights to which the deceased neither did or could succeed as heir to his predecessor. *Id. ibid.* One who succeeds to lands acquired by purchase. *Bell's Dict.*

Heir general. An heir who generally represents the deceased, and succeeds to every thing not specially provided to other heirs; another name for an heir at law. Called also *heir whatsoever*, or *whomsoever*. *Id.* 76, 77. *Bell's Dict.*

HEIR-LOOM, *Heir-lome.* [from Sax. *heier*, heir, and *leoma*, a limb, or member; L. Lat. *hæreditarium, principalium.*] In English law. A personal chattel which goes by special custom to the heir, along with the inheritance, and not to the executor or administrator of the last proprietor. Literally, a limb or member of the inheritance. 1 *Williams on Exec.* 606. The old authorities generally confine the application of this term to articles of household furniture, or "dead chattels moveable." *Bro. Abr.* Discent, pl. 43. *Termes de la Ley.* But Lord Coke mentions fish in a pond, deer in a park, and doves in a dove-house, as chattels which go with the inheritance. *Co. Litt.* 8 a. Spelman defines an heir-loom to be "any utensil of the stronger or more ponderous kind, which is not easily separated from a house, and therefore, by the custom of some places, passes to the heir as a member of the inheritance;" (*omne utensile robustius quod ab ædibus non facile revellitur, ideoque, ex more quorundam locorum, ad hæredem transit tanquam membrum hæreditatis.*) And Blackstone observes that heir-looms are generally such things as cannot be taken away without damaging or dismembering the freehold. 2 *Bl. Com.* 427. But in modern law, they are clearly distinguished from fixtures. 1 *Williams' Exec.* 607. 2 *Kent's Com.* 343. Charters or deeds relating to the inheritance, are in the nature of heir-looms, and follow the land to which they relate. 1 *Williams' Exec.* 609.

In the United States, heir-looms, as such, are for the most part unknown. 1 *Hilliard's Real Prop.* 50.

HEIRS. A word used in deeds of conveyance, (either solely, or in connection with others,) where it is intended to pass a fee; as, "to——, and his *heirs*;" or, "to——, his *heirs* and assigns;" or, "to——, his *heirs* and assigns forever." At common law, this is a necessary word of conveyance where the estate is to be created by deed. The limitation to the *heirs* must be made in direct terms, or by immediate reference, and no substituted words of perpetuity, except in special cases, will be allowed to supply their place, or make an estate of inheritance in feoffments and grants. *Litt.* sect. 1. 4 *Kent's Com.* 5. 2 *Bl. Com.* 107. 1 *Steph. Com.* 223. 2 *Crabb's Real Prop.* 12, § 955. Thus, if a man purchases lands "to *himself forever*," or "to *him* and to his *assigns forever*," he takes but an estate for life. Though the intent of the parties be ever so clearly expressed in the deed, a fee cannot pass without the word *heirs*. Holt, C. J. 6 *Mod. R.* 109. Even the word *heir*, in the singular, according to Lord Coke, is insufficient. *Co. Litt.* 8 b. 4 *Kent's Com.* 5, note. 1 *Hilliard's Real Prop.* 605, 606. The special cases which form exceptions to this rule are enumerated by Blackstone. 2 *Bl. Com.* 107, 108. And see 4 *Kent's Com.* 6, 7. In wills, a fee will pass without the word *heirs*, if the intention to pass a fee can be clearly ascertained from the will, or a fee be necessary to sustain the charge or trust created by the will. *Id. ibid.* 2 *Crabb's Real Prop.* 14, § 958.

In some of the United States, (as Virginia, Kentucky, Tennessee, Mississippi, Missouri, Alabama, and New-York,) the word *heirs*, or other words of inheritance, are no longer requisite to create or convey an estate in fee, either in grants or devises of lands. In other states, (as New-Jersey and North Carolina,) the provision is confined to wills. See 4 *Kent's Com.* 7, 8, and notes. 1 *Hilliard's Real Prop.* 609. 9 *Grattan's R.* 479. 6 *Ohio St. R.* 481. *Code of Tennessee*, (ed. 1858,) § 2006.

"HEIRS," in a will, is sometimes construed to mean "children." 2 *Jarman on Wills*, 23, (16, Perkins' ed.) 2 *Story's Eq. Jur.* § 1065 b. The word "heirs," when applied, in a will, to personal property, means those who take by law or under the statute of distributions. 2 *Jones' Eq. R.* 28. 1 *Id.* 114, 221. See 6 *Richardson's Eq. R.* 26. 3 *Ohio R.* (N. S.) 369.

"HEIRS" and "HEIRS OF THE BODY," when words of limitation and when of purchase, see 4 *Kent's Com.* 215—233. 17 *Georgia R.* 81. 5 *Indiana R.* 283. 2 *Selden's R.* 419.

HEIRSHIP MOVEABLES. In Scotch law. The moveables which the law withholds from the executors or nearest of kin, and gives to the heir, that the heir may not succeed to a house and land completely dismantled. *Bell's Dict.*

HENGHAM. The reputed author of a Latin treatise in two parts, entitled *Summa Magna* and *Summa Parva*, (great and small *sum*, or summary,) which Mr. Reeves calls a collection of notes relating to proceedings in actions. It is said to have been translated into English in the time of Edward II. or Edward III., and was published by Mr. Selden with some original notes of his own. Ralph de Hengham, the author, was Chief Justice of the King's Bench in the reign of Edward I., but was, for misconduct, degraded from his office, with many other justices of the period, and heavily fined. 2 *Reeves' Hist. Eng. Law*, 281. *Crabb's Hist.* 199. *Bridgman's Leg. Bibliog. Spelman*, voc. *Justitia.* Raulf de Ingham is referred to as an authority, in *Yearb.* M. 3 Edw. III. 37.

HENGHEN. [Sax. *hengcen, hengenne.*] In old English law. A prison, a place of confinement, (*carcer ;*) a house of correction, (*ergastulum.*) *Ponatur in* hengen, *et ibi sustineat. LL. Hen.* I. c. 65. *Thonne gebuga he hengen & thære abid. LL. Canut.* c. 32. He shall be put into prison, and there abide, &c. *Spelman.*

HENGWYTE. Sax. In old English law. An acquittance from a fine for hanging a thief. *Fleta*, lib. 1, c. 47, § 17. See *Hangwite.*

HENRICUS VETUS. L. Lat. Henry the old, or elder. King Henry I. is so called in ancient English chronicles and charters, to distinguish him from the subsequent kings of that name. *Spelman.*

H'ENS. A contraction of *habens.* 1 *Inst. Cler.* 10. *H'ent ;* a contraction of *habent. Id. ibid.*

HEPTARCHY. [from Gr. ἑπτὰ, seven, and ἀρχὴ, government.] The name usually given to the *seven kingdoms* of Kent, Sussex, Essex, Wessex, East Anglia, Mercia, and Northumberland, established by the Saxons on their settlement in Britain. 4 *Bl. Com.* 410. According to some, eight kingdoms were established, to which the name of *octarchy* has been given. 1 *Spence's Chancery*, 4, c. 1.

HERALD. [L. Lat. *heraldus, heroldus ;* L. Fr. *herhault, heraud, heroud, haraz*, of uncertain etymology.] An officer at arms in England, whose duties, in modern times, principally relate to the superintendence and management of public pageants and solemnities, as coronations, royal marriages, funerals, &c., and the preservation of genealogies and coat armour. See *Heralds' College.*

HERALDS' COLLEGE, (or COLLEGE OF ARMS.) An ancient royal corporation in England, instituted in the first year of the reign of Richard III. A. D. 1483 ; consisting of three kings of arms, six heralds and four pursuivants, together with the earl marshal of England and a secretary. The records of this college contain abundant sources of genealogical evidence. See these enumerated in *Hubback's Evidence of Succession*, 538—566.

HERBA. Lat. In old English law. A plant ; a weed. *Herba exotica ;* tea. *Bunb.* 254.

Herbæ dampnosæ ; noxious weeds. *Fleta*, lib. 2, c. 81, § 1.

HERBAGE. L. Fr. and Eng. [L. Lat. *herbagium.*] The produce or vesture of land, which is fed upon by cattle, (*vestura terræ quæ dentibus animalium decerpitur.*) *Spelman*, voc. *Herbagium.*

The right or liberty of feeding cattle in another's ground, as in forests. *Id.* 1 *Chitt. Gen. Pr.* 181. *Blount.*

HERBAGIUM. L. Lat. In old records. Herbage; the right to herbage; the right of pasturage. *Spelman. Fleta*, lib. 4, c. 19, § 9. *Liberum herbagium;* free herbage. *Blount*, voc. *Herbage. Herbagium anterius;* the first crop of grass or hay, in opposition to aftermath and second cutting. *Kennett's Paroch. Antiq.* 459. *Cowell.*

HERBERGARE, *Herbigare.* L. Lat. In old English law. To harbor; to entertain. *Cowell. Herbergatus;* entertained; spent at an inn. *Blount. Ad herbigandum. Cowell.* See *Heribergare.*

Herbergagium. A lodging for guests. *Blount.*

HERBERGER. L. Fr. To lodge. *Et que tiels ne se* herbergent *trope sovent en un lieu;* and that such do not lodge too often in one place. *Artic. sup. Chart.* c. 13.

To entertain. *Son hoste que il avera* herberge *plus de deux nuytz ensemble;* his guest whom he shall have entertained more than two nights together. *Britt.* c. 12.

HERCIA. L. Lat. In old English law. A harrow. *Fleta*, lib. 2, cc. 77, 84.

HERCIARE. L. Lat. [Fr. *hercer.*] In old English law. To harrow. *Arabant et* herciebant *ad curiam domini;* they ploughed and harrowed at the lord's manor. 4 *Inst.* 270. See *Arabant.*

HERCIATURA. L. Lat. [from *hercia*, a harrow.] In old English law. Harrowing; work with a harrow. *Fleta*, lib. 2, c. 82, § 2.

HERCISCERE, *Erciscere.* L. Lat. To divide or partition. The more common form is *erciscere*, (q. v.)

HERCISCUNDA, *Erciscunda.* Lat. [particip. of *herciscere*, q. v.] In the civil law. To be divided. *Familia herciscunda;* an inheritance to be divided. *Actio familiæ herciscundæ;* an action for dividing an inheritance. *Erciscunda* is more commonly used in the civil law. *Dig.* 10. 2. *Inst.* 3. 28. 4. *Id.* 4. 6. 20. *Id.* 4. 17. 4. *Herciscunda* is used by Bracton. *Bract.* fol. 443 b. This is translated in Britton by the barbarous and unmeaning word *hertescumbe. Britt.* c. 71, (fol. 183 b, Wingate's ed.) The whole phrase, *actio familiæ herciscundæ*, is unintelligibly rendered in the same passage, "*accion de la mone dame de hertescumbe*," which Wingate proposes to amend by reading "*accion de la meine la Dame de Hertescombe.*" (!)

In a note by Wenck to the German edition of Gibbon's *Decline and Fall of the Roman Empire*, (c. 44,) it is said that this word has never existed, and that Cujacius is the author of it, who read the words *terris condi* in Servius *ad Virg. herciscundi. Erciscunda*, however, which is essentially the same word, not only occurs repeatedly in the text of the civil law, but is used by Cicero himself, and may be traced to the XII Tables. *Cic. de Orat.* i. 56.

HERDEWICH, *Herdewic, Hardewice.* [from Sax. *herd*, a herd, and *wice*, a place or habitation.] In old English law. A grange, or place for cattle and husbandry. *Blount.* 3 *Mon. Angl.* cited *ibid.*

A herdsman's village. *Domesday. Cowell*, voc. *Herdwice.*

HERDWERCH, *Heordwerch.* Sax. In old records. Herdsman's work, or customary labors done by shepherds, herdsmen, and other inferior tenants, at the will of their lord. *Regist. Eccl. Christ. Cant.* MS. A. D. 1166. *Cowell.*

H'ERE. A contraction of *Habere.* 1 *Inst. Cler.* 10.

HERE, *Herge.* Sax. An army, (*exercitus.*) *Spelman.*

An assemblage of more than thirty-five persons. *LL. Inæ*, c. 13. See *Hloth.*

Weapons and habiliments of war. *Lambard, apud Spelman*, voc. *Hereotum.*

HEREBANNUM, *Heribannum, Haribannum, Arribannum.* L. Lat. [from Sax. *here*, an army, and *bannum*, an edict, proclamation, fine.] In early European law. The calling out of an army by proclamation, (*indictio exercitûs.*) *Spelman.* See *Aribannum.*

A fine for not joining the army when summoned, (*mulcta non ambulantis in exercitum evocati.*) *Capitul. Caroli*, lib. 3, c. 67. *Spelman. LL. Longob.* lib. 1, tit. 14, § 13. 1 *Robertson's Charles* V. Appendix, Note viii. This was imposed upon the *liberi homines*, or freemen. *Id. ibid.*

A tribute or subsidy paid for the support of an army, (Sax. *heregeld.*) *Spelman.*

HEREDAD YACENTE. Span. [from Lat. *hæreditas jacens*, q. v.] In Spanish law. An inheritance not yet entered upon or appropriated. *White's New Recop.* b. 2, tit. 19, c. 2, § 8.

HEREDITAGIUM. L. Lat. In Sicilian and Neapolitan law. That which is held by hereditary right; the same with *hereditamentum* (*hereditament*) in English law. *Const. Sicul.* lib. 3, tit. 15. *Spelman.*

HEREDITAMENT. [L. Lat. *hæredi-*

tamentum.] That which may be inherited; every thing which passes to the heir by hereditary right, (*omne quod jure hæreditario ad hæredem transeat.*) *Spelman*, voc. *Hæreditamentum.* This is by far the largest and most comprehensive expression by which things real can be described, as it includes not only lands and tenements, but whatsoever may be inherited, be it corporeal or incorporeal, real, personal or mixed. *Co. Litt.* 6 a. *Shep. Touch.* 91. 2 *Bl. Com.* 17. Thus, an heir-loom, or implement of furniture which by custom descends to the heir, together with a house, is neither land nor tenement, but a mere moveable, yet, being inheritable, is comprised under the general word *hereditament;* and so a condition, the benefit of which may descend to a man from his ancestor, is also an hereditament. *Id. ibid.* 3 *Co.* 2 b, *Winchester's case. Hereditament* is a word almost as comprehensive as property. 3 *Kent's Com.* 401. And it is under this term that the subjects of real property have been usually arranged; being divided into *corporeal* and *incorporeal.* 1 *Steph. Com.* 159. 1 *Crabb's Real Prop.* 2. See *Corporeal hereditaments, Incorporeal hereditaments.*

HEREDITAS. See *Hæreditas.*

HEREF'. The abbreviation of *Herefordshire*, in old English pleadings and records. *Towns. Pl.* 157. 1 *Instr. Cler.* 28.

HEREFARE. Sax. [from *here*, an army, and *fare*, a going.] A going into, or with an army; a going out to war, (*profectio militaris;*) an expedition. *Spelman.*

HEREGEAT. Sax. [from *here*, an army.] In old English law. A heriot. *LL. Canuti*, par. 1, c. 69. *Spelman.* See *Heriot.*

HEREGELD. Sax. [from *here*, an army, and *geld*, a payment.] In old English law. A tribute or tax levied for the maintenance of an army. *Spelman.* See *Heregeld.*

HEREOTUM, *Heriotum, Hariotum.* L. Lat. In old English law. A heriot, or hereot. *Spelman.* See *Heriot.* Bracton uses *heriettum.* (q. v.)

HERES. Lat. Heir; an heir. A form of *hæres*, very common in the civil law. See *Hæres.*

HERESCHIP. Sc. In old Scotch law. Theft or robbery. 1 *Pitc. Cr. Trials*, part 2, pp. 26, 89.

HERESY. [from Gr. αἵρεσις, a choice.] In English law. An offence against religion, consisting not in a total denial of Christianity, but of some of its essential doctrines, publicly and obstinately avowed. 4 *Bl. Com.* 44, 45. Defined by Sir Matthew Hale, *sententia rerum divinarum humano sensu excogitata, palam docta, et pertinaciter defensa;* an opinion on divine subjects devised by human reason, openly taught, and obstinately maintained. 1 *Hale's P. C.* 384. This offence is now subject only to ecclesiastical correction, and is no longer punishable by the secular law. 4 *Steph. Com.* 233.

HERETOCH. [Sax. *heretoga*, from *here*, an army, and *toga*, to lead; L. Lat. *heretochius.*] In Saxon law. A leader or commander of an army, on land or at sea, (*ductor exercitûs, sive navalis sive terrestris;*) a constable, or marshal. *Spelman*, voc. *Heretochius.*

A duke, (*dux*, a leader.) 1 *Bl. Com.* 397. Supposed to have been the title of the ancient English *earl*, in his military capacity. *Crabb's Hist. Eng. Law*, 17.

On the conquest of Gaul by the Franks, the Frank *herizog* superseded the *dux* or duke. He was a military commander, but also administered justice. *Steph. Lect.* 46.

HERETUM. L. Lat. [from Sax. *here*, an army.] In old records. A court or yard for drawing up guards, or military retinue. *Cowell.*

HEREZELD. [from Germ. herr, lord, and Scot. *zeld*, a gift.] In Scotch law. A gift or present made or left by a tenant to his lord as a token of reverence. *Skene de Verb. Sign.* vocc. *Herezelda, Averia.* Spelman thinks it to be a form of *heregeld*, (q. v.) A heriot. *Id.*

HERIBANNUM. See *Herebannum.*

HERIBERGARE. L. Lat. [from Sax. *here*, an army, and *bergian*, to protect or defend.] In old European law. To pitch a camp; to receive or put an army in a safe place. *Spelman.*

To receive an individual under one's protection; to receive or entertain a traveller, (*hospitari.*) *Id.*

HERIBERGUM. L. Lat. [See *Heribergare.*] In early European law. A fortified camp; a place for the safe reception of an army. *Spelman.*

Any place of reception or entertainment; an inn, (*hospitium.*) *Id.*

HERIETTUM. L. Lat. In old English law. A heriot. *Bract.* fol. 84, 86.

Fleta, lib. 3, c. 18. *Dyer*, 199 b. See *Heriot*.

HERIOT, *Hariot*, *Herioth*, *Hereot*. [L. Lat. *heriotum*, *hereotum*, *hariotum*, *herietum*; Sax. *heregeat*, from *here*, an army, and *geat*, an expedition.] In Saxon law. A payment or tribute in arms, or military accoutrements, (*militaris supellectilis præstatio*,) made or due to the lord, on the death of a tenant. *Spelman*, voc. *Hereotum*. *Lambard*, *ibid*. Called also *exercituale*, (from *exercitus*, an army.) *Cowell*, voc. *Exercituale*. Thus, by the laws of Canute, the heriot of an earl was fixed at eight horses, four with trappings and four without; four helmets, four coats of mail, eight spears, and as many shields, four swords, and two hundred pieces of gold. *LL. Sax. Canuti*, par. 1, c. 69. These were compulsory heriots. 2 *Bl. Com.* 423.

In early English law. A gift or legacy made by a tenant to his lord, at his death, of his best or second best beast, according to custom. *Bract.* fol. 86. This, according to Bracton, was done as a mark of respect to the lord, and was a matter of favor rather than of right. *Bract. ub. sup.* See *Fleta*, lib. 3, c. 18. And yet, in another passage, Bracton observes that where a freeman died suddenly and without a will, his lord was entitled to his heriot. *Id.* fol. 60 b. Which shows that the heriot had become, at that early period, a customary tribute. 2 *Bl. Com.* 423, 424.

In modern English law. A customary tribute of goods and chattels, payable to the lord of the fee, on the decease of the owner of the land. 2 *Bl. Com.* 422. See 16 *Mees. & W.* 1. This, (which is otherwise called *heriot custom*,) is now confined for the most part to copyhold tenures, and is sometimes the best live beast, or *averium*, which the tenant dies possessed of, sometimes the best inanimate good, under which a jewel or piece of plate may be included, but it is always a *personal* chattel, which, immediately on the death of the tenant who was the owner of it, being ascertained by the option of the lord, becomes vested in him as his property. 2 *Bl. Com.* 423, 424. 2 *Steph. Com.* 48, 49. 1 *Crabb's Real Prop.* 632, § 809, *et seq.* This custom, Mr. Stephen observes, is now justly considered as one of the most oppressive circumstances which attend the modern law of tenures. 1 *Steph. Com.* 210.

HERIOTH. A heriot. *Bract.* fol. 60 b.

HERIREITA. L. Lat. [from Sax. *here*, an army, and *ryt*, a band.] In old European law. A military band or company. *L. Boior.* tit. 3, c. 8, § 1. *Spelman.*

HERISCHULDA. Sc. In old Scotch law. A fine or penalty for not obeying the proclamation made for warfare. Skene derives this word from *herr*, an army, and *schuld*, a debt.

HERISLIT, *Herisliz*, *Herislitz*. [from Sax. *here*, an army, and *slit*, or *slice*, a breaking, or severing.] In old European law. A breaking off or separation from an army, (*diruptio exercitûs*;) the crime of deserting from an army. *Spelman.*

HERISTAL. [from Sax. *here*, an army, and *stal*, a station; L. Lat. *heristallus*.] The station of an army; the place where a camp is pitched. *Spelman.*

HERITABLE. In Scotch law. That which may be inherited; that which goes to the heir, and not to the executor; the opposite of *moveable*.* See *infra*.

HERITABLE BOND. In Scotch law. A bond accompanied by a conveyance of land, to be held as a security for debt. *Bell's Dict. Jacob.*

HERITABLE JURISDICTIONS. In Scotch law. Grants of criminal jurisdiction, formerly bestowed on great families in Scotland, to facilitate the administration of justice. *Dalrymple on Feuds*, 292. *Bell's Dict.* Abolished in effect by stat. 20 Geo. II. c. 50. *Id. Tomlins.*

HERITABLE RIGHTS. In Scotch law. Rights of the heir; rights to land, or whatever may be intimately connected with land; answering to the *realty* of the English law. *Bell's Dict. Jacob. Whishaw.*

HERITAGE. In Scotch law. Land, and all property connected with land; real estate, as distinguished from *moveables*, or personal estate. *Bell's Dict.*

HERITOR. In Scotch law. A proprietor of land. 1 *Kames' Equity*, pref.

HERMAPHRODITE. [Lat. *hermaphroditus*.] A person of doubtful sex, or one supposed to possess the characteristics of both sexes.

Hermaphroditus tam masculo quam fœminæ comparatur, secundum prævalentiam sexûs incalescentis; an hermaphrodite is to be considered male or female, according to the predominance of sex. *Bract.* fol. 5. *Fleta*, lib. 1, c. 5, § 3. *Co. Litt.* 8. This was probably taken from *Dig.* 1. 5. 10.

HERMOGENIAN CODE. See *Codex Hermogenianus.*

HERNESIUM, *Hernasium.* L. Lat. [from Teut. *harnas*, harness.] In old English law. The furniture of a house or table. *Girald. Cambr. apud Wharton. Angl. Sac. Cowell.*

The tackle or rigging of a ship. *Plac. Parl.* 22 *Edw.* I. *Cowell. Blount.*

HEROUD, *Heraud.* L. Fr. A herald. *Spelman*, voc. *Heraldus.*

HERPEX. Lat. A harrow. *Spelman.*

HERPICATIO. L. Lat. [from *herpex*, q. v.] In old English law. A day's work with a harrow. *Spelman.*

HERPSAC. Sax. A place of immunity. *Blount*, voc. *Frodmortel.*

HERSCHILDT. Sax. [from *her*, an army, and *schildt*, a shield.] In Saxon law. Military service; scutage. *Spelman.*

HERTESCUMBE. A word used in Britton (c. 61,) to express the Lat. *herciscundæ*, the meaning of which was obviously not understood. This goes to show that the ignorance of the civil law, to which Blackstone alludes in the introduction to his Commentaries, had begun to prevail in England as early as the time of Edward I. 1 *Bl. Com.* 22.

HERUS. Lat. A master. *Servus facit ut* herus *det;* the servant does [the work] in order that the master may give [him the wages agreed on.] 2 *Bl. Com.* 445. Herus *dat ut servus facit;* the master gives [or agrees to give, the wages,] in consideration of, or with a view to the servant's doing [the work.] *Id. ibid.*

HEST CORN. In old records. Corn or grain given or devoted to religious persons or purposes. 2 *Mon. Angl.* 367 b. *Cowell.*

H'ET. A contraction of *habet* in old records. *Towns. Pl.* 167. 1 *Inst. Cl.* 10.

HETÆRIA. Lat. In the Roman law. A company, society or college. *Plin. Epist.* x. 43, 94.

HEUVELBORH. Sax. [from *healf*, half, and *borh*, a pledge or surety.] In old English law. A surety, (*warrantus.*) *LL. Gul. Conq.* l. 25.

HEYARE. L. Lat. In old English law. To make a hedge. *Si* heyaverit *vel fossatum fecerit;* if he have made a hedge or ditch. *Bract.* fol. 159 b.

HEYBOTE, *Haybote.* [from Fr. *haye*, a hedge, and Sax. *bote*, an allowance or consideration.] In English law. A liberty granted to a tenant, of cutting as much underwood and bushes on the premises, as was necessary for mending and maintaining the fences or hedges. *Kennett's Paroch. Ant.* 209. *Cowell. Libertas habendi rationabile estoverium in bosco patroni, sicut ad housbote et* heybote, *et ad ardendum et hujusmodi;* a liberty of having a reasonable estover in the wood of the patron, as for housebote and heybote, and for burning [fire bote,] and the like. *Bract.* fol. 408.

HEYLODE. In old records. A customary burden upon inferior tenants, for mending or repairing hays or hedges. *Cowell.*

HEYNOUSITE. L. Fr. Heinousness. *Yearb.* M. 3 Edw. III. 19.

HEYWARD. [from Sax. *hig*, grass, or *heg*, a hedge, and *weard*, a keeper.] In English law. One who takes care of the pasturing of animals, (*rei pascuæ curator;*) a herdsman. *Spelman.* The same probably as *hayward*, (q. v.)

HI. L. Fr. There; thither. *Kelham.*

HIDA, *Hyda.* L. Lat. In old English law. A hide; a portion or measure of land. *Spelman.* See *Hide.*

HIDAGE, *Hydage.* [L. Lat. *hidagium.* q. v.] In old English law. An extraordinary tax payable to the king for every *hide* of land; otherwise called *hidegild. Spelman*, voc. *Hida.* See *Hide.* In raising taxes, it was an ancient custom to describe the kingdom by *hides;* which Spelman thinks was introduced by King Ethelred, A. D. 1008. William the Conqueror took from every hide in England six shillings; and William Rufus, four shillings. *Florent. Wigorn.* in an. 1084. *Mat. Par.* in an. 1083. *LL. Edw. Conf.* c. 11. *Spelman.* Bracton mentions hidages among those common payments which are not called services, nor arise from custom, unless some necessity intervenes, or when the king comes. *Bract.* fol. 37. See *Fleta*, lib. 3, c. 14, § 9.

The privilege of being quit or exempt from the tax called hidage. *Termes de la Ley.*

HIDAGIUM. L. Lat. [from *hida*, q. v.] Hidage. *Bract.* fol. 37. See *Hidage.*

HIDALGO. Span. [from *hijos*, son, and *algo*, property.] In Spanish law. A noble; a person entitled to the rights of nobility. *White's New Recop.* b. 1, tit. 5, c. 1. *Id.* c. 3, § 4, note. By *hidalgos*, are understood men chosen from good situations in life (*de buenos lugures*) and possessed of property, (*algo.*) *Id. ibid.*

HIDALGUIA. Span. In Spanish law. Nobility by descent or lineage. *White's New Recop.* b. 1, tit. 5, c. 3, § 4.

HIDARE. L. Lat. [from *hida*, q. v.] In old English law. To tax or assess land by hides. *Spelman*, voc. *Hida*. *Hidatus;* taxed. *Id. ibid.*

HIDE, *Hyde.* [Sax. *hyd*, from *hyden*, to cover, or hide: L. Lat. *hida*, *hyda;* Scot. *hilda.*] In old English law. A house or dwelling; a mansion or manse; answering to the Latin *tectum*, a thing *covered*, or roofed. *Spelman*, voc. *Hida.* Called by the writers of the middle ages, *mansum* and *mansio. Id.*

A portion of land sufficient for the support of one family; called by Bede *familia;* including a house or *hide*, and lands belonging to it, called *hydelandes. Spelman.*

A quantity of land sufficient for the working of one plough for a year, (*portio terræ ad unius aratri pensum annuum sufficiens;*) or as much as could be ploughed with one plough in a year; a ploughland. *Spelman*, voc. *Hida. Henric. Huntington, Hist.* lib. 6, fol. 206 b. *Co. Litt.* 5 a. Called also *carucata terræ*, (q. v.) *Id. ibid.* The quantity of land contained in a hide is uncertain. According to Gervase of Tilbury, who is followed by Crompton, it originally consisted of one hundred acres. *Cromp. Jur.* fol. 220, 222. *Spelman, ub. supra. Cowell.* Lord Coke observes that it does not contain any certain number of acres. *Co. Litt.* 69 a. The division of England into hides is of great antiquity, occurring as early as the time of king Ina. *Spelman, ub. sup.*

HIDE (or HYDE) AND GAIN. In English law. A term anciently applied to arable land. *Co. Litt.* 85 b. See *Gain.*

HIDE LANDS. [Sax. *hydelandes.*] In Saxon law. Lands belonging to a *hide*, that is, a house or mansion. *Spelman*, voc. *Hida.*

HIDEL. In old English law. A place of protection; a sanctuary. *Stat.* 1 *Hen.* VII. c. 5, 6. *Cowell.*

HIER. L. Fr. Heir. *Kelham.*

HIGH. [Lat. *altus, alta, altum;* L. Fr. *hault, halt.*] Open; common; public; as the *high* sea, a *high* way, (qq. v.)

Elevated in station, dignity or importance; as a *high* court. Head, or chief; (Lat. *magnus;*) as *high* admiral; *high* constable, *high* sheriff.

Elevated or prominent in a bad sense; aggravated; atrocious; as a *high* crime, *high* treason.

HIGH COMMISSION COURT. A court of ecclesiastical jurisdiction in England, erected and united to the regal power by virtue of the statute 1 Eliz. c. 1; which, from the abuses of its powers, was abolished by statute 16 *Car.* 1, c. 11. 3 *Bl. Com.* 67.

HIGH CONSTABLE. In English law. A ministerial officer of justice, otherwise called *chief* constable, and constable of the hundred, whose proper duty is to keep the king's peace within the hundred, as the petty constable does within the parish or township. 3 *Steph. Com.* 46, 47. See *Constable.*

HIGH JUSTICE. [Fr. *haute justice.*] In feudal law. The jurisdiction or right of trying crimes of every kind, even the highest. This was a privilege claimed and exercised by the great lords or barons of the middle ages. 1 *Robertson's Charles* V. Appendix, Note xxiii. See *Justice.*

HIGH JUSTICIER. [Fr. *haut justicier.*] In old French and Canadian law. A feudal lord who exercised the right called high justice. *Guyot, Inst. Feod.* ch. 26. *Dunkin's Address*, 87.

HIGH SEAS, (more correctly, HIGH SEA.) [Lat. *altum mare;* L. Fr. *le hault meer.*] The open ocean outside of the *fauces terræ*, as distinguished from arms of the sea; the waters of the ocean without the boundary of any county. 1 *Kent's Com.* 367 and note. 5 *Mason's R.* 290. 1 *Story's R.* 259. See *Fauces terræ.*

Any waters on the seacoast which are without the boundaries of low-water mark. 1 *Gallison's R.* 624. 5 *Wheaton's R.* 184. The high or main sea properly begins at low-water mark. Story, J. 2 *Gall. R.* 398, 428. See 1 *Kent's Com.* 367, note. 5 *Howard's R.* 453, 462.

HIGH TREASON. [L. Lat. *alta proditio;* L. Fr. *graund treson.*] In English law. Treason against the king or sovereign, as distinguished from petit or petty treason which might formerly be committed against a subject. 4 *Bl. Com.* 74, 75. The crime of *petit* treason having been recently abolished, the correlative term *high* has lost its significance, and is accordingly omitted by Mr. Stephen in his New Commentaries. 4 *Steph. Com.* 183, 184, note. See *Treason, Petit Treason.*

HIGH-WATER MARK. The mark which the sea makes on the shore, at high-

water of ordinary tides. See 5 *B. & Ald.* 268. 7 *Peters' R.* 324. 6 *Mass. R.* 435. *Angell on Tide Waters*, chap. 3. The margin of the periodical flow of the tide, unaffected by extraordinary causes. Nelson, J. 13 *Howard's R.* 421. See *Id.* 423, 424. Anciently called *flood-mark*, (q. v.) and the high line of the sea, (*haut fil de mer.*) See *Fil.*

HIGHWAY. [L. Lat. *alta via ;* L. Fr. *haut chimin, hault strete, haut estrete.*] A public way or road; a way or passage open to all;* a way over which the public at large have a right of passage. *Brande.* Called in some of the old books, *high street. Finch's Law*, b. 2, ch. 9. Every thoroughfare which is used by the public, and is, in the language of the English books, "common to all the king's subjects," is a *highway*, whether it be a carriage-way, a horse-way, a foot-way or a navigable river. 3 *Kent's Com.* 432. Lord Ellenborough, 13 *East*, 95. As to rivers, see *Angell on Water-Courses*, chap. 13. 18 *Barbour's R.* 277. The word *highway* is the genus of all public ways. Holt, C. J. 6 *Mod.* 255. A distinction is made by Blackstone between the *king's highway*, leading from town to town, and a *common* way leading from a village into the fields. 2 *Bl. Com.* 32. This distinction has been formally adopted by Mr. Crabb, who defines a highway, "a way to a market, or a great road, &c. common to all passengers, or, more properly speaking, a public passage for the Queen and all her subjects, whence called by distinction the "Queen's highway;" adding that "whether it leads to a market-town or not, it is a highway if common to all the people." 1 *Crabb's Real Prop.* 99, 100, § 102. Mr. Serjeant Stephen has not adopted the distinction above referred to, though he distinguishes between highways and turnpike roads. 3 *Steph. Com.* 257, 259, 261, 266. See *Turnpike.* A highway is an easement. 1 *Conn. R.* 103, 132. Lord Brougham, 4 *Bell's Appeal Cases*, 390. See 2 *Smith's Lead. Cas.* 94, note, and Am. ed. note. *United States Digest*, Ways. See *Alta via, Via regia.*

HIGHWAY ACT. In English law. The statute of 5 & 6 Will. IV. c. 50. 3 *Steph. Com.* 258.

HIIS (or HIJS) TESTIBUS. L. Lat. (These being witnesses.) The name of the concluding or attestation clause in ancient deeds and charters, which contained the names of the witnesses; so called from the words with which it commenced. The whole clause ran thus: *Hijs testibus, Johanne Moore, Jacobo Smith ; et aliis ad hanc rem convocatis ;* these being witnesses, John Moore, James Smith, and others assembled for this purpose. 2 *Bl. Com.* 307. *Co. Litt.* 6 a, 7. The names of the witnesses were written by the clerk who drew the deed, and not by the witnesses themselves, who very often could not write. 2 *Reeves' Hist. Eng. Law*, 89. Tindal, C. J. 6 *Man. & Gr.* 457. Magna Charta concludes with a clause of this kind, and so did all royal grants and charters until the reign of Richard the second, when the clause *Teste meipso* was introduced in its place. 2 *Bl. Com.* 308. *Crabb's Hist.* 150, 151. 2 *Inst.* 78. The clause of *hijs testibus* in the deeds of subjects was not entirely discontinued until the reign of Henry VIII. 2 *Bl. Com. ub. sup.*

HIJO. Span. In Spanish law. A child, or son. *White's New Recop.* b. 3, tit. 10, c. 1, § 4.

HIKENILD STREET. One of the four great Roman roads of Britain. *LL. Edw. Conf.* c. 12. More commonly called Ikenild Street, (q. v.)

HILARY TERM. One of the four terms of the English courts of common law, beginning on the 11th and ending on the 31st of January in each year. *Stat.* 11 *Geo.* IV. & 1 *Will.* IV. c. 70. 3 *Steph. Com.* 561. It formerly began on the 23d January, and ended on the 12th February; and derives its name from St. Hilary's day, which immediately preceded its commencement. *Id. ibid.* 3 *Bl. Com.* 277.

HINE, *Hein.* Sax. In old English law. A servant or domestic; properly a servant at husbandry. *Cowell.*

HINFANGTHEFE. This word occurs in Bracton, (fol. 122 b,) but in another passage is written *infangenthef, infangethef*, which is the ordinary form. *Id.* fol. 154 b. See *Infangthefe.*

HIPOTECA, *Hypoteca.* Span. [from Græco-Lat. *hypotheca*, q. v.] In Spanish law. A mortgage of real property. *White's New Recop.* b. 2, tit. 7. *Schmidt's Civ. Law*, 179.

HIRCISCUNDA. See *Herciscunda.*

HIRE. [Lat. *merces.*] In the law of bailment. Compensation for the use of a thing, or for labor and services. See *Locatio, Merces.*

HIRER. [Lat. *conductor.*] In the law of bailment. One who takes a thing from

another to use it, for a compensation agreed upon. See *Conductor.*

HIRST, *Hurst.* In old English law. A wood. *Co. Litt.* 4 b.

HITHE. See *Hyth.*

HLAFORD. Sax. A lord. 1 *Spence's Chancery*, 36.

HLAFORDSWICE. Sax. In Saxon law. The crime of betraying one's lord, (*proditio domini ;*) treason. *Crabb's Hist. Eng. Law*, 59, 301.

HLOTH, *Hlode.* Sax. In Saxon law. An unlawful company or assembly of men, (*turma illegitima,*) numbering from seven to thirty-five. *LL. Inæ, MSS.* c. 13. *Spelman.*

HLOTHBOTE. Sax. [from *hloth*, a company, and *bote*, a fine.] In Saxon law. A fine for being present at an unlawful assembly. *LL. Alured. MSS.* c. 26. *Spelman.*

HO. Stop; cease. The word made use of for the combatants in the *duellum* to leave off fighting. *Kelham.*

HOASTMEN. In English law. An ancient guild or fraternity at New-Castle-upon-Tine, who dealt in sea coal. *Stat.* 21. *Jac.* I. c. 3.

HOBELLARII, *Hobelarii.* L. Lat. [from *hobby*, a light or small horse, or Fr. *hobille*, a tunic or jack.] In old English law. Hobilers or hoblers. Soldiers lightly armed, and mounted on ordinary but active horses, (*milites levi armatura, et mediocri equo ad omnem motum agili ;*) light horsemen or light cavalry. *Spelman. Barringt. Obs. Stat.* 237, note [*i*].

HOBILERS, *Hoblers.* [L. Fr. *hobelours ;* L. Lat. *hobellarii.*] In old English law. Light horsemen. See *Hobellarii.*

HOC PARATUS EST VERIFICARE. See *Et hoc paratus, &c.*

HOC QUIDEM PERQUAM DURUM EST, SED ITA LEX SCRIPTA EST. Lat. (This indeed is exceedingly hard, but so the law is written; such is the written or positive law.) An observation quoted by Blackstone, as used by Ulpian in the civil law; and applied to cases where courts of equity have no power to abate the rigor of the law. *Dig.* 40. 9. 12. 1. 3 *Bl. Com.* 430. The text of the Digests reads, "quod *quidem perquam*," *&c.*

HOC VOBIS OSTENDIT. L. Lat. [L. Fr. *ceo vous monstre.*] (This shows to you.) The form in which the plaintiff's count (or *intentio,*) in some real actions commenced in the time of Bracton. *Hoc ostendit vobis A. quod B. injuste ei deforciat,* &c.; this shows A. to you that B. unjustly deforces him, &c. *Bract.* fol. 372 b. *Id.* fol. 296 b. *Fleta*, lib. 5, c. 25, § 9. *Id.* lib. 6, c. 16, § 2. 1 *Reeves' Hist. Eng. Law*, 427.

HOCHPOT. See *Hotchpot.*

HODGE-PODGE ACT. A name given to an act of parliament, in which enactments on various distinct subjects are thrown together under one title. *Barringt. Obs. Stat.* 449.

HOGA, *Hogum.* L. Lat. In old English law. A hill or mountain; in old English, a *how. Grene hoga ;* Greenhow. *Domesday. Spelman.*

HOGACIUS, *Hoggacius.* L. Lat. In old English law. A sheep of the second year. *Cartul. Abbat. Glaston. MS.* fol. 48 a. *Cowell.*

HOGASTER, *Hoggaster.* L. Lat. In old English law. A sheep of the second year. *Fleta*, lib. 2, c. 79, §§ 4, 12.

HOGHENEHYNE, *Hogenehyne, Agenhine, Homehyne.* Sax. [from *hogh*, a house, and *hine*, a servant.] A domestic servant; one of the household or family. A name given, in the old Saxon laws, to one who was entertained in another's house, on the third night of his stay; the head of the family being, in such case, answerable for his conduct as for his *own domestic* servant. On the first night, he was called *uncuth*, (unknown, or a stranger;) on the second night, *gust*, (guest;) on the third night, *hogenehyne. Bract.* fol. 124 b. *Britt.* c. 12. In the Saxon laws, the word is written *agen hyne*, pronounced *awn hine. Frum night*, uncuth; *twa night*, gest; *thrid night*, agin hine. *LL. Edw. Conf.* c. 17. Spelman defines the word under *homehine.* Cowell and some others make *third night* a part of the appellation, which is clearly an error. In Latch, 88, the old Saxon law seems to be entirely misunderstood.

HOGSHEAD. A measure of capacity, containing the fourth part of a tun, or sixty-three gallons. *Cowell.*

In America, a butt or cask, containing from 110 to 120 wine gallons. *Webster.*

HOLD. In old law. Tenure. A word constantly occurring in conjunction with others, as *freehold, leasehold, copyhold,* &c., but rarely met with in the separate form. It occurs several times in the old laws of the colony of New Plymouth. "That inheritance do descend according to the commendable custom of England

and *hold* of East Greenwich." *Colony Laws*, Nov. 15, 1636. "That a convenient form for registry of men's particular *holds* be here inserted," &c. *Id. ibid.*

To HOLD. [Lat. *tenere ;* L. Fr. *tener.*] To bind; to be of legal force or efficacy. See *Tenere.*

To judge or deem; to be of opinion; to decide. "The court held," &c. See *Tenere.*

To be the grantee or tenant of another; to take or have an estate from another. Properly, to have an estate on condition of paying rent, or performing service. See *Tenere, Tenendum, Tenure, Tenant.*

To have in possession; to possess. See *Holder, Tenant.*

To HOLD PLEAS. [L. Lat. *tenere placita ; ad tenenda placita.*] To have cognizance or jurisdiction of actions. 3 *Bl. Com.* 35, 298.

To hold courts, or hear causes. *Reg. Orig.* 68 b.

HOLDER. [Fr. *porteur.*] In mercantile law. The person having [rightfully] in possession a bill of exchange, promissory note or check, whether as payee, indorsee or otherwise.* *Story on Bills*, § 12. Called sometimes *bearer. Chitty on Bills*, 26, 27.

HOLDES. Sax. In Saxon law. A military commander. *Spelman.*

HOLDING. In Scotch law. Tenure; the nature of the right given by the superior to the vassal. *Bell's Dict.* See *Ward-holding, Blench-holding, Feu-holding.*

HOLDING UP THE HAND. In criminal practice. A formality observed in the arraignment of prisoners. See *Arraignment, Hand.* Held to be not absolutely necessary. 1 *W. Bl.* 3, 4.

HOLDING OVER. A holding beyond a term; a continuing in possession, after the expiration of a term. The act of keeping possession of premises leased, after the expiration of the term of the lease, without the consent of the landlord.

HOLIDAY. See *Dies non juridicus.*

HOLM. [L. Lat. *hulmus.*] In English law. An island in a river (*insula amnica,*) or the sea, (*marina.*) *Spelman*, voc. *Hulmus. Co. Litt.* 5 a. *Blount.*

Plain grassy ground upon water sides, or in the water. *Blount. Camden*, cited *ibid.* Low ground intersected with streams. *Spelman.*

HOLOGRAPH. [Græco-Lat. *holographum ;* Gr. ὁλογραφον, from ὁλος, all, and γράφειν, to write.] In civil and Scotch law. Any writing, deed, document or memorandum wholly in the handwriting of a party. *Bell's Contr. of Sale*, 64. *Bell's Dict. Best on Evid.* 256, § 210.

A will written entirely by the hand of the testator. *Calv. Lex.* 1 *Jarman on Wills*, 135, (Perkins' ed.) 3 *Jones' Law R.* 516. Called, in French, *olograph*, (*le testament olograph.*) *Civ. Code of Louis. Art.* 1581. See *Olograph.*

HOLT. Sax. In old English law. A wood or grove. *Spelman. Cowell. Co. Litt.* 4 b.

HOLY ORDERS. [Lat. *sacri ordines.*] In ecclesiastical law. The orders of bishops, (including archbishops,) priests anddeacons, in the church of England. 3 *Steph. Com.* 55. 1 *Wooddes. Lect.* 174. The Roman canonists had the orders of bishop, (in which the pope and archbishops were included,) priest, deacon, sub-deacon, psalmist, acolythe, exorcist, reader, ostiarius. *Corv. Jus. Canon.* 38, 39. *Gibs. Cod.* 115. 1 *Wooddes. Lect.* 174, note.

HOMAGE. Fr. and Eng. [L. Lat. *homagium* and *hominium ;* from *homo*, (Fr. *home,*) a man, or vassal.] In feudal law. An acknowledgment by a feudal tenant, that he was the *man* or vassal of his lord.* A ceremony or service which every tenant was bound to perform to his lord, on receiving investiture of a fee, or coming to it by succession as heir, in acknowledgment of the tenure. *Glanv.* lib. 9, c. 1. *Bract.* fol. 77 b. 78, 79, 80. It was properly incident to the tenure by knight-service, and is called by Littleton the most honorable service, and the most humble service of reverence that a free tenant could do to his lord. *Litt.* sect. 85. It was performed by the tenant kneeling, bare-headed and ungirt, holding both his hands together between those of his lord, who sat before him, and repeating the following form of words: "I become your *man*, from this day forth, of life, of limb, and of worldly honor [or earthly worship]; and unto you shall be true and faithful, and will bear you faith for the lands which I hold of you, saving the faith I owe to our sovereign lord the king." *Stat.* 17 *Edw.* II. st. 2. The lord then gave the tenant a kiss, and the latter standing up then made the oath of fealty. *Litt.* sect. 85. *Bract.* fol. 80. *Spelman.* 2 *Bl. Com.* 54. See *Homagium, Homo.*

*** The above mentioned formula of homage was prescribed by the statute 17

Edw. II. The older form given by Bracton is in somewhat different language, though both commenced with the same words: *Devenio vester homo;* (L. Fr. *jeo deveigne vostre home,*) from which the term *homage* itself is derived. *Bract.* fol. 80. *Britt.* c. 68. See *Fleta*, lib. 3, c. 16, § 20. *Co. Litt.* 64 b. See *Devenio.* That homage was much more than a mere ceremony, is clear from Bracton's definition of it, (see *Homagium,*) who also observes that the putting of the tenant's hands between those of the lord denoted, on the part of the lord, protection, defence, and warranty, and on the part of the tenant, reverence and subjection. *Bract.* fol. 80. Homage is now commonly regarded in the light of an abject and servile ceremony, importing a degree of humiliation on the part of the tenant degrading to the character of a freeman. There was one part of the ceremonial, however, which places it in a somewhat less odious light. At the conclusion of the homage, the lord was bound *to kiss* the tenant, and this, according to Britton, could *never be dispensed with*, whoever the lord might be; whether the king himself or any other, whether male or female, clerk or layman, old or young; and whoever the tenant might be, poor or rich, healthy or sick, ugly or fair, (*poure ou ryche, lede ou bele.*) *Britt.* c. 68. In the reign of Henry VI. a special act of parliament was passed, to excuse the kissing in the case of homage made to the king, by reason of pestilence. *Rot. Parl.* 18 *Hen.* VI. n. 58. *Hal. MSS.*

HOMAGE ANCESTREL, (or AUNCESTREL.) L. Fr. In old English law. A species of tenure, where a man and his ancestors had immemorially holden land of another and his ancestors, by the service of homage. *Litt.* sect. 143. 2 *Bl. Com.* 300. This bound the lord to warranty, in the ancient sense of homage. *Id. ibid. Hargr. Co. Litt.* Note 12, lib. 2. See *Homagium.*

HOMAGE JURY. In English law. The jury in a court baron; so called, because it most commonly consisted of such as owed homage to the lord of the fee. *Cowell.* See *Homagium.* Otherwise called *pares curiæ*, peers of the court. 2 *Bl. Com.* 54, 366.

HOMAGE LIEGE. See *Homagium ligium.*

HOMAGER. In English law. One that does, or is bound to do homage. *Cowell.*

HOMAGIUM, L. Lat. [quasi *hominis agium;* the tenant promising to be his lord's *man; se domini hominem acturum. Spelman.*] In feudal law. Homage. Called also, anciently, *hominium, hominatus, hominatio, hominiscum*, and *hominiscatus. Hominium*, according to Spelman, was the most ancient form. Lord Coke says it is called in English *manhood*, and that manhood and homage is all one. *Co. Litt.* 64 b.

Homagium est juris vinculum quo quis tenetur et astringitur ad warrantizandum, defendendum et acquietandum tenentem suum in seysina sua versus omnes, per certum servitium in donatione nominatum et expressum, et etiam, vice versâ, quo tenens re-obligatur et astringitur ad fidem domino suo servandam, et servitium debitum faciendum; homage is a bond of law by which one is held and bound to warrant, defend and acquit his tenant in his seisin, against all persons, by the certain service named and expressed in the gift; and also, on the other hand, by which the tenant in return is obligated and bound to keep his faith to his lord, and to perform the service due. *Bract.* fol. 78 b. See *Fleta*, lib. 3, c. 16, § 8.

HOMAGIUM LIGIUM. L. Lat. In feudal law. Liege homage; that kind of homage which was due to the sovereign alone, as supreme lord, and which was done without any saving or exception of the rights of other lords. *Spelman*, voc. *Homagium.* So called from *ligando*, (binding,) because it could not be renounced like other kinds of homage. *Id.*

HOMAGIUM PLANUM. L. Lat. In feudal law. Plain homage; a species of homage which bound him who did it to nothing more than fidelity, without any obligation either of military service or attendance in the courts of his superior. 1 *Robertson's Charles* V. Appendix, Note viii.

HOMAGIUM SIMPLEX. L. Lat. In feudal law. Simple homage; that kind of homage which was merely an acknowledgment of tenure, with a saving of the rights of other lords. *Hargr. Co. Litt.* note 18, lib. 2.

HOMAGIUM REDDERE. L. Lat. In old English law. To renounce homage; to give it up, or dissolve it. *Bract.* fol. 81 b.

HOMBRES BUENOS. Span. In Spanish law. Good men; fit men. *White's*

New Recop. b. 2, tit. 19, c. 3, § 1. Substantial citizens. *Schmidt's Civ. Law*, 216. Corresponding with the *boni* or *probi homines* of the old common law.

HOME. See *Domicile.*

HOMEAUS. L. Fr. In old English law. The Elms near Smithfield; the place of execution before Tyburn. *Kelham.*

HOMEHYNE. Sax. A domestic. *Spelman.* See *Hogenehyne.*

HOME PORT. A port in a state in which the owner of a ship resides.* 1 *Brock. R.* 396, 404. But see 3 *Kent's Com.* 171, 172, note.

HOMESTEAD. The place of a home or house.* That part of a man's landed property which is about and contiguous to his dwelling-house. Parsons, J. 2 *Metcalf's R.* 45, note. Called anciently, a *homestall*, or *homestale. Cowell.*

In the case of True *v.* Estate of Morrill, (28 *Vermont R.* 672,) it was held, under the Vermont homestead act, (defining a homestead, as consisting of "a dwelling-house, out-buildings and lands appurtenant, occupied as a homestead by a housekeeper, or the head of a family,") that the occupancy must be a *personal* one and not by a tenant. See *Compiled Statutes*, tit. 18, ch. 65, §§ 1, 4.

HOMICIDE. L. Fr. and Eng. [Lat. *homicidium*, from *homo*, a man, or human being, and *cædere*, to kill, or *cædes*, a killing.] In criminal law. The killing of one human being by another, (*hominis occisio ab homine facta.*) *Bract.* fol. 120 b. 4 *Bl. Com.* 177. See *Wharton's Am. Crim. Law*, b. 4, chap. 1. Divided by Blackstone (*ub. sup.*) into three kinds: justifiable, excusable, and felonious. 4 *Steph. Com.* 96, 97. See *Justifiable homicide*, *Excusable homicide*, *Felonious homicide.*

HOMICIDE PER INFORTUNIUM. Eng. and L. Lat. In criminal law. Homicide by misfortune, or accidental homicide; as where a man doing a lawful act, without any intention of hurt, unfortunately kills another; a species of excusable homicide. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. Called also *homicide per misadventure. Id. ibid.* 1 *Russell on Crimes*, 657. *Wharton's Am. Crim. Law*, § 934. Answering to the *homicidium ex casu*, (q. v.) of Bracton. See *Per infortunium*, *Per misadventure.*

HOMICIDE PER MISADVENTURE. See *Homicide per infortunium.*

HOMICIDE SE DEFENDENDO. Eng. and L. Lat. In criminal law. Homicide in self-defence; the killing of a person in self-defence upon a sudden affray; where the slayer had no other possible (or, at least, probable) means of escaping from his assailant. 4 *Bl. Com.* 183, 184—186. 4 *Steph. Com.* 103—105. A species of excusable homicide. *Id. ibid.* 1 *Russell on Crimes*, 660. *Wharton's Am. Crim. Law*, § 935.

HOMICIDIUM. Lat. Homicide. *Est dictum* homicidium *ab* homine *et* cædo, *quasi* hominis cædium; it is called *homicidium* from *homine* and *cædo*, as it were *hominis cædium. Bract.* fol. 120 b. See *Homicide.*

Homicidium ex justitia; homicide in the administration of justice, or in the execution of the sentence of the law. *Id. ibid.*

Homicidium ex necessitate; homicide from inevitable necessity, as for the protection of one's person or property. *Id. ibid.* See *Justifiable homicide.*

Homicidium ex casu; homicide by accident. *Id. ibid.* See *Excusable homicide.*

Homicidium ex voluntate; voluntary or wilful homicide. *Id.* fol. 121. See *Felonious homicide.*

HOMINATIO. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage, or the doing of homage. *Spelman*, voc. *Homagium. Domesday. Blount.*

HOMINES LIGII. L. Lat. In feudal law. Liege men; feudal tenants or vassals, especially those who held immediately of the sovereign. 1 *Bl. Com.* 367. See *Homo ligius.*

HOMINIUM. L. Lat. [from *homo*, a man or vassal.] In old English law. Homage. This, according to Spelman, was the original, and anciently the more common term, which afterwards gave place to *homagium. Spelman*, voc. *Homagium.*

HOMIPLAGIUM. L. Lat. [from *homo*, a man, and *plaga*, a wound.] In old English law. The maiming of a man. *LL. Hen.* I. c. 80. *Blount.*

HOMME. Fr. Man; a man. This term is defined by the Civil Code of Louisiana, to include a woman. Art. 3522, n. 1. 2. See *Homo.*

HOMMES DE FIEF. Fr. In feudal law. Men of the fief; feudal tenants, the peers in the lord's courts. *Esprit des Lois*, liv. 28, c. 27.

HOMMES FEODAUX. Fr. In feudal law. Feudal tenants; the same with *hommes de fief*, (q. v.) *Esprit des Lois*, liv. 28, c. 36.

HOMO. Lat. A man. (See *Homo*, in feudal law.) *Homo consiliarius, et in lege peritus;* a counsellor, and learned in the law. 10 *Co.* 61.

A human being, including both male and female. Hominis *appellatione, tam fœminam quam masculum contineri, non dubitatur;* that both female as well as male is included under the term *homo*, is not doubted. *Dig.* 50. 16. 152. This exposition of the civil law is followed in the common law, and formally adopted in some modern codes. 2 *Inst.* 45. See *Homme.*

HOMO. L. Lat. In feudal law. A man; a vassal (*vassallus, vassus;*) a military or feudal tenant or retainer, (*miles, cliens feodalis.*) One who having received a fee or fief, was found to fight for his lord, and to do homage, and other military services. Called also *baro*, and more frequently *leudes. Spelman*, voc. *Homagium.* A tenant by knight service. *Id. ibid. Plenam itaque custodiam domini filiorum et hæredum* hominum *suorum, et feodorum suorum, ita quod plenam inde habent dispositionem;* the lords therefore have the entire wardship of the children and heirs of their tenants, and of their fees, so that they have the full disposition thereof. *Glanv.* lib. 7, c. 9. *Hugo Bardolf et Will. Stuteville consentire noluerunt quia erant* homines *comitis Johannis Moretonii;* Hugh Bardolf and William Stuteville would not consent, because they were the *men* of earl John Moreton. *Hoveden in Ric.* I. A. D. 1193.

Any tenant of lands, whether agricultural, (*socmannus,*) or military. *Spelman, ub. sub.*

Any retainer, dependant, servant, or person of inferior or servile condition; (*cliens, famulus, subditus.*) *Id. ibid.*

Homo casatus. One who did service within a house, (*qui in ædibus servit.*) *Capitular.* lib. 5, c. 136. *Spelman*, voc. *Homagium.* But see *Casatus.*

Homo chartularius. A slave manumitted by charter. *Capitular.* lib. 6, c. 208.

Homo commendatus. One who surrendered himself into the power of another, for the sake of protection or support. *L. Ripuar.* tit. 72, § 5. See *Commendatus.*

Homo ecclesiasticus. A church vassal; one who was bound to serve a church, especially to do service of an agricultural character. *Capitular.* lib. 5, c. 151. *Spelman*, voc. *Homagium.*

Homo exercitalis. A man of the army (*exercitus;*) a soldier. *LL. Longob.* lib. 1, tit. 9, l. 21. *L. Wisigoth.* lib. 19, tit. 2, l. 9.

Homo feodalis. A vassal or tenant; one who held a fee (*feodum,*) or part of a fee. *Spelman, ub. sup.*

Homo fiscalis or *fiscalinus.* A servant or vassal belonging to the treasury or *fiscus. Id. Formull. Solenn.* c. 90.

Homo francus. A freeman. See *Francus.* A Frenchman. See *Francus.*

Homo ingenuus. A free man. *L. Ripuar.* tit. 31, § 1. A free and lawful man. *Spelman*, voc. *Ingenuus.* A yeoman. *Id. ibid.*

Homo liber. A freeman. See *Liber homo.*

Homo ligius. A liege man; a subject; a king's vassal. *Spelman*, vocc. *Homagium, Ligius.* The vassal of a subject. *Id. ibid.*

Homo novus. A new tenant or vassal; one who was invested with a new fee. *Spelman*, voc. *Homagium.*

Homo pertinens. A feudal bondman or vassal; one who *belonged* to the soil, (*qui glebæ adscribitur.*) *LL. Longob.* lib. 1, tit. 16, l. 8.

Homo regius. A king's vassal. *L. Ripuar.* tit. 11, § 3.

HOMO ROMANUS. Lat. A Roman. An appellation given to the old inhabitants of Gaul and other Roman provinces, and retained in the laws of the barbarous nations. *L. Salic.* tit. 34, § 3. *Id.* tit. 43. §§ 6—8. *Spelman.*

HOMOLOGARE. Græco-Lat. [from Gr. ὁμολογεῖν, to consent, assent, confess.] In the civil law. To confirm or approve; to consent, or assent; to confess. *Calv. Lex.* Sometimes corruptly written *emologare.*

HOMOLOGATE. [from *homologare*, q. v.] In modern civil law. To approve, to confirm; as a court *homologates* a proceeding. See *Homologation.* Literally, to use the *same words* with another, (Gr. ὁμός, same, and λόγος, word;) to say the like. Martin, J. 9 *Martin's* (La.) *R.* 324. To assent to what another says or writes.

HOMOLOGATION. [from *homologare*, q. v.] In modern civil law. Approbation or confirmation by a court; as of an award,

a partition, &c. *Civil Code of Louis.* art. 3096, 1296, 1297, 1299.

In Scotch law. An act by which a person approves of a deed, the effect of which is to render that deed, though in itself defective, binding upon the person by whom it is homologated. *Bell's Dict.* Confirmation of a voidable deed.

HOMOLOGUS. Lat. In feudal law. A liege vassal. The same, according to the feudists, as *homo ligius.* But Spelman and Calvin disapprove this derivation.

HOMONYMIÆ. Græco-Lat. [from Gr. ὁμός, same, and ὄνομα, name.] A term applied, in the civil law, to cases where a law was repeated, or laid down in the same terms or to the same effect, more than once. Cases of iteration and repetition. *Bacon's Works*, iv. 371. For an illustration of *homonymiæ*, in judicial decisions, see the American cases referred to by Chancellor Kent. 2 *Kent's Com.* 489, note.

HOMSTALE. Sax. [from *ham*, house, and *stal*, station.] In old English law. A mansion-house, or homestall. *Cowell.* See *Homestead.*

HONDHABEND. Sax. Having in hand. See *Handhabend.*

HONESTE. Lat. In civil and old English law. Honorably; with credit or propriety; in a manner becoming one's station; creditably; becomingly; virtuously. *Provideatur ei domus competens in qua possit* honeste *morari, quousque dos sua ei assignetur;* there shall be provided for her a sufficient house, in which she may tarry, or live creditably, until her dower be assigned her. *Bract.* fol. 96. *Mag. Cart.* c. 7. **Honeste vivere;** to live honorably, creditably or virtuously. One of the three general precepts to which the Institutes of Justinian reduced the whole doctrine of the law. *Inst.* 1. 1. 3. *Bract.* fol. 3, 3 b. This phrase is rendered by Blackstone, as well as Harris and Cooper, in their translations of the Institutes, "to live *honestly.*" 1 *Bl. Com.* 40. But this is not the proper meaning of *honeste*, either in classical or law Latin. *Id. ibid.* Christian's note. See the quotation from Bracton, *supra;* and see *Honestus.*

HONESTUS. Lat. In civil and old English law. Of good character, or standing. *Coram duobus vel pluribus viris legalibus et* honestis; before two or more lawful and good men. *Bract.* fol. 61.

Proper or becoming. **Non omne quod licet honestum est.** What is lawful is not always becoming. *Dig.* 50. 17. 144.

HONOR, HONOUR. [L. Lat. *honor.*] In feudal law. A seigniory of the nobler sort, having several inferior lordships and manors dependent upon it, by the performance of customs and services. *Cowell. Termes de la Ley. Blount.* 1 *Steph. Com.* 202. The seigniory of a lord paramount. 2 *Bl. Com.* 91. This term was introduced into England by the Normans, and anciently signified the feodal patrimony, estate or barony of a greater baron. It was called also a royal benefice or fee, and was always held of the king *in capite. Spelman.*

HONOR COURTS. In English law. Courts held within honors. *Stat.* 33 *Hen.* VIII. c. 37. *Stat.* 37 *Hen.* VIII. c. 18. *Cowell.*

To HONOR. In mercantile law. To accept a bill of exchange; to pay a bill or note when due.

HONORARIUM. Lat. In the civil law. An honorary or free gift; a gratuitous payment, as distinguished from hire or compensation for service; a lawyer's or counsellor's fee. *Dig.* 50. 13. 1. 10—12. Among the ancient Romans, advocates practiced *gratis*, for honor merely, or at most for the sake of gaining influence; being prohibited by the Cincian law from taking any fees or presents for their services. Under the emperors, the taking of fees to a certain limit (ten thousand sesterces, or about 80*l.* of English money,) was permitted. 3 *Bl. Com.* 28. *Tacit. Annal.* lib. xi. c. 5. The ancient idea continued, however, to be retained in the name (*honorarium*) given to the fees thus allowed, and is still preserved in that rule of the English law that a counsel can maintain no action for his fees. 3 *Bl. Com. ub. sup. Story on Bailm.* § 153.

HONORARY SERVICES. In English law. Services incident to grand serjeanty, and annexed commonly to some honor. *Cowell.*

HONTFANGENETHEF. Cowell thinks this word should be written *hondfangenethef*, signifying a thief taken *hondhabend.* But it is rather a misprint for *houtfangenethef*, a form or corruption of *outfangenethef.* Bracton uses both *hutfangthefe*, and *utfangenethef. Bract.* fol. 122 b, 154 b. So *infangenethef* was otherwise written *hinfangthefe. Id. ibid.* See *Outfangthefe.*

HONY. L. Fr. Disgrace; evil. *Kelham.*

HOPE. In old English law. A valley. *Co. Litt.* 4 b.

HORA. Lat. In old English law. An hour. *Hora fit ex quadraginta momentis;* an hour consists of forty minutes. *Bract.* fol. 264, 359 b. *Fleta*, lib. 5, c. 5, § 31. 2 *Inst.* 318. See *Hour.*

HORA AURORÆ. L. Lat. In old records. The morning bell. *Cowell.*

HORÆ JURIDICÆ. Lat. In English practice. Juridical hours; hours for judicial business; hours during which judges sit in court. 2 *Inst.* 265. In Fortescue's time, the judges of England did not sit in the king's courts above three hours in the day, that is, from eight in the morning till eleven. *Fortescue de L. L. Angliæ*, c. 51. *Selden's note*, in loc.

HORCA. Span. [from Lat. *furca*, q. v.] In Spanish law. A gallows; the punishment of hanging. *White's New Recop.* b. 2, tit. 19, c. 4, § 1.

HORDERIUM. L. Lat. In old English law. A hoard; a treasure, or repository. *LL. Canut.* c. 104. *Cowell.*

HORDEUM. Lat. In old records. Barley. *Hordeum palmale;* beer barley, as distinguished from common barley, which was called *hordeum quadragesimale. Blount.*

HORE. L. Fr. Hour. *Kelham.*

HORE. L. Fr. Now; the present time. *Kelham.* See *Ore.*

HORN. In old Scotch practice. A kind of trumpet used in denouncing contumacious persons rebels, and outlaws; which was done with three blasts of the horn by the king's serjeant. This was called "putting to the horn;" and the party so denounced was said to be "at the horn." *Bell's Dict.* voc. *Denunciation. Skene de Verb. Sign.* voc. *Bannitus.* 1 *Pitc. Cr. Trials*, part 2, pp. 77, 80.

HORN WITH HORN. In old records. The promiscuous feeding together of horned cattle upon the same common. *Spelman. Cowell.* The intercommoning of horned cattle, where there was common *pur cause de vicinage. Blount.*

HORN TENURE. See *Cornage.* The Pusey estate in England was held by the tenure of a horn, which, on a bill filed in chancery, was ordered to be delivered up to the heir. 1 *Vern.* 273.

HORNGELD. Sax. [from *horn*, and *geld*, a payment.] In old English law. A tax within a forest, paid for horned beasts. *Cromp. Jurisd.* 197. *Cowell. Blount.*

HORNING, or LETTERS OF HORNING. In Scotch law and practice. A warrant in the king's name, issued out under the signet, to charge persons to pay, or perform deeds within a prefixed time, upon pain of being declared outlaw, and having their goods pointed, [i. e. distrained,] &c. in case of disobedience. 1 *Forbes' Inst.* part 3, p. 22. See *Horn.* A species of diligence, [i. e. process] against a debtor, proceeding on the warrant of a decree of the court of session, directing the debt to be paid within a limited number of days; in default of which payment, the debtor incurs the charge of rebellion, and is thereupon liable to caption or arrest. *Brande.*

HORREUM, *Orreum.* Lat. In civil and old English law. A place for keeping grain; a granary. See *Custos horrei.*

A place for keeping fruits, wines, and goods generally; a store-house. *Calv. Lex. Brissonius. De mercibus in orreis. Bract.* fol. 48.

HORS. L. Fr. Out; out of; without. Probably derived, through *fors*, from the Latin *foris; f* and *h* being sometimes interchangeable letters. Thus *forsprise* is sometimes written *horsprise* or *horspris.* See *Foris, Forprise. Hors son sen;* out of his sense or mind. *Britt.* c. 85. *Hors de pryson;* out of prison. *Stat. Mod. Lev. Fines. Hors de court;* out of court. *Yearb.* T. 2 Edw. II. 44. *Tener hors;* to keep out. *Britt.* c. 65.

HORS DE SON FEE. L. Fr. [L. Lat. *extra feodum.*] Out of his fee. *Britt.* c. 38. The name given, in the old books, to an exception or plea to avoid an action brought for rent issuing out of certain land, by one pretending to be the lord, or for some customs and services; for if the defendant could prove the land to be *out of* the compass of the plaintiff's *fee*, the action failed. *Termes de la Ley.* 3 *Reeves' Hist. Eng. Law.* 455. See *Extra feodum, District.*

HORS PRIS. L. Fr. Except. Literally translated by the Scotch *out taken. Hors pris clers, gentz de religion, et femmes;* except clerks, people of religion, and women. *Britt.* c. 29.

HORTUS. Lat. In the civil law. A garden. *Dig.* 32. 91. 5.

HOSPES. Lat. In civil and old English law. A guest. 8 *Co.* 32, *Calye's case.* See *Hospites.*

A host or entertainer. *Calv. Lex.* More commonly *hospitator*, (q. v.)

HOSPITARE. Lat. [from *hospes*, q. v.]

In old English law. To entertain a guest. *Reg. Orig.* 105. *Hospitatus;* one entertained; a guest. *Id. ibid. Ad hospitandum. Id. ibid. Causâ hospitandi;* for the purpose of being entertained as a guest. Lord Ellenborough, 4 *M. & S.* 310.

HOSPITATOR. L. Lat. [from *hospitare*, (q. v.) or according to Coke, from *hospitium.*] In old English law. An entertainer; a host. *Reg. Orig.* 105. 4 *M. & S.* 310. *Hospitator communis;* a common innkeeper. *Plowd.* 9, marg. 8 *Co.* 32, *Calye's case. Pro defectu hospitatoris;* for default of the host. Lord Ellenborough, 4 *M. & S.* 310.

HOSPITES. Lat. [plural of *hospes*, q. v.] Guests. *Reg. Orig.* 105. *Ut hospites;* as guests. 1 *Salk.* 25, pl. 10.

HOSPITELARIUS. L. Lat. In old English law. A hospitaller. *Fleta*, lib. 2, c. 50, § 16.

HOSPITIA. Lat. [pl. of *hospitium*, q. v.] In old English law. Inns. *Hospitia communia;* common inns. *Reg. Orig.* 105. *Hospitia curiæ;* inns of court. *Hospitia cancellariæ;* inns of chancery. *Crabb's Hist. Eng. Law*, 428, 429. 4 *Reeves' Hist.* 120.

HOSPITIUM. Lat. In old English law. An inn, hospice, or hostel. *Commune hospitium;* a common inn. 8 *Co.* 32, *Calye's case. Hob.* 245 b. See *Infra hospitium.*

A household. *Hospitium regis;* the king's household. *Fleta*, lib. 2, c. 2, § 2.

HOST, *Hoste, Houst.* L. Fr. An army. *Britt.* c. 22.

A military expedition; war. *Kelham.*

HOSTAGE. In international law. A person given up to an enemy, as a security for the performance of a contract made between belligerent powers, or their subjects or citizens. See 1 *Kent's Com.* 106.

HOSTAGIUM. This word is given by Blount from the *Monasticon Anglicanum*, par. 1. fol. 348 b, without any signification. It probably signified a tax or tribute towards the support of an army, (*hostis* or *hostium.*)

HOSTE. L. Fr. A host, or entertainer. *Kelham.*

A guest. *En droit de* hostes, *volons que chescun respoyne pur son* hoste *que il avera herberge*, &c.; in right [or, as to the law] of guests, we will that every one shall answer for his guest, whom he shall have harbored, &c. *Britt.* c. 12.

HOSTEL, *Hostell.* L. Fr. A household. *Britt.* fol. 1 b. *Artic. sup. Chart.* c. 2.

HOSTELAGIUM. L. Lat. In old records. A right to receive lodging and entertainment, anciently reserved by lords in the houses of their tenants. *Cowell.*

HOSTELER, *Hostiler.* [Fr. *hostelier.*] An innkeeper. *Cowell. Blount.*

HOSTENDUCLÆ, *Hostenditiæ.* L. Lat. [from *hostis*, an army.] In feudal law. A tribute or aid resembling scutage. *Spelman.* An aid (*adjutorium*) paid by those vassals who did not accompany their lords when they went with the king to war. *Feud. Lib.* 2, tit. 40, § 2.

HOSTES. Lat. [pl. of *hostis*, q. v.] Enemies. Hostes *hi sunt qui nobis, aut quibus nos publice bellum decrevimus, cæteri latrones aut prædones sunt;* enemies are those who declare war against us, or against whom we declare war, publicly; all others are pirates or robbers. *Dig.* 50. 16. 118. See *Id.* 49. 15. 24. This definition of the civil law is accurately given by Blackstone, but carelessly quoted by Coke. 1 *Bl. Com.* 257. 7 *Co.* 24 b, *Calvin's case.*

HOSTIA. Lat. In old records. The host, bread or consecrated wafer in the eucharist. *Cowell.*

HOSTIARIUS. L. Lat. [from *hostium*, for *ostium*, a door.] In old English law. A door-keeper. *Fleta*, lib. 2, c. 14, §§ 2, 5.

HOSTILE. [from Lat. *hostilis*, from *hostis*, an enemy.] Having the character of an enemy; standing in the relation of an enemy. See 1 *Kent's Com.* Lect. iv.

HOSTILITY. In the law of nations. A state of open war. "At the breaking out of hostility." 1 *Kent's Com.* 60.

An act of open war. "When *hostilities* have commenced." *Id.* 56.

A hostile character. "Hostility may attach only to the person." *Id.* Lect. iv.

HOSTIS. Lat. An enemy; one who makes war by an open formal proclamation of hostility. See *Hostes.*

HOSTIS. L. Lat. [from Fr. *hoste.*] A host or army. This sense of the word is common in ancient European laws, proceedings of councils, and authors of the middle ages. *Spelman.* See *Feud. Lib.* 2, tit. 40, § 2.

HOSTIUM. L. Lat. In old European law. A host or army. *Spelman*, voc. *Hostis.*

Used also for *ostium*, a door. *Ad hostium ecclesiæ;* at the church door. *Bract.*

fol. 303. *Custodes hostiorum;* door-keepers. *Stat. Westm.* 2, c. 44. *Fleta*, lib. 2, c. 39.

HOTCHPOT. [Sax. *hutspot, hotspot;* L. Fr. *hochepot;* L. Lat. *in partem positio, —collatio.*] A mixing or blending together; a commixion or commixture of divers things together.* *Co. Litt.* 177 a. A throwing of one or more separate portions into a common stock.* Anciently applied to the mixing and blending of lands given to one daughter in frank-marriage, with those descending to her and her sisters in fee simple, for the purpose of dividing the whole equally among them; without which, the daughter who held in frank-marriage could have no share in the lands in fee simple. *Litt.* sect. 267, 268. *Co. Litt.* 177 a. 2 *Bl. Com.* 190. To *put in hotchpot*, or *bring into hotchpot*, (L. Fr. *mitter en hotchpot*,) signified to make this mixture. *Litt.* sect. 267, 268. These terms are traced by Blackstone, after Spelman, to the *mittere in confusum*, of the law of the Lombards. 2 *Bl. Com.* 190. The word *hotchpot* is considered by Webster as of French origin; but Lord Coke treats it as another form of the Sax. *hotspot*, a pudding or mixture of different ingredients, and Littleton expressly gives it this meaning. *Litt.* sect. 267. *Co. Litt.* 177 a. Spelman writes it *hotchpotch*, which form is also used in some of the old reports. 2 *Rep. in Ch.* 360. And see *Bacon's Works*, iv. 255.

Hotchpot, or the *putting in hotchpot*, is applied in modern law to the throwing the amount of an advancement made to a particular child in real or personal estate, into the common stock, for the purpose of a more equal division, or of equalizing the shares of all the children. 2 *Bl. Com.* 516, 517. 2 *Kent's Com.* 421, 422. 4 *Id.* 418, 419. This answers to, or resembles the *collatio bonorum*, or *collation* of the civil law. *Id. ibid.* See *Collatio bonorum.* The term has been applied by Mr. Justice Story in a case of salvage. 1 *Sumner's R.* 400, 421. It has also been applied, in insurance law, to the interests of the owners of a vessel. 14 *East*, 522.

HOUAWARTH. [quasi *hofwarde*, from Sax. *hof*, a house, and *werde* or warde, a guard.] In old European law. One that keeps or guards a house, (*ædium vel aulæ custos.*) *Spelman. L. Baivarior.* tit. 19, § 9.

HOUR. [Lat. *hora.*] The twenty-fourth part of a day, consisting of sixty minutes. In the old books it is said to consist of *forty* minutes, or moments. *Bract.* fol. 264. *Fleta*, lib. 5, c. 5, § 31. 2 *Inst.* 318. In the note to 2 *Bl. Com.* 140, the word *forty* in 2 *Inst.* 318, is called a misprint. But Lord Coke merely copied from Bracton, or Fleta, both of whom very plainly use the word *quadraginta.* See *Hora.*

HOUR OF CAUSE. In Scotch practice. The hour when a court is met. 3 *How. State Trials*, 603.

HOUSE. [from Sax. *hus;* Lat. *domus.*] A building intended for human habitation. 14 *Mees. & W.* 181. "We all think," observes Pollock, C. B. in this case, "that the term *house, primâ facie*, means a *dwelling-house. Id.* 185. And see 4 *Man. Gr. & Scott*, 105. But in 7 *Man. & Gr.* 122, it was said that a *house* does not necessarily mean a *dwelling-house.* Creswell, J. *Id.* 136. A building calculated to be used as a dwelling-house, though not used as such, is properly described as "*a house.*" *Id.* 122. This was decided under the statute 2 Will. IV. c. 35. A building divided into floors and apartments, with four walls, a roof, a door and chimneys, would be considered in ordinary parlance between man and man, as a *house.* Tindal, C. J. *Id.* 125. See *Domus, Dwelling-house.*

By the grant of a messuage or *house*, the orchard, garden and curtilage occupied therewith will pass, (but *contra*, as to the garden;) and so an acre or more may pass by the name of a *house.* So, by a devise of a messuage or *house*, land will pass; but what shall be said to pass by a devise is a question of intention. 1 *Crabb's Real Prop.* 68, § 87. In Pennsylvania, it has been held that in the devise of a *house* in a will, the word "*house*" is synonymous with "*messuage*," and conveys all that comes within the curtilage. 4 *Rawle's R.* 339. 4 *Penn. St.* (Barr's) *R.* 93. But this is doubted. 2 *Hilliard's Real Prop.* 543. 1 *Jarman on Wills*, 709, (606, 607, Perkins' ed. notes.) For the meaning of the word *house* in the law of arson and burglary, see *Wharton's Am. Crim. Law*, §§ 1555—1576. *Id.* § 1667.

HOUSE. A legislative body; the quorum of a legislative body. The term *house* means the members present doing business. 2 *Michigan* (Gibbs) *R.* 287.

HOUSEBOTE, *Housbote.* [from *house*, and Sax. *bote*, an allowance.] An allowance of wood made to a tenant, for repairing

his *house*. Necessary timber which a lessee for years, or for life, is allowed to cut off the ground let to him, for the purpose of repairing the houses upon the same ground.* *Termes de la Ley.* 2 *Bl. Com.* 35. *Bract.* fol. 408. It is sometimes said to include necessary wood for burning in the house; though the latter is more properly called by the distinct name of fire-bote. *Co. Litt.* 41 b. 2 *Bl. Com.* 35. Bracton (*ub. sup.*) makes a clear distinction between them.

HOUSEHOLD. A family living together. Platt, J. 18 *Johns. R.* 400, 402. Those who dwell under the same roof and compose a family. *Webster.* A man's family living together constitutes his household, though he may have gone to another state. 18 *Johns. R. ub. sup.*

Belonging to the house and family; domestic. *Webster.*

"HOUSEHOLD FURNITURE," in a will, includes all personal chattels that may contribute to the use or convenience of the householder, or the ornament of the house; as plate, linen, china, both useful and ornamental, and pictures. But goods in trade, books and wines will not pass by a bequest of household furniture. *Ambl.* 605, 610. 1 *Roper on Legacies*, 268, 270. *Ward on Legacies*, 215. 2 *Williams on Exec.* 1021. 1 *Johns. Ch. R.* 329. See *Supellex.*

"HOUSEHOLD GOODS," in a will, include every thing of a permanent nature, (i. e. articles of household which are not consumed in their enjoyment,) that are used in, or purchased or otherwise acquired by a testator for his house. 1 *Roper on Legacies*, 253, and cases there cited. *Ward on Legacies*, 217. 2 *Williams on Exec.* 1017.

"HOUSEHOLD STUFF," in a will, includes every thing which may be used for the convenience of the house, as tables, chairs, bedding and the like. But apparel, books, weapons, tools for artificers, cattle, victuals and choses in action will not pass by those words, unless the context of the will clearly show a contrary intention. 1 *Roper on Legacies*, 273. *Shep. Touch.* 447.

HOUSEHOLDER. The occupier of a house. *Brande.* More correctly, one who keeps house with his family; the head or master of a family. *Webster.* Platt, J. 18 *Johns. R.* 302. See 19 *Wendell's R.* 475. 14 *Barbour's R.* 456. A *pater familias.* 8 *Mod.* 40. One who has a household; the head of a household. See *Household.*

HOUSEKEEPER. One who keeps or occupies a house, as distinguished from a boarder, inmate or lodger.* A person actually occupying part or the whole of a house, being the party responsible to the landlord for the entire rent, and assessed or liable for parochial rates and taxes. 3 *Petersd. Abr.* 103, note. Webster makes it synonymous with *householder*, but it has been decided otherwise. 1 *Dowl. P. C.* 172. The principle requiring bail to be a housekeeper is a salutary rule, as it excludes persons who have not a *fixed, permanent and known residence.* Ashton, J. *Lofft*, 148.

HOVEL. In English law. A shed put up in a field, for sheltering cattle or utensils. 2 *W. Bl.* 683, note. Derived from the word to *heave.* *Id. ibid.*

HOWE. In old English law. A hill. *Co. Litt.* 5 b.

HUCUSQUE. Lat. In old pleading. Hitherto. 2 *Mod.* 24.

HUDEGELD. Sax. In old English law. An acquittance for a trespass or assault committed upon a trespassing servant, (*quietancia trangressionis illatæ in servum transgredientem.*) *Fleta*, lib. 1, c. 47, § 20. Cowell and Blount make this word to be a misprint for *hinegeld.* In the additions to Cowell, it is supposed to be the same with *hidegeld*, a sum paid by a villein or servant to save himself from being whipped.

HUE AND CRY. [L. Lat. *hutesium et clamor; clamor popularis;* L. Fr. *crie de pays.*] In English law. A loud outcry with which felons, (such as robbers, burglars and murderers,) were anciently pursued, and which all who heard it were bound to take up, and join in the pursuit, until the malefactor was taken. *Bract.* fol. 115 b, 124. The ancient law was that where a felony had been committed, and the felon fled and could not be taken, hue and cry was to be immediately raised, (*statim levetur hutesium,*) and pursuit (*secta*) made after him from town to town, (*de villa in villam,*) or from one district to another, (*de terra in terram,*) until he was taken; otherwise the township (*villata*) where the felony was committed was liable to be amerced. *Bract. ub. sup.* The hue and cry might be by horn, and by voice, (*de corne et de bouche;*) and in Scotland it was raised by blowing a horn, with which the *la meyne de corne* of Britton corresponds. 2 *Inst.* 173. *Skene de Verb. Signif.* voc.

Hutesium. Britt. c. 27. Its object was to raise the country, or to give general notice to the neighboring inhabitants, so as to secure an immediate and effectual pursuit. It is now discontinued in England, having given place to the ordinary complaint made to a peace officer, on commission of a felony; but a modification of it exists in the outcry made upon the escape of a *thief*, which is still common there as well as in the United States. 4 *Steph. Com.* 360, 361. The public and general *pursuit* made after felons, upon complaint made, is still retained. *Id. ibid.*

The words *hue* and *cry*, according to the best authority, are of the same signification; *hue* being derived from the Fr. *huyer*, to cry out or exclaim. *Spelman.* 2 *Inst.* 173. Bracton uses *hue* (*hutesium*) alone, in some passages. *Bract.* fol. 115 b, 124. Glanville, on the other hand, uses *cry*, (*clamor,*) without *hue*, calling it the *cry* of the country, (*clamor popularis;*) and so does the statute of Westminster 1, c. 9, (*crie de pays.*) Fleta calls it *clamor patriæ*, and, in another passage, *clamor per hutesios. Fleta*, lib. 1, c. 24, § 1; c. 27, § 1. Skene derives *hue* from the Fr. *oyes*, hear; and Manwood from the Lat. *heu*, an expression of complaint. See *Cowell.* And see *Clamor*, *Crie de pais*, *Hutesium.*

HUE AND CRY. In English practice. A written proclamation issued on the escape of a felon from prison, requiring all officers and people to assist in retaking him. 3 *How. St. Trials*, 386.

HUEBRAS. Span. A measure of land equal to as much as a yoke of oxen can plough in one day. 2 *White's Recop.* [38,] 49. 12 *Peters' R.* 443.

HUIS, *Huys*, *Hus.* L. Fr. [from Lat. *ostium.*] A door. *Al* huis *d'esglise;* at the church door. *Litt.* sect. 39. *Al* huys *de moustre. Britt.* c. 107. *Al* hus *de moustre. Yearb.* M. 3 Edw. II. 53.

HUISSIER. Fr. [from *huis*, a door.] In French law. A name given to the executive officers of courts of justice, whose original function was that of a *door-keeper. Brande.* The English word *usher* is from this source.

H'UIT. A contraction of *Habuit.* 1 *Instr. Cler.* 10.

HULKA. L. Lat. In old records. A hulk or small vessel. *Cowell.*

HULLUS. L. Lat. In old records. A hill. 2 *Mon. Angl.* 292. *Cowell.*

HULMUS. See *Holm.*

HUM, *Huem.* L. Fr. Corrupt forms of *home*, (q. v.) *Kelham.*

HUNDRED. [L. Lat. *hundredus*, *hundredum*, *hundreda; centena*, *centuria.*] In English law. A portion or subdivision of a county; so named, because originally composed of ten tithings, or consisting, as is supposed, of *one hundred* freemen or frank pledges, although the number of one hundred does not seem to have been invariable. *Spelman.* Its establishment is generally ascribed to Alfred, and it is supposed to have been introduced from the continent where a similar territorial division, under the name of *centena*, prevailed from a very early period. See *Centena.* Its essential use was in the liability of the hundredors, (or families composing it,) where offences were committed within their district, either to produce the offender or make good the damage, and this feature, which seems to have always belonged to it, is still to a limited extent retained. 1 *Bl. Com.* 115. See *Hundredor.* Its ancient importance arose, in a great degree, from the court which was regularly held in it for the trial of causes, called the *hundred court*, now disused. See *Hundred Court.* It was governed by an officer called *dominus hundredi*, (lord of the hundred,) *aldermannus hundredi*, (alderman of the hundred,) or *hundredarius*, (hundredary;) and is now under the government of a high constable or bailiff. *Spelman. Crabb's Hist. Eng. Law*, 17. 1 *Bl. Com.* 115. 1 *Steph. Com.* 117. In some of the more northern counties, hundreds are called *wapentakes. Id. ibid.* and notes.

HUNDRED COURT. [L. Lat. *curia hundredi.*] In English law. A larger court baron, being held for all the inhabitants of a particular *hundred*, instead of a manor. The free suitors are the judges, and the steward the registrar, as in the case of a court baron. It is not a court of record, and resembles a court baron in all respects except that in point of territory it is of greater jurisdiction. Like several other inferior courts, however, it has fallen into disuse, and is not now resorted to. 3 *Bl. Com.* 34, 35. 3 *Steph. Com.* 394, 395. This is not to be confounded with the hundred court of the Saxon times, called *hundred gemote*, (q. v.)

HUNDRED GEMOTE. [L. Lat. *curia centuriæ*, or *hundredi; hundredum.*] In Saxon law. A meeting or court of a hun-

dred. See *Gemote.* A court held for every hundred, by the hundredors or inhabitants of the district, who were compelled to attend under heavy penalties. It was of considerable importance and distinction, being a court of civil and criminal jurisdiction, and having cognizance, like the county court, of ecclesiastical as well as civil matters. *Spelman*, vocc. *Hundredus, Gemotum.* 1 *Reeves' Hist. Eng. Law*, 7. *Crabb's Hist.* 27.

HUNDRED LAGH. Sax. The law of the hundred, or hundred court; liability to attend the hundred court. *Spelman*, voc. *Hundredus.* Cowell and Blount translate it, *hundred court.*

HUNDRED PENNY. In old English law. A tax collected from the hundred, by the sheriff or lord of the hundred. *Spelman*, voc. *Hundredus.*

HUNDRED SETENA. Sax. In Saxon law. The dwellers or inhabitants of a hundred. 1 *Mon. Angl.* 16. *Cowell. Blount.* Spelman suggests the reading of *sceatena*, from Sax. *sceat*, a tax.

HUNDRED WEIGHT. A denomination of weight containing one hundred and twelve pounds. *Brande.* For the weight of the old *centena* or hundred, see *Fleta*, lib. 2, c. 12, §§ 4, 5. And see *Centena.*

By the Revised Statutes of New-York, a hundred weight is made to consist of one hundred pounds avoirdupois. 1 *Rev. Stat.* [611, § 35,] 621, § 39.

HUNDREDA. L. Lat. In old English law. A hundred. *Spelman*, voc. *Hundredus.*

HUNDREDARIUS. L. Lat. In old English law. A hundredary, or hundredor. A name given to the chief officer of a hundred, as well as to the freeholders who composed it. *Spelman*, voc. *Hundredus.*

HUNDREDARY. [L. Lat. *hundredarius.*] The chief or presiding officer of a hundred. See *Hundredarius.*

HUNDREDORS. In English law. The inhabitants or freeholders of a hundred, anciently the suitors or judges of the hundred court. See *Hundred.* Persons impanneled or fit to be impanneled upon juries, dwelling within the hundred where the cause of action arose. *Cromp. Jur.* 217. It was formerly necessary to have some of these upon every panel of jurors. 3 *Bl. Com.* 359, 360. *Id.* 352. 4 *Steph. Com.* 370.

The term *hundredor* was also used to signify the officer who had the jurisdiction of a hundred, and held the hundred court, and sometimes the bailiff of a hundred. *Termes de la Ley. Cowell.*

The inhabitants of a hundred in which any damage is done by rioters feloniously demolishing buildings or machinery, are liable to make it good to the party injured. *Stat.* 7 & 8 Geo. IV. c. 31, ss. 2, 3. *Stat.* 2 & 3 Will. IV. c. 72. 4 *Steph. Com.* 275. This liability was anciently much more extensive and constituted a peculiar feature of the hundred from the earliest times. See *Hundred.*

HUNDREDUM. L. Lat. In old English law. A hundred; the subdivision of a county or shire. *Spelman*, voc. *Hundredus.*

The ancient hundred court. *Qualiter* hundredum *teneri debeat;* how the hundred ought to be held. *LL. Inæ, apud Spelman, ub. sup. Hundreda;* hundreds or hundred courts. *LL. Edw. Conf.* c. 35.

The privilege or immunity of being quit or free from payments or customs due to hundredors, or the governors of hundreds. *Spelman*, voc. *Hundredus. Termes de la Ley.*

HUNDREDUS. L. Lat. A hundred. *Spelman.*

HUNT'. The abbreviation of Huntingdonshire, in old English pleadings and records. *Towns. Pl.* 147. 1 *Inst. Cler.* 28.

HURDEREFEST. Sax. [from *hyred*, a family, and *fæst*, fixed.] In old English law. One who is fixed or settled in a certain family. *Spelman.* Called by Bracton, *husfastene*, (q. v.)

HURDLE. In English criminal law. A kind of sledge, on which convicted felons were drawn to the place of execution. See *Draw, Drawing to execution.*

HURST, *Hirst.* [Sax. *hyrst.*] In old English law. A wood. *Spelman. Co. Litt.* 4 b.

HURTO. Span. [from Lat. *furtum*, q. v.] In Spanish law. Theft. *White's New Recop.* b. 2, tit. 20.

HUS. Sax. House; a house. See *Husbrec.*

HUS. L. Fr. Door; a door. See *Huis.*

HUS AND HANT. These words occur in a record of the *Curia Regis* in the 27th year of Henry III. (rot. 9,) setting forth that a certain H. P. being arrested on the complaint of merchants of Flanders and imprisoned, offers to the king *Hus and Hant* in pledge, (*offert domino regi* Hus et Hant *in plegio,*) to stand to the right, and to answer to the aforesaid merchants, and to all others who will complain against him. And divers persons come who become bail

that the said H. P. shall appear by Hus and Hant, (*manucapiunt quod dictus H. P. per* hus et hant *veniet*,) at the king's summons, &c. Spelman suggests that this may be *common bail* by fictitious persons, like the more modern John Doe and Richard Roe. But the proceeding more nearly resembles the giving of *special bail*.

HUSBAND AND WIFE. An important relation created by marriage. For a comprehensive view of the rights and duties growing out of it, see 2 *Kent's Com.* 129—187, Lect. xxviii.

HUSBAND LAND. In old Scotch law. A quantity of land containing commonly six acres. *Skene de Verb. Sign.*

HUSBANDRIA. L. Lat. In old English law. Husbandry. *Dyer*, 35 b. (Fr. ed.) *Yearb.* T. 18 Hen. VI. 2. Whether husbandry was an *art*, see the discussion, *ibid.*

HUSBANDUS. L. Lat. [from Sax. *hus*, house, and *band*, a bond.] In old Scotch law. The head of a family, employed in agriculture; (Lat. *œconomus*, Fr. *mesnagier*.) *Stat. David* II. *Reg. Scot.* c, 43. *Spelman.*

HUSBREC. Sax. [from *hus*, house, and *bryce*, breach.] In Saxon law. The crime of house-breaking, or burglary. *Crabb's Hist. Eng. Law*, 59, 308.

HUSCARLE. Sax. [from *hus*, house, and *carl*, man.] In old English law. A house servant, or domestic; a man of the household, (*vir e familia.*) *Spelman.*

A king's vassal, thane or baron; an earl's man, or vassal. A term of frequent occurrence in Domesday Book. *Domesd.* tittt. *Middlesex, Rogerius comes, Ticheham. Id.* tittt. *Bockinghamscire, Hugo comes, Senelai. Id.* tittt. *Grentbrigsc. comes Alanus, Sidefam.*

HUSFASTENE. Sax. [from *hus*, house, and *fæst*, fixed.] In Saxon law. A term applied to one who held a house and land, (*qui terram tenet et domum.*) *Bract.* fol. 124 b. A householder, or one who had a fixed habitation, (*quasi domi-fixus*,) as distinguished from one who went about from place to place, (*itinerans de loco in locum.*) *Id. ibid. Spelman.* All these were bound to be members of some frank pledge. *Bract. ub. sup.*

HUSGABLUM. Sax. and L. Lat. [from *hus*, house, and *gablum*, a rent.] In old records. House rent; or a tax or tribute laid upon a house. 3 *Mon. Angl.* 254. *Cowell. Blount.*

HUSTINGS, *Husting.* [from Sax. *hus*, house, and *thing*, a cause, or plea; q. d. a house of causes, or place where causes are pleaded: L. Lat. *hustingum, hustingus, hustingia, hustengus.*] The principal court of the city of London, held before the lord mayor, recorder and aldermen; of which, however, the recorder is in effect the sole judge. It is the county court of London, but has cognizance of no actions that are merely personal. 3 *Steph. Com* 449, note (*l*). 2 *Inst.* 322. *F. N. B.* 22 H. It is of Saxon origin, and very high antiquity, as is proved by the record of a transaction before it, in the reign of Henry I. which Spelman gives at length. And see *Fleta*, lib. 2, c. 2, § 13. *Calthrop's R.* 131. The proper term seems to be *husting*, in the singular. See *Hustingus.* Other cities, besides London, appear to have had their *hustings.* See *Fleta, ub. sup.*

In Virginia, some of the local courts are called *hustings*, as in the city of Richmond. 6 *Grattan's R.* 696.

HUSTINGUS, *Hustengus.* L. Lat. In old English law. The husting, or principal court of London. *Apud London, in hustingo;* at London in the husting. *Bract.* fol. 127. *In London, extra hustingum;* in London, out of the husting. *Id.* fol. 133. *In hustengo. Fleta*, lib. 2, c. 55, § 2.

HUTESIUM, *Huthesium, Uthesium, Utesium.* L. Lat. In old English law. A hue, or outcry. *Bract.* fol. 115 b, 124. *Levare hutesium;* to raise the hue. *Id. ibid. Hutesium et clamor;* hue and cry. *Id.* 16 b, 115 b, 157. See *Hue and cry.*

HUTFANGTHEFE. Otherwise written *utfangthef*, (q. v.) *Bract.* fol. 122 b, 154 b.

HUY. L. Fr. [from Lat. *hodie?*] To-day. *Kelham.*

HUYER. L. Fr. To cry out, or proclaim. *Kelham.*

HUYS. L. Fr. A door. See *Huis.*

HYBERNAGIUM. L. Lat. [from *hibernus*, of winter.] In old English law. The season for sowing winter grain, between Michaelmas and Christmas. *Cowell.*

The land on which such grain was sown. *Id.*

The grain itself; winter grain or winter corn. *Id.*

HYDAGE. *See Hidage.*

HYDE. See *Hide.*

HYEMS, *Hiems.* Lat. In the civil law. Winter. *Dig.* 43. 20. 4, 34. Written, in some of the old books, *yems. Fleta*, lib. 2, c. 73, §§ 16, 18.

HYL. L. Fr. A corrupt form of *il*, (q. v.) *Kelham.*

HYPOBOLON, *Hypobolum.* Græco-Lat. [from Gr. ὑποβάλλειν, to add a smaller to a larger thing or sum.] In civil, feudal and old European law. That which was given to a woman on the death of her husband, in addition to her dowry, (*dotis incrementum.*) *Calv. Lex.* It seems to have resembled the dower of the English law. *Id. ibid.*

HYPOTHEC. [from *hypotheca*, q. v.] In Scotch law. A right over a subject acquired by a creditor, while the subject over which this right is acquired remains in the possession of the debtor and proprietor of the subject. *Bell's Dict.*

HYPOTHECA. Græco-Lat. [from Gr. ὑποθηκη; from ὑποτιθέναι, to put under; Lat. *supponere.*] In the civil law. That kind of pledge in which the possession of the thing pledged remained with the debtor, the obligation resting in mere contract, without delivery, (*quæ sine traditione, nudâ conventione tenetur;*) and in this respect distinguished from *pignus*, of which the possession was delivered to the creditor or pawnee. *Dig.* 13. 7. 9. 2. See *Id.* 20. 1. 5. 1. *Inst.* 4. 6. 7. 2 *Bl. Com.* 159. *Story on Bailm.* § 286. 2 *Story's Eq. Jur.* § 1005. Answering to the modern *mortgage.* 4 *Kent's Com.* 136. Literally, a *putting under;* a subjecting to an encumbrance or obligation. The Scotch *hypothec*, Spanish *hipoteca* or *hypotica*, and French *hypothèque* are closely formed from this word. *Ypoteca* is a Latin form occurring in the Register. *Reg. Orig.* 306 b.

The right or obligation arising from a pledge without delivery. *Dig.* 20. 1. 4. *Calv. Lex.* So far as the remedy (*actio hypothecaria*) for enforcing the creditor's right was concerned, there was no difference between *hypotheca* and *pignus.* *Inst.* 4. 6. 7. *Dig.* 20. 1. 5. 1.

HYPOTHECARIA ACTIO. Lat. In the civil law. An hypothecary action; an action for the enforcement of a *hypotheca*, or right of mortgage; or to obtain the surrender of the thing mortgaged. *Inst.* 4. 6. 7. 1 *Mackeld. Civ. Law*, 395, § 358. Adopted in the Civil Code of Louisiana, under the name of *l'action hypothècarie*, (translated, *action of mortgage.*) Art. 3361.

HYPOTHECARII CREDITORES. Lat. In the civil law. Hypothecary creditors; those who loaned money on the security of a *hypotheca*, (q. v.) *Calv. Lex.*

HYPOTHECATE. [from Græco-Lat. *hypotheca*, q. v.] To pledge a thing without delivering the possession of it to the pledgee. "The master, when abroad, and in the absence of the owner, may *hypothecate* the ship, freight and cargo, to raise money requisite for the completion of the voyage." 3 *Kent's Com.* 171.

HYPOTHECATION. [from Græco-Lat. *hypotheca*, q. v.] A pledge without possession by the pledgee. *Story on Bailm.* § 288. "The *hypothecation* of the ship or cargo is the transfer of a title to take effect conditionally." 2 *Phillips on Ins.* 296. See *Hypothecate.*

HYPOTHEQUE. Fr. [from Græco-Lat. *hypotheca*, q. v.] Translated *mortgage*, in the Civil Code of Louisiana. Art. 3360.

HYTHE. Sax. In English law. A port, wharf or small haven, to embark or land merchandise at. *Cowell. Blount.*

I.

I. The initial letter of the word *Instituta*, used by some civilians in citing the Institutes of Justinian. *Tayl. Civ. Law*, 24.

I, at the beginning of words having the first syllable *In*, commonly denotes a derivation from the Latin, as E, in a similar position, indicates a derivation from the French. See *E.* But I and E were formerly, in many instances, used as initial letters indifferently, and in some words the practice continues to be retained.

I, in the Latin of the civil law, is sometimes used for *e;* as *petitioni* for *petitione*, *affinitati* for *affinitate*, and *vice versa.* So it occasionally occurs in place of *u*, as *reciperare* for *recuperare.* *Calv. Lex.*

IBERNAGIUM. An old form of *hibernagium* or *hybernagium*, (q. v.)

IBI. Lat. There; in that place; the correlative of *ubi.* *Calv. Lex.* **Ibi semper debet fieri triatio ubi juratores melìorem possunt habere notitiam.** A trial ought always to be had where the jurors can have the best information. 7 *Co.* 1 b, *Bulwer's case.*

Therein; in that thing. *Calv. Lex.*

Then. *Id.*

IBID. An abbreviation of *ibidem*, (q. v.)

IBIDEM. Lat. In the same place.

In the same thing, matter or case.

IBIMUS. Lat. [from *ire*, to go.] We will go. *Nec super eum ibimus;* nor will we go, or pass upon him. *Magna Charta*,

c. 29. These words have been interpreted to mean, "nor will we sit in judgment upon him ourselves;" that is, he shall not be condemned in the court *coram rege*. 2 *Inst.* 46, 49. 1 *Reeves' Hist.* 249. But they seem to have imported a forcible rather than a judicial action on the part of the king. See 3 *Chitt. Bl. Com.* 41, note. And see *Nullus liber homo.*

IBM. A contraction of *ibidem*, (q. v.) 1 *Inst. Cler.* 10.

ICEE. L. Fr. There. *LL. Gul. Conq.* l. 2.

ICTUS. Lat. In old English law. A stroke or blow from a club or stone; a bruise, contusion or swelling produced by a blow from a club or stone, as distinguished from *plaga*, (a wound.) *Fleta*, lib. 1, c. 41, § 3.

ICTUS ORBUS. L. Lat. In old English law. A stroke which merely made a bruise or swelling, without breaking the skin. *Bract.* fol. 122.

ID. A common abbreviation of *idem*, (q. v.)

ID. Lat. That. **Id certum est quod certum reddi potest.** That is certain which can be made certain. 2 *Bl. Com.* 143. 1 *Id.* 78. 4 *Kent's Com.* 462. See *Certum.* **Id certum est quod certum reddi potest, sed id magis certum est quod de semetipso est certum.** That is certain which can be made certain, but that is more certain which is certain of itself. 9 *Co.* 47 a, *Earl of Shrewsbury's case.*

Id perfectum est quod ex omnibus suis partibus constat. That is perfect which consists of all its parts. 9 *Co.* 9.

Id possumus quod de jure possumus. We can do that which we can do lawfully. *Broom's Max.* Introd. Power means lawful power, or right.

Id quod nostrum est sine facto nostro ad alium transferri non potest. That which is ours, cannot be transferred to another without our act. *Dig.* 50. 17. 11.

ID EST. (abbrev. *i. e.*) Lat. That is. See Calvin's exposition of this phrase in the civil law.

IDEM. Lat. The same. According to Lord Coke, *idem* has two significations, sc. *idem syllabis seu verbis*, (the same in syllables or words,) and *idem re et sensu*, the same in substance and in sense. 10 *Co.* 124 a, *Case of the Mayor and Burgesses of Lynn.*

Idem agens et patiens esse non potest. The same person cannot be both agent and patient. *Jenk. Cent.* 40, case 76. A man cannot, as a judge, administer justice to himself as a party. *Id.*

Idem est facere, et nolle prohibere cum possis. It is the same thing to do a thing, and to refuse to prohibit it when in your power. 3 *Inst.* 158. Not to forbid or prevent a thing when in your power, is the same as to do it yourself. See **Qui non prohibet, &c.**

Idem est nihil dicere, et insufficienter dicere. It is the same thing to say nothing, and to say a thing insufficiently. 2 *Inst.* 178. To say a thing in an insufficient manner is the same as not to say it at all. Applied to the plea of a prisoner. *Id.*

Idem est non esse, et non apparere. It is the same thing not to be, as not to appear. *Jenk. Cent.* 207. Not to appear is the same thing as not to be. *Broom's Max.* 72, [123.] See *Apparens.*

IDEM. L. Lat. In old practice. The said, or aforesaid; said, aforesaid. Distinguished from *prædictus*, in old entries, though having the same general signification. *Towns. Pl.* 15, 16. Idem *semper proximo antecedenti refertur. Idem* always refers to the next antecedent. *Co. Litt.* 20 b, 385 b.

IDEM SONANS. L. Lat. Sounding the same or alike; having the same sound; (L. Fr. *tout un sound.*) A term applied to names which are substantially the same, though slightly varied in the spelling, as Lawrence and Lawrance, and the like. 1 *Cromp. & M.* 806. 3 *Chitt. Gen. Pr.* 171.

IDEMPTITAS. L. Lat. [from *idem*, the same.] In old English practice. Sameness; identity. *Reg. Orig.* 104, *et seq.* Another form of *identitas*, (q. v.)

IDENTIFICATION. [from Lat. *idem*, the same, and *facere*, to make.] In the law of evidence. Proof of identity; a *making* out to be *the same;* the act or process of proving a subject, person or thing, before a court, to be *the same* as it is claimed or charged to be. *Burr. Circ. Evid.* 631. The act or process of proving a person charged with a crime to be *the same* person who actually committed it. *Id.* 635, *et seq.* The act or process of proving an article found in the possession of a person charged with larceny or robbery, to be *the same* with the article charged to have been stolen. *Id.* 651, *et seq.*

IDENTITAS. L. Lat. Identity; sameness. See **Ex multitudine signorum, &c.**

IDENTITY. [L. Lat. *identitas, idemp-*

titas, q. v.] In the law of evidence. Sameness; the fact that a subject, person or thing before a court, is *the same* as it is represented, claimed or charged to be. See *Burr. Circ. Evid.* 382, 453, 631, 644.

IDEO. Lat. Therefore. *Calv. Lex.*

IDEO QUÆRE. L. Lat. Therefore inquire. See *Quære.*

IDEO CONSIDERATUM EST. L. Lat. Therefore it is considered. The initial words of the ancient entry of judgment on the record in an action at law, and by which that part of the record is still sometimes called, in modern practice. *Mem. in Scacc.* 20 Edw. I. *Yearb.* T. 1 Edw. II. 11. *Cro. Jac.* 36. 3 *Bl. Com.* 396. 1 *Burr. Pr.* 254. See *Consideratum est.*

IDEOT. An old form of *idiot*, (q. v.)

IDEOTA. An old form of *idiota*, (q. v.) *Non* ideota *à nativitate, sed per infortunium. Mem. in Scacc.* P. 20 Edw. I.

IDES. [Lat. *idus*, from O. Lat. *iduare*, to divide, because they divided the month.] One of the three divisions of the ancient Roman month. In the months of March, May, July and October, the ides fell on the 15th; and in the other months, on the 13th, *Adam's Rom. Antiq.* 355, 357.

IDIOCHIRA. Græco-Lat. [Gr. ἰδιοχειρα, from ἴδιος, private, and χειρ, hand.] In the civil law. An instrument privately executed, as distinguished from such as were executed before a public officer. *Cod.* 8. 18. 11. *Calv. Lex.*

IDIOCY. In medical jurisprudence. That condition of mind in which the reflective, and all or a part of the affective powers, are either entirely wanting, or are manifested to the slightest possible extent. *Ray on Insanity*, § 51. *Wharton & Stille's Med. Jur.* § 222. See *Idiot.*

IDIOT, *Ideot.* [Lat. *idiota*, *ideota;* from Gr. ἰδιώτης, a private individual. See *infra.*] A fool, (*fatuus,*) or person of no understanding, of which two kinds are mentioned in the books; an idiot from birth, (*idiota à nativitate,*) otherwise called a natural fool; and an idiot from accident or sickness, (*idiota à casû et infirmitate.*) See *Idiota.* But these distinctions are not always observed; thus an idiot is expressly defined to be "he that is a *natural fool from his birth*, and knows not how to count twenty pence, or name his father or mother, nor tell his own age, or such like easy and common matters, so that it appears he hath no manner of understanding, reason or government of himself." *Termes de la Ley.* See *Natural fool.* The terms *idiot* and *natural fool* are treated as synonymous by Coke and Blackstone, and Lord Hardwicke has observed that "an idiot was such as was so *à nativitate.*" *Co. Litt.* 247 a. 4 *Co.* 124 b, 128 a, *Beverley's case.* 1 *Bl. Com.* 302, 303. 2 *Vesey*, 407. See 1 *Collinson on Idiots*, 1. *Stock on Non Compotes Mentis*, Introd. See *Idiocy.*

The original form of this word is the Greek ἰδιώτης, a private individual, one in private life, from ἴδιος, one's own, peculiar, by one's self, (Lat. *suus, sui generis.*) Hence the Gr. ἰδιωτεύειν, to lead a private life. This original sense was retained in the Latin form *idiota*, which is used by Seneca and other writers to denote a private person. But another meaning was more commonly given to the latter word, viz. an illiterate or ignorant person, one deficient in learning or understanding, and from this has been derived the intenser sense of the word *idiot* in modern law.

IDIOTA. Lat. [from Gr. ἰδιώτης, a private individual.] In the civil law. An unlearned, illiterate or simple person. *Calv. Lex.* A private man; one not in office. *Id.*

In the common law. An idiot, or fool. *Reg. Orig.* 266, 267. *Idiota à nativitate;* an idiot from birth, or natural fool. *Id. ibid.* 1 *Bl. Com.* 303. *Purus idiota;* an absolute fool.

IDONEARE. L. Lat. [from *idoneus*, q. v.] In old European law. To make or prove one's self innocent, (*idoneum se facere—insontem se reddere;*) to clear one's self according to law, from an accusation of guilt. *LL. Longob.* lib. 2, tit. 35, l. 4. *Capitul.* lib. 3, tit. 89. *Spelman.*

IDONEUS. Lat. In the civil and common law. Sufficient; competent; fit or proper; responsible; unimpeachable. *Idoneus homo;* a responsible or solvent person. *Calv. Lex.* A competent or credible person; a good and lawful man. *Spelman.* A person apt and fit to execute an office. 8 *Co.* 41 b, *Griesley's case.* "He is said in law to be *idoneus* who has these three things, honesty, knowledge and ability." *Id. ibid. Idonea persona;* a fit person or parson. 6 *Co.* 49 b, *Boswell's case.* "Which epithet *idonea* includes ability in learning and doctrine, honesty in conversation, and diligence in his function." *Id. ibid.*

Sufficient; adequate; satisfactory. *Idonea cautio;* sufficient security. *Reg. Orig.*

66, 67. *T. Raym.* 225. *Idonea paries;* a sufficient wall. *Calv. Lex.*

IDONIETAS. L. Lat. [from *idoneus*, q. v.] In old English law. Ability or fitness (of a parson.) *Artic. Cleri*, c. 13.

IGALE. L. Fr. Equal. *Kelham.* Another form of *egale.*

IGLISE. L. Fr. A church. *Kelham.* Another form of *eglise.*

IF. [Lat. *si.*] A word expressive of condition in deeds and other instruments. See *Condition*, *Si.*

"If," in a will, is sometimes construed "when," in order to advance the apparent intention of the testator. 3 *Russ. Chan. Cas.* 365. 2 *Williams on Exec.* 932.

IGNITEGIUM. L. Lat. [from *ignis*, fire, and *tegere*, to cover.] In old English law. The curfew, or evening bell. *Cowell.* See *Curfew.*

IGNORAMUS. L. Lat. (We are ignorant, or, we know nothing of it.) In practice. A word formerly endorsed by a grand jury on the back of a bill of indictment, in cases where, after hearing the evidence, they thought the accusation groundless. 9 *Co.* 55 b, *The Poulterers' case. Cro. Jac.* 7. *Latch*, 79. *Yelv.* 99. The words used for the same purpose, in modern practice, are "not a true bill," or "not found." 4 *Bl. Com.* 305. 4 *Steph.* 373. The term "*ignore*," however, is still applied in the books, to this mode of disposing of an indictment; thus, when a jury throw out a bill, they are said to *ignore* it.

IGNORANCE. See *Ignorantia.*

IGNORANTIA. Lat. Ignorance; want of knowledge. Distinguished from mistake, (*error*,) or wrong conception. 1 *Mackeld. Civ. Law*, 163, § 165. *Dig.* 22. 6. Divided in the civil law, into *ignorantia facti* (ignorance of fact) and *ignorantia juris* (ignorance of law.) *Dig.* 22. 6. 1, pr. Lord Coke adopts this division; adding that the former is twofold, *lectionis et linguæ*, (ignorance of reading and ignorance of language.) 2 *Co.* 3 b, *Manser's case.* See *Cod.* 1. 18.

Ignorantia facti excusat. Ignorance of fact excuses, or is a ground of relief.* 2 *Co.* 3 b. *Broom's Max.* [190.] Acts done and contracts made, under mistake or ignorance of a material fact, are voidable and relievable in law and equity. 2 *Kent's Com.* 491, and notes. 24 *Mississippi R.* 44.

Ignorantia juris non excusat. Ignorance of the law is no excuse. 1 *Co.* 177 b, *Mildmay's case.* 2 *Co.* 3 b, *Manser's case.* **Ignorantia juris quod quisque tenetur scire, neminem excusat.** Ignorance of the [or a] law, which every one is bound to know, excuses no man. A mistake in point of law is, in criminal cases, no sort of defence. 4 *Bl. Com.* 27. 4 *Steph. Com.* 81. *Broom's Max.* 122, [190.] 7 *Carr. & P.* 456. And in civil cases, ignorance of the law, with a full knowledge of the facts, furnishes no ground either in law or equity, to rescind agreements, or reclaim money paid, or set aside solemn acts of the parties. 2 *Kent's Com.* 491, and note. A maxim said by Mr. Justice Story to be "laid up among the earliest rudiments of the law." 2 *Story's R.* 353. See 1 *Story's Eq. Jur.* § 116. 23 *Penn. St. R.* 509. Another form of this maxim is, **Ignorantia legis neminem excusat.** Ignorance of the law excuses no man. 1 *Story's Eq. Jur.* § 111. The substance of both the preceding maxims is embraced in the rule laid down by Paulus, in his book *De juris et facti ignorantia*,—**juris quidem ignorantiam cuique nocere, facti vero ignorantiam non nocere**; ignorance of law prejudices a person, but ignorance of fact does not. See *Dig.* 22. 6. 9, pr.

Ignorantia judicis [est] calamitas innocentis. The ignorance of the judge is the misfortune of the innocent party. 2 *Inst.* 591.

IGNORARE. Lat. In old practice. To be ignorant; to ignore, or throw out a bill of indictment. See *Ignoramus.*

IGNORARI. L. Lat. To be unknown. **Ignoratis terminis artis, ignoratur et ars.** Where the terms of an art are unknown, the art itself is unknown also. *Co. Litt.* 2 a.

IGNORE. [from Lat. *ignorare*, q. v.] In practice. To know nothing; to be ignorant; to reject on the ground of ignorance, in consequence of the want of evidence. See *Ignoramus.*

Ignoscitur ei qui sanguinem suum qualiter redemptum voluit. The law holds him excused from obligation, who chose to redeem his blood (or life) upon any terms. Whatever a man may do under the fear of losing his life or limbs, will not be held binding upon him in law. 1 *Bl. Com.* 131.

IKENILD STREET. One of the four great Roman roads in Britain; supposed to be so called from the *Iceni*, who inhabited that part of England now known as

Suffolk, Norfolk, Cambridgeshire and Huntingdonshire, through which it passed. *Camd. Brit.* fol. 343. *LL. Edw. Conf.* c. 12. *Cowell. Spelman.*

IL. L. Fr. It. *Il covient;* it behooveth. *Litt.* sect. 61. *Il est dit;* it is said. A common expression in Littleton. *Litt.* sect. 601. Said by Lord Coke to be as good as a *concessum*, (q. v.) *Co. Litt.* 328 b. *Il est comunement dit;* it is commonly said. *Litt.* sect. 288. That is, it is the common opinion. *Co. Litt.* 186 a.

He. *Il monstra;* he showeth. *Litt.* sect. 365. In the Civil Code of Louisiana, *il* is declared to be applicable both to males and females. Art. 3522.

ILL. In old pleading. Bad; defective in law; null; naught; the opposite of good or valid. "An *ill teste.*" 6 *Mod.* 285. "An *ill* plea." 11 *Id.* 258. "An *ill* president." 3 *Leon.* 28. "The plea is *ill;* the plea is naught." 2 *Mod.* 68. 5 *Id.* 168. "It [the declaration] is *ill*, and shall not be aided." *Com.* 44. "Both the return and the writ of *mandamus* are very *ill.*" 5 *Mod.* 421. "*Et per curiam, ill.*" 1 *Show.* 366.

ILLA. Lat. [plur. of *ille*, that.] Those. See this word construed in 2 *Co.* 33 a, Dodington's case. *Wingate's Max.* 13, pl. 11.

ILLEGITIMATE. Not legitimate; born out of lawful wedlock. See 2 *Kent's Com.* 208.

ILLEVIABLE. Not leviable; that cannot or ought not to be levied. *Cowell.*

ILLICENCIATUS. L. Lat. In old English law. Without license. *Fleta*, lib. 3, c. 5, § 12.

ILLICIT. [from Lat. *illicitus*, from *in*, and *licitus*, allowed, from *licere*, to permit.] Not permitted or allowed; prohibited; unlawful, as, an *illicit* trade; *illicit* intercourse.

ILLICKES, *Illeques, Illec, Alec.* L. Fr. There. *Britt.* c. 21. *Kelham.*

ILLITERATE. [Lat. *illiteratus*, from *in* and *literatus*, from *litera*, a letter.] Unlettered, ignorant of letters or books; untaught; unlearned; as a person who cannot read or write.

ILLONQUES, *Illoeqes, Ilokes, Iluccke*, L. Fr. There. *Britt.* c. 22. *Kelham.*

ILLUD. Lat. That. **Illud quod alias licitum non est, necessitas facit licitum.** That which otherwise is not lawful, necessity makes lawful. *Bract.* fol. 247. 10 *Co.* 61 a, *Bishop of Salisbury's case.* See *Necessitas.*

ILLUSORY. [from Lat. *illudere*, to mock.] Deceiving by false appearances; nominal, as distinguished from substantial. An illusory appointment is one which is merely nominal; and on that account is fraudulent and void in equity. See 4 *Kent's Com.* 342, 343. By the English statute of Will. IV. c. 46, it is declared that no appointment shall be impeached in equity, on the ground that it is unsubstantial, illusory, or nominal. See 5 *Florida R.* 52.

IMBARGO. An old form of *embargo*, (q. v.) *Stat.* 18 *Car.* II. c. 5.

IMBECILITY. [Lat. *imbecilitas.*] In medical jurisprudence. Weakness or feebleness of mind; absence of natural or ordinary vigor. See *Whart. & Stille's Med. Jur.* §§ 229—233.

IMBEZLE, *Imbesil.* Old forms of *embezzle. Stat.* 14 *Car.* II. c. 31. *Cowell.* See *Embezzle. Imbessel. Brownl. & Gold.* 21.

IMBLADARE. L. Lat. [L. Fr. *embler, emblaver.*] In old English law. To plant or sow grain. *Bract.* fol. 176 b.

IMBRACER, *Imbracery.* Old forms of *embracer* and *embracery*, (qq. v.)

IMBRACIATOR. L. Lat. In old English law. An embracer. *Reg. Orig.* 189 a. See *Embracer.*

IMBREVIARE. *Inbreviare.* L. Lat. [L. Fr. *embrever.*] In old English law. To commit to writing briefly, (*scripto breviter mandare;*) to put or copy into a schedule, (*in schedulam quod* breve *vocant, rem conscribere;*) to enrol. *Spelman. Magna Charta*, c. 18. *Et nomina eorum xii statim imbreviari faciant in quadam schœdula;* and they shall cause the names of those twelve to be immediately written in a certain schedule. *Bract.* fol. 116. See *Fleta*, lib. 4, c. 5, § 10. To make an inventory; to inventory. *Bract.* fol. 60 b. Sometimes translated *imbreviate.*

IMBROCUS, *Brocus.* L. Lat. In old records. A brook, or water-passage. *Cowell.*

IMMATERIAL. Not material; not essential or important.

Not formally proper. See *Immaterial issue.*

IMMATERIAL ISSUE. In pleading. An issue taken on an immaterial point, that is, a point not proper to decide the action. *Steph. Pl.* 99, 130. 2 *Tidd's Pr.* 921.

IMMEDIATE. Lat. In old English law. Immediately; directly; without any thing intermediate. *Fleta*, lib. 3, c. 10, § 1.

IMMEDIATELY. [Lat. *statim;* Fr. *maintenant.*] This word is often understood, not literally, of a time succeeding without any interim or actual interval, but of an effectual and lawful time, allowing "all the adjuncts and accomplements," as Lord Bacon terms them, necessary to give an act full legal effect, to be performed. Argument in the Case of Revocation of Uses; *Works*, iv. 253. See *Statim.*

IMMEMORIAL. Beyond time of memory. See *Time immemorial.*

IMMISCERE. Lat. In the civil law. To mix or mingle with; to meddle with; to join with. *Calv. Lex.* **Culpa est immiscere se rei ad se non pertinenti.** It is fault or blameable conduct to meddle with a thing that does not belong or concern one's self. *Dig.* 1. 17. 36.

To take or enter upon an inheritance. A term applied to those heirs called *hæredes sui*, corresponding with *adire*, which was applied to *hæredes extranei. Calv. Lex.*

IMMISSIO. L. Lat. [from *immittere*, q. v.] In old English law. A putting in; introduction. *Fleta*, lib. 3, c. 15, § 11.

IMMITTERE. Lat. In the civil law. To put or let into, as a beam into a wall. *Calv. Lex. Dig.* 50. 17. 242. 1.

In old English law. To put cattle on a common. *Fleta*, lib. 4, c. 20, § 7.

IMMOBILIS. Lat. Immoveable. *Immobilia*, or *res immobiles;* immoveable things, such as lands and buildings. 1 *Mackeld. Civ. Law*, 152, § 147. 2 *Kent's Com.* 347. **Immobilia situm [sequuntur.]** Immoveable things follow their site or position; are governed by the law of the place where they are fixed. 2 *Kent's Com.* 67.

IMMOVEABLES. See *Immobilis.*

IMMUNITY. [Lat. *immunitas.*] Privilege; exemption from some common burden. See *Dig.* 50. 6. Derived from *munus*, in the sense of a burden, (*onus.*) *Dig.* 50. 16. 18.

IMPAIR. To weaken; to affect injuriously; to diminish or take from.

"IMPAIRING THE OBLIGATION OF CONTRACTS." For the meaning of this phrase in the Constitution of the United States, see *Story on the Const.* b. 3, ch. 34, § 1374, *et seq.* 1 *Kent's Com.* 413—422.

IMPALARE. L. Lat. In old European law. To impale; to kill or wound by falling upon a paling. *L. Burgund.* tit. 23, § 2. *L. Ripuar.* tit. 70, § 3. *LL. Longob.* lib. 1, tit. 19, l. 10. *Spelman.*

IMPANEL. [L. Lat. *impanulare, impannellare.*] In practice. To enter the names of jurors on a *panel*, which, in English practice, is an oblong piece of parchment annexed by the sheriff to the writ of *venire*, and returned with it. 3 *Steph. Com.* 590. 2 *Tidd's Pract.* 785—787. See *Panel.*

In American practice, the term is applied not only to the general list of jurors returned by the sheriff, but sometimes also to the list of jurors drawn by the clerk for the trial of a particular cause.

Empanel is used by Cowell and Blount.

Pannell is used in the laws of the Colony of New-Plymouth. Nov. 15, 1636.

IMPANULARE. L. Lat. In old records. To impanel. *Paroch. Antiq.* 657. *Cowell.*

IMPARCARE. L. Lat. [from *in*, in, and *parcus*, a pound, or enclosed place.] In old English law. To impound. *Reg. Orig.* 92 b.

To shut up, or confine in prison. *Inducti sunt in carcerem et* imparcati; they were carried to prison and shut up. *Bract.* fol. 124.

IMPARL, *Emparl.* [from Fr. *enparler*, to speak together.] In practice. Literally, to *speak with* the plaintiff, which is supposed to have originally been its actual meaning. See *Imparlance.* To have time before pleading; to have time to plead. "To crave leave to *imparl*," in judgment records, is to ask for a continuance. *Kitch.* fol. 200. Anciently the parties literally went out of court to imparl. *Et puis ils isser'* d'emparler *et reviendront, et Parn. dist que*, &c.; and afterwards they went out to imparl and returned, and Parn. said that, &c. *Yearb.* P. 5 Edw. III. 18. When jurors went aside or retired to deliberate on their verdict, they were anciently said to imparl (*enparler,*) or talk together. See *Enparler.*

IMPARLANCE, *Emparlance.* [from *imparl*, (q. v.) L. Lat. *interlocutio, interloquela, licentia loquendi.*] In practice. Time to plead in actions at law; literally, time to *talk with* the plaintiff. 1 *Tidd's Pr.* 462. 3 *Bl. Com.* 299.

A continuance on the judgment record,

between the declaration and plea. 1 *Tidd's Pr.* 678.

*** Formerly an imparlance was asked for, by actual motion to the court; its original object being, as is supposed, to obtain time to *speak with* the plaintiff in order to effect, if possible, an amicable arrangement of the suit. 3 *Bl. Com.* 299. *Gilb. C. Pleas*, 42. The actual object of an imparlance, however, has long been merely the obtaining of further *time to plead*. Imparlances in personal actions have been recently abolished by statute 2 Will. IV. c. 39. 3 *Chitt. Gen. Pr.* 700.

In the sense of *time to plead*, imparlances have not been recognized in American practice; time, when necessary, being usually obtained in another way. See *Time to plead*. But as *continuances*, they have been retained in judgment records, and serve conveniently to connect the proceedings between declaration and plea, where those pleadings do not take place in the same term. 1 *Burr. Pr.* 265. The continuance by imparlance has been expressly abolished in English practice. *Reg. Gen.* Hil. T. 4 Wm. IV. reg. 2. See *Continuance*.

IMPARSONEE. L. Fr. [L. Lat. *impersonatus.*] In ecclesiastical law. One who is inducted and in possession of a benefice. Parson imparsonee, (*persona impersonata.*) *Cowell. Dyer*, 40.

IMPEACH. [L. Fr. *empescher;* L. Lat. *empetere, impescare, impechiare.*] To accuse or challenge; to call to account; to make or hold liable; to sue. See *Impeachment*. To exhibit articles of accusation against a public officer before a competent tribunal.

IMPEACH. In the law of evidence. To call in question the veracity of a witness, by means of evidence adduced for that purpose.

IMPEACHMENT OF WASTE. [L. Fr. *empeschement de wast;* L. Lat. *impetitio vasti.*] Liability for waste; liability to be proceeded against or sued for committing waste upon lands or tenements. All tenants for life, or any less estate, are punishable or liable to be impeached for waste, both voluntary and permissive, unless their leases be made as they sometimes are, without impeachment of waste, (*absque impetitione vasti.*) 2 *Bl. Com.* 283. See *Absque impetitione vasti, Without impeachment of waste*.

IMPECHIARE. L. Lat. [from Fr. *empescher.*] In old records. To impeach or accuse. *Cowell.*

IMPEDIENS. L. Lat. [from *impedire*, q. v.] In old practice. One who hinders; an impedient. The defendant or deforciant in a fine was sometimes so called. *Cowell. Blount.*

IMPEDIRE. Lat. [from *in*, in, and *pes*, foot.] To impede, prevent or embarrass motion, as by something about the feet; to obstruct or hinder generally; to disturb.* Bracton gives the etymology of this word, but applies it in a peculiar manner. Impedire *est* ponere pedem *in jus alienum quod quis habet in jure præsentandi, cum quasi seysina et jure quali quali, &c. Impedire* is to put the foot (*pedem*) into another's right to a presentation, with a sort of seisin, and color of right. *Bract.* fol. 247. See *Fleta*, lib. 5, c. 16, § 2. See *Impedit*.

IMPEDIT. Lat. [from *impedire*, q. v.] He hinders. See *Impedire, Quare impedit.* Impedit *componitur de* in *et* pes pedis, *et unde revera ille* impedit *qui nititur intus* pedem ponere *in jus alienum, ubi nullum jus ei competit. Impedit* is compounded of *in*, and *pes, pedis*, whence he truly *impedes* who endeavors to put his foot into another's right, where no right belongs to him. *Bract.* fol. 247.

IMPEDITOR. L. Lat. [from *impedire*, q. v.] In old English law. A disturber in the action of *quare impedit. Stat. Marlb.* c. 12.

IMPENSÆ. Lat. [from *impendere*, to lay out, or bestow.] In the civil law. Expenses; outlays. 1 *Mackeld. Civ. Law*, 157, § 155. *Calv. Lex.* Divided into necessary, (*necessariæ,*) useful, (*utiles,*) and tasteful or ornamental (*voluptuariæ.*) *Dig.* 50. 16. 79. See *Id.* 25. 1.

IMPERATOR. Lat. [from *imperare*, to command.] Emperor; the title of the Roman emperors. Justinian, in the preface to the Institutes, styles himself "Imperator, Cæsar Flavius Justinianus," &c. *Inst.* proœm. *Imperator solus et conditor et interpres legis existimatur;* the emperor alone is considered the maker and interpreter of the law. *Cod.* 1. 14. 12. And see *Tayl. Civ. Law*, 30.

A title given to the kings of England in charters before the conquest. *Selden's Tit. of Hon.* I. 2. 1 *Bl. Com.* 242.

"IMPERFECT," applied to a testamentary paper, technically means that the document is, upon the face of it, manifestly

in progress only, and unfinished and incomplete as to the body of the instrument. 2 *Addams' R.* 357. 1 *Williams on Exec.* 61.

IMPERITIA. Lat. [from *in*, priv. and *peritia*, skill.] Want of skill; unskilfulness. **Imperitia culpæ adnumeratur.** Want of skill is reckoned as *culpa;* that is, as blameable conduct or neglect. *Dig.* 50. 17. 132. Thus, if a surgeon perform an operation unskilfully, or a physician carelessly administers medicine, so that the death of the patient follows, they are respectively liable for the result. *Inst.* 4. 3. 7. And so, in any art or trade, if a man performs his work unskilfully, he becomes responsible in damages. 2 *Kent's Com.* 588. *Story on Bailm.* §§ 390 a, 428, 431. See *Culpa*, *Peritia*, **Spondet peritiam artis.**

Imperitia est maxima mechanicorum pœna. Unskilfulness is the greatest punishment of mechanics; [that is, from its effect in making them liable to those by whom they are employed.] 11 *Co.* 54 a, *Ipswich Tailors' case.* The word *pœna* in some translations is erroneously rendered *fault.*

IMPERPETUUM. L. Lat. In old English law. Forever. *Fleta*, lib. 2, c. 54, § 26. *Towns. Pl.* 19.

IMPERSONALITAS. Lat. Impersonality. A mode of expression where no reference is made to any person, such as the expression *ut dicitur*, (as is said.) *Co. Litt.* 352 b. **Impersonalitas non concludit nec ligat.** Impersonality neither concludes nor binds. *Id. ibid.*

IMPERIUM. Lat. In the civil law. Power or command; military power or command, (*potestas armata;*) authority and power of a superior kind; the power of punishing, (*gladii potestas.*) *Calv. Lex. Heinec. Elem. Jur. Civ.* lib. 4, tit. 17, §§ 1318—1322. This was called *merum imperium*, as distinguished from *mixtum. Dig.* 2. 1. 3.

IMPERTINENCE. [from Lat. *in*, priv. and *pertinere*, to belong to.] In equity pleading. The quality of *not belonging* to a thing, or matter in question; superfluousness; irrelevance. The introduction of any matters into a bill, answer or other pleading or proceeding in a suit, which are not properly before the court for decision, at any particular stage of the suit. *Story's Eq. Pl.* § 266. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 399, and notes. Impertinence is the same description of fault in pleadings in equity, which, in those at common law, is denominated *surplusage. Id.* 400. Sometimes distinguished from *prolixity. Id. ibid.*

IMPERTINENT. In equity pleading. That which does not belong to a pleading, interrogatory or other proceeding; out of place; superfluous; irrelevant. See *Impertinence.*

IMPESCARE. L. Lat. [from L. Fr. *empescher.*] In old records. To impeach or accuse. *Impescatus;* impeached. *Blount.*

IMPETERE. L. Lat. [from *in*, against, and *petere*, to demand.] In old English law. To impeach, or accuse. *Impetebatur tunc Guntheramnus de interitu Theodoberti;* Gunthram was then accused of the slaying of Theodobert. *Greg. Turon. Hist.* lib. 5, c. 14. *Spelman*, voc. *Impetitus.*

To call to account, or hold accountable; to sue. 2 *Bl. Com.* 283. See *Impetitio*, *Impeachment.*

IMPETITIO. L. Lat. [from *impetere*, q. v.] In old English law. An accusation, charge or impeachment. *Spelman.*

A calling to account, or holding accountable or liable; a prosecuting for some alleged damage. *Impetitio vasti;* impeachment of waste. *Id.* 2 *Bl. Com.* 283.

A demand. 11 *Co.* 82 b, *Bowles' case.*

A suit. *Glanv.* lib. 13, c. 17. A judicial claim or interruption by suit in law. *Bacon's Works*, iv. 226.

*** In Leake *v.* Eyre, the court held that *impetitio* was a corruption of *impeditio*, and imported the same thing with that word, or *impedimentum*, viz. a hindrance. *Cro. Jac.* 216. And see *Cowell*, voc. *Impeachment of waste.* But Lord Coke has very satisfactorily shown it to be a genuine word. 11 *Co.* 82 b. And Lord Bacon has more distinctly said that, "It is an ignorant mistaking of any man to take impeachment for *impedimentum*, and not for *impetitio;* for it is true that *impedimentum* doth extend to all hindrances or disturbances, or interruptions, as well *in pais* as judicial. But *impetitio* is merely a judicial claim or interruption by suit in law, and upon the matter, all one with *implacitatio.* Wherein we may first take light of the derivation of *impetitio*, which is a compound of the preposition *in*, and the verb *peto*, whereof the verb *peto* itself doth signify a demand, but yet properly such a demand as is not extra-judicial; for the words *petit judicium*, *petit auditum brevis*, &c. are words of acts *judicial.* But the preposition *in* enforceth it more, which

signifies against;—so it is such a demand only where there is a party raised to demand against, that is, an adversary, which must be in a suit at law, and so it is used in records of law." Bacon's Arg. Case of Impeachment of Waste; *Works*, iv. 226, 227.

IMPETITUS. L. Lat. [from *impetere*, q. v.] In old English law. Impeached, accused or charged with an offence; an accused person. *LL. Hen.* I. c. 6. *Spelman.*

IMPETRARE. Lat. In old English practice. To obtain by request, as a writ or privilege. *Bract.* fol. 57, 172 b. This application of the word seems to be derived from the civil law. *Calv. Lex.*

IMPETRATIO. Lat. [from *impetrare*, q. v.] An obtaining by request, or prayer. Applied, in old practice, to writs and liberties. *Bract.* fol. 57, 172 b. *Fleta*, lib. 4, c. 5, § 1. *Impetration* is used in old English statutes, for the pre-obtaining of benefices and church offices from the court of Rome. *Stat.* 25 *Edw.* III. *Stat.* 38 *Edw.* III. st. 2, c. 1. *Cowell.*

IMPIERMENT. L. Fr. Impairing or prejudicing. *Stat.* 23 *Hen.* VIII. c. 9. *Blount. Kelham.* See *Empire.*

IMPIGNORATA. L. Lat. Pledged; given in pledge, (*pignori data;*) mortgaged. A term applied in Bracton to land. *Bract.* fol. 20.

IMPLACITARE. L. Lat. [from *in*, into, and *placitum*, a plea or suit.] In old English law and practice. To subject to an action, or *placitum;** to implead or sue. *In omni casu quo minores infra ætatem* implacitare *possunt;* in every case in which minors under age may sue. *Stat. Westm.* 2, c. 15. *Nec* implacitabit *nec implacitabitur;* shall neither implead nor be impleaded. *Bract.* fol. 86 b. *Unde eum implacitat;* whereof he impleads him. *Fleta*, lib. 2, c. 65, § 12.

IMPLACITATUS. L. Lat. [from *implacitare*, q. v.] Impleaded; sued. *Cum aliquis* implacitatus *coram aliquibus justitiariis*, &c.; when any one impleaded before any justices, &c. *Stat. Westm.* 2, c. 31. See *Bract.* fol. 102 b. *Fleta*, lib. 2, c. 60, § 22.

IMPLEAD. [from L. Fr. *impleder* or *empleder;* L. Lat. *implacitare*, q. v.] In practice. To sue, or prosecute by due course of law. *Termes de la Ley.* 3 *Comstock's R.* 195. Still used in records.

IMPLEADED. [L. Fr. *implede;* L. Lat. *implacitatus.*] Sued or prosecuted. Still used in practice, particularly in the titles of causes where there are several defendants.

IMPLEDER. L. Fr. To implead. *Implede;* impleaded or sued. *Stat. Glocest.* c. 12. The more usual form was *empleder*, (q. v.)

IMPLEMENT. [L. Lat. *implementum*, from *implere*, to fill, fulfil or accomplish.] In a general sense, whatever may supply wants. *Webster.* Any thing used for the performance of a work, or the accomplishment of a purpose.* Webster states this to be a word of very extensive signification.

In a stricter sense—a thing or instrument necessary, or ordinarily used for the performance of work or labor, or the prosecution of any game or sport; a tool or utensil.* More commonly used in the plural (implements,) and in this sense confined to *inanimate* things, as *implements* of trade, of agriculture, &c. In Coolidge *v.* Choate *et al.* it was said that the word *implements* had the same meaning as *apparatus*, and did not include animals or beings having life. 11 *Metcalf's R.* 79.

IMPLICATION. Intendment or inference, as distinguished from the actual expression of a thing in words. By a will, an estate may pass by mere *implication*, without any express words to direct its course. 2 *Bl. Com.* 381. 4 *Kent's Com.* 541, and note. In general, where any implications are allowed, they must be such as are necessary, (or at least highly probable,) and not merely possible implications. 2 *Bl. Com.* 382. In construing a will, conjecture must not be taken for implication, but necessary implication means not natural necessity, but so strong a probability of intention, that an intention contrary to that which is imputed to the testator cannot be supposed. Lord Eldon, C. 1 *Ves. & B.* 466. See 3 *Paige's R.* 1. 1 *Jarman on Wills*, 465, (431, Perkins' ed.) *et seq.*

IMPLIED ABROGATION. Abrogation by implication; as where a law contains provisions contrary to those of a former law, without expressly abrogating such law; or where the reason of a law, or object for which it was passed, has ceased to exist. See **Cessante ratione legis, cessat et ipsa lex.** The implied repeal of statutes is not favored. 15 *Georgia R.* 361.

IMPLIED ASSUMPSIT. An undertaking or promise not formally made, but presumed or implied from the conduct of a party. See *Assumpsit.*

IMPLIED CONDITION. See *Condition implied.*

IMPLIED CONSIDERATION. A consideration implied or presumed by law, as distinguished from an *express* consideration, (q. v.)

IMPLIED CONTRACT. A contract implied by reason and justice, and which therefore the law presumes that every man undertakes to perform. As if I employ a person to do any business for me, or perform any work, the law implies that I undertook or contracted to pay him as much as his labor deserves. 2 *Bl. Com.* 443. 3 *Id.* 158—165. 2 *Steph. Com.* 110, 111. Sometimes called an implied *assumpsit.* 3 *Bl. Com. ub. sup.*

IMPLIED COVENANT. A covenant implied or inferred from certain words in deeds, leases, &c.; as "give," "grant, bargain and sell," "demise," and the like. 4 *Kent's Com.* 473, 474. 2 *Hilliard's Real Prop.* 365, 366.

IMPLIED MALICE. Malice presumed or implied by law from the acts of a party and the circumstances of a case.* Malice inferred from any deliberate cruel act committed by one person against another, however sudden. *Wharton on Homicide,* 38. What is called *general* malice is often thus inferred. *Id. ibid.*

IMPLIED TRUST. A trust raised or created by implication of law; a trust implied or presumed from circumstances.* 2 *Crabb's Real Prop.* 571, § 1796. 1 *Steph. Com.* 346. A more general term than "*resulting,*" or "*constructive*" trust. 2 *Crabb's R. P. ub. sup.* See 2 *Story's Eq. Jur.* § 1195, *et seq.* 1 *Hilliard's Real Prop.* 305.

IMPLIED WARRANTY. A warranty implied by law from circumstances, as distinguished from an express or actual warranty. Thus, if the seller of a chattel have possession of it and sell it as his own, and not as agent for another, and for a fair price, he is understood to *warrant the title.* 2 *Kent's Com.* 478. A warranty of the *quality* of an article sold is also sometimes implied. *Id.* 478—481, and notes. See 1 *Selden's R.* 73.

A warranty implied from an instrument or from particular words in an instrument. Thus, in every policy of insurance there is an *implied* warranty that the ship is seaworthy when the policy attaches. 3 *Kent's Com.* 287. 1 *Phillips on Ins.* 308. So in ancient deeds, the law implied a warranty from the word *dedi.* See *Dedi.*

IMPONERE. L. Lat. [from *in,* in or upon, and *ponere,* to put.] In old practice. To put in. *Imposuit commune ballium;* he put in common bail. 1 *Salk.* 8, pl. 19.

To put upon, or impose. See *Impositio.*

To IMPORT. [from Lat. *importare,* from *in,* into, and *portare,* to carry or bring.] In a general sense—to bring to, or in; to bring to or into a country. This sense of the word was contended for in the case of the *Ship Adventure and Cargo,* but disallowed by Marshall, C. J. 1 *Brock. R.* 235.

In a stricter sense—to bring goods, chattels or other property into a country from another country; to bring from a foreign port; to bring by sea, or in the way of trade.* See *Import.*

IMPORT. A thing imported; a thing or article brought into a country from another country. More commonly used in the plural. See *Imports.*

IMPORTATION. The act of bringing goods and merchandise into a country from a foreign country.

IMPORTER. L. Fr. To carry away. *Coupa et* importa *ses arbres;* cut and carried away his trees. *Yearb.* M. 5 Edw. III. 109. *Arbres coupes et importes;* trees cut and carried away. *Dyer,* 35 b, (Fr. ed.) *Blees imports;* corn carried away. *Id.* 36 b.

IMPORTS. Things imported. Marshall, C. J. 12 *Wheaton's R.* 419. Things, commodities or articles of property imported into a country from another country.* Woodbury, J. (dissenting,) 7 *Howard's R.* 535. See 10 *Richardson's Law R.* 474. "No state shall, &c., lay any imposts or duties on *imports* or exports," &c. *Const. U. S.* Art. 1, Sect. 10. The term is not properly applicable to *persons,* except to that description of persons who are regarded as property, viz. slaves. Taney, C. J. (dissenting,) 7 *Howard's R.* 477. Daniel, J. (dissenting,) *Id.* 505. Woodbury, J. (dissenting,) *Id.* 535.

IMPORTUNITY. [Lat. *importunitas.*] Pressing solicitation; urgent request; application for a claim or favor which is urged with troublesome frequency or pertinacity. *Webster.* Importunity is sometimes a ground for setting aside a will. But it must be in such a degree as to take away from the testator free agency; it must be such importunity as he is too weak to resist; such as will render the act no longer the act of the deceased, not the free

act of a capable testator, in order to invalidate the instrument. Sir John Nicholl, 2 *Phillim. R.* 551, 552. 1 *Williams on Exec.* 41.

IMPOSITIO. Lat. [from *imponere*, q. v.] In old English law. An imposition, tax or tribute. According to Lord Coke, this word was first used in the 13th year of Edward III. 2 *Inst.* 60, 530. The older expression was *maletot. Stat. Confirm. Chartar.* c. 7. 2 *Inst.* 530. See the Great Case of Impositions, 2 *How. St. Trials*, 425.

IMPOSSIBILIS. Lat. Impossible. See *Calv. Lex.* **Impossibilium nulla obligatio est.** There is no obligation of [to do] impossible things. *Dig.* 50. 17. 185. [145.] As if a man promises to give another the moon. *Id. gloss. marg.* See 2 *Story's Eq. Jur.* §§ 1308—1310. **Lex non cogit ad impossibilia.** The law does not compel the performance of impossibilities. *Hob.* 96. *Broom's Max.* [186.] **Ea quæ dari impossibilia sunt, vel quæ in rerum natura non sunt, pro non adjectis habentur.** Those things which are impossible to be given, or which do not exist in the nature of things, are considered as not added [as making no part of the contract.] *Dig.* 50. 17. 135.

IMPOST. Fr. and Eng. [from *imposer*, to lay upon; Lat. *impositum*, a thing laid upon.] A custom or tax levied on articles brought into a country. Marshall, C. J. 11 *Wheaton's R.* 419.—A duty on imported goods and merchandise. *Story on the Const.* § 952. *Id.* (Abr.) § 474.

In a large sense, any tax, duty or imposition.* *Id. ibid.*

IMPOSTERUM. L. Lat. Hereafter. *Towns. Pl.* 72.

IMPOTENCE. In medical jurisprudence. Want of procreative power in the male. *Whart. & Stille's Med. Jur.* § 419, *et seq.*

IMPOTENS. Lat. [from *in*, priv. and *potens*, able.] Unable; impotent; without power or ability. *Impotens sui;* having no power of himself, unable to help himself. *Bract.* fol. 15. *Fleta*, lib. 3, c. 7, § 1.

IMPOTENTIA. Lat. [from *impotens*, q. v.] Inability; impossibility. **Impotentia excusat legem.** Inability or impossibility excuses law. *Co. Litt.* 29 a. 10 *Co.* 139, *Keighley's case.* 2 *Bl. Com.* 127. *Broom's Max.* 116, [182.] The impossibility of a thing dispenses, in certain cases, with a requirement of law. See **Lex non cogit ad impossibilia.** Where the performance of the condition of a bond or recognizance is rendered impossible by the act of God, or of the law, or of the obligee, the default to comply with it is excused. 3 *Hill's* (N. Y.) *R.* 570.

IMPOUND. To put in a pound; to place cattle, goods or chattels taken under a distress, in a lawful pound. *Holthouse.* See *Pound.*

IMPRESSOR. [L. Lat. from *imprimere*, (q. v.) L. Fr. *impresseur.*] In old English law. A printer. 1 *W. Bl.* 116.

IMPRIMATUR. Lat. [from *imprimere*, q. v.] (Let it be printed.) A license to print a book; so termed from the emphatic Latin word formerly used to express it. Imprimaturs were first introduced by the Acts of Uniformity. The first printers in England exercised the art without any license for that purpose. Yorke, Sol. Gen. arg. 1 *W. Bl.* 114.

IMPRIMERE. Lat. To press upon; to impress or press; to imprint or print.

IMPRIMERIE, *Imprimery.* In old English law. A print; an impression. *Cowell.*

The art of printing. *Id.*

A printing house or office. *Id. Stat.* 14 *Car.* II. c. 33.

IMPRIMIS, (properly INPRIMIS, IN PRIMIS.) Lat. In the first place; first of all. A word formerly very common in the commencement of wills. 2 *Powell on Devises*, 647, 648. Used also in old English statutes and charters, to denote the commencement or first clause. *Mag. Cart.* 9 Hen. III. c. 1. *Artic. Cleri*, c. 1. *Cart.* 31 *Edw.* I. *apud Molloy de Jur. Mar.* 370—380. Used by Fleta, in describing the order of pleading. Lib. 2, c. 54. And see *Dyer*, 74.

IMPRISON. [L. Fr. *enprisoner;* L. Lat. *imprisonare*, q. v.] To put in a prison; to put in a place of confinement. See *Imprisonare.*

To confine a person, or restrain his liberty, in any way. See *Imprisonment.*

IMPRISONAMENTUM. L. Lat. [from *imprisonare*, q. v.] In old English law. Imprisonment. *Est enim* imprisonamentum *duplex delictum, injusta captio et injusta detentio, in vinculis vel sine, in cippo vel alia pœna majori vel minori;* for imprisonment is a double offence, an unlawful taking and an unlawful detention, in chains or without, in the stocks or with other greater or less punishment. *Fleta*, lib. 1, c. 42, § 1.

IMPRISONARE. L. Lat. [from L. Fr. *emprisoner*, q. v.] In old English law and practice. To imprison. *Quare vi et armis ipsum* A. *apud* N. *cepit*, imprisonavit *et male tractavit, et ipsum sic* imprisonatum *abinde usque* T. *duxit, et ipsum ibidem* in prisona—*detinuit*, &c.; wherefore, with force and arms the said A. at N. he took, imprisoned and ill treated, and him so imprisoned took from thence to T. and him there in prison detained, &c. *Reg. Orig.* 93. See *Fleta*, lib. 1, c. 42.

IMPRISONMENT. [L. Lat. *imprisonamentum.*] A putting into prison; confinement of a person in a prison or gaol. See *Imprison*, *Prison*, *Prisoner*.

Confinement of the person in any wise. 1 *Bl. Com.* 136.—Any restraint of the person by force. Lord Denman, C. J. 7 *Ad. & Ell.* N. S. 742, 753.—Any restraint upon a man's liberty, wherever may be the place, or whatever may be the manner in which the restraint is effected; as by keeping a man against his will in a private house, or arresting or forcibly detaining him in the open street, or even merely using words which impose a restraint upon his person.* *Termes de la Ley.* 1 *Bl. Com.* 136. 2 *Inst.* 589. 2 *Kent's Com.* 26. See the late case of Bird *v.* Jones in the Queen's Bench, 7 *Ad. & Ell.* N. S. 742.

IMPROBARE. Lat. In the civil law. To disapprove; to disallow; the opposite of *approbare*. *Calv. Lex.*

IMPROBATION. [from Lat. *improbare*, to disallow.] In Scotch law. An action brought for the purpose of having some instrument declared false and forged. 1 *Forbes' Inst.* part 4, p. 161. The act by which falsehood and forgery is proved. *Bell's Dict.* The verb *improve* (q. v.) was used in the same sense.

IMPROPRIATION. In English ecclesiastical law. A lay appropriation; a benefice in the hands of a lay person, or lay corporation. 1 *Bl. Com.* 386. *Termes de la Ley.* So called, according to Spelman, as being *improperly* in the hands of laymen. *Spelm. Tithes*, c. 29. See *Appropriation*.

IMPROVE. In Scotch law. To disprove; to invalidate or impeach; to prove false or forged. 1 *Forbes' Inst.* part 4, p. 162.

IMPROVEMENT. In American land law. An act by which a locator or settler expresses his intention to cultivate or clear certain land; an act expressive of the actual possession of land; as by erecting a cabin, planting a corn-field, deadening trees in a forest; or by merely marking trees, or even by piling up a brush-heap.*

The cabin, field, deadening or brush-heap itself. See 1 *Bibb's* (Ky.) *R.* 82. 4 *Id.* 578.

IMPROVEMENT. In the law of patents. An addition to, or modification of a previous invention or discovery, intended or claimed to increase its utility or value. See 2 *Kent's Com.* 366—372.

IMPROVEMENTS. A term used in leases, which, according to Mr. Chitty, is sometimes of doubtful meaning. It would seem to apply principally to buildings, though generally it extends to the amelioration of every description of property, whether real or personal; but when contained in any document, its meaning is generally explained by other words. 1 *Chitt. Gen. Pr.* 174.

As to allowances for improvements to occupants of lands evicted by a better title, see 2 *Kent's Com.* 334—337, and notes.

IMPRUIARE. L. Lat. In old records. To improve land. *Impruiamentum;* the improvement so made of it. *Chartul. Abbat. MS.* fol. 50 a. *Cowell.*

IMPUBES, (pl. IMPUBERES.) Lat. In the civil law. A minor under the age of puberty; a male under fourteen years of age; a female under twelve. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 136, § 126.

IMPUNITAS. Lat. Impunity; exemption from punishment. **Impunitas continuum affectum tribuit delinquenti.** Impunity offers a continual bait to a delinquent. 4 *Co.* 45 a, *Vaux's case.*

Impunitas semper ad deteriora invitat. Impunity always invites to greater crimes. 5 *Co.* 109 a, *Foxley's case.*

IN. Lat. and Eng. [Fr. *en.*] Sometimes construed to mean "*of.*" Thus, coroner *in* a county was held to mean coroner *of* a county. *Plowd.* 76. 4 *Co.* 41.

IN. [L. Fr. *eins.*] A term used, from a very early period, to express the nature of a title, or the mode of acquiring an estate, or the ground upon which a seisin is founded. Thus, in Littleton, a tenant is said to be "*in* by lease of his lessor," (*eins per lease son lessor,*) that is, his title or estate is derived from the lease. *Litt.* sect. 82. So, parceners are said to be "*in* by divers descents." *Id.* sect. 313. So, the issue of a husband is said to be "*in* by descent," (*eins per discent.*) *Id.* sect. 403. So, two sisters are said to be "*in* by divers titles." *Id.* sect. 662. So, in modern law, parties are constantly said in the books to

be "*in* by descent," "*in* by purchase." A dowress is said to be "*in*, of the seisin of her husband." 4 *Kent's Com.* 69. A devisor is said to be "*in*, of his old estate." 1 *Powell on Devises*, (by Jarman,) 621, note. So, a lessor. Shaw, C. J. 1 *Metcalf's R.* 120. See *Eins.* "If he has a freehold, he is *in* as freeholder. If he has a chattel interest, he is *in* as a termor. If he has no title, he is *in* as a trespasser." Lord Mansfield, 1 *Burr.* 114.

*** This term seems to be a contraction of "*in seisin*," and to be properly expressive of actual possession of the land. *Fuit in seisina;* he was in seisin. *Fleta*, lib. 4, c. 16, § 4; c. 17, § 10. So, in Britton it is said, "*si le heire soit de pleyn age, et soit* eins, *et ne voet suffrer le seigniour de aver seisine*," &c.; if the heir be of full age, and be *in*, and will not suffer the lord to have seisin, &c. *Britt.* c. 70. It is essentially figurative, and belongs to the same period with the now obsolete phrase "to come to land," implying in its origin an actual entry and possession. Thus, it is said, "when the lord of a villein *enters*, he *comes to the land* in respect of a title paramount, that is to say, in respect of villeinage, and the lord by escheat in respect of the seigniory which was a title paramount, and both those are *in* merely in the *post*," &c. 3 *Co.* 62 b, *Lincoln College's case.* That it was also expressive of mere seisin, without lawful title, appears clearly from Littleton's expression "*eins encounter la ley*," (*in* against the law.) *Litt.* sect. 306.

IN ACTION. Attainable or recoverable by action; not in possession. A term applied to property of which a party has not the possession, but only a right to recover it by action. Things in action are rights of personal things, which nevertheless are not in possession. *Hale's Anal.* sect. xxiii. See *Chose in action.*

IN ADVERSUM. L. Lat. Against an adverse, unwilling or resisting party. "A decree not by consent, but *in adversum.*" Story J. 3 *Story's R.* 318.

IN ÆQUA MANU. L. Lat. In equal hand. *Fleta*, lib. 3, c. 14, § 2.

IN ÆQUALI JURE. L. Lat. In equal right; on an equal in point of right. "Where parties stand in *æquali jure*, equality of burden becomes equity." 4 *Kent's Com.* 371. **In æquali jure melior est conditio possidentis.** In [a case of] equal right, the condition of the party in possession is the better. *Plowd.* 296. 4 *Co.* 90, *Drury's case.* The law favoureth possession, where the right is equal. *Finch's Law*, b. 1, ch. 3, n. 36. Where the right is equal, the claim of the party in actual possession shall prevail. *Broom's Max.* 323, [561.] Thus, where a thing is pledged severally to two creditors, without any communication with each other, and one of them has obtained the possession, he is entitled to a preference. *Story on Bailm.* § 312. See 1 *Story's Eq. Jur.* §§ 64 c, 413.

IN ÆQUALI MANU. L. Lat. [L. Fr. *en owele mayn.*] In equal hand; held equally or indifferently between two parties. Where an instrument was deposited by the parties to it in the hands of a third person, to keep on certain conditions, it was said to be held *in æquali manu. Reg. Orig.* 28.

IN ALIENO SOLO. Lat. [L. Fr. *en auter soile.*] In another's land. 2 *Steph. Com.* 20.

In alternativis electio est debitoris. In a case of alternatives, the choice is the debtor's.

IN AMBIGUA VOCE LEGIS. Lat. In an ambiguous expression of law. See maxim under *Ambiguus.*

IN AMBIGUIS ORATIONIBUS. Lat. In ambiguous discourses. See maxim under *Ambiguus.*

In Anglia non est interregnum. In England there is no interregnum. *Jenk. Cent.* 205. *Broom's Max.* [39.]

IN ANTEA. L. Lat. Henceforth; in future. *Spelman.*

IN APERTA LUCE. L. Lat. In open daylight; in the day time. 9 *Co.* 65 b, *Mackalley's case.*

IN APICIBUS JURIS. L. Lat. Among the subtleties or extreme doctrines of the law. 1 *Kames' Equity*, 190. See *Apex juris.*

IN ARCTA ET SALVA CUSTODIA. L. Lat. In close and safe custody. 3 *Bl. Com.* 415.

IN ARTICULO. Lat. In a moment; immediately. *Cod.* 1. 34. 2.

IN ARTICULO MORTIS. L. Lat. In the article of death; at the point of death. 1 *Johns. R.* 159. See *Articulus.*

IN AUTER DROIT. L. Fr. In another's right. Properly, *en autre droit*, (q. v.)

IN AUTER SOILE. L. Fr. In or on another's land. *Dyer*, 36 b, (Fr. ed.)

IN BANCO. L. Lat. In banc or bank,

as distinguished from "at *nisi prius*." See *Banc, Bank.* This application of the phrase is plainly derived from the more ancient one, next noticed.

In the Bench, or Court of Common Bench. *Bract.* fol. 352 b, 353, 354, 360 b. *Coram justitiariis* de Banco, *si qui tunc fuerint residentes* in banco, *et alii itinerantes in comitatu ;* before the justices of the bench, if there be some then sitting in the bench, and others itinerating in the county. *Id.* fol. 361. *Sive* in banco, *sive in itinere ;* whether in the bench or in the eyre. *Id.* fol. 352 b.

IN BLANK. A term applied to the indorsement of a bill or note, where it consists merely of the indorser's name. 2 *Steph. Com.* 164. Called *blank*, from the blank space left over it. See *Indorsement in blank.*

IN BONIS. Lat. Among the goods, or property ; in actual possession. *Inst.* 4. 2. 2. *Tayl. Civ. Law*, 479. *Fleta*, lib. 3, c. 1, § 3. See *Ex bonis.*

IN CAPITA. Lat. To, or among heads or individuals ; according to the number of persons. A term derived from the civil law. Succession *in capita* is where an inheritance is divided *viritim* (man by man, or singly,) according to the number of persons, all claiming in their own right as being in equal degree of kindred. *Hallifax, Anal.* b. 3, ch. 9, num. 5. Εἰ δὲ πολλοὶ τοῦ αυτοῦ βαθμοῦ ἐυρεθῶσι, κατὰ τον τῶν προσώπων ἀριθμὸν μεταξὺ αυτῶν ἡ κληρονομία διαιρεθήσεται, ὅπερ in capita ὁι ἡμετέροι λέγουσι νόμοι ; but if there be found several of the same degree, the inheritance shall be divided among them according to the number of persons, which our laws call *in capita. Nov.* 118, c. 2, *ad finem.* See *Per capita.*

IN CAPITA. L. Lat. To the polls. See *Challenge to the polls.*

IN CAPITE. L. Lat. In chief. 2 *Bl. Com.* 60. Tenure *in capite* was a holding directly from the king. *Bacon's Works*, iv. 233.

IN CASU CONSIMILI. L. Lat. In a like case. See *In consimili casu.*

IN CASU PROVISO. L. Lat. In a (or the) case provided. See *Casu proviso. In tali* casu *editum et* provisum ; in such case made and provided. *Towns. Pl.* 164, 165.

IN CAUSA. Lat. In the cause, as distinguished from *in initialibus*, (q. v.) A term in Scotch practice. 1 *Brown's R.* 252.

In casu extremæ necessitatis, omnia sunt communia. In a case of extreme necessity, all things are common. *Hale's P. C.* 54. *Broom's Max.* 1, note.

IN CHIEF. Relating to a principal matter ; in the principal or direct course ; as distinguished from incidental, collateral, derivative or adverse. See *Chief.*

IN COMMENDAM. L. Lat. In commendation ; as a commended living. 1 *Bl. Com.* 393. See *Commenda.*

A term applied in Louisiana to a limited partnership, answering to the Fr. *en commandite. Civ. Code of Louis.* art. 2810. See *Commendam.*

In commodato hæc pactio, ne dolus præstetur, rata non est. In the contract of loan, a stipulation not to be liable for fraud is not valid. *Dig.* 13. 7. 17, pr.

IN COMMUNI. L. Lat. In common. *Fleta*, lib. 3, c. 4, § 2.

In conjunctivis oportet utramque partem esse veram. In conjunctives, it is necessary that each part be true. *Wingate's Max.* 13, max. 9. In a condition consisting of divers parts in the copulative, both parts must be performed. *Id. ibid.*

IN CONSIDERATIONE INDE. L. Lat. In consideration thereof. 3 *Salk.* 64, pl. 5.

IN CONSIDERATIONE LEGIS. L. Lat. In consideration or contemplation of law ; in abeyance. *Dyer*, 102 b, *Lord Barkley's case.*

IN CONSIDERATIONE PRÆMISSORUM. L. Lat. In consideration of the premises. 1 *Stra.* 535.

In consimili casu, consimile debet esse remedium. In a like case, there ought to be a like remedy. *Hard.* 65.

IN CONSPECTU EJUS. L. Lat. In his sight or view. 12 *Mod.* 95.

In consuetudinibus, non diuturnitas temporis sed soliditas rationis est consideranda. In customs, not length of time but solidity of reason is to be considered. *Co. Litt.* 141 a. The antiquity of a custom is to be less regarded than its reasonableness.

IN CONTINENTI. Lat. Immediately ; without any interval or intermission. *Calv. Lex.* Sometimes written as one word, *incontinenti*, (q. v.)

IN CONTINENTIBUS. Lat. In the suburbs. See *Continens.*

In contractibus tacite insunt [veniunt] quæ sunt moris et consuetudinis. In contracts, matters of custom and usage are tacitly implied. A contract is understood to contain the customary clauses, although

they are not expressed. *Story on Bills*, § 143. 3 *Kent's Com.* 260, note. *Broom's Max.* [667.] See *Benignus.*

In contractibus, rei veritas potius quam scriptura perspici debet. In contracts, the truth of the matter ought to be regarded rather than the writing. *Cod.* 4. 22. 1.

In contrahenda venditione, ambiguum pactum contra venditorem interpretandum est. In the contract of sale, an ambiguous agreement is to be interpreted against the seller. *Dig.* 50. 17. 172. See *Id.* 18. 1. 21.

In conventionibus contrahentium, voluntatem potius quam verba spectari placuit. In the agreements of contracting parties, the rule is to regard the intention rather than the words. *Dig.* 50. 16. 219. 2 *Kent's Com.* 555.

IN CORPORE. Lat. In body, or substance; in a material thing or object. *Sive consistant* in corpore, *sive in jure;* whether they consist in, or belong to a material object, or a mere right. *Bract.* fol. 37 b.

IN CRASTINO. L. Lat. On the morrow. *In* crastino *Animarum;* on the morrow of All Souls. 1 *Bl. Com.* 342. See *Crastino.*

In criminalibus, probationes debent esse luce clariores. In criminal cases, the proofs ought to be clearer than light. 3 *Inst.* 210. See *Cod.* 4. 19. 25.

In criminalibus sufficit generalis malitia intentionis, cum facto paris gradus. In criminal matters or cases, a general malice of intention is sufficient, [if united] with an act of equal or corresponding degree. *Bacon's Max.* 65, reg. 15. "All crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact; which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature." *Id. ibid.* See *Criminalis.*

In the translation of this maxim in Branch's Principia, the words "*cum facto paris gradus*" are erroneously rendered, "keeping equal pace with the fact committed;" and the error is closely followed in Wharton's Lexicon. Lord Bacon's own words, "another particular of as high a nature," sufficiently explain the meaning.

IN CUJUS REI TESTIMONIUM. L. Lat. [L. Fr. *en tesmoignance de quel chose.*] In witness or testimony whereof. The initial words of the concluding clause in ancient deeds, constituting one of the formal and orderly parts of the instrument. *Co. Litt.* 6 a. 6 *Man. & Gr.* 457. The whole clause, as given by Fleta, ran thus: *In cujus rei testimonium, huic scripto sigillum meum apposui;* In witness whereof, I have to this writing set my seal. *Fleta*, lib. 3, c. 14, § 13. As given by Littleton, it ran thus: *In cujus rei testimonium, partes prædictæ sigilla sua præsentibus alternatim apposuerunt;* In witness whereof, the parties aforesaid to these presents interchangeably have put their seals. *Litt.* 371.

A clause beginning with the same words anciently formed the conclusion of letters patent. *In cujus rei testimonium, has literas nostras* (vel *meas*) *fieri fecimus* (vel *feci*) *patentes;* In witness whereof, we (or I) have caused these our (or my) letters to be made patent. *Reg. Orig.* 4 b. And a similar clause concludes some of the old statutes. *Stat. de Tallagio*, 2 *Inst.* 536. *Stat. of Tithes*, *Id.* 639.

IN CUSTODIA LEGIS. L. Lat. In the custody or keeping of the law. 2 *Steph. Com.* 74.

IN DAMNO. L. Lat. In damage; doing damage. *Bract.* fol. 158. See *Damnum.*

IN DEFENSO. L. Lat. In defence; in a state of prohibition; in fence; inclosed. A term applied, in old English law, to lands either actually surrounded by an enclosure, or otherwise exclusively appropriated. See *Defensum.* Applied also to rivers and their banks. *Magna Charta*, c. 16. *Provisum est quod aquæ de Humbre, &c. et omnes aliæ aquæ in regno in quibus salmones capiuntur, ponantur* in defenso, *quoad salmones capiendos, a die, &c.;* it is provided that the waters of the Humber, and all other waters in the kingdom in which salmons are taken, shall be put *in defense*, as to the taking of salmons, from, &c. *Stat. Westm.* 2, c. 47. See *Defendere.*

IN DELICTO. Lat. In fault; in guilt; culpable; guilty. "Where both parties are *in delicto*, concurring in an illegal act, it does not always follow that they stand *in pari delicto;* for there may be, and often are, very different degrees in their guilt." 1 *Story's Eq. Jur.* § 300.

In guilt; in the act of committing an offence; in a prohibited act or course. 1 *Kent's Com.* 151, 191.

IN DIEM. Lat. For a day; for the space of a day. *Calv. Lex. Spiegelius.*

On, or at a day. *In diem debitum;* a

debt due at a certain day. *Calv. Lex. Brissonius.*

In disjunctivis, sufficit alteram partem esse veram. In disjunctives, it is sufficient that either part be true. Where a condition is in the disjunctive, it is sufficient if either part be performed. *Wingate's Max.* 13, max. 9. Lord Ellenborough, 7 *East*, 272. *Broom's Max.* [455.] See **Ubi verba conjuncta**, &c.

IN DOMINICO. L. Lat. In demesne. *In dominico suo, ut de feodo;* in his demesne as of fee. *Bract.* fol. 253 b, 261 b. *Fleta*, lib. 2, c. 54, § 18. 1 *Reeves' Hist.* 428. *Co. Litt.* 17 a. 2 *Bl. Com.* 105, 106. See *Dominicum.*

IN DORSO. L. Lat. On the back. 2 *Bl. Com.* 468. 2 *Steph. Com.* 164. *In dorso recordi;* on the back of the record. 5 *Co.* 45. Hence the English *indorse, indorsement*, &c.

IN DUBIIS. Lat. In doubtful cases; in matters or cases of doubt. **In dubiis magis dignum est accipiendum.** In doubtful cases, the more worthy is to be taken. *Branch's Princ.*

In dubiis, benigniora præferenda sunt. In doubtful cases, the more favorable views are to be preferred: the more liberal interpretation is to be followed. *Dig.* 50. 17. 56. 2 *Kent's Com.* 557. See **Semper in dubiis**, &c.

In dubiis, non præsumitur pro testamento. In cases of doubt, the presumption is not in favor of a will. *Branch's Princ.* But see *Cro. Car.* 51.

IN DUBIO. Lat. In doubt; in a state of uncertainty.

In a doubtful case. **In dubio hæc legis constructio quam verba ostendunt.** In a case of doubt, that is the construction of the law which the words indicate. 10 *Mod.* 117. *Branch's Princ.*

IN DUPLO. Lat. In double. *Damna in duplo;* double damages. *Fleta*, lib. 4, c. 10, § 1.

IN DUPLUM. Lat. For the double value. *Inst.* 4. 6. 23. *Bract.* fol. 103.

IN EADEM CAUSA. Lat. In the same state or condition. *Calv. Lex. Spiegelius.*

IN EMULATIONEM VICINI. Lat. In envy or hatred of a neighbor. Where an act is done, or action brought, solely to hurt or distress another, it is said to be *in emulationem vicini.* 1 *Kames' Equity*, 56.

In eo quod plus sit, semper inest et minus. In the greater is always included the less also. *Dig.* 50. 17. 110.

IN ESSE. L. Lat. In being; in existence. *Bacon's Arg.* Low's Case of Tenures. Distinguished from *in posse*, or in mere possibility. 2 *Bl. Com.* 169. See *Esse, Posse, In posse.*

IN EXCAMBIO. L. Lat. In exchange. Formal words in old deeds of exchange. *West's Symboleogr.* part 1, lib. 2, sect. 513.

IN EXITU. L. Lat. In issue. *De materia in exitu;* of the matter in issue. 12 *Mod.* 372.

IN EXPERIENCE. L. Fr. Concerned. *Q'il av' estr'* in experience *ove cest case;* that he had been concerned in this case. *Dyer*, 32, (Fr. ed.)

IN EXTREMIS. Lat. In extremity; in the last extremity; in the last illness. 3 *P. Wms.* 93. 20 *Johns. R.* 502. Kent, C. *Id.* 514. 2 *Bl. Com.* 375, 500. *Agens in extremis;* being in extremity. *Bract.* fol. 373 b. Declarations *in extremis;* dying declarations. 15 *Johns. R.* 286. 1 *Greenl. on Evid.* § 156.

IN FACIE CURIÆ. L. Lat. In the face of the court. *Dyer*, 28.

IN FACIE ECCLESIÆ. L. Lat. In the face of the church. A term applied, in the law of England, to marriages, which are required to be solemnized in a parish church or public chapel, unless by dispensation or license. 1 *Bl. Com.* 439. 2 *Steph. Com.* 288, 289. Applied, in Bracton, to the old mode of conferring dower. *Bract.* fol. 92. 2 *Bl. Com.* 133.

IN FACIENDO. L. Lat. In doing; in feasance. 2 *Story's Eq. Jur.* § 1308.

IN FACILI. Lat. Easily; easy of determination or explanation. *Calv. Lex.*

IN FACTO. Lat. In fact; in deed. *In* facto *dicit;* in fact says. 1 *Salk.* 22, pl. 1. See *Factum.*

Depending on fact. *Calv. Lex.*

In facto quod se habet ad bonum et malum, magis de bono quam de malo lex intendit. In an act or deed which admits of being considered as both good and bad, the law intends more from the good than from the bad; the law makes the more favorable construction. *Co. Litt.* 78 b.

IN (or EN) FAIT. L. Fr. In fact; in deed. Lord Coke distinguishes "matters *of record*" from "matters *in fait.*" *Co. Litt.* 380 b.

In favorabilibus magis attenditur quod prodest quam quod nocet. In things favored, what profits is more regarded than what prejudices. *Bacon's Max.* 57, in reg. 12.

IN FAVOREM LIBERTATIS. L. Lat. In favor of liberty. *Fleta*, lib. 2, c. 51, § 3. 2 *W. Bl.* 746.

IN FAVOREM VITÆ. L. Lat. In favor of life. *Bacon's Max.* 36, in reg. 7. 4 *Bl. Com.* 338. **In favorem vitæ libertatis et innocentiæ omnia præsumuntur.** All things are presumed in favor of life, liberty and innocence. *Lofft's R.* Appendix, 125.

IN FELONIA. L. Lat. In felony; in a felonious manner; feloniously. *Nequiter et in felonia;* wickedly and feloniously. *Bract.* fol. 121. *Fleta*, lib. 1, c. 31, § 7.

IN FEODO. L. Lat. In fee. *Bract.* fol. 207, *et passim. Fleta*, lib. 2, c. 64, § 15. *Seisitus in feodo;* seised in fee. *Fleta*, lib. 3, c. 7, § 1.

In fictione juris semper æquitas existit. In the fiction of law there is always equity; a legal fiction is always consistent with equity. 11 *Co.* 51 a, *Liford's case. Broom's Max.* 54, [90.] The court will not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the thing. Lord Mansfield, C. J. 2 *Burr.* 950, 962. Otherwise expressed, **In fictione juris semper subsistit æquitas.** 3 *Bl. Com.* 43. **In fictione juris consistit æquitas.** *Id.* 283.

IN FIERI. L. Lat. In being made, or done; in course or process of being made, made up or done; imperfect; incomplete; The proceedings in a cause are said to be *in fieri*, until judgment is given and the record made up. 3 *Bl. Com.* 406. Anciently, while the pleading *ore tenus* was going on, the record was *in fieri. Gilb. C. Pleas*, 115. The term has also been used as descriptive of the proceedings in a chancery suit before issue joined. *Gilb. For. Rom.* 49. It has also been applied to a contract. "It was a contract *in fieri*." 3 *East*, 303.

IN FORMA PAUPERIS. L. Lat. In the form or manner of a poor person; as a poor person; in the character of a pauper. 2 *Burr. Pr.* 104.

IN FORMA PRÆDICTA. L. Lat. In form aforesaid. *Perkins*, ch. 3, s. 242.

IN FORO. Lat. In a, or the forum, court or tribunal. See *infra.*

IN FORO CONSCIENTIÆ. L. Lat. In the forum of conscience. *Story on Bailm.* § 391 a, 391 b.

IN FORO CONTENTIOSO. Lat. In the form of contention or litigation. *Hale's Hist. Com. Law*, 28, (Runnington's ed. 1820.)

IN FORO ECCLESIASTICO. L. Lat. In an ecclesiastical forum; in the ecclesiastical court. *Fleta*, lib. 2, c. 57, § 13.

IN FORO SÆCULARI. L. Lat. In a secular forum or court. *Fleta*, lib. 2, c. 57, § 14. 1 *Bl. Com.* 20.

IN FRAUDEM LEGIS. Lat. In fraud of the law. 3 *Bl. Com.* 94. With the intent or view of evading the law. 1 *Johns. R.* 424, 432. "It may be laid down as a general principle, that whenever an act is done *in fraudem legis*, it cannot be the basis of a suit in the courts of the country whose laws are attempted to be infringed." *Id.* 433, Spencer, J. See 15 *Johns. R.* 146. *Contra legem facit qui id facit quod lex prohibet;* in fraudem *vero, qui, salvis verbis legis, sententiam ejus circumvenit;* he acts against the law, who does that which the law forbids; but he acts in fraud of the law, who, saving the words of the law, circumvents its meaning. *Dig.* 1. 3. 29.

IN FRAUDEM CREDITORUM. Lat. In fraud of creditors; with intent to defraud creditors. *Inst.* 1. 6, pr. 3. *Dig.* 42. 8.

IN FULL LIFE. Alive in fact and in law. This phrase is a literal translation of the L. Fr. *en pleyn vie*, (q. v.) and seems to have been constructed with reference to the *two kinds of death* recognised in law, viz: *natural* and *civil.* A party may be physically alive, or *in life*, (*en vie*,) and yet civilly dead; hence the use of the phrase to express *life* in *both* senses, or in the *fullest* sense of the word.

IN FUTURO. Lat. In future; at a future time; the opposite of *in præsenti.* 2 *Bl. Com.* 166, 175.

IN GENERALI PASSAGIO. L. Lat. In the general passage [to the Holy Land.] A term of frequent occurrence in the old law of essoins, importing that the party essoined had gone beyond the sea with the *great body of crusaders*, instead of performing a pilgrimage alone, which was called the *simple* or single *passage* or pilgrimage, (*simplex passagium* or *peregrinatio.*) *Bract.* fol. 338, 339. *Britt.* cc. 122, 123.

IN GENERE. Lat. In kind; of the same kind; generically. In the civil law, things are divided into those which may be furnished *in genere*, and those which must be furnished *in specie*, or specifically. 1 *Mackeld. Civ. Law*, 152, § 148. See *In specie.*

In general. *In genere, quicunque ali-*

quid dicit, sive actor sive reus, necesse est ut probet; in general, whoever affirms any thing, whether plaintiff or defendant, must prove it. *Matth. de Prob.* c. 8, n. 4. *Best on Evid.* 294, § 252.

IN GREMIO LEGIS. L. Lat. In the bosom of the law; in abeyance. 1 *Co.* 131 a, *Chudleigh's case. T. Raym.* 319.

Under the protection of the law. 14 *Howard's R.* 375.

IN GROSS. [L. Lat. *in grosso.*] In a large quantity or sum; without division or particulars; by wholesale. See *In grosso.*

At large; not annexed to, or dependent upon another thing. Common in gross is such as is neither appendant nor appurtenant to land, but is annexed to a man's person. 2 *Bl. Com.* 34. Applied also to *advowsons*, and anciently to *villeins* annexed or belonging to the person. See *Advowson in gross.*

IN GROSSO. L. Lat. In gross; by wholesale. *Nec* in grosso, *nec ad retalliam;* neither in gross, nor by retail. *Reg. Orig.* 184.

IN HAC PARTE. L. Lat. In this behalf. *Reg. Orig.* 25.

IN HÆC VERBA. Lat. In these words; in the same words. *Dig.* 34. 4. 30, pr. The same with *his verbis. Id. ibid.*

IN HUNC MODUM. L. Lat. After this manner. *Fleta*, lib. 2, c. 64, § 1.

IN IISDEM TERMINIS. L. Lat. In the same terms. 9 *East*, 487.

IN INDIVIDUO. L. Lat. In the distinct, identical or individual form; *in specie. Story on Bailm.* § 97.

In particular; particular; special. See *Criminalis.*

IN INITIALIBUS. Lat. In the preliminaries. A term in Scotch practice, applied to the preliminary examination of a witness, as to the following points: whether he knows the parties, or bears ill-will to either of them, or has received any reward or promise of reward for what he may say; or can lose or gain by the cause; or has been told by any person what to say. If the witness answer these questions satisfactorily, he is then examined *in causa*, in the cause. *Bell's Dict.* Evidence. 2 *Alison's Crim. Prac.* 438. 1 *Brown's R.* 252. See *In causa.*

IN INITIO. Lat. In, or at the beginning. *In initio litis;* at the beginning, or in the first stage of the suit. *Bract.* fol. 400.

IN INTEGRUM. Lat. To the original or former state. *Calv. Lex.* See *Integer. Dig.* 4. 1. *Id.* 4. 6.

IN INVITUM. Lat. Against an unwilling party; against a party without his consent. The law presumes *quod judicium redditur in invitum*, that a judgment is a proceeding against a party's will. 5 *Co.* 28 b, *Harrison's case.* 1 *Stra.* 382. 1 *Steph. Com.* 444. 2 *Florida R.* 620. *Item contra voluntatem domini quandoque transfertur dominium*, s. *per judicem, quia judicium ruit* in invitum; also, ownership is sometimes transferred against the owner's will, to wit, by a judge, [i. e. by the act of a court,] because a judgment goes, [literally, *rushes*, implying forcible or compulsory progress,] against an unwilling party. *Bract.* fol. 41 b.

IN IPSIS FAUCIBUS. Lat. In the very throat or entrance. *In ipsis faucibus* of a port; actually entering a port. 1 *Rob. Adm. R.* 233, 234.

IN ITINERE. Lat. On the voyage; on the way. The same as *in transitu.* Sir William Scott, (The Vrow Margaretha,) 1 *Rob. Adm. R.* 338.

IN JUDGMENT. In a court of justice; in a seat of judgment. Lord Hale is called "one of the greatest and best men who ever sat in judgment." Lord Kenyon, C. J. 1 *East*, 306.

IN JUDICIO. Lat. Before a *judex* or judge; in the course of actual trial. A term used, in the Roman law, to denote the second stage of the proceedings in an action, as distinguished from those *in jure*, (q. v.) before the prætor, which constituted the first stage. See *Actio.*

By a course of judicial proceeding; judicially; by action. *Eorum quæ non in judicio, sed extra prosequimur, sicut furem*, &c.; of those things which we prosecute not in judgment or by action, but without, as a thief, &c. *Bract.* fol. 98 b. *Sine judicio;* without due course of law. *Id.* fol. 196.

In judgment; in a course of judicial investigation.

In a judicial proceeding. See the maxims, *infra.*

In court; in or before a court. In this sense, the phrase occurs in the civil law, and constantly in Bracton. *Præsens in judicio;* present in court. *Inst.* 4. 11. 3. *Ubi, et coram quibus personis proponendæ sunt actiones et probandæ; et scienduæ quod* in judicio; where and before what

persons actions are to be propounded and proved; and it is to be known that it is in a court. *Bract.* fol. 106. *Partibus* in judicio *comparentibus;* the parties appearing in court. *Id.* fol. 183 b. *Pars* in judicio; a party in court. *Id. ibid. Si ambo fuerint præsentes* in judicio, *petens et tenens;* if both the parties be present in court, demandant and tenant. *Id.* fol. 257 b. And see *Id.* fol. 281 b, 288, 353 b. *Fleta*, lib. 4, c. 7, § 2.

In judicio non creditur nisi juratis. In a court of justice, credit is not given to [the statements of] persons unless they are sworn. No person is allowed to testify in court except under oath. *Cro. Car.* 64. 1 *Bl. Com.* 402. See **Confessio facta in judicio, &c.** **Confessus in judicio, &c.**

In judiciis minori ætati succurritur. In courts or judicial proceedings, infancy is aided or favored. *Jenk. Cent.* 46, case 89.

IN JURE. Lat. In law; in the merely formal or introductory part of the proceedings; before the prætor or magistrate. This was the peculiar sense of the term in the Roman law, being descriptive of the first of the two stages of the proceedings in an action; the second stage being said to be *in judicio*, (q. v.) See *Actio.* The office of the magistrate was to inquire into matters of *law*, and whatever business was transacted before him was said to be done *in jure. Hallifax, Anal.* b. 3, ch. 8, num. 7.

In law; according to law; rightfully. *In jure, vel extra jus;* by law, or without law. *Bract.* fol. 169 b.

In jure, non remota causa, sed proxima spectatur. In law, not the remote but the proximate cause is considered. *Bacon's Max.* 1, reg. 1. *Broom's Max.* 104, [165.] See **Causa proxima non remota spectatur.**

IN JURE ALTERIUS. Lat. In another's right. *Hale's Anal.* sect. xxvi.

IN JURE PROPRIO. Lat. In one's own right. *Hale's Anal.* sect. xxvi.

IN JUS VOCARE. Lat. To call, cite or summon to court. *Inst.* 4. 16. 3. *Dig.* 2. 4. *Cod.* 2. 2. *Calv. Lex. In jus vocando;* summoning to court. *Dig.* 2. 4. 3 *Bl. Com.* 279.

IN LATROCINIO. L. Lat. In larceny; as a thief. *Fleta*, lib. 1, c. 38, § 3.

IN LECTO MORTALI. Lat. On the death-bed. *Fleta*, lib. 5, c. 28, § 12.

IN LIMINE. Lat. On, or at the threshhold; preliminarily.

IN LITEM. Lat. For a, or the suit. See *Ad litem.* Applied to a plaintiff's oath when allowed in a suit. 1 *Greenl. Evid.* § 348.

IN LOCO. Lat. In place; in lieu; instead; in the place or stead. *Towns. Pl.* 38.

IN LOCO PARENTIS. Lat. In the place of a parent. 1 *Bl. Com.* 453. 2 *Steph. Com.* 331. 2 *Kent's Com.* 192. 1 *Story's Eq. Jur.* § 339.

IN MAJOREM CAUTELAM. Lat. For greater security. 1 *Stra.* 105, arg.

In majore summa continetur minor. In the greater sum is contained the less. 5 *Co.* 115 a, *Wade's case.* This very simply constructed maxim has been singularly mistranslated in Branch and Wharton.

In maleficiis voluntas spectatur, non exitus. In offences, the intent is regarded, not the consequence. *Dig.* 48. 8. 14. The words of a rescript of the emperor Hadrian.

In maleficio ratihabitio mandato comparatur. In a case of malfeasance, ratification is equivalent to command. *Dig.* 50. 17. 152. 2.

IN MATERIA. L. Lat. In the matter; in the case. *Dyer*, 34 b.

In maxima potentia minima licentia. In the greatest power there is the least freedom. *Hob.* 159.

IN MEDIO. L. Lat. Intermediate. A term applied, in Scotch practice, to a fund held between parties litigant.

IN MEDITATIONE FUGÆ. L. Lat. In contemplation of flight. 2 *Kames' Equity*, 14, 15.

In mercibus illicitis non sit commercium. There should be no commerce in illicit or prohibited goods. 3 *Kent's Com.* 262 note.

IN MERCY. [L. Fr. *en mercie;* L. Lat. *in misericordia.*] A phrase used at the conclusion of judgment records, derived from the old practice of *amercing* parties against whom judgment was rendered. Thus, where judgment was rendered for the plaintiff, it was also considered that the defendant be "*in mercy*, &c.," that is, that he be *amerced* for his wilful delay of justice, in not immediately obeying the king's writ by rendering the plaintiff his due. 3 *Bl. Com.* 398. This phrase has been literally retained in modern practice. So, where judgment was for the defendant, it was considered that the plaintiff and his pledges be "*in mercy* [that is, *amerced*] for his false claim." *Id.* 399, 376. *Fleta*, lib. 2, c. 54, § 24. See *In misericordia.*

IN MERO JURE. L. Lat. On the mere right. *Yearb.* M. 1 Edw. II. 2.

IN MI'A. L. Lat. An old abbreviation of *in misericordia*, used at the conclusion of judgment records, and also written in the margin. *Hob.* 127. *Towns. Pl.* 494, 497, 502.

IN MISERICORDIA. L. Lat. In mercy; subject or liable to amercement. *In misericordia pro falso clamore suo;* in mercy for his false claim. 3 *Bl. Com.* 376, 398, 399. *Fleta*, lib. 2, c. 61, § 16. See *In mercy, Misericordia.*

IN MITIORI SENSU. L. Lat. In the milder or more favorable sense. *Hob.* 77 b.

IN MODUM ASSISÆ. L. Lat. In the manner or form of an assise. *Bract.* fol. 183 b. *In modum juratæ;* in manner of a jury. *Id.* fol. 181 b.

IN MORA. Lat. [Fr. *en demeure.*] In default; literally, in delay. In the civil law, a borrower who omits or refuses to return the thing loaned at the proper time is said to be *in mora. Story on Bailm.* §§ 254, 259.

In Scotch law, a creditor who has begun without completing diligence necessary for attaching the property of his debtor, is said to be *in mora. Bell's Dict.*

IN MORTUA MANU. L. Lat. In a dead hand; in the hands of a person dead in law, as ecclesiastical bodies anciently were; in mortmain. 1 *Bl. Com.* 479. *Co. Litt.* 2 b. See *Mortmain.*

IN NOMINE DEI, AMEN. Lat. In the name of God, Amen. A solemn form of introduction, anciently used in wills and many other instruments, public and private. The Procemia to the Institutes and Digests of Justinian commence, *In nomine Domini nostri Jesu Christi;* in the name of our Lord Jesus Christ. The confirmation of the Code and several of the Novels are introduced with the same form. Some old wills began, *In nomine Patris, et Filii, et Spiritus Sancti, Amen. Blount*, voc. *Will.* Mercantile instruments, such as protests, policies, procurations, &c. frequently began, *In Dei nomine, Amen.* See *West's Symboleogr.* part 1, lib. 2, sect. 662, 666, 668, 669, 670, 672.

IN NUBIBUS. L. Lat. In the clouds; in a state of suspension or abeyance; not in any person living; no where; in consideration and intendment of law; in the custody or preservation of the law. *Litt.* sect. 646, 650. *Hob.* 335. Periam, C. B. 1 *Co.* 134 a, *Chudleigh's case.* In the same case, Clarke, B. speaking of future uses, observed, "some have supposed they were preserved *in nubibus*, and in the custody of the law, but," he said, "in our case, be they below in the land, there they should be perpetually buried, and should never rise again; and be they above *in nubibus*, in the clouds, there they should always remain, and should never descend." 1 *Co.* 137 b.

IN NULLIUS BONIS. Lat. Among the goods or property of no person; belonging to no person, as treasure-trove and wreck were anciently considered. *Bract.* fol. 120. *Thesaurus* in nullius bonis *est. Id. ibid.* In the civil law, things sacred and religious were considered as not the subjects of private property. *Nullius sunt res sacræ, et religiosæ, et sanctæ. Inst.* 2. 1. 7. *Dig.* 1. 8, pr. Animals *feræ naturæ*, while they remain wild, are accounted *nullius in bonis*, the common property of mankind. 2 *Steph. Com.* 17. See *Res nullius.*

IN NULLO EST ERRATUM. L. Lat. In nothing is there error. The name of the common plea or joinder in error, denying the existence of error in the record or proceedings; which is in the nature of a demurrer, and at once refers the matter of law arising thereon, to the judgment of the court. 2 *Tidd's Pr.* 1173. Shaw, C. J. 7 *Metcalf's R.* 285, 287.

In obscuris inspici solere quod verisimilius est, aut quod plerumque fieri solet. In obscure cases, we usually look at what is most probable, or what most commonly happens. *Dig.* 50. 17. 114.

In obscuris quod minimum est sequimur. In obscure or doubtful cases, we follow that which is the least. *Dig.* 50. 17. 9. 2 *Kent's Com.* 557. The precise meaning of this maxim is not very clearly explained in the civil law. *Dig. ub. sup. gloss. marg.*

IN OCTAVIS (or OCTABIS.) L. Lat. On the octave. One of the ancient return days in the English courts. 3 *Bl. Com.* 277, 278. *Reg. Orig.* 17 b, *et passim. Towns. Pl.* 141, 142. *In octabis Sancti Hilarii;* on the octave of St. Hilary. *Id. ibid.* See *Octave.*

IN ODIUM SPOLIATORIS. Lat. In hatred [as a mark of hatred] of a despoiler, robber, destroyer or wrong-doer. Story, J. 1 *Gallison's R.* 174. 2 *Story's R.* 99. 1 *Greenl. Evid.* § 348.

In odium spoliatoris omnia præsumuntur. All things are presumed against a

despoiler; every presumption is made against a wrong-doer. 1 *Vern.* 452. *Branch's Princ.*

In omni re nascitur res quæ ipsam rem exterminat. In every thing there arises a thing which destroys the thing itself. Every thing contains the element of its own destruction. 2 *Inst.* 15.

IN OMNIBUS. Lat. In all things; on all points. "A case parallel *in omnibus.*" 10 *Mod.* 104. "Wyndham, J. agreed *in omnibus.*" 2 *Id.* 13.

In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur. In all contracts, whether nominate or innominate, an exchange [of value, i. e. a consideration] is implied. *Gravin.* lib. 2, § 12. 2 *Bl. Com.* 444, note.

In omnibus obligationibus in quibus dies non ponitur, præsenti die debetur. In all obligations in which a date is not put, the debt is due on the present day; the liability accrues immediately. *Dig.* 50, 17. 14.

In omnibus [fere] pœnalibus judiciis, et ætati et imprudentiæ succurritur. In nearly all penal judgments, immaturity of age and imbecility of mind are favored. *Dig.* 50. 17. 108.

In omnibus quidem, maxime tamen in jure, æquitas spectanda sit. In all things, but especially in law, equity is to be regarded. *Dig.* 50. 17. 90. *Story on Bailm.* § 257.

IN ORE. Lat. In the mouth. See *Jacet in ore.*

IN PACE DEI ET REGIS. L. Lat. In the peace of God and the king. *Fleta*, lib. 1, c. 31, § 6. Formal words in old appeals of murder.

IN PAIS, *En pais, En pays.* L. Fr. In the country, as distinguished from "*in court;*" out of court, or without judicial process; by deed, or not of record. Matter *in pais* is distinguished from matter *of record.* 2 *Bl. Com.* 294. Conveyances were anciently either by matter *in pais*, or deed, which was an assurance transacted between two or more private persons *in pais*, in the country, that is, (according to the old common law,) upon the very spot to be transferred; or by matter of record, or an assurance transacted only *in the* king's public *courts of record. Id. ibid.* 1 *Steph. Com.* 466. *Hale's Anal.* sect. xxxv. *Story on Agency*, § 25, note. So, a disclaimer *in pais* is distinguished from a disclaimer in a court of record. *Litt.* sect. 695. *Co. Litt.* 364 a. *Per fait fait* en pays; by deed made in the country. *Litt.* sect. 618. Notice *in pais* is notice given without the instrumentality of a court. *Story on Bailm.* § 348.

Without writing, as distinguished from *by deed.* Thus, estoppels are said to be either by matter of record; by matter in writing, as by deed indented, &c.; and by matter *in pais*, or in the country, without any writing, as by livery, by entry, by acceptance of rent, &c. *Co. Litt.* 352 a.

IN PAPER. A term formerly applied to the proceedings in a cause before the record was made up. 3 *Bl. Com.* 406. 2 *Burr.* 1098. Probably from the circumstance of the record being always on parchment. The opposite of "on record," or "of record." Denison, J. 1 *Burr.* 322. 10 *Mod.* 88.

IN PARI CAUSA. Lat. In an equal cause or matter; in a case affecting two equally. **In pari causa, possessor potior haberi [esse] debet.** Where two persons have equal rights in reference to the same thing, the party in possession ought to be regarded as the better; that is, his right should have the preference. *Dig.* 50. 17. 128, pr. [170.] *Broom's Max.* [562.] 1 *Wooddes. Lect.* Introd. lxxi. note. Where a thing is pledged severally to two creditors, without any communication with each other, and one of them has obtained the possession, he is entitled to a preference. *Story on Bailm.* § 312.

IN PARI DELICTO. Lat. In equal fault; equally culpable or criminal; in a case of equal fault or guilt. 1 *Story's Eq. Jur.* § 300. 1 *Campb.* 398. See *In delicto.*

In pari delicto, potior est conditio possidentis [defendentis.] In a case of equal or mutual fault [between two parties,] the condition of the party in possession [or defending,] is the better one. Lord Mansfield, 2 *Burr.* 926. Where each party is equally in fault, the law favors him who is actually in possession. *Broom's Max.* 325, [567, 572.] Where the fault is mutual, the law will leave the case as it finds it. *Story on Agency*, § 195. Thus, where money is paid by one of two parties to an illegal contract to the other, in a case where both may be considered as *participes criminis*, an action cannot be maintained after the contract is executed, to recover the money. 1 *Selw. N. P.* 90. So, the premium paid on an illegal insurance cannot be recovered back, though the underwriter cannot be compelled to make good the loss. 1 *East*,

96. *Dougl.* 451. 2 *Steph. Com.* 183. See 1 *Story's Eq. Jur.* §§ 61, 298. And see 25 *Penn. St. R.* 441. This maxim is merely another form of the civil law maxim, **Cum par delictum est duorum, semper oneratur petitor, et melior habetur possessoris causa,** (q. v.)

IN PARI JURE. L. Lat. In equal right. "Persons standing *in pari jure* or *in eodem jure*." Lord Ellenborough, 4 *M. & S.* 491.

IN PARI MATERIA. L. Lat. Upon the same subject. A phrase frequently applied to statutes. Lord Ellenborough, 9 *East*, 468. 1 *Steph. Com.* 74. 1 *Kent's Com.* 463. 3 *Howard's R.* 556, 563.

IN PATRIMONIO. Lat. As a subject of property. *Fleta*, lib. 3, c. 1, § 2.

IN PECTORE JUDICIS. Lat. In the breast of the judge. *Latch*, 180. A phrase applied to a judgment.

IN PEJOREM PARTEM. L. Lat. In the worst part; on the worst side. *Latch*, 159, 160.

IN PENDENTI. Lat. In suspension, or abeyance. *Bract.* fol. 12, 19 b. Written in Fleta, as one word, *inpendenti* and *impendenti*. *Fleta*, lib. 3, c. 9, § 7.

IN PERPETUAM REI MEMORIAM. Lat. In perpetual memory of a matter. *Gilb. For. Rom.* 118.

IN PERPETUUM. Lat. Forever. *Perkins*, ch. 8, s. 557. Sometimes written in one word, *imperpetuum*, (q. v.)

IN PERPETUUM REI TESTIMONIUM. L. Lat. In perpetual testimony of a matter; for the purpose of declaring and settling a thing forever. 1 *Bl. Com.* 86.

IN PERSONAM. Lat. Against the person; against a person. *Inst.* 4. 6. 1. *Fleta*, lib. 2, c. 60, § 21. 1 *Kent's Com.* 379. See *Actio in personam.*

IN PIOS USUS. L. Lat. For pious uses; for religious purposes. 2 *Bl. Com.* 505.

IN PLENA VITA. L. Lat. In full life. *Yearb.* P. 18 Hen. VI. 2.

IN PLENO COMITATU. L. Lat. In full county court. 2 *Bl. Com.* 36.

In pœnalibus causis, benignius interpretandum est. In penal causes or cases, the more favorable interpretation should be adopted. *Dig.* 50. 17. 155. 2. *Plowd.* 86 b, 124. 2 *Hale's P. C.* 365.

IN POSSE. L. Lat. In possibility; not in actual existence. See *In esse.*

IN POSTERUM. L. Lat. Hereafter. Called a forcible word to create a special inheritance. 3 *Leon.* 87. Lord Ellenborough, 1 *M. & S.* 136.

IN POTESTATE PARENTIS. Lat. In the power of a parent. *Inst.* 1. 8, pr. *Id.* 1. 9. 2 *Bl. Com.* 498.

IN PRÆJUDICIUM. L. Lat. To the prejudice; in prejudice. *Mem. in Scacc.* M. 22 Edw. I.

IN PRÆMISSIS. L. Lat. In the premises. *Reg. Orig.* 17 b. *Fleta*, lib. 3, c. 10, § 1. See *Præmissa.*

IN PRÆMISSORUM FIDEM. L. Lat. In confirmation or attestation of the premises. A notarial phrase.

IN PRÆPARATORIIS. Lat. In, or among preliminary proceedings. *Bract.* fol. 400. In præparatoriis *ad judicium favetur actori;* in the proceedings preliminary to judgment the plaintiff is favored. 2 *Inst.* 57.

IN PRÆSENTI. L. Lat. At the present time. 2 *Bl. Com.* 166.

In præsentia majoris potestatis, minor potestas cessat. In the presence of the superior power, the inferior power ceases. *Jenk. Cent.* 214, c. 53. The less authority is merged in the greater.

IN PRENDER. L. Fr. In taking. A term applied to such incorporeal hereditaments as a party entitled to them was to *take* for himself; such as common. 2 *Steph. Com.* 23. 3 *Bl. Com.* 15.

IN PRIMIS. L. Lat. In the first place. *Mag. Cart. Johan.* c. 1.

IN PRINCIPIO. Lat. At the beginning. *Bract.* fol. 347 b.

IN PROPRIA PERSONA. Lat. In proper person; in one's own person. *Sive* in propria persona *litigaverit, sive per atturnatum;* whether he litigate in proper person, or by attorney. *Bract.* fol. 370. See *Fleta*, lib. 2, c. 62, § 3.

IN QUINDENA. L. Lat. In fifteen days. One of the return days in the old practice of the English courts. *Towns. Pl.* 141. 2 *Reeves' Hist. Eng. Law*, 57—61.

IN QUINQUE SEPTIMANAS. L. Lat. In five weeks. One of the old returns. *Towns. Pl.* 142.

In quo quis delinquit, in eo de jure est puniendus. In whatever thing one offends, in that is he rightfully to be punished. *Co. Litt.* 233 b. *Wingate's Max.* 204, max. 58. The punishment shall have relation to the nature of the offence.

IN QUOVIS. Lat. In whatever. Assurance *in quovis*, i. e. in whatever ship laden. *Emerig. Tr. des Ass.* ch. 6, sect. 5.

IN RE. Lat. In a thing, or matter; in the matter. *In re* A. B.; in the matter of A. B. Papers in judicial proceedings other than actions are sometimes so entitled.

In re dubia, benigniorem interpretationem sequi, non minus justius est quam tutius. In a doubtful matter, to follow the more liberal interpretation is not less the juster than the safer course. *Dig.* 50. 17. 192. 1. This maxim is taken from Marcellus' 29th book of Digests, extracted in *Dig.* 28. 4. 3, where the whole context may be seen.

In re dubia, magis inficiatio quam affirmatio intelligenda. In a doubtful matter, the denial or negative is to be understood, [or regarded,] rather than the affirmative. *Godb.* 37.

In re pari, potiorem causam esse prohibentis constat. In a thing equally shared [by several] it is clear that the party refusing [to permit the use of it] has the better cause. *Dig.* 10. 3. 28. A maxim applied to partnerships, where one partner has a right to withhold his assent to the acts of his co-partner. 3 *Kent's Com.* 45.

IN REBUS. Lat. In matters, things, or cases. **In rebus manifestis, errat qui authoritates legum allegat; quia perspicue vera non sunt probanda.** In clear cases, he mistakes who cites legal authorities, for obvious truths are not to be proved. 5 *Co.* 67 a, *Jeffrey's case.* Applied to cases too plain to require the support of authority; "because," says the report, "he who endeavors to prove them obscures them."

IN REM. Lat. Against a thing; for the recovery of a thing. *Inst.* 4. 6. 1. *Fleta*, lib. 2, c. 60, § 21. Story, J. 2 *Gallison's R.* 191, 197. *Story on Bailm.* § 607. Wayne, J. 7 *Howard's R.* 729, 735. 1 *Cushing's R.* 29. Proceedings *in rem* are peculiar to courts of admiralty. "The foreign and other attachments of property, in the state courts, though, by analogy, loosely termed proceedings *in rem*, are evidently not within the category." Grier, J. 19 *Howard's R.* 89. And see 1 *Kent's Com.* 379, 380, notes.

IN RENDER. L. Fr. In yielding or paying. Rent is said by the ancient lawyers to *lie in render*, in contradistinction to other corporeal hereditaments which lie *in prender*. 2 *Steph. Com.* 23. See *In prender.*

In republica maxime conservanda sunt jura belli. In a state, the laws of war are to be especially upheld. 2 *Inst.* 58. Used by Lord Coke, in commenting on Magna Charta, c. 30.

IN RERUM NATURA. L. Lat. In the nature of things; in existence; not a fictitious person. In pleading, to say that there is no such person *in rerum natura*, is the same as to say that the party named is a fictitious person. 3 *Bl. Com.* 301. The phrase is applied, in the civil law, to things. *Inst.* 2. 20. 7.

IN RESPECTU. L. Lat. In respite. *Ponitur assisa in respectu;* the assise is put in respite, i. e. is respited. *Bract.* fol. 256. *Fleta*, lib. 5, c. 3, § 4. *Yelv.* 97.

In restitutionem, non in pœnam, hæres succedit. The heir succeeds to the restitution, not to the penalty; an heir may be compelled to make restitution of a sum unlawfully appropriated by the ancestor, but is not answerable criminally, as for a penalty. 2 *Inst.* 198.

IN RETALLIA. L. Lat. In retail; by retail. *Reg. Orig.* 184.

IN ROBERIA. L. Lat. In or by robbery. *Bract.* fol. 146 b. Formal words in the ancient appeal of robbery. *Id. ibid.*

IN SCRINIO JUDICIS. L. Lat. In the writing-case of the judge; among the judge's papers. "That is a thing that rests *in scrinio judicis*, and does not appear in the body of the decree." *Hardr.* 51.

IN SEPARALI. L. Lat. In several; in severalty. *Fleta*, lib. 2, c. 54, § 20.

IN SEYSINA. L. Lat. In seisin; in actual possession of lands. *Bract.* fol. 252, *et seq.* Expressed in law French, by the simple word *eins*, of which the English "*in*" is a mere translation. *Tenere se in seysina;* to hold himself in seisin; to maintain his possession. *Bract.* fol. 252 b. *Se ponere in seysinam;* to put himself into seisin. *Id.* fol. 252.

IN SIMPLICI PEREGRINATIONE. L. Lat. In simple pilgrimage. *Bract.* fol. 338. A phrase in the old law of essoins. See *In generali passagio.*

IN SIMPLUM. Lat. For the simple or single value. *Inst.* 4. 6. 22. *Bract.* fol. 103.

IN SOLIDO. Lat. [Fr. *solidairement.*] For the whole, (*pro toto*, q. v.;) to, or for the full amount; jointly and severally. A common term in the law of partnership and the civil law of contracts. 3 *Kent's Com.* 32, 34, 156, 164. A contract *in solido* is one by which each party is bound severally as well as jointly, and by which each is

liable for the whole. *Civil Code of Louis.* Art. 2077. Marshall, C. J. 7 *Peters' R.* 413, 429. An obligation *in solido* is a joint and several obligation. *Burge on Suretyship*, 391. *Schmidt's Civ. Law*, 117. *Poth. Obl.* part 1, ch. 3, art. 8, sec. 1. The terms "creditor *in solido*," "debtor *in solido*," are common in the civil law. *Burge, ub. sup.* In the Roman civil law, *in solidum* (q. v.) is the more common expression. And see *Pro solido.*

IN SOLIDUM. Lat. For the whole. *Si plures sint fidejussores, quotquot erunt numero, singuli* in solidum *tenentur;* if there be several sureties, however numerous they may be, they are individually bound for the whole debt. *Inst.* 3. 21. 4. *In parte, sive* in solidum; for a part, or for the whole. *Id.* 4. 1. 16. See *Id.* 4. 6. 20. *Id.* 4. 7. 2. "In joint contracts, all are bound to answer *in solidum.*" Lord Mansfield, 1 *W. Bl.* 388.

As a whole; exclusively; to the exclusion of others. **Plures eandem rem in solidum possidere non possunt.** Several persons cannot possess the same thing exclusively, [or so that both have the whole property in it at the same time.] *Dig.* 41. 2. 3. 5.

Duorum in solidum dominium vel possessio esse non potest. There cannot be an ownership or possession by two persons of the whole of one thing at the same time. *Dig.* 13. 6. 5. 15. 1 *Mackeld. Civ. Law*, 245, § 236. In Bracton, this phrase of the civil law is used as one word, *insolidum. Bract.* fol. 28 b. *Non dominus* insolidum, *sed tamen dominus in communi;* not owner of the whole exclusively, but yet owner in common. *Id.* fol. 167. And in another passage, it occurs very expressively as an adverb, *insolidè*, (q. v.) *Id.* fol. 45.

IN SOLO. Lat. In the soil or ground. *In solo alieno;* in another's ground. *In solo proprio;* in one's own ground. 2 *Steph. Com.* 20.

IN SPECIE. Lat. In shape or form; in the same form; in precise form; specifically; identically. Performance *in specie;* specific performance. 1 *Rep. in Ch.* 160.

In stipulationibus id tempus spectatur quo contrahimus. In stipulations, the time when we contract is regarded. *Dig.* 50. 17. 144. 1.

In stipulationibus, quum quæritur quid actum sit, verba contra stipulatorem interpretanda sunt. In stipulations or contracts, when there arises a question as to what was actually done, the words are to be interpreted against the stipulator. *Dig.* 45. 1. 38. 18. And see *Id.* 45. 1. 99, pr. *Broom's Max.* [461.]

In the case of Hogg's Appeal, (22 *Penn. St. R.* 479, 485,) it was said by Lowrie, J. that "when this rule was transferred from the Roman law to ours, the reason of it was left behind, and this has seriously affected its value. That reason interpreted obscurities and ambiguities against the party who defined or wrote down the terms, because the fault was his." In the Roman law, the parties to contracts were called *stipulator* and *promissor;* the *stipulator* proposed the terms of the contract, the *promissor* simply accepted them; although he was in fact the party who contracted the obligation. The rule was to interpret in favor of the promissor, and against the stipulator, because the latter was free to choose such terms as he pleased. *Secundum promissorem interpretamur, quia stipulatori liberum fuit verba late concipere. Dig.* 45. 1. 99, pr.

IN STIRPES. Lat. To, by, or according to the *roots* or *stocks;* as representatives of *stocks;* with reference to the *stocks* from which parties are descended, and not to themselves as individuals, (or *capita.*) A term derived from the ancient Roman law of succession, and still frequently applied to cases where, in the distribution of estates, persons take the share which their parent, (the *stirps*, stock or root whom they represent,) would have done, had he been living. 2 *Bl. Com.* 217. *Τοσοῦτον ἐκ τῆς κληρονόμιας τοῦ τελευτήσαντος λαμβάνοντες μέρος, ὅσοι δήποτε ἂν ὦσιν ὅσον ὁ αὐτων γονεὺς εἰ περιῆν, ἐκομίζετο· ἦν τίνα διαδοχήν* in stirpes *ἡ ἀρχαιότης ἐκάλεσεν*; taking such a share of the inheritance of the deceased, (how numerous soever they may be,) as their parent, if living, would have had; which antiquity [i. e. the old law] called succession *in stirpes. Nov.* 118, c. 1. See *Stirpes.*

IN STRICTO JURE. Lat. In strict law; in strict right. See *Stricti juris.*

IN SUBSIDIUM. L. Lat. In aid.

IN SUBSTANTIALIBUS. L. Lat. In a material point. Lord Lyndhurst, 6 *Bell's Appeal Cases*, 171. Of a substantial nature. 7 *Wils. & Shaw R.* 103.

IN SUMMA. L. Lat. On the whole; to sum all up. *Fleta*, lib. 2, c. 60, § 19.

In suo quisque negotio hebetior est quam in alieno. Every one is more dull in his own business than in another's. Lord

Coke cites this saying as illustrating the reason of his observation "that it is not safe for any man (be he never so learned) to be of counsel with himself in his own case, but to take advice of other great and learned men." *Co. Litt.* 377 b.

IN SUPERFICIE. Lat. In the surface. "His interest is *in superficie*, not *in profundo*." *Bacon's Arg.* case of Impeachment of Waste, *Works*, iv. 217.

IN SUSPENSO. L. Lat. In suspense. *Bract.* fol. 12, 357 b. *Fleta*, lib. 6, c. 10, § 6.

IN TAM AMPLO MODO. L. Lat. In as ample a manner. 7 *East*, 325.

IN TANTUM. L. Lat. In so much; so much; so far; so greatly. *Reg. Orig.* 97, 106.

IN TERMINIS. L. Lat. In terms. *Burr. Sett. Cas.* 286.

IN TERMINIS TERMINANTIBUS. L. Lat. In terms of determination; exactly in point. 11 *Co.* 40 b, *Metcalfe's case.* In express or determinate terms. 1 *Leon*, 93.

IN TERROREM. Lat. In or for terror; by way of threat or menace; for the purpose of terrifying or deterring. 2 *Inst.* 529. "Restraint of marriage was only *in terrorem*." 1 *P. Wms.* 284. See *Id.* 653.

IN THE NAME OF GOD, AMEN. A solemn formula with which wills and testaments once almost invariably commenced, though now in many cases disused. Bills of exchange also formerly commenced in the same way. *Story on Bills*, § 26. note, citing *Scaccia de Camb.* § 1, Quest. 5. And some policies of insurance continue to retain the same form of invocation. 2 *Duer on Ins.* 71, 797. See *In nomine Dei, Amen.* The compact on board the Mayflower, Nov. 11, 1620, begins *In the name of God, Amen.*

IN TOTIDEM VERBIS. Lat. In so many, or just so many words. *Hale's Hist. Com. Law*, 101.

IN TOTO. Lat. In the whole; altogether. *In toto vel in parte;* in whole or in part. *Fleta*, lib. 4, c. 18, § 1.

In toto et pars continetur. In the whole, the part also is contained. *Dig.* 50. 17. 113.

In traditionibus scriptorum, non quod dictum est, sed quod gestum est, inspicitur. In the delivery of writings, not what is said, but what is done is looked to. The actual delivery of a writing sealed to the party, without any words, is a good delivery. 9 *Co.* 137 a, *Thoroughgood's case.*

This maxim has been strangely translated in Branch's Principia and Wharton's Lexicon, "In the *traditions* of *writers*," &c.; the mistake appearing to have arisen from taking *scriptorum* to be the genitive of *scriptores*, instead of *scripta.*

IN TRANSITU. L. Lat. In transit; on the way or passage; while passing from one person or place to another. 1 *Kent's Com.* 35. 2 *Id.* 540—552. See *Stoppage in transitu.*

On the voyage. 1 *Rob. Adm. R.* 338. 5 *Id.* 131.

IN TRAJECTU. Lat. In the passage over; on the voyage over. See Sir William Scott, (The Daifjee,) 3 *Rob. Adm. R.* 141.

IN TUTO. L. Lat. In safety. See **Interest reipublicæ ut carceres sint in tuto.**

IN UNUM ANNUM ET UNUM DIEM. L. Lat. For one year and one day; for a year and a day. *Reg. Orig.* 8 b.

IN VADIO. L. Lat. In gage or pledge. 2 *Bl. Com.* 157.

IN (or EN) VENTRE SA MERE. L. Fr. In its mother's womb. *Is qui* in ventre *portabatur. Cod.* 6. 29. 3. *Quae adhuc* in ventre *vehitur materno. Id.* 7. 4. 14. An infant *in ventre sa mere* is supposed in law to be born, for many purposes. 1 *Bl. Com.* 130.

IN VINCULIS. Lat. In chains; in actual custody. *Gilb. For. Rom.* 97.

Applied also, figuratively, to the condition of a person who is compelled to submit to terms which oppression and his necessities impose on him. 1 *Story's Eq. Jur.* § 302.

IN VITA. L. Lat. In life; alive. See *En vie.*

For life. *Bract.* fol. 13 b.

"INABILITY" of a ship to execute or proceed on a service, may fairly be taken to mean not only an inability in respect of the tackle and hull of the ship, but also, for want of a sufficient crew to navigate her. Lawrence, J. 3 *East*, 249.

INACTITARE. L. Lat. In old English law. To enact. *Inactitatus, inactitatum;* enacted. *Reg. Brev.* Appendix, 36. 3 *Salk.* 331. *Freem.* 75.

INADEQUACY OF PRICE. Want of a sufficient consideration for a thing sold. Sometimes a sufficient ground for the avoidance of a contract of sale. See 2 *Kent's Com.* 477, note.

INÆDIFICATIO. Lat. In the civil law. Building on; the building on another's land, with one's own materials; building on one's own land with another's materials. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, §§ 362, 363. 1 *Mackeld. Civ. Law*, 283, § 268.

INANTEA. L. Lat. From this day forth. *Spelman.*

INBENEFICIARE. L. Lat. In old European law. To give land as a benefice, or in fee. *Spelman.* See *Beneficium.*

INBLADARE. L. Lat. [from *in*, and *bladum*, grain.] In old English law. To plant or sow. *Spelman. Quo blado* inbladata *fuerint;* with what grain they were sown. *Fleta*, lib. 2, c. 41, § 1.

Inbladatio. Sowing. *Id. ibid.*

INBLAURA. L. Lat. In old records. Profit or product of ground. *Cowell.*

INBORH, *Inborow.* Sax. [from *in*, and *borh*, a pledge.] In old English law. A pledge for persons going in. *Inborh & outborh;* a pledge for persons going in and out. This is the interpretation of Blount, but Cowell, following Camden, gives a different one.

INBREVIARE. L. Lat. [from *in*, in, and *brevis*, short.] In old English practice. To take a short account in writing; to inventory. *Attachiare et* inbreviare *catalla defuncti inventa in laico feodo;* to attach and inventory the chattels of the deceased found in a lay fee. *Mag. Cart.* 9 *Hen.* III. c. 18. *Id. Johan.* c. 26. Other MSS. read *imbreviare*, (q. v.)

INCAPACITY. Want of capacity; want of power or ability to take or dispose; want of legal ability to act. See *Capacity.*

INCAUSTUM, *Encaustum.* Lat. Ink. A fluid anciently used for writing, of which, as appears from the following passage of Bracton, there were two kinds: the black, (*incaustum nigrum*,) and the red, (*incaustum rubrum*,) the former being also termed *atramentum*, (from *ater*, black,) which is the Latin word generally used for "*ink.*" *Item diversitas* incausti *et atramenti, ut si una pars scribatur* incausto nigro, *et altera pars* incausto rubro, *non atramento. Bract.* fol. 398 b.

*** The original form of this word was the Græco-Lat. *encaustum*, from Gr. ἐν, in, or upon, and καυστικὸς, burnt, or burning, (hence *caustic*,) from καιειν, to burn; which is used by Pliny as descriptive of a kind of painting executed by *fire* or heat. See *Encyclopedia Americana*, tit. *Encaustic painting.* In the civil law, however, it occurs in the sense of a writing fluid. The ink with which the imperial rescripts were signed, was of a purple color, obtained from the juices of a shell-fish called *murex*, and the powder of another shell-fish called *conchylium*, by the application of *fire*, or heat; (*ut* cocti muricis *et* triti conchylii ardore *signentur.*) In the Code of Justinian it is called *sacrum encaustum*, and the making of it for common uses, or by common persons, was prohibited under the penalty of death and confiscation of goods. *Cod.* 1. 23. 6. *Incaustum*, also, was occasionally used in the later civil law, and, as already mentioned, is the form adopted by Bracton. The law French "*enke*," which occurs in Britton, (c. 28,) seems to have been framed directly from *encaustum*, by mere abbreviation, and the English "*ink*" is merely the French word with a different initial, in which respect the form *incaustum* is followed.

INCENDIARY. [from Lat. *incendium*, a burning.] In criminal law. One who wilfully and maliciously sets fire to another's house. Anciently termed *ardour*, (q. v.) a burner.

INCENDIUM. Lat. [from *incendere*, to burn.] In the civil law. A fire; a conflagration. *Dig.* 47. 9. **Incendium ære alieno non exuit debitorem.** A fire does not release a debtor from his debt. *Cod.* 4. 2. 11.

INCERTA. Lat. [fem. sing. and neut. pl. of *Incertus*, q. v.] Uncertain; doubtful. *Incerta persona;* an uncertain person; a person not particularly named or designated. *Inst.* 2. 20. 25.

Incerta pro nullis habentur. Uncertain things are held for nothing. *Davies' R.* 33.

INCERTI TEMPORIS. Lat. Of uncertain time or date. A title given to some English statutes enacted between Magna Charta and the reign of Edward III.; their period not being ascertained. 2 *Reeves' Hist. Eng. Law*, 85, 312. *Incerti nominis et temporis;* of uncertain name and date. Cases in the old reports are sometimes so entitled. *Hob.* 2.

INCERTITUDO. L. Lat. [from *incertus*, q. v.] In old English law. Uncertainty. *Fleta*, lib. 4, c. 17, § 1.

INCERTUS, *Incerta, Incertum.* Lat. [from *in*, priv. and *certus*, certain.] Uncertain; doubtful; not known. *Incertus possessor est quem ignoramus;* an uncer-

tain possessor is one whom we know not. *Dig.* 50. 16. 39. 3.

INCEST. [Lat. *incestus, incestum*, from *in*, not, and *castus*, chaste.] In criminal law. Sexual intercourse between persons who, by reason of consanguinity or affinity, cannot lawfully be united; (*coitus illicitus inter eas personas quæ, ob consanguinitatem vel adfinitatem, conjungi non possunt.*) *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 18, § 1352. See 2 *Kent's Com.* 81, 82, *et seq. Lewis' U. S. Crim. Law*, 436.

INCHOATE. [from Lat. *inchoatus*, from *inchoare*, to begin.] Begun; commenced; incipient; incomplete. A term applied to dower, as *initiate* (q. v.) is to curtesy.

INCIDENT. [Lat. *incidens*, from *incidere*, (q. v.) *accessorium.*] Belonging or appertaining to; following; depending upon another thing as more worthy or principal.* *Co. Litt.* 151 b. *Termes de la Ley.* Used both as an adjective and substantive. 1 *Steph. Com.* 291. **Things incident are adherent to their principals.** *Wingate's Max.* 127, max. 41. **Things incident cannot be severed.** *Finch's Law*, b. 1, ch. 3, num. 12. Estovers or wood granted to be burnt in such a house, shall go to him that hath the house, by whatsoever title, for one is inseparably incident to the other. *Id.*

A thing may be necessarily and inseparably *incident* to another, or usually so. In England, a court baron is necessarily *incident* to a manor, and a court of piepowders to a fair, so that they cannot be severed by grant. *Termes de la Ley.* The usual *incidents* to reversions are fealty and rent. 1 *Steph. Com.* 291. To every estate in lands the law has annexed certain peculiar *incidents*, which appertain to it as of course, without being expressly enumerated. 1 *Hilliard's Real Prop.* 91.

INCIDENTALITER. L. Lat. Incidentally. *Bract.* fol. 247 b.

INCIDERE. Lat. [from *in*, into or upon, and *cadere*, to fall.] In the civil and old English law. To fall into. *Calv. Lex. Brissonius.*

To fall out: to happen; to come to pass. *Calv. Lex.*

To fall upon or under; to become subject or liable to. *Incidere in legem;* to incur the penalty of a law. *Brissonius.* *Quibus modis quis* incidat *in assisam;* in what ways a person may become liable to an assise. *Bract.* fol. 170 b, 171. *Incidere in misericordiam;* to fall into mercy; to become liable to amercement. *Fleta*, lib. 2, c. 44, § 2.

INCILE. Lat. In the civil law. A trench. A place sunk by the side of a stream, so called because it is *cut* (*incidatur*) into, or through the stone or earth. *Dig.* 43. 21. 1. 5. The term seems to have included ditches (*fossæ*) and wells, (*putei.*) *Id. ibid.*

INCIPITUR. L. Lat. [from *incipere*, to begin.] (It is begun; it begins; a beginning.) A term applied, in English practice, to an entry made upon the roll in an action at law, by giving merely the *commencement* of the pleadings or other proceedings, instead of entering them in full. 1 *Arch. Pr.* 177. 3 *Ad. & Ell.* N. S. 425. 2 *Tidd's Pr.* 734.

INCISED WOUND. In medical jurisprudence. A cut or incision on a human body; a wound made by a cutting instrument, such as a razor. *Burr. Circ. Evid.* 693. *Whart. & Stille's Med. Jur.* § 808.

INCIVILE. Lat. [from *in*, not, and *civile*, proper or lawful.] Against legal propriety, rule or order, (*contra juris ordinem;*) irregular; unusual, (*inusitatum;*) unbecoming, (*inconveniens;*) unjust, (*iniquum.*) *Calv. Lex.*

Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare, vel respondere. It is improper, without looking at the whole of a law, to give judgment or advice, upon a view of any one clause of of it. *Dig.* 1. 3. 24.

Incivile est, nisi tota sententia inspecta, de aliqua parte judicare. It is irregular, or legally improper, to pass an opinion upon any part of a sentence, without examining the whole. *Hob.* 171 a. This seems to be a modification of the last maxim.

INCLAMARE. L. Lat. [from *in*, to or upon, and *clamare*, to cry.] In old European law. To cry out for a person, as a crier does in court;* to summon to court. *Inclamatus;* proclaimed; called or summoned by proclamation, (*in jus exactus.*) *Edict. Theodoric.* c. 145. *Spelman.*

INCLAUSA. L. Lat. In old records. A home close, or enclosure near the house. *Paroch. Antiq.* 31. *Cowell.*

INCLAUSTRUM. L. Lat. In old English law. An enclosure; the enclosure or circuit of a monastery. *Spelman.*

INCLOSE. To shut up. "To inclose a jury," in Scotch practice, is to shut them up in a room by themselves. *Bell's Dict.* voc. *Criminal prosecution.*

INCLUSIO. Lat. [from *includere*, to shut in, enclose, include.] In the civil law. A shutting in; an enclosing or including; inclusion; the setting of a gem. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 363.

A shutting up, as of bees in a hive. *Fleta*, lib. 3, c. 2, § 3. A shutting up in a prison. *Id.* lib. 2, c. 65, § 7.

Inclusio unius est exclusio alterius. The inclusion of one is the exclusion of another. The certain designation of one person is an absolute exclusion of all others. 11 *Co.* 58 b, *Foster's case.*

INCOLA. Lat. [from *incolere*, to inhabit, to dwell in.] In the civil law. An inhabitant; a dweller or resident. Properly, one who has transferred his domicil to any country; the same with the Greek πάροικος. (Incola *est qui in aliquam regionem domicilium suum contulit, quem Græci* πάροικον *appellant.*) *Dig.* 50. 16. 239. 2. See *Id.* 50. 1. 34, 35, et per tot. One who comes from abroad, and takes up his abode in a place, with the view of residing there. The peculiar sense of the word seems to be derived from the component particle *in*, having the sense of *into*, or *entry.** Domicil made a person an *incola*, as birth made him *civis*, (a citizen.) *Cod.* 10. 40. 7. *Phillimore on Domicil*, 25, 26. See *Calv. Lex.*

In old English law. A subject. *Stat. Marlbr.* pr. *Fleta*, lib. 2, c. 47, § 13.

INCOME. In a strict sense,—that which comes in, or is received from any business or investment of capital, without reference to the outgoing expenditures. *Profits* generally mean the gain which is made upon any business or investment, when both receipts and payments are taken into the account. Bronson, J. 4 *Hill's* (N. Y.) *R.* 20, 23.

In a looser sense, income is used as synonymous with profits. *Id. ibid.*

INCOMMODUM. Lat. [from *in*, priv. and *commodum*, advantage.] In the civil and old English law. Disadvantage; loss. The opposite of *commodum*, (q. v.)

INCOMPATIBLE. Legally inconsistent; that cannot be legally united in the same person. A term frequently applied to offices.

INCOMPETENCY. In the law of evidence. Want of competency. See *Competency.*

INCONCLUSIVE. In the law of evidence. Not conclusive; that may be disputed or rebutted. A term applied to presumptions. See *Burr. Circ. Evid.* 47, 48. *Best on Pres.* § 25. 1 *Greenl. Evid.* §§ 33, 34.

INCONSULTO. Lat. [from *in*, and *consulto*, advisedly.] In the civil law. Unadvisedly; unintentionally. *Dig.* 28. 4. 1.

INCONTINENT. L. Fr. Forthwith. *Litt.* sect. 127.

INCONTINENTI. Lat. Forthwith; immediately; without any interval; incontinently. *Ejicio te, et tu me* incontinenti, *flagrante disseysina;* I eject you, and you immediately, while the disseisin is fresh, [eject] me. *Bract.* fol. 163 b. See *Id. ibid.* and fol. 164, *passim.* *Id.* fol. 12 b. *Pacta* incontinenti *apposita insunt contractibus, et legum dant eis;* covenants put into contracts at the time they are made, are considered as inherent parts of them, and give law to them. *Id.* fol. 22 b.

In the civil law, this word did not always import instantaneous succession, (*ad punctum, ad momentum,*) but admitted of the existence of a moderate interval. *Calv. Lex.* So Fleta uses the expression, *satis erit incontinenti.* Lib. 4, c. 2, § 2.

INCORPORALIS. Lat. [from *in*, priv. and *corporalis*, corporeal.] In civil and old English law. Incorporeal; not material; not having a body or substance; that cannot be touched nor seen, (*quæ tangi non potest, nec videri.*) *Bract.* fol. 13 b. *Res incorporales;* incorporeal things, such as rights, obligations, actions, &c. *Id.* fol. 7 b, 10 b. *Fleta*, lib. 2, c. 60, § 18. *Inst.* 2. 2.

Incorporalia bello non adquiruntur. Incorporeal things are not acquired by war. Lord Ellenborough, 6 *M. & S.* 104.

INCORPORAMUS. L. Lat. [from *incorporare*, q. v.] We incorporate. One of the words by which a corporation may be created in England. 1 *Bl. Com.* 473. 3 *Steph. Com.* 173. See *Incorporare.*

INCORPORARE. L. Lat. [from *in*, into, and *corpus*, a body.] In old English law. To give a body to; to clothe with a body; to gather into a body; to incorporate. In *The Case of Sutton's Hospital*, this word was held not requisite in law to create an incorporation, other equivalent words being sufficient. 10 *Co.* 30 a.

INCORPORATION. [L. Lat. *incorporatio*, from *incorporare*, q. v.] The forming into a body, (*corpus;*) the creation of a corporation, or artificial body having perpetual succession. See *Corporation.*

INCORPOREAL. [L. Lat. *incorporalis.*]

Having no body, or *corpus;* not material, or tangible; not an object of sense, but existing only in contemplation of law; not capable of actual visible seisin, or possession.* 1 *Chitt. Gen. Pract.* 150, 203.

INCORPOREAL CHATTELS. A class of incorporeal rights growing out of, or incident to things *personal;* such as patent rights, and copyrights. 2 *Steph. Com.* 72.

INCORPOREAL HEREDITAMENT. [L. Lat. *incorporale hæreditamentum.*] In a large sense—any possession or subject of property, whether real or personal, capable of being transmitted to heirs, and not the object of the bodily senses. 2 *Steph. Com.* 1. 1 *Id.* 159. See *Hereditament, Incorporeal.*

In a stricter sense,—a right annexed to, or issuing out of, or exercisable within a corporeal hereditament, or land. 2 *Bl. Com.* 17, 19. 2 *Steph. Com.* 2. 1 *Id.* 159. The term *incorporeal hereditament* is, in effect, exclusively applied to the class of things *real.* Thus, a man may have a right of common of pasture for his cattle, or a right of way, (which are incorporeal hereditaments,) to be exercised over the land (which is corporeal) of another person. 2 *Steph. Com.* 2. 3 *Kent's Com.* 402.

Corporeal hereditaments consist of such as affect the senses, such as may be seen and handled by the body; *incorporeal* are not the object of sensation, can neither be seen nor handled, are creations of the mind, and exist only in contemplation. 2 *Bl. Com.* 17. Incorporeal hereditaments, according to Blackstone, are principally of ten sorts: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities and rents. 2 *Bl. Com.* 21. Mr. Stephen adds to these, watercourses and lights, but makes of the whole a different arrangement. 2 *Steph. Com.* 3. In American law there are fewer kinds of this description of property, the only incorporeal rights recognised being those of commons, ways, easements and aquatic rights, offices, franchises, annuities and rents. 3 *Kent's Com.* 402, 403.

INCORRIGIBLE ROGUE. A species of rogue or offender, described in the statutes 5 Geo. IV. c. 83, and 1 & 2 Vict. c. 38. 4 *Steph. Com.* 309.

INCREASE. Produce of land.

Offspring or issue of animals. "Increase" of a female slave has no broader meaning than children. 3 *Jones' Law R.* 473.

INCREMENTUM. Lat. In old English law and practice. Increase; addition; an advance in rent; an additional payment. *Paroch. Antiq.* 164, 316. *Cowell.* Costs *de incremento;* costs of increase. See *De incremento.*

A parcel of land enclosed out of common or waste ground. *Dedi* J. B. *quoddam incrementum terræ meæ apud D.* &c.; I have given to J. B. a certain enclosed parcel of my land at D. &c. *Blount.*

Increase of land by the sea. See *Maritima incrementa.*

INCROCARE. L. Lat. [from *in*, upon, and Fr. *croc*, a hook.] In old European law. To suspend from a hook, (*ab unco pendere;*) to hang. *Spelman. Si quis hominem, sine consensu judicis, de ramo ubi incrocatur, deponere præsumpserit,* &c.; if any one shall presume, without consent of the judge, to take down a man from the branch where he is hung, &c. *L. Salic.* tit. 69, § 2.

INCROCH. [L. Lat. *incrochiare*, from L. Fr. *encrocher*, q. v.] In old English law. To draw to one, as with a hook, (*velut hamâ subducere;*) to usurp. Hence the modern *encroach.* "Admirals and their deputies do *incroch* to themselves divers jurisdictions." *Stat.* 15 *Rich.* II. c. 3. *Blount.* See *Encroach.*

INCULPATE. [from Lat. *in*, and *culpa*, blame.] To impute blame or guilt; to accuse.

INCULPATORY. In the law of evidence. Going, or tending to establish guilt; intended to establish guilt; criminative. *Burr. Circ. Evid.* 251, 252.

INCUMBENT. [Lat. *incumbens*, from *incumbere*, to lie or be upon; to bend over, to bend to.] In English ecclesiastical law. A clerk who is resident on his benefice, with cure; and called *incumbent* of that church, because he does or ought to *bend* all his study to the discharge of the cure. *Co. Litt.* 119 b. *Cowell. Blount.* The law styles every parochial minister an *incumbent*, upon the supposition that he always *resides upon* his benefice. 1 *Bl. Com.* 392. 3 *Steph. Com.* 83.

This word is now applied to civil officers, as well as ecclesiastical, to denote the person in present possession of an office.

INCUMBERE. Lat. To lie or rest upon; to be upon. Hence *incumbent*, (q. v.) *incumber.* **Actori incumbit onus probandi.** The burden of proof rests on the plaintiff. 4 *Co.* 72 a.

To lie or bend over a thing, as one bends

over a task; to apply one's self vigorously. Coke derives *incumbent* from this sense also.

To possess or preserve; to hold fast or close. *Calv. Lex.*

INCUMBRAMENTUM. L. Lat. [from *incumbrare*, q. v.] In old English law. An incumbrance. *Bract.* fol. 261. *Fleta*, lib. 5, c. 4, § 16; c. 14, § 11.

INCUMBRANCE. [L. Lat. *incumbramentum*, q. v.] A burden or charge upon property; a legal claim or lien upon an estate; such as a judgment or mortgage.

INCUMBRANCER. One who holds an incumbrance, such as a mortgage, upon another's estate.

INCUMBRARE. L. Lat. [from *incumbere*, to lie upon?] In old English law. To incumber. *Agat versus eum qui incumbravit, ad tollendum incumbramentum;* he may have an action against him who incumbered, to remove the incumbrance. *Fleta*, lib. 5, c. 14, § 11.

INCURRERE. L. Lat. [from *in*, upon, and *currere*, to run.] To run or fall against, or into; to become subject or liable to; to incur. *Cowell.* Scotticè, *inrine*, in-run. *Incurramentum* is used in old records. *Cowell.*

INDE. L. Lat. Thereof; therefrom. *Quod eat* inde *sine die;* that he go thereof without day.

Thereof; thereupon. *Et* inde *producit sectam;* and thereof he produces suit, or brings suit. See *Et inde*, &c. *Si judicium* inde *redditum sit;* if judgment be thereupon given.

Thereof; of that thing. *In consideratione* inde; in consideration thereof. *Non constat quid* inde *venit;* it does not appear what became of it. *Hardr.* 65. A reporter's note.

Therefore. Inde *datæ leges ne fortior omnia posset;* laws are made to prevent the stronger from having the power to do everything. *Davies' R.* 36.

Therewith. *Consignando* inde *chartas vel brevia;* by sealing therewith charters or writs. *Bract.* fol. 119 b.

INDEBITATUS. L. Lat. Indebted. *Nunquam indebitatus;* never indebted. The title of the plea now substituted in England, for *nil debet.*

INDEBITATUS ASSUMPSIT. L. Lat. Being indebted, he undertook. The emphatic words of the old common counts in *assumpsit*, which, after stating for what the defendant was indebted to the plaintiff, went on to state that, "*sic inde* INDEBITATUS *existens, idem* W. *in consideratione inde, postea, scilicet eodem die et anno supradicto, apud locum predictum, super se* ASSUMPSIT, *et eidem querenti adtunc et ibidem fideliter promisit,*" &c. Or, as literally translated in the modern forms,—"*being so indebted*, the said W. [defendant,] in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at the place aforesaid, *undertook*, and then and there faithfully promised the said plaintiff," &c. *Towns. Pl.* 415. 2 *Chitt. Pl.* 37.

The name given to that species of the action of assumpsit, in which the above description of count is employed, and in which the declaration consists substantially of two general allegations; first, of a *debt*, and then of a *promise*, in consideration of the debt; the promise, however, being usually not an express but an implied one. See 3 *Bl. Com.* 154, 155. 1 *Tidd's Pr.* 2. 1 *Chitt. Pl.* 341, *et seq.*

INDEBITI SOLUTIO. Lat. In the civil and Scotch law. The payment of what is not due; which, when made from ignorance or by mistake, might be recovered back by an action termed *condictio indebiti.* *Dig.* 12. 6. *Bell's Dict.*

INDEBITUM. Lat. [from *in*, priv. and *debitum*, due.] In the civil law. Not due, or owing. *Dig.* 12. 6. *Calv. Lex.*

INDECIMABLE. [L. Lat. *indecimabilis*, from *in*, priv. and *decimæ*, tithes.] In old English law. That which is not titheable, or liable to pay tithes. 2 *Inst.* 490.

INDEFEASIBLE. *Indefeisible.* That which cannot be defeated, undone, or made void.

INDEFENSUS. L. Lat. [from *in*, priv. and *defendere*, to deny.] In old English practice. Undefended; undenied by pleading. See *Undefended.*

A defendant who makes no defence or plea. *Fleta*, lib. 2, c. 61, § 6.

INDEFINITE FAILURE OF ISSUE. A failure of issue not merely at the death of the party whose issue are referred to, but at any subsequent period, however remote. 1 *Steph. Com.* 562.—A failure of issue whenever it shall happen, sooner or later, without any fixed, certain or definite period within which it must happen. 4 *Kent's Com.* 274. The period when the issue or descendants of the first taker shall become extinct, and when there is no longer any issue of the issue of the grantee, without

reference to any particular time or any particular event. *Id. ibid.* See 14 *N. Hamp. R.* 215.

INDEFINITE PAYMENT. In Scotch law. Payment without specification. Indefinite payment is where a debtor, owing several debts to one creditor, makes a payment to the creditor, without specifying to which of the debts he means the payment to be applied. See *Bell's Dict.*

INDEFINITUM. L. Lat. Indefinite; undefined; without specification, or particular designation; in general terms.

Indefinitum æquipollet universali. The undefined is equivalent to the universal or whole. 1 *Ventr.* 368. Where reference is made to several parcels, in general terms, as "the said," it will be taken to include the *whole.* Thus, where a testator devised his lands in A. to his wife for life; Item, his lands in B. to his wife for life, and also his lands which he purchased of C. to his wife for life, and after the decease of his wife, he gave *the said* lands to one of his sons and his heirs, it was held that *all* the lands passed. *Id. ibid.* Another form of this maxim is, **Indefinitum supplet locum universalis.** The undefined or general supplies the place of the whole. *Branch's Princ.*

In *Hardr.* 310, Hale, C. B. says, "in the king's grants indefinite words do not import an absolute universality."

INDEMNIFY. [L. Lat. *indemnificare*, from *indemnis*, harmless, and *facere*, to make.] To make or save harmless; to secure against loss or damage; to secure against future loss.* "Insurance is a contract whereby, for a stipulated consideration, one party undertakes to *indemnify* the other against certain risks." 1 *Phillips on Ins.* 1.

To make good; to re-imburse to one what he has lost. *Webster.* To put one in the situation he was in, before sustaining a loss.* See *Indemnity.*

In some of the old books, this word is written *indempnify.* 2 *Rep. in Ch.* 410.

INDEMNIS. Lat. [from *in*, priv. and *damnum*, loss or harm.] Without loss, damage or harm; harmless; unharmed.* One who experiences no loss, or is affected by no loss; (*qui* damnum non *sentit, qui* nullo damno *adficitur.*) *Brissonius.*

INDEMNITY. [Lat. *indemnitas*, from *indemnis*, q. v.] Security against loss; security against future loss; security against loss or liability from any future act or occurrence.* "Insurance is universally considered to be a contract of *indemnity.*" 1 *Phillips on Ins.* 4. The general principle that runs through the whole subject of insurance, is that of *indemnity.* 2 *Id.* 42. The indemnity proposed by insurance is, to put the assured in the situation he was in when the risk began. *Id. ibid.*

Security against loss or liability in consequence of an act already done, or any past occurrence.* An *act of indemnity*, in English law, is one that is passed for the relief of those who have neglected to take certain necessary oaths, or to perform other acts required to qualify them for their offices and employments. *Holthouse. Wharton's Lex. Brande.*

In some of the old books, this word is written after the law Latin, *indempnity.* 2 *Rep. in Ch.* 410.

INDEMPNIS. L. Lat. The old form of writing *indemnis. Towns. Pl.* 19. So, *indempnificatus* for *indemnificatus.*

To INDENT. [L. Lat. *indentare*, from *in*, in, and *dens*, a tooth.] Literally, to make *in teeth;* to cut in the form of teeth.

In old conveyancing. To cut through parchment or paper in a line composed of a series of uniform points or angles like the *teeth* of a *saw*, (or what may be called a *serrated line;*) which was done through a space left for that purpose in the *middle*, between the two written parts of an instrument. To cut in a waving or undulating line. See *Indenture.*

In modern conveyancing. To cut the *edge* or margin of the paper or parchment on which an indenture is written; which is done at the top, in a *waving* or undulating line. To cut or notch the edge in a series of scallops, which is the more common practice, both being modifications of the old *indented* or serrated line. See *Indenture.*

To bind by indenture or contract; to bind as an apprentice. *Indented;* bound by indenture. *Webster.*

INDENT. In American law. A certificate or indented certificate issued by the government of the United States at the close of the Revolution, for the principal or interest of the public debt. *Webster. Mr. Hamilton's Report on Public Credit*, Jan. 9, 1790.

This word is used in the acts of Congress of April 30, 1790, sess. 2, chap. 9, § 14, and March 3, 1825, sess. 2, chap. 65, § 17, and was construed in the case of the United

States *v.* Irwin, 5 *McLean's R.* 178. In this case, the court (Leavitt, J.) quoted and adopted the definition of Webster, and held that a military land warrant was not an indent. *Id.* 183. The word itself seems to be no longer in use.

INDENTURE. [L. Fr. *endenture, fait endent;* L. Lat. *indentura, scriptum indentatum, scriptura indentata,* (a writing indented,) *charta indentata,* (a deed indented,) *literæ indentatæ,* (letters indented;) Gr. σύγγραφον, συγγραφὴ.] In ancient conveyancing. A writing containing a conveyance, bargain, contracts, covenants or agreements between two or more, and *indented* in the top or side, answerable to another that likewise comprehends the self-same matter. *Co. Litt.* 229 a.—An instrument executed in parts, that is, consisting of the same matter written twice on the same sheet, with a space between, where, after execution, the parchment was cut through, *divided,* (hence the name *dividenda,* q. v.) or *indented,* (i. e. cut in a serrated line, whence the name *indenture,*) and a part delivered to each of the parties. Sometimes termed "a pair of indentures." 3 *Leon.* 69. 2 *Id.* 130.

*** Before the *indenting* of deeds (or *charters,* as they were formerly called,) came into use, when there were more parties than one interested in them, there were as many parts of them taken as there were parties interested, and one part was delivered to each of the parties. These multiplied parts were called *chartæ pariclæ* or *pariculæ,* a barbarous term importing that they were *equal* or *alike* in all respects, (*in omnibus pariles.*) *Spelman,* voc. *Paricla. Butler's Note,* 138, lib. 3, *Co. Litt.* Instead of this method, (which resembles that now in use,) the practice was afterwards introduced, of writing the several parts of which the deed was to be composed, on the *same sheet* of parchment, leaving between the parts a space where a sentence was written or figure drawn, through which, after execution, the parchment was *cut* or divided into as many parts as there were parties. This prevailed as early as the times of the Saxons, the cuts or divisions being made in *straight* lines. Afterwards the word CYROGRAPHUM, or CHIROGRAPHUM, (q. v.) was substituted for the intermediate sentence or figure, and the cut made through it, in a line composed of a series of points or angles resembling the *teeth* (*dentes*) of a *saw,* and from this *indented* or *serrated* line, these instruments came to receive the name of *indentures,* which is retained to this day. This practice of *indenting,* according to Mr. Butler, began with the lawyers as early as the reign of King John, and is substantially continued in modern conveyancing, though the indenting is no longer made on an *intermediate* line, but only on the *edge* of the paper or parchment, at the top of the instrument, and usually in a *waving* or scalloped line, instead of the original *indented* form.

INDENTURE. In modern conveyancing. A deed of conveyance expressed to be made *between parties,* (*inter partes,*) and in the *third person;* thus: "This Indenture, made, &c. between —— of the first part, and —— of the second part, witnesseth, that the said party of the first part, &c. hath granted," &c.; in which respects it is distinguished from a deed poll, which is expressed to be made by *one party* only, and in the *first* person, thus: "Know all men by these presents, that I, —— of ——, &c. have granted," &c. See *Inter partes.*

A deed of conveyance indented or cut at the top or side in an *indented,* waving, or scalloped line, as distinguished from a deed *poll,* which has the edge uncut or even. See *infra.*

*** The ancient inherent and essential distinction between an *indenture* and a *deed poll,* (and which the names themselves so significantly express,) viz. that the one was always *indented,* and the other *not,* has become almost entirely obliterated by time, and the gradual disuse of the ancient forms; the result of which has been to leave the names of these instruments with very little sensible meaning. As late as the time of Lord Coke, when the forms of indentures had become substantially the same as at present, the old rule and practice of indenting were strictly retained, it being laid down by that author that the *manual act of indenting* the parchment made the instrument an *indenture,* though it did not itself purport in words to be an indenture; and that, on the other hand, though it contained words of indenture, yet, *unless actually indented,* it was no indenture. *Co. Litt.* 229 a. 5 *Co.* 20 b, *Stile's case.* And see 3 *Leon.* 16, case 39. Since that time, however, the indenting of deeds has gradually become a mere form, and, though retained in England in the practice of cutting the top of the parchment in a waving line,

it is not, in general, necessary to the legal validity of the instrument. 2 *Bl. Com.* 296. 1 *Steph. Com.* 447. See *Deed indented.* Careful conveyancers, however, even in the United States, continue to notch or scallop the edge of the paper at the top of deeds, which, however unimportant in its legal effect, is not without significance, as an expression of the real character of the instrument. In England, it has been thought necessary to declare, by act of parliament, that a deed shall have the effect of an indenture, though not actually indented. *Stat.* 8 & 9 *Vict.* c. 106, § 5.

INDENTURE. A contract in two parts, by which a person is bound to serve another in his trade, art or occupation, on condition of being instructed in it. See *Apprentice.*

INDEPENDENT COVENANTS. Covenants in an instrument which are independent of each other, or where the performance of one does not depend upon the performance of the other; and where either party may recover damages from the other, for the injury he may have sustained by a breach of the covenants in his favor, without averring performance of other covenants on his part, as conditions precedent. See 1 *Selden's R.* 247.

The dependence or independence of covenants is determined by the order of time in which, by the terms and meaning of the contract, their performance is required. *Id. ibid.*

Independenter se habet assecuratio a viaggio navis. The voyage insured is an independent or distinct thing from the voyage of the ship. 3 *Kent's Com.* 318, note.

Index animi sermo. Speech is the index of the mind or thought; language is the exponent of intention. Nothing can so well explain the meaning of the makers of an act as their own direct words. *Broom's Max.* 268, [480.] See **Verba sunt indices animi.**

INDICARE. L. Lat. [from *index*, a shower or pointer.] In the civil law. To show or discover.

To fix or tell the price of a thing. *Calv. Lex.*

To inform against; to accuse. *Dig.* 50. 16. 197.

INDICATION. [Lat. *indicatio*, from *indicare*, q. v.] In the law of evidence. A sign or token; a fact pointing to some inference or conclusion. *Burr. Circ. Evid.* 251, 252, 263, 275.

INDICAVIT. L. Lat. [from *indicare*, to show.] In English practice. A writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by the clerk of another patron, for tithes amounting to a fourth part of the value of the living. 3 *Bl. Com.* 91. 3 *Steph. Com.* 711. So termed from the emphatic words of the Latin form. *Reg. Orig.* 35 b, 36.

INDICIA. Lat. [plur. of *indicium*, q. v.] In the law of evidence. Signs; marks; tokens; badges; indications; facts proved as pointing to facts sought. *Cod.* 3. 32. 19. *Id.* 4. 19. 25. *Burr. Circ. Evid.* 121, note (d). *Indicia indubitata quæ fidem extorquent;* undoubted tokens which extort belief. 14 *St. Trials*, 1199, 1231. *Indiciis luce clarioribus;* by indications clearer than light. *Cod.* 4. 19. 25.

Physical marks of crime. *Fleta*, lib. 1, c. 25, § 14.

Badges of guilt, on the part of an accused person. *Burr. Circ. Evid.* 83.

Badges of fraud in conveyances of property. 2 *Kent's Com.* 515.

INDICIUM. Lat. In the civil law. A sign or mark. A species of proof, answering very nearly to the *circumstantial evidence* of the common law. *Best on Presumptions*, 13, § 11, note. *Wills on Circ. Evid.* 34.

INDICT. [L. Lat. *indictare*, from Fr. *endicter*, or *enditer*, from Gr. ἐνδείκνυμι, to point out, or present by name before a court.] In criminal law. To accuse by the finding or presentment of a grand jury; to find an indictment against.* See *Indictment. Indite* and *endite* were old forms of this word. *Cowell. Blount.*

In old maritime law. To proclaim, or openly declare. "If war be *indicted*, or is begun," &c. *Molloy, de Jur. Mar.* 17.

INDICTAMENTUM. L. Lat. In old English law. An indictment. *Reg. Orig.* 169 b. *Fleta*, lib. 1, c. 34, § 39. *Co. Litt.* 126 b.

INDICTARE. L. Lat. In old English law. To indict. *Stat. Westm.* 2, c. 46. *Fleta*, lib. 1, c. 25, § 3. *Indictatus;* indicted. *Bract.* fol. 143, 153. *Reg. Orig.* 269, 270. See *Indict.* Anciently called *indictee. Stat.* 21 *Jac.* I. c. 8. *Blount.*

INDICTIO. Lat. [from *indicere*, to declare or proclaim.] In old public law. A declaration; a proclamation. *Indictio belli;* a declaration or indictment of war. *Molloy,*

de Jur. Mar. 17. *Grotius, de Jur. Bell.* lib. 3, c. 3.

INDICTMENT. [L. Fr. *enditement;* L. Lat. *indictamentum.*] In criminal law. A written accusation of one or more persons of a crime or misdemeanor, preferred to and presented upon oath by a grand jury. 4 *Bl. Com.* 302. 4 *Steph. Com.* 369. *Arch. Crim. Pl.* 1. See *Indict.* Sometimes written *inditement* and *enditement. Co. Litt.* 126 b. See *Wharton's Prec. of Indictments. United States Digest*, Indictment.

INDICULUS. L. Lat. A species of formula in the jurisprudence of the middle ages, resembling a writ or precept, but, as is supposed, without a seal. *Spelman. Steph. Pl.* Appendix, Note (2.)

Any declaratory writing, (*scriptum indicativum.*) *Spelman.*

INDIFFERENT. Impartial; unbiassed; disinterested.

INDIGENA. Lat. In old English law. A subject born; one born within the realm, or naturalized by act of parliament; a native. *Co. Litt.* 8 a. The opposite of *alienigena*, (q. v.)

INDILATE. L. Lat. [from *in*, priv. and *dilatus*, delayed.] In old English practice. Without delay. A formal word in writs. *Reg. Orig.* 128 b. *Fleta*, lib. 2, c. 47, § 4.

INDIRECT EVIDENCE. That kind of evidence which goes to prove a principal fact, by establishing other or subordinate facts, from which the principal fact may be inferred or presumed. *Vinnius, Jurispr. Contr.* lib. 4, c. 25. 3 *Benth. Jud. Evid.* 25. See *Direct.* Generally used as synonymous with *circumstantial evidence. Burr. Circ. Evid.* 4—7. *Best on Evid.* 21, 22, § 27. But see *Id. ibid.* note.

INDITEE. L. Fr. In old English law. A person indicted. *Mirr.* c. 1, sect. 3. 9 *Co.* pref.

INDIVIDUUM. Lat. In the civil law. That cannot be divided. *Calv. Lex.*

INDIVISUM. Lat. [from *in*, priv. and *divisum*, divided.] Undivided; that which two hold in common without partition. *Cowell.* See *Pro indiviso.*

In the civil law, this word sometimes had the sense of *individuum*, (q. v.) *Calv. Lex.*

INDOMINICATUS, *Indominicatum.* [from *in*, in, and *dominicum*, demesne.] In feudal and old European law. In demesne; reserved for the use of the lord. *Spelman.*

INDORSAMENTUM. L. Lat. [from *indorsare*, q. v.] In old English law. Indorsement; an indorsement; a writing on the back. *Cowell*, voc. *Indorsement.* See 3 *P. Wms.* 428, 434. The continental writers use *indossamentum*, (q. v.)

INDORSARE. L. Lat. [from *in*, on, and *dorsum*, the back.] In old English law. To put or write on the back. *Dies captionis* indorsari *debet in tergo brevis;* the day of the taking ought to be indorsed on the back of the writ. *Bract.* fol. 365 b. *Reg. Orig.* 20, *in marg. Indorsavit;* he indorsed. 7 *Mod.* 86. *Indorsatum;* indorsed. *Mem. in Scacc.* H. 26 Edw. I. *Fleta*, lib. 6, c. 6, § 19.

INDORSAT. In old Scotch law. Indorsed. 2 *Pitc. Cr. Trials*, 41.

INDORSE, *Endorse.* [L. Lat. *indorsare;* L. Fr. *endorser*, qq. v.] To put *on* the *back;* to write on the back, (*in dorso.*)

In mercantile law. To write one's name *on* [and properly, across] *the back* of a bill of exchange, promissory note or check, with or without other words; to transfer by such writing. See *Indorsement.*

To write one's name on the *face* of a bill or note, or on another paper annexed to it. See *Indorsement.* This is an improper sense of the term.

INDORSEE, *Endorsee.* [L. Lat. *indossatarius.*] In mercantile law. The party in whose favor a bill of exchange, promissory note or check is *indorsed;* the party to whom it is transferred by the indorsement of the payee, or any previous holder.* *Chitty on Bills*, 2.

INDORSEMENT, *Endorsement.* [Fr. *endossement;* L. Lat. *indorsamentum, indossamentum*, qq. v.] Any writing *on the back*, (*in dorso,*) of any instrument or paper. 1 *Salk.* 375. A writing on the back of a paper or parchment containing another writing. 7 *Mod.* 86. Called "a term known in law." *Id. ibid.* See *Indorse.*

In mercantile law. The writing one's name *on* [that is, across] *the back* of a bill of exchange, promissory note or check; the writing the name of the payee, or holder of a bill, note or check *on the back* of it, by which the property in it is assigned and transferred.* 2 *Bl. Com.* 468, 469. *Story on Bills*, § 204. *Story on Notes*, § 121.

The writing the name of the payee or holder of a bill or note *on the face* of it, or on another paper annexed to it, (and called in French law, *allonge*, q. v.) It is well settled that writing on the *back* of a bill or

note is not essential to a valid indorsement. On the contrary, it will be a good indorsement if it be made on the face of the bill or note. *Story on Bills*, § 204. *Story on Notes*, § 121. 1 *Stra.* 18, 19. But this is, undoubtedly, an improper sense of the term.

*** In the case of Rex *v.* Bigg, (3 *P. Wms.* 419,) the prisoner was indicted for rasing out an *indorsement* on a Bank of England note. The fact was, that he had, by means of lemon juice, taken out a receipt, written *on the inside* of the note and across its face, but "called by the bank an indorsement." It was urged for the prisoner, that this receipt written *on the face* of the note was not *an indorsement;* and the learned counsel relied on the plain signification of the word, not only as indicated by its obvious composition and etymology, but as sanctioned by common use. The opinion of the judges is not given in the report of the case, although it is said in a note that they differed in opinion, but the majority of them held it to be felony. In 1 *Stra.* 18, 19, which contains a report of the same case, it appears that the court held that the writing on the face of the note was of the same *effect* as an indorsement, and being *introduced by the company* instead of writing on the back, and always accepted and taken to be an indorsement, was within the words of the indictment.

In a late Virginia case, the word "endorsement" was construed by the court in its general sense, "a writing on the back." 11 *Grattan's R.* 830. It was said in this case, by Lee, J. that "the primitive and popular sense of something written *on the outside*, or *back* of a paper, on the *opposite* side of which something else had been previously written, should be given to the word wherever the context shows it to be proper, or it is necessary to give effect to the pleading or other instrument in which it may occur." *Id. ibid.*

INDORSEMENT IN BLANK. In mercantile law. An indorsement consisting merely of the signature of the party making it. *Story on Bills*, § 206. An indorsement is said to be *in blank*, when the name of the indorser is simply written on the back of the note, leaving a *blank* over it for the insertion of the name of the indorsee, or of any subsequent holder. *Story on Notes*, § 138.

INDORSEMENT IN FULL. In mercantile law. An indorsement which mentions the name of the person in whose favor it is made, thus: "Pay A. B. or order, C. D." *Story on Notes*, § 139. *Story on Bills*, § 206.

INDORSER, *Endorser.* [L. Lat. *indossans.*] In mercantile law. The party by whom a bill of exchange, promissory note or check is indorsed.* *Chitty on Bills*, 2.

INDORSOR. An old form of *indorser*, and strictly the true form of the word. 11 *Mod.* 369.

INDOSSAMENTUM. L. Lat. In mercantile law. Indorsement; an indorsement. *Id quod vocant* indossamentum, *quia* dorso *inscribi solet;* that which they call indorsement, (*indossamentum*,) because it is usually written *dorso*, (on the back.) *Heinecc. de Camb.* c. 2, §§ 7, 10, 11.

INDOSSANS. L. Lat. An indorser. *Heinecc. de Camb.* c. 2, §§ 10, 11.

INDOSSATARIUS. L. Lat. An indorsee. *Heinecc. de Camb.* c. 2, §§ 10, 11.

INDUCEMENT. [from Lat. *inducere*, to introduce or bring in.] In pleading. Introduction; a leading to, or bringing in.* Matter of *inducement* is matter brought forward only by way of explanatory introduction to the main allegations of a pleading. *Steph. Pl.* 243.

In criminal evidence. Motive; that which leads or tempts to the commission of crime. *Burr. Circ. Evid.* 283.

INDUCIÆ. Lat. In the law of nations. A truce; a suspension of hostilities; an agreement during war, to abstain for a time from warlike acts. *Grotius, de Jur. Bell.* lib. 3, c. 21, § 1. One of the *commercia belli. Id. ibid.*

In old maritime law. A period of twenty days after the safe arrival of a vessel under bottomry, to dispose of the cargo, and raise the money to pay the creditor, with interest. *Loccenius, de Jur. Mar.* lib. 2, c. 6, § 10.

In old English practice. Delay or indulgence allowed a party to an action; further time to appear in a cause. *Bract.* fol. 352 b. *Fleta*, lib. 4, c. 5, § 8.

In Scotch practice. Time allowed for the performance of an act. *Arkley's R.* 270. Time to appear to a citation. 2 *Brown's R.* 267. Time to collect evidence or prepare a defence. 1 *Swinton's R.* 360, arg.

INDUCTIO. Lat. [from *inducere*, to draw along, or over.] In the civil law. Obliteration, by drawing the pen or *stylus*

over the writing. *Dig.* 28. 4. *Calv. Lex.*

INDUCTION. [L. Fr. *induccion*, from Lat. *inductio*, a leading into.] In English ecclesiastical law. The giving a clerk or parson corporal possession of a church, which is done by *leading* him *into* it, and delivering him the keys by the archdeacon or bishop's deputy; and by his tolling a bell, or the like, to show that he has taken possession. *Cowell.* 1 *Bl. Com.* 391. The object of this form is to give all the parishioners due notice, and sufficient certainty of their new minister, to whom their tithes are to be paid. *Id. ibid.* It is the investiture of the temporal part of the benefice, as institution is of the spiritual. *Id. ibid.*

INDUSTRIALIS. Lat. [from *industria.*] In the civil law. Industrial; produced by industry. See *Fructus industriales.*

INESSE. Lat. To be in; to be inherent in; to be a component part of. See **Quæ incontinenti fiunt**, &c.

INEVITABLE ACCIDENT. In the law of bailment. Any accident produced by any physical cause which is inevitable, such as a loss by lightning or storms, by the perils of the seas, by an inundation or earthquake, or by sudden death or illness. *Story on Bailm.* § 25. Commonly called *the act of God. Id. ibid.* 2 *Kelly's* (Ga.) *R.* 349.

INFALISTATUS. L. Lat. [from *in*, and Fr. *falaize*, the sea shore.] In old English law. Exposed upon the sands, or sea shore. A species of punishment mentioned in Hengham. *Summa Parva*, c. 3. *Cowell.* See *Faleste.*

INFAMARE. Lat. [from *in*, priv. and *fama*, reputation.] In the civil law. To defame; to attack or injure one's character by word or writing. *Brissonius. Eum qui nocentem* infamat, *non est æquum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit;* it is not just that he who defames a guilty person should be condemned therefor; for it is both right and proper that the crimes of the guilty should be made known. *Dig.* 47. 10. 17. 3 *Bl. Com.* 125.

INFAMIA. Lat. [from *infamis*, q. v.] An evil report. 4 *Reeves' Hist. Eng. Law*, 37.

Infamy; ignominy or disgrace.

INFAMIS. Lat. [from *in*, priv. and *fama*, reputation.] Infamous; without character or reputation; not of good character. *Calv. Lex.*

Branded as infamous by the law. *Id.*

INFAMOUS CRIME. In criminal law. A crime which, in England, formerly incapacitated the party committing it from giving evidence as a witness; such as treason, *præmunire*, felony, and every species of the *crimen falsi*, as perjury, forgery, and the like. *Roscoe's Crim. Ev.* 135, *et seq.* Incompetency from this cause has been abolished by statute 6 & 7 Vict. c. 85.

By the Revised Statutes of New-York, the term "infamous crime," when used in any statute, is directed to be construed as including every offence punishable with death or by imprisonment in a state prison, and no other. 2 *Rev. St.* [702, § 31,] 587, § 35.

INFANC, *Infang.* Sax. [from *in* on, and *fang*, a hand, or *fangen*, to take hold.] In old European law. A laying hands on. *Si in eum contra legem manus injicerit, quod* infanc *dicitur*, &c.; if he lay hands on him contrary to law, which is called *infanc*, &c. *L. Boior.* tit. 3, § 3. *Id.* tit. 4, § 5. *Spelman.*

INFANCY. [L. Lat. *minor ætas.*] The state of an infant; nonage, or minority; the state of being under age, or under the age of twenty-one years.* 4 *Bl. Com.* 22. 1 *Id.* 463. See *Infant.* The *infantia* of the civil law was only one of the stages of minority, reaching to the age of seven. See *Infantia.*

INFANGTHEFE, *Infangtheof, Infangthef, Infangethef, Infangenthef, Infongenthef, Infangenetheof.* Sax. [from *in*, within, *fang*, taken, and *thef*, or *theof*, a thief; Lat. *infra captus fur.*] In old English law. A thief taken in, or within; i. e. within the manor or liberty of any man having jurisdiction to try him. *Spelman. Fleta*, lib. 6, c. 37, § 2.—A thief taken on any one's lands, being one of his own men or tenants, found in possession of the thing stolen; (*latro captus in terrâ alicujus, de hominibus suis propriis seysitus latrocinio.*) *Bract.* fol. 154 b. 2 *Reeves' Hist. Eng. Law*, 40.

The privilege or liberty anciently granted to lords of certain manors, to try such offenders. *Id. ibid. Cowell. LL. Gul. Conq.* l. 3, note.

INFANS. Lat. [from *in*, priv. and *fans*, speaking.] In the civil law. A child under the age of seven years; so called *quasi impos fandi*, (as not having the faculty of speech.) *Cod. Theodos.* 8. 18. 8.

Cod. 6. 30. 18. *Dig.* 36. 1. 65. 3. 1 *Mackeld. Civ. Law*, 136, § 126. *Tayl. Civ. Law*, 258, 259. 4 *Bl. Com.* 22.

Infans non multum à furioso distat. An infant is not far removed from [not very unlike] a madman. *Inst.* 3. 20. 9. 1 *Story's Eq. Jur.* §§ 223, 242.

INFANT. [from Lat. *infans*, q. v.] A person within age, not of age, or not of full age; a person under the age of twenty-one years; a minor. *Co. Litt.* 171 b. 1 *Bl. Com.* 463—466. 2 *Kent's Com.* 233. 1 *Story's Eq. Jur.* § 240. See *Age*, *Full age.*

INFANTIA. Lat. [from *infans*, q. v.] In the civil law. The age from birth till the completion of seven years. 4 *Bl. Com.* 22. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 1, tit. 21, § 247.

INFANTICIDE. In medical jurisprudence. The murder of a newly born infant. See *Whart. and Stille's Med. Jur.* § 356.

INFEFT. In Scotch law. To give seisin or possession of lands; to invest, or enfeoff. 1 *Kames' Equity*, 215. See *Infeftment.*

INFEFTMENT. In old Scotch law. Investiture or infeudation, including both charter and seisin. 1 *Forbes' Inst.* part 2, p. 110.

In later law. Sasine, or the instrument of possession. *Bell's Dict.*

INFENSARE CURIAM. L. Lat. An expression applied to a court when it suggested to an advocate something which he had omitted through mistake or ignorance. *Spelman.* Spelman gives no translation of the word *infensare.* The phrase strongly resembles the old Scotch expression, "to *fence* a court," and may possibly have the same meaning.

INFEODARE, *Infeudare.* L. Lat. [from *in*, and *feodum*, a fee.] To confer or bestow a fief, feud, or fee; to enfeoff; to give seisin of lands. *Spelman.* 2 *Bl. Com.* 310.

INFEOFF. See *Enfeoff.*

INFERENCE. In the law of evidence. A process of reasoning, by which one fact is deduced from another; the process by which a fact sought to be proved is deduced from one or more other facts proved. *Burr. Circ. Evid.* 5, 146.

The conclusion arrived at by such process. *Id.* 25. See *Presumption.*

INFERENDA. L. Lat. In old European law. A tribute paid annually. *Spelman.*

INFERENTIAL. In the law of evidence. Operating in the way of inference; argumentative. Presumptive evidence is sometimes termed *inferential.* Gibson, C. J. 4 *Barr's R.* 272.

INFICIARI, *Infitiari.* Lat. In the civil law. To deny; to deny one's liability; to refuse to pay a debt or restore a pledge; to deny the allegation of a plaintiff; to deny the charge of an accuser. *Calv. Lex.*

INFICIATIO. Lat. [from *inficiari*, q. v.] In the civil law. Denial; the denial of a debt or liability; the denial of the claim or allegation of a party plaintiff. *Calv. Lex.*

INFICIATOR, *Infitiator.* Lat. [from *inficiari*, q. v.] One who denies; one who denies that he owes what a plaintiff claims, or has committed what an accuser charges. *Nonius. Calv. Lex.*

INFIDELIS. Lat. [from *in*, priv. and *fidelis*, faithful.] In old English law. An infidel, or heathen. *Inter* infideles *connumerare;* to reckon among infidels; to excommunicate. *Cowell.*

In feudal law. An unfaithful, or faithless person; one who violated his oath of fidelity or fealty. *Capitul. Caroli*, lib. 4, tit. 34. *Spelman.*

INFIDELITAS. Lat. In feudal law. Infidelity; faithlessness to one's feudal oath. *Spelman.*

INFIDUCIARE. L. Lat. In old European law. To pledge property. *LL. Longob.* lib. 2, tit. 29, l. 2. *Spelman.*

INFIHT. Sax. An assault made on a person inhabiting the same dwelling. *Wharton's Lex.*

INFINITUM. Lat. [from *in*, priv. and *finis*, end.] Without end or limit; unlimited; undefined.

Infinitum in jure reprobatur. That which is endless is reprobated in law. 12 *Co.* 24. Applied to litigation. *Id. ibid.*

INFIRMARE. Lat. [from *in*, priv. and *firmus*, strong.] To invalidate; to deprive of strength or force. *Quibus modis testamenta* infirmantur; in what ways wills are invalidated. *Inst.* 2. 17.

INFIRMATIVE. In the law of evidence. Having the quality of diminishing force; having a tendency to weaken or render *infirm.* This word was first introduced into the law of evidence by Mr. Bentham, and has been generally adopted by other writers. 3 *Benth. Jud. Ev.* 14. *Best on Pres.* § 217.

INFIRMATIVE CONSIDERATION. In the law of evidence. A consideration, supposition or hypothesis of which the criminative facts of a case admit, and which tends to weaken the inference or presumption of guilt deducible from them. *Burr. Circ. Evid.* 153—155.

INFIRMATIVE FACT. In the law of evidence. A fact set up, proved or even supposed, in opposition to the criminative facts of a case, the tendency of which is to weaken the force of the inference of guilt deducible from them. 3 *Benth. Jud. Ev.* 14. *Best on Pres.* § 217, *et seq.* *Burr. Circ. Ev.* 154. Otherwise called an exculpatory fact. *Id.* 536—580.

INFIRMATIVE HYPOTHESIS. In the law of evidence. An hypothesis or theory upon which the criminative facts of a case may be explained consistently with the idea or supposition of the prisoner's innocence. *Burr. Circ. Evid.* 153, 183, 184, 186, 188—192.

INFISCARI. L. Lat. [from *in*, into, and *fiscus*, treasury.] In old European law. To be adjudged to the exchequer, (*fisco adjudicari ;*) to be seized for the public treasury, (*in fiscum rapi ;*) to be confiscated. *Spelman.*

INFORMATION. A process or proceeding in behalf of the crown, or (in American law) the people, used both as a criminal prosecution and a civil remedy; and so termed, because founded upon *information* given or supposed to be given by the attorney-general, or other proper law officer of the government.

A criminal information is an accusation exhibited against a defendant for some criminal offence, not (like an indictment,) upon the oath of jurors, but on the suggestion or information, and at the discretion of an officer empowered to exhibit it.* *Cole on Informations*, 1. *Brande.* 4 *Bl. Com.* 307, 308. *Wharton's Am. Crim. Law*, § 213.

Civil informations include informations in chancery, and in the court of exchequer, and informations in the nature of a writ of *Quo warranto*, the latter being most commonly used as private remedies to try the right to an office or franchise. 3 *Bl. Com.* 261, 262. 4 *Steph. Com.* 34, 48. 3 *Id.* 689, 691. *United States Digest*, Information. See *Quo warranto.*

INFORMATOR. L. Lat. An informer. *Spelman.* See *Informer.*

INFORMATUS. L. Lat. Informed. See *Non sum informatus.*

INFORMER. [L. Lat. *informator ;* Lat. *delator.*] One who informs against another for the violation of some penal statute; one who gives information upon which another may be prosecuted for the violation of some penal statute. See *Common informer*, *Qui tam.* Called, also, in old law, *promoter.*

INFORTIARE. L. Lat. [from Fr. *enforcer.*] To strengthen or fortify. *Spelman.* To add to, increase, or enlarge. The same with *afforciare*, (q. v.)

INFORTIATUM. L. Lat. [from *infortiare*, to enlarge.] The name given by the glossators to the second of the three parts or volumes into which the Pandects were divided. The glossators at Bologna had at first only two parts, the first called *Digestum Vetus*, (the old Digest,) and the last, called *Digestum Novum*, (the new Digest.) When they afterwards received the middle or second part, they separated from the *Digestum Novum* the beginning it had then, and added it to the second part, from which *enlargement* the latter received the name *Infortiatum.* 1 *Mackeld. Civ. Law*, 91, § 100.

INFORTUNIUM. Lat. [from *in*, priv. and *fortuna*, fortune.] In old English law. Misfortune; misadventure; mischance. *Fleta*, lib. 1, c. 31, § 3. See *Homicide per infortunium.*

INFRA. Lat. and L. Lat. Below; under; underneath. This is the strict and proper meaning of the word, the correlative word being *supra*, above. *Primo gradu est supra, pater, mater ;* infra, *filius, filia. Secundo gradu, supra, avus, avia ;* infra, *nepos, neptis.* In the first degree above, is father, mother; below, son, daughter. In the second degree above, grandfather, grandmother; below, grandson, granddaughter. *Inst.* 3. 6. 1. See *Id.* 3. 6. 2, 3, 4. *Dig.* 38. 10. 1. 3, 4. This meaning is preserved in the phrase *infra ætatem*, (q. v.)

Within.—This is the ordinary, but (in most of its applications,) improper meaning of the word, as appears in the common phrases, *infra corpus comitatûs, infra præsidia, infra quatuor maria*, and the like. The proper word in these expressions, as Mr. Hargrave has observed, is *intra*, and hence Grotius is classically correct in using *intra præsidia*, (q. v.) *Hargr. Co. Litt.* Note 115, lib. 2.

*** The use of *infra*, (below,) in the sense and place of *intra*, (within,) is a corruption of very ancient date. Blackstone, indeed, quotes the phrase *infra annum luctûs*, (within the year of mourning,) as used in the civil law. *Cod.* 5. 9. 2. 1 *Bl. Com.* 457. But in the latest glossed edition of the Corpus Juris Civilis, (Lyons, 1627,) the reading in the constitution here referred to, and also in the preceding one, is *intra*, and *intra* is also used throughout the glosses. See *Infra annum luctus.* In the codes of the barbarous nations, (the Franks, Lombards, Bavarians and others,) the corruption very distinctly appears, so intermixed, however, with the genuine word as to show that it had not even then become confirmed. *Intra capsum;* within the chest. *LL. Longob.* lib. 1, tit. 7, l. 9. *Infra capsum. Id. ib.* tit. 8, l. 14. *Intra capsum. Id. ib.* l. 20. *Ab infra;* from within. *Id.* lib. 1, tit. 19, l. 10. *Intra placitum;* within the court. *L. Salic.* tit. 49. *Infra placitum. Id.* tit. 72, § 1. *Infra curtem;* within the court. *L. Baiwar.* tit. 13, § 2. The same improper and unsettled use of *infra* occurs in the collection of forest law attributed to Canute. *Infra septa;* within the enclosures. § 27. *Infra limites. Id. ibid. Inter septa. Id. ib. Infra septa. Id.* § 31. *Intra septa. Id.* § 33. After the Conquest, *infra* seems to have entirely supplanted *intra*, both in English and Scotch law. *Infra maneria;* within the manors. *Reg. Orig.* 10 b. *Infra libertates vel extra;* within liberties or without. *Id.* 24 b. *Infra regnum;* within the realm. *Id.* 25. *Infra listas;* within the lists. *Magna Charta*, 9 Hen. III. c. 25. *Infra annum;* within a year. *Bract.* fol. 7. *Infra furorem;* during madness. *Id.* fol. 19 b. *Infra pallacium;* within the palace. *Mem. in Scacc.* H. 22 Edw. I. *Infra comitatum vel extra;* within a county or without. *Bract.* fol. 352 b. *Infra metas et divisas;* within the metes and bounds. *Chart. Rob.* I. *Ranulpho Com. Morav. Infra regnum. Id. Chart. Jac. Rob. Dom. Seytoun.*

This singular use of so common a preposition as *infra* perhaps originated in the circumstance that the characteristic meanings of *infra* and *intra* were, in certain applications, identical. Thus, to be *below* (*infra*) a certain number, and to be *within* (*intra*) it, were expressions conveying the same idea; just as, in English, the words "under" and "within" are constantly used as synonymous in expressing periods of time, as in the phrases "under a year," "within a year," &c.

The expression "under age," (the correct literal translation of *infra ætatem*,) indeed, is of more common occurrence than "within age." But the use of *infra* in the sense of *intra*, as expressive of *place*, is an undoubted barbarism.

INFRA ÆTATEM. Lat. [L. Fr. *deins age.*] Below or under age; within age. *Bract.* fol. 19 b. In Magna Charta, (9 Hen. III. cc. 3, 4,) and the statute of Merton, (c. 22,) this phrase is written *infra etatem.*

INFRA ANNOS NUBILES. L. Lat. Under or within marriageable years; not of a marriageable age. 6 *Co.* 22, *Ambrosia Gorge's case. Hale's Anal.* sect. xiv.

INFRA ANNUM. L. Lat. Under or within a year. *Bract.* fol. 7.

INFRA ANNUM LUCTUS. Lat. Within the year of mourning. This phrase is quoted by Blackstone from the civil law. *Cod.* 5. 9. 2. 1 *Bl. Com.* 457. But the constitution referred to, contains only the phrase *intra anni spatium.* In the constitution immediately preceding, or rather the extract from the Authentics appended to it, the phrase *intra luctûs tempus* occurs. See *Infra.*

INFRA BRACHIA. L. Lat. [L. Fr. *entre ses bras.*] Within her arms. A term anciently used to denote a husband not only *de jure*, but *de facto. Stat. Glocest.* c. 9. 2 *Inst.* 317. Lord Coke observes that *infra* has here the sense of *inter. Id. ibid.* Bracton and Fleta have *inter brachia. Bract.* fol. 148 b. *Fleta*, lib. 1, c. 35.

INFRA CIVITATEM. L. Lat. Within the state. 1 *Campb.* 23, 24.

INFRA CORPUS COMITATUS. L. Lat. Within the body of a county. A term applied to waters over which the admiralty has no jurisdiction. 1 *Kent's Com.* 366, 367 note. *Molloy, de Jur. Marit.* 231. In the case of Waring et al. *v.* Clarke, the Supreme Court of the United States held, that the admiralty jurisdiction of the courts of the United States, in cases of tort or collision, extends to tide-waters, as far as the tide flows, though that may be *infra corpus comitatûs.* 5 *Howard's R.* 441. Wayne, J. *Id.* 451, 452, 464. And see 20 *Howard's R.* 296.

INFRA DIGNITATEM CURIÆ. L. Lat. Beneath the dignity of the court. 3 *Burr.* 1592. A term applied to cases

where a suit is too trifling in amount or in character to be entertained by a court. 1 *Chitt. Gen. Pr.* 823, note.

INFRA FUROREM. L. Lat. During madness; while in a state of insanity. *Bract.* fol. 19 b. *Fleta*, lib. 3, c. 9, § 17.

INFRA GILDAM. L. Lat. Within a gild, or guild. *Reg. Orig.* 219 b.

INFRA HOSPITIUM. L. Lat. Within an inn; within the inn. *Reg. Orig.* 105. 8 *Co.* 32, *Calye's case.* 1 *Smith's Lead. Cas.* 47. 2 *Kent's Com.* 593. *Story on Bailm.* § 478.

The use of this phrase seems to have originated in Calye's case. The phrase itself is taken from the Register.

INFRA JURISDICTIONEM. L. Lat. Within the jurisdiction. 2 *Stra.* 827. *Latch*, 214.

INFRA METAS. L. Lat. Within the bounds or limits. *Infra metas forestæ;* within the bounds of the forest. *Fleta*, lib. 2, c. 41, § 12. *Infra metas hospitii;* within the limits of the household; within the verge. *Id.* lib. 2, c. 2, § 2.

INFRA LIGEANTIAM REGIS. L. Lat. Within the king's ligeance. *Comb.* 212.

INFRA PRÆSIDIA. Lat. Within the guards or fortified places; in a place of safe custody or protection. *Molloy, de Jur. Mar.* 9. 1 *Rob. Adm. R.* 139. 1 *Kent's Com.* 102, 173. Applied to property captured in war and carried *within* the enemy's *defences*, out of all probable hopes of recovery.

Infra, in this expression, should undoubtedly be *intra*, as Grotius uses it. *Res quæ* intra præsidia *perductæ nondum sunt, quanquam ab hostibus occupatæ, ideo postliminii non egent, quia dominum nondum mutarûnt ex gentium jure;* things which have not been carried *intra præsidia*, though taken possession of by the enemy, do not need the right of postliminy, because they have not yet changed their owner according to the law of nations. *Grot. de Jur. Belli*, lib. 3, c. 9, § 16. See *Id.* lib. 3, c. 6, § 3. The phrase itself is taken from the Roman law of *postliminium*, in which *intra præsidia* is distinctly and repeatedly used. *Dig.* 49. 15. 3. 1. *Intra præsidia* is also the form used by Blackstone, and in several reported cases. 2 *Bl. Com.* 402. 2 *Stra.* 1250.

INFRA QUATUOR MARIA. L. Lat. Within the four seas. *Litt.* sect. 157. Within the kingdom of England, and the dominions of the same kingdom. *Co. Litt.* 107 a. *In regno, infra quatuor maria. Bract.* fol. 437. *In Anglia, infra quatuor maria. Fleta*, lib. 6, c. 54, § 6. "According to classical style," as Mr. Hargrave has observed, "this phrase ought to be *intra quatuor maria.*" *Harg. Co. Litt.* Note 115, lib. 2. See *Infra.*

INFRA QUATUOR PARIETES. L. Lat. Within four walls. 2 *Crabb's Real Prop.* 106, § 1089. Fleta has *inter* instead of *infra.* Lib. 6, c. 55, § 4.

INFRA REGNUM. L. Lat. Within the realm. *Reg. Orig.* 25.

INFRA TEMPUS SEMESTRE. L. Lat. Within six months, (*infra sex menses.*) *Stat. Westm.* 2, c. 5. 2 *Inst.* 361. 2 *Reeves' Hist. Eng. Law*, 195. 3 *Bl. Com.* 249.

INFRA TRIDUUM. L. Lat. Within three days. Formal words in old appeals. *Fleta*, lib. 1, c. 31, § 6; c. 35, § 3.

INFRA VIRGAM. L. Lat. Within the verge. 10 *Co.* 65. Properly, *infra virgatam. Fleta*, lib. 2, c. 3, § 2.

INGAGEMENT. An old form of *engagement.* 1 *Rep. in Ch.* 59.

INGEN, *Ingene, Engin.* L. Fr. Deceit; fraud; wrong. *Kelham.*

INGENIUM. [Fr. *engin.*] In old European law. Artifice; trick; fraud. *Greg. Turon.* lib. 6, c. 22. *Spelman.*

An engine, machine or device. *Flor. Wigorn. Contin.* A. D. 1138. *Fleta*, lib. 2, c. 41, § 21. *Spelman.*

INGENUUS. L. Lat. In old European law. A freeman; a free and lawful man; a yeoman. *Spelman.*

In the civil law. One who is free from the moment of his birth; (*qui statim ut natus est, liber est.*) *Inst.* 1. 4, pr. One who is born in marriage of parents who are both free or both freed, (*sive ex duobus ingenuis, sive ex libertinis duobus;*) or of parents, one free, the other freed, (*sive ex altero libertino, et altero ingenuo.*) *Id. ibid.* One who is born of a free mother. *Id. ibid. Dig.* 1. 5. 5. 2. *Calv. Lex. Spelman. Fleta*, lib. 1, c. 4.

INGENUITAS REGNI. L. Lat. In old English law. The freemen, yeomanry or commonalty of the kingdom. *Cowell.* Applied sometimes also to the barons. *Id.*

INGRESS. [from Lat. *ingressus*, q. v.] Entry; a going into or upon. *Ingress, egress and regress;* entry, exit and return. Words frequently used to express the right of a party to go into or upon, to go out of or off, and to go back or return to lands.

INGRESSUS. Lat. [from *ingredi*, to enter.] In old English law. Ingress; entry. The relief paid by an heir to the lord was sometimes so called. *Cowell.*

INGRESSUS ET EGRESSUS. L. Lat. In old English law. Ingress and egress; liberty of going into, and out of land. *Et quod habeant liberum* ingressum et egressum; and that they shall have free ingress and egress. *Stat. Merton*, c. 4. *Fleta*, lib. 4, c. 18, § 1.

INGROSS. An old form of *engross*, following the orthography of *ingrossare*, (q. v.) *Cowell. Blount.*

INGROSSARE. L. Lat. [from *in*, and *grossus*, large.] In old English law. To obtain in large quantities; to get the whole; to engross. *Spelman.* See *Engross.*

To write in a large, or court hand, (*forensi charactere.*) *Id.*

INGROSSATOR. L. Lat. [from *ingrossare*, q. v.] An engrosser. *Ingrossator magni rotuli;* ingrosser of the great roll; afterwards called clerk of the pipe. *Spelman. Cowell.*

INGROSSER. An old form of *engrosser*, used by Cowell and Blount. See *Ingross.*

INHABITANT. [Lat. *inhabitans*, from *inhabitare*, from *in*, in, and *habitare*, to dwell.] A *dweller in* a place; a resident. One who dwells or resides permanently in a place. *Webster.* One who has a fixed and permanent abode in a place. A *resident* and *inhabitant* mean the same thing. 2 *Kent's Com.* 430, 431, note. 20 *Johns. R.* 208. Walworth, C. 8 *Wendell's R.* 140. But *citizen* and *inhabitant* are not synonymous. 12 *Peters' R.* 319, 329, Barbour, J. The Lat. *habitare*, the root of this word, imports by its very construction, frequency, constancy, permanency, habit, closeness of connection, attachment both physical and moral, and the word *in* serves to give additional force to these senses.

INHERIT. [L. Fr. *enheriter.*] To take by inheritance; to take as heir, on the death of the ancestor. "To inherit *to*" a person, (from the Fr. *enheriter al,*) is a common expression in the books. 3 *Co.* 41. 2 *Bl. Com.* 254, 255. See *Inheritance, Enheriter.*

INHERITABLE BLOOD. In the law of descent. Blood which has an inheritable quality; blood which gives to the person who has it the character of heir; or which may be the medium of transmitting an estate of inheritance.* 2 *Bl. Com.* 254, 255. 1 *Steph. Com.* 402. 4 *Kent's Com.* 413, 424. An illegitimate child has not inheritable blood. *Id.* 413.

INHERITANCE. [Lat. *hæreditas.*] An estate in things real, descending to the heir. 2 *Bl. Com.* 201.—Such an estate in lands or tenements, or other things, as may be inherited by the heir. *Termes de la Ley.*—An estate which a man has by descent, as heir to another, or which (whether acquired by descent or purchase) he may transmit to another, as his heir.* *Litt.* sect. 9.—A perpetuity in lands or tenements, to a man and his heirs. *Cowell. Blount.* See *Hæreditas.*

INHERITANCE ACT. The English statute 3 & 4 Will. IV. c. 106, by which the law of inheritance, or descent, has been considerably modified. 1 *Steph. Com.* 359, 500.

INHIBITION. [Lat. *inhibitio*, from *inhibere*, to forbid, or restrain.] In English ecclesiastical law. A writ issuing out of a higher court christian, to forbid an inferior judge from further proceeding in a cause before him. *Stat.* 24 *Hen.* VIII. c. 13. *Stat.* 15 *Car.* II. c. 9. *Blount. Shelf. Marr. & Div.* 559. Analogous to the writ of *prohibition*, with which it is sometimes confounded. *F. N. B.* 39.

In Scotch law. A species of diligence or process by which a debtor is prohibited from contracting any debt which may become a burden on his heritable property, in competition with the creditor at whose instance the inhibition is taken out; and from granting any deed of alienation, &c. to the prejudice of the creditor. *Brande.*

A writ to prevent credit from being given to a man's wife, at the creditor's peril. *Id.* See *Bell's Dict.*

INHOC, *Inhoke.* Sax. [L. Lat. *inhokium.*] In old records. A nook or corner of a common or fallow field, enclosed and cultivated. *Kennett's Par. Ant.* 297, 298. *Cowell.*

INHONESTUS. Lat. In old English law. Unseemly; not in due order. *Fleta*, lib. 1, c. 31, § 8.

INIQUITY. In Scotch practice. A technical expression applied to the decision of an inferior judge who has decided contrary to law; he is said to have committed iniquity. *Id. Bell's Dict.*

INIQUUM. Lat. [from *in*, priv. and *æquum*, even, equal, right.] Unjust; unequal; inequitable; not right. *Iniquum est alios permittere, alios inhibere mercaturam.* It is unjust to permit trade to some,

and to inhibit it to others. 3 *Inst.* 181, *in marg.*

Iniquum est aliquem rei sui esse judicem. It is wrong for a man to be a judge in his own cause. *Branch's Pr.* 12 *Co.* 113. **In propria causa nemo judex.** No one should be judge in his own cause. *Id. ibid.*

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem. It is unjust that freemen should not have the free disposal of their own property. *Co. Litt.* 223 a. *Hob.* 87. 4 *Kent's Com.* 131.

INITIAL. [from Lat. *initium*, a beginning.] That which *begins*, or stands at the *beginning*. *Initials* is now a common word, denoting the *first letters* of a name or names. A party may bind himself by signing a written instrument with his *initials*, as effectually as by signing his name in full. 1 *Denio's R.* 471.

An initial letter, between the christian and surname, is no part of the name. 4 *Watt's R.* 329. 1 *Hill's* (N. Y.) *R.* 102. 14 *Barbour's R.* 261. The initials of a middle name are, in law, no part of the name; and the omission or mis-statement of them will be no ground of objection. 26 *Vermont R.* 599. 8 *Foster's* (N. H.) *R.* 561. 8 *Texas R.* 376. 14 *Id.* 402.

INITIALIA TESTIMONII. L. Lat. In Scotch law. Preliminaries of testimony. The preliminary examination of a witness, before examining him in chief, answering to the *voir dire* of the English law, though taking a somewhat wider range. *Wharton's Lex. Bell's Dict.* See *In initialibus.*

INITIATE. [from *initium*, a beginning.] Begun. A term applied to a tenant by the curtesy, on the birth of a child, because his estate then *begins*, though it is not consummate or complete till the death of the wife. See *Consummate.* A term derived from the feudal law, according to which, as soon as a child of a woman seised of lands was born, the father began to have a permanent interest in the lands, he became one of the *pares curtis*, (peers of the court,) did homage to the lord, and was called *tenant by the curtesy initiate.* 2 *Bl. Com.* 127.

INITIUM. Lat. [from *inire*, to enter upon.] A, or the beginning; the origin, cause or foundation of a thing, act or contract. See *Ab initio.*

Hoc servabitur quod initio convenit, legem enim contractus dedit. That should be sustained which was originally agreed to, for it has given law to the contract. *Dig.* 50. 17. 23. See *Principium.*

INJECTURE. L. Fr. A laying on. *Injecture le mains;* laying hands on. *Kelham.*

INJUNCTION. [Lat. *injunctio*, from *injungere*, to enjoin or command.] In practice. A prohibitory writ, granted by a court of equity, (in the nature of an *interdictum*, in the civil law,) and which may be obtained in a variety of cases, to restrain the adverse party in the suit from committing any acts in violation of the plaintiff's rights; as, to stay proceedings at law, to restrain the negotiation of notes and other securities, to restrain from committing waste or nuisance, or from infringing a patent or copyright.* 4 *Steph. Com.* 12. 3 *Bl. Com.* 442. *Drewry on Injunctions.* More generally described as "a judicial process whereby a party is required to do a particular thing, or refrain from doing a particular thing, according to the exigency of the writ." 2 *Story's Eq. Jur.* § 861. See 3 *Daniell's Ch. Pr.* 1809, *et seq.* (Perkin's ed.)

INJURIA. Lat. [from *in*, priv. and *jus*, right.] Injury; wrong; the privation or violation of right. 3 *Bl. Com.* 2. Injuria *est quicquid non jure fit;* injury is whatever is not done rightfully. *Bract.* fol. 155. *Id.* fol. 45 b, 101. *Est* injuria *omne illud quod non est jus;* wrong is every thing that is not right. *Id.* fol. 378. *Est* injuria *omne quod non jure fit. Fleta*, lib. 2, c. 1, § 1. These definitions are from the civil law. See *infra. Non omne damnum inducit* injuriam, *sed è contra*, injuria *damnum;* every loss does not work an injury, but, on the contrary, every injury produces a loss. *Bract.* fol. 45 b. There may, however, be *injuria sinè damno.* Story, J. 3 *Sumner's R.* 189, 192. See *Damnum.*

Injuria non præsumitur. Injury is not presumed. *Co. Litt.* 232. Cruel, oppressive or tortious conduct will not be presumed. *Best on Evid.* 336, § 298.

Injuria propria non cadet in beneficium facientis. One's own wrong shall not fall to the advantage of him that does it. A man will not be allowed to derive benefit from his own wrongful act. *Branch's Princ.*

INJURIA. Lat. In the civil law. In a general sense,—every thing that is not done rightfully; (*generaliter dicitur omne quod non jure fit.*) *Inst.* 4. 4, pr. *Dig.* 47. 10. 1, pr.

In a special sense,—contumely or insult; (*contumelia*, Gr. ὕβρις.) *Id. ibid.*

Fault, (*culpa*, Gr. ἀδίκημα.) *Id. ibid.*

Iniquity, (*iniquitas*, ἀνομία;) or injustice, (*injusticia*, Gr. ἀδικία.) *Id. ibid.*

INJURIARE. L. Lat. [from *injuria*, q. v.] In old English law. To injure. *Reg. Orig.* 150 b. *Bract.* fol. 45 b. *Injuriatum;* injured. *Fleta*, lib. 4, c. 27, § 16.

INJURIOSUM. L. Lat. [from *injuria*, q. v.] In old English law. Injurious; wrongful; that occasions a wrong or injury. *Nocumentorum aliud* injuriosum *est et damnosum, aliud damnosum et non* injuriosum; of nuisances, there is one species which is wrongful and detrimental, another which is simply detrimental, and not wrongful. *Bract.* fol. 231 b. *Injuriosus*, in the civil law, is applied to persons. *Calv. Lex.*

INJURY. [from Lat. *injuria*, q. v.] Wrong; the privation or violation of right. 4 *Bl. Com.* 1—3. See *Wrong.*

In ordinary language, this word has effectually usurped the meaning of *damnum*, (damage,) from which it is so carefully distinguished in law, and is constantly used in cases where no manner of *right* is concerned or invaded.

INJUSTE. Lat. Unjustly. *Questus est nobis talis, quod talis* injustè *et sine judicio disseysivit talem;* such a one has complained to us, that such a one, unjustly and without due process of law, hath disseised such a one. *Bract.* fol. 205. *Fleta*, lib. 4, c. 12, § 3. A word of common occurrence in old writs, and extensively commented on by Bracton, *ub. sup.*

INJUSTUS. Lat. [from *in*, priv. and *justus*, just, lawful.] Unjust; wrong. **Injustum est, nisi tota lege inspecta, de una aliqua ejus particula proposita judicare vel respondere.** It is wrong to decide or give an answer upon any part of a law without examining the whole of it. 8 *Co.* 117 b, *Bonham's case.*

INLAGARE. L. Lat. [from *in*, and Sax. *laga*, law.] In old English law. To restore to the law, (*ad legem restituere.*) *Fleta*, lib. 1, c. 28, § 14. To restore an outlaw or exile to the protection of the law; (*ejectum restituere in legis patrocinium.*) *Spelman.* The opposite of *utlagare*, to outlaw; but the corresponding word *inlaw*, has not been retained in English, though once used in Saxon, and occasionally by early English writers. See *Inlaw, Utlagare, Inlagary.*

INLAGARY. [L. Lat. *inlagatio, inlageria;* L. Fr. *inlagerie.*] In old English law. A restitution of one outlawed to the protection of the law, or to the benefit or liberty of a subject. *Cowell. Blount. Spelman*, voc. *Inlagare.* See *Inlagare.* The ancient word *utlagary*, has become the modern *outlawry*, but *inlagary* has never undergone a corresponding change into *inlawry.*

INLAGATUS. L. Lat. [from *inlagare*, q. v.] In-law, (Sax. *inlagh, inlaughe;*) one who was under law, (*sub lege,*) that is, under the protection of the law, by being in some frank-pledge or decennary; (*in franco plegio sive decenna.*) *Bract.* fol. 125 b. See *Inlaughe.*

INLAGHE. Sax. [from *in*, and *lagh*, law.] In-law, subject to the law, (*subjectus legi.*) *Fleta*, lib. 1, c. 47, § 24. See *Inlaughe.*

INLAND. Sax. [L. Lat. *inlandum, inlanda;* Lat. *terra interior.*] In old English law. The demesne land of a manor; that part which lay next, or most convenient for the lord's mansion house, as within the view thereof, and which therefore he kept in his own hands for support of his family and hospitality. *Kennett's Gloss. Cowell.* Distinguished from *outland* or *utland*, which was the portion let out to tenants, and sometimes called the *tenancy. Spelman.* See *Demesne.* This word is often found in Domesday.

INLAND. Within a country, state or territory; within the same country.

INLAND BILL OF EXCHANGE. In mercantile law. A bill of exchange drawn upon a person residing in the same state or country with the drawer;* a domestic or intra-territorial bill. *Story on Bills*, § 22. Distinguished from a *foreign bill*, (q. v.) See *Domestic bill of exchange.*

INLANDTAL, *Inlantal.* Sax. The same with *inland*, (q. v.) *Cowell.*

INLARGE. An old form of *enlarge. Cas. temp. Talb.* 25.

INLAUGHE. Sax. In old English law. Under the law (*sub lege,*) in a frank-pledge, or decennary. *Bract.* fol. 125 b.

IN-LAW. In old English law. To place under the protection of the law. "Swearing obedience to the king in a leet, which doth *in-law* the subject." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 328.

INLEASED. [from Fr. *enlasse.*] In old English law. Entangled, or ensnared. 2 *Inst.* 247. *Cowell. Blount.*

INLEGIARE. L. Lat. [from *in*, in, and *lex*, law.] In old English law. To restore to the favor of the law by satisfying its demands; to make one's self *rectus in curia*. *Cowell.*

INLIGARE. L. Lat. In old European law. To confederate; to join in a league, (*in ligam coire.*) *Spelman.*

INMATE. A person who lodges or dwells in the same house with another, occupying different rooms, but using the same door for passing in and out of the house. *Cowell. Webster. Jacob.*

In old English law, this word seems to have been applied almost exclusively to paupers, or persons not able to maintain themselves. *Kitch.* 45. And it is still constantly used in the modern law of settlements.

INN. [Lat. *hospitium.*] A house where the traveller is furnished with every thing he has occasion for, while on his way. 3 *B. & Ald.* 283.—A house for the lodging and entertainment of travellers. *Webster.* Used frequently in the sense of *tavern*, (q. v.) and held in New-York to be synonymous with that word. 3 *Hill's R.* 150. 2 *Kent's Com.* 595, 597, and note. See *United States Digest*, Inns and Licensed houses. To constitute a house an *inn*, in the sense of the common law, it must be a *common* inn, or *diversorium*, [*commune hospitium*,] that is, an inn kept for travellers *generally*, and not merely for a short season of the year, and for select persons who are lodgers. *Story on Bailm.* § 475. 2 *Kent's Com.* 595.

INNAMUM, *Innama.* L. Lat. [from Sax. *in*, and *naman*, to take.] In old English law. Things taken in, (*introcapta;*) animals taken in to feed or pasture. *Spelman.* Seee *Namium.*

INNATURALITAS. L. Lat. In old records. Unnatural usage. *Cowell.*

INNAVIGABLE. In insurance law. Not navigable. A term applied to a vessel when, by a peril of the sea, she ceases to be navigable, by irremediable misfortune. A ship is relatively *innavigable* when it will require almost as much time and expense to repair her as to build a new one. *Emerig. Tr. des. Ass.* ch. 12, sect. 38, tom. 1, 591—598. 3 *Kent's Com.* 323, note.

INNAVIGABILITY. [Fr. *innavigabilite.*] In insurance law. The condition of being *innavigable*, (q. v.) The foreign writers distinguish *innavigability* from *shipwreck.* 3 *Kent's Com.* 323, and note.

INNIG. L. Fr. June. *Kelham.*

INNINGS. In old records. Lands recovered from the sea, by draining and banking. *Cowell.*

INNKEEPER. One who keeps an *inn*, or house for the accommodation of travellers. See *Inn.* The keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants, for a reasonable compensation. *Bac. Abr.* Inns and Innkeepers, C. *Story on Bailm.* § 475. One who keeps a tavern or coffee-house in which lodging is provided. 2 *Steph. Com.* 133. Sometimes called an *innholder*, and more frequently *tavern-keeper*, (q. v.) See *Guest.* As to the responsibility of innkeepers, see 2 *Kent's Com.* 592—597.

INNOCENCE. [Lat. *innocentia*, from *in*, not, and *nocens*, guilty.] In the law of evidence. Freedom from guilt. **Every person is presumed to be innocent until proved to be guilty.** *Burr. Circ. Evid.* 39, 58.

INNOMINATE. [Lat. *innominatum*, from *in*, priv. and *nominatum*, named.] In the civil law. Not named or classed; belonging to no specific class; ranking under a general head. A term applied to those contracts for which no certain or precise remedy was appointed, but a general action on the case only. *Dig.* 2. 1. 4. 7. 2. *Id.* 19. 4 & 5.

INNONIA. L. Lat. [from Sax. *innan*, within.] In old English law. A close or enclosure, (*clausum, inclausura.*) *Spelman.*

INNOTESCIMUS. L. Lat. We make known. A term formerly applied to letters patent, derived from the emphatic word at the conclusion of the Latin forms. It was a species of exemplification of charters of feoffment or other instruments not of record. 2 *Co.* 54 a, *Page's case.*

INNOVATION. In Scotch law. The exchange of one obligation for another, so as to make the second obligation come in the place of the first, and be the only subsisting obligation against the debtor. *Bell's Dict.* The same with *novation*, (q. v.) Fleta has *innovatio* in the same sense. Lib. 2, c. 60, § 12.

INNS OF COURT. [L. Lat. *hospitia curiæ.*] The four law societies of the Middle Temple, Inner Temple, Lincoln's Inn, and Gray's Inn, which, in England, possess the exclusive privilege of conferring the degree of *barrister at law.* 1 *Bl. Com.* 23. 1 *Steph. Com.* 19.

INNUENDO. L. Lat. [from *innuere*, to nod; to make a sign; to intimate or signify.] Signifying; meaning. An emphatic word in the old Latin declarations in actions of slander and libel, literally translated, ("meaning,") in the modern forms, and retained as the name of the whole clause in which the application of the slanderous or libellous matter to the plaintiff is explained, or pointed out; thus, "he (*meaning* the said plaintiff,) is perjured." 1 *Chitt. Pl.* 406, 407. 2 *Id.* 624, 625. See *Hob.* 2. *Id.* 6. 1 *Ld. Raym.* 256. Said to mean no more than the words "*id est*," "*scilicet*," or "*meaning*," or "*aforesaid*," as *explanatory of a subject matter sufficiently expressed before;* as "such a one, *meaning* the defendant," or "such a subject, *meaning* the subject in question." De Grey, C. J. *Cowp.* 683. It is only explanatory of some matter already expressed; it serves to point out where there is precedent matter, but never for a new charge; it may *apply* what is *already expressed*, but cannot add to or enlarge, or change the sense of the previous words. 1 *Chitt. Pl.* 407.

INOFFICIOSUM. Lat. [from *in*, priv. and *officium*, duty.] In the civil law. Undutiful; contrary to, or not in accordance with natural duty, (*non ex officio pietatis.*) *Inst.* 2. 18, pr. Sometimes rendered *inofficious.* 1 *Bl. Com.* 448. *Testamentum inofficiosum;* an undutiful will; so called when the testator disinherited or totally passed by a child, without assigning a true and sufficient reason; and which the child so disinherited or passed over was allowed to contest, (*agere de inofficioso.*) *Inst. ub. sup. Dig.* 5. 2. 3, 5. 2 *Bl. Com.* 502, 503. Parents, also, might complain of the will of a child on the same ground. *Inst.* 2. 18. 1. *Dig.* 5. 2. 1. See *Cod.* 3. 28. See *Querela.*

INOPS CONSILII. Lat. Destitute of counsel; without, or deprived of the aid of counsel. 2 *Bl. Com.* 172. Doderidge, J. *Latch*, 137. Applied to an American Indian. Harris, J. 4 *Comstock's R.* 299.

INPENY and OUTPENY. In old English law. A customary payment of a penny on entering into and going out of a tenancy, (*pro exitu de tenura, et pro ingressu.*) *Spelman. Cowell.*

INQUÆSTIO. L. Lat. An inquest, or inquisition. *Spelman.*

INQUEST. [L. Lat. *inquæstio, inquisitio;* from *inquirere*, to inquire.] In practice. A judicial inquiry, or examination; an inquiry into any cause or matter, civil or criminal, by a jury summoned for the purpose. Most commonly applied, in this sense, to the inquiry made by a coroner's jury. See *Coroner.*

A jury. 1 *Leon.* 109. *Bell's Dict.* A grand jury was formerly sometimes termed the great or grand *inquest*, and the term is retained in modern practice. See *Grand jury.*

The finding of a jury in a civil case, *ex parte*, that is, where the opposite party does not appear at the trial. The counsel who takes a verdict in such a case is said to *take an inquest.*

INQUEST OF OFFICE. [L. Lat. *inquisitio ex officio.*] In English practice. An inquiry made by the king's (or queen's) officer, his sheriff, coroner or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels; as to inquire whether the king's tenant for life died seised, whereby the reversion accrues to the king; whether A. who held immediately of the crown, died without heir, in which case the lands belong to the king by escheat; whether B. be attainted of treason, whereby his estate is forfeited to the crown; whether C. who has purchased land, be an alien, which is another cause of forfeiture, &c. 3 *Bl. Com.* 358. 4 *Id.* 301. These *inquests of office* were more frequently in practice during the continuance of the military tenures, than at present; and were devised by law as an authentic means to give the king his right by solemn matter of record. 3 *Id.* 258, 259. 4 *Steph. Com.* 40, 41. Sometimes simply termed *office*, as in the phrase "*office found*," (q. v.) As to inquests of office in American law, see 7 *Cranch's R.* 603.

INQUILINUS. Lat. [from *incolere*, to inhabit.] In the civil law. The hirer of a house in a city; one who lived in a hired house in a city; a city tenant, as *colonus* was a country tenant.* *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 916, note. *Dig.* 7. 8. 2. 1. *Id.* 7. 8. 4, pr. *Bract.* fol. 42 b. *Calv. Lex.*

INQUIRY, *Writ of.* [L. Lat. *breve de inquirendo.*] In practice. A judicial writ issued in certain actions at law, where a defendant has suffered judgment to pass against him by default, for the purpose of ascertaining and assessing the plaintiff's

damages, in cases where they are not ascertained nor ascertainable by mere calculation. It is directed to the sheriff of the county in which the venue of the action is laid, reciting the former proceedings and the judgment thereon that the plaintiff ought to recover his damages (indefinitely;) "but because it is unknown what damages the plaintiff has sustained by means of the premises," commanding the sheriff, that, by the oath of twelve good and lawful men of his county, he diligently inquire the same, and return the inquisition which he shall thereupon take into court. 3 *Bl. Com.* 398. 3 *Steph. Com.* 635. 1 *Tidd's Pr.* 580, 581. 2 *Archb. Pr.* 38, 39. *Chitt. Arch. Pr.* 707. 1 *Burr. Pr.* 377, 378.

In execution of this writ, the sheriff, by his under sheriff, sits as judge, and tries by a jury, subject to nearly the same law and conditions as apply to the trial by jury at *nisi prius*, what damages the plaintiff has really sustained; and when their verdict is given, which must assess some damages, the sheriff returns the inquisition, upon which judgment is entered.

INQUISITIO. Lat. In old English law. An inquisition or inquest. *Inquisitio post mortem;* an inquisition after death. An inquest, of office held, during the continuance of the military tenures, upon the death of every one of the king's tenants, to inquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, primer seisin, or other advantages, as the circumstances of the case might turn out. 3 *Bl. Com.* 258. *Inquisitio patriæ;* the inquisition of the country; the ordinary jury, as distinguished from the grand assise. *Bract.* fol. 15 b.

INQUISITION. [Lat. *inquisitio.*] In modern practice. The finding of a jury; especially, the finding of a jury under a writ of inquiry. See *Inquiry, writ of.*

INROLL. A form of *enroll*, used in the old books. 3 *Rep. in Ch.* 63, 73. 3 *East*, 410.

INROLMENT, *Enrollment.* [L. Lat. *irrotulatio.*] In practice. The entry of any act or matter upon a roll, (*in rotulo.*) In English practice, the registering, recording, or entering of any lawful act in the rolls of the Chancery, or of the Exchequer, King's Bench, or Common Pleas. *Termes de la Ley. Cowell.* The entering or transcribing a deed on a roll of parchment, according to certain forms and regulations; the transcribing a deed upon the records of one of the courts at Westminster, or at a court of Quarter Sessions. *Holthouse.* This, however, does not make it a record, it being merely a private act of the parties concerned. *Id.* See *Record, Roll.*

The term *inrollment* is also applied, in equity practice, to the entry of a decree on record, at the conclusion of a suit. 2 *Daniell's Chan. Pract.* 1220. The proper orthography of this word seems to be *enrollment*, (q. v.)

INSANE. [Lat. *insanus*, from *in*, priv. and *sanus*, sound, healthy.] Unsound in mind; of unsound mind; deranged, disordered or diseased in mind.

Violently deranged; mad. See *Insanus.*

INSANITY. [Lat. *insania, insanitas*, from *insanus*, q. v.] Unsoundness of mind; derangement of intellect; madness. Delusion is said to be the true test of insanity. Sir John Nicholl, 3 *Addams' R.* 79. Lunacy is properly a species of insanity, although the terms are frequently used as synonymous. See *Lunacy.*

INSANUS. Lat. [from *in*, priv. and *sanus*, sound.] Insane; deranged; mad. Insanus [*est*] *qui, abjecta ratione, omnia cum impetu et furore facit;* an insane person is one who having lost reason, does every thing with violence and fury. 4 *Co.* 128 a, *Beverley's case.*

INSCRIBERE. Lat. [from *in*, to, or on, and *scribere*, to write.] In the civil law. To subscribe an accusation. To bind one's self, in case of failure to prove an accusation, to suffer the same punishment which the accused would have suffered had he been proved guilty. *Calv. Lex.*

INSCRIPTIO. Lat. [from *inscribere*, q. v.] In the civil law. A written accusation, (*libellus accusatorius.*) An undertaking to suffer the punishment of the accused, in case of a failure to prove him guilty. *Calv. Lex. Cod.* 9. 1. 10. *Id.* 9. 2. 16, 17.

INSECTATOR. L. Lat. In old English records. A prosecutor, or adversary at law. *Kennett's Par. Ant.* 388. *Cowell.*

INSENSIBLE. In pleading. Unintelligible; without sense or meaning, from the omission of material words, &c. *Steph. Pl.* 377.

INSETENA. Sax. and L. Lat. In old records. An inditch; an interior ditch; one made within another, for greater security. *Spelman.*

INSIDIATIO. Lat. [from *insidia*, an

ambush.] In old English law. A lying in wait. *Insidiatio viarum;* a lying in wait for one on the highway. 4 *Bl. Com.* 373. A species of felony in which the benefit of clergy was denied even by the common law. *Id.*

Insidiatores viarum; way layers. *Cowell.*

INSIGNIA. Lat. Distinctive marks; characteristics. 1 *Kent's Com.* 188.

INSILIARIUS. L. Lat. [from *insilium*, q. v.] In old records. An evil counsellor, or ill adviser. *Flor. Wigorn.* A. D. 855. *Spelman. Cowell.*

INSILIUM. L. Lat. In old records. Ill advice, or pernicious counsel. *Flor. Wigorn.* A. D. 1016. *Spelman. Cowell.*

INSIMUL. Lat. Together; jointly. *Towns. Pl.* 44.

INSIMUL COMPUTASSENT, (or COMPUTASSET.) L. Lat. (They accounted together; he accounted together.) In pleading. The emphatic name given to one of the common counts, (otherwise called a count upon an *account stated,*) those being the two emphatic words of the count when framed in Latin; it setting forth that the defendant, at a certain time and place, INSIMUL COMPUTASSET *cum præfato querente, de diversis denariorum summis eidem querenti, per præfatum defendentem, ante tempus illud debitis et insolutis,* &c. *Towns. Pl.* 412. Or, as literally rendered in the modern forms, "accounted together with the said plaintiff concerning divers sums of money, before that time due and unpaid to the said plaintiff by the said defendant;" after which it goes on to say, that upon such accounting, the said defendant was found to be in arrear to the said plaintiff in a certain sum named; and being so found in arrear, the said defendant, in consideration thereof, afterwards undertook and promised to pay the said sum of money to the said plaintiff, &c.

INSIMUL TENUIT. L. Lat. In old English practice. The name of a species of the writ of formedon in the descender. *F. N. B.* 216.

INSINUARE. In the civil law. To put into; to insert; to deposit a writing in court, answering nearly to the modern expression "to file." To transcribe an act on the public registers; to record. *Si non mandatum actis* insinuatum *est;* if the power or authority be not deposited among the records of the court. *Inst.* 4. 11. 3.

To declare or acknowledge before a judicial officer; to give an act an official form, (*publicare, et apud acta coram judice testari.*) *Calv. Lex.*

To make known; to give information. *Id.*

INSINUATIO. L. Lat. In old English law. Information or suggestion. *Ex insinuatione;* on the information. *Reg. Jud.* 25, 50.

INSINUATION OF A WILL. In the civil law. The first production of a will, or the leaving it with the registrar, in order to its probate. *Cowell. Blount.* See *Insinuare.*

INSOLIDE. L. Lat. Solidly; without any separation of possession or ownership. A term used by Bracton to express that impossible or impracticable kind of possession where two persons hold a thing at the same time exclusively. [*Duo non possunt*] *simul et insolidè unicam rem possidere, non magis quàm unus stare ubi alius stat, et unus sedere ubi alius sedet;* two cannot possess one thing at the same time and solidly, [or to the same extent,] no more than one man can stand where another stands, or one man sit where another sits. *Bract.* fol. 45.

INSOLVENCY. [from Lat. *in*, priv. and *solvere*, to pay.] Inability to pay; want of solvency; the state of an insolvent; the state of a person who is unable, from want of means, to pay his debts.* Inability to pay one's debts out of one's own means. Cowen, J. 4 *Hill's* (N. Y.) *R.* 650, 652. Paige, J. 15 *New-York* (1 *Smith*) *R.* 200. —Inadequacy of a man's funds to the payment of his debts. 2 *Bell's Com.* 162. Brown, J. 15 *New-York R.* 141.—The condition of a person unable to pay his debts as they fall due, or in the usual course of trade and business. 2 *Kent's Com.* 389, note. See 3 *Gray's R.* 599, 600.—Present inability to pay one's debts in full out of one's own means.* See *Burrill on Assignments*, 38.

Strictly, the state of a person, not engaged in trade, who is unable to pay his debts. This is the sense of the word in English law, as distinguished from *bankruptcy;* but the distinction does not seem to be recognised in the United States. 2 *Steph. Com.* 213. *Brande.* See *Bankruptcy, Solvency, Insolvent.*

INSOLVENT. [from Lat. *in*, priv. and *solvens*, paying, from *solvere*, to pay.] One who cannot or does not pay; one who is unable to pay his debts; one who is not solvent; one who has not present means or property sufficient to pay his debts.—

One who is unable to pay all his debts from his own means, or whose debts cannot be collected out of his means by legal process.* Cowen, J. 4 *Hill's* (N. Y.) *R.* 650, 652.—A trader who is not in a condition to pay his debts in the ordinary course, as persons carrying on trade usually do. Thomas, J. 3 *Gray's R.* 600; citing 1 *M. & S.* 338. 3 *Dowl. & Ryl.* 218. 4 *Hill*, 650. 4 *Cush.* 134. See *Solvent.*

Strictly, a person not engaged in trade, who is unable to pay his debts. See *Bankrupt.*

INSPECTION. In practice. The examination of writings not under seal, and books, in the possession of a party, which the opposite party may have, on obtaining a rule of court or a judge's order for the purpose. 1 *Tidd's Prac.* 589—596. It is analogous to the *oyer* of deeds or writings under seal.

INSPECTION. Official view or examination of commodities or manufactures, to ascertain their quality, under some statute requiring it.

INSPECTION, *Trial by.* A mode of trial formerly in use in England, by which the judges of a court decided a point in dispute, upon the testimony of their own sense, without the intervention of a jury. This took place in cases where the fact upon which issue was taken must, from its nature, be evident to the court from ocular demonstration, or other irrefragable proof; and was adopted for the greater expedition of a cause. 3 *Bl. Com.* 331. In this way, questions whether a party were an infant or not, or whether idiot or not, whether an injury were maihem or no maihem, and the like, might be determined, the judges deciding by *inspection* and examination of the party. *Id.* 332, 333. But this has long been out of use. 3 *Steph. Com.* 582, note (*u*).

INSPEXIMUS. Lat. In old English law. We have inspected. An exemplification of letters patent, so called from the emphatic word of the old forms. 5 *Co.* 53 b, *Page's case.*

INSTANCE. [Lat. *instantia*, from *instare*, to press or urge.] In pleading and practice. Solicitation, properly of an earnest or urgent kind. An act is often said to be done at a party's "special *instance* and request."

In the English courts, causes of *instance* are those which proceed at the solicitation of some party. *Hallifax, Anal.* b. 3, c. 11.

INSTANCE COURT. The ordinary Court of Admiralty, as distinguished from the *prize* court, which is held in times of war. 1 *Kent's Com.* 352. These are sometimes treated in the English books as perfectly distinct tribunals. 2 *Chitt. Gen. Pr.* 508. But they appear rather to be different branches of jurisdiction of the same court. 1 *Kent's Com.* 354, 356. In the United States, the equal jurisdiction of the admiralty as an instance and as a prize court, is now definitely settled. *Id. ibid.*

INSTANS. L. Lat. An instant. *Instans est finis unius temporis et principium alterius;* an instant is the end of one period of time, and the beginning of another. *Co. Litt.* 185. See *Instant.*

INSTANT. [Lat. *instans.*] An indivisible point of time.* Defined by the old logicians to be *Unum indivisibile in tempore, quod non est tempus, nec pars temporis, ad quod tamen partes temporis copulantur;* one indivisible thing in time, which is not time, nor a part of time, to [or by] which, however, the parts of time are conjoined. *Cowell.* See *Plowd.* 110. According to Lord Coke, in consideration of law, there is a priority of time in an instant. *Co. Litt.* 185 b.

INSTANTER. Lat. Instantly; forthwith; without any delay, or the allowance of any time. 4 *Bl. Com.* 396. This term, however, as generally used, does not import an absolutely instantaneous succession, but only that which is comparatively so. Thus, in practice, *instanter* is frequently said to mean "within twenty-four hours," and it is sometimes so defined by express rule of court. 1 *Tidd's Pr.* 567, note. 3 *Chitt. Gen. Pr.* 112. See *Immediately, Instant, Forthwith, Fraction.*

INSTANTIA. L. Lat. In old practice. Despatch; speedy prosecution. *Fleta*, lib. 2, c. 65, § 10.

INSTAR. Lat. Likeness; the likeness, size or equivalent of a thing. *Instar dentium;* like teeth. 2 *Bl. Com.* 295. *Instar omnium;* equivalent or tantamount to all. *Id.* 146. 3 *Id.* 231.

INSTAURUM. L. Lat. In old English deeds. A stock or store of cattle, and other things; the whole stock upon a farm, including cattle, wagons, ploughs, and all other implements of husbandry. 1 *Mon. Ang.* 548. *Fleta*, lib. 2, c. 68, § 1; c. 72, § 7. *Terra instaurata;* land ready stocked, or furnished with all things necessary to carry on the use or occupation of a farm.

Et reddat heredi, cum ad plenam etatem venerit, terram suam totam instauratam *de carucis et omnibus aliis rebus ;* and he shall restore to the heir, when he shall arrive at full age, all his land, stocked with ploughs and all other things. *Magna Carta*, c. 5. *Cowell.*

INSTITOR. Lat. [from *instare*, to press or urge, to attend diligently.] In the civil law. A person put in charge of a shop, with authority to buy and sell, (*qui tabernæ ad emendum vendendumque præponitur.*) *Dig.* 14. 3. 18. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1209. *Story on Agency*, § 8.

A person having charge of buying or selling, without any particular place, (*qui sine loco ad eundem actum præponitur.*) *Dig.* 14. 3. 18.

A person to whom the transaction of any particular business was committed, (*cuilibet alii negotiationi præpositus.*) *Dig.* 14. 3. 3. *Inst.* 4. 7. 2.

INSTITORIA ACTIO. Lat. In the civil law. The name of an action given to those who had contracted with an *institor*, (q. v.) to compel the principal to performance. *Inst.* 4. 7. 2. *Dig.* 14. 3. 1. *Cod.* 4. 25. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1211. *Story on Agency*, § 426.

INSTITUERE. Lat. In old English law. To establish, enact or ordain. *Hæc sunt* instituta *quæ Edgarus rex consilio sapientum suorum* instituit; these are the establishments which king Edgar, with the advice of his wise men, established. 1 *Bl. Com.* 148. *Hæc sunt judicia quæ sapientes, consilio regis Ethelstani*, instituerunt; these are the judgments which the wise men, with the advice of king Athelstan, established. *Id. ibid.*

In the civil law. To prepare, provide or furnish. *Calv. Lex.*

To name, designate or appoint, as an heir. *Id. Dig.* 28. 5. See *Hæres institutus.*

To appoint, or put in one's place, as an attorney. *Calv. Lex.*

To move or commence, as an action. *Id.*

In feudal law. To invest or give possession. *Id.*

INSTITUTA. Lat. Institutes. The Institutes of Justinian are so called in *Fleta*, lib. 3, c. 3, § 12. This corresponds with the Latino-Gr. Ινστιτουτοις, in *Nov.* 18, c. 9. *Nov.* 21, c. 1.

INSTITUTE. [Lat. *instituere*, q. v.] To commence; to set on foot; as to *institute* proceedings; to *institute* an inquiry; to *institute* an action.

INSTITUTES OF JUSTINIAN. [Lat. *Institutiones.*] Elements of the Roman law, in four books, compiled by Tribonian, Theophilus and Dorotheus, by the order, and under the direction of the emperor Justinian, and published on the 21st day of November, A. D. 533; being one of the principal component parts or general divisions of the *Corpus Juris Civilis. Proœm. de Confirm. Inst.* 3. 4, &c. 1 *Mackeld. Civ. Law*, 56, § 67. 1 *Bl. Com.* 81. 1 *Kent's Com.* 538. They were composed, as Justinian himself explains in the *proœmium* or introduction, for the benefit of students of the law, to whom in fact they are formally addressed, (*cupidæ legum juventuti—ut liceat prima legum cunabula discere*, &c.) in order to facilitate their studies, which before had been embarrassed by many difficulties and delays. *Proœm.* § 3. According to Justinian's own account, they were compiled from all the older elementary works of a similar character, (*ex omnibus antiquorum institutionibus,*) but principally from what he calls the Commentaries of Caius or Gaius, (*præcipue ex commentariis Caii nostri,*) embracing both his *Institutes* and *Res Quotidianæ*, (*tam institutionum, quam rerum quotidianarum ;*) and also from many other commentaries, (*aliisque multis commentariis.*) *Id.* § 6. Since the discovery, in 1816, of a copy of the Institutes of Gaius, it has appeared that the Institutes of Justinian are little more than a new edition of that work, omitting what had become obsolete, and including the new constitutions of Justinian as far as they had then been issued. 1 *Mackeld. Civ. Law*, 56, § 67. 1 *Kent's Com.* 538, and note.

The division of the Institutes into four books was by Justinian's own order, so as to embrace the first elements of the whole science of the law; (*in quatuor libros easdem institutiones partiri jussimus, ut sint totius legitimæ scientiæ prima elementa.*) *Proœm.* § 4. Each book is again divided into titles, and each title, after a short *principium*, or introduction, into paragraphs or sections. The most common and simple mode of citation is by giving the numbers of the book, title and section, thus: *Inst.* 4. 7. 2; meaning book 4, title 7, section 2; or, where the *principium* is referred to, *Inst.* 4. 7, pr. Another method is by naming the section first, and using the

letter J. instead of *Inst.* thus: § 2, J. 4. 7. The ancient mode of citation was by giving the heading of the title, and the initial words of the paragraph, thus: § fratris vero, J. de nuptiis, which answers to the modern *Inst.* 1. 10. 3.

INSTITUTES, (or INSTITUTIONS) OF GAIUS. [Lat. *Gaii Institutiones.*] An elementary work of the Roman jurist Gaius; important as having formed the foundation of the Institutes of Justinian, (q. v.) These Institutes were discovered by Niebuhr in 1816, in a *codex rescriptus* of the library of the cathedral chapter at Verona, and were first published at Berlin in 1820. Two editions have appeared since. 1 *Mackeld. Civ. Law*, 35.

INSTITUTIO. In old English law. Institution (of a clerk.) Called by Bracton a kind of spiritual marriage. *Bract.* fol. 242. See *Institution.*

INSTITUTION. [Lat. *institutio*, from *instituere*, to place in, to establish or ordain.] In English ecclesiastical law. A kind of investiture of the spiritual part of a benefice, by which the cure or care of the souls of the parish is committed to the clerk. 1 *Bl. Com.* 390. It was anciently done by the bishop saying to the clerk who was presented, *Instituo te rectorem talis ecclesiæ, cum cura animarum, et accipe curam tuam et meam;* I institute or ordain thee rector of such a church, with cure of souls, and take thy cure (or charge) and mine. *Cowell.*

INSTITUTIONES. Lat. [from *instituere*, to instruct, or educate.] Works containing the elements of any science; institutions, or institutes. One of Justinian's principal law collections, and a similar work of the Roman jurist Gaius, are so entitled. See *Institutes.*

INSTRUCTION. In French law. The means used and formality employed to prepare a case for trial. *Bouvier.*

INSTRUCTIONS. In practice. Written statements of facts, intended as guides to attorneys and counsel, in the prosecution and defence of actions, the preparation of pleadings, and in conducting examinations and trials. See 3 *Chitt. Gen. Pr.* 117—124, 429.

INSTRUMENT. [Lat. *instrumentum*, from *instruere*, to provide or furnish.] A mean or help to do a thing; a writing, as the *means* of giving formal expression or effect to some act; a writing expressive of some act, contract, process or proceeding, as a deed, writ, &c.

Instruments of evidence are the media through which the evidence of facts, either disputed or required to be proved, is conveyed to the mind of a judicial tribunal; and they comprise persons as well as writings. *Best on Evid.* 139, § 113.

INSTRUMENTUM. Lat. [from *instruere*, to provide or furnish.] In the civil law. Furniture; equipment; articles provided or necessary for the carrying on of any business, art or occupation; tools of a trade, &c. *Dig.* 33. 7. The tackle or equipments of a vessel. *Id.* 33. 7. 29.

Every thing with which a cause could be provided, (*omnia quibus causa instrui potest,*) including both evidences and persons, (*tam testimonia quam personæ.*) *Dig.* 22. 4. 1. See *Id.* 50. 16. 99. 2.

A contract containing the evidence of some agreement, called in Gr. συμβόλαιον, especially such as were drawn up by a notary, tabellion or public officer. See *Nov.* 47. The word had the same sense in feudal law. *Feud. Lib.* 2, tit. 2.

INSUFFICIENCY. In equity pleading. That quality of an answer when it does not fully and specifically reply to the specific charges in the bill, or where there is some material allegation, charge or interrogatory contained in the bill, which has not been fully answered. *Mitford's Ch. Pl.* (Moulton's ed. 1849,) 376, and note.

INSULA. Lat. An island. *Inst.* 2. 1. 22. *Dig.* 41. 1. 7. 3. *Bract.* fol. 9. *Fleta*, lib. 3, c. 2, § 6.

In the Roman law. A house in a city not adjoining others, but having a vacant space all around it. *Calv. Lex. Dig.* 19. 2. 30. *Id.* 32. 91. 6. An insulated house.

A house of any kind, especially one occupied by different families. *Calv. Lex. Adam's Rom. Ant.* 57.

INSULTUS. Lat. [from *insilire*, to assault.] In old English law. An assault. Insultum *fecit et verberavit;* made an assault and beat. *Reg. Orig.* 92.

INSUPER. Lat. Moreover; over and above.

An old exchequer term, applied to a charge made *upon* a person in his account. *Blount.*

INSURANCE, *Assurance.* [Fr. *assurance;* L. Lat. *assecuratio, aversio periculi.*] A contract whereby, for a stipulated consideration, one party undertakes to in-

demnify the other against certain risks. 1 *Phillips on Ins.* 1. The party undertaking to make the indemnity is called the *insurer*, (and sometimes the *underwriter ;*) the party to be indemnified, the *insured* or *assured ;* the agreed consideration, a *premium ;* and the instrument containing the contract, a *policy.** *Id. ibid.* See *Assurance*, *Aversio periculi*, *Fire Insurance*, *Life Insurance*, *Marine Insurance*, *Policy*, *Premium.*

INSURANCE BROKER. A broker through whose agency insurances are effected. 3 *Kent's Com.* 260. See *Broker.*

INTAKERS. In old English law. A kind of thieves inhabiting Redesdale, on the extreme northern border of England; so called because they *took in* or received such booties of cattle and other things as their accomplices, who were called *outparters*, brought in to them from the borders of Scotland. *Stat.* 9 *Hen.* V. c. 8. *Spelman. Cowell.* See *Outparters.*

INTEGER. Lat. Entire and whole; fresh; new; untouched, as a thing originally or at first was. *Res integra ;* a new matter or question; one untouched by *dictum* or decision. 2 *Kent's Com.* 177. *In* integrum *restituere ;* to restore a thing to its original state. *Calv. Lex.* See *Restitutio*, *Res integra.*

INTELLECTUS. Lat. [from *intelligere*, to understand.] In old English law. Meaning; sense; signification. *Bract.* fol. 34. *Fleta*, lib. 3, c. 14, § 4.

INTEND. [from Lat. *intendere*, from *in*, to or towards, and *tendere*, to stretch or strain.] To fix the mind upon a thing; to mean; to determine; to act with a full knowledge of consequences, and with a determination or willingness to produce such consequences. **Every man is presumed to intend the natural and probable consequences of his own voluntary acts.** 1 *Greenl. Evid.* § 18. Lord Ellenborough, 3 *M. & S.* 11, 15. *Burr. Circ. Evid.* 38, 47.

INTENDERE. Lat. In the civil law. To claim at law, or in an action. *Si* [*actor,*] *cum ei decem aurei deberentur, quinque sibi dari oportere*, intenderit; if a plaintiff, where ten *aurei* were due him, should claim that five only ought to be paid him. *Inst.* 4. 6. 34, 35.

In old English law. To apply one's self; to attend diligently, as to the duties of an office. *Quod talem eligi faciat qui melius et sciat, et velit, et possit officio illi* intendere; that he cause to be chosen such a person as best knows how, and is willing and able to discharge that office. 1 *Bl. Com.* 347.

INTENDMENT. [L. Fr. *entendment;* L. Lat. *intellectus.*] Understanding; judgment; intention.

INTENDMENT OF LAW. [L. Lat. *intellectus legis.*] The understanding or intelligence of the law. *Co. Litt.* 78 b. The judgment, intention, or true meaning of the law. *Cowell. Blount.* Regularly, judges ought to adjudge according to the common intendment of law. *Co. Litt.* 78 b.

A presumption of law. *Best on Pres.* § 15. *Burr. Circ. Ev.* 45.

INTENT. [from Lat. *intendere*, from *in*, to or towards, and *tendere*, to stretch or strain.] In the law of evidence. Determination to act in a particular manner; design; meaning; purpose. Literally, the stretching of the mind towards an object; the fixed direction of the mind towards a particular object.

Intent expresses mental action at its most advanced point, or as it actually actually accompanies an outward, corporal act which has been determined on. *Intent* shows the presence of *will* in the act which consummates a crime. It is the exercise of intelligent will; the mind being fully aware of the nature and consequences of the act which is about to be done, and with such knowledge, and with full liberty of action, willing and electing to do it. *Burr. Circ. Evid.* 284, and notes. See *Intend.*

Intent is clearly distinguishable from *motive*, which is a moral impulse, the original moving cause of crime. *See Motive.*

INTENTARE. L. Lat. To prosecute. *Utraque* [*actio*] *simul poterit* intentari; both actions may be prosecuted at the same time. *Bract.* fol. 112 b. *Fleta*, lib. 2, c. 1, § 5.

INTENTIO. Lat. [from *intendere*, to intend or design.] Intention; design; meaning or purpose. **Intentio cæca mala.** A blind, or obscure meaning is bad, or ineffectual. 2 *Bulstr.* 179. Said of a testator's intention. *Id. ibid.*

Intentio inservire debet legibus, non leges intentioni. The intention [of a party] ought to be subservient to [or in accordance with] the laws, not the laws to the intention. *Co. Litt.* 314 a, b.

Intentio mea imponit nomen operi meo.

My intention gives name to my act. *Hob.* 123. See *Affectio.*

INTENTIO. Lat. [from *intendere*, to pursue or claim.] In the civil law. The formula by which the plaintiff (*actor*) preferred his suit or made his claim against the defendant before the prætor. *Si minus* intentione *suâ complexus fuerit actor quam ad eum pertineat;* if the plaintiff should embrace in his demand less than what actually belongs to him. *Inst.* 4. 6. 34.

In old English practice. The plaintiff's or demandant's count, or declaration in real actions. *Fleta*, lib. 4, c. 7. *Cum partes in judicio comparuerint, proponat mulier per se, vel per attornatum suum*, intentionem *suam, in hunc modum, &c.;* when the parties have appeared in court, the woman [demanding dower] shall offer, by herself or by attorney, her count, in this manner: "This shows to you B. (*hoc vobis ostendit* B.) who was the wife of C. that A. unjustly deforces her of the third part of so much land, with the appurtenances, in such a town; and unjustly so, because the aforesaid C. formerly her husband, endowed her thereof at the church door, when he espoused her, and who was able to endow her thereof; and if he will acknowledge this, it will be agreeable to her; if not, she hath sufficient proof thereof, or thereupon will produce a sufficient suit, (*inde producat sectam sufficientem.*") *Bract.* fol. 296 b, 297. Otherwise called *narratio. Fleta*, lib. 6, c. 16.

INTENTION. [See *Intent.*] Meaning; will; purpose; design. "The *intention* of the testator, to be collected from the whole will, is to govern, provided it be not unlawful or inconsistent with the rules of law." 4 *Kent's Com.* 534.

INTER. Lat. Between; among.

INTER ALIA. Lat. Among other things. A term anciently used in pleading, especially in reciting statutes, where the whole statute was not set forth at length. *Inter alia enactatum fuit;* among other things it was enacted. See the observations of Montague, C. J. in Dive *v.* Maningham, *Plowd.* 65.

INTER ALIOS. Lat. Between other parties. Inter alios *res gestas aliis non posse præjudicium facere sæpe constitutum est;* that things done between others cannot prejudice third parties, has often been determined. *Cod.* 7. 60. 1, 2. See *Res inter alios.*

INTER APICES JURIS. L. Lat. Among the niceties, or subtleties of the law; among the extreme doctrines of the law. Story, J. 1 *Gallison's R.* 192, 200.

INTER BRACHIA. L. Lat. Between her arms. *Fleta*, lib. 1, c. 35, §§ 1, 2.

INTER CÆTEROS. Lat. Among others; in a general clause; not by name (*nominatim.*) A term applied, in the civil law, to clauses of disinheritance in a will. *Inst.* 2. 13. 1. *Id.* 2. 13. 3.

INTER CANEM ET LUPUM. Lat. Between dog and wolf. A term anciently used to signify twilight, from the uncertain nature of the light, which rendered it difficult to distinguish one animal from another, (*cum* lupus à cane *non fit cognoscibilis.*) *Spelman*, voc. *Canis. Cowell.*

INTER PARTES. L. Lat. Between parts or parties. In case of an indenture, the deed is always formally described as made *inter partes;* that is, as made between such an one, *of the one part*, and such another, *of the other part.* 1 *Steph. Com.* 449. "Where there is a deed *inter partes*, that is, a deed importing to be between the persons who are named in it, as executing the same, and not, as some deeds are, general to 'all people,' the immediate operation of the deed is to be confined to those persons who are parties to it; no stranger to it can take under it except by way of remainder, nor can any stranger sue upon any of the covenants it contains." Lord Ellenborough, 3 *M. & S.* 322.

INTER QUATUOR PARIETES. L. Lat. Between four walls. *Fleta*, lib. 6, c. 55, § 4.

INTER SESE. Lat. Between or among themselves. *Story on Partn.* § 405.

INTER VIVOS. Lat. Between living persons. Ordinary gifts (*donationes*) are so called to distinguish them from such as are made in contemplation of *death*, (*mortis causâ.*) A term of the civil law, introduced into the English law at an early period. *Inst.* 2. 7. 2. *Bract.* fol. 11. 2 *Kent's Com.* 438.

INTERCALARE. Lat. [from *inter*, between or among, and O. Lat. *calare*, to call.] In the civil law. To introduce or insert among or between others; to introduce a day or month into the calendar; to intercalate. *Dig.* 50. 16. 98, pr.

INTERCALARIS. Lat. [from *intercalare*, q. v.] In the civil law. Inserted among others; additional (*additicius.*) *Dig.* 50. 16. 98. 1. *Mensis* intercalaris

constat ex diebus viginti octo; an intercalary month consists of twenty-eight days. *Id.* 50. 16. 98. 2.

INTERCHANGEABLY. [L. Lat. *alternatim.*] In the way, mode or form of exchange or interchange. A term constantly used in the concluding clause of indentures, (In witness whereof, the said parties have hereunto *interchangeably* set their hands and seals;) and properly importing not only an execution by all the parties, but an actual interchange of signatures and seals, such as takes place in the case of instruments executed in duplicate, or in part and counterpart, where the signature and seal of each party are affixed to the part given to the other. It is used, however, every day in deeds signed by the grantor only, but will not be held to import a signature by the grantee. 7 *Penn. St.* (Barr's) *R.* 329.

INTERCHARAXARE. L. Lat. In old European law. To interline. *Spelman.*

INTERCOMMON. To enjoy a common mutually or promiscuously with the inhabitants or tenants of a contiguous township, vill, or manor. 2 *Bl. Com.* 33. 1 *Crabb's Real Prop.* 271, § 290.

INTERCOMMONING. A mutual privilege existing between the inhabitants or tenants of two or more adjoining townships, or manors, of pasturing their cattle in the lands or commons of each other.* *Termes de la Ley. Cowell.* It is the same with *common because of vicinage*, (q. v.)

INTERCOURSE. [Lat. *intercursus*, from *inter*, between, and *currere*, to run.] Communication; literally, a *running*, or passing *between* persons or places; commerce. See the *Passenger cases*, 7 *Howard's R.* 283—573.

INTERDICT. [Lat. *interdictum*, from *interdicere*, to prohibit, or *inter* (*duos*) *dicere*, to pronounce between two.] In the civil law. A decree of the *prætor*, or form of words by which he commanded something to be done, or prohibited it from being done; (*formæ atque conceptiones verborum, quibus prætor aut jubebat aliquid, aut fieri prohibebat;*) and which was chiefly used where a contention arose between parties concerning possession, or *quasi* possession. *Inst.* 4. 15, pr. *Gaius*, 4. 139. They were of three kinds, prohibitory, (*prohibitoria;*) restoratory, (*restitutoria;*) and exhibitory, (*exhibitoria.*) *Inst.* 4. 15. 1. The first resembled the modern writ of injunction, (3 *Bl. Com.* 442;) and it was supposed, even in Justinian's time, that these alone, from their etymology (*interdicere*, to prohibit,) ought to be called *interdicts*, and that those of the restoratory and exhibitory kind should properly be called *decrees;* but the practice was otherwise, and to reconcile it with the etymology, a new derivation was suggested in the Institutes, viz: that these forms were called *interdicta, quia* inter *duos* dicuntur; (because they were *pronounced between* two contending parties.) *Inst.* 4. 15. 1. And see *Dig.* 43. 1. *Cod.* 8. 1.

An interdict was distinguished from an action, (*actio,*) properly so called, by the circumstance that the prætor himself decided, in the first instance, (*principaliter,*) on the application of the plaintiff, without previously appointing a *judex*, by issuing a decree commanding what should be done, or left undone. *Gaius*, 4. 139. It might be adopted as a remedy in various cases where a regular action could not be maintained, and hence interdicts were at one time more extensively used by the prætor than the *actiones* themselves; afterwards, however, they fell into disuse, and in the time of Justinian were generally dispensed with. 1 *Mackeld. Civ. Law*, 211, § 209. *Inst.* 4. 15. 8.

INTERDICT, *Interdiction.* [Lat. *interdictio;* from *interdicere*, to forbid.] In canon law. An ecclesiastical censure, prohibiting the administration of divine ordinances, or the performance of religious services. *Termes de la Ley. Cowell. Stat.* 22 *Hen.* VIII. c. 12.

INTERDICT. In Scotch practice. An injunction. *Bell's Dict.* 7 *Bell's Appeal Cases*, 272.

INTERDICTUM. Lat. In the civil law. An interdict; a species of action. *Dig.* 44. 7. 37, pr. See *Interdict.*

INTERDICTUM SALVIANUM. Lat. In the civil law. The Salvian interdict. A process which lay for the owner of a farm, to obtain possession of the goods of his tenant who had pledged them to him for the rent of the land. *Inst.* 4. 15. 3. *Dig.* 43. 33.

INTERESSE. Lat. In old English law. The interest of money, as distinguished from the principal, (*sors.*) *Super trecentis marcis de sorte, et centum marcis de* interesse; for three hundred marks of principal, and one hundred marks of interest. 40 *Hen.* III. 2 *Prynne's Collect.* 360. *Cowell.*

An interest in lands. *Bract.* fol. 18 b. According to Lord Coke, this word, *ex vi termini*, in legal understanding extends to estates, rights and titles that a man has of, in, to, or out of lands, for he is truly said to have an *interest* in them; and by the grant of *totum* interesse *suum*, [all his interest] in such lands, as well reversions as possessions in fee simple, shall pass. *Co. Litt.* 345 b.

An interest in a term for years. See *Interesse termini.*

An interest in a suit. *Allegandum est* interesse *tuum;* you must set forth your interest. *Clerke's Prax. Cur. Adm.* titt. 34, 35.

INTERESSE TERMINI. L. Lat. An interest in a term, (literally, an interest *of* a term;) a right to the possession of a term at a future time, as distinguished from a term in possession;* a future term. *Co. Litt.* 345 b. An expression used to denote the particular interest of a lessee for a term of years, before actual entry on the land demised. *Id.* 270 a. The bare lease does not vest any estate in the lessee, but only gives him a right of entry, which is called his *interest* in the *term*, or *interesse termini.* When he has actually entered, and not before, the estate is completely vested in him. 2 *Bl. Com.* 144, 314. 1 *Steph. Com.* 268, 476. An *interesse termini* is a right or interest only, and not an estate. 4 *Kent's Com.* 97, and note. It is, however, so far in the nature of an estate, that even before entry the lessee may grant it over to another. 1 *Steph. Com.* 268. *Burton's Real Prop.* 18, pl. 61. *Shep. Touch.* 242. 2 *Crabb's Real Prop.* 227, § 1269. And see, as to the rule in American law, 1 *Hilliard's Real Prop.* 200.

INTEREST. [L. Lat. *interesse.*] The most general term that can be employed to denote a property in lands or chattels. In its application to lands or things real, it is frequently used in connection with the terms *estate*, *right* and *title*, and, according to Lord Coke, it properly includes them all. *Co. Litt.* 345 b. See *Interesse.* It is made the synonyme sometimes of *estate*, and sometimes of *right*, though with less accuracy as to the former term; for though every estate is an interest, every interest is not an estate, as in the case of an *interesse termini*, (q. v.) *Estate*, however, is the term most commonly used in dispositions of property, as wills, &c. being regarded as the most comprehensive word of conveyance. See *Estate.*

INTEREST. Concern, share; advantage, benefit or profit; participation in benefit. See this sense of the word considered by Shaw, C. J. 11 *Metcalf's R.* 390.

INTEREST. [L. Lat. *interesse;* Lat. *accessio, usura, fœnus.*] A sum of money, or other certain profit, paid or allowed by way of compensation for the loan or use of another sum, and as an increase or addition (*accessio*) to it. Called, when unlawful in its amount, usury. 2 *Bl. Com.* 454. 2 *Steph. Com.* 137. See 2 *Kent's Com.* 460, 461, and notes. 1 *N. Y. Rev. St.* [771,] 760. 3 *Comstock's R.* 355. 4 *Id.* 477. *United States Digest*, Interest.

Interest is an incident which the law gives the creditor, upon failure of the debtor to pay the principal. 24 *Mississippi R.* 369. "When the principal sum is ascertained to be due at a particular period, and remains unpaid, without a sufficient excuse for its non-payment, the interest follows as an incident." Chilton, C. J. 22 *Alabama R.* 360.

INTEREST. In the law of evidence. The concern, benefit or advantage which a witness, called to testify in a cause, has in its result; the fact that he will gain or lose by the event of the trial.* The interest to disqualify a witness must be some legal, certain and immediate interest, however minute, in the result of the cause, or in the record, as an instrument of evidence, acquired without fraud. 2 *Stark. Evid.* (part 4,) 744.

INTEREST. Lat. It concerns; it is for the advantage or benefit. *Interest reipublicæ;* it concerns the state or commonwealth; it is for the benefit or welfare of the community; it is for the common good. See *Expedit.*

Interest (imprimis) reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur provide declinentur. It especially concerns the state that peace be preserved in the kingdom, and that whatever things are against peace be prudently avoided. 2 *Inst.* 158.

Interest reipublicæ ne maleficia remaneant impunita. It concerns the state that crimes remain not unpunished. *Jenkins' Cent.* 30, 31, case 59. *Wingate's Max.* 501.

Interest reipublicæ quod homines conserventur. It concerns the state that [the lives of] men be preserved. 12 *Co.* 62, *Mouse's case.*

Interest reipublicæ res judicatas non rescindi. It concerns the state that things adjudicated be not rescinded. 2 *Inst.* 360. It is a matter of public concern that solemn adjudications of the courts should not be disturbed. See *Best on Evid.* 41, 44.

Interest reipublicæ suprema hominum testamenta rata haberi. It concerns the state that men's last wills be held valid, [or allowed to stand.] *Co. Litt.* 236 b.

Interest reipublicæ ut carceres sint in tuto. It concerns the state that prisons be safe places of confinement. 2 *Inst.* 589. 3 *P. Wms.* 484.

Interest reipublicæ ne sua quis male utatur. It concerns the state that persons do not misuse their property. 6 *Co.* 36 a, *The Dean and Chapter of Worcester's case.* "It is unreasonable that a lessee should, at his pleasure, commit waste and destruction, which is against the commonwealth." *Id. ibid.*

Interest reipublicæ ut sit finis litium. It concerns the state that there be an end of lawsuits. *Co. Litt.* 303. It is for the general welfare that a period be put to litigation. A maxim constantly quoted, and with a great variety of application; as to express the policy of acts of limitation, the duty of courts to apply legal remedies efficiently, the importance of finality in judicial decisions, the doctrine of estoppel, &c. 3 *Bl. Com.* 308. *Broom's Max.* [244, 254.] 2 *Smith's Lead. Cas.* 238, note. *Best on Evid.* 36, § 41. "An old maxim, deeply fixed in the fundamentals of the common law." Story, J. 1 *Sumner's R.* 482, 492.

INTEREST OR NO INTEREST. A term applied to a species of marine insurance, otherwise called *wagering*, where the insured had in fact no property on board. This was prohibited in England by statute 19 Geo. II. c. 37. 2 *Bl. Com.* 460. 2 *Steph. Com.* 182. See *Wager policy.*

INTERFECTIO. Lat. [from *interficere*, to kill.] In old English law. A killing. *Felonica interfectio;* a felonious killing. *Comb.* 39.

INTERLAQUEARE. L. Lat. In old practice. To link together, or interchangeably. Writs were called *interlaqueata*, where several were issued against several parties (as warrantors) residing in different counties, each party being summoned by a separate writ to warrant the tenant, together with (*simul cum*) the other warrantors. *Fleta*, lib. 5, c. 4, § 2. They were, in other words, *simul cum* writs.

INTERLESSE. L. Fr. Interlined. *Kelham.*

INTERLINEATION. [from Lat. *inter*, between, and *linea*, a line.] In conveyancing. A writing between lines. Addition to a written instrument, by inserting one or more words between the lines.

INTERLOCUTIO. L. Lat. Imparlance. See *Imparlance.*

INTERLOCUTOR. In Scotch practice. An order or decree of court; an order made in open court. 2 *Swinton's R.* 362. *Arkley's R.* 32.

INTERLOCUTOR OF RELEVANCY. In Scotch practice. A decree as to the relevancy of a libel or indictment in a criminal case. 2 *Alis. Crim. Pr.* 373.

INTERLOCUTORY. [L. Lat. *interlocutorius*, from *interloqui*, to speak between, to determine intermediately.] In practice. Intermediate; something done or determined *between* the commencement and termination of an action. See *infra.*

INTERLOCUTORY COSTS. In practice. Costs accruing upon proceedings in the intermediate stages of a cause, as distinguished from final costs; such as the costs of motions. 3 *Chitt. Gen. Pr.* 597.

INTERLOCUTORY DECREE. In equity practice. A preliminary or intermediate decree; a decree which does not determine the suit, but directs some further proceedings before a final decree can be had.* 3 *Bl. Com.* 452. A decree pronounced for the purpose of ascertaining matter of law or fact preparatory to a final decree. 1 *Barbour's Ch. Pr.* 326, 327.

INTERLOCUTORY JUDGMENT. In practice. A preliminary or intermediate judgment.* A judgment given in the course of an action, upon some plea, proceeding or default, which is only *intermediate*, and does not finally determine or complete the suit; such as a judgment for the plaintiff on a plea in abatement, in which it is considered by the court that the defendant do answer over, (*respondeat ouster*,) that is, put in a more substantial plea. But the interlocutory judgments most usually spoken of are those incomplete judgments, whereby the *right* of the plaintiff is established, but the *quantum* of damages sustained by him is not ascertained; which is the character of most judgments rendered on default.* 3 *Bl. Com.* 396, 397. 1 *Tidd's Pract.* 568.

INTERLOCUTORY ORDER. In practice. An order made during the progress

of a suit, upon some incidental matter which arises out of the proceedings.* *Termes de la Ley.*

INTERLOCUTORY SENTENCE. In the civil law. A sentence upon some indirect question arising from the principal cause. *Hallifax, Anal.* b. 3, ch. 9, num. 40.

INTERLOQUELA. L. Lat. Imparlance. See *Imparlance.*

INTERLOQUITOR. In old Scotch practice. An interlocutory decree or decision. 3 *State Trials*, 689. See *Interlocutor of relevancy.*

INTERNATIONAL LAW. [Lat. *jus inter gentes.*] The law which regulates the intercourse of nations; the law of nations. 1 *Kent's Com.* 1, 4. The customary law which determines the rights and regulates the intercourse of independent states in peace and war. 1 *Wildman's Intern. Law*, 1.

A distinction has been made by some writers between *international law* and the *law of nations.* See *Wheaton's Elem. Intern. Law*, 19, note (*a.*) It is remarked by Chancellor Kent, that international law seems to relate more particularly to rights and duties arising from social, commercial and pacific intercourse between different nations, and may be subdivided into public and private international law. 1 *Kent's Com.* 51, note. Other writers advocate the use of the term, in place of that of the *law of nations*, as more appropriate and expressive. See *Wheat. El. Int. Law, ubi supra.*

INTERNUNCIUS. Lat. [from *inter*, between, and *nuncius*, a messenger.] A messenger between two parties; a go-between. Applied to a broker, as the agent of both parties. 4 *Rob. Adm. R.* 204.

INTERPLACITARE. L. Lat. [from *inter*, between, and *placitare*, to plead or litigate.] To inquire into a point arising incidentally or collaterally in a cause, before determining the principal matter; to interplead. *Spelman.*

INTERPLEAD, *Interplede, Enterplede.* [from Fr. *entreplaider*, from *entre*, between, and *pleder*, to litigate; L. Lat. *interplacitare.*] In ancient practice. To discuss or try a point incidentally arising, before the principal cause can be determined, by making the parties concerned litigate it between them. *Blount. Bro. Abr.* Enterpleder.

In modern practice. To settle a question of right to certain property or money adversely claimed, by the litigation of the claimants, for the benefit or security of a third person who holds the property or money claimed, but is in doubt to which party he shall pay or deliver it.* See *infra.*

INTERPLEADER. In practice. A mode of obtaining the settlement of a question of right to certain property or money adversely claimed, by compelling the parties claiming it to *interplead*, that is, to *litigate* the title *between themselves*, for the benefit and relief of a third person of whom they claim. Thus, where an article of property, sum of money or fund in the hands of a person having himself no interest in or claim to it, is claimed adversely by two or more parties, and such person is in doubt to which of them he shall pay or deliver it, he may relieve himself from liability or litigation by compelling the claimants to *interplead*, that is, to litigate the title between themselves, instead of litigating it with him. This is usually done in equity by filing what is called a *bill of interpleader.* See 2 *Story's Equity Jur.* §§ 805, 806. 3 *Bl. Com.* 448. 2 *Kent's Com.* 568. *Story on Bailm.* §§ 110—112. 3 *Daniell's Ch. Pr.* (Perkins' ed.) 1753, *et seq.*

In England, by the Interpleader Act, 1 & 2 Will. IV. c. 58, summary proceedings at *law* are provided for the same purpose, in actions of assumpsit, debt, detinue and trover. 3 *Steph. Com.* 704, 705.

Interpretari et concordare leges legibus est optimus interpretandi modus. To interpret, and [in such a way as] to harmonize laws with laws, is the best mode of interpretation. 8 *Co.* 169 a, *Paris Stoughter's case.*

Interpretatio fienda est ut res valeat. Interpretation is to be [so] made that the subject of it may have effect. *Jenk. Cent.* 198, case 12.

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum. In cases of ambiguity, such an interpretation should always be made, that what is inconvenient and absurd may be avoided. 4 *Inst.* 328.

INTERPRETATION. [Lat. *interpretatio*, from *interpretari*, to interpret; *interpres*, an interpreter. See *Lieber's Hermeneutics*, (1839,) 20, note.] Explanation or exposition of meaning. The explanation or authoritative declaration of the meaning of an instrument, or of some clause or word in it. Sometimes held to be the same with *construction*, and used indifferently with that word; but sometimes distinguished

from it. See *Construction.* As to the interpretation of statutes, see *Sedgwick on Stat. & Const. Law*, chap. 6. 1 *Kent's Com.* 460. As to the interpretation of treaties, see *Id.* 174. *Sedgwick*, chap. 9. As to the interpretation of the constitution of the United States, see 1 *Kent's Com.* 243.

INTERROGARE. Lat. In the civil law. To propose a law; to request the passage of it; to move its adoption. *Lex est quod populus Romanus, senatorio magistratu* interrogante, (*veluti consule,*) *constituebat;* a law (that is, *lex,* in the proper sense,) is that which the Roman people, on the proposition or motion of a senatorial magistrate, (such as a consul,) enacted. *Inst.* 1. 2. 4. *Rogare* (q. v.) was more commonly used in the same sense.

In old English practice. To call or demand a party. *Quod faciat eum* interrogari *de comitatu in comitatum;* that he cause him to be demanded from county court to county court. *Bract.* fol. 149.

INTERROGATORY. [L. Lat. *interrogatorium*, from *interrogare*, to ask.] In practice. A question in writing. Interrogatories are sets of questions in writing drawn up according to a certain form, and proposed or intended to be proposed to witnesses in a cause, and sometimes to other parties. Where witnesses in a cause are examined out of court, as under a commission issued for the purpose, it is done by means of written *interrogatories* and *cross-interrogatories*, previously prepared and settled between the parties, according to the practice of the court, and annexed to the commission. 2 *Tidd's Pr.* 810—812. 3 *Chitt. Gen. Pr.* 816. 1 *Burr. Pr.* 444.

The ordinary mode of examining witnesses in courts of equity, and other courts proceeding according to the course of the civil law, is upon *interrogatories* and *cross-interrogatories.* 2 *Daniell's Ch. Pr.* (Perkins' ed.) 1045, *et seq.* 4 *Steph. Com.* 25. And interrogatories are also used in proceedings upon attachments for contempts. 1 *Tidd's Pr.* 481.

INTERRUPTIO. Lat. [from *interrumpere*, to break through or apart.] Interruption. A term used both in the civil and common law of prescription. *Calv. Lex.* **Interruptio multiplex non tollit prescriptionem semel obtentam.** Manifold or repeated interruption does not take away or defeat a prescription once obtained. 2 *Inst.* 654.

INTERRUPTION. [Lat. *interruptio*, q. v.] In Scotch law. The breaking through of that possession on which a prescriptive title rests. *Bell's Dict.* A claim of right made by the true proprietor, during the course of prescription. *Whishaw.* The term is also used in the modern English law of prescription. 1 *Crabb's Real Prop.* 348, § 394.

INTERTIARE, *Interciare.* L. Lat. [from Fr. *entiercer.*] In old European law. To put into a third hand, (*in manum tertiam ponere;*) to deliver to a third person, (*tertio tradere;*) to call upon or vouch a third person, (*tertium advocare;*) to sequester. *L. Salic.* tit. 49. *Spelman.*

In Saxon law. To call or vouch to warranty, (*ad warrantum provocare.*) *LL. Edw. Conf.* c. 25. *Spelman.*

INTERVALLUM. Lat. In old English law. An interval of time or place. *Nisi lucidis gaudeat* intervallis; unless he enjoy lucid intervals. *Bract.* fol. 12. *Dum tamen dilucidis gauderet* intervallis; provided he enjoy lucid intervals. *Id.* fol. 43. See *Id.* fol. 420 b. *Fleta*, lib. 6, c. 40, § 1. *Ex intervallo;* after an interval. *Id.* lib. 2, c. 60, § 2.

INTERVENIRE. Lat. [from *inter*, between, and *venire*, to come.] In the civil law. To intervene or come between; to substitute one's self for another; to assume the obligation of another; to assume the prosecution or defence of another's cause; to intercede or supplicate. *Calv. Lex.*

INTERVENTION. [Lat. *interventio*, from *intervenire*, q. v.] In the civil law. A coming between parties. The act by which a person, not originally a party to a suit or proceeding, but claiming an interest in the subject matter in dispute, interposes his claim, or *comes in between* the parties, and thus makes himself a third party to the proceeding. See 2 *Chitt. Gen. Pr.* 492. Intervention is unknown in the English courts of law and equity, but is admitted in the practice of the ecclesiastical courts. *Id. ibid.*

INTESTABILIS. Lat. [from *in*, priv. and *testari*, to testify.] In the civil law. That cannot testify; one whose testimony cannot be received; an incompetent or disqualified witness. *Calv. Lex.*

INTESTABLE. [Lat. *intestabilis.*] Incompetent to make a will. 2 *Steph. Com.* 234. But *intestabilis* (q. v.) properly had another signification.

INTESTACY. The state of an intestate; the condition of a party who dies without

having made a will. 2 *Kent's Com.* 408. See *Intestate.*

INTESTATE. [Lat. *intestato, intestatus*, qq. v.] Without a will; a person who dies without making a will; or without making a valid will. 2 *Bl. Com.* 494. 2 *Kent's Com.* 408, 409. The opposite of *testator*, (q. v.) One who makes a will and appoints executors, who refuse to act, is said in the books to die *quasi intestate.* 2 *Inst.* 397. *Cowell. Lovelass on Wills*, 1. This is borrowed from the civil law. See *Intestatus.*

INTESTATO. Lat. In the civil law. Intestate; without a will. *Dig.* 50. 17. 7. *Calv. Lex.*

INTESTATUS. Lat. [from *in*, priv. and *testare*, to make a will.] In the civil and old English law. An intestate; one who dies without a will. *Dig.* 50. 17. 7. *Fleta*, lib. 2, c. 57, § 10. Intestatus *decedit, qui aut omnino testamentum non fecit, aut non jure fecit, aut id quod fecerat ruptum irritumve factum est, aut nemo ex eo hæres extitit;* a man dies intestate who either has not made any will at all, or has not made it in due form of law; or if the will which he has made is cancelled or broken; or if no one will become heir under it. *Inst.* 3. 1, pr. *Dig.* 38. 16. 1. *Id.* 50. 16. 64. See *Ab intestato.*

INTIMATION. In Scotch law. Notice; judicial notice of any proceeding.

Notice of an assignation (assignment) given to a debtor, made either by a notarial instrument, or by a private acknowledgment endorsed by the debtor on the assignation. *Bell's Dict. Kames' Equity*, b. 1, part 2, sect. 3.

INTITLE. An old form of *Entitle.* 6 *Mod.* 304.

INTOL AND UTTOL. In old records. Toll or custom paid for things imported and exported, or bought in and sold out. *Cowell.*

INTRA. Lat. Within. *Si quis sic dixerit, ut* intra *diem mortis ejus aliquid fiat; ipse quoque dies, quo quis mortuus est numeratur;* if one should use this expression, that something should be done *within* the day of his death, the day on which he died shall be included in the computation. *Dig.* 50. 16. 133. See *Infra.*

In; by; near. *Calv. Lex.*

INTRA ANNI SPATIUM. Lat. Within the space of a year. *Cod.* 5. 9. 2. *Intra annale tempus. Id.* 6. 30. 19.

INTRA FIDEM. Lat. Within belief; credible. *Calv. Lex.*

INTRA LUCTUS TEMPUS. Lat. Within the time of mourning. *Cod.* 9. 1, auth.

INTRA MÆNIA. Lat. Within the walls, (of a house.) A term applied to domestic, or *menial* servants. 1 *Bl. Com.* 425.

INTRA PARIETES. Lat. Between walls; among friends; out of court; without litigation. *Calv. Lex.*

INTRA PRÆSIDIA. Lat. Within the defences. *Dig.* 49. 15. 5. 1. See *Infra præsidia.*

INTRA QUATUOR MARIA. Lat. Within the four seas. *Shep. Touch.* 378.

INTRARE. L. Lat. In old English practice. To enter.

In old records. To take in land; to drain marshy land, and reduce it to herbage or pasture ground; to *inn* it. *Cowell.*

INTRATIO. L. Lat. [from *intrare*, to enter.] In old practice. An entry.

INTRINSECUS, *Intrinsecum.* Lat. [from *intra*, within.] That which is within; intrinsic; done or taken within. The opposite of *forinsecus*, (q. v.) Applied, in old English law, to that kind of service which was expressed in the charter and instrument, and remained to the chief lord. *Bract.* fol. 35 b.

INTROMISSION. [Lat. *intromissio*, from *intromittere*, q. v.] In Scotch law. The assuming possession of property belonging to another, either on legal grounds, or without any authority; intermeddling. The irregular intermeddling with the effects of a deceased person, which subjects the party to the whole debts of the deceased, is called *vitious intromission. Kames' Equity*, b. 3, c. 8, sect. 2.

INTROMITTERE. Lat. [from *intra*, within, and *mittere*, to send.] To introduce or let in. *Intromittere se;* to introduce or intrude one's self; to intermeddle with. *De causa testamentaria curia regis se non* intromittit; with a testamentary cause the king's court does not intermeddle. *Bract.* fol. 61.

INTRUSION. [Lat. *intrusio*, q. v.] In English law. The entry of a stranger, after a particular estate of freehold is determined, before him in remainder or reversion. A species of injury by ouster or amotion of possession of the freehold, which happens where a tenant for term of life dies seised of certain lands and tenements,

and a stranger enters thereon after such death of the tenant, and before any entry of him in remainder or reversion. *Co. Litt.* 277. *F. N. B.* 203, 204. 3 *Bl. Com.* 169. 3 *Steph. Com.* 483. Such stranger is termed, in the technical sense of the word, an *intruder*. *Id. ibid.* See *Intrusio.*

INTRUSIO. Lat. [from *intrudere*, to intrude or thrust in.] Intrusion. Intrusio *est ubi quis* (*cui nullum jus competit in re, nec scintilla juris,*) *possessionem vacuam ingreditur*, &c.; Intrusion is where one who has no right nor spark of right in the thing, enters upon a vacant possession, as on an estate in abeyance (*hæreditatem jacentem,*) before entry by the heir, or by the chief lord, &c.; or if after the death of one who held for life, where the tenement ought to return to the owner, a person puts himself into seisin, before the tenement can come to him to whom it ought to come. *Bract.* fol. 160.

INTUITUS. Lat. [from *intueri*, to look upon or view.] A view; regard; contemplation. *Diverso intuitu*, (q. v.;) with a different view.

View or sight. *Intuitu Dei;* in the sight of God. *Mag. Chart.* pr.

INURE. More commonly written *enure*, (q. v.)

INUTILIS. Lat. [from *in*, priv. and *utilis*, useful, effectual.] Useless; without force or effect. *Inutilis stipulatio;* an ineffectual or void stipulation. *Inst.* 3. 20. 1, 5, 6. See *Utilis.*

Inutilis labor, et sine fructu non est effectus legis. Useless and fruitless labor is not the effect of law. *Co. Litt.* 127 b. The law forbids such recoveries whose ends are vain, chargeable and unprofitable. *Id. ibid. Wingate's Max.* 110, max. 38. See **Lex neminem cogit**, &c.

INVADIARE, *Inwadiare.* L. Lat. [from *in*, and *vadiare*, to pledge.] In feudal and old European law. To pledge; to engage or pledge lands; to mortgage. *Habenda sibi et hæredibus et cuicunque dare, vendere*, invadiare, *assignare, &c. voluerint;* to have to him and his heirs, and to whomsoever they may choose to give, sell, mortgage or assign, &c. *Kennett's Paroch. Ant.* 262. *Cowell. Spelman.* See *Vadiare.*

INVADIATIO. L. Lat. [from *invadiare*, q. v.] A pledge or mortgage. *Confirmamus eis omnes alias donationes, venditiones et* invadiationes, *eis rationabiliter factas;* we confirm to them all other gifts, sales and mortgages, reasonably made to them. 1 *Mon. Angl.* 478. *Cowell. Blount.*

INVADIATUS. L. Lat. [from *invadiare*, q. v.] One who is under pledge; one who has had sureties or pledges given for him. *Spelman*, voc. *Invadiare.*

A person acquitted, (*absolutus.*) *Id. Ingulfus*, cited *ibid.*

INVALID. [Lat. *invalidus*, from *in*, priv. and *validus*, strong.] Not valid; without force or legal efficacy; void.

INVECTA ET ILLATA. Lat. In the civil law. Things carried in and brought in. Articles brought into a hired tenement by the hirer or tenant, and which became or were pledged to the lessor as security for the rent. *Dig.* 2. 14. 4, pr. *Id.* 20. 1. 32. *Id.* 20. 2. 2, *et seq.* The phrase is adopted in Scotch law. See *Bell's Dict.*

INVENIENDO. L. Lat. In old conveyancing. Finding. One of the words by which a rent might formerly be reserved. *Co. Litt.* 47 a.

INVENIRE. Lat. To find. *Inveniens;* finding. *Inventus;* found. *Inveniens libellum famosum et non corrumpens punitur;* he who finds a libel, and does not destroy it, is punished. *Moor*, 813. An old rule derived from the civil law.

INVENTARIUM. Lat. [from *invenire*, to find.] In the civil law. A formal enumeration and setting down in writing of the property *found* to belong to an inheritance; (*legitima bonorum in hæreditate* repertorum *annotatio et in scripturam reductio.*) *Calv. Lex. Cod.* 6. 30. 22. 1—4. *Dig.* 26. 7. 7, pr.

This word is retained in the Greek of the Novels, no equivalent Greek word being used. *Nov.* 1, c. 2, § 1.

INVENT. [Lat. *invenire.*] To find out. To contrive and produce something that did not exist before.

INVENTIO. L. Lat. [from *invenire*, to find.] In the civil law. Finding; one of the modes of acquiring title to property by occupancy. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 350. Sometimes Englished *invention.*

In old English law. A thing found; as goods, or treasure trove. *Cowell.* The plural *inventiones* is also used. *Id.*

INVENTION. [Lat. *inventio*, from *invenire*, to find out.] A finding out. The act or operation of finding out something new; the contrivance of something which did not before exist.* *Webster.* See *Act*

of Congress, July 4, 1836. 2 *Kent's Com.* 366, *et seq.*

INVENTORY. [Lat. *inventarium, inventorium.*] A list of goods found, (*inventa.*) A list or schedule in writing, of the goods, chattels and credits [and sometimes of the real estate] of a testator or intestate, made by an executor or administrator.* *Cowell.* 2 *Williams on Exec.* 834, 841. 2 *Kent's Com.* 414. A term derived from the *inventarium* (q. v.) of the civil law.

INVENTUS. Lat. [from *invenire*, q. v.] In old English law. Found. *Thesaurus inventus;* treasure trove. *Non est inventus;* [he] is not found.

INVEST. [L. Lat. *investire*, from *in*, and *vestire*, to clothe; Fr. *invester.*] To give possession; to put into possession; to put one in possession of a fee, estate, or office newly acquired. *Spelman*, voc. *Investire. Cowell.* To clothe with possession; to clothe possession with the solemnities of law. A term derived from the feudal law. See *Investiture.*

INVEST. [See *supra.*] To lay out money or capital in some permanent form so as to produce an income; to *clothe* it in something. Properly applied to capital not actively employed. Thompson, C. J. 15 *Johns. R.* 358, 384.

INVESTITURE. [L. Lat. *investitura.*] In feudal law. The delivery of actual corporeal possession of lands or tenements given or granted to another, with certain ceremonies or solemnities; which was held absolutely necessary to complete the donation.* 2 *Bl. Com.* 311. *Id.* 53. The same with livery of seisin in the ancient English law. *Id. ibid. Feudum sine* investitura *nullo modo constitui potuit;* a fee could in no way be created without investiture. *Wright on Tenures*, 37.

Investiture is a metaphorical term, which, as Lord Mansfield observes, "the feudists took from clothing, [*vestimentum;*] by which they meant to intimate that the *naked* possession was *clothed* with the solemnities of the feudal tenure." 1 *Burr.* 60. Bracton says of naked possession, (*nuda possessio,*) that it is so called because it is not protected by any clothing, (*eo quod non vallatur aliquo vestimento.*) *Bract.* fol. 159 b, 160.

INVITO DOMINO. Lat. Against the will of the owner. *Fleta*, lib. 1, c. 38, § 1.

Invito beneficium non datur. A benefit is not conferred on an unwilling party. *Dig.* 50. 17. 69. No one is obliged to accept a benefit against his will.

INVITUS. Lat. Unwilling; against the will or inclination; without the consent; by or under coercion or compulsion. *In invitum*, (q. v.;) against an unwilling or resisting party.

INVOICE. [from Fr. *envoyer*, to send.] A list or account of goods or merchandise sent or shipped by a merchant to his correspondent, factor or consignee, containing the particular marks of each description of goods, the value, charges and other particulars. *Jacobsen's Sea Laws*, 302.—A writing made on behalf of an importer, specifying the merchandise imported, and its true cost or value. *Andrews on Rev. Laws*, § 294.

INWADIARE. L. Lat. In old European law. To pledge. *LL. Longob.* lib. 1, tit. 14, l. 10. See *Invadiare.*

I. O. U. I owe you. A simple form of acknowledging a debt in writing, in use among merchants, but more common in England than in the United States. "[Date.] I. O. U. 20*l.* A. B." It is regarded in law as a mere memorandum or evidence of debt, not amounting to a promissory note. *Chitty on Bills*, 526.

IPSE. Lat. He himself; he alone; the very man. *Ipsi, ipsæ;* they themselves.

Ipsæ [etenim] leges cupiunt ut jure regantur. [For] the laws themselves desire to be governed by right. A hexameter line quoted by Lord Coke from Cato, and repeatedly used as a maxim. 2 *Co.* 25 b, *The case of Bankrupts.* 3 *Co.* 32 b, *Butler and Baker's case.* 5 *Co.* 100 a, *Rooke's case.* 8 *Co.* 152 a, *Altham's case. Co. Litt.* 174 b.

IPSISSIMIS VERBIS. Lat. In the very same words; in the exact words. 7 *Howard's R.* 719. Applied to the statement of the language of a deceased witness. See 5 *Ohio St. R.* 325.

IPSO FACTO. L. Lat. By the act or fact itself; by the very act; by the mere effect of the act or fact, without any other act or proceeding. "Insanity does not work a dissolution of partnership, *ipso facto.*" 3 *Kent's Com.* 58. That is, it does not of itself work a dissolution, but is only a ground for proceedings to obtain a dissolution. *Id. ibid.* See 2 *Bl. Com.* 137. 3 *Id.* 19. *Cro. Eliz.* 679.

IPSO JURE. Lat. By the law itself; by the mere operation of law. *Bacon's Works*, iv. 330. *Calv. Lex.*

IRA MOTUS. Lat. Moved or excited by anger or passion. A term sometimes formerly used in the plea of *son assault demesne.* 1 *Tidd's Pr.* 645.

IRE. Lat. In old English law and practice. To go; to be dismissed from court, or discharged from legal restraint. *Ire ad largum;* to go at large. *Plowd.* 37. See *Eat inde sine die, Ibimus.*

IRENARCHA. Græco-Lat. [from Gr. ειρηνη, peace, and αρχη, government.] In the Roman law. An officer whose duties are described in *Dig.* 5. 4. 18. 7. See *Id.* 48. 3. 6. *Cod.* 10. 75. Literally, a peace officer or magistrate.

IRREGULAR. [L. Lat. *irregularis*, from *in*, priv. and *regula*, a rule.] Out of rule; not according to rule. See *Irregularity.*

IRREGULARITAS. L. Lat. In old English law. Irregularity. *Ne committat irregularitatem;* lest he be guilty of irregularity. *Bract.* fol. 407.

IRREGULARITY. [L. Lat. *irregularitas*, from *irregularis.*] In practice. Departure from rule (*regula;*) non-observance of rule.* The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time, or improper manner. 1 *Tidd's Pr.* 512. Irregularity is the technical term for every defect in *practical proceedings*, or the mode of conducting an action or defence, as distinguishable from defects in *pleadings.* 3 *Chitt. Gen. Pr.* 509. It is a comprehensive term, including all formal objections to practical proceedings. *Id. ibid.*

IRREIS, *Irrys, Irrois.* L. Fr. Irish. *Kelham.*

IRRELEVANT. In the law of evidence. Not relevant; not relating or applicable to the matter in issue; not supporting the issue.

IRREPLEGIABILIS. L. Lat. [from *in*, priv. and *replegiabilis*, repleviable, bailable.] In old English law. Not bailable. *Et sit hujusmodi incarceratus* irreplegiabilis; and one so imprisoned shall not be bailable. *Stat. Westm.* 2, c. 11.

Irrepleviable. See *Irrepleviable.*

IRREPLEVIABLE, *Irreplevisable.* [L. Lat. *irreplegiabilis.*] That may not, or ought not by law to be replevied, delivered or set at large upon sureties. *Stat.* 13 *Edw.* I. c. 2. Applied originally to persons as well as property, though in modern law exclusively to the latter.

IRRER. L. Fr. To journey; to perform an *iter* or eyre. *Kelham.*

IRRESISTIBLE FORCE. In the law of bailment. Such an interposition of human agency, as is, from its nature and power, absolutely uncontrollable; such as the inroad of a hostile army, robbery by force, &c. *Story on Bailm.* §§ 25, 26. See *Vis major.*

IRRETITUS. L. Lat. In old European law. Summoned to court to do justice, or to answer an accusation, (*ad rectum vocatus.*) *Spelman.* Arrected or arretted; quasi *inrectatus. Id.* See *Arrected.*

IRRIGATION. [Lat. *irrigatio*, from *irrigare*, to water.] Watering; the act of watering land; the operation of causing water to flow over lands for agricultural purposes. See *Angell on Water-Courses*, § 120, *et seq.*

IRRITANCY. [from Lat. *irritum*, void.] In Scotch law. A becoming void or null; nullity. 1 *Kames' Equity*, 228, 230, 234.

A clause in a conveyance declaring upon what contingencies an estate shall become void. *Id. ibid.*

IRRITANT. In Scotch law. Avoiding, or making void; as an irritant clause. See *Irritancy.*

IRRITUS, *Irritum.* Lat. [from *in*, priv. and *ratus*, valid; Fr. *irrite.*] In the civil law. Void; invalid; of no effect; ineffectual. Applied, in a particular sense, to a will where the testator, after making it in due form, suffered that change of condition called *capitis diminutio*, (*cum is qui fecit testamentum capite diminutus sit,*) which rendered it of no effect; (*hoc casu irrita fieri testamenta dicuntur.*) *Inst.* 2. 17. 4, 5.

In a more general sense, it was applied to wills which were cancelled and to those which were void *ab initio;* (*et quæ rumpuntur irrita fiunt, et ea quæ statim ab initio non jure fiunt, irrita sint.*) *Id.* 2. 17. 5.

IRROGARE. Lat. [from *in*, upon, and *rogare*, to propose a law.] In the civil law. To impose or set upon, as a fine. *Calv. Lex.*

To inflict, as a punishment. *Id.*

To make or ordain, as a law. *Id.*

IRROTULARE. L. Lat. [quasi *inrotulare;* from *in*, in, and *rotulus*, a roll.] In old English law and practice. To enrol; to put on a roll or record. *Et eum hujus-*

modi inquisitiones captæ fuerint, retornentur in bancis, et ibi fiat judicium, et irrotulentur; and when such inquisitions shall be taken, they shall be returned in the benches, (the K. B. and C. B.) and there shall judgment be rendered, and they be enrolled. *Stat. Westm.* 2, c. 30. *Sicut per inspectionem* irrotulamenti *cartæ prædictæ, in* rotulis *cancellariæ nostræ* irrotulatæ, *nobis constat;* as by inspection of the enrolment of the charter aforesaid in the rolls of our chancery enrolled, appears to us. *Reg. Orig.* 221.

IRROTULAMENTUM. L. Lat. [from *irrotulare*, to enrol.] In old English practice. Enrolment; an or the enrolment. *Reg. Orig.* 221.

IRROTULATIO. L. Lat. [from *irrotulare*, q. v.] In old English practice. An enrolment; an entry on record. *Forma* irrotulationis *talis esse debet;* the form of the enrolment ought to be thus. *Bract.* fol. 292. *Et sic tota irrotulanda erit narratio;* and so the whole declaration shall be enrolled. *Id. ibid. Et sic fiat irrotulatio;* and the enrolment shall be made thus. *Id.* fol. 299 b. *Acta sive irrotulationes;* proceedings or records. *Id.* fol. 1 b. *Fleta*, lib. 2, c. 65, § 11.

ISH. [O. Sc. *ische.*] In Scotch law. The period of the termination of a tack or lease. *Bell's Dict.* 1 *Bligh's R.* 522. "At the *ische* of ye quhilk terme." 1 *Pitc. Cr. Trials*, part 2, p. 30.

ΙΣΟΤΥΠΟΝ, Ισότυπον. Gr. In the civil law. A copy, (*exemplar.*) *Nov.* 22, epil.

ISSANT, *Issantz.* L. Fr. [from *isser*, q. v.] Issuing. *Yearb.* T. 10 Edw. III. 11, 18.

ISSER. L. Fr. To go out or forth; to issue. *Ne pusse entrer ne* isser *a sa volunte;* may not go in, or go out at his pleasure. *Britt.* c. 42. *Issist;* [he] went out. *Id.* c. 80. *Istra;* shall go out, shall issue. *Kelham. Fet Assaver*, § 48.

ISSINT. L. Fr. So; thus. *Adonques dirra il* issint; then shall he say thus. *Britt.* c. 22. *Et* issint *poyes veier;* and so you may see. *Litt.* sect. 51, 52, 53, 62. *Et puis dirra le countour* issint: *que la peace est tiel, a vous conge, que William et Alice sa feme*, &c.; and afterwards the counter shall say thus: that the peace is such, with your leave, that William and Alice his wife, &c. *Stat. Mod. Lev. Fines.* This passage is sometimes differently pointed in the original, and quite differently translated. 2 *Inst.* 510.

ISSUABLE. In practice. Leading to, or producing an issue; relating to an issue or issues. See *infra.*

ISSUABLE PLEA. In practice. A plea in chief to the merits, upon which the plaintiff may take issue, and go to trial. 1 *Tidd's Pr.* 471. 1 *Burr. Pr.* 175. A demurrable plea is not issuable. 6 *Man. & Gr.* 752. Nor is a plea in abatement. 1 *Burr.* 59. 3 *Johns. R.* 259.

ISSUABLE TERMS. In English practice. Hilary and Trinity terms are so called, because in them issues are made up for the assizes, and after them, the judges usually go their circuits for the trial of such issues. 3 *Bl. Com.* 353. 1 *Tidd's Pr.* 106.

ISSUABLY. In practice. In an issuable manner. The defendant is sometimes put upon terms of pleading *issuably.* 1 *Tidd's Pr.* 471. See *Issuable plea.*

ISSUE. Fr. and Eng. [from Fr. *isser*, to go out; to proceed or arise from; L. Lat. *exitus.*] Offspring; including not only children, but all lineal descendants. See *infra.*

The point of fact or law growing out of, or resulting from the pleadings in an action. See *infra.*

"ISSUE," in a will, is a word of very extensive import, embracing descendants of every degree, whensoever existent. 2 *Jarman on Wills*, 328, (239, Perkins' ed.) In other words, it may be taken to include all generations of descendants however remote. 1 *Spence's Chancery*, 543. It has been called by Lord Hale, *nomen collectivum*, and by Lord Kenyon, *genus generalissimum.* 1 *Ventr.* 231. 4 *Term R.* 299. 3 *Id.* 373. In a deed, *issue* is taken universally as a word of purchase; in a will, it is taken as a word of limitation or of purchase as will best effectuate the devisor's intention, but if not controlled by the context, it is, it seems, a word of limitation. 1 *Spence's Chancery*, 543. See *Jarman on Wills*, chap. 40, where the subject is considered at length.

The word *issue*, in a will, is, however, sometimes understood in the restricted sense of "children." 2 *Jarman on Wills*, 36, (27, Perkins' ed.) And see 1 *White's Eq. Cases*, [27.] 4 *Kent's Com.* 418, 419. 15 *Mees. & W.* 263. 3 *A. K. Marshall's* (Ky.) *R.* [289,] 1140. 28 *Eng. Law & Eq. R.* 375. 35 *Id.* 564.

ISSUE. [L. Fr. *issue, issu;* L. Lat. *exitus.*] In pleading. A single, certain and material point *issuing out* of the allega-

tions or pleas [pleadings] of the plaintiff and defendant, [in an action at law,] consisting regularly of an affirmative [on one side] and a negative [on the other; and presenting for decision, in a brief and convenient form, the essence of the whole matter in controversy between the two parties.]* *Co. Litt.* 126 a. The production of an *issue* is the object as well as the end and effect of the system or process of pleading; and when, by means of this process, the parties have arrived at a specific point affirmed on the one side and denied on the other, they are said to be *at issue*, (*ad exitum*, that is, *at the end* of their pleading;) and the emergent question itself is termed *the issue;* being designated, according to its nature, as an *issue in fact*, or an *issue in law*. *Steph. Plead.* 24, 54. 3 *Bl. Com.* 314. 3 *Steph. Com.* 572. See *Pleading*, *Tender of issue*, *Joinder in issue.*

ISSUE IN FACT, (or ISSUE OF FACT.) [L. Fr. *issue en fet.*] In pleading. An issue taken upon, or consisting of matter of *fact;* the fact only, and not the law, being disputed; and which is to be tried by a jury. 3 *Bl. Com.* 314, 315. *Co. Litt.* 126 a. 3 *Steph. Com.* 572. Matter of law, however, is sometimes involved in an issue in fact, as in what are called *general issues.*

ISSUE IN LAW. [L. Fr. *issu en ley.*] In pleading. An issue upon matter of law, or consisting of matter of law, being produced by a demurrer on the one side, and a joinder in demurrer on the other. 3 *Bl. Com.* 314. 3 *Steph. Com.* 572, 580. Called by Finch, "an issue upon the law," and "an issue of the law." *Law*, b. 1, c. 4, n. 83; b. 4, c. 40.

ISSUE ROLL. In English practice. A roll upon which the issue in actions at law was formerly required to be entered, the roll being entitled of the term in which the issue was joined. 2 *Tidd's Pr.* 733. It was not, however, the practice to enter the issue at full length, if triable by the country, until after the trial, but only to make an *incipitur* on the roll. *Id.* 734. These issue rolls have been abolished. *Pleading Rules*, Hil. T. 4 Will. IV.

ISSUE. L. Fr. Issue; an issue, (in pleading.) *Vous dites chose q' veot avoir deux* issues, *tenetz vous al une;* you say a thing that will have two issues, keep yourself to one. *Yearb.* T. 1 Edw. II. 14.

Egress. *Entre et issue. Britt.* c. 54.

ISSUES. [L. Lat. *exitus.*] The profits of lands or tenements. *Stat. Westm.* 2, c. 39. 3 *Bl. Com.* 280. Not used in the singular.

The profits growing from amercements or fines. *Termes de la Ley. Cowell.*

ITA. Lat. So. **Ita semper fiat relatio ut valeat dispositio.** The relation should always be so made that the disposition may prevail. 6 *Co.* 76.

ITA LEX SCRIPTA EST. Lat. So the law is written. *Dig.* 40. 9. 12. The law must be obeyed, notwithstanding the apparent rigor of its application. 3 *Bl. Com.* 430. See *Hoc perquam durum*, &c. We must be content with the law as it stands, without inquiring into its reasons. 1 *Bl. Com.* 32.

ITA QUOD. L. Lat. In old practice. So that. Formal words in writs. *Ita quod habeas corpus;* so that you have the body. 2 *Mod.* 180.

ITA QUOD. L. Lat. In old conveyancing. So that. An expression which, when used in a deed, formerly made an estate upon condition. *Litt.* sect. 329. Sheppard enumerates it among the three words that are most proper to make an estate conditional. *Shep. Touch.* 121, 122. The term was also used in other instruments, and continues to be employed in modern law to denote a conditional provision. 2 *Ld. Raym.* 760, 766. Trimble, J. 1 *Peters' R.* 226, 227.

ITA TE DEUS ADJUVET. L. Lat. [L. Fr. *ci Dieu vous aide.*] So help you God. The old form of administering an oath in England, generally in connection with other words, thus: *Ita te Deus adjuvet, et sacrosancta Dei Evangelia;* So help you God, and God's holy Evangelists. *Ita te Deus adjuvet et omnes sancti;* So help you God and all the saints. Willes, C. J. *Willes*, 338.

ITEM. Lat. and L. Fr. Also. *Litt.* sect. 5, 6, 12, 26, 27, *et passim.* A word used in old instruments, and especially in wills, to denote the commencement of a new paragraph or section, containing a new provision or disposition in addition to the preceding one; the first or introductory one commencing with the word *imprimis*, (q. v.) Hence is derived the common word *item*, denoting a separate or distinct particular of an account or other thing.* *Item* was an usual word in a will to introduce new distinct matter; and the rule is therefore laid down, that a clause thus introduced is not influenced by, nor to influence

a precedent or subsequent sentence, unless it be of itself imperfect and insensible without such reference. Trevor, C. J. 1 *Salk.* 239. The introduction of the word *item* shows that the testator is dealing with a new subject, and that the words following apply to that only, and not the preceding matter, unless the intention that they should do so is plain. Bayley, J. 4 *B. & C.* 669. See *Also.*

Item is also frequently used in old statutes to denote the commencement of a new division, as of a charter, or section. The second, fifth, and all the subsequent chapters of the Statute *Articuli cleri* begin with this word. In a charter of 31 Edw. I. cited by Molloy, all the paragraphs after the introductory one commence with *item.* *De Jur. Marit.* 370. Fleta uses the word repeatedly, in the sixtieth and sixty-first chapters of his second book. And see *Dyer*, 74.

ITEM is sometimes used as a verb. "The whole [costs] in this case that was thus *itemed* to counsel." *Bunb.* 164, case 233.

ITER. Lat. In the civil law. Way; a way or path; a species of servitude or easement incident to rural estates. Iter *est jus eundi, ambulandi hominis; non etiam jumentum agendi vel vehiculum;* way is a right for a man, of going or walking over another's land; but not of driving a beast or a vehicle. *Inst.* 2. 3, pr. It included, however, the right of passing on horseback, (*eques,*) and of being carried in a sedan chair, or litter, (*sella aut lectica.*) *Dig.* 8. 3. 7, pr. *Id.* 8. 3. 12. 1 *Mackeld. Civ. Law*, 343, § 313. A clear distinction was made between *iter*, *actus*, and *via*, which was adopted by Bracton, and followed by Lord Coke. *Inst.* 2. 3, pr. *Bract.* fol. 232. *Co. Litt.* 56 a. And see the opinion of Lord Brougham, 4 *Bell's Appeal Cases*, 390. See *Via.*

ITER. [L. Fr. *eyre*, Sc. *aire.*] In old English law. A journey; particularly the journey or circuit made or travelled by those justices who were anciently commissioned to go through the different counties in England, to hold certain pleas, or determine certain causes, and who were hence called *justices itinerant*, (*justitiarii itinerantes.*) *Bract.* fol. 108, 109. *Spelman.* 3 *Bl. Com.* 57. The *iter* was more commonly called, from the French, *eyre*, answering to the modern *circuit*, and the justices, justices *in eyre.* *Id. ibid.* See *Eyre, Justices in eyre.*

The court itself, held by these justices. *Qualiter se gerere debeant in* itinere *suo;* how they ought to conduct themselves on their eyres. *Bract.* fol. 109. *Poterit* iter *multipliciter impediri, revocari, vel suspendi;* the eyre may in various ways be prevented, countermanded or suspended. *Id.* fol. 110. A similar court, under the name of *justice aire*, was held in Scotland. *Skene de Verb. Sign.* voc. *Iter.*

ITER. Lat. [Fr. *route.*] In maritime law. A way or route. The route or direction of a voyage; the route or way that is taken to make the voyage assured, (*iter viagii.*) *Emerig. Tr. des. Ass.* chap. 13, sect. 5, § 1. Distinguished from the voyage itself. *Id. Distinguitur* iter *à viaggio.* *Casaregis*, disc. 67, n. 24.

ITERATO. Lat. In old practice. Again; a second time. *Bract.* fol. 74. *Fleta*, lib. 2, c. 65, § 12.

ITERUM. Lat. In the civil law. A second time. (Gr. δεύτερον.) *Dig.* 2. 13. 7. 1.

Again, (Gr. πάλιν.) *Id. ibid.*

Frequently, (*sæpius.*) *Id. ibid.*

ITINERA. Lat. (pl. of *iter.*) Eyres, or circuits. 1 *Reeves' Hist. Eng. Law*, 52.

ITINERANT. [L. Lat. *itinerans.*] Going or travelling about. See *Iter.*

ITINERANTES. L. Lat. Itinerant; travelling; in eyre. A term applied to justices instituted by Hen. II. Called, in the Black Book of the Exchequer, (c. 8,) *deambulantes et perlustrantes.*

ITINERARE. L. Lat. [from *iter*, q. v.] In old English law. To travel about; to go on the *iter*, *eyre*, or circuit. *Itineraverunt.* *Bract.* fol. 109, 109 b. *Ad itinerandum per comitatum talem, vel comitatus tales;* to travel through such a county or counties. *Id. ibid.*

ITINERATIO. L. Lat. In old English law. An eyre, or circuit; the same with *iter*, (q. v.) *Spelman.* *Si infra diem illum incipiat* itineratio; if the eyre begins within that day. *Bract.* fol. 110. *Quæ sit utilitas itinerationis;* what is the advantage of the eyre. *Id.* fol. 115 b.

J.

J is sometimes used for I, in the initial letter of Institutiones, in references to the Institutes of Justinian.

JA. L. Fr. Yet; never; nevertheless. *Kelham. Britt.* c. 49, 93.

JACENS. Lat. [from *jacere*, q. v.]

Lying; fallen; prostrate; in abeyance. *Bract.* fol. 84. See *Hæreditas jacens*, *Jacere.*

JACERE. Lat. In civil and old English law. To lie. *Cum non* jaceat *in ore tenentis dedicere;* since it lies not in the mouth of the tenant to deny. *Stat. Westm.* 2, c. 9. *Fleta*, lib. 2, c. 50, § 1.

To lie, as an action, or proceeding in an action, to have place, (*locum habere;*) to be applicable or available; to be competent or legally proper. *Fleta*, lib. 4, c. 1, § 16. *Id.* lib. 6, c. 8, § 9. *Id.* c. 21, §§ 18—23.

To be fallen, or in a state of prostration; to be unclaimed; to be in abeyance. *Calv. Lex. Hæreditas dum* jacet *non adita;* an inheritance while it lies not entered upon. *Bract.* fol. 44.

To be overthrown or defeated in a suit. See *Jactivus.*

JACET IN ORE. L. Lat. In old English law. It lies in the mouth. *Fleta*, lib. 5, c. 5, § 49.

JACTITATION. [L. Lat. *jactitatio*, from *jactitare*, to throw or give out frequently.] A throwing or giving out; a boasting. See *infra.*

JACTITATION OF MARRIAGE. [L. Lat. *jactitatio matrimonii.*] In English ecclesiastical law. A boasting or *giving out* by a party that he or she is married to another, whereby a common reputation of their matrimony may ensue. This is one of the first and principal of what are termed matrimonial causes. 3 *Bl. Com.* 93.

JACTIVUS, *Jectivus.* L. Lat. In old European law. One who is in default, or loses by default. *Spelman. Cowell.*

JACTURA. Lat. [from *jacere*, to throw.] In the civil law. A throwing of goods overboard in a storm; jettison. *Loccenius, de Jur. Mar.* lib. 2, c. 7, § 1.

Loss from such a cause. *Calv. Lex.*

Loss, generally. *Id.*

JACTUS. Lat. [from *jacere*, to throw.] In the civil law. Jettison; the throwing of goods overboard, to lighten a vessel. *Loccenius, de Jur. Mar.* lib. 2, c. 7. *De lege Rhodia de jactu;* of the Rhodian law of jettison. *Dig.* 14. 2. *Lege Rhodiâ cavetur, ut si, levandæ navis gratiâ, jactus mercium factus est, omnium contributione sarciatur quod pro omnibus datum est;* by the Rhodian law, it is provided that if a jettison of goods is made for the purpose of lightening a vessel, that which is given [the loss which is borne] for all, must be made good by the contribution of all. *Dig.* 14. 2. 1. *Abbott on Ship.* 475. See *Jettison.*

The thing thrown overboard, or cast away. Grier, J. 10 *Howard's R.* 303.

JACTUS. Lat. [from *jacere*, to throw.] In old practice. Thrown; cast; overthrown or defeated. See *Ject.*

JADEMAINS, *Jademeins, Jadumeins.* L. Fr. Yet; nevertheless. *Art. sup. Chart.* c. 10.

JADES, *Jaditz.* L. Fr. Late. *Dyer*, 97 b, (Fr. ed.)

JAIL. A form of *gaol*, sometimes used. See *Gaol.*

JAIL DELIVERY. See *Gaol delivery.*

JALEMEINS, *Jalemeyns, Ja le meyns, Jalemens.* L. Fr. Always; also; nevertheless; still; yet; sometimes; as well as; moreover; further. *Britt.* c. 20, 24. *Kelham.*

JALO. L. Lat. In old English law. A gallon. *Fleta*, lib. 2, c. 11.

JALONATA. L. Lat. In old English law. A gallon measure. *Fleta*, lib. 2, c. 12, § 1.

JAMPNUM, *Jaunum.* L. Lat. [from Fr. *jaulne*, yellow.] In old English law. Furze, heath, or gorse; a gorsy ground. *Cowell. Blount.* 1 *Leon.* 169.

A waterish place. *Co. Litt.* 5 a. *Cro. Car.* 179.

JAMUNLINGUS. L. Lat. [from Sax. *gemundian*, to protect, and *ling*, a young or tender person.] In old European law. One who delivered himself and his property into the protection of a more powerful person, as of a bishop or abbot, in order by that means to avoid military service and other burdens of the state. *Spelman.*

JANITOR. Lat. In old English law. A door-keeper. *Fleta*, lib. 2, c. 24.

JASOIT. L. Fr. Although. *Kelham.*

JATARDE. L. Fr. Lately. *Kelham.*

JAVELOUR. O. Sc. In Scotch law. Jailer or gaoler. 1 *Pitc. Cr. Trials*, part 1, p. 33.

JECT, *Jecte.* L. Fr. [L. Lat. *jactus.*] In old practice. Cast; thrown; overthrown or defeated in law. *Litt.* sect. 448, 680, 682, 684. A term derived from the old practice in trial by battel, and literally signifying thrown to the ground; unhorsed. *Le champion le tenant, al second cours, fuit jecte;* the champion of the tenant, at the second course or encounter, was thrown. *Yearb.* M. 4 Edw. III. 12.

JECTS. L. Fr. Cast; computed. *Dyer*, 55 b, (Fr. ed.)

JEMAN. In old records. Yeoman. *Cowell. Blount.*

JEO. Fr. I. *Jeo doy;* I ought. *Litt.* sect. 150. *Jeo teigne;* I hold. *Id.* Jeo *sue icy prist;* I am here ready. *Id. Jeo vous pry;* I pray you. *Id. Jeo garauntise;* I warrant. *Britt.* c. 75. In the Fet Assaver, the form is *joe*, throughout.

JEO DONE. L. Fr. I give. *Jeo done par si que tu me doynes;* I give for this that you may give me. *Britt.* c. 36. *Jeo face, par si que tu faces;* I do for this that you may do. *Id. ibid. Jeo face, par si que tu me doynes;* I do for this that you may give me. *Id. ibid. Jeo doyne, par si que tu me faces;* I give for this that you may do for me. *Id. ibid.* These are the proposed readings of Wingate, in his edition of Britton, A. D. 1640.

JEOFAIL. [from Fr. *j'ai faillé*, I have failed, or mistaken.] An oversight in pleading; a mistake, or error; strictly, the acknowledgment of an oversight. *Jeofaile*, or *j'ay faillé* was the expression anciently made use of by a pleader, when he perceived a slip in the form of his proceedings, and desired to amend it. Hence the statute (14 Edw. III. st. 1, c. 6,) which first gave the liberty of amendment in such cases was called the *Statute of Jeofail;* and the term has continued to be applied to the various statutes of amendment since passed. 3 *Bl. Com.* 407. *Crabb's Hist. Eng. Law*, 280, 281. 3 *Reeves' Hist.* 469, 472. *Steph. Pl.* 97, and Appendix, Note (32.)

JEOPARDY. Exposure to death, loss or injury; hazard, danger, peril. *Webster.* The constitution of the United States declares that no person shall "be subject for the same offence to be twice put in *jeopardy of life or limb.*" Amendments, art. 5. 1 *Kent's Com.* 610, [12.] See *Once in jeopardy.*

JESK ORE. L. Fr. Until now. *Fet Assaver*, § 18.

JET. Fr. In French law. Jettison. *Ord. Mar.* liv. 3, tit. 8. *Emerig. Tr. des Ass.* ch. 12, sect. 40.

JETSAM, *Jotsom, Jetsen, Jetzon, Jotson.* [from Fr. *jetter*, to throw out.] Goods thrown into the sea from a vessel in danger of wreck, for the purpose of lightening her, and which remain under water, without coming to land.* 5 *Co.* 106 b, *Constable's case.* 1 *Bl. Com.* 292. Spelman considers this word as derived from the old Germ. *josum*, down, or downward; hence *jotsom* signifies that which sinks and stays at the bottom, (*id quod sidet et moratur in fundo;*) as distinguished from *flotsom*, or that which floats on the surface. See *Flotsam.* This is not to be confounded with *jettison*, (q. v.) although perhaps originally the same word.

JETTISON, *Jetson, Jettezoon.* [from Fr. *jetter*, to throw out; Lat. *jactus;* Fr. *jet;* Swed. *kast.*] In maritime law. The voluntary throwing overboard of goods, in a case of extreme peril, to lighten and save the ship.* 3 *Kent's Com.* 232—235. 2 *Phillips on Ins.* 76. Sometimes called *semi-naufragium*, half shipwreck, or a species of shipwreck. 3 *Kent's Com.* 234.

JEU. L. Fr. A Jew. *Britt. c.* 97.

JUESDAY. L. Fr. Tuesday. *Kelham.*

JEUSDYE, *Jurisdie.* Tuesday. *Kelham.*

JO, *Joe.* L. Fr. I. *LL. Gul. Conq.* l. 38.

JOCALE. L. Lat. [Fr. *joyau.*] In old English law. A jewel, or gem. *Spelman. Jocalia*, (Fr. *joialx;*) jewels. *Id. Blount. De robis et* jocalibus; of robes and jewels. *Bract.* fol. 60 b. *Fleta*, lib. 2, c. 14, § 2.

JOCARIUS. L. Lat. A jester. *Cowell. Blount.*

JOCLET. In old English law. A little farm or manor. *Cowell. Blount.*

JOCUS. Lat. In old English law. A game of hazard. *Reg. Orig.* 290.

JOCUS PARTITUS. L. Lat. In old English practice. A divided game, risk, or hazard. An arrangement which the parties to a suit were anciently sometimes allowed to make by mutual agreement upon a certain hazard, (*sub periculo;*) as that one should lose if the case turned out in a certain way, and if it did not, that the other should gain, (*quod unus amittat si ita sit, et si non sit, quod alius lucretur.*) *Bract.* fol. 211 b, 379 b, 432, 434, 200 b. This arrangement, however, was altogether a voluntary and extra-judicial one, (*non judiciale.*) *Id.* 431 b. This expression is not noticed in the old dictionaries, and (from the common mode of printing *jocus, iocus,*) may, perhaps, have been confounded with *locus partitus*, (q. v.) In Hengham's *Summa Magna*, (c. 4,) it is written *bipertijocus.*

JOEFNES, *Joefene.* L. Fr. [from Lat. *juvenis.*] Young. *Britt.* c. 110.

JOESDIE, *Joefdy, Joendie, Joedy, Juerdy.* L. Fr. Thursday. *Kelham.*

JOIALX. L. Fr. Jewels. *Artic. sup. Chart.* c. 20.

JOINDER. A joining or uniting together; a comprehending or including of several persons or things together; as of several persons as plaintiffs or defendants in one suit, or of several causes of action, or counts, in one declaration. 1 *Chitt. Pl.* 8, 41, 64, 84, 199. See *Misjoinder, Nonjoinder.*

JOINDER IN DEMURRER. In pleading. A pleading or formula, by which one of the parties to a suit *joins in*, or accepts an *issue* in law tendered by the opposite party. It follows immediately after a demurrer, and, with it, constitutes and completes the issue.* *Steph. Plead.* 55, 239. See *Demurrer, Issue in law.*

JOINDER IN ISSUE. [L. Lat. *junctio exitûs.*] In pleading. A formula by which one of the parties to a suit *joins in*, or accepts an *issue* in fact tendered by the opposite party. *Steph. Pl.* 57, 236. More commonly termed a *similiter*, (q. v.)

JOINT. [Lat. *junctus.*] United; combined; done by or against two or more unitedly; shared by, or between two or more.

JOINT ACTION. In practice. An action in which two or more unite, or are united as parties.

JOINT BOND. A bond executed by two or more as obligors, in which they bind themselves jointly but not severally, and which can be enforced only by a joint action against them all.

JOINT AND SEVERAL BOND. A bond in which the obligors bind themselves both jointly and severally to the obligee, and which may be enforced either by a joint action against all, or separate actions against each.

JOINT FIAT. In English law. A fiat in bankruptcy, issued against two or more trading partners. *Stat.* 6 *Geo.* IV. c. 16. *Wharton's Lex.* See *Fiat.*

JOINT INDICTMENT. In criminal law. An indictment in which several offenders are joined. 2 *Hale's P. C.* 173.

JOINT STOCK COMPANY. In mercantile law. A species of partnership consisting of a large number of members, constituting an unincorporated association; having a capital divided into shares transferable without the express consent of all the copartners, and acting under a written instrument termed articles of association, or in England, a deed of settlement.* 3 *Steph. Com.* 182. 3 *Kent's Com.* 26, 27. *Wordsworth on Joint Stock Companies*, 1—15. *Brande.*

JOINT TENANTS. [L. Lat. *conjunctim tenentes.*] Joint holders; persons who hold an estate or property jointly, or in that peculiar mode called joint tenancy.* Persons who own lands by a joint title created expressly by one and the same deed or will. 4 *Kent's Com.* 357. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. 2 *Bl. Com.* 180.

JOINT TENANCY. A joint holding; an union or conjunction of interest in land or other property. See *Estate in joint tenancy.*

JOINTMENT. L. Fr. Jointly. *Yearb.* M. 8 Edw. III. 20.

JOINTRESS, *Jointuress.* A woman having a jointure. 2 *Bl. Com.* 138. 2 *Crabb's Real Prop.* 191, § 1212.

JOINTURE. [L. Lat. *junctura.*] An estate settled upon a wife, to be enjoyed after her husband's decease, for her own life at least, in lieu and in satisfaction of dower.*—A competent livelihood of freehold for the wife, of lands and tenements; to take effect presently in possession or profit, after the decease of the husband, for the life of the wife at least. *Co. Litt.* 36 b. 2 *Bl. Com.* 137. 1 *Steph. Com.* 255. 2 *Crabb's Real Prop.* 191, § 1212. A jointure strictly signifies a joint estate limited to both husband and wife, and such was its original form; but, in its more usual form, it is a sole estate limited to the wife only, expectant upon a life estate in the husband. 2 *Bl. Com.* 137. 1 *Steph. Com.* 255. 4 *Kent's Com.* 54. *Burton's Real Prop.* 119, pl. 357. And see *Atherley on Marriage Settlements*, 501—558.

JONCARIA, *Juncaria.* L. Lat. [from Fr. *jonc*, a rush.] In old English law. The soil where rushes grow. *Co. Litt.* 5 a. See *Juncaria.*

JORER. L. Fr. To swear. *Tauntost face* jorer *douze;* he shall presently cause twelve to swear. *Britt.* c. 30. A form of *jurer*, (q. v.)

JORNALE, *Jurnale.* L. Lat. [Fr. *journau*, from *jour*, a day.] In old European law. As much ground as might be ploughed in one day. *Spelman.*

JOSUM, *Jusum.* L. Lat. In old European law. Down; downward. *Pausant arma sua josum;* lay down their arms. *L. Alam.* tit. 45. Perhaps a corruption of *deorsum.*

JOTSUM. See *Jetsam.*

JOUR, *Jor, Jur, Joer.* L. Fr. [Lat. *dies.*] In old English law. Day; a day. *Co. Litt.* 134 b. See *Dies, Day.*

JOUR EN BANC. L. Fr. In old practice. A day in banc. *Yearb.* H. 11 Hen. VI. 1. 14 Hen. VI. 10. Distinguished from *jour en pays,* (a day in the country,) otherwise called *jour en nisi prius. Id. ibid.*

JOUR IN COURT. In old practice. Day in court; day to appear in court; appearance day. "Every process gives the defendant a day in court." *Hale's Anal.* sect. viii.

JOURNAUNTE, *Jornaunte.* L. Fr. Daybreak; dawn. *Britt.* c. 80.

JOURNE, *Journee, Jornee.* L. Fr. A day; a court, or court day; the day of holding a court. *A la journee;* at the court. *Stat. Westm.* 1, c. 33.

JOURNES (JOURNEES or JOURNEIS) ACCOMPTS. L. Fr. Journeys reckoned or computed. *Yearb.* M. 8 Edw. III. 20. *Dyer,* 55. See *Journeys accounts.*

JOURNEYS ACCOUNTS. [L. Fr. *journes accompts, journees accomptes;* L. Lat. *diætæ computatæ.*] Properly, journeys computed; days' journeys computed or reckoned. A term applied in practice to a fresh writ issued as soon as possible, or within a reasonable time after the abatement of a former one; the second writ being called a writ *by journeys accounts.* So termed from the old practice of *computing* the time allowed for the purpose, by *days' journeys,* which the party was obliged to make to the chancery, (a moveable court,) in order to purchase the writ. See *infra.*

*** The practice of allowing writs by *iourneys accounts* was considered in Spencer's case, 6 *Co.* 9 b, 10, where it was traced to Bracton, fol. 176. It was again discussed at considerable length in Kinsey *v.* Heyward, 1 *Ld. Raym.* 433, 435, where Selden's explanation of the term was quoted by Treby, C. J. It has been recently considered in the English reports, and the phrase itself is sometimes used even in American law. 7 *Man. & Gr.* 763, 773, note. *Id.* 774, 784, note. 8 *Cranch's R.* 84—93.

The precise meaning of the phrase has generally not been clearly apprehended, owing to the uncouthness of its form, which is merely the L. Fr. *journees accomptes* Anglicized, without regard to the proper meaning of the words. The L. Lat. *diætæ computatæ* (days' journeys computed) sufficiently shows what the proper translation should be. The origin of the phrase is thus explained by Selden, as quoted by Treby, C. J. *ubi supra.* The chancery being anciently a moveable court, and following the king's court, and the writs being to be purchased out of the said court, the party who purchased the second writ was bound to apply to the king's court as hastily (that he might obtain the second writ) as the distance of the place would allow, *accounting* twenty miles for every *day's journey;* and, for this reason, he was to show in the second writ, that he had purchased his second writ as hastily as he could, *accounting the days' journeys* he had to the king's court. Hence the second writ was said to be brought *per diætas computatas,* (by days' journeys accounted,) or, in French, *par journeis accomptes.* See *Selden's Diss. ad Fletam,* c. 8, sect. 1.

JUBERE. Lat. In the civil law. To order, direct or command. *Calv. Lex.* The word *jubeo,* (I order,) in a will, was called a word of direction, as distinguished from *precatory* words. *Cod.* 6. 43. 2.

To assure or promise. *Calv. Lex.* See *Fide-jubere.*

To decree or pass a law. *Id. Adam's Rom. Ant.* 97.

JUCHUS, *Jochus.* L. Lat. [Germ. joch; Fr. *joug;* Lat. *jugum.*] In old European law. A yoke of land; a portion of land which might be ploughed by a yoke of oxen in one day. *Spelman.*

JUDÆUS, *Judeus.* Lat. A Jew. *Judeus nihil proprium habere potest, quia quicquid acquirit non sibi acquirit sed regi, quia non vivunt sibi ipsis sed aliis, et sic aliis acquirunt et non sibi ipsis;* a Jew can have nothing of his own, because whatever he acquires he acquires not for himself but for the king; for they do not live for themselves but for others, and so they acquire for others and not for themselves. *Bract.* fol. 386 b. *Do tibi talem rem, habendum tibi et hæredibus tuis, vel cuicunque dare vel assignare volueris, exceptis viris religiosis et Judeis;* I give you such a thing, to have to you and your heirs, or to whomsoever you choose to give or

assign it, except religious men and Jews. *Id.* fol. 47 b. This last clause or exception was very common in ancient deeds. *Co. Litt.* 223 b.

JUDAISMUS. Lat. [from *Judæus*, q. v.] In old English law. Judaism; the religion or rites of the Jews. *Cowell. Blount.*

The income anciently accruing in England to the king, from the Jews. *Judaismum nostrum Angliæ. Blount.*

The place or street where the Jews lived, called Jewry. *Vetus Judaismus;* old Jewry, in London. *Blount.*

Usury; or Jewish interest. This was the subject of the statute 18 Edw. I. called *Statutum de Judaismo.* 2 *Inst.* 506.

A mortgage. *Ad acquietandam terram prædictam de* judaismo *in quo fuit impignorata;* to clear the said land of a mortgage [or judaism] in which it was pledged, &c. *Magn. Rot. Pip.* 9 *Edw.* II. *Cowell. Secundum legem et consuetudinem Judaismi;* according to the law and custom of Judaism. *Mem. in Scacc.* P. 6 Edw. I.

JUDEX. Lat. In old English law. A judge; one who declares the law, (*qui jus dicit,*) or administers justice between contending parties.* *Bract.* fol. 106 a. 3 *Bl. Com.* 25. A title generally given to ecclesiastical judges, as distinguished from the *justitiarius* of the common law courts. *Bract.* fol. 401, 402, 405, 406.

Judex æquitatem semper spectare debet. A judge ought always to regard equity. *Jenk. Cent.* 45, case 85.

Judex bonus nihil ex arbitrio suo faciat, nec proposito domesticæ voluntatis, sed juxta leges et jura pronunciet. A good judge should do nothing of his own arbitrary will, nor on the dictate of his personal inclination, but should decide according to law and justice. 7 *Co.* 27 a, *Calvin's case.*

Judex est lex loquens. A judge is the law speaking; [the mouth of the law.] 7 *Co.* 4 a, *Calvin's case.*

Judex non potest esse testis in propria causa. A judge cannot be a witness in his own cause. 4 *Inst.* 279.

Judex non potest injuriam sibi datam punire. A judge cannot punish a wrong done to himself. See 12 *Co.* 114.

Judex non reddit plus quam quod petens ipse requirit. A jndge does not give more than what the complaining party himself demands. 2 *Inst.* 286. Said of the recovery of damages in real actions. *Id. ibid.*

Judici officium suum excedenti non paretur. A judge exceeding his office is not to be obeyed. *Jenk. Cent.* 139, case 84. Said of void judgments. *Id. ibid.*

Judici satis pœna est, quod Deum habet ultorem. It is punishment enough for a judge that he has God as his avenger. 1 *Leon.* 295.

Judicis [nostrum] est judicare secundum allegata et probata. It is the duty of a judge to determine according to what is alleged and proved. *Dyer*, 12 a.

Judicis est jus dicere, non dare. It is the province of a judge to declare the law, not to give it. *Lofft*, Appendix, 42.

Judicis officium est ut res, ita tempora rerum quærere. It is the duty of a judge to inquire into the times of things, as well as into things themselves. *Co. Litt.* 171. Part of a Latin couplet quoted by Lord Coke. *Id. ibid.*

JUDEX. Lat. In old English law. A juror. *LL. Hen.* I. c. 6. *Spelman.*

JUDEX. Lat. In the old civil law. A private person appointed by the prætor, with the consent of the parties, to try and decide a cause or action commenced before him; otherwise called *judex datus*, and *judex pedaneus*, (qq. v.) He was appointed on the application of the plaintiff, (*actor,*) as soon as the cause was at issue, and received from the prætor a written formula instructing him as to the legal principles according to which the action was to be judged. *Calv. Lex.* 1 *Mackeld. Civ. Law*, 187, § 193, Kaufmann's note. Hence he was said to have the *judicium*, as the prætor had the *jus;* and the proceedings before him were said to be *in judicio*, as those before the prætor were said to be *in jure. Id. ibid.*

*** The word *judex* is generally used in the Digests, in this its original sense. It is sometimes translated *judge*, but not, as it seems, with entire accuracy. The precise function, indeed, of the *judex* has been differently represented by the civilians; some supposing that he merely found the facts of the case as they appeared in evidence, and reported them with his opinion to the prætor; others, that he determined the law as well as the fact, and pronounced *judgment* in the proper modern sense of the word. 1 *Spence's Chancery*, 210, and note. Some features of the office resemble those of the modern *juror*, particularly the

fundamental one that the *judex*, like the *juror*, was *a private person, regularly called in at a certain stage of a cause*, to aid in its trial and determination. The circumstance, however, that private causes were generally referred to a *single* judex, to whom their *exclusive management* while before him was committed, constitutes a very marked and material point of distinction between the two offices. What the discretion of a *judex* was, how he contrived to provide himself, *pro hac vice*, with a sufficient amount of law knowledge to enable him to get through a cause, and upon what singular grounds he was often inclined to place his decision, may be seen in the very unreserved account given by the grammarian and critic Aulus Gellius, of his own experience in the office. *Noctes Atticæ*, lib. 14, c. 2.

JUDEX. Lat. In later and modern civil law. A judge, in the modern sense of the term; a public officer before whom actions are brought and pleadings carried on, as well as issues tried and determined, in courts held for the purpose; and who, unlike the ancient *judex*, has entire control of the action from its commencement to its termination. After the system of trial by *judices* (*supra*) had been abandoned in Roman practice, the function and powers of the *judex* were transferred to, and united with those of the prætor or magistrate, and in this sense the term *judex*, as employed in the Institutes, Code and Novels, is to be understood. *Hallifax, Anal.* b. 3, c. 8, num. 15. See *Cod.* 1. 45, 48, 49, 51. *Id.* 7. 43—49. *Nov.* 82.

JUDEX A QUO. Lat. In modern civil law. The judge *from* whom, as *judex ad quem* is the judge *to* whom an appeal is made or taken. *Hallifax, Anal.* b. 3, c. 11, num. 34.

JUDEX DATUS. Lat. In old Roman law. A judge given, that is, assigned or appointed by the prætor to try a cause. See *Judex* in old civil law.

JUDEX DELEGATUS. Lat. In the civil law. A delegated judge. *A judice* judex delegatus *judicis dandi potestatem non habet, quum ipse judiciario munere fungatur, nisi à principe judex datus fuerit;* a judge delegated by a judge has not the power of assigning a judge, as he should exercise the judicial office personally, unless the judge should have been assigned by the emperor. *Cod.* 3. 1. 5.

JUDEX FISCALIS. L. Lat. In old European law. A fiscal judge; a judge having cognizance of matters pertaining to the *fiscus*, or public treasury, and by whose sentence property was confiscated. *Spelman*, voc. *Grafio.* Supposed to be the same with the *grafio* and *comes*, (qq. v.) *Id. L. Ripuar.* tit. 35. *Esprit des Loix*, liv. 30, c. 18.

JUDEX ORDINARIUS. Lat. In the civil law. An ordinary judge; one who had the right of hearing and determining causes as a matter of his own proper jurisdiction, (*ex propria jurisdictione;*) one who exercised jurisdiction in his own right, and not by virtue of a derived or delegated authority. *Calv. Lex. Id.* voc. *Ordinarii judices.* This term is understood by Blackstone in a different sense. See *Judices ordinarii.*

JUDEX PEDANEUS. Lat. In the Roman law. A name given to the *judex* appointed by the prætor to try a cause, from the low seat which he occupied at the *foot* of the tribunal or prætor's bench, (*ad pedes tribunalis.*) *Calv. Lex.* vocc. *Judex pedaneus, Pedanei judices.* Other derivations are given *ibid.* See *Judices pedanei.*

JUDGE. [Fr. *juge;* Lat. *judex*, q. v.] A person whose office is to administer justice (*jus dicere*) in courts held for that purpose; a public officer authorized by law to hear and determine causes, and who holds courts statedly for that purpose.

One who presides in a court of judicature, either solely or with associate judges.

JUDGE ADVOCATE. In military law. An officer of a court-martial, who combines the character of adviser to the court with that of public prosecutor.* 1 *McArthur on Courts Martial*, 233, (ed. 1806.) *Tytler's Mil. Law*, c. 10. *O'Brien's Mil. Law*, 281, 283.

JUDGMENT. [Fr. *jugement;* Lat. *judicium.*] In practice. The sentence of the law, pronounced by a court upon the matter contained in the record [of an action before it.] 3 *Bl. Com.* 395, 396. The final proceeding in an action at law, by which the court applies the law to the particular case presented before it, and specifically grants or denies to the plaintiff the remedy which he has sought by the action.* *Id. ibid.* An award of execution on the record, is not a judgment, properly so called, that is, it is not a judgment to recover. 11 *East*, 516.

Judicial determination or decision; adjudication. See *Judicium.*

In a more general sense,—the act, process or business of judging, that is, of *hearing* as well as determining a cause. This was one of the senses of the Lat. *judicium*, (q. v.)

JUDGMENT PAPER. In English practice. A sheet of paper containing an *incipitur* of the pleadings in an action at law, upon which final judgment is signed by the master. 2 *Tidd's Pr.* 930.

JUDGMENT RECORD. In practice. A record of the proceedings in an action at law, from the commencement of the pleadings to the giving of judgment inclusive, composed of what are technically called *entries*, made according to a prescribed order, and drawn in strict conformity with established precedents. See *Record*. This record, when properly signed, filed and docketed, constitutes the legal evidence of the judgment, and entitles the party obtaining it to issue execution. It is sometimes called a *judgment roll*, (q. v,)

JUDGMENT ROLL. In English practice. A roll of parchment containing the entries of the proceedings in an action at law to the entry of judgment inclusive, and which is filed in the treasury of the court. 1 *Arch. Pr.* 227, 228. 2 *Tidd's Pr.* 931. See *Roll*.

JUDICARE. Lat. [from *judex*, a judge.] In civil and old English law. To judge; to decide or determine judicially; to give judgment or sentence.

Judicandum est legibus non exemplis. Judgment is to be given according to the laws, not according to examples or precedents. 4 *Co.* 33 b, *Mitton's case*. 4 *Bl. Com.* 405.

JUDICARE. L. Lat. In feudal law. To give by will. *Feud. Lib.* 2, tit. 9, § 3. *Calv. Lex.*

JUDICATIO. Lat. [from *judicare*, q. v.] In the civil law Judging; the pronouncing of sentence, after hearing a cause. *Hallifax, Anal.* b. 3, c. 8, num. 7.

JUDICATUS, *Judicata*, *Judicatum*. Lat. [from *judicare*, q. v.] In civil and old English law. Adjudged; determined; decided. *Res judicata;* a thing adjudged or determined; a judicial sentence or determination. See *Res judicata*. *Judicatum solvere;* to pay what was adjudged to a party in a suit. 3 *Bl. Com.* 291. In the civil law, security (*satisdatio*) *judicatum solvi*, was security that the judgment of the court should be complied with. *Inst.* 4. 11. See *Dig.* 46. 7.

JUDICES. Lat. [pl. of *judex*, q. v.] Judges. *Judices non tenentur exprimere causam sententiæ suæ;* judges are not bound to express the reason of their sentence or judgment. *Jenk. Cent.* 75, case 43. An old rule relating to the form of the judgment as entered on record.

JUDICES ORDINARII. Lat. In the civil law. Ordinary *judices;* the common *judices* appointed to try causes, and who, according to Blackstone, determined only questions of fact. 3 *Bl. Com.* 315.

JUDICES PEDANEI. Lat. In the Roman law. The ordinary *judices* appointed by the prætor or by the governors of provinces to try causes. See *Cod.* 3. 3. So called from *pes*, foot, denoting the low seat they occupied, or, according to some, the humble character of their office; (Gr. χαμαιδικασται.) *Calv. Lex.* See *Cod.* 7. 51. 5. 2. They are defined in the Code, as those *qui negotia humiliora disceptent*, (who should have charge of the more humble matters.) *Cod.* 3. 3. 5. In the Novels they are required to sit continually at the royal porch, in the little houses where they now judge, (εν οις και νυν οικισκοις δικαζουσιν,) and to hear causes from early in the morning to sunset. *Nov.* 82, c. 3.

JUDICES SELECTI. Lat. In the civil law. Select or selected *judices* or judges; those which were used in criminal causes, and between whom and modern *jurors* many points of resemblance have been noticed. 3 *Bl. Com.* 366.

JUDICIA. Lat. In the Roman law. Judicial proceedings; trials. *Judicia publica;* criminal trials. *Dig.* 48. 1.

JUDICIA. L. Lat. [pl. of *judicium*, q. v.] In old English law. Judgments. **Judicia sunt tanquam juris dicta, et pro veritate accipiuntur.** Judgments are, as it were, the sayings of the law, and are received as truth. 2 *Inst.* 537.

Judicia in deliberationibus crebro maturescunt, in accelerato processu nunquam. Judgments frequently become matured by deliberations; never by hurried process or precipitation. 3 *Inst.* 210.

Judicia posteriora sunt in lege fortiora. The later judgments are the stronger in law. 8 *Co.* 97 a, *Manning's case*. **Judiciis posterioribus fides est adhibenda.** Faith or credit is to be given to the later judgments. 13 *Co.* 14, *The case of Modus Decimandi*.

JUDICIAL. [Lat. *judicialis*, from *judex*, a judge, or *judicium*, judgment.] Belonging to the office of a judge; as *judicial* authority.

Relating to, or connected with the administration of justice; as a *judicial* officer.

Having the character of judgment or formal legal procedure; as a *judicial* act.

Proceeding from a court of justice; as a *judicial* writ, a *judicial* determination.

Constituting the basis of a judgment; as a *judicial* opinion.

JUDICIAL CONFESSION. In the law of evidence. A confession of guilt, made by a prisoner before a magistrate, or in court, in the due course of legal proceedings. 1 *Greenl. Evid.* § 216.

JUDICIAL SALE. In practice. A sale under the judgment or decree of a court; a sale under judicial authority, by an officer legally authorized for the purpose, such as a sheriff's sale, an administrator's sale, &c.

JUDICIAL WRIT. In English practice. A writ issuing under the private *seal of a court*, and tested in the name of the chief or senior justice; as distinguished from an *original* writ which issues out of Chancery under the *great seal*, and is tested in the king's name. 3 *Bl. Com.* 282. See *Fleta*, lib. 2, c. 13, § 3.

JUDICIUM. Lat. [pl. *judicia;* from *judex*, q. v.] In the civil law. The investigation and decision of a cause by a *judex*, constituting the second of the two stages or divisions of the proceedings in an action; a trial. See *Judex, Actio.*

A judicial procedure; a proceeding before a *judex*, or judge. *Inst.* 4. 5. 8.

An action. *Bonæ fidei judicium;* an action of good faith. *Id.* 4. 6. 29. 30. *Id.* 4. 6. 20. See *Dig.* 5. 1. 13. *Cod.* 3. 1.

A court, or judicial tribunal. *Quod in* judicio *permaneat usque ad terminum litis;* that he will remain in court until the end of the suit. *Inst.* 4. 11. 2. *Præsens in judicio;* present in court. *Id.* 4. 11. 3. *In* judicium *venire;* to come into court. *Sive in* judicio, *sive extra* judicium; whether in court or out of court. *Id.* 4. 11. 4.

The intention of a testator. *Id.* 2. 11. 1.

JUDICIUM. L. Lat. In old English law. A court, or judicial tribunal. *Partibus in* judicio *comparentibus;* the parties appearing in court. *Bract.* fol. 183 b. *Id.* fol. 296 b. *Præsentes in* judicio; being present in court. *Id.* fol. 257 b, 281 b, 288 a. *Postquam diem in* judicio *recepit;* after he had a day in court. *Id.* fol. 344 a. *Si nullum sit ibi placitum nec* judicium; if there be there no plea nor court. *Id. ibid. Cujus* judicium *et forum actor adire debeat;* whose court and forum the plaintiff ought to apply to. *Id.* fol. 401.

A proceeding in court; judicial hearing and investigation. Judicium *est in qualibet actione trinus actus trium personarum; judicis, viz. actoris, et rei:—s. quod duæ sint personæ ad minus inter quas vertatur contentio, et tertia persona, ad minus, qui judicet;* judicial procedure in an action is the threefold act of three persons, namely, the judge, the plaintiff, and the defendant; so that there be two persons at least between whom the controversy is carried on, and a third person at least who shall judge. *Bract.* fol. 106 a. *Id.* fol. 360 b, 431 a. See *Fleta*, lib. 1, c. 17, § 1.

Judicial authority. *Imprimis videat tenens an sit ibi* judicium; the tenant should first consider whether there be there a competent judicial tribunal. *Bract.* fol. 376 a. *Id.* fol. 405 b.

Due process of law. *Sine judicio;* without process of law; as when one ejected another by force without resorting to law. *Bract.* fol. 205 a.

An action. Judicium *novæ disseysinæ;* an action of novel disseisin. *Id.* fol. 161 b.

Trial by jury; (*duodecemvirale judicium*, q. v.)

The verdict of a jury. *Justum* judicium *juratorum;* the just verdict of the jurors. *Bract.* fol. 289 a. *Potest jurator falsum facere* judicium; a juror may give a false verdict. *Id. ibid. Per legale* judicium *parium suorum;* by the lawful judgment of his peers. *Mag. Chart.* c. 29. 2 *Inst.* 48.

Judgment. Judicium *executioni demandare;* to enforce a judgment by execution. *Bract.* fol. 107 a, 175 a. *Cum perfectum sit* judicium *licet non executum;* since the judgment is perfected though not executed. *Id.* fol. 311 b. *Judicium pro querente;* judgment for the plaintiff. 1 *Stra.* 33, 34. Judicium *est quasi juris dictum;* judgment is, as it were, the speech of the law; the very voice of law and right. *Co. Litt.* 39 a, 168 a. 10 *Co.* 42 a.

Judicium a non suo judice datum nullius est momenti. A judgment given by one who is not a proper judge, (or, not judge of the cause,) is of no weight. 10 *Co.* 76 b. Expressed in other words by Bracton: **Sententia a non suo judice lata non teneat;** a sentence pronounced by one who is not a proper judge is not binding. *Bract.* fol. 401 a.

Judicium non debet esse illusorium; suum effectum habere debet. A judgment ought not to be illusory; it ought to have its proper effect. 2 *Inst.* 341.

Judicium redditur in invitum in præsumptione legis. Judgment in presumption of law is given against an unwilling party. *Co. Litt.* 248 b, 314 b. **Judicium ruit in invitum.** *Bract.* fol. 41 b. 2 *Stra.* 1043, arg. See *In invitum.*

Judicium (semper) pro veritate accipitur. A judgment is always taken for truth; that is, as long as it stands in force it cannot be contradicted. 2 *Inst.* 380. *Co. Litt.* 39 a, 168 a.

JUDICIUM CAPITALE. L. Lat. In old English law. Judgment of death; capital judgment. *Fleta*, lib. 1, c. 39, § 2. Called also *judicium vitæ amissionis;* judgment of loss of life. *Id.* lib. 2, c. 1, § 5.

JUDICIUM DEI. Lat. In old English and European law. The judgment of God; otherwise called *Divinum judicium;* the divine judgment. A term particularly applied to the ordeals by fire or hot iron, and water, and also to the trials by the cross, the eucharist, and the corsned, and the *duellum* or trial by battel, (qq. v.) it being supposed that the interposition of heaven was directly manifested in these cases, in behalf of the innocent. *Spelman. Si se super defendere non posset* judicio *Dei, sc. aquâ vel ferro, fieret de eo justitia;* if he cannot defend himself by the judgment of God, that is, by water or hot iron, let justice be done upon him. *LL. Edw. Conf.* c. 16. *Tenetur se purgare is qui accusatur, per* Dei judicium, *scilicet per calidum ferrum vel per aquam, pro diversitate conditionis hominum;* he who is accused is bound to purge himself by the judgment of God, that is, by hot iron or by water, according to the difference of the condition of persons. *Glanv.* lib. 14, c. 1.

JUDICIUM PARIUM. L. Lat. In old English law. Judgment of the peers, judgment of one's peers; trial by jury. *Mag. Chart.* 9 Hen. III. c. 29. *Id.* Johan. c. 39. See *Judicium, Per legale judicium parium suorum.*

JUG. In old English law. A watery place. *Domesday. Cowell.*

JUGEMENT. L. Fr. Judgment. *Britt.* c. 87, 100. *Jugement de brief,* (asked.) *Yearb.* M. 4 Edw. III. 58. *Jugement de count.* P. 8 Edw. III. 3.

JUGERUM. Lat. An acre. *Co. Litt.* 5 b. As much as a yoke (*jugum*) of oxen could plough in one day.

JUGULATOR. In old records. A cut-throat or murderer. *Cowell.*

JUGUM. Lat. In the civil law. A yoke; a measure of land; as much land as a yoke of oxen could plough in a day. *Nov.* 17, c. 8. Called, also, *jugalium* and *zygocephalum. Id. ibid.* See *Brissonius.*

JUGUM TERRÆ. L. Lat. In old English law. A yoke of land; half a plough land. *Domesday. Co. Litt.* 5 a. *Cowell.*

JUICIO. Span. [from Lat. *judicium.*] In Spanish law. A trial or suit. *White's New Recop.* b. 3, tit. 4, c. 1.

JUISE. L. Fr. A term used in Britton, to denote certain incidents to a franchise or privileged jurisdiction, particularly those of gallows, pillory and tumbrel. *Britt.* cc. 15, 19, 30.

JUMENT. Sc. In old Scotch law. An ox used for tillage. 1 *Pitc. Crim. Trials,* part 2, p. 89.

JUMENTA. Lat. In the civil law. Beasts of burden; animals used for carrying burdens. This word did not include oxen. *Dig.* 32. 65. 5.

JUNCARIA, *Joncaria.* L. Lat. [from Fr. *jonc,* a rush.] In old English law. The soil where rushes grow. *Co. Litt.* 5 a. *Cowell.*

Juncta juvant. United they aid. Lord Ellenborough, 11 *East,* 220. A portion of the maxim **Quæ non valeant singula, juncta juvant,** (q. v.) frequently cited. 3 *Man. & Gr.* 99.

JUNCTURA. Lat. [from *jungere,* to join.] In old English law. A joining together; the uniting, putting together, or including of several covenants in one stipulation or contract; (*si plura pacta de eadem re deducantur in stipulatione.*) *Bract.* fol. 100 b. One of the ancient *vestimenta pactorum;* (vestments of contracts.) *Id.* fol. 99 a. *Fleta*, lib. 2, c. 60, § 20.

A jointure; a joint estate. 4 *Co.* 2 a.

JUNGERE DUELLUM. L. Lat. In old English law. To join the *duellum;* to engage in the combat. *Fleta*, lib. 1, c. 21, § 10.

"JUNIOR" is no part of the name of the person to whose name it is usually affixed; but it is merely descriptive of the person intended. 10 *Paige's R.* 170. 14 *Barbour's R.* 261.

JUNIORES. L. Lat. In old European

law. Subordinate or inferior judges, (*judices subordinati.*) *Spelman.* See *Puisne.*

Successors, or heirs. *Id.*

Vassals, (*vassalli;*) subjects, (*subditi;*) servants, (*famuli.*) *Id. L. Alam.* tit. 79, § 1.

Yeomen, (*ingenui.*) *Spelman.*

JURA. Lat. [pl. of *jus*, q. v.] Rights; laws. 1 *Bl. Com.* 123. See *Jus* and *infra.* Freedoms or abilities. *Bacon's Works*, iii. 265.

Jura eodem modo destituuntur quo constituuntur. Laws are abrogated by the same means [authority] by which they are made. *Broom's Max.* [681.]

Jura naturæ sunt immutabilia. The laws of nature are unchangeable. *Branch's Pr.*

Jura publica anteferenda privatis. Public rights are to be preferred to private. *Co. Litt.* 130 a. Applied to protections. *Id. ibid.*

Jura publica ex privato [privatis] promiscue decidi non debent. Public rights ought not to be decided promiscuously with private. *Co. Litt.* 130 a, 181 b.

Jura sanguinis nullo jure civili dirimi possunt. The rights of blood can be taken away by no civil law. *Dig.* 50. 17. 8. *Bacon's Max.* 52, reg. 11. Applied chiefly to cases of attainder.

JURA FISCALIA. Lat. In English law. Fiscal rights; rights of the exchequer. 3 *Bl. Com.* 45.

JURA IN RE. Lat. In the civil law. Rights in a thing; rights, which being separated from the *dominium*, or right of property, exist independently of it, and are enjoyed by some other person than him who has the *dominium.* 1 *Mackeld. Civ. Law*, 232, § 228. See *Jus in re.*

JURA MIXTI DOMINII. Lat. In old English law. Rights of mixed dominion. The king's right or power of jurisdiction was so termed. *Hale's Anal.* sect. vi.

JURA PERSONARUM. Lat. Rights of persons; the rights of persons. Rights which concern and are annexed to the persons of men. 1 *Bl. Com.* 122. *Hale's Anal.* sect. i.

JURA PRÆDIORUM. Lat. In the civil law. The rights of estates. *Dig.* 50. 16. 86.

JURA REGALIA. Lat. In English law. Royal rights, or privileges. 1 *Bl. Com.* 117, 119. 3 *Id.* 44.

JURA REGIA. Lat. In English law. Royal rights; the prerogatives of the crown. *Crabb's Hist.* 174.

JURA RERUM. Lat. Rights of things; the rights of things; rights which a man may acquire over external objects, or things unconnected with his person. 1 *Bl. Com.* 122. 2 *Id.* 1. *Hale's Anal.* sect. i.

JURA SUMMI IMPERII. Lat. Rights of supreme dominion; rights of sovereignty. *Hale's Anal.* sect. v. 1 *Bl. Com.* 49. 1 *Kent's Com.* 211. Called, also, by Hale, *jura majestatis. Anal.* sect. iv.

JURAMENTUM. L. Lat. [from *jurare*, to swear; Lat. *jusjurandum.*] In the civil and common law. An oath. *Juramentum est affirmatio vel negatio de aliquo, attestatione sacræ rei firmata;* an oath is an affirmation or denial respecting any matter, confirmed by the attestation of a sacred thing. *Fleta*, lib. 5, c. 22, § 1. Juramentum *est indivisibile, et non est admittendum in parte verum, et in parte falsum;* an oath is indivisible, and is not to be received as in part true and in part false. 4 *Inst.* 279. See *Oath.*

The classic word *jusjurandum* is used in the Digests. *Dig.* 12. 2. But *juramentum* occurs in the Code, and is the prevailing word in the later civil law, as in the feudal and old common law. *Cod.* 2. 59. *Feud. Lib.* 2, tit. 33.

JURAMENTUM CALUMNIÆ. L. Lat. In the civil and canon law. The oath of calumny. 4 *Reeves' Hist. Eng. Law*, 16. *Calv. Lex. Gilb. For. Rom.* 22. *Clerke's Prax. Cur. Adm.* tit. 42. Called, in the Code of Justinian, *sacramentum calumniæ. Cod.* 2. 59. 2. 3. See *Calumnia.*

JURARE. In the civil and feudal law. To swear. *Dig.* 12. 3. *Cod.* 5. 53. *Feud. Lib.* 2, tit. 2.

JURARE. Lat. In old English law. To swear; to make oath; to take an oath. *Bract.* fol. 340 b. Jurare *est Deum in testem vocare, et est actus divini cultûs;* to swear is to call God to witness, and is an act of religion. 3 *Inst.* 165. *Best on Evid.* 51, § 55. Jurare *duodecimâ manu;* to swear by twelve hands; that is, by eleven persons besides the party accused. See *Duodecima manus.*

JURAT. [Lat. *juratum.*] In practice. The memorandum or clause at the foot of an affidavit, showing when, [and in English practice, where,] and before whom it was *sworn*, (*juratum.*) 1 *Tidd's Pr.* 495. In the old forms, it ran thus: *Juratum* (or, by abbreviation, *Jurat'*)—*die—coram J. H. Towns. Pl.* 491. This has been literally translated in the modern forms, "Sworn

this—day of—before me," &c.; and the original word *jurat'* adopted as the name of the clause. 3 *Chitt. Gen. Pr.* 339, 546. 6 *Ad. & Ell.* (N. S.) 528. 13 *Mees. & W.* 519.

The clause or certificate at the end of bills and answers in chancery, showing when, and how, and before whom they are sworn to, is also called the *jurat*. 1 *Barbour's Chanc. Pr.* 44, 144.

JURATS. [L. Lat. *jurati.*] Sworn men. Officers of certain municipal corporations in England, in the nature of aldermen, or assistants. *Cowell. Blount.* So called from their official *oaths.* See *Dugdale on Imbanking*, 18, *et seq.*

JURATA. L. Lat. [from *jurare*, to swear.] A jury. *Bract.* fol. 63 b. *Reg. Orig.* 179 b, 186, 188, 222. *Ad faciendam* juratam *illam;* to make that jury. *Fleta*, lib. 2, c. 65, § 12. So termed from being *sworn* well and truly to try the issue between the parties, and a true verdict to give according to the evidence. 3 *Bl. Com.* 365.

The *jurata*, or common jury of the ancient law, (otherwise termed *jurata patriæ*, a jury of the country,) as distinguished from the *assisa*, or assise established by Henry II. The jury seems to have been gradually introduced by usage, as an adaptation of the mode of trial by twelve men to other cases than those properly triable by the assise, and finally became, (even while assises were in use,) a familiar mode of trying any fact in dispute in a judicial proceeding. It differed from an assise, in being a tribunal chosen by consent of the parties themselves, or appointed by the court on their request; and in the jurors not being liable to an attaint. In some cases, an assise was turned into a jury, (*vertitur in juratam*,) and sometimes said to be taken in the manner, or form of a jury, (*in modum juratæ.*) The difference between an *assisa* and a *jurata* was a very common piece of learning in the reign of Henry III. 1 *Reeves' Hist. Eng. Law*, 86, 335, 336. *Crabb's Hist.* 164. *Bract.* fol. 192 b, 210 b, 215 b. *Fleta*, lib. 4, c. 16. See *Assisa, Assise.*

JURATA. L. Lat. In English practice. The jury clause in a nisi prius record, so called from the emphatic words of the old forms: *Jurata ponitur in respectum;* the jury is put in respite. *Towns. Pl.* 487. *Yelv.* 97. *T. Raym.* 74.

JURATOR. L. Lat. [from *jurare*, to swear.] In old English law. A juror. *Juratores;* jurors. 3 *Bl. Com.* 365. *Juratores assisæ;* jurors of the assise. *Reg. Orig.* 188, 223. *Juratores debent esse minus suspecti;* jurors ought to be free from suspicion. *Jenk. Cent.* 141, case 88. **Juratores sunt judices facti.** Jurors are the judges of fact. *Jenk. Cent.* 68, case 29.

A compurgator; one who swore for a defendant. *Fleta*, lib. 2, c. 63, § 11.

JURATORY CAUTION. [L. Lat. *cautio juratoria.*] In Scotch law. Security given by oath. See *Cautio.*

JURE. Lat. [abl. of *jus*, q. v.] By right; in right; by the law; according to the law. See *infra.*

JURE BELLI. Lat. By the right, or law of war. 1 *Kent's Com.* 126. 1 *Rob. Adm. R.* 289.

JURE CIVILI. Lat. By the civil law. *Inst.* 1. 3. 4. 1 *Bl. Com.* 423.

JURE DIVINO. L. Lat. By divine right. 1 *Bl. Com.* 191.

JURE ECCLESIÆ. L. Lat. In right of the church. 1 *Bl. Com.* 401.

JURE EMPHYTEUTICO. Lat. By the right or law of emphyteusis. 3 *Bl. Com.* 232. See *Emphyteusis.*

JURE GENTIUM. Lat. By the law of nations. *Inst.* 1. 3. 4. 1 *Bl. Com.* 423. See *Jus gentium.*

JURE NATURÆ. Lat. By or according to the law of nature. **Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiorem.** According to the law of nature, it is just that no man should be made richer by the loss and injury of another. *Dig.* 50. 17. 206.

JURE PROPINQUITATIS. L. Lat. By right of propinquity, or nearness. 2 *Crabb's Real Prop.* 1019, § 2398.

JURE REPRESENTATIONIS. L. Lat. By right of representation; in the right of another person. 2 *Bl. Com.* 224, 517. 2 *Crabb's Real Prop.* 1019, § 2398.

JURE UXORIS. L. Lat. In right of a wife. 3 *Bl. Com.* 210.

JURE, *Juree.* L. Fr. [from *jurer*, to swear.] A jury. *Serra la verite enquis par* jure; the truth shall be inquired by a jury. *Britt.* c. 51. *Serra la verite enquis par les jurours en forme de* juree; the truth shall be inquired by the jurors in the form of a jury. *Id.* c. 86. The chapters of Britton here referred to, are respectively entitled "*De assises tournes en jures*," and "*De assises tournes en jurees*;" (of assises turned into juries.)

JURER. L. Fr. [from Lat. *jurare.*] To swear. *Britt.* c. 1. *Jurgent;* they shall swear. *Id.* c. 2.

JURIDICAL. [Lat. *juridicus*, q. v.] Relating to the administration of justice. A juridical day is one on which courts sit for the administration of justice. See *Juridicus.*

Belonging to the office of a judge. See *Judicial.*

JURIDICUS. Lat. [from *jus*, law, and *dicere*, to say, or pronounce.] Belonging to law; relating to the administration of justice in, or by a court. *Dies* juridicus; a day on which courts can lawfully sit; a juridical day; a law or court day.* See *Dies juridicus.*

Juris effectus in executione consistit. The effect of the law consists in the execution. *Co. Litt.* 289 b.

JURIS ET DE JURE. Lat. Of law and from law. A term applied to absolute and conclusive presumptions, as distinguished from those which are inconclusive or rebuttable, which are termed *presumptiones juris* merely. *Best on Presumptions*, 20, § 17. *Best on Evid.* 43, § 48. *Burr. Circ. Evid.* 46. See *Præsumptio juris*, *Præsumptio juris et de jure.*

JURIS ET SEISINÆ CONJUNCTIO. L. Lat. In old English law. The union of the right [of possession or property in land] and the seisin, i. e. the actual corporal possession; constituting the complete title to lands, tenements and hereditaments. *Fleta*, lib. 3, c. 15, § 5. 2 *Bl. Com.* 199, 311. 3 *Id.* 176.

JURIS POSITIVI. L. Lat. Of positive law; a regulation or requirement of positive law, as distinguished from natural or divine law. 1 *Bl. Com.* 439. 2 *Steph. Com.* 286. The fixing the period of full age at twenty-one years, is said to be merely arbitrary and *juris positivi.* 1 *Bl. Com.* 464. So, rules of succession to estates are said to be creatures of the civil polity, and *juris positivi*, merely. 2 *Id.* 211.

JURIS PRIVATI. Lat. Of private right; subjects of private property. *Hale's Anal.* sect. xxiii.

JURIS PUBLICI. Lat. Of common right; of common or public use; such things as, at least in their own use, are common to all the king's subjects; as common highways, common bridges, common rivers, and common ports. *Hale's Anal.* sect. xxiii. The phrase *publici juris* is also used. *Hale de Jur. Mar.* pars 1, c. 3.

JURIS UTRUM. L. Lat. In English law. A writ which lay for the incumbent of a benefice, to recover the lands or tenements belonging to the church, which were aliened by his predecessor. *Termes de la Ley. F. N. B.* 48 R, 49. Sometimes called "the parson's writ of right," being the highest writ he could have. 3 *Bl. Com.* 252.

JURISCONSULTUS. Lat. [from *jus*, law, (*juris*, of law,) and *consultus*, consulted.] In the civil law. One who is consulted on matters of law; a learned person who gives counsel on questions of law; a jurisconsult. The *jurisconsulti* of the Roman law were learned persons (*prudentes*) who were authorized to give answers on matters of law, (*quibus permissum erat de jure respondere,*) and whose opinions (called *responsa prudentum*) were of binding authority. *Inst.* 1. 2. 8.

J Ctus or *I Ctus* is sometimes used as a contraction of this word.

JURISDICTIO. Lat. [from *jus*, law, right, (*juris*, of law,) and *dictio*, a speaking, declaring, or determining.] In old English law. Jurisdiction; authority to judge, or administer justice. *Nihil aliud est* jurisdictio *quam habere autoritatem* judicandi *sive* jus dicendi *inter partes de actionibus personarum et rerum, secundum quod deductæ fuerint in judicium per auctoritatem ordinariam vel delegatam;* jurisdiction is nothing else than the having authority of judging or of administering justice [declaring the law] between the parties to personal and real actions, according as they may have been brought into court by ordinary or delegated authority. *Bract.* fol. 400 b. See *Fleta*, lib. 6, c. 37, § 1.

Jurisdictio *est potestas de publico introducta, cum necessitate juris dicendi;* jurisdiction is a power introduced of common right, [by public authority or for the common benefit,] arising out of the necessity of declaring the law. 10 *Co.* 73 a, *The case of the Marshalsea.* 1 *Bulstr.* 211. This definition is borrowed from the civil law. *Id. ibid.*

JURISDICTION. [Lat. *jurisdictio*, q. v.] Authority to judge, or administer justice; power to act judicially; power or right to pronounce judgment.*—The right by which judges exercise their power. *Hale's Anal.* sect. xi.—The power of hear-

ing and determining causes, and of doing justice in matters of complaint. *Hallifax, Anal.* b. 3, c. 8, num. 4. "The power to hear and determine a cause is jurisdiction." Baldwin, J. 6 *Peters' R.* 691, 709. 2 *Howard's R.* 319, 338. To have *jurisdiction* in a criminal case is to have power to inquire into the facts, to apply the law, and to declare the punishment in a regular course of judicial proceeding. Shaw, C. J. 3 *Metcalf's R.* 460, 462. See *United States Digest*, Jurisdiction.

In a more general sense—power to make law; power to legislate or govern; power or right to exercise authority.

JURISPERITUS. Lat. [from *jus*, law, (*juris*, of law,) and *peritus*, skilled.] Skilled or learned in the law.

JURISPRUDENCE. [Lat. *jurisprudentia*, q. v.] The science of law; knowledge of law. See *Jurisprudentia.*

JURISPRUDENTIA. Lat. [from *jus*, law, (*juris*, of law,) and *prudentia*, wisdom, knowledge.] In the civil and common law. Jurisprudence, or legal science.

Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia; jurisprudence is the knowledge of things divine and human, the science of what is right and what is wrong. *Dig.* 1. 1. 10. 2. *Inst.* 1. 1. 1. This definition is adopted by Bracton, word for word. *Bract.* fol. 3.

Jurisprudentia legis communis Angliæ est scientia socialis et copiosa; The jurisprudence of the common law of England is a social and copious science: "social, in that it agreeth with the principles and rules of other excellent sciences, divine and human; copious, for that, *quamvis ad ea quæ frequentius accidunt jura adaptantur*, (though laws are adapted to those cases which more frequently happen) yet in a case so rare, and of such a quality that loss is the assured end of the practice of it, there should be such a multitude and farrago of authorities in all successions of ages, in our books and book-cases, for the deciding of a point of so rare an accident." 7 *Co.* 28 a, *Calvin's case.*

JURIST. [from Lat. *jus*, law.] One who is versed or skilled in law; answering to the Lat. *jurisperitus*, (q. v.)

One who is skilled in the civil law, or law of nations. The term is now usually applied to those who have distinguished themselves by their *writings* on legal subjects.

JURNALE. L. Lat. In old records. The journal or diary of accounts in a religious house. *Kennett's Par. Ant.* 571. *Cowell.*

JURNEDUM. L. Lat. In old English law. A journey; a day's travelling. *Cart. S. Edmund.* cited in *Cowell.*

JUROR. [L. Fr. *jurour, jorour;* L. Lat. *jurator.*] In practice. One of a jury; a person sworn (*juratus*) on a jury; a juryman. See *United States Digest*, Jurors.

JURY. [L. Fr. *jure, juree;* L. Lat. *jurata*, qq. v.] In practice. A certain number of men, selected according to law, and *sworn* (*jurati*) to inquire of certain matters of fact, and declare the truth upon evidence to be laid before them. This definition embraces the various subdivisions of juries, as *grand jury, petit jury, common jury, special jury, coroner's jury, sheriff's jury*, (qq. v.)

In a narrower sense, twelve men, selected and sworn according to law, constituting the ordinary and proper tribunal for the trial of issues of fact in actions at law; otherwise termed the *petit jury*, to distinguish it from the grand jury.* A jury, *ex vi termini*, imports twelve men. 6 *Metcalf's R.* 231, arg. "That the term 'jury,' without addition or prefix, imports a body of twelve men in a court of justice, is as well settled as any legal proposition can be." Thurman, C. J. 4 *Ohio St. R.* 177. See 2 *Wisconsin R.* 22. 3 *Id.* 219. 3 *Kernan's R.* 427. 2 *Id.* 190. 2 *Parker's Crim. R.* 312.

JURY BOX. In practice. The place in court (strictly, an enclosed place) where the jury sit during the trial of a cause. 1 *Archb. Pr.* 208. 1 *Burr. Pr.* 455.

JURY MAN. One of a jury; a juror. Little used.

JURY PROCESS. In practice. The process by which a jury is summoned in a cause, and by which their attendance is enforced. In England, it consists of the writs of *venire facias*, and *distringas juratores.* 2 *Tidd's Pr.* 777. *Chitt. Arch. Pr.* 249. 2 *Steph. Com.* 589. See *Venire.*

JUS. Right in general, or in the abstract; justice; equity; otherwise termed *fas;* (L. Lat. *rectum*, Fr. *droit.*) *Bract.* fol. 2 b. *Fleta*, lib. 6, c. 1, § 1. See *Rectum, Right.*

Law. *Dig.* 1. 1. 1. pr. *Id.* 1. 1. 10. 1. *Id.* 1. 2. 2. 12. *Jus publicum;* public law. *Id.* 1. 1. 1. 2.

Law, as distinguished from equity; strict law, (*pro rigore juris.*) *Bract.* fol. 3.

A, or the law. *Jus civile;* the civil law. *Jus gentium;* the law of nations. *Inst.* 1. 1, 2. *Dig.* 1. 1. 5, 6. *Bract.* fol. 3 b, 4. See *Law.*

A, or the right; as applied to a particu- law person or subject. *Jus ad rem;* a right to a thing. *Jus possessionis;* the right of possession. See *infra.*

A rule of law or regulation. *Jus vetus;* the old rule or law. *Jus novum;* the new rule. *Inst.* 2. 13.

An action. *Bract.* fol. 3. Or rather, those proceedings in the Roman action which were conducted before the prætor. See *Actio.*

Power or authority. *Sui juris;* in one's own power; independent. *Inst.* 1. 8. pr. *Bract.* fol. 3. *Alieni juris;* under another's power. *Inst.* 1. 8. pr.

The profession, (*ars*) or practice of the law. *Jus ponitur pro ipsa arte. Bract.* fol. 2 b.

A court or judicial tribunal, (*locus in quo redditur jus.*) *Bract.* fol. 3.

Jus est ars boni et æqui. Law is the science of what is good and just. *Dig.* 1. 1. 1. 1. *Bract.* fol. 2 b. This definition is considered by the learned editor of Mackeldey's Civil Law, to be inaccurate or imperfect, as it makes law merely the science of morals, or, at most, the science of equity. 1 *Mackeld. Civ. Law*, 122, 123, Kaufmann's note, *ibid.*

Jus est norma recti; et quicquid est contra normam recti est injuria. Law is a rule of right; and whatever is contrary to the rule of right is an injury. 3 *Bulstr.* 313.

Jus et fraus nunquam cohabitant. Right and fraud never dwell together. 10 *Co.* 45 a, *Jenning's case.* Applied to the title of a statute. *Id. ibid. Best on Evid.* 250, § 205.

Jus ex injuria non oritur. A right does [or can] not arise out of a wrong. 4 *Bing.* 639. *Broom's Max.* 352, note.

Jus non habenti tute non paretur. One who has no right cannot be safely obeyed. *Hob.* 146.

Jus respicit æquitatem. The law regards equity. *Co. Litt.* 24 b. *Broom's Max.* 39, [112.]

JUS ACCRESCENDI. L. Lat. The right of survivorship; sometimes called the right of accruer or accretion. *Bract.* fol. 262 b. This is a principal incident peculiar to an estate held by several *jointly;* and is so called, because, upon the death of one joint tenant, the right or share which he had, accumulates and increases, or *accrues to the survivor;* (*pars illa communis, per jus* accrescendi, accrescit *superstitibus.*) *Id. ibid. Fleta*, lib. 3, c. 4, § 2. 2 *Bl. Com.* 184. 1 *Steph. Com.* 316. 2 *Crabb's Real Prop.* 940, § 2306.

Jus accrescendi inter mercatores, pro beneficio commercii, locum non habet. The right of survivorship has no place between merchants, for the benefit of commerce. *Co. Litt.* 182 a. 2 *Story's Eq. Jur.* § 1207. There is no survivorship in cases of partnership, as there is in joint-tenancy. *Story on Partn.* § 90. It is an universally established principle of the whole commercial world, that the property and effects of a partnership do not, in case of a dissolution by death, belong exclusively to the survivors, but are to be distributed between them and the representatives of the deceased, in the same manner as they would have been upon a voluntary dissolution *inter vivos. Id.* § 342.

Jus accrescendi præfertur oneribus. The right of survivorship is preferred to incumbrances. *Co. Litt.* 185 a. Hence no dower or curtesy can be claimed out of a joint estate. 1 *Steph. Com.* 316.

Jus accrescendi præfertur ultimæ voluntati. The right of survivorship is preferred to the last will. *Co. Litt.* 185 b. A devise of one's share of a joint estate, by will, is no severance of the jointure; for no testament takes effect till after the death of the testator, and by such death the right of the survivor (which accrued at the original creation of the estate, and has therefore a priority to the other) is already vested. 2 *Bl. Com.* 186. 3 *Steph. Com.* 316.

JUS AD REM. Lat. In the civil law. A right to a thing. A personal right applying only against the actual obligee, as distinguished from *jus in re*, a right in the thing itself, which is a real right having effect against every third person. 1 *Mackeld. Civ. Law*, 321, Kaufmann's note. Defined by Huberus and Heineccius, *facultas competens personæ in personam, ut hæc aliquid dare vel facere teneatur;* (a power belonging to one person against another person, [by which] the latter may be compelled to give or do something.) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 332. Property consisting in action or obligation is called *jus ad rem;* property in possession or do-

minion is called *jus in re*. *Hallifax, Anal.* b. 2, c. 1, num. 9. Property in action, when considered with regard to the person *from* whom it is due, is called obligation; when considered with regard to the person *to* whom it is due, it is called *jus ad rem*. *Id.* c. 13, num. 1. *Story's Confl. Laws*, § 530. These terms are derived from the canon law. 2 *Wooddes. Lect.* 235. 1 *Kent's Com.* 177.

In the canon law. A right to a thing. An inchoate and imperfect right, such as is gained by nomination and institution, as distinguished from *jus in re*, or complete and full right, such as is acquired by corporeal possession. *Decretal.* lib. 2, tit. 4, c. 40. 2 *Bl. Com.* 312.

In the common law. A right to a thing. A disseisee hath *majus jus ad rem*, viz. *in jure*, to have the land than the heir of the disseisor hath; but the heir of the disseisor hath *majus jus in re*, viz. in possession, to have the land than the disseisee hath. *Perkins*, ch. 3, s. 218 B. Lord Bacon calls *jus in re* an estate; *jus ad rem*, a demand. *Bac. Read. Uses.*

In modern law. A right to a thing without the possession of it. 1 *Kent's Com.* 177. An imperfect or incomplete right. Cowen, J. 4 *Hill's* (N. Y.) *R.* 635, 640. A lien depending wholly upon contract is called a *jus ad rem*. 1 *Duer on Ins.* 538, note.

JUS AQUAM DUCENDI. Lat. In old English law. The right of leading water, (over another's land.) *Fleta*, lib. 4, c. 18, § 3. See *Aquæ ductus.*

JUS ALBINATUS. L. Lat. The *droit d'aubaine*, (q. v.) See *Albinatûs jus.*

JUS BANCI. L. Lat. In old English law. The right of bench. The right or privilege of having an elevated and separate *seat of judgment*, anciently allowed only to the king's judges, who hence were said to administer *high* justice, (*summam administrant justitiam.*) *Blount*, voc. *Bank.*

JUS BELLI. Lat. The law of war. The law of nations as applied to a state of war, defining in particular the rights and duties of the belligerent powers themselves, and of neutral nations.

The right of war; that which may be done without injustice, with regard to an enemy. *Grotius de Jure Belli*, lib. 1, c. 1, § 3.

JUS CIVILE. Lat. Civil law; the civil law. The whole body of law peculiar to any state; the law by which particular districts, communities or nations are governed. *Quod quisque populus sibi jus constituit, id ipsius proprium civitatis est, vocaturque* jus civile, *quasi* jus *proprium ipsius* civitatis; that law which every people establishes for itself is peculiar to the state which establishes it, and is called *civil* law, being, as it were, the proper law of such *state* (*civitatis.*) *Inst.* 1. 2. 1. Otherwise called by Blackstone, *municipal* law. 1 *Bl. Com.* 44.

The civil law of the Romans, in particular; the law used by the Roman people; (*Jus civile Romanorum.*) *Inst.* 1. 2. 2. Now called emphatically "*the civil law.*"

Among the Romans, the term *jus civile* was used in a more restricted sense, to signify all the Roman law, except the *jus honorarium*. *Dig.* 1. 1. 7, pr. And, in a still more restricted acceptation, to denote only the *auctoritas prudentum*, and the *disputatio fori*. *Dig.* 1. 2. 2, 5, 12.

JUS CIVITATIS. Lat. In the Roman law. The right of citizenship, (the right of the city,) the right of a Roman citizen. *Butler's Hor. Jur.* 27. See *Civitas.*

In English law, "*jus civitatis* answers to that we call denization or naturalization." *Bacon's Works*, iii. 265.

JUS COMMUNE. Lat. In the civil law. Common right; the common and natural rule of right, as opposed to *jus singulare*, (q. v.) 1 *Mackeld. Civ. Law*, 181, 188. See *Dig.* 50. 17. 81. Bracton uses the phrase in this sense. *Poterit quis renuntiare iis quæ pro se et suis introducta sunt contra* jus commune; a person may relinquish rights introduced for the benefit of himself and his, [that is, those claiming under him,] against the common rule of law. *Bract.* fol. 49.

In English law. The common law, answering to the Saxon *folcright*. 1 *Bl. Com.* 67.

JUS CORONÆ. Lat. In English law. The right of the crown, or rather to the crown; the right of succession to the throne. 1 *Bl. Com.* 191. 2 *Steph. Com.* 434.

JUS CUDENDÆ MONETÆ. L. Lat. In old English law. The right of coining money. 2 *How. St. Trials*, 118.

JUS CURIALITATIS. L. Lat. In English law. The right of curtesy. *Spelman.* See *Curialitas, Curtesy.*

JUS DARE. Lat. To give law; to make law. The province of the legislative power. 3 *P. Wms.* 485. See *Jus dicere.*

JUS DELIBERANDI. Lat. In the civil law. The right of deliberating; a

right granted by the prætor to the heir, allowing him time to consider whether he would accept the inheritance or not. *Inst.* 2. 19. 5. *Dig.* 28. 8. *Cod.* 6. 30. See *Deliberare.* Adopted in Scotch law. *Bell's Dict.*

JUS DICERE. Lat. To declare the law; to say what the law is. The province of a court or judge. "My business in this and every other case, is *jus dicere, non jus dare.*" Lord Henley, C. 2 *Eden*, 29. 3 *P. Wms.* 485.

JUS DISPONENDI. L. Lat. The right of disposing. 2 *Kent's Com.* 174. 3 *Id.* 44.

JUS DUPLICATUM. Lat. A double right; the right of possession united with the right of property; otherwise called *droit droit.* 2 *Bl. Com.* 199.

JUS FALCANDI. Lat. In old English law. The right of mowing or cutting. *Fleta*, lib. 4, c. 27, § 1.

JUS FECIALE. Lat. In the Roman law. The law of arms. *Taylor's Civ. Law*, 63.

JUS FIDUCIARIUM. Lat. In the civil law. A right in trust, as distinguished from *jus legitimum*, a legal right. 2 *Bl. Com.* 328. A right for which there is a remedy, but only in conscience. *Bacon's Read. Uses.*

JUS FLUMINUM. Lat. In the civil law. The right to the use of rivers. *Loccenius de Jur. Mar.* lib. 1, c. 6.

JUS FODIENDI. Lat. In the civil and old English law. A right of digging on another's land. *Inst.* 2. 3. 2. *Bract.* fol. 222. *Fleta*, lib. 4, c. 19, § 6.

JUS GENTIUM. Lat. The law of nations. *Quod naturalis ratio inter omnes homines constituit, id apud omnes gentes perœque custoditur, vocaturque* jus gentium, *quasi quo* jure *omnes* gentes *utantur;* that law which natural reason has established among all men is equally observed among all nations, and is called the law of nations, as being the law which all nations use. *Inst.* 1. 2. 1. *Dig.* 1. 1. 9. *Id.* 1. 1. 1. 4. *Id.* 1. 1. 5. *Id.* 41. 1. 1. 1 *Bl. Com.* 43. 1 *Kent's Com.* 7. 1 *Mackeld. Civ. Law*, 21, § 31. *Id.* 124, § 113. See *Grotius de Jur. Bell.* lib. 2, c. 8, § 26. *Tayl. Civ. Law*, 127.

JUS GERANII. L. Lat. In old European law. Literally, the right of the crane; the right of unloading goods from vessels by means of a hoisting engine called a crane, (*geranium.*) *Loccenius de Jur. Mar.* lib. 1, c. 10. See *Jus Stapulæ.*

JUS GLADII. Lat. In the civil law. The right of the sword; the executory power of the law; the right, power or prerogative of punishing for crime. 4 *Bl. Com.* 177. *Potestas animadvertendi in facinorosos. Calv. Lex.* Sometimes called *potestas gladii*, (the power of the sword.) *Dig.* 50. 17. 70.

JUS HAURIENDI. Lat. In civil and old English law. The right of drawing water. *Fleta*, lib. 4, c. 27, § 1.

JUS HONORARIUM. Lat. In the Roman law. The honorary law. A code of equitable jurisprudence compiled from the edicts of the prætors and ædiles. *Inst.* 1. 2. *Dig.* 1. 2. 2. 10, 12. *Hallifax, Anal.* b. 1, c. 2, num. 12. 1 *Spence's Chancery*, 322, 324. 1 *Mackeld. Civ. Law*, 23, § 33. So called *ab honore prætoris*, that is, from the public offices with which the prætors and ædiles were invested, and from which that law issued; and hence signifying *law by the magistrates. Id. ibid.* note (*d.*) *Inst.* 1. 2. 7. Called in the Digests, the living voice of the civil law, (*viva vox juris civilis.*) *Dig.* 1. 1. 8.

JUS IMMUNITATIS. Lat. In the civil law. The law of immunity, or exemption from the burden of public office. *Dig.* 50. 6.

JUS INDIVIDUUM. L. Lat. An individual or indivisible right; a right incapable of division. 36 *Eng. Law. & Eq. R.* 25.

JUS IN RE. Lat. A right in a thing. Defined by the civilians, *facultas homini in rem competens, sine respectu ad certam personam;* a power belonging to a man over a thing, without reference to any particular person. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 332. A right in a thing itself, having effect against every third person. 1 *Mackeld. Civ. Law*, 321, § 294, Kaufmann's note. A fixed right of property, annexed or attached to a thing. *Story on Bailm.* 93 g. See *Story's Confl. Laws*, § 371.—Property in possession or dominion, as distinguished from *jus ad rem*, (q. v.) *Hallifax, Anal.* b. 2, c. 1, num. 9. *Story's Confl. Laws*, § 530.

A right in a thing, implying both right and possession. 1 *Kent's Com.* 177. A complete, as distinguished from an imperfect right.* Cowen, J. 4 *Hill's* (N. Y.) *R.* 635, 640.—A lien accompanied with possession; a visible lien. 1 *Duer on Ins.* 538, note.

JUS LATII. Lat. In the Roman law.

The right of Latium or of the Latins. The principal privilege of the Latins seems to have been the use of their own laws, and their not being subject to the edicts of the prætor; and that they had occasional access to the freedom of Rome, and a participation in her sacred rites. *Butler's Hor. Jur.* 28.

JUS LEGITIMUM. Lat. In the civil law. A legal right; one which was remedied by the ordinary course of law. 2 *Bl. Com.* 328. *Bacon's Read. Uses.* Cowen, J. 2 *Hill's* (N. Y.) *R.* 418, 424.

JUS MARITI. Lat. The right of a husband; especially the right which a husband acquires to his wife's moveable estate by virtue of the marriage. 1 *Forbes' Inst.* part 1, p. 63. *Bell's Dict.*

JUS MERUM. L. Lat. In old English law. Mere or bare right; the mere right of property in lands, without either possession or even the right of possession. 2 *Bl. Com.* 197. *Bract.* fol. 23. *Fleta*, lib. 5, c. 5, § 37.

JUS NATURÆ. Lat. The law of nature. See *Jus naturale.*

JUS NATURALE. Lat. Natural law. The name given among the Romans to that law which is derived from the animal nature of man, and from those instincts which he has in common with the brute creation. 1 *Mackeld. Civ. Law*, 124, § 113. *Id.* 125, 126, Kaufmann's note. *Dig.* 1. 1. 1. 4. *Tayl. Civ. Law*, 111. *Bract.* fol. 3 b.

The law of nations (*jus gentium*) was sometimes called by this name. *Inst.* 1. 2. 11. *Id.* 2. 1. 11. See *Tayl. Civ. Law*, 128.

Grotius defines *jus naturale* to be *dictatum rectæ rationis, indicans actui alicui, ex ejus convenientia aut disconvenientia cum ipsa natura rationali, inesse moralem turpitudinem aut necessitatem moralem;* which Dr. Taylor translates, "the rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitableness or unsuitableness to a reasonable nature." *Grot. de Jur. Bell.* lib. 1, c. 1, § 10. *Tayl. Civ. Law*, 99.

JUS NAVIGANDI. Lat. The right of navigating or navigation; the right of commerce by ships or by sea. *Loccenius de Jur. Mar.* lib. 1, c. 3.

JUS NECIS. Lat. In the Roman law. The right of death; or of putting to death. A right which a father anciently had over his children. 3 *Gibbon's Rom. Emp.* 169, (Am. ed. 1844.) *Adam's Rom. Ant.* 51.

JUS NON SCRIPTUM. Lat. The unwritten law. 1 *Bl. Com.* 64.

JUS PAPIRIANUM, or *Jus Civile Papirianum.* Lat. The civil law of Papirius. The title of the earliest collection of Roman law, said to have been made in the time of Tarquin, the last of the kings, by a *pontifex maximus* of the name of Sextus or Publius Papirius. *Dig.* 1. 2. 2. 2. Very few fragments of this collection now remain, and the authenticity of these has been doubted. 1 *Kent's Com.* 517. 1 *Mackeld. Civ. Law*, 14, § 21.

JUS PASCENDI. Lat. In civil and old English law. The right of pasturing cattle. *Inst.* 2. 3. 2. *Dig.* 8. 3. 1. 1. *Bract.* fol. 53 b, 222. *Fleta*, lib. 4, c. 27, § 1.

JUS PATRONATUS. L. Lat. In English ecclesiastical law. The right of patronage; the right of presenting a clerk to a benefice. *Blount.*

A commission from the bishop, where two presentations are offered upon the same avoidance, directed usually to his chancellor and others of competent learning, who are to summon a jury of six clergymen and six laymen, to inquire into and examine who is the rightful patron. 3 *Bl. Com.* 246. 3 *Steph. Com.* 517.

JUS PISCANDI. Lat. In civil and old English law. The right of fishing. *Fleta*, lib. 4, c. 27, § 1. *Loccenius de Jur. Mar.* lib. 1, c. 9.

JUS PORTUS. L. Lat. In maritime law. The right of port or harbor. *Loccenius de Jur. Mar.* lib. 1, c. 8.

JUS POSSESSIONIS. Lat. A, or the right of possession, or seisin. *Bract.* fol. 3. *Fleta*, lib. 4, c. 1, § 2. *Co. Litt.* 266 a. 3 *Bl. Com.* 177, 191.

JUS POSTLIMINII. Lat. In the civil law. The right of postliminy; the right or claim of a person who had been restored to the possession of a thing, or to a former condition, to be considered as though he had never been deprived of it. *Dig.* 49. 15. 5. 3 *Bl. Com.* 107, 210. See *Postliminium.*

In international law. The right by which property taken by an enemy, and recaptured or rescued from him by the fellow-subjects or allies of the original owner, is restored to the latter upon certain terms. 1 *Kent's Com.* 108.

JUS PRÆLATIONIS. Lat. The right of preference or priority; the priority of

one creditor over another. *Story Confl. Laws*, § 325 c.

JUS PRÆSENS. Lat. In the civil law. A present or vested right; a right already completely acquired. 1 *Mackeld. Civ. Law*, 174, § 183.

JUS PRÆTORIUM. Lat. In the civil law. The discretion of the prætor, as distinct from the *leges*, or standing laws. 3 *Bl. Com.* 49. That kind of law which the prætors introduced for the purpose of aiding, supplying or correcting the civil law, for the public benefit. *Dig.* 1. 1. 7. Called also *Jus honorarium*, (q. v.)

JUS PRECARIUM. Lat. In the civil law. A right in courtesy, for which the remedy was only by entreaty, (*prece*,) or request, (or for which, in other words, there was no remedy at all.) *Bacon's Read. Uses.* 2 *Bl. Com.* 328. Cowen, J. 2 *Hill's* (N. Y.) *R.* 418, 424.

JUS PROPRIETATIS. Lat. The right of property, as distinguished from the *jus possessionis*, or right of possession. *Bract.* fol. 3. *Fleta*, lib. 4, c. 1, § 2. Called by Bracton (*ubi supra*) *jus merum*, the mere right. 2 *Bl. Com.* 197. 3 *Id.* 19, 176.

JUS PUBLICUM. Lat. In the Roman law. Public law; that which regards the condition of the Roman state; (*quod ad statum rei Romanæ spectat.*) *Inst.* 1. 1. 4. *Dig.* 1. 1. 1. 2. This definition is borrowed by Bracton, who accommodates it to the English jurisprudence. *Est* jus publicum *quod ad statum reipublicæ pertinet. Bract.* fol. 3 b.

Jus publicum, privatorum pactis mutari non potest. A public law or right cannot be altered by the agreements of private persons. *Dig.* 2. 14. 38. See *Id.* 2. 15. 3, pr. Another form of the maxim **Conventio privatorum non potest publico juri derogare.**

JUS RELICTÆ. L. Lat. The right of a relict; the right or claim of a relict or widow to her share of her husband's estate, particularly the moveables. 2 *Kames' Equity*, 340. 1 *Forbes' Inst.* part 1, p. 67. *Bell's Dict.*

JUS SCRIPTUM. Lat. In the Roman law. Written law; answering to the Gr. νομος ἐγγραφος. *Inst.* 1. 2. 3. All law that was actually committed to writing, whether it had originated by enactment or by custom, in contradistinction to such parts of the law of custom as were not committed to writing. 1 *Mackeld. Civ. Law*, 125, § 113.

In English law. Written law, or statute law, otherwise called *lex scripta*, as distinguished from the common law, *lex non scripta.* 1 *Bl. Com.* 62.

Jus scriptum is used in Fleta to denote the civil law, as distinguished from the law of England. *Quod in* jure scripto *jus appellatur, in* lege Angliæ *rectum esse dicitur;* that which in the civil law is called *jus*, in the law of England is said to be *rectum*, (right.) *Fleta*, lib. 6, c. 1, § 1. This passage is quoted by Lord Coke. *Co. Litt.* 158.

JUS SECANDI. Lat. In the old English law. The right of cutting. *Fleta*, lib. 4, c. 27, § 1.

JUS SINGULARE. Lat. In the civil law. A peculiar or anomalous rule, differing from the *jus commune* or common rule of right, and established for some special reason. 1 *Mackeld. Civ. Law*, 181, § 188.

JUS STAPULÆ. L. Lat. In old European law. The law of staple; the right of staple. A right or privilege of certain towns, of stopping imported merchandise, and compelling it to be offered for sale in their own markets. *Loccen. de Jur. Mar.* lib. 1, c. 10.

JUS STRICTUM. Lat. Strict law. See *Stricti juris.*

JUS TERTII. L. Lat. The right of a third party; the right or interest of a third person. 1 *Curtis' R.* 345.

JUS TRIUM LIBERORUM. Lat. In the Roman law. A right or privilege allowed to the parent of *three* or more *children.* 2 *Kent's Com.* 85. 2 *Bl. Com.* 247. These privileges were, an exemption from the trouble of guardianship, priority in bearing offices, and a treble proportion of corn. *Adam's Rom. Ant.* 227, (Am. ed.)

JUS VENANDI. Lat. In old English law. A right of hunting on another's land. *Bract.* fol. 222. *Fleta*, lib. 4, c. 27, § 1.

JUSJURANDUM. Lat. In the civil law. An oath. *Inst.* 4. 16. 1. *Dig.* 12. 2. *Cod.* 4. 1. *Juramentum*, (q. v.) is the ordinary law-Latin word. *Jusjurandum* is used in the Books of Feuds. *Feud. Lib.* 2, tit. 2. Grotius uses both words indifferently. *De Jur. Bell.* lib. 2, c. 13.

Jusjurandum inter alios factum nec nocere nec prodesse debet. An oath made between others ought neither to hurt nor profit. 4 *Inst.* 279. This is merely a special application of the maxim, **Res inter**

alios acta alteri nocere non debet, (q. v.) See *Dig.* 12. 2. 10.

JUSTA. See *Justus.*

JUSTA CAUSA. Lat. In the civil law. A just cause; a lawful ground; a legal transaction of some kind. 1 *Mackeld. Civ. Law*, 287, § 274. See *Grotius de Jur. Bell.* lib. 2, c. 23, § 13.

JUSTE. Lat. In the civil law. Justly; lawfully; by title, or upon some lawful ground, (*ex causâ titulove.*) *Calv. Lex.*

Justly; regularly; lawfully; in due form of law. *Id.*

JUSTICE. L. Fr. and Eng. [Lat. *justitia.*] The virtue which consists in giving to every one what is his due. *Webster.* Conformity to the law both in will and act. The definition of justice in the Roman civil law makes it to consist in the will or disposition (*voluntas*) alone. Taylor defines it, after that law, "that virtue of the human mind by which we are disposed to render to every man what is due to him." *Civil Law*, 83. See *Justitia.*

That which is one's due or desert; the giving or administering of which is the object and end of the law.* 2 *Inst.* 56.

JUSTICE. Fr. In feudal law. Jurisdiction; judicial cognizance of causes or offences; the right of dispensing justice; the hereditary jurisdiction of a feudal lord. There was an extremely ancient distinction in the feudal law, between the *high justice* and the *low.* The former included the right of trying crimes of every kind, even the highest; the latter was confined to petty trespasses. 1 *Robertson's Charles* V. Appendix, note xxiii. There was sometimes a distinction between *high, middle* and *low* justice, (*justice haute, moyenne and basse.*) *Boutillier Somme Rurale*, lib. 1, tit. 21. *Esprit des Lois*, liv. 28, c. 42. *Guyot, Inst. Feod.* ch. 3.

The power to administer, of right, high, low and middle jurisdiction, is given in the Dutch patent of Mespath, or Newtown, L. I., March 28, 1642.

JUSTICE. L. Fr. and Eng. [L. Lat. *justicia, justiciarius.*] A title given to the judges of common law courts in England and the United States. This is of great antiquity in English law, and seems peculiar to the common law; never having been given to the judges of equity and admiralty courts. *Cowell.* See *Justices. Justice* occurs as a French word in Britton. *Britt.* cc. 2, 121.

Lord Coke observes that "in Glanville (lib. 2, cap. 6,) a justice is called *justitia in ipso abstracto*, as it were justice itself, [in the abstract] which appellation remains still in English and French, to put them in mind of their duty and functions. But now, in legal Latin they are called *justiciarii, tanquam justi in concreto* [just in the concrete;] and they are called *justiciarii de banco*, &c. and never *judices de banco*, &c." *Co. Litt.* 71 b. This ancient practice still remains unchanged; the judges of the English courts of Queen's Bench and Common Pleas, and, after them, the judges of the Supreme Court of the United States, and of most of the state supreme courts, being denominated in law, and according to the proper style of their respective courts, *justices.*

The term *justice*, however, is not confined to the superior courts, but is applied to judicial officers and magistrates of the lowest grade. See *Justices of the peace.*

To JUSTICE. [L. Lat. *justiciare.*] In old English practice. To do justice; to see justice done; to summon one to do justice. See *Justiciare, Justicies.*

JUSTICE AYRES (or AIRES.) In Scotch law. Circuits made by the judges of the Justiciary Courts through the kingdom, for the distribution of justice. *Bell's Dict.*

JUSTICE SEAT. In English law. The principal court of the forest, held before the chief justice in eyre, or chief itinerant judge, or his deputy; to hear and determine all trespasses within the forest, and all claims of franchises, liberties and privileges, and all pleas and causes whatsoever therein arising. 3 *Bl. Com.* 72. 4 *Inst.* 291. 3 *Steph. Com.* 440.

JUSTICEABLE. In old English law. Amenable; summonable. *Britt.* c. 34. See *Justice.*

JUSTICER. The old form of *justice*, following the L. Lat. *justitiarius. Blount*, voc. *Justice. Spelman*, voc. *Justitia.*

JUSTICES OF ASSISE. [L. Lat. *justitiarii ad capiendas assisas.*] In old English law. A particular kind of justices in eyre, appointed or commissioned to determine certain actions called *assises*, or to take verdicts in such actions. *Magna Charta*, c. 12. *Bract.* fol. 105 b, 108. 3 *Bl. Com.* 57. They were not however specially known by this name until after the discontinuance of the justices in eyre, (q. v.) Lord Coke says they were "so called because writs of *assise of novel dis-*

seisin were returnable before them to be taken in their proper counties twice every year at the least, whereupon they had authority to *give judgment*, and award seisin and *execution;* and therefore, both for the number of them in times past, and for the greater authority they had than as justices of *nisi prius*, (which was to *try issues only*, except in *quare impedit* and assises *de darrein presentment*) they were denominated *justices of assises.*" *Co. Litt.* 263 a.

In modern English law. The judges of the superior courts at Westminster, who go circuit into the various counties of England and Wales twice a year, for the purpose of disposing of such causes as are ready for trial at the *assizes*. *Holthouse.* Sometimes also called justices of *nisi prius*. 3 *Bl. Com.* 58.

JUSTICES IN EYRE. [L. Lat. *justiciarii in itinere; justiciarii itinerantes* or *errantes.*] In old English law. Itinerant or travelling justices. Justices who travelled from county to county throughout the kingdom, usually once every seven years, sometimes with a general commission to determine all manner of causes, (*ad omnia placita,*) and sometimes for certain special purposes, as to take assises of novel disseisin and mort d'ancestor, to deliver the gaols, and sometimes to take a single assise or two, and no more. *Bract.* fol. 105 b, 108. Bracton gives the forms of their commissions in each of these cases, at length. *Id.* fol. 109—111 b. They were first regularly established in the time of Henry II. 3 *Bl. Com.* 57. 1 *Spence's Chancery*, 115, 116.

JUSTICES OF THE BENCH. [L. Lat. *justiciarii de Banco.*] In old English law. The justices of the court of Common Bench or Common Pleas. *Fleta*, lib. 2, c. 34.

JUSTICES OF GAOL DELIVERY. [L. Lat. *justiciarii ad gaolas deliberandas.*] In old English law. Justices in eyre, who acted under a special commission to deliver the gaols of persons confined in them for any contempt or offence. *Bract.* fol. 105 b, 108, 109 b, 110. See *Gaol delivery.*

The judges of the superior courts at Westminster now act in this capacity, under a commission of gaol delivery. 3 *Bl. Com.* 58.

JUSTICES OF THE JEWS. [L. Lat. *justiciarii ad custodiam Judæorum assignati.*] In old English law. Justices appointed by Richard I. to carry into effect the laws and orders which he made for regulating the contracts and usury of the Jews. *Blount. Holthouse.*

JUSTICES OF LABORERS. In old English law. Justices appointed to redress the frowardness of laboring men, who would either be idle or have unreasonable wages. *Blount.*

JUSTICES OF NISI PRIUS. In English law. This title is now usually coupled with that of *Justices of Assize;* the judges of the superior courts acting on their circuits in both these capacities. 3 *Bl. Com.* 58, 59. Formerly, a distinction was made between these two kinds of justices; justices of *assise* having power to give judgment in a cause, but justices of *nisi prius* only to take the verdict. *Cromp. Jur.* 204. And Cowell makes another distinction; that the former had to deal in causes personal, as well as real, but the latter strictly only in the possessory writs called *assises.* See *Nisi prius.*

JUSTICES OF OYER AND TERMINER. [L. Lat. *justiciarii ad audiendum et terminandum.*] In old English law. Justices deputed upon some special or extraordinary occasion, to hear and determine some peculiar causes, such as cases of riotous assembly or insurrection, heinous misdemeanor or trespass. *Cowell. F. N. B.* 110.

The judges of the superior courts now act in this capacity, under a commission of *oyer and terminer.* 3 *Bl. Com.* 58. See *Oyer and Terminer.*

JUSTICES OF TRAIL-BASTON. In old English law. A kind of justices appointed by king Edward I. upon occasion of great disorders in the realm, during his absence in the Scotch and French wars. They were a kind of justices in eyre, with great powers adapted to the emergency, and which they exercised in a summary manner. *Cowell. Blount.* The origin of the term *trail-baston* has been variously explained. See *Cowell.*

JUSTICES OF THE PAVILION. In old English law. Judges of a pyepowder court, of a most transcendent jurisdiction, anciently authorized by the Bishop of Winchester, at a fair held on St. Giles' Hills near that city. *Cowell. Blount.*

JUSTICES OF THE PEACE. [L. Lat. *justitiarii ad pacem.*] In English law. County magistrates appointed by special commission under the great seal, to *keep*

the peace in the particular county named. Their commission appoints them all, jointly and severally, to keep the peace, and any two or more of them to inquire of and determine felonies and other misdemeanors in such county committed; in which number some particular justices, or one of them, are directed to be always included, and no business to be done without their presence; the words of the commission running thus: QUORUM *aliquem vestrum*, A. B., C. D., &c. *unum esse volumus;* whence the persons so named are usually called justices of the *quorum*. 1 *Bl. Com.* 351. 3 *Steph. Com.* 40. 12 *East*, 559. See *Quorum*. They were anciently called conservators, wardens or keepers of the peace, and acquired the more honorable appellation of *justices*, after the statute 34 Edw. III. c. 1, gave them the power of trying felonies. 1 *Bl. Com. ub. sup.* As to justices in boroughs, see 3 *Steph. Com.* 40, note (*u.*)

In the United States, justices of the peace are either appointed by the executive, or elected by the people; and, in addition to their common law powers, generally have jurisdiction in civil cases. *United States Digest*, Justices of the Peace.

JUSTICIAR. [L. Lat. *justiciarius, justitiarius;* L. Fr. *justicier.*] In old English law. A justice or justicer. The judicial members of the court of *Aula Regis* were called the king's *justiciars*, and the chief of them, who was the presiding officer of the court, the *chief justiciar*. 3 *Bl. Com.* 38. *Gilb. C. Pleas*, Introd. 18. The corresponding modern titles are *justice* and *chief justice*. See *Justice*. Spelman has given a list of the chief justiciars of England under the Norman princes and their successors. *Gloss.* voc. *Justitia.*

JUSTICIARE, *Justitiare.* L. Lat. [from *justicia* or *justitia*, justice.] In old English law. To justice; to do justice or right; to compel a person to appear in court. *Bract.* fol. 308 b. 1 *Reeves' Hist. Eng. Law*, 125, 173, 174. Hence the writ of *justicies*, (q. v.) *Justiciari;* to be justiced; to have justice. *Stat. Marlebr.* c. 1.

JUSTICIARIUS, *Justitiarius.* L. Lat. In old English law. A justice. *Mag. Chart.* 9 *Hen.* III. c. 12, 13.

JUSTICIATUS. L. Lat. [from *justiciare*, q. v.] In old English law. Judicature, prerogative or jurisdiction. *Blount.*

JUSTICIER. Fr. In old French law. A seignior or feudal proprietor who had the right of *justice*, (q. v.)

JUSTICIES, *Justities.* L. Lat. (You justice.) In English practice. A writ (sometimes called *breve de justiciando*) directed to the sheriff, giving him a judicial authority to hear and determine a cause in the county court, of which he could not, by his ordinary power, hold plea. *Cowell. Bract.* fol. 308 b. *Finch's Law*, b. 4, ch. 19. So called from the emphatic word of its mandate in the Latin form:—*Præcipimus tibi quod* justicies J. B. &c.: We command you that you *justice* J. B. that, &c. *Reg. Orig.* 135, 139. *F. N. B.* 117 C. *Id.* 119, G. H. I. K. *Bract.* fol. 231, 308 b. *Fleta*, lib. 2, c. 62, § 2. *To justice* signified to summon or require to do justice, to compel to appear in court.

This writ is retained (though little used) in modern English practice, and is described by Blackstone as a special writ empowering the sheriff, for the sake of despatch, to do the same justice in his county court, as might otherwise be had at Westminster. 3 *Bl. Com.* 36. 3 *Steph. Com.* 395, 396. 1 *Tidd's Pr.* 78.

JUSTIFIABLE HOMICIDE. In criminal law. The killing of a human creature without fault or blame, even in the minutest degree; as where it is required by the absolute command of the law, or permitted for the advancement of public justice, or the prevention of some atrocious crime. In these instances, the slayer is to be totally acquitted and discharged, with commendation rather than blame. 4 *Bl. Com.* 178—181. 4 *Steph. Com.* 96.

JUSTIFICATION. [Lat. *justificatio.*] In pleading. A maintaining or showing a good reason in court, why one did such a thing, which he is called to answer. *Blount.* Pleas of justification are frequent in actions of trespass and case. 1 *Chitt. Pl.* 490—502. 3 *Bl. Com.* 306.

In practice. The procedure by which the competency or sufficiency of bail is established, or made out. 1 *Tidd's Pr.* 263. See *Justify.*

JUSTIFY. [L. Lat. *justificare.*] In practice. To make out, or establish according to law; particularly to establish the sufficiency of bail. When bail make oath (as they may be required to do,) before a proper officer, that they are housekeepers or freeholders, and are worth a certain amount over and above all debts, they are said to *justify*, or to *justify them-*

selves, as good and sufficient bail. 3 *Bl. Com.* 201. 1 *Tidd's Pr.* 263.

JUSTITIA. Lat. [from *justus*, q. v.] In the civil law. Justice. Justitia *est constans et perpetua voluntas jus suum cuique tribuendi;* Justice is the constant and perpetual disposition or will of giving to every man his right. *Inst.* 1. 1. pr. *Dig.* 1. 1. 10. It will be seen that justice is here defined to be a *disposition* or will, (*voluntas*,) rather than an outward conduct, and Bracton, who copies the definition word for word, and comments upon it, lays considerable stress upon this feature: *Dicitur* voluntas *tribuere jus suum, non quantum ad actum sed quantum ad affectionem. Bract.* fol. 2 b. Some of the modern civilians, however, regard this definition as altogether erroneous and untenable, unless *voluntas* be understood to imply that justice consisted not merely in an outward conformity with the law, but in a conduct that agreed with the precepts of the law from internal disposition and free volition. 1 *Mackeld. Civ. Law*, 121, 122, § 112. *Id.* 122, 124, Kaufmann's note. Fleta quotes the definition with the following modification: *Est autem justitia constans et perpetua voluntas, jus suum unicuique tribuens, vel hoc saltem affectans;* justice is a constant and perpetual disposition, giving to every man his right, or at least, desiring this. *Fleta*, lib. 4, c. 1, § 1.

JUSTITIA. In the common law. Justice. *Nulli vendemus, nulli negabimus, aut differemus rectum vel* justitiam; to no one will we sell, to no one will we deny or delay right or justice. *Magna Charta*, c. 29. Lord Coke construes *right* in this passage to mean law, as the means, and *justice* to be the end of law. 2 *Inst.* 56. 1 *Reeves' Hist.* 250, note.

Justitia debet esse libera, quia nihil iniquius venali justitia; plena, quia justitia non debet claudicare; et celeris, quia dilatio est quædam negatio; Justice ought to be free, because nothing is more iniquitous than venal justice; full, because justice ought not to halt; and speedy, because delay is a kind of denial. 2 *Inst.* 56. *Justitia est duplex;* viz. *severè puniens, et verè præveniens;* Justice is twofold, viz.: severely punishing, and really or efficiently preventing. 3 *Inst.* Epil.

Justitia nemini neganda est. Justice is to be denied to none. *Jenk. Cent.* 176, case 53.

Justitia non est neganda, non differenda. Justice is not to be denied nor delayed. *Jenk. Cent.* 93, case 80.

Justitia non novit patrem nec matrem; solam veritatem spectat justitia. Justice knows not father nor mother; justice looks at truth alone. 1 *Bulstr.* 199.

JUSTITIA. L. Lat. A justice or judge of a court. *Glanv.* lib. 2, c. 6. From this has been derived, through the French, the modern *justice*, (q. v.) *Co. Litt.* 71 b.

JUSTITIARE. See *Justiciare.*

JUSTITIARIUS. L. Lat. A justiciar or justice. *Bract.* fol. 105, 106.

JUSTITIUM. Lat. In the civil law. A suspension or intermission of the administration of justice in courts; (*juris interstitio et cessatio;*) vacation time. *Calv. Lex. Aul. Gell. Noct. Att.* lib. 20, c. 1, § 43. Blount refers to this old term as used in the Laws of Canute.

JUSTIZA, *Justicia.* In old Spanish law. A supreme judge. A judicial magistrate peculiar to the kingdom of Aragon, who acted as the protector of the people and the controller of the prince. His person was sacred, his power and jurisdiction almost unbounded, and he was the supreme interpreter of the laws. Not only inferior judges, but the kings themselves were bound to consult him in any doubtful case, and to receive his responses with implicit deference. 1 *Robertson's Charles* V. 122, 123, sect. iii. and note xxxi. See 1 *Kent's Com.* 292, note. *Id.* 294, note.

JUSTUS. Lat. Just; right. Bracton, following the civil law idea of justice as a mere affection of the mind, (*justitia in mentibus justorum quiescit,*) considers *justus* as peculiarly appropriate to persons, in contradistinction to *æquus*, (equitable or righteous,) which was appropriate to things or acts. "Hence," he observes, "if we would speak properly, we should say a *righteous*, not a *just* judgment, and a *just*, not a *righteous* man, (*dicemus judicium* æquum, *non* justum, *et hominem* justum *non* æquum); but abusing these epithets we say a righteous man and a just judgment." *Bract.* fol. 3. This remark is important, as showing that the ideas and rules of the civil law had not then obtained that currency in England which is sometimes claimed for them.

Lawful; according to law; in due form of law. *Calv. Lex.*

JUVENES. Lat. (Youths or young men.) In old English law. Inferior clerks

of chancery, so called. *Crabb's Hist. Eng. Law*, 184.

JUXTA. Lat. According to. 1 *Ld. Raym.* 415. The same as *secundum*, in the civil law. 12 *Mod.* 218.

Juxta formam statuti; according to the form of the statute. *Reg. Orig.* 16. The established phrase by which reference to a statute was expressed in old writs and records.

Juxta tenorem sequentem; according to the tenor following. 2 *Salk.* 417. A phrase used in the old books, when the very words themselves referred to, were set forth. *Id. ibid.* 1 *Ld. Raym.* 415.

Juxta conventionem; according to the covenant. *Fleta*, lib. 4, c. 16, § 6.

Juxta ratam; at or after the rate. *Dyer*, 82.

K.

KAIA. L. Lat. A key, kay, or quay. *Spelman.* See *Kay.*

KAIAGIUM. L. Lat. Kayage or wharfage. *Spelman.* See *Kayage.*

KAIN. Sc. In Scotch law. A word derived from *canum*, a vocable used in ancient grants to signify the fowls or animals payable to the superior. In modern practice, it is used to express the poultry, &c. payable by a tenant to his landlord in terms of his lease. *Bell's Dict.* See *Canum.* It has evidently the sense of the English word "kind," in the expression "payment in kind," which possibly may have been derived from it.

KALENDÆ. Lat. Kalends or calends. See *Calendæ, Calends.*

KALENDAR. See *Calendar.*

KALENDARIUM. Lat. In the civil law. A calendar, a book of accounts, memorandum-book, or debt-book; a book in which accounts were kept of moneys loaned out on interest. *Dig.* 32. 64. So called, because the Romans used to let out their money and receive the interest on the *calends* of each month. *Calv. Lex.*

KANC'. An abbreviation of *Kancia*, Kent. 1 *Inst. Cler.* 28.

KANCIA. L. Lat. Kent, in England. *Fleta*, lib. 5, c. 31, § 10.

KANTREF. Brit. A hundred villages; a division of a county in Wales; a hundred. Another form of *cantred*, (q. v.) *Blount.*

KARAXARE, *Charaxare.* L. Lat. [from Gr. χαράττω, to mark or stamp.] In old records. To mark; to put down in characters or letters; to write. *Spelman.*

KARL, *Karle, Carl.* Sax. In Saxon and old English law. A man; a serving man, (*famulus.*) *Spelman. Buscarl;* a seaman. *Huscarl;* a house servant. *Id.*

KARRATA. L. Lat. In old records. A cartload. *Cowell. Blount.*

KASKUN. L. Fr. Every. *Kelham.* A corrupted form of *chescun*, (q. v.)

KAST. Swed. In Swedish law. Jettison; a literal translation of the Lat. *jactus*, (q. v.) *Loccen. de Jur. Mar.* lib. 2, c. 7, s. 1.

KAST-GELD. Swed. Contribution for a jettison; average. *Loccen.* lib. 2, c. 8, s. 1.

ΚΑΤΙΟΝΤΕΣ, Κατιοντες. Gr. [from κάτειμι, to descend.] In the civil law. Descendants; persons in the descending line. *Nov.* 118, c. 1.

ΚΑΤΟΧΗ, Κατοχη. Gr. [from κατέχω, to detain.] In the civil law. Detention; possession. *Dig.* 41. 2, 1. pr. See *Detentio.*

KE. L. Fr. That. A corruption of *que. E volums ke meismes celes chartres;* and we will that these same charters. *Conf. Cartar.* 25 Edw. I.

KEELAGE. [L. Lat. *killagium.*] In English law. A toll or duty payable on ships in a port. See *Hale de Jur. Mar.* pars 2, c. 6.

KEEPER OF THE FOREST. [L. Lat. *custos forestæ.*] In old English law. An officer, (called also chief warden of the forest,) who had the principal government of all things relating to the forest, and the control of all officers belonging to the same. *Cowell. Blount. Manwood*, cited *ibid.*

KEEPER (or LORD KEEPER) OF THE GREAT SEAL. [L. Lat. *custos magni sigilli.*] A high officer of state who holds or keeps the great seal of England; and whose office has, since the statute 5 Eliz. c. 18, been united with that of the lord chancellor; the office of chancellor being at this day created by the mere delivery of the queen's great seal into his custody. 3 *Bl. Com.* 47. 3 *Steph. Com.* 407.

KEEPER OF THE PRIVY SEAL. [L. Lat. *custos privati sigilli.*] In English law. A high officer of state, through whose hands pass all charters signed by the king, before they come to the great seal. He is a privy councillor, and was anciently called *Clerk of the privy seal*, in stat. 12 Ric. II. c. 11; *Gardein del privy seal*, in Rot. Parl. 11 Hen. IV. num. 28; and *Lord privy seal*,

in stat. 34 Hen. VIII. c. 4. *Cowell. Blount.*

KEINS. L. Fr. Oaks. *Yearb.* P. 7 Hen. VI. 47.

KENNING TO A TERCE. Sc. In Scotch law. The act of the sheriff in ascertaining the just proportion of the husband's lands which belong to the widow in right of her *terce*, or dower. *Bell's Dict.*

KERNELLARE. L. Lat. In old English law. To fortify or embattle. *Kernellare domum;* to build a house with a wall or tower *kernelled* or *crenellè*, with crannies or notches for the better convenience of shooting arrows and making other defence. *Cowell. Blount. Spelman.*

KEY. This appears as an English word as early as the time of Bracton, in the phrase *cone et keye;* being applied to women at a certain age, to denote the capacity of having charge of household affairs. *Bract.* fol. 86 b. See *Cone & Key.* The custody of the *keys* seems to have been then, as now, one of the prerogatives of the housewife. Hence it is said by the same author, that a wife should in certain cases be held to answer for the theft of her husband, if the thing stolen were found under the wife's *keys*, which keys the wife ought to have under her custody and care, (*quas quidem claves habere debet uxor sub custodia sua;*) that is to say, the keys of her spence, (*dispensæ,*) chest, (*arcæ,*) and writing-case, (*scrinii.*) *Bract.* fol. 151 b.

KEYNES. L. Fr. Oaks. *Yearb.* Add. M. 2 Edw. III. 27. *Barringt. Obs. Stat.* 151.

KEYS. In old English law. A guardian, warden or keeper. See *Claves insulæ.*

KEYS OF COURT. In old Scotch law. Certain officers of courts. See *Claves curiæ.*

KIDDLE, *Kiddel, Kidel, Kedel.* [L. Lat. *kidellus*, q. v.] In old English law. A dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of engines to catch fish. 2 *Inst.* 38. *Magna Charta*, c. 24. *Blount.*

KIDELLUS, *Kydellus.* L. Lat. In old English law. A kiddel, or wear. *Omnes* kidelli *deponantur de cetero penitus per Tamisiam, et Medeweyam, et per totam Angl' nisi per costeram maris;* all wears shall from henceforth be wholly pulled down by the Thames and the Medway, and throughout all England, except on the sea-coast. *Mag. Cart.* 9 Hen. III. c. 23. Quoted and recognised as law, by Lord Ellenborough, in Weld *v.* Hornby, 7 *East*, 195. See *Fleta*, lib. 1, c. 20, § 40. *Hale de Jur. Mar.* pars 1, c. 5.

KIDNAPPING. The stealing and carrying away, or secreting a person. *Lewis' U. S. Crim. Law*, 17.—The forcible abduction or stealing away of a man, woman or child, from their own country, and sending them into another. 4 *Bl. Com.* 219.—An aggravated kind of abduction, consisting in the forcible carrying away, or fraudulent inveigling or decoying away a person. *Wharton's Am. Crim. Law*, § 1208. *Id.* §§ 1176—1201.

KIL. L. Fr. That he. Kil *facent les avaunt dites charteres puplier*, e ke il *facent;* that he cause the aforesaid charters to be published, and that he cause, &c. *Conf. Cartar.* 25 Edw. I.

KILL. Anglo-Dutch. In New-York law. A creek or small stream. *Kill* is a Dutch word signifying a channel or bed of a river, and hence the river or stream itself. 1 *Comstock's R.* 107.

KIN. Relation or relationship by blood or consanguinity. "The nearness of *kin* is computed according to the civil law." 2 *Kent's Com.* 413. See *Next of Kin.*

KINDRED. Relatives by blood. "Kindred of the whole blood, preferred to kindred of the half blood." 4 *Kent's Com.* 404, notes.

KING'S BENCH. [L. Lat. *bancus regis;* L. Fr. *banc le roy.*] The highest court of common law in England, (called during the reign of a queen, as at present, the *Queen's Bench*, q. v.) consisting of a chief justice and four puisné justices, who are by their office the sovereign conservators of the peace, and supreme coroners of the land. It is so called, because the sovereign used formerly to sit there *in person*, and still is supposed so to do, the style of the court still being *coram ipso rege*, (before the king himself.) It is the remnant of the great original court of *Aula Regia* (q. v.) and is not, nor can be, from the very nature and constitution of it, fixed to any certain place, but may follow the sovereign's person wherever he goes; although it has for some centuries past usually sat permanently at Westminster. It takes cognizance both of criminal and civil causes; the former in what is called the *crown* side or crown office; the latter in the *plea* side of the court. Anciently its jurisdiction was confined to criminal matters and pleas of the crown, and to civil

actions of trespass, but it gradually usurped a jurisdiction over all actions between subject and subject, except real actions, in which it is now confirmed.* 3 *Bl. Com.* 41—43. 4 *Id.* 265. 3 *Steph. Com.* 403, 404. 4 *Id.* 326.

KING'S COUNSEL. See *Queen's Counsel.*

KING'S SILVER. In old English practice. A fine due the king *pro licentia concordandi*, (for leave to agree) in the process of levying a fine. 5 *Co.* 39, 43. 2 *Inst.* 511. 2 *Bl. Com.* 350.

KINSBOTE, *Kinsbot.* Sax. [from *kin*, and *bote*, a satisfaction, or amends.] In Saxon law. A composition or satisfaction paid for killing a kinsman. *Spelman*, voc. *Bote.*

KIRBY'S (or KIRKBY'S) QUEST. In English law. An ancient record remaining with the remembrancer of the exchequer, being an inquisition or survey of all the lands in England, taken in the reign of Edward I. by John de Kirkby, his treasurer. *Blount. Cowell.*

KISSING THE GOSPELS. The act with which the ceremony of taking an oath by laying the hand upon the gospels, concludes. In modern law and practice, which do not generally require the party swearing to pronounce the words of the oath, the kiss is regarded as an essential part of the solemnity, being an expression of the party's assent to the oath as administered to him. Anciently, however, when the words of the oath were repeated by the party himself, the kiss was regarded rather as an act of reverence to the contents of the book, than as a necessary part of the oath. Hence the remark of Britton,—*et soient les evangelies beyses en touts honors, sicome nostre foy et nostre sauvacion;* and then should the gospels be kissed in all reverence, as our faith and our salvation. *Britt.* c. 52. In this latter view, the opinion of Dr. Paley seems to be correct. *Paley's Mor. Phil.* b. 3, c. 16. See *Oath.*

ΚΛΗΡΟΣ, *Κλῆρος.* Gr. In the civil law. The clergy. *Nov.* 17, c. 16.

ΚΛΗΡΙΚΟΣ, *Κληρικος.* Gr. In the civil law. A clerk; a clergyman. *Nov.* 3, in tit. et per tot.

KNAVE. [Sax. *cnafa.*] In old English law. A man servant. *Stat.* 14 *Edw.* III. st. 1, c. 3. 2 *Inst.* 493.

KNIGHT. [Sax. *cniht;* Fr. *chivalier;* Lat. *miles, eques auratus.*] In English law. A title of honor or dignity, next beneath a peer or baronet. 1 *Bl. Com.* 403. Defined in the old books to be "one who bears arms, who for his virtue and martial prowess, is by the king, or one having his authority, exalted above the rank of gentleman, to a higher account or step of dignity," *Blount.* See *Stat. de Militibus*, 1 *Edw.* II. 2 *Inst.* 594—598.

KNIGHTEN-GYLD. Sax. A guild in London consisting of nineteen knights, founded by king Edgar. *Cowell.*

KNIGHT-SERVICE. [L. Lat. *servitium militare;* L. Fr. *service de chivaler.*] In old English and feudal law. A free but uncertain service by which lands were formerly held, being the most universal and esteemed the most honorable species of tenure; called in law French, *chivalry.* It was, in its nature, entirely military, and is said to have been created and provided for the defence of the realm. 2 *Bl. Com.* 62. *Litt.* sect. 103. *Co. Litt.* 75 b. To make a tenure by knight-service, a determinate quantity of land was necessary, which was called a *knight's fee*, (q. v.) and he who held such a fee was bound to attend his lord to the wars for forty days in every year, if called upon, which attendance was his rent or service for the land he claimed to hold. 2 *Bl. Com.* 62.

KNIGHT'S FEE. [L. Lat. *feodum militare.*] In old English law. A certain quantity of land, the possession of which was necessary to make a tenure by knight-service. The measure of a knight's fee in 3 Edw. I. was estimated at twelve ploughlands, and its value, (though it varied with the times,) in the reign of Edward I. and Edward II. was stated at 20*l.* per annum, 2 *Bl. Com.* 62. *Co. Litt.* 69. 2 *Inst.* 596. According to Selden, however, it did not consist of land of a fixed extent or value, but it was as much as the king was pleased to grant, upon the condition of having the service of one knight. *Tit. of Hon.* part 2, c. 5, sect. 17, 26.

KNIGHTS OF THE SHIRE. In English law. Members of parliament representing counties or shires, (two being elected from each county,) in contradistinction to *burgesses*, who represent boroughs or corporations. So called, because it was formerly necessary that they should be *knights*, but now any person may be chosen to fill the office, who has an estate worth 600*l.* per annum. *Wharton's Lex.* 2 *Steph. Com.* 362, 392. *Stat.* 1 & 2 *Vict.* c. 48. These knights or members are the representatives

of the landholders or landed interest of the kingdom. 1 *Bl. Com.* 172.

KNOW ALL MEN. In conveyancing. A form of public address, of great antiquity, and with which many written instruments, such as bonds, letters of attorney, &c. still commence. It is a literal translation of *Noverint universi*, or *Sciant*, which was anciently used. See *Noverint.*

KNOWINGLY. See *Scienter.*

KNOWN-MEN. A title formerly given to the Lollards. *Cowell.*

KOINON, Κοινον. Gr. In the civil law. A community. *Dig.* 49. 1. 1. 1.

KOINOΣ NOMOΣ, Κοινὸς νόμος. Gr. In the civil law. The common law; the general law of the empire. *Nov.* 79, c. 2.

KOINΩNIA, Κοινωνία. Gr. [from κοινὸς, common.] In the civil law. Community; partnership. *Inst.* 3. 26. pr.

KOMHΣ, Κομης. Latino-Gr. In the civil law. Comes. An official title. *Nov.* 27, in tit. See *Comes.*

KY. L. Fr. Who. *LL. Gul. Conq.* ll. 5, 6.

KYMORTHA. Brit. In old English law. Assemblies. A corruption of *cymortha*, used in the stat. 4 Hen. IV. c. 27. *Barringt. Obs. Stat.* 360.

L.

L. 5. An abbreviation of *Long Quinto.* One of the parts of the Year Books. *Dyer*, 37, marg. (Fr. ed.)

LA. L. Fr. There. *Dyer*, 62, (Fr. ed.) *La ou;* there where; whereas. *Kelham. L. Fr. Dict. Que la;* until that. *Kelham.*

LABEL. In English practice. A narrow slip of paper or parchment affixed to a deed or writing, for an appending seal. *Cowell.*

A copy of a writ in the Exchequer. 1 *Tidd's Pr.* 156.

LABOUR A JURY. In old practice. To tamper with a jury; to endeavor to influence them in their verdict, or their verdict generally. "Heydon, by his friends and servants, had *laboured* the jury not to appear." 1 *Leon.* 72. See *Dyer*, 48.

LACERTA. L. Lat. In old English law. A fathom. *Co. Litt.* 4 b.

LACHES, *Lachesse, Lasches.* L. Fr. and Eng. [from Fr. *lascher*, to loosen or slacken.] Slackness, negligence or remissness. *Litt.* sect. 403, 726. 1 *Bl. Com.* 247. 3 *Id.* 317.—"A neglect to do something which, by law, a man is obliged to do." Lord Ellenborough, 4 *M. & S.* 463.—Neglect to make a claim within a reasonable time.* 2 *Story's Eq. Jur.* § 1520. 7 *Howard's R.* 234. Lord Coke calls this an old French word. *Co. Litt.* 380 b. But Cowell conjectures it may be an old English word; as much as to say *lack is.*

LACTA. L. Lat. In old English law. Defect in the weight of money; *lack* of weight. This word and the verb *lactare* are used in an assise or statute of the sixth year of King John. *Spelman.*

LACUS. Lat. In the civil law. A lake, a receptacle of water which is never dry. *Dig.* 43. 14. 1. 3.

LACUS. L. Lat. In old English law. Allay or alloy of silver with base metal. *Fleta*, lib. 1, c. 22, § 6. This word is not found either in *Spelman* or *Cowell.*

LADA. L. Lat. [from Sax. *ladian*, to purge, to excuse.] In Saxon law. A purgation, or mode of trial by which one purged himself of an accusation; as by oath or ordeal. *Spelman.*

A water-course; a trench or canal for draining marshy grounds; in old English, a *lade* or *load. Spelman. Cowell.*

LADA. L. Lat. [from Sax. *lathian*, to convene or assemble.] In old English law. A court of justice; a lade or lath. *Cowell.*

LÆSA MAJESTAS. Lat. In old criminal law. Lese majesty; treason. See *Crimen læsæ majestatis.*

LÆSIWERP, *Lesiwerp.* Sax. [from *laisus*, bosom, or power, and *werpire*, to surrender or deliver up; or from Fr. *laisher*, to let go.] In old European law. A thing surrendered into the hands or power of another; a thing given or delivered. *Spelman.*

LÆSTUM. L. Lat. [Sax. *læthe, læth.*] In old English law. A lathe; a division of a county. *Spelman.* See *Lathe.*

LAFORDSWIC, *Hlafordswice.* Sax. [from *hlaford*, lord or master, and *swic*, betrayal.] In Saxon law. The betrayal of a master; treachery or treason against a lord. *LL. Hen.* I. c. 13. *LL. Canut.* c. 61. *Spelman.*

LAG, *Lah, Lagh.* Sax. Law. *Spelman.*

LAGA. L. Lat. [from Sax. *lag.*] Law. *Spelman.* Lagam *Edwardi regi, vobis reddo:* I restore to you the law of King Edward. *Chart. Hen.* I. A. D. 1100. *Bl. Introd. to Mag. Chart.* vii. ix. note. The

meaning of this word is discussed at much length in the preface to the translation of *Fortescue de L. L. Angliæ*, (ed. 1737,) p. xix. *et seq.*

LAGAMANNUS, *Lagemannus.* L. Lat. [from *laga*, (q. v.) and *man.*] In old English law. A law-man or lage-man; a lawful man, (*legalis homo.*) *Spelman. Domesday*, cited *ibid.* See *Lahman.*

LAGAN. Sax. [from *liggan*, to lie.] In old English law. A term used by Bracton to denote goods found in the sea, at a distance from the shore, (*in mari, longius a litore,*) under circumstances rendering it *doubtful where they were intended to come to land*, (*ita quòd constare non possit ad quam terram vel regionem essent applicandæ;*) and which belonged to the finder, as being *in nullius bonis. Bract.* fol. 120. This word is considered by Spelman to be the same with *ligan*, (or *lagon*, as he writes the word.) But *ligan* differs from the word described by Bracton, in the very material circumstance of denoting an *attachment* to a buoy or cork, *in order that the goods may be found* by the owner. See *Ligan.* The two words, indeed, appear to have directly opposite meanings, and to be framed from different roots: *lagan*, from Sax. *liggan*, to lie; *ligan*, from Lat. *ligare*, Fr. *lier*, to tie. Bracton (*ub. sup.*) says *lagan* was a nautical term in his day, (*dicitur a nautis Lagan.*)

LAGE. [Sax. *lag.*] In old English law. Law. See *Dane lage, Mercen lage.*

LAGE DAY, *Lagh day.* In old English law. A law-day; a time of open court. 1 *Mon. Angl.* 279. *Cowell.* See *Dies juridicus.*

LAGEMAN. See *Lagamannus.*

LAGENA. L. Lat. In old English law. A measure of ale. *Fleta*, lib. 2, c. 11. Said to consist of six sextaries. *Cowell.*

LAHMAN. Sax. [from *lah*, law.] In Saxon law. A law-man, or lawyer, (*jurisconsultus.*) *Spelman*, voc. *Lagamannus.*

LAHSLIT, *Lahslite, Lagslit, Laghslit, Laxlite, Laslit.* Sax. or Dan. [from *lah* or *lag*, law, and *slit*, a breaking.] In Saxon or Anglo-Danish law. A breach or transgression of law, (*transgressio legis.*) *Spelman.*

Punishment for breaking the law, (*legis violatæ pœna.*) *Id.* Spelman calls this a Danish word. In the laws of William the Conqueror, it is written *Laxlite*, and is said to have denoted the Danish common forfeiture, which was twelve *ores* or one pound sterling. *LL. Gul. Conq.* l. 41, and note.

LAI, *Laie.* L. Fr. Law. *Kelham.* Old forms of *ley*, (q. v.)

LAICUS, *Laicum.* L. Lat. [from Gr. λαὸς, people.] In old English law. Lay, as distinguished from ecclesiastical. *Laicum feodum;* a lay fee. *Magna Charta*, 9 Hen. III. c. 18. *Fleta*, lib. 2, c. 69, § 1. *Laicum tenementum;* a lay tenement. *Mag. Chart.* c. 14.

A layman. *Tradantur omnes schedulæ alicui* laico *qui omnino literas non cognoscat;* all the escrows shall be delivered to some layman who knows nothing at all of letters. *Fleta*, lib. 5, c. 9, § 13. See *Laity.*

LAIEL. L. Fr. Lawful. *Kelham.* See *Leal.*

LAIN, *Laisnes, Laynes, Leignes, Leynes.* L. Fr. Wool. *Kelham.*

LAIRWITE, *Layrwit, Leirwyte, Legerwit.* Sax. [from *lagan*, to lie, and *wite*, a fine or mulct.] In Saxon and early English law. A fine for committing adultery and fornication. *Spelman. Fleta*, lib. 1, c. 47.

LAISER. L. Fr. To let. 3 *Leon.* 134, arg.

LAISSER. L. Fr. To transfer. *Kelham.*

To leave. *L. Fr. Dict.*

LAISSIER. L. Fr. To prevent; to omit or neglect. *Kelham.*

LAITY. [from Gr. λαὸς, people.] The lay part of the people, or such as are not comprehended under the denomination of clergy. 1 *Bl. Com.* 396, 376. See *Lay.*

LAMA. Lomb. A fish pond. *Spelman.*

LAMANEUR. Fr. In French marine law. A pilot. *Ord. Mar.* liv. 4, tit. 3.

LAMBETH DEGREE. In English law. A degree conferred by the Archbishop of Canterbury, in prejudice of the universities. 3 *Steph. Com.* 65. 1 *Bl. Com.* 381.

LANA. Lat. In the civil law. Wool. See this word construed in *Dig.* 32. 60, 70, 88.

LANCETA. L. Lat. In old English law. A kind of agricultural tenant or vassal. *Spelman.*

LAND, [Lat. *terra, solum, ager, prædium, fundus;* Fr. *terre.*] In the most general sense, comprehends any ground, soil or earth whatsoever; as meadows, pastures, woods, moors, waters, marshes, furzes and heath. *Co. Litt.* 4 a. It le-

gally includes also all houses and other buildings built upon it; or, in still more general terms, it includes not only the face of the earth, but every thing under it or over it. *Id. ibid.* 2 *Bl. Com.* 17, 18. *Shep. Touch.* 90. 1 *Chitt. Gen. Pr.* 179, 180. 1 *Crabb's Real Prop.* 66, 67, § 86. 3 *Kent's Com.* 401. See **Cujus est solum ejus est usque ad cœlum.**

In fines, *land* denoted *arable* land, only. *Shep. Touch.* (by Preston,) 13. 1 *Chitt. Gen. Pr.* 179, 180.

In wills, "land" is construed in its largest sense. 1 *Crabb's Real Prop.* 67, § 86. 2 *Powell on Devises*, (by Jarman,) 186. It has sometimes, however, been confined to mean arable land. *Cro. Eliz.* 476. See 1 *Jarman on Wills*, 706, 707, (604, 605, Perkins' ed.)

In American law, the common law definition of land has been adopted, with some modifications introduced by statute. 3 *Kent's Com.* 401. 1 *Hilliard's Real Prop.* 51. 2 *Id.* 339. See *Id.* 50. 1 *N. Y. Rev. St.* [387,] 379, § 1. *Id.* [750,] 741, § 10. The word *land* includes not only the soil, but every thing attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. Bronson, J. 1 *Comstock's R.* 572.

"LANDS," in the plural, is, at common law, a less extensive term of description than "*tenements* and *hereditaments*." In American law, however, it is sometimes made by statute to include both the latter terms. *Rev. Stat. Mass.* c. 61, § 32. 1 *N. Y. Rev. St.* [750,] 741, § 10.

LANDA. L. Lat. An open field without wood; a lawnd or lawn. *Cowell. Blount.*

LANDBOC. Sax. [from *land*, and *boc*, a writing.] In Saxon law. A charter or deed by which lands or tenements were given or held. *Spelman. Cowell.* 1 *Reeves' Hist. Eng. Law*, 10. 1 *Spence's Chancery*, 22.

LANDCHEAP. [Sax. *landceap;* from *ceapon*, to buy and sell.] In old English law. An ancient customary fine, paid either in money or cattle, at every alienation of land lying within some manor, or within the liberty of some borough. *Cowell. Blount.*

LANDEA, *Landia.* L. Lat. In old English law. A ditch or trench for conveying water from marshy grounds. *Spelman.*

LANDEGANDMAN. Sax. In old English law. A kind of customary tenant or inferior tenant of a manor. *Spelman.*

LANDGABLE, *Landgavel.* Sax. [from *land*, and *gafel*, a rent.] In old English law. A tax or rent issuing out of land; (*terræ census vel redditus;*) a land tax. *Cowell. Blount.*

A quit rent for the site of a house, or the land whereon it stood; a ground rent. *Domesday. Cowell.*

LANDIMER. [L. Lat. *landimera;* from *land*, and Sax. *gemære*, a boundary.] In old English law. A limit or boundary of land. *Spelman.*

LANDIMER. Sc. [Lat. *agrimensor.*] In old Scotch law. A measurer of land. *Skene de Verb. Sign.* voc. *Particata.*

LANDIRECTA. L. Lat. In Saxon law. Services and duties laid upon all that held land, including the three obligations called *trinoda necessitas* (q. v.); *quasi* land rights. *Cowell.*

LANDLORD. He of whom lands or tenements are holden. Used as early as 2 *Leon.* 94.

LANDMAN. [L. Lat. *terricola.*] A terre-tenant. *Cowell.*

LANDREEVE. In English law. A person whose business it is to overlook certain parts of a farm or estate. *Wharton's Lex.*

LANDSLAGH. In Swedish law. A body of common law, compiled about the thirteenth century, out of the particular customs of every province; being analogous to the *common law* of England. 1 *Bl. Com.* 66.

LAND-TAX. In English law. A tax upon land which, in its modern shape, has superseded all the former methods of rating either property, or persons in respect of their property, whether by tenths, or fifteenths, subsidies on land, hydages, scutages or talliages. 1 *Bl. Com.* 308. 2 *Steph. Com.* 569. As between landlord and tenant, this tax is, generally considered, a charge upon the former. Properly speaking, however, it is a tax neither on landlord nor tenant, but on the beneficial proprietor as distinguished from the mere tenant at rack-rent. *Id.* 574, 575. See *Wharton's Lex.*

LAND-TENANT. He that actually possesses land, or has it in his manual occupation; a terre-tenant. *Cowell.*

LANDWARD. Sc. In Scotch law. Rural. 7 *Bell's Appeal Cases*, 2.

LANGEMANNI. L. Lat. In old English law. Lords of manors, according to Sir Edward Coke's definition, who writes the word *lannemanni*. *Domesday*. *Co. Litt.* 5 a.

LANGUIDUS. L. Lat. (Sick.) In practice. The name given to the return made by a sheriff to a *capias* or *ca. sa.* that the defendant was sick, or sick in prison, (*languidus in prisona.*) 1 *Tidd's Pr.* 308. 2 *Id.* 1028. 3 *Chitt. Gen. Pr.* 249. *Perpetuo languidi;* incurably sick. *Fleta*, lib. 4, c. 5, § 5.

LANGUOR. L. Lat. In old English practice. Sickness; a confirmed and lingering sickness, as distinguished from a transient indisposition, (*malum transiens.*) *Glanv.* lib. 1, c. 18, 19. *Bract.* fol. 340, 344 b, 352 b, 357 b. *Fleta*, lib. 6, c. 6, § 19. Skene defines it to be "a vehement sickness of body or of mind." *Reg. Maj.* lib. 1, c. 8. This was a common ground of essoin in the old practice. See *Essoin.* If it continued over a year, it was called *morbus sonticus.* *Bract.* fol. 344 b.

LANO NIGER. L. Lat. In old English law. A kind of base coin. *Cowell.*

LANZA. Span. In Spanish law. Military service. *White's New Recop.* b. 2, tit. 2, c. 2.

A certain service in money, paid by the grandees and nobles to the king every year. *Id.* note.

LAPIDICINA. Lat. In the civil law. A stone-quarry. *Dig.* 7. 1. 9. 2.

LAPILLI. Lat. In the civil law. Precious stones. *Dig.* 34. 2. 19. 17. Distinguished from gems, (*gemmæ.*) *Id. ibid.*

LAPSE. [L. Lat. *lapsus.*] In English ecclesiastical law. A slip or omission; a species of forfeiture, whereby the right of presentation to a church accrues to the ordinary by neglect of the patron to present; to the metropolitan by neglect of the ordinary; and to the king by neglect of the metropolitan. 2 *Bl. Com.* 276. The term in which the title to present by lapse accrues from the one to the other successively is six calendar months, exclusive of the day of the avoidance. *Id. ibid.* 3 *Steph. Com.* 116, 117.

To LAPSE. [from Lat. *lapsus*, fallen.] To fall, slip or sink; to fail of its object; to become void.* Where the person to whom a legacy is bequeathed, dies before the testator, the legacy is said to be *lapsed*, that is, lost or fallen, and sinks into the residuum of the testator's personal estate. 2 *Bl. Com.* 513. In some of the United States, legacies do not lapse if any issue of the legatee be living when the testator dies. 4 *Kent's Com.* 541, note. And a similar rule has been recently established in England in cases where a bequest is to a child or issue of the testator. *Stat.* 7 *Will.* IV. and 1 *Vict.* c. 26, s. 33. 2 *Steph. Com.* 249.

LAPSE PATENT. In American land law. A patent obtained after another which has become null or forfeited for non-payment of quit rents or want of cultivation. 1 *Wash.* (Va.) *R.* [38,] 50.

LAPSED DEVISE. A devise which fails, or takes no effect, in consequence of the death of the devisee before the testator; the subject matter of it being considered as not disposed of by the will. 1 *Steph. Com.* 559. 4 *Kent's Com.* 541. An exception to this rule has lately been established in England, in favor of the issue of a devisee. 1 *Steph. Com.* 559, 560.

LAPSED LEGACY. A legacy which takes no effect, or becomes void, in consequence of the death of the legatee before the testator. See *Lapse.*

LARCENY. [from L. Fr. *larcyn*, contr. of *larrecin*, from L. Lat. *latrocinium*, qq. v.] In criminal law. The felonious taking and carrying away of the personal goods of another. 4 *Bl. Com.* 229.—The unlawful taking and carrying away of things personal, with intent to deprive the right owner of the same. 4 *Steph. Com.* 152.—The felonious taking the property of another, without his consent and against his will, with intent to convert it to the use of the taker. Grose, J. 2 *Leach*, 1089. These are the definitions of simple larceny, otherwise called *theft.* 4 *Bl. Com.* 229. See 2 *East's P. C.* 552, 553. 2 *Russell on Crimes*, 1—130. *United States Digest*, Larceny. *Lewis' U. S. Crim. Law*, 438—478. *Wharton's Am. Crim. Law*, § 1750. *Id.* §§ 1705—1750. In a late English case, it was said by Parke, B. that "the definitions of larceny are none of them complete." 2 *Car. & Kir.* 945. See *Simple larceny*, *Mixed larceny.*

LARCYN, *Larcin.* L. Fr. Larceny. *Britt.* cc. 15, 24. *LL. Gul. Conq.* l. 4.

LARECIN. L. Fr. A thing stolen. *Si* larecin *est troved;* if a thing stolen is found. *LL. Gul. Conq.* l. 31.

LARGE. L. Fr. Broad; the opposite of *estreyte*, strait or strict. *Pures et larges.* *Britt.* c. 34.

Unconfined. *Mettre à large ;* to set at liberty.

LARGURE, *Largeur.* L. Fr. [from *large*, q. v.] Breadth. *Solonc la* largure, *et la longure ;* according to the breadth and length. *Britt.* c. 63. *Id.* c. 103.

LARGUS. Lat. Large; broad; comprehensive. *Item poterit esse warrantizatio* larga *et stricta ;* larga, *ut si dicatur, Ego et hæredes mei warrantizabimus tali et hæredibus suis ;* largior, *ut si dicat, tali et hæredibus suis et assignatis et hæredibus assignatorum. Item* largissima, *ut si dicat tali et hæredibus suis et assignatis, et eorum hæredibus, et assignatis assignatorum et hæredibus eorum ;* also, warranty may be *broad* and strict; broad, as if it be said, "I, and my heirs will warrant to such a one and his heirs;" *broader*, as if he say, "to such a one and his heirs and assigns, and the heirs of his assigns." Also, *broadest*, as if he say, "to such a one and his heirs and assigns and their heirs, and the assigns of their assigns and their heirs." *Bract.* fol. 37 b.

LARON, *Laroun, Larun.* L. Fr. A thief. *Britt.* c. 15. *Stat. Westm.* 1, c. 3. *LL. Gul. Conq.* l. 5. *Petits larons ;* petty thieves. *Britt.* c. 29.

LAS PARTIDAS. Span. In Spanish law. A code of laws compiled by Alphonso X. about A. D. 1250, in which all the provincial customs were collected into one uniform law. 1 *Bl. Com.* 66. It is otherwise entitled *Las Siete Partidas*, (the seven parts,) from the seven parts into which it is divided. It was compiled under the direction of Alphonso, by four Spanish jurisconsults, whose names have not been preserved, and who drew its materials from the ancient customary law, the canonical laws of Spain, but principally from the Roman civil law, which is sometimes translated literally. It was published in 1263, but was not promulgated or generally adopted as the law of Spain until the reign of Alphonso XI. in 1348. This code has always been regarded as authority in Spanish America, and such of its provisions as are applicable remain in force in the states of Louisiana and Texas. An English translation by Moreau [Lislet] and Carleton was published at New Orleans in 1820. A particular description of the *Partidas* is given in *Schmidt's Civil Law of Spain and Mexico*, Introd. 69—74.

LASIER. L. Fr. To omit. *Kelham.*

LAST. [L. Lat. *lastus, lestus.*] In English law. A burden; a weight or measure of various commodities, as of pitch, hides, fish, corn, wool, leather, &c. *Cowell.*

A court held in the marshes of East Kent, by twenty-four jurats, wherein they made orders, laid and levied taxes, &c. for the preservation of the marshes. *Id.*

LAST HEIR. [Lat. *ultimus hæres.*] In English law. He to whom lands come by escheat for want of lawful heirs; that is, in some cases, the lord of whom the lands were held; in others, the sovereign. *Cowell.*

LAST WILL. [Lat. *ultima voluntas ;* L. Fr. *darrein volunte ;* Gr. τελευταια βουλήσις.] This term, according to Lord Coke, is most commonly used where lands and tenements are devised, and *testament* where it concerns chattels. *Co. Litt.* 111 a. Both terms, however, are now generally employed in drawing a will either of lands or chattels, as descriptive of the instrument,—("my last will and testament;") the general word of description being "will," (q. v.)

LASTAGE. In old English law. A custom exacted in some fairs and markets to carry things where one will. *Rastal Expos. Verb.* cited in *Spelman* and *Cowell.*

The burthen of a ship, (*onus quod navi imponitur.*) *Spelman.* According to Cowell, the ballast of a ship.

A kind of tax or tribute. *Spelman.* A custom paid for wares sold by the last. *Cowell.* See *Hale de Jur. Mar.* pars 2, c. 6. A duty of one penny for every quarter of corn, that is, ten pence for every last. 1 *H. Bl.* 207, note.

LASTUS, *Lestus.* L. Lat. In old English law. A last. A weight or measure of hides, wool and other articles. *Fleta*, lib. 2, c. 12, §§ 2, 3.

LATA CULPA. Lat. In the law of bailment. Gross fault or neglect; extreme negligence or carelessness, (*nimia negligentia.*) *Dig.* 50. 16. 213. 2. **Lata culpa dolo æquiparatur.** Gross negligence is equivalent to fraud. See *Culpa.*

LATENS. Lat. [from *latere*, to lie hid.] Latent; hidden; not apparent. See *Ambiguitas.*

"LATELY." This word has been held to have "a very large retrospect, as we say '*lately* deceased' of one dead ten or twenty years." *Per cur.* 2 *Show.* 294.

LATENT. [from Lat. *latens.*] Hidden; concealed; that does not appear upon the face of a thing. See *Ambiguity.*

LATERA. L. Lat. In old records. Sidesmen; companions; assistants. *Cowell.*

LATERARE. L. Lat. [from *latus*, a side.] In old English law. To lie sideways; literally, to side; the opposite of *capitare*, to head or abut. *Cowell.* See *Capitare.*

LATHE, *Leth.* [Sax. *læthe;* L. Lat. *læstum, leda.*] In English law. A larger division of a county, intermediate between the shire and hundred, containing sometimes three or more hundreds. *Spelman*, voc. *Læstum. Blount.* 1 *Bl. Com.* 116. It seems to be peculiar to the county of Kent. *Id.* See 12 *East*, 244.

LATHE-REEVE, *Lathreve, Leidgreve.* Sax. An officer under the Saxon government, who had authority over a lathe. *Cowell.* 1 *Bl. Com.* 116.

LATIFUNDIUM. Lat. [from *latus*, broad, and *fundus*, land?] In the Roman law. An estate of large extent, made up of an aggregation of small estates. Its nature is shown by its Greek name, συγκτησις. *Dig.* 34. 4. 30. 1. These *latifundia* were acquired by individuals during the later periods of the empire, and are considered to have contributed to the ruin both of Italy and Spain. See *Schmidt's Civil Law*, Introd. 19.

LATIMER. A word used by Lord Coke in the sense of an interpreter. 2 *Inst.* 515. Supposed to be a corruption of the Fr. *latinier*, or *latiner. Cowell. Blount.*

LATIN. An important language in the law; being the language not only of the civil and canon law, but of the early European codes, of much of the ancient common law of England and Scotland, and of a large proportion of the public, civil and maritime law of later times. The Latin of the Pandects is, in Gibbon's words, "not unworthy of the silver age" of Roman literature; but the Code and Institutes exhibit the language in the periods of its decline and decay, and the Latin of most of the subsequent law belongs to that peculiar and technical dialect known as *low Latin*, or *law Latin*, (q. v.) The value of the Latin has always consisted in its peculiar expressiveness as a language of law terms, in its superior conciseness which has made it the appropriate language of law maxims, and in its almost unlimited capacity of condensation by means of abbreviations and contractions, many of which are retained in popular use at the present day.

LATINI. Lat. In the civil law. An inferior kind of freedmen, who did not enjoy the full privilege of Roman citizens, but had only what was called the lesser liberty, (*minorem libertatem consequebantur.*) They were introduced by the *Lex Junia Norbana*, and abolished by Justinian. *Cod.* 7. 6. *Inst.* 1. 5. 3. *Id.* 3. 8. 4. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 5, §§ 107, 109.

LATITARE. Lat. [freq. of *latere*, to lie hid.] In the civil law. To hide; to secrete one's self; to keep out of the way of creditors; to conceal one's self with a view of defrauding creditors. *Dig.* 42. 4. 7. 4—7. To conceal one's self for some length of time, (*cum tractu aliquo.*) *Id.* 42. 4. 7. 8. See *Id.* 42. 5. 36.

In old English practice. To keep out of the way, to avoid being served with process; not to appear when summoned. *Bract.* fol. 364 b.

In old criminal law. To lurk by a roadside. *Fleta*, lib. 1, c. 24, § 8.

LATITAT. L. Lat. (He lurks or lies hid.) In old English practice. A writ which issued in personal actions, on the return of *non est inventus* to a bill of Middlesex; so called from the emphatic word in its recital, in which it was "testified that the defendant *lurks* (*latitat*) and wanders about" in the county. 3 *Bl. Com.* 286. Abolished by statute 2 Will. IV. c. 39.

LATITATIO. L. Lat. [from *latitare*, q. v.] In the civil law and old English practice. A lying hid; lurking, or concealment of the person. *Dig.* 42. 4. 7. 5. *Bract.* fol. 126.

LATRO. Lat. In the civil and old English law. A robber. *Dig.* 50. 16. 118. *Fleta*, lib. 1, c. 38, § 1. A thief. *Id. ibid.*

LATROCINIUM. Lat. [from *latro*, a robber.] In old English law. Larceny or theft. *Reg. Orig.* 268 b, 269. See *Larceny.*

A thing stolen. *Fleta*, lib. 1, c. 38, § 7.

The liberty of *infangenthef*, or privilege of judging and executing thieves. *Cowell. Spelman*, voc. *Latro.*

LATURE. L. Fr. Breadth. *Kelham.*

LATUS. Lat. A side; the side.

LAUDARE. Lat. In the civil law. To name; to cite or quote; to show one's title or authority. *Calv. Lex. A. Gell. Noct. Att.* lib. 2, c. 6.

In feudal law. To determine or pass upon judicially. *Feud. Lib.* 1, tit. 22. *Laudamentum;* the finding or award of a jury. *Id.* tit. 21. 2 *Bl. Com.* 285.

LAUDATIO. Lat. [from *laudare*, to praise.] In the civil law. A praising or commending; a speaking in one's favor.

Testimony adduced in favor of the character of an accused person. *Hallifax, Anal.* b. 3, c. 13, num. 28.

LAUDEMIUM, *Laudimium.* Lat. In the civil law. A sum paid by a new *emphyteuta*, (q. v.) who acquires the *emphyteusis*, not as heir, but as a singular successor, whether by gift, devise, exchange or sale. It was a sum equal to the fiftieth part of the purchase money, paid to the *dominus* or proprietor, for his acceptance of the new *emphyteuta*. 1 *Mackeld. Civ. Law*, 359, § 326. Called, in old English law, acknowledgment-money, (q. v.) *Cowell.*

LAUDUM. L. Lat. In old Scotch law. Sentence or judgment; dome or doom. 1 *Pitc. Cr. Trials*, part 2, p. 8.

LAUS DEO. Lat. Praise be to God. An old heading to bills of exchange. *West's Symboleog.* part 1, lib. 2, sect. 660.

LAUGHLESMAN. Sax. In old English law. An outlaw. *Bract.* fol. 125.

LAVOR NUEVA. Span. In Spanish law. A new work. *Las Partidas*, part 3, tit. 32, l. 1.

LAW. [Lat. *lex, jus;* Sax. *lag, lagh, lah;* L. Fr. *ley, loy.*] In the most general sense,—a rule of action prescribed by a superior. 1 *Bl. Com.* 38, 39. A rule of human action or conduct. *Id. ibid.* A system of such rules.*

In a stricter sense,—a rule of civil conduct, prescribed by the supreme power in a state. 1 *Steph. Com.* 25. 1 *Bl. Com.* 44. This is the definition of municipal or civil law. Blackstone's definition, in full, is, "a rule of civil conduct, prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." The last clause has been made the subject of considerable criticism, and is omitted by Mr. Serjeant Stephen in his New Commentaries, (*ub. sup.*) It seems to have been taken from the "*jubens honesta, prohibens contraria*" of Cicero's definition of *lex*, adopted by Bracton, of which, indeed, it is very nearly a literal translation. *Bract.* fol. 2. 1 *Bl. Com.* 122.—A science, or system of principles or rules, defining the rights and duties of persons, and prescribing remedies for their violation or non-observance.*

In the strictest sense,—a statute; a rule prescribed by the legislative power. "The *laws* of a state," observes Mr. Justice Story, "are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long-established local customs having the force of laws." 10 *Peters' R.* 18. Hence he argues, "in the ordinary use of language, it will hardly be contended that the decisions of courts constitute laws." *Id. ibid.* In this, he follows Sir Matthew Hale, who observes—"It is true, the decisions of courts of justice, though, by virtue of the laws of this realm, they do bind as a law between the parties thereto, as to the particular case in question, till reversed by error or attaint, yet they do not make *a law, properly so called*, for that only the king and parliament can do." *Hist. Com. Law*, 90, (Runnington's ed. 1820.) But though it be incorrect to speak of a judicial decision as "*a law*," or to call any aggregate of such decisions, "*laws*," in the plural, yet the decision of a court may in many instances be pronounced to be "*law*," or "*the law* of the state or the land," and such expressions are in conformity with daily professional usage.

*** In the ordinary definitions of this word, sufficient attention does not seem to have been paid to the circumstance of its being used without or with an *article* prefixed; and to the nature of such article, as whether *definite* or *indefinite*.

Law, without an article, properly implies a *science* or *system* of principles or rules of human conduct, answering to the Latin *jus;* as when it is spoken of as a subject of study or practice. In this sense, it includes the decisions of courts of justice, as well as acts of the legislature. The judgment of a competent court, until reversed or otherwise superseded, is *law*, as much as any statute. Indeed, it may happen that a statute may be passed in violation of *law*, that is, of the fundamental *law* or constitution of a state; and it is the prerogative of courts in such cases to declare it void, or, in other words, to declare it not to be *law*. See 3 *Kernan's R.* 378, 392—395, Comstock, J. *Id.* 445, Selden, J. See *Law of the land.*

A law, (answering to the Latin *lex*,) undoubtedly imports an act of the legislature; and the term is quite inapplicable to a decision of a court of justice as explained above.

The law is a term often used in the same sense with *law*, as importing a science or system of principles or rules, though in a somewhat narrower sense, as expressive of a system of principles and rules adopted

by a state for the government of its citizens or subjects. The force of this term is well illustrated by its use in many old maxims, such as—"The law" favoureth right, "The law" favoureth things for the common weal, &c. That it does not necessarily import an act of the legislature, see *Law of the land.*

Law [the law] respecteth the bonds of nature. *Wingate's Max.* 268, max. 78. *Finch's Law*, b. 1, ch. 3, num. 29.

Law [the law] favoureth possession, where the right is equal. *Wing. Max.* 375, max. 98. *Finch's Law*, b. 1, ch. 3, num. 36.

Law respecteth matter of substance more than matter of circumstance. *Wing. Max.* 382, max. 101. *Finch's Law*, b. 1, ch. 3, num. 39.

Law respecteth possibility of things. *Wing. Max.* 403, max. 104. *Finch's Law*, b. 1, ch. 3, num. 40.

Law favoureth mutual recompence. *Wing. Max.* 411, max. 108. *Finch's Law*, b. 1, ch. 3, n. 42.

Law [the law] favoureth charity. *Wing. Max.* 497, max. 135.

Law favoureth justice and right. *Wing. Max.* 502, max. 141.

Law favoureth common right. *Wing. Max.* 547, max. 144.

Law hateth wrong. *Wing. Max.* 563, max. 146. *Finch's Law*, b. 1, ch. 3, n. 62.

Law of itself prejudiceth no man. *Wing. Max.* 575, max. 148. *Finch's Law*, b. 1, ch. 3, n. 63.

Law favoureth truth, faith and certainty. *Wing. Max.* 604, max. 154.

Law disfavoureth impossibilities. *Wing. Max.* 606, max. 155.

Law disfavoureth improbabilities. *Wing. Max*, 620, max. 161.

Law favoureth diligence, and therefore hateth folly and negligence. *Wing. Max.* 665, max. 172. *Finch's Law*, b. 1, ch. 3, n. 70.

Law favoureth speeding of men's causes. *Wing. Max.* 673, max. 175.

Law hateth delays. *Wing. Max.* 674, max. 176. *Finch's Law*, b. 1, ch. 3, n. 71.

Law [the law] construeth things with equity and moderation. *Wing. Max.* 685, max. 183. *Finch's Law*, b. 1, ch. 3, n. 74.

Law construeth things according to common possibility or intendment. *Wing. Max.* 705, max. 189.

Law always construeth things to the best. *Wing. Max.* 720, max. 193.

Law construeth every act to be lawful, when it standeth indifferent whether it should be lawful or not. *Wing. Max.* 722, max. 194. *Finch's Law*, b. 1, ch. 3, n. 76.

Law [the law] favoureth things for the commonwealth [common weal.] *Wing. Max.* 729, max. 197. *Finch's Law*, b. 1, ch. 3, n. 53.

Law favoureth public commerce. *Wing. Max.* 738, max. 198.

Law favoureth honour and order. *Wing. Max.* 739, max. 199.

Law favoureth public quiet. *Wing. Max.* 742, max. 200. *Finch's Law*, b. 1, ch. 3, n. 54.

Law hateth new inventions and innovations. *Wing. Max.* 756, max. 204.

Law favoureth life, liberty and dower. "Is it not a common principle that the law favoureth three things: life, liberty and dower? And what is the reason of this favour? This, because our law is grounded upon the law of nature. And these three things do flow from the law of nature,—preservation of life natural; liberty, which every beast or bird seeketh, and affecteth naturally; the society of man and wife, whereof dower is the reward natural." *Bacon's Arg.* Case of the Postnati of Scotland; *Works*, iv. 345.

LAW. [Lat. *lex;* L. Fr. *ley.*] In old English law. An oath; particularly that kind of oath which was taken with compurgators, in the proceeding called "*making law*," or less correctly, *wager of law.* See *Compurgator*, *To make law*, *Law-worth.*

A freeman's privilege of being sworn in court as a juror or witness. See *Frank law*, *Libera lex.*

LAW OF ARMS. [Lat. *lex armorum, jus militare.*] That law which gives precepts and rules concerning war; how to make and observe leagues and truce, to punish offenders in the camp, and such like. *Cowell. Blount.* Now more commonly called the *law of war*, (q. v.)

LAW OF THE LAND. [L. Lat. *lex terræ.*] Due process of law. *Magna Charta*, c. 29. 2 *Inst.* 50. 2 *Kent's Com.* 13. 1 *Curtis' R.* 311.—A trial by due course and process of law, or according to the course of the common law. Coulter, J. 6 *Penn. St.* (Barr's) *R.* 86, 91. Bronson, J. 4 *Hill's* (N. Y.) *R.* 140, 146. The words "law of the land" do not necessarily or exclusively signify an act of the legislature. Ruffin, C. J. 4 *Devereux's R.* 15. Comstock, J. 3 *Kernan's R.* 393.

The general and public law, operating

equally upon every member of the community. 2 *Yerger's* (Tenn.) *R.* 500, 554. 10 *Id.* 71. 2 *Kent's Com.* 13, note.

In American law, this has become a common phrase in state constitutions and bills of rights. Its original is the "*lex terræ*" of Magna Charta, which Lord Coke has construed to mean, "due process of law;" and this construction seems to have been adopted in the Constitution of the United States, in which the latter phrase is used. *Const. U. S.* Amendments, Art. 5. See *Lex terræ.*

LAW OF MARQUE. See *Marque, Letters of Marque.*

LAW OF MERCHANTS. See *Law-Merchant.*

LAW OF NATIONS. [Lat. *jus gentium.*] A system of rules and principles established among nations, and intended for the regulation of their mutual intercourse; otherwise called *international law*, (q. v.)—A code of public instruction, which defines the rights and prescribes the duties of nations in their intercourse with each other. 1 *Kent's Com.* 1. It is founded for the most part on usage, consent and agreement, but in an important degree, also, on the principles of natural law. *Id.* 2.

LAW OF NATURE. [Lat. *jus naturæ, jus naturale.*] A rule of conduct arising out of the natural relations of human beings, established by the Creator, and existing prior to any positive precept. *Webster.* Otherwise termed *natural law. Tayl. Civ. Law*, 99. The foundation of this law is placed by the best writers in the will of God, discovered by right reason and aided by divine revelation; and its principles, when applicable, apply with equal obligation to individuals and to nations. 1 *Kent's Com.* 2, note. *Id.* 4, note.

LAW OF THE STAPLE. In old English law. The same with the law-merchant, (q. v.) *Blount.* But see *Jus stapulæ.*

LAW OF WAR. See *Jus belli.*

LAW-BORGH. Sc. [from *law*, and Sax. *borh*, a pledge.] In old Scotch law. A pledge or surety given for a party's appearance in court. *Skene de Verb. Sign.* voc. *Iter*, (p. 79.)

LAW BURROWS. In Scotch law. Security for the peaceable behaviour of a party; security to keep the peace. 1 *Robertson's Charles* V. Appendix, No. xvi. Properly, a process for obtaining such security. 1 *Forbes' Inst.* part 2, p. 198. *Bell's Dict.*

LAW DAY or LAGE DAY. In old English law. A day of open court; commonly used for the more solemn courts of a county or hundred. *Cowell.*

The court leet, or view of frankpledge. *Id. Blount.*

In modern practice. The day limited in a mortgage or deed of trust, for the payment of the debt secured. 24 *Alabama R.* 149. 10 *Connecticut R.* 280.

LAW FRENCH. The Norman French language, introduced into England by William the Conqueror, and which, for several centuries, was, in an emphatic sense, the language of the English *law*, being that in which the proceedings of the courts and of parliament were carried on, and in which many of the ancient statutes, reports, abridgments and treatises were written and printed. It is called by Blackstone "a barbarous dialect," and the later specimens of it fully warrant the appellation, but at the time of its introduction it was, as has been observed, the best form of the language spoken in Normandy.

The pleadings in actions, including the arguments of counsel and the decisions of the courts, were conducted and pronounced exclusively in this language, down to the thirty-sixth year of Edward III. when the English was substituted in its place. 3 *Bl. Com.* 318. The cases and decisions, however, continued to be *reported* in French to the close of the seventeenth century, the first reports published in English being those of Style, in 1658. The statutes began to be written in French in the reign of Henry III. and in some of the subsequent reigns are exclusively in this language. The English was substituted in the reign of Henry VII. Of the law treatises in French, the most important are those of the Mirror and Britton, and the later work of Littleton. A good sketch of the history of the language may be found in an article in the *North American Review* for October, 1840.

The frequent barbarisms observable in this language, especially in its later periods, arose from the corruptions to which it was inevitably exposed from its intermixture with English; which, after it had ceased to be spoken, increased to such a degree as to produce a sort of hybrid dialect, many amusing specimens of which may be found in the books. Even the purer portions of it appear to have been in a state of continual fluctuation, no uniform standard even of

orthography being regarded. Hence we find the ordinary word *ley* (law,) occurring in the several forms of *lay*, *lee*, *leie* and *ly*; and the still more common word *lour*, (their) taking the forms of *leour*, *ler*, *lirr*, *loar*, *lor*, *lur*, *lure* and *lurr*. The old parliament rolls, from which Kelham in his Norman Dictionary has extracted copiously, furnish numerous examples of this kind. As a further evidence of the singular deterioration which this language underwent, it may be mentioned that in the small volume of Britton, of 287 folios, or 578 pages 18mo. the text of 650 passages was considered by Wingate, in the year 1640, to be so corrupt as to justify a different reading.

LAW LATIN. A technical kind of Latin, in which the pleadings and proceedings of the English courts were enrolled and recorded from a very early period to the reign of George II.; being also, during a great part of the same period, the language of original and judicial writs, of royal charters and letters patent, of private charter or deeds, and many other instruments public and private. See, in particular, the Registrum Brevium, and West's Symboleography, *passim*. See *Latin*, and the words in this dictionary designated by the abbreviation "L. Lat." It still continues to be used in England and Scotland, as the language of some public instruments, such as charters, pardons, &c.

*** The principal peculiarities of this language consist first, in its construction, which is adapted so closely to the English idiom as to answer to it sometimes word for word; and, secondly, in the use of numerous words "not allowed by grammarians nor having any countenance of Latin," but framed from the English by merely adding a Latin termination, as *murdrum* from murder, *gardinum* from garden, and the verbs *murdrare*, to murder, *triare*, to try, and the like. Hence it has frequently been looked upon as of modern origin, and in Blackstone's words, "to be totally fabricated at home." "Whereas, in reality," as the same writer observes, "it is a very universal dialect, spread throughout all Europe at the irruption of the northern nations, and particularly accommodated and moulded to answer all the purposes of the lawyers with a peculiar exactness and precision." 3 *Bl. Com.* 419. It is, indeed, only a variety of what is generally termed *Low Latin*, or the Latin of the middle ages, (*media et infirma Latinitas*,) in which all the codes of the early nations of Europe, as the Franks, Burgundians, Alemanni, and others appear to have been written. At this remote period, then, the practice of framing for legal purposes new words from the vernacular, with Latin terminations, may be considered as having originated. The words themselves, though now generally regarded as unmitigated barbarisms, were as much the result of necessity as of ignorance, being intended to express certain necessary ideas for which no appropriate Latin words in many cases existed. Of this class are the words *faderfium*, *garathinx*, *hrevawuntum*, *lidscartum* and many others, which in point of rudeness exceed any in the English books.

On the adoption of the Latin in England, as the record language of the law, a still greater necessity of framing new or modern Latin words was found to exist. The language had to be closely adapted to the various exigencies of modern life, and to be made to express many ideas and subjects which previously had no existence whatever. The pleadings in actions, particularly, contained constant references to articles of dress, of food, of household furniture, and other things which it was necessary to mention by name, but for which no genuine Latin could possibly be found. In such cases, the original system of adding a Latin termination to the vernacular word was, to some extent, pursued. Hence it was allowed to use *velvetum* for *velvet*, and the like. 10 *Co.* 133 b. In many cases, however, the practice was introduced of describing the article or other subject by what was technically termed an "*Anglicè*," or "*vocat'*:" that is, by first using some Latin word descriptive of the class to which it belonged, and then naming the particular English word for it, preceded by the word *Anglicè* (in English,) or *vocat'*, (called,) thus: "*operimentum*, *Anglicè*, a rug," "*decem velamina*, *Anglicè*, coifs," "*instrumentum*, *vocat'* a plate for a jack." 10 *Co.* 130 a, 133 b. *Styles*, 125. Numerous examples of this kind occur in the older reports.

In point of construction, or the arrangement of words in sentences, this Law Latin was, with a view to greater precision, closely assimilated to the English idiom. Hence such phrases as "*convenit*, *promisit et agreavit ad et cum*," (covenanted, promised and agreed to, and with;) "*de tempore in*

tempus et ad omnia tempora," (from time to time and at all times.) With all its rudeness and singularity, however, it was always considered as fundamentally Latin, and governed essentially by the ordinary rules of grammar; and that it was not viewed by the courts as *necessarily*, even inelegant, is shown in the remark of Lord Holt, that "what is good Latin in Cicero is good Latin in law." 2 *Ld. Raym.* 904, 907.

LAW-MERCHANT. [Lat. *lex mercatoria.*] The general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54. Otherwise termed commercial law. Blackstone calls it the *custom of merchants*, and ranks it under the head of the particular customs of England, which go to make up the great body of the common law. 1 *Bl. Com.* 75. Mr. Stephen, however, very properly remarks that, as its character is not local, nor its obligation confined to a particular district, it cannot with propriety be considered as a *custom*, in the technical sense in which Blackstone uses that word. 1 *Steph. Com.* 54. It is a law, indeed, which does not rest essentially for its character and authority on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world. 3 *Kent's Com.* 2.

LAW-WORTH. A word occurring in a charter granted by William the Conqueror to the city of London. "And I grant you, that I will that you be all your *law-worth* that ye were in Edwardis dayes the king," &c. *Blount*, voc. *Portgreve.* The meaning probably is, privilege in regard to *law*, or the privileges of a *legalis homo*, or lawful man; or the word may have an affinity with the *othesworthe* (q. v.) of Bracton.

LAWE, *Law.* In old English law. A hill. *Co. Litt.* 4 b.

LAWFUL. [L. Lat. *legalis;* Lat. *licitus, legitimus.*] Authorized or permitted by law; conformable to law; as a lawful act or proceeding.

Having the qualities or qualifications prescribed by law.

"LAWFUL MONEY OF THE UNITED STATES," is lawful money of any state or territory. 1 *Hempstead's R.* 236.

LAWING OF DOGS. In forest law. The cutting out the ball of the forefeet of dogs, or cutting off three claws of the forefoot. *Chart. de Forest.* c. 6. See *Expeditate.*

LAWNDE, *Lownde.* In old English law. A plain between woods. *Co. Litt.* 5 b.

TO LAY. In pleading. To allege or state. To *lay the venue* in a declaration, is to state or name a particular county in the margin and body of the declaration, as the county in which the plaintiff proposes that the trial shall take place. See *Venue.* This is sometimes termed *laying the action.* 3 *Steph. Com.* 574. To *lay damages*, is to state at the conclusion of the declaration the amount of damages claimed in the action. See *Damages.*

LAY. L. Fr. Lay; not clerical or ecclesiastical. *Lay fee. Britt.* c. 96. *Lay home;* a layman. *Id. ibid.*

A layman. *A touts lays;* to all laymen. *Id.* c. 16. *Clers ou lays;* clerks or laymen. *Id.* c. 28. *Les layes. Kelham.* See *Lays gens.*

LAY. L. Fr. and Eng. [Lat. *laicus*, q. v.] Not clerical or ecclesiastical; relating or belonging to the *people* (Gr. λαός,) as distinguished from the clergy. See *infra.*

LAY CORPORATION. A corporation composed of laymen, as distinguished from ecclesiastical persons; or established for temporal, as distinguished from spiritual purposes.* Formerly called a *temporal* corporation. *Cowell*, voc. *Corporation.* See *Corporation.*

LAY DAYS. In the law of shipping. Days allowed in charter parties, for loading and unloading the cargo. 3 *Kent's Com.* 202, 203.

LAY FEE. L. Fr. and Eng. [L. Lat. *feodum laicum.*] In English law. A fee held of a lay lord, or by lay tenure, that is, the ordinary feudal tenure, as distinguished from the ecclesiastical tenure of frankalmoign.* *Britt.* c. 26. 2 *Bl. Com.* 101.

LAY IMPROPRIATOR. In English ecclesiastical law. A lay person holding a spiritual appropriation. 3 *Steph. Com.* 72. See *Appropriation.*

LAYS GENTS, *Lays Gens, Lais Gens.* L. Fr. In old English law. Lay people; the common people or laity. *Les* lays gents *que ne sont apprises en la ley;* the common people who are not learned in the law. *Litt.* sect. 331. *Ceo serra grand*

p'il à mett' cest matt' en bouche del lais gens; it would be a great hazard (very dangerous) to put this matter in the mouth of lay people. *Yearb.* M. 9 Hen. VI. 37. See *Gents.*

A jury; jurors. *Yearb.* M. 11 Hen. VI. 2, 4.

LE, *Lee.* L. Fr. Large; broad. *Kelham.*

LE. L. Fr. The. Used anciently in the composition of names. *Henricus* le *Smyth;* Henry the Smyth. *Reg. Orig.* 96 b. *Philippus* le *Riche;* Philip the Rich. *Bract.* fol. 166. *Henricus* le *Turner;* Henry the Turner. *Id.* fol. 199. *Johannes* le *Botiler;* John the Butler. *Yearb.* H. 3 Edw. III. 10.

LE, *Lie,* is used in old Scotch records, in the same manner as the Lat *vocat'* in old English records. *Cum dict' pessimo veneno,* le *poysone.* 1 *Pitc. Cr. Trials,* part 2, p. 202. *Cum magno exercitu* le *buschement;* with a great force called an ambushment. *Id.* 329. *Cum uno mangonale* lie *gwnne;* with an engine called a gun. *Id. ibid.*

LE GUIDON, (or LE GUIDON DE LA MER.) The title of a celebrated French treatise on the law of insurance, being the earliest work extant on that subject. It was prepared for the use of the merchants of Rouen at least as early as the sixteenth century, but its author's name has not been preserved. It was published by Cleirac in 1671, in his collection entitled *Les Us et Coutumes de la Mer.* 3 *Kent's Com.* 346. 1 *Duer on Ins.* Introd. Disc. Lect. ii.

LE ROY (or LA REINE) LE VEUT. L. Fr. The king (or queen) wills it. The form of the royal assent to public bills in parliament. 1 *Bl. Com.* 184. *Le roy le voet. Rot. Parl.* 4 Hen. IV.

LE ROY (or LA REINE) S'AVISERA. L. Fr. The king (or queen) will advise upon it. The form of words used to express the refusal of the royal assent to public bills in parliament. 1 *Bl. Com.* 184. This is supposed to correspond to the judicial phrase *curia advisari vult,* (q. v.) 1 *Chitt. Bl. Com. ibid.* note.

LE ROY (or LA REINE) REMERCIE SES LOYAL SUJETS, ACCEPTE LEUR BENEVOLENCE, ET AUSSI LE VEUT. L. Fr. The king (or queen) thanks his (or her) loyal subjects, accepts their benevolence, and wills it to be so. The form of the royal assent to a bill of supply. 1 *Bl. Com.* 184.

LE ROY VOET. L. Fr. The king wills. The initial words of the royal answers to the petitions of the commons in parliament. *Le roy voet que de cy en avant,* &c. *Hale's Hist. Com. Law,* 51.

LEA, *Ley.* In old English law. A pasture. *Co. Litt.* 4 a.

To LEAD A USE. In old conveyancing. To direct beforehand the particular use to which a conveyance is to operate.* Deeds *to lead uses* were common incidents to fines and recoveries, where the latter were intended to operate to certain uses, being, in other words, deeds made previous to the fine or recovery, directing its operation to the particular uses. 1 *Steph. Com.* 529, 530.

To LEAD IN A CAUSE. In English practice. A term applied, at trials at nisi prius, to the counsel (hence called *leading* counsel or *leader,*) who directs the management of a cause, as distinguished from the junior counsel, who only assists under his direction. *Holthouse.*

LEADING CASE. In practice. A reported case in which the decision of the court is considered as settling or determining the law upon the point or points involved, and which is looked upon and followed as a guide for subsequent decisions.

LEADING COUNSEL. See *To lead in a cause.*

LEADING QUESTION. In practice. A question put or framed in such a form as to suggest the answer sought to be obtained by the person interrogating. *Holthouse.* As, "Did not you see this?" or, "Did not you hear that?" 3 *Bl. Com.* 449. 3 *Chitt. Gen. Pr.* 892, *et seq. Best on Evid.* 478, § 436.—A question which directly suggests the answer desired, or which embodies a material fact, and admits of a simple negative or affirmative. 26 *Mississippi R.* 157.

LEAL. L. Fr. [from *ley,* law.] In old English law. Lawful. *Le don fuit bon et* leal; the gift was good and lawful. *Britt.* c. 51. *Leal matrimoine. Id.* c. 43.

Loyal; liege; a liege. *A touts ses feals et ses* leaus; to all his faithful subjects and his lieges. *Britt.* fol. 1.

LEALMENT, *Leaument.* L. Fr. Lawfully. *Britt.* cc. 29, 58.

LEALTE. L. Fr. Legality; the condition of a *legalis homo,* or lawful man. *LL. Gul. Conq.* l. 16.

LEARNING. [L. Fr. *erudicion.*] Doc-

trine. "It is a common learning." 1 *Leon.* 77.

LEAS. L. Fr. A lease. *Stat. Glocest.* c. 4.

LEASE. [L. Fr. *leas*, *lees*, *leez*, from *lesser*, or *laiser*, to let; L. Lat. *dimissio*, q. v.] A conveyance of any lands or tenements (usually in consideration of rent or other annual recompense,) made for life, for years or at will, but always for a less time than the lessor has in the premises; for if it be for the whole interest, it is more properly an assignment than a lease. 2 *Bl. Com.* 317. *Shep. Touch.* 266. *Watkins on Conv.* 220.—A contract in writing, under seal, whereby a person, having a legal estate in hereditaments, corporeal or incorporeal, conveys a portion of his interest to another, in consideration of a certain annual rent or render, or other recompense. *Archb. Landl. & Ten.* 2. This last definition is framed in accordance with recent English statutes. See 1 *Hilliard's Real Prop.* 212.

The usual words of operation in a lease, according to Blackstone, are "demise, grant and to farm let," which are translations of the Lat. *dimisi*, *concessi et ad firmam tradidi*, used in the ancient leases. 2 *Bl. Com.* 317, 318. Other writers state the operative words to be "demise, lease and to farm let." *Watk. on Conv.* 207. *Archb. Landl. & Ten.* 19. But any other words which express an intention to part with the possession, will amount to a lease. 1 *Steph. Com.* 477. In Pennsylvania, the word "lease," even in a parol lease, implies a covenant for quiet enjoyment. 20 *Penn. St. R.* 482. As to the difference between a lease and a contract to work for a share of the crop, see 3 *Jones' Law R.* 63.

LEASE AND RELEASE. A species of conveyance deriving its efficacy from the statute of uses, and now the most common method in England, of conveying freehold estates. It is, as its name imports, a compound conveyance, consisting of a *lease*, or rather a bargain and sale, and a *release*, constituting separate deeds, and is effected thus: A lease, or rather bargain and sale upon some pecuniary consideration, for one year, is made by the tenant of the freehold to the lessee or bargainee. This, without any enrolment, makes the bargainor stand seised to the use of the bargainee, and vests in the bargainee the *use* of the term for a year, and then the statute immediately annexes the *possession*. He, therefore, being thus in possession, is capable of receiving a release of the freehold and reversion, which must be made to a tenant in possession; and accordingly the next day a *release* is granted to him. 2 *Bl. Com.* 339. 1 *Steph Com.* 496.

This mode of conveyance was universally in practice in the state of New-York until the year 1788, after which, on the revision of the statute law, it gave place to the conveyance by bargain and sale. 4 *Kent's Com.* 494.

LEASING-MAKING. In old Scotch criminal law. An offence consisting in slanderous and untrue speeches, to the disdain, reproach and contempt of the king, his council and proceedings, &c. *Bell's Dict.*

LEASUM. Sc. In old Scotch law. Lawful. *Skene de Verb. Sign.* vocc. *Manus mortua*, *Vadium.*

LEAURE, *Leur.* L. Fr. Breadth. *Kelham.*

LEAUTE. L. Fr. Legality; sufficiency in law. *Britt.* c. 109.

LEAVE. To give or dispose by will. "The word *leave*, as applied to the subject-matter, *primâ facie* means a disposition by will." Bayley, J. 10 *East*, 438.

LEAWE. L. Fr. Water. *Kelham.*

LEDA. L. Lat. In old English law. A lathe (division of a county.) *Spelman.* See *Lathe.*

LEDE. L. Fr. Grievous. *Kelham.* Afflicted; impaired or damaged in appearance. *Lede ou bele*, sick (or ill-favored) or fair. *Britt.* c. 68.

LEDENGE. L. Fr. Damaged. *Kelham.*

LEDER. L. Fr. [from Lat. *lædere?*] To hurt. *Ledera;* shall hurt. *Ledez;* hurt. *Kelham.*

LEDGREVIUS. L. Lat. In old English law. A lathe-reeve, or chief officer of a lathe. *Spelman.*

LEE. L. Fr. Large. *Kelham.*

Law. *Id.* A corruption of *ley.*

Read, (from *lier*, q. v.)

LEES. L. Fr. [from *lesser*, to let.] A lease. *Lees et dimissions. Britt.* c. 34. *Id.* cc. 42, 47, 114.

A leash by which dogs were led. *Yearb.* M. 18 Hen. VI. 6.

LEET. [L. Lat. *leta;* L. Fr. *lete.*] In English law. The name of a court of criminal jurisdiction, formerly of much importance, but latterly fallen into disuse. See *Court leet.*

Spelman derives this word from the Sax. *let*, a part, from its jurisdiction being parcelled out among smaller tribunals, or from *læt*, a valuation or assessment. Others derive it from the Sax. *leod*, people; because all the residents in a manor assembled there. *Crabb's Hist. Eng. Law*, 110.

LEGA. L. Lat. In old English law. The allay of money. *Cowell. Blount.*

A termination of the names of places in old records, supposed by Spelman to signify *place*.

LEGABILIS. Lat. [from *legare*, to bequeath.] In old English law. That which may be bequeathed. *Cowell.*

LEGACY. [Lat. *legatum*, q. v.] A bequest or gift of goods and chattels by testament. 2 *Bl. Com.* 512. 2 *Steph. Com.* 248.—A gift by will of personal property. *Ward on Legacies*, 1.—A gift by will either of a sum of money, called a *general* or *pecuniary* legacy, or of a specific article, as a piece of plate, called a *specific* legacy, (q. v.)

The word *legacy* properly imports a gift of *personal*, as *devise* does a gift of *real* property; but it may, by reference and construction, be descriptive of real estate. 1 *Burr.* 268, 272. 3 *Term R.* 716. *Shep. Touch.* (by Preston,) 400. The Lat. *legare* (q. v.) had this general sense in the civil law.

LEGAL. [from Lat. *legalis*, from *lex*, law.] According to law; required, authorized or permitted by law; good or valid in law; lawful; the opposite of *illegal*. As, a *legal* contract, a *legal* tender, *legal* resistance, and the like.

That which is governed by, or construed according to rules of law, in contradistinction to rules of equity; the opposite of *equitable*. As, a *legal* estate, *legal* assets, &c.

LEGAL ASSETS. That portion of the assets of a deceased party which by law are directly liable, in the hands of his executor or administrator, to the payment of debts and legacies. 1 *Story's Eq. Jur.* § 551. Such assets as can be reached in the hands of an executor or administrator, by a suit at law against him. *Id. ibid.*

LEGAL ESTATE. That kind of estate which is properly cognizable in the courts of common law, though noticed, also, in the courts of equity. 1 *Steph. Com.* 217.

LEGALIS HOMO. L. Lat. In old English law. A lawful man; a person to whom no objection could be made in a court of justice; a person who stood *rectus in curia*, not outlawed, excommunicated or infamous; a person who could sue and be sued at law; a person competent to be sworn as a juror or witness; a person enjoying the privilege technically called *lex*, (q. v.) *Magna Charta*, c. 14. *Spelman*, voc. *Legalis*. *Legales* included both *liberos* and *probos*. 2 *Show.* 144. The phrase "lawful men" is still used in jury process.

LEGALITAS. L. Lat. [from *legalis*.] Legality; the quality, character or condition of a *legalis homo*, (q. v.) *Spelman.*

Behaviour according to law; good behaviour. *Id.*

LEGARE. Lat. In the civil and old English law. To bequeath; to leave or give by will; to give in anticipation of death; in Scotch phrase, to *legate*. *Inst.* 2. 20. *Dig.* 30. 12, 15, *et seq.* *Bract.* fol. 18 b. *Stat. Merton*, c. 2. 1 *Kames' Equity*, 259. Applied, in the civil law, to real as well as personal property, and so used by Bracton. *Legare fundum. Inst.* 2. 20. 9. *Legare terram. Bract.* fol. 186.

LEGATARIUS. Lat. In the civil law. One to whom a thing is bequeathed; a legatee, or legatary. *Inst.* 2. 20. 2, 4, 5, 10. *Bract.* fol. 40.

In old European law. A legate, messenger, or envoy. *Spelman.* See *Legatus.*

LEGATEE. [Lat. *legatarius*.] The person to whom a legacy is given. 2 *Bl. Com.* 512. Sometimes used in the sense of *devisee*. See 15 *East*, 505.

LEGATINE CONSTITUTIONS. In English law. Ecclesiastical laws enacted in national synods held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III. about the years 1220 and 1268. 1 *Bl. Com.* 83.

ΛΗΓΑΤΟΝ, Ληγάτον. Latino-Gr. In the civil law. A legacy (*legatum.*) *Dig.* 48. 22. 16.

LEGATUM. Lat. [from *legare*, q. v.] In the civil law. A legacy; a gift left by will, (*donatio testamento relicta.*) *Dig.* 31. 36. A gift left by a deceased person, to be executed by the heir; (*donatio quædam à defuncto relicta, ab hærede præstanda.*) *Inst.* 2. 20. 1.

In the common law. A legacy; a gift by will. Bracton, following the civil law, makes it to be the same with a *donatio mortis causa*. *Bract.* fol. 49. *Cum* legatum *sit donatio mortis causâ, et legatum*

tantum morte confirmatur, et [*ut?*] *donatio inter vivos traditione. Id. ibid.* See *Dig.* 32. 87. This passage is substantially quoted in Dyer, 143.

In old ecclesiastical law. A soul-scot, mortuary, or gift to the church. *Cowell.*

LEGATUS. Lat. [from *legare*, to send a messenger.] A legate; an ambassador, envoy or nuncio. Called, also, in old European law, *legatarius. Spelman.* **Legatos violare contra jus gentium est.** To offer violence to ambassadors is against the law of nations. *Branch's Princ.*

In old European law. A messenger of a private person. *Spelman.*

A king's justice or commissary, (*missus dominicus.*) *Id.*

LEGEM FACERE. L. Lat. In old English law. To make law, or oath. *Legem vadiare;* to wage law. *Legem habere;* to have law; to be capable of giving evidence upon oath. *Legem amittere;* to lose the law, or privilege of being admitted to oath. *Legem terræ amittentes perpetuam infamiæ notam inde merito incurrunt;* they who lose the *lex terræ* (law of the land,) justly incur therefor the perpetual brand of infamy. 3 *Inst.* 221. In Branch's Maxims, the peculiar meaning of *lex terræ*, in this passage, has been misapprehended.

LEGEM FERRE. Lat. In the Roman law. To propose a law to the people for their adoption. *Heinecc. Antiq. Rom.* lib. 1, tit. 2. *Tayl. Civ. Law*, 9.

LEGEM JUBERE (or SCISCERE.) Lat. In the Roman law. To give consent and authority to a proposed law; to make or pass it. *Tayl. Civ. Law*, 9.

LEGER, *Legier.* L. Fr. Light; short; easy. *Kelham.*

Quick; sudden; violent. *L. Fr. Dict.*

LEGEREMENT. L. Fr. [from *leger*, q. v.] Slightly; easily; shortly. *Kelham.*

LEGERTE. L. Fr. [from *leger*, q. v.] Levity. *De* legerte *de jaungle;* from levity of discourse. *Britt.* c. 96.

LEGES. Lat. [plur. of *lex*, q. v.] Laws. At Rome, the *leges* (the decrees of the people in a strict sense) were laws which were proposed by a magistrate presiding in the senate, and adopted by the Roman people in the *comitia centuriata.* 1 *Mackeld. Civ. Law*, 18, § 27. *Tayl. Civ. Law*, 177, 178. See *Lex.*

Leges figendi et refigendi consuetudo est periculosissima. The practice of fixing and re-fixing [making and remaking] the laws is a most dangerous one. 4 *Co.* pref.

Leges non verbis sed rebus sunt impositæ. Laws are imposed not on words but things. 10 *Co.* 101. *Branch's Pr.*

Leges posteriores priores contrarias abrogant. Later laws abrogate prior laws that are contrary to them. 1 *Co.* 25 b. When the provisions of a later statute are opposed to those of an earlier, the earlier statute is considered as repealed. *Broom's Max.* 11, [23.] A very ancient maxim in the Roman law, and called by Blackstone a general principle of universal law. 1 *Bl. Com.* 89. See *Abrogare.*

Leges suum ligent latorem. Laws should bind their own maker. *Fleta*, lib. 1, c. 17, § 11.

LEGES ANGLIÆ. Lat. The laws of England, as distinguished from the civil law and other foreign systems. *Et omnes comites et barones unâ voce responderunt, quod nolunt leges Angliæ mutare, quæ hucusque usitatæ sunt et approbatæ;* and all the earls and barons with one voice answered, that they will not change the laws of England, which have hitherto been used and approved. *Stat. Merton*, c. 9. 1 *Bl. Com.* 19.

LEGES NON SCRIPTÆ. Lat. In English law. Unwritten or customary laws, including those ancient acts of parliament which were made before time of memory. *Hale's Hist. Com. Law*, 5. See 1 *Bl. Com.* 63, 64.

LEGES ROMANÆ. Lat. The Roman laws. *Legum Romanarum non est vilis auctoritas, sed non adeo vim suam extendunt, ut usum vincant aut mores; strenuus autem legisperitus, sicubi casus emerserit qui consuetudine feudi non sit comprehensus, absque calumnia uti poterit lege scripta;* the Roman laws are of no mean authority, but their force does not extend so far as to overcome usage or custom; but a zealous advocate, if a case arise which is not embraced within the custom of the fief, may without objection make use of the written law. *Feud. Lib.* 2, tit. 1.

LEGES SCRIPTÆ. Lat. In English law. Written laws; statute laws, or acts of parliament which are originally reduced into writing before they are enacted, or receive any binding power. *Hale's Hist. Com. Law*, 1, 2.

LEGES SUB GRAVIORI LEGE. Lat. Laws under a weightier law. *Hale's Hist. C. Law*, 46. 44.

LEGES TABELLARIÆ. Lat. Roman laws regulating the mode of voting by ballot, (*tabella.*) 1 *Kent's Com.* 232, note.

LEGIBUS SOLUTUS. Lat. Released from the laws; not bound by the laws. An expression applied in the Roman civil law to the emperor. *Calv. Lex.* 3 *Gibbon's Rom. Emp.* 157, (Am. ed. 1844.)

LEGIOSUS. L. Lat. In old records. Litigious; and so subjected to a course of law. *Cowell.*

Legis constructio non facit injuriam. The construction of the law does no wrong; a construction made by the law works no injury. See *Constructio.*

Legis interpretatio legis vim obtinet. The interpretation of law acquires the force of law. *Branch's Princ.*

Legis minister non tenetur in executione officii sui, fugere aut retrocedere. The minister of the law is bound, in the execution of his office, not to fly nor to retreat. *Branch's Princ.*

LEGISPERITUS. L. Lat. A person skilled or learned in the law; a lawyer or advocate. *Feud. Lib.* 2, tit. 1.

LEGIT UT CLERICUS. L. Lat. (He reads as a clerk.) In old English practice. The answer made by the ordinary to the question *Legit vel non?* importing that a prisoner could read, and was consequently entitled to the benefit of clergy. *Dyer*, 205.

LEGIT VEL NON? Lat. (Does he read or not?) In old English practice. The question asked of the ordinary, on the trial, whether a prisoner claiming his clergy could read. 1 *Salk.* 61. See *Benefit of clergy.*

LEGITIM. In Scotch law. Children's claim out of the free moveable estate of their father, amounting to one-half or one-third, (according to circumstances,) of his moveables, after paying his debts. *Bell's Dict.* See 4 *Bell's Appeal Cases*, 286.

LEGITIMACY. [L. Lat. *legitimitas.*] Lawful birth; the condition of being born in wedlock; the opposite of illegitimacy, or bastardy.

LEGITIMATE. [Lat. *legitimus.*] Lawful; lawfully born; born in lawful wedlock. Commonly applied to issue.

To LEGITIMATE. To make lawful; to confer legitimacy. To place a child born before marriage on the footing of those born in lawful wedlock. 26 *Vermont R.* 653, 657, 658.

LEGITIMATIO. Lat. In the civil law. A making lawful; the conferring of a lawful character or condition, as upon children born before marriage; legitimation. *Inst.* 1. 10. 13.

In English law. Legitimacy; lawful birth. **Semper præsumitur pro legitimatione.** The presumption always is in favor of legitimacy. *Branch's Pr.*

LEGITIMATION. The act of making legitimate; the act of conferring legitimacy on a child born before marriage. 26 *Vermont R.* 653, 657, 658.

LEGITIME. Lat. Lawfully; with the authority of law. **Legitime imperanti parere necesse est.** One who commands lawfully must be obeyed. *Jenk. Cent.* 120, case 12.

LEGITIMITAS. L. Lat. [from *legitimus*, q. v.] In old English law. Legitimacy; the condition of being lawfully born, as opposed to bastardy, (*bastardia.*) *Fleta*, lib. 5, c. 5, § 7.

LEGITIMUS. Lat. Lawful; legitimate. Legitimus *hæres et filius est quem nuptiæ demonstrant;* a lawful son and heir is he whom the marriage points out to be lawful. *Bract.* fol. 63.

LEGO. Lat. In the Roman law. I bequeath. A common term in wills. *Dig.* 30. 36. 81, *et seq.* See *Legare.*

LEGULEIUS. Lat. A person skilled in law, (*in legibus versatus;*) one versed in the forms of law. *Calv. Lex. Cic. de Orat.* i. 55.

LEI. L. Fr. Law. *Prest affaire sa lei;* ready to make his law. *Yearb.* M. 2 Edw. II. 21.

LEIC'. An abbreviation of *Leicestria*, Leicester. 1 *Inst. Cler.* 28.

LEIDGREVE. In Saxon law. An officer who had jurisdiction over a *lathe. Cowell.*

LEIE. L. Fr. Law. *Kelham.* An old form of *ley.*

LEIPA. L. Lat. In old English law. A fugitive or runaway. *LL. Hen.* I. c. 43. *Spelman.* Possibly the root of *elope.*

LENA. Lat. In the Roman law. A bawd. *Dig.* 23. 2. 43. 7.

LEOD. Sax. People; a people; a nation. *Spelman*, voc. *Leodes.*

LEODES. L. Lat. [from Sax. *leod.*] In old European law. A vassal, or liege man; (*vassallus; homo ligeus.*) *Spelman.*

Service, (*servitium.*) *Id. Marculf.* lib. 1, form. 40.

A were or weregild, (*wera, wergildum,*) *Spelman.*

LEPORARIUS. L. Lat. In old English law. A grey-hound for the hare. *Fleta*, lib. 2, c. 41, § 21. 2 *Mon. Angl.* 283.

LEPRA. Lat. In old English law. Leprosy. *Fleta*, lib. 6, c. 40, § 3. *Leprosus*; a leper. *Id. ibid.*

LESE MAJESTY, *Læse Majesty.* [L. Fr. *leze majest.*] The old English and Scotch translation of *læsa majestas*, or high treason. 2 *Reeves' Hist. Eng. Law*, 6.

LESER. L. Fr. To hurt. *Kelham.*

LESION. Fr. Damage; injury; detriment. *Kelham.* A term of the Scotch law. 1 *Kames' Eq.* pref.

In the civil law. The injury suffered by one who does not receive a full equivalent for what he gives in a commutative contract. *Civ. Code of Louis.* art. 1854.—Loss sustained by not receiving the just price or value for a thing sold. 7 *Texas R.* 134.

Inequality in contracts. *Pothier, Obl.* part 1, ch. 1, sec. 1, art. 3, § 4.

LESPEGEND. Sax. A lesser thane or baron. *Const. Canuti Regis de Foresta*, art. 2. Spelman prefers to write it *Lesthegen.*

LESSEE. L. Fr. and Eng. [from *lesser*, to let.] He to whom a lease is made for life, or years, or at will. *Litt.* sect. 57.

Lessee and *cropper* distinguished. 3 *Jones' Law R.* 61.

LESSER. L. Fr. To let. *Lesse à farme*; let to farm. *Britt.* c. 21.

To suffer. *Lesse cheir*; let fall. *Id.* c. 1.

LESSOR. L. Fr. and Eng. He who lets lands for term of life, or years, or at will. *Litt.* sect. 57.

LEST. Fr. In French maritime law. Ballast. *Ord. Mar.* liv. 4, tit. 4, art. 1.

LESTAGE, *Lastage.* [L. Lat. *lestagium*; from Sax. *last*, a burden.] In old English law. A custom claimed in fairs or markets for carrying things. *Rastal's Expos. Cowell.*

LESTINGE. Sax. In old English law. Acquittance from lestage. *Fleta*, lib. 1, c. 47, § 11.

LESTUS, *Lastus.* L. Lat. In old English law. A last; a measure of commodities. *Fleta*, lib. 2, c. 12, §§ 2, 3.

LESWES, *Lesues.* Sax. Pastures. *Domesday. Co. Litt.* 4 b. A term often inserted in old deeds and conveyances. *Cowell.*

LET. In old conveyancing. Hindrance; interruption. Still occasionally used in the phrase "without any *let*, suit, trouble," &c.

To LET. [L. Lat. *locare, tradere.*] In conveyancing. To demise or lease. See *To farm let.* "To *let* and set" is an old expression.

To LET. [L. Lat. *tradere.*] In practice. To deliver. "To *let* to bail" is to deliver to bail on arrest. See *Bail*, L. Fr.

To LET IN. In practice. To admit a party as a matter of favor. See *To open.*

LETA. L. Lat. In old English law. Leet; a leet or court leet. *Spelman.* See *Leet.*

LETRADO. Span. In Spanish law. An advocate. *White's New Recop.* b. 1, tit. 1, c. 1, § 3, note.

LETTER. [Lat. *epistola.*] A written communication from one person to another.* An order for goods, folded and directed as a letter, though not sealed, is a letter, or mailable matter, within the act of Congress of March 3, 1845, § 10. 12 *Howard's R.* 88, 97. A seal is not necessary to constitute it a letter, or make it chargeable with postage. *Id. ibid.*

LETTER, LETTERS. [Lat. *epistola*; L. Lat. *litera, littera, literæ, breve*; L. Fr. *lettre, lettres, briefe.*] The form given, from a very early period, to many public and private written instruments, as letters patent, writs in actions, appointments of attorney, of executors and administrators, and some kinds of conveyance; and still to a considerable extent adhered to. See *Epistola, Lettre.* It appears to have been derived from the form of private epistolary correspondence among the Romans. See *Breve.* And see the form of a conveyance in Greek, preserved in the Digests. *Dig.* 8. 3. 37. See *Id.* 17. 1. 59, 60. *Id.* 20. 1. 34. In Scotch practice, judicial writs and other instruments are still called letters. *Bell's Dict.* in voc.

LETTERS OF ADMINISTRATION. The instrument by which an administrator or administratrix is authorized by the surrogate or other proper officer, to have the charge or administration of the goods and chattels of a party who has died intestate, or has left a will without appointing an executor. See *Administration.*

LETTER OF ATTORNEY. [L. Lat. *litera attornati*,] and anciently, LETTERS OF ATTORNEY, [L. Lat. *litteræ procuratoriæ.*] A writing authorizing another person, who in such case is called the *attorney* of the person appointing him, to do any lawful act in the stead of another; as to give seisin of lands, to receive debts, to

sue a third person, &c. *Cowell. Wharton's Lex. Story on Agency*, § 3. Now more commonly called a *power of attorney*, (q. v.) See *Letter.*

LETTERS CLOSE, (or CLAUSE.) [L. Lat. *literæ clausæ.*] In English law. Letters or writs *closed* up and sealed on the outside, as distinguished from *letters patent*, (q. v.) See *Close writs.*

LETTER OF CREDIT. A letter written by a merchant or correspondent to another, requesting him to credit the bearer or other person named, with a certain sum of money. *McCulloch's Dict. Wharton's Lex.* See 3 *Kernan's R.* 630. Letters of credit usually contain a request that some one will advance money or sell goods to a third person, and an undertaking, on the part of the writer, that the debt which may be contracted by the third person in pursuance of the request, shall be duly paid. Bronson, J. 5 *Hill's R.* 642. And see 3 *Comstock's R.* 203.

LETTER (or LETTERS) OF EXCHANGE. [L. Lat. *litera cambii, literæ cambitoriæ.*] The old title of a bill of exchange. *Reg. Orig.* 194. Still preserved in the Fr. *lettre de change.* See *Bill of exchange.*

LETTER OF LICENSE. A letter or written instrument given by creditors to their debtor, who has failed in trade, &c. allowing him longer time for the payment of his debts, and protecting him from arrest in the mean time. *Tomlins. Holthouse. Wharton's Lex.*

LETTERS OF MARQUE AND REPRISAL. [Fr. *lettres de marque.*] In public law. A commission issued by the authority of the sovereign of a nation, to one or more of its subjects, authorizing the seizure of the property of the subjects or sovereign of an offending nation, and the detention of it as a pledge, until satisfaction for the injury complained of, be made.* 1 *Kent's Com.* 61. 1 *Bl. Com.* 258. The words *marque* and *reprisal* in this case are synonymous; the latter signifying a *taking in return*, the former the passing the *frontiers*, in order to such taking. *Id. ibid.* See *Marque, Reprisal.*

Lettres de marque is defined by Emerigon to be, the right of passing the limits or frontiers of another sovereign, and of doing justice to one's self; (*droit de passer les limites ou frontieres d'un autre prince, et de se faire justice à soi-meme.*) *Tr. des Ass.* ch. 12, sect. 36.

LETTER MISSIVE. In English equity practice. A letter sent by the Lord Chancellor to a peer, when a defendant in the Court of Chancery, requesting his appearance, together with a copy of the bill.* 3 *Bl. Com.* 445.

In civil law practice. Letters sent on an appeal from the judge *à quo* to the judge *ad quem;* otherwise called *letters dimissory*, and *apostles*, (qq. v.) *Hallifax, Anal.* b. 3, c. 11, num. 34.

LETTERS PATENT. [L. Lat. *literæ patentes;* L. Fr. *lettres overtes*, open letters.] The modern form of royal grants in England; called *patent*, that is *open*, because they are not sealed up, but exposed to open view, with the great seal pendant at the bottom, and are usually directed or addressed by the king to all his subjects at large; differing in this respect from *letters close*, which are directed to particular persons, and for particular purposes, and are therefore *closed* up and sealed on the outside.* 2 *Bl. Com.* 346. See *Hubback's Evid. of Succession*, 616, *et seq.*

This form of grant has been substantially adopted in the United States, where it is commonly termed a *patent.* 1 *N. Y. Rev. St.* [198,] 184. See *Patent.*

LETTERS OF REQUEST. In English ecclesiastical law. The mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court; being an instrument or *letter* by which the judge of the inferior court *requests* the superior judge to take cognizance of the suit, thereby waiving or remitting his own jurisdiction; and this authorizes the suit to be instituted in the superior court, which could otherwise only exercise jurisdiction as a court of appeal.* *Wharton's Lex. Holthouse.*

LETTERS OF SLANES, (or SLAINS.) In old Scotch law. A kind of bond by which the heirs and relations of a person who had been murdered bound themselves, in consideration of an *assythment*, or composition paid to them, to forgive, "pass over and forever forget, and in oblivion inter all rancor, malice, revenge, prejudice, grudge and resentment that they have or may conceive against the aggressor or his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever." 1 *Robertson's Charles* V. Appendix, Note xxiii. *Bell's Dict.* voc. *Slains.*

LETTERS TESTAMENTARY. An instrument granted by a surrogate, or other proper officer, to an executor, after probate of a will, authorizing him to act as executor. 2 *N. Y. Rev. St.* [69,] 13, § 1.

LETTEREURE, *Lettrure.* L. Fr. Literature; learning. *Kelham.*

LETTRE. L. Fr. In old English law. A letter; conveyance or grant, so called from its form. *A toutz ceux que ceste* lettre *verrount ou orrount*, A. *de* B. *salut: Saches moy aver done à P.* &c. To all those who shall see or hear this *letter*, A. of B. greeting: Know that I have given to P. &c. *Britt.* c. 41.

A writ. *Id.* c. 120.

A written authority to an attorney. *Id.* c. 40.

LEU. L. Fr. A place; the place. *Britt.* c. 119. An old form of *lieu.*

LEU. L. Fr. [from *lier*, to read.] Read. *Britt.* cc. 91, 120.

LEUCA, *Leuga, Lega.* L. Lat. In old French law. A league, consisting of fifteen hundred paces. *Spelman.*

In old English law. A league or mile of a thousand paces. *Domesday. Spelman. Fleta*, lib. 2, c. 2, § 2.

A privileged space around a monastery of a league or mile in circuit. *Spelman.*

LEUDIS, *Leodis.* L. Lat. [from Sax. *leod*, people or subject.] In old European law. A vassal; a liege man or feudal dependant, (*homo legius seu feudalis;*) a retainer, (*cliens;*) a feudal tenant. *Spelman.*

A crown vassal or baron. *Spelman. Lex Burgund.* in Add. 1, c. 1, § 14, cited *ibid.*

A layman; a common or illiterate person. *Spelman.* Hence the old English *lewd. Id.*

A composition; a were or were-gild. *Id.*

LEVANDÆ NAVIS CAUSÂ. Lat. For the purpose of lightening the ship. *Inst.* 2. 1. 48. *Levandæ navis gratia. Dig.* 14. 2. 1.

LEVANT. L. Fr. [from *lever*, to raise or rise.] Rising up. A term applied to cattle. See *Levant et couchant.*

LEVANT ET COUCHANT. L. Fr. Rising up and lying down. A term applied to a stranger's cattle which have been long enough on another's land to have *lain down* and *risen up* to feed, which in general is held to be one night, at least; or rather a night and a day. 3 *Chitt. Bl. Com.* 9, and note. More properly, *couchant et levant*, which is the old form of the phrase. See *Couchant.*

LEVANTES ET CUBANTES. L. Lat. Rising up and lying down. A term applied to cattle. 3 *Bl. Com.* 9. *Levantia et cubantia. Vaugh.* 252. See *Levant et couchant.* Applied by Bracton to villeins who actually lived on their lord's estate, (*in villenagio.*) *Bract.* fol. 6 b.

LEVANUM. L. Lat. In old English law. Leaven. *Pro gesto vel levano;* for yeast or leaven. *Fleta*, lib. 2, c. 10.

LEVARE. Lat. and L. Lat. In old English law. To raise or lift up; to set or put up; to cast up; to build or construct; to levy. *Levare domum;* to raise or erect a house. *Reg. Orig.* 199. *Levare fossatum;* to throw up a dyke or ditch. *Id. ibid. Stat. Westm.* 2, c. 46. *Levare stagnum;* to make a pool or pond. *Reg. Orig.* 199. *Fleta*, lib. 4, c. 1, § 19. *Levare nocumentum;* to levy a nuisance. 3 *Bl. Com.* 221.

To levy or raise money, as a tax. *Reg. Orig.* 188. *Assidere, taxare et* levare; to assess, tax and levy. *Id. ibid.*

LEVARI FACIAS. L. Lat. (You cause to be levied.) In English practice. A writ of execution, commanding the sheriff to *levy* or make of the lands and chattels of the judgment debtor, the sum recovered by the judgment. *Reg. Orig.* 298 b. 2 *Tidd's Pr.* 1042. 3 *Bl. Com.* 417. This is now little used, the remedy by *elegit* being much more effectual. *Id. ibid. Sewell's Sheriff*, 201.

In Pennsylvania, a *levari facias* is the proper form of process in equity for collecting charges upon land. 23 *Penn. St. R.* 39.

LEVER. L. Fr. To levy. *Britt.* c. 21. *Leva un fyn;* levied a fine. *Yearb.* H. 1 Edw. II.

To raise; to erect; to build or construct. *Britt.* c. 54.

To stir up; to display. *Kelham.*

LEVIR. Lat. [Gr. δαήρ.] In the Roman law. A husband's brother; a wife's brother-in-law. *Dig.* 38. 10. 4. 6. *Calv. Lex.*

LEVIS. Lat. Light; slight; trifling. *Levis culpa;* slight fault or neglect. *Levissima culpa;* the slightest neglect. See *Culpa.*

Levis nota; a slight mark or brand. 1 *Mackeld. Civ. Law*, 135, § 123.

LEVITICAL DEGREES. Degrees of kindred within which persons are prohibited

to marry. So called, as being defined by the Levitical law. 1 *Bl. Com.* 435. *Burn's Eccl. Law*, Marriage, I. *Vaugh.* 206, 302. 1 *Chitt. Bl. Com.* 435, note. *Shelf. Marr. & Div.* 158—162.

To LEVY. [Lat. *levare.*] In old English law. To raise or lift up; to cast or throw up; to set or put up; to erect or build; to make or construct. To *levy* a house or mill, a dyke or pond, and to *levy* a nuisance were common expressions. 3 *Bl. Com.* 221. See *Levare.* To *levy* a tax, had the same radical sense of *raising.*

In later law. To carry on certain proceedings at law, especially those peculiar to fines of lands; to acknowledge a fine. The party *levying* the fine was called the cognizor, and he to whom it was levied, the cognizee. 2 *Bl. Com.* 350, 351. The radical idea of *raising* seems to have been retained even in this application of the term, and Blount mentions his having seen a deed in which a party covenanted "to *rere* (rear) a fine."

To LEVY. In practice. To collect by execution. Executions are usually endorsed with a direction to the sheriff, to "*levy*" so much money.

To take or seize in execution; to apply an execution to property; to subject property to the operation of an execution. The expression in this sense is, "to levy *on.*" See *Levy.*

LEVY. In practice. A taking or seizure of property under execution, by the officer to whom the execution is directed; a taking of personal property in execution, as preliminary to a sale; the application of a writ of execution to the property of the party named in the writ.* A levy is made on goods, by taking actual possession of them, or bringing them within the view and control of the officer, and taking an inventory of them. 1 *Burr. Pr.* 298. 23 *Wendell's R.* 490. 2 *Hill's* (N. Y.) *R.* 666. A levy is made on real estate, by giving public notice of the sale of it. 1 *Burr. Pr.* 300. 5 *Hill's* (N. Y.) *R.* 228.

LEX. Lat. [L. Fr. *ley.*] Law; a law; the law. Defined by Bracton, *commune præceptum, virorum prudentum consultum, delictorum que quæ sponte vel ignorantia contrahuntur coertio, reipublicæ sponsio communis;* a common precept, [or rule of general obligation,] the deliberate enactment of learned men; the means of repressing crimes committed either wilfully or through ignorance; the common pledge of the commonwealth. *Bract.* fol. 2. This definition is taken, word for word, from the Digests. *Dig.* 1. 3. 1. In this sense, the words *jus* and *lex* are synonymous. In the maxims which follow, *lex*, for the most part, signifies the *common law.*

Lex æquitate gaudet. Law delights in equity. *Jenk. Cent.* 36, case 69.

Lex beneficialis rei consimili remedium præstat. A beneficial law affords a remedy in a similar case. 2 *Inst.* 689.

Lex citius tolerare vult privatum damnum, quam publicum malum. The law will sooner tolerate a private loss than a public evil. *Co. Litt.* 152 b.

Lex deficere non debet in justitia exhibenda. The law ought not to fail in showing justice. *Jenk. Cent.* 4, case 3. *Co. Litt.* 197 b.

Lex dilationes semper exhorret. The law always abhors delays. 2 *Inst.* 240.

Lex est ab æterno. Law is from everlasting. A strong expression to denote the remote antiquity of the law. *Jenk. Cent.* 34, case 66.

Lex est dictamen rationis. Law is the dictate of reason. *Jenk. Cent.* 117, case 33. The common law will judge according to the law of nature, and the public good. *Id.*

Lex est norma recti. Law is a rule of right. *Branch's Pr.*

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet. Law is the perfection of reason, which commands what is useful and necessary, and forbids the contrary. *Co. Litt.* 319 b. *Id.* 97 b.

Lex est sanctio sancta, jubens honesta et prohibens contraria. Law is a sacred sanction, commanding what is right and prohibiting the contrary. 2 *Inst.* 587. This is taken from Bracton, (fol. 2,) with a slight alteration.

Lex est tutissima cassis; sub clypeo legis nemo decipitur. Law is the safest helmet; under the shield of the law no one is deceived. 2 *Inst.* 56.

Lex favet doti. The law favors dower. *Jenk. Cent.* 50, case 95. But see the late English Dower Act, 3 and 4 Will. IV. c. 105.

Lex fingit ubi subsistit æquitas. The law feigns where equity exists. *Branch's Princ.*

Lex intendit vicinum vicini facta scire. The law intends [or presumes] that one neighbor knows what another neighbor does. *Co. Litt.* 78 b.

Lex judicat de rebus necessario faciendis, quasi re ipsa factis. The law judges of

things that must necessarily be done, as if they were in fact done. *Branch's Princ.*

Lex necessitatis est lex temporis, i. e. instantis. The law of necessity is the law of the time, that is, of the instant, or present moment. *Hob.* 159.

Lex neminem cogit ad vana seu inutilia peragenda. The law compels no one to do vain or useless things. 5 *Co.* 21 a. *Wingate's Max.* 600, max. 152. *Co. Litt.* 197 b. See 3 *Bl. Com.* 144. *Shep. Touch.* 172. A sheriff, after a levy once made under an execution, is not required to make a new levy on the same property, upon receiving a subsequent execution. 7 *Penn. St.* (Barr's) *R.* 206, 214. 17 *Johns. R.* 115.

Lex nemini facit injuriam. The law does injury to no one. *Branch's Princ.*

Lex nemini operatur iniquum. The law works injustice to no one. *Jenk. Cent.* 18, case 33. *Id.* 22, case 41. *Id.* 284, case 14.

Lex nil facit frustra. The law does nothing in vain. 1 *Ventr.* 417. *Jenk. Cent.* 12, case 19. *Id.* 17, case 30. *Id.* 51, case 98. *Id.* 63, case 19. *Id.* 182, case 70.

Lex nil frustra jubet. The law commands nothing vainly. 3 *Bulst.* 280.

Lex non cogit ad impossibilia. The law does not compel the doing of impossibilities. *Hob.* 96.

Lex non deficit in justitia exhibenda. The law does not fail in showing justice. *Jenk. Cent.* 31, case 61. *Id.* 27, case 50. *Id.* 41, case 78. Applied in illustration of the old practice. *Id. ibid.*

Lex non præcipit inutilia, quia inutilis labor stultus. The law does not command useless things; for useless labor is folly. 5 *Co.* 89 a, *Frost's case. Co. Litt.* 197 b.

Lex non intendit aliquid impossibile. The law does not intend any thing impossible. 12 *Co.* 89 a. For otherwise, the law should not be of any effect. *Id.*

Lex non patitur fractiones et divisiones statuum. The law does not suffer fractions and divisions of estates. *Branch's Princ.* 1 *Co.* 87 a.

Lex non requirit verificari quod apparet curiæ. The law does not require that to be verified [or proved] which is apparent to the court. 9 *Co.* 54 b, *Baten's case.*

Lex plus laudatur quando ratione probatur. The law is the more praised when it is approved by reason. *Litt.* epilog. A hexameter line.

Lex prospicit, non respicit. The law looks forward, not backward. *Jenk. Cent.* 284, case 15.

Lex punit mendacium. The law punishes falsehood. *Jenk. Cent.* 15, case 26.

Lex rejicit superflua, [pugnantia.] The law rejects superfluous [and contradictory] things. *Jenk. Cent.* 133, case 72. *Id.* 140, case 86.

Lex reprobat moram. The law reprobates delay. *Jenk. Cent.* 35, case 68.

Lex semper dabit remedium. The law will always give a remedy. *Branch's Princ.*

Lex semper intendit quod convenit rationi. The law always intends what is agreeable to reason. *Co. Litt.* 78 b.

Lex spectat naturæ ordinem. The law regards the order of nature. *Co. Litt.* 197 b.

Lex succurrit ignoranti. The law assists the ignorant. *Jenk. Cent.* 15, case 26.

Lex succurrit minoribus. The law aids minors. *Jenk. Cent.* 51, case 97.

Lex uno ore omnes alloquitur. The law addresses all with one [the same] mouth or voice. 2 *Inst.* 184.

LEX. Lat. In the Roman law. A rule of action binding a whole community, (*commune præceptum ;*) the same with *jus. Calv. Lex. Dig.* 1. 3. 1.—A law enacted by a proper authority. *Tayl. Civ. Law,* 146, 147.

A written law, or statute ;* that kind of law which was enacted or ordained by the whole body of the Roman people, on the proposition or recommendation of a senatorial magistrate. *Inst.* 1. 2. 4. This was the proper sense of the word. *Tayl. Civ. Law,* 146, 148. Otherwise termed *populiscitum. Id.* 177, 178.

Positive law, as opposed to natural. *Tayl. Civ. Law,* 148.

That system of law which descended from the Twelve Tables, and formed the basis of all the Roman law. *Id. ibid.*

The terms of a private covenant; the condition of an obligation. *Id.* 149.

A form of words prescribed to be used upon particular occasions. *Id. ibid.*

LEX. L. Lat. In old English law. The Roman civil law. Bracton so distinguishes it in the following passage: "*convenit* lex *cum consuetudine Anglica,*" citing the Digests immediately after. *Bract.* fol. 30 b.

An oath; the oath with compurgators, in the proceeding called *making law. Formantur verba* legis *secundum formam recordi ;* the words of the oath are framed

according to the form of the record. *Bract.* fol. 410. *Legem vadiare;* to wage law; to give pledge to make law. *Legem facere;* to make law; to make oath with compurgators. *Id.* fol. 366. *Reg. Orig.* 116. *Lex vincit sectam;* the law overcomes the suit; the defendant's *lex* (oath with compurgators) prevails against the plaintiff's *secta*. *Bract.* fol. 214 b. See *To make law, Wager of law.*

LEX. In the language of the middle ages,—a body or collection of law; not a code, in the proper sense of that term. 1 *Mackeld. Civ. Law*, 78, § 88.

LEX ÆLIA SENTIA. Lat. In the Roman law. The Ælian Sentian law, respecting wills, proposed by the consuls Ælius and Sentius, and passed A. U. 756; restraining a master from manumitting his slaves in certain cases. *Calv. Lex.* Complementum, *De Legibus Romanis. Halli-fax, Anal.* b. 1, c. 3, num. 18.

LEX AGRARIA. Lat. In the Roman law. The Agrarian law. A law proposed by Tiberius Gracchus, A. U. 620, that no one should possess more than five hundred acres of land; and that three commissioners should be appointed to divide among the poorer people what any one had above that extent. *Liv. Epit.* 58. *Plut. in Gracch.* 837. There were several laws termed *agrariæ.*

LEX ALAMANNORUM, (or ALEMANNORUM.) The law of the Alamanni; first reduced to writing from the customs of the country, by Theodoric, king of the Franks, A. D. 512. Amended and reenacted by Clotaire II. *Spelman. Butl. Hor. Jur.* 84.

LEX ANGLIÆ. The law of England. One of the names of the common law.

Lex Angliæ est lex misericordiæ. The law of England is a law of mercy. 2 *Inst.* 315.

Lex Angliæ non patitur absurdum. The law of England does not suffer an absurdity. 9 *Co.* 22 a, *Case of Avowry.*

Lex Angliæ nunquam matris, sed semper patris conditionem imitari partum judicat. The law of England adjudges that the offspring shall never follow the condition of the mother, but always that of the father. *Fortescue de L. L. Angliæ*, c. 42. *Co. Litt.* 123 a. This is in opposition to the rule of the civil law, **Partus sequitur ventrem,** (q. v.)

Lex Angliæ nunquam sine parliamento mutari potest. The law of England can never be changed without parliament. 2 *Inst.* 218.

LEX ANGLIÆ, or LEX ANGLICANA. The law or curtesy of England. *Bract.* fol. 22, 31. *Fleta*, lib. 6, c. 55, § 4. See *Curtesy.*

LEX APPARENS. L. Lat. In old English and Norman law. Apparent or manifest law. A term used to denote the trial by battel or duel, and the trial by ordeal, *lex* having the sense of process of law, (*processus litis.*) *Spelman.* Called *apparent*, because the plaintiff was obliged to make his right *clear* by the testimony of witnesses, before he could obtain an order from the court to summon the defendant. *Id.* See *Lex manifesta.*

LEX AQUILIA. In the Roman law. The Aquilian law; a celebrated law passed on the proposition of the tribune C. Aquilus Gallus, A. U. 672, regulating the compensation to be made for that kind of *damage* called *injurious*, (*de damni injuriâ data,*) in the cases of killing or wounding the slave or beast of another. *Inst.* 4. 3. *Dig.* 9. 2. *Cod.* 3. 35. *Calv. Lex.* Complementum, *De Legibus Romanis. Halli-fax, Anal.* b. 2, c. 24. 1 *Kames' Equity*, 60, 61.

LEX ATILIA. In the Roman law. The Atilian law; a law passed on the proposition of the tribune L. Atilius Regulus, A. U. 443, respecting guardianships, (*de tutelis,*) authorizing the prætor, with a majority of the tribunes, to assign guardians to persons, where none had been appointed. *Inst.* 1. 20. This law fell into disuse, and was changed by Justinian. *Id.* 1. 20. 3, 4. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 19, § 241.

LEX ATINIA. In the Roman law. The Atinian law; a law declaring that the property in things stolen should not be acquired by prescription, (*usucapione.*) *Inst.* 2. 6. 2. *Adam's Rom. Ant.* 207.

LEX BAIUVARIORUM, (BAIORIORUM, or BOIORUM.) The law of the Bavarians, a barbarous nation of Europe, first collected (together with the law of the Franks and Alemanni) by Theodoric I. and finally completed and promulgated by Dagobert. *Spelman.*

LEX BARBARA. The Barbarian law. A term applied to the law of those nations that were not in subjection to the Roman empire, such as the Burgundian and Salian law, the law of the Lombards, &c. *Spelman.*

LEX BREHONIA. L. Lat. The Brehon law of Ireland. See *Brehon law.*

LEX BRETOYSE. The law of the Britons or marches of Wales. See *Bretoyse.*

LEX BURGUNDIONUM. L. Lat. The law of the Burgundians, a barbarous nation of Europe, first compiled and published by Gundebald, one of the last of their kings, about A. D. 500. *Spelman. Esprit des Loix*, liv. 27, c. 1. *Butl. Hor. Jur.* 84.

LEX COMITATUS. L. Lat. In old English law. The law of the county, or the law administered in the county court, before the earl, (*comes,*) or his deputy, (*vice comes.*) *LL. Edw. Conf.* c. 12. *Spelman.*

LEX COMMUNIS. L. Lat. The common law. *Spelman.* See *Jus commune.*

LEX COMMISSORIA. Lat. In the Roman law. A law by which a debtor and creditor might agree, (where a thing had been pledged to the latter to secure the debt,) that if the debtor did not pay at the day, the pledge should become the absolute property of the creditor. 2 *Kent's Com.* 583. This was abolished by a law of Constantine. *Id. ibid. Cod.* 8. 35. 3.

A law, according to which, a seller might stipulate that if the price of the thing sold were not paid within a certain time, the sale should be void. *Dig.* 18. 3.

LEX CORNELIA DE INJURIIS. In the Roman law. The Cornelian law respecting injuries. A law passed by the dictator L. Cornelius Sylla, providing remedies for certain injuries; as for battery, forcible entry of another's house, &c. *Calv. Lex.* Complementum, *De Legibus Romanis. Hallifax, Anal.* b. 2, c. 25, num. 11.

LEX CORNELIA DE FALSO, (or FALSIS.) Lat. In the Roman law. The Cornelian law respecting forgery or counterfeiting. Passed by the dictator Sylla. *Dig.* 48. 10. *Calv. Lex.* Complem.

LEX CORNELIA DE SICARIIS ET VENEFICIS. Lat. In the Roman law. The Cornelian law respecting assassins and poisoners. Passed by the dictator Sylla. *Dig.* 48. 8. *Calv. Lex.* Complem.

LEX ET CONSUETUDO PARLIAMENTI. L. Lat. The law and custom of parliament. The peculiar law of the English or British Parliament, the whole of which, according to Sir W. Blackstone, has its original from this one maxim, "that whatever matter arises concerning either house of parliament, ought to be examined, discussed and adjudged in that house to which it relates, and not elsewhere." 1 *Bl. Com.* 163. 4 *Inst.* 15. It was of this law that Lord Coke observed, that it was *ab omnibus quærenda, à multis ignorata, à paucis cognita,* (to be examined by all; unknown to many; known by few.) *Co. Litt.* 11 b. *Crabb's Hist.* 263.

LEX ET CONSUETUDO REGNI. Lat. The law and custom of the realm. One of the names of the common law. *Hale's Hist. Com. Law*, 52.

LEX DANORUM. L. Lat. The law of the Danes; Dane-law, or Dane-lage. *Spelman.* See *Danelage.*

LEX DERAISINA. L. Lat. A branch of Norman law defined in the Coustumier, (c. 126,) to be a law established in Normandy, by which a party sued declares that he did not do the act with which he is charged by the adverse party. *Spelman.*

LEX DOMICILII. Lat. The law of the domicil. 2 *Kent's Com.* 112, 433.

LEX FALCIDIA. Lat. In Roman law. The Falcidian law; a law passed on the motion of the tribune P. Falcidius, A. U. 713, forbidding a testator to give more in legacies than three-fourths of all his estate, or, in other words, requiring him to leave at least one fourth to the heir. *Inst.* 2. 22. *Dig.* 35. 2. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 22.

LEX FORI. Lat. The law of the *forum* or court; the law of the place or state where a remedy is sought, or action instituted. *Story's Confl. Laws*, § 330. *Story on Bills*, § 160. Usually contrasted with *lex loci*, the *law of the place* where a *contract* is made. "Remedies upon contracts and their incidents are regulated and pursued according to the law of the place where the action is instituted, and the *lex loci* has no application." 2 *Kent's Com.* 462. "The remedies are to be governed by the laws of the country where the suit is brought; or, as it is compendiously expressed, by the *lex fori.*" Story, J. 8 *Peters' R.* 361, 372. "So far as the law affects the remedy, the *lex fori*, the law of the place where that remedy is sought, must govern. But so far as the law of the construction, the legal operation and effect of the contract is concerned, it is governed by the *law of the place* where the *contract* is made." Shaw, C. J. 4 *Metcalf's R.*

594, 597. 6 *Florida R.* 555. See *Lex loci contractus.*

LEX FRANCORUM. L. Lat. The law of the Franks; promulgated by Theodoric I. son of Clovis I. at the same time with the law of the Alemanni and Bavarians. *Spelman.* This was a different collection from the Salic law.

LEX FRISIONUM. L. Lat. The law of the Frisians, promulgated about the middle of the eighth century. *Esprit des Loix*, liv. 28, c. 1. *Spelman.*

LEX FURIA (or FUSIA) CANINIA. Lat. In Roman law. The Furian (or Fusian) Caninian law; a law passed in the consulship of P. Fusius Camillus and C. Caninius Gallus, A. U. 752, prohibiting masters from manumitting by will more than a certain number or proportion of their slaves. This law was abrogated by Justinian. *Inst.* 1. 7. *Cod.* 7. 3. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 7.

LEX GOTHICA. L. Lat. The Gothic law, or law of the Goths. First promulgated in writing, A. D. 466. *Spelman.* See *Lex Wisigothorum.*

LEX HOSTILIA. Lat. In the Roman law. The Hostilian law; a law passed in the consulship of A. Hostilius and A. Atilius, authorizing actions of theft to be brought in the names of captives, or persons absent upon the business of the state. *Inst.* 4. 10, pr. *Calv. Lex.* Compl. *De Leg. Romanis.*

LEX IMPERATORIA. Lat. The Imperial or Roman law. Quoted under this name, by Fleta, lib. 1, c. 38, § 15. *Id.* lib. 3, c. 10, § 3.

LEX JULIA MAJESTATIS. Lat. In the Roman law. The Julian law of majesty; a law promulgated by Julius Cæsar, and again published with additions by Augustus, comprehending all the laws before enacted to punish transgressors against the state. *Hallifax, Anal.* b. 3, c. 12, num. 17. *Calv. Lex.* Complementum, *De Legibus Romanis.* See *Majestas.*

LEX LOCI CONTRACTUS, generally abbreviated to LEX LOCI. Lat. The law of the place of a contract; the law of the place where a contract is made, or is to be performed. "The *lex loci contractûs* controls the nature, construction and validity of the contract." 2 *Kent's Com.* 454. *Story's Confl. Laws*, §§ 241, 263, *et passim.* Story, J. 8 *Peters' R.* 361, 372. "The general rule is well settled, that the law of the place where the contract is made, and not where the action is brought, is to govern in expounding and enforcing the contract, unless the parties have a view to its being executed elsewhere; in which case, it is to be governed according to the law of the place where it is to be executed." Thompson, J. 6 *Peters' R.* 172, 203. "The *lex loci* acts upon the right; the *lex fori* on the remedy." 2 *Kent's Com.* 462. See *United States Digest*, Lex loci.

LEX LOCI REI SITÆ. L. Lat. The law of the place where a thing is situated. "It is equally settled in the law of all civilized countries, that real property, as to its tenure, mode of enjoyment, transfer and descent, is to be regulated by the *lex loci rei sitæ.*" 2 *Kent's Com.* 429, 430.

LEX LONGOBARDORUM. L. Lat. The law of the Lombards. A code of laws first framed by Rotharis, about A. D. 620. *Spelman.* Said to be still in force in some cities of Italy. *Butler's Hor. Jur.* 85. The Lombards were of Saxon origin, which, according to Spelman, accounts for the analogies subsisting between their laws and the old laws of England. These laws are referred to in the Books of Feuds. *Lib.* 2, tit. 1.

LEX MANIFESTA. L. Lat. Manifest or open law; the trial by duel or ordeal. *Nullus balivus de cætero ponat aliquem ad* legem manifestam, *vel* [*nec*] *ad juramentum, simplici loquelâ suâ, sine testibus fidelibus ad hoc inductis.* No bailiff shall henceforth put any man to his open law, nor to an oath, upon his own bare saying, without competent witnesses brought in for that purpose. *Magna Charta*, 9 Hen. III. c. 28. The same with *lex apparens*, (q. v.) In King John's charter, (c. 38,) and the Articles of that charter, (c. 28,) the word *manifestam* is omitted.

LEX MERCATORIA. L. Lat. The law-merchant; the law or custom of merchants. A body of rules and usages by which the affairs of commerce are regulated; not peculiar to any one nation, but common in most respects to all.* 1 *Bl. Com.* 75, 273.—The general body of European usages in matters relative to commerce. 1 *Steph. Com.* 54. It was introduced into England in the time of the Anglo-Saxons. 1 *Spence's Chancery*, 247. See 1 *W. Bl.* 238. Fleta speaks of the *consuetudo mercatorum* (custom of merchants) as being *secundum legem mercatoriam*, (in accordance with the law-merchant.) *Fleta*, lib. 2, c. 58, § 5. See *Custom of merchants.*

LEX NON SCRIPTA. Lat. Law not written; unwritten law; a law originating in custom, and having its force from long and immemorial usage.* The term is applied to the common law of England, not in the literal sense of an unwritten or *oral* law, but in that of a law not derived from express legislative enactment. 1 *Bl. Com.* 63, 64, 67. Statutes made before the beginning of the reign of Richard I. are accounted part of the *lex non scripta*. *Hale's Hist. Com. Law*, 1, 2, 21. See *Leges non scriptæ*.

LEX PAPIA POPPÆA. Lat. In the Roman law. The Papian Poppæan law; a law proposed by the consuls Papius and Poppæus, at the desire of Augustus, A. U. 762, enlarging the *Lex Prætoria*, (q. v.) *Inst.* 3. 8. 2. *Hallifax, Anal.* b. 2, c. 10, num. 4.

LEX PRÆTORIA. Lat. In the Roman law. The Prætorian law. A law by which every freedman who made a will was commanded to leave a moiety to his patron. *Inst.* 3. 8. 1.

Lord Chief Baron Gilbert has applied this term to the rules that govern in a court of equity. *Gilbert's Chancery*, vol. or part 2.

LEX REGIA. Lat. In Roman law. The royal law. The law by which the legislative power was transferred (or claimed to be transferred) by the Roman people to the emperor; and according to which, the will or pleasure of the emperor was declared to have the force of law. *Inst.* 1. 2. 6. *Dig.* 1. 4. 1, pr. Whether such a law was ever actually passed, has been doubted. 1 *Kent's Com.* 544, note. The subject is discussed at length by Selden, in his *Dissertatio ad Fletam*, c. 3, sect. 2, 3, 4. And see *Taylor's Civil Law*, 236.

LEX RHODIA. Lat. The Rhodian law, particularly the fragment of it on the subject of jettison, (*de jactu*,) preserved in the Pandects. *Dig.* 14. 2. 1. 3 *Kent's Com.* 232, 233.

LEX SALICA. L. Lat. The Salic, Salique, or Salian law; the law of the Salians or Salian Franks, a people of Germany who, under their king Pharamond, settled in Gaul in the fifth century. It is the oldest of the barbarian codes, being said to have been framed about A. D. 422, by four chiefs or nobles chosen for the purpose, whose names have been preserved as Viogast, Bosogast, Salagast, and Vindigast. *Spelman. Esprit des Loix*, liv. 28, c. 1. *Butler's Hor. Jur.* 83. The most celebrated provision of this law is the one excluding females from succession to inheritances. See *Terra Salica*. According to Spelman, many provisions of the laws of Henry I. of England were taken from this source.

LEX SCRIPTA. Lat. Written law; law deriving its force, not from usage, but from express legislative enactment; statute law. 1 *Bl. Com.* 62, 85. *Hale's Hist. Com. Law*, 1, 2. So called because originally reduced into writing before it is enacted or receives any binding power. *Id.* 2, 21.

The Roman law. *Feud. Lib.* 2, tit. 1.

LEX TALIONIS. Lat. The law of retaliation; a law which punished an injury by a similar injury, an eye for an eye, &c. See *Talio*.

LEX TERRÆ. L. Lat. In old English law. The law of the land; due process of law. *Bract.* fol. 127. *Nullus liber homo capiatur vel imprisonatur, aut disseisietur de libero tenemento suo, vel libertatibus, vel liberis consuetudinibus suis, aut utlagetur, aut exuletur, aut aliquo modo destruatur,—nisi per legale judicium parium suorum, vel per* legem terræ. No freeman shall be taken or imprisoned, or disseised of his freehold, or of his liberties or free customs, or be outlawed, or exiled, or in any manner destroyed, unless it be by the lawful judgment of his peers, [the verdict of his equals, or men of his own condition,] or by the law of the land, [by the due course and process of law.] *Magna Charta*, c. 29. 2 *Inst.* 46.

Every lawful process and proceeding, in contradistinction to the mode of trial by jury. 1 *Reeves' Hist.* 249. 2 *Id.* 442, note.

In a stricter sense, trial by the ancient modes long known to the law of the land, as by the *lex manifesta*, the *juramentum*, *duellum*, or whatever it might be. 1 *Reeves' Hist.* 249.

In the strictest sense, trial by oath; the privilege of making oath. Bracton uses the phrase to denote a freeman's privilege of being sworn in court as a juror or witness, which jurors convicted of perjury forfeited, (*legem terræ amittant.*) *Bract.* fol. 292 b.

In a general sense, the general or common law of the land. *Bract.* fol. 17 b. The common law, or course of the common law. *Hale's Hist. Com. Law*, 52. See *Law of the land*.

LEX WALLENSICA. L. Lat. The Welsh law; the law of Wales. *Blount.*

LEX WISIGOTHORUM. L. Lat. The law of the Visigoths, or Western Goths who settled in Spain; first reduced to writing, A. D. 466. They were made by Euric, amended by Leovigildus, and confirmed by Chindaswindus and Recaswindus. A revision of these laws was made by Egigas. *Spelman. Esprit des Loix*, lib. 28, c. 1. See *Schmidt's Civil Law*, Introd. 24, 25.

LEY, *Lay, Lee, Leie, Ly.* L. Fr. [from Lat. *lex.*] Law. *Britt.* fol. 1. *Id.* c. 100, 103. *General rule de ley est. Id.* c. 121. *Ceo n'est ley ;* this is not law. *Yearb.* M. 20 Hen. VI. 16. *Ceo serra merveillous ley ;* this would be strange law. *Id.* T. 20 Hen. VI. 4. *Si ce' cas soit* ley *q' Newton ad mis, donc n'est question de la* ley *en nostre cas ;* if this case be law, which Newton has put, then there is no question of the law in our case. *Id. ibid. Clere ley ;* clear or undoubted law. *Kielw.* 51, 75, 198 b. *Il fuit* ley *avant c' q' no' fuim' nes, q',* &c.; it was law before we were born, that, &c. *Id.* M. 8 Edw. III. 35. *Le* ley *de Dieu et le* ley *de terre sont tout un ;* the law of God and the law of the land are all one. *Keilw.* 191.

La ley voet plus toft suffer un mischeife que un inconvenience. The law will sooner suffer a mischief than an inconvenience. *Litt.* sect. 231. It is holden for an inconvenience that any of the maxims of the law should be broken, though a private man suffer loss. *Co. Litt.* 152 b.

Le ley favour' la vie d'un home. The law favours the life of a man. *Yearb.* M. 10 Hen. VI. 51.

Le ley favour l'enheritance d'un home. The law favours the inheritance of a man. *Id. ibid.*

LEY. L. Fr. In old English law. Law, in the technical sense of an *oath*, or the oath with compurgators. *Et si il tende sa* ley *au pleyntyfe, et il la refuse ;* and if he tender his law to the plaintiff, and he refuse it. *Britt.* c. 27. *Et si il la receyve, si soit jour done al defendaunt que il veigne à un autre jour, à parfaire sa* ley *ove la dozyme meyn ;* and if he receive it, a day shall be given to the defendant, that he come at another day, to perfect his law with the twelve-hand. *Id. ibid.* See *Id.* 51. *Prist à faire sa ley ;* ready to make his law. *Yearb.* T. 5 Edw. III. 4. *La* ley *ne gist pas ;* the law does not lie. *Id.* M. 1 Hen. VI. pl. 3. See M. 3 Hen. VI. 16.

LEY CIVILE. L. Fr. In old English law. The civil or Roman law. *Yearb.* H. 8 Edw. III. 42. Otherwise termed *ley escripte*, the written law. *Id.* 10 Edw. III. 24.

LEY GAGER. L. Fr. In old English law. Law-wager; wager of law; the giving of gage or security by a defendant, that he would make or perfect his law (*parfaire sa ley,*) at a certain day. *Litt.* sect. 514. *Co. Litt.* 294 b, 295 a. See *Ley.*

LEY. Span. [from *leyenda*, reading.] In Spanish law. Law; a written declaration which contains precepts, and decrees punishments, in order to restrain men from doing evil, and to teach them to do good. It is, moreover, called *law*, because all its commands should be loyal (*leales*) and equitable, conformably to justice and the will of God. *Las Partidas*, part. 1, tit. 1, l. 4.

LEYES DE ESTILO. Span. In Spanish law. A collection of laws, usually published as an appendix to the Fuero Real; treating of the mode of conducting suits, prosecuting them to judgment and entering appeals. *Schmidt's Civ. Law*, Introd. 74.

LEZ. L. Fr. Laws, (*leges.*) *Kelham.* Those, them, (*les.*) *Id.* The. *Id.* Nigh, near. *Id.*

LI. L. Fr. The; him; his. *Kelham.*

LIBEL. [from Lat. *libellus*, dimin. of *liber*, a book.] Literally, a little book, or writing. See *Libellus.*

A species of pleading in the ecclesiastical and admiralty courts. See *infra.*

A defamatory publication. See *infra.*

LIBEL. In admiralty practice. The first pleading in a suit, containing a statement of the case upon which the complaining party (hence termed the *libellánt,*) founds his right to recover, closing with a prayer for the proper relief.* *Benedict's Adm. Pr.* 208. 2 *Browne's Civ. & Adm. Law*, 357, 413, (Am. ed. 1840.)

LIBEL. In the practice of the ecclesiastical courts. The first pleading in a cause, containing a statement of the complainant's ground of complaint, and corresponding with a declaration at common law, and a bill in equity.* 3 *Bl. Com.* 100. *Hallifax, Anal.* b. 3, c. 11, num. 7. 1 *Browne's Civ. & Adm. Law*, 461, 472, (Am. ed. 1840.)

LIBEL. [Lat. *libellus famosus.*] Written defamation. *Cooke's Law of Defama-*

tion, 1.—Defamation by writing, printing, pictures or other signs; a defamatory publication; a publication affecting character.* —Any malicious defamation expressed either in printing, writing, pictures or effigies. 1 *Chitt. Gen. Pr.* 43.—Any act, other than spoken words, which sets a person in an odious or ridiculous light, and thereby diminishes his reputation.* 3 *Bl. Com.* 125.—A censorious or ridiculing writing, picture or sign, made with a mischievous or malicious intent towards government, magistrates or individuals. Hamilton *arg.* in The People *v.* Croswell, 3 *Johns. Cas.* 354. The last definition was adopted by the Supreme Court of New-York, in the case of Steele *v.* Southwick, 9 *Johns. R.* 214, 215, and recently approved by the same court. 1 *Denio's R.* 347. See 4 *Mass. R.* 168. 2 *Pick. R.* 111, 113. *United States Digest*, Libel. Lord Chancellor Lyndhurst lately remarked that he had never yet seen, nor been able himself to hit upon any thing like a definition of libel, which possessed the requisites of a good logical definition; and that he could not help thinking that the difficulty was not accidental, but essentially inherent in the nature of the subject matter. See *Cooke's Law of Defamation*, 482, Appendix, No. II.

*** The precise meaning of the word *libel* has been the subject of considerable discussion in the books, founded for the most part on the meaning claimed for the Latin word *libellus*, (literally, a *little book*,) from which it is unquestionably derived. In the case of Rex *v.* Curl, (2 *Stra.* 789, the pleadings then being in Latin,) it was argued for the defendant that the word *libellus* was so called from its being a *book*, and not from the matter of its contents; and the Chief Justice (Raymond) observed, "I do not think *libellus* is always to be taken as a technical word. Would not trover lie *de quodam* libello *intitulat'* (of a certain book, or little book, entitled) the New Testament?" Reynolds, J. in the same case said, "a libel does not, *ex vi termini*, import defamation, but is to be governed by the epithet which is added to it." Fortescue, J. however, was of opinion that *libel* was a technical word at the common law, and in this the court appear to have finally agreed. The misapprehension which has existed on this point seems to have grown out of the idea that *libel* was merely the English form of the Lat. *libellus*, (q. v.) which, taken by itself, certainly radically imports a *little book*. But *libellus*, in the sense of an injurious publication, was never used in the Roman law without the epithet *famosus*, in which indeed the whole force of the term rested,—*famosus libellus* signifying a *defamatory* publication, a publication affecting *character*, (*fama.*) See *Dig.* 47. 10, *De injuriis et famosis libellis. Cod.* 9. 36, *De famosis libellis.* The term and its epithet were both transferred to the common law, and rendered in English, *scandalous* libel, *infamous* libel, &c. See 5 *Co.* 125 a, *De libellis famosis.* At some period, however, not very distinctly marked, the epithet began to be dropped, and the word *libel* has, by a sort of judicial license, or professional usage, come down to modern times as importing *in itself, and without epithet*, a *defamatory* publication; and this has become the settled popular meaning of the term. Perhaps, however, the proper view is to regard the epithet (*defamatory*) as *still understood*, and omitted only by way of abbreviation. Indeed, in pleading, it has generally been expressed, and in the late English Libel Act, 6 & 7 Vict. c. 96, the expression "defamatory libel" is constantly, though not invariably, used. See *Cooke's Law of Defamation*, 467, Appendix, No. I. And see *Id.* 482, Appendix, No. II. containing a report of the evidence of Lord Chancellor Lyndhurst before a committee of the House of Lords, in which the etymology of *libel* is placed in a clear light.

To LIBEL. In admiralty practice. To proceed against, by filing a libel; to seize under admiralty process, at the commencement of a suit. Applied most commonly to the seizure of vessels.

LIBELLANT. In admiralty practice. One who libels; one who proceeds by libel, or files a libel; the complaining party in an admiralty suit.

LIBELLUS. Lat. [dimin. of *liber*, a book.] In the Roman law. Literally a little book, as a memorandum or account book, (*libellus memorialis*, vel. *rationalis.*) *Adam's Rom. Ant.* 559.

A writing divided into pages, (*paginæ*,) and folded in the form of a little book; particularly a letter or message from the emperor to the senate; an application or request made to the emperor. *Id. ibid.* Julius Cæsar, in his letters to the senate, introduced the custom of dividing them into *pages*, and folding them up like a *small*

book; whereas, formerly, consuls and generals, when they wrote to the senate, used to continue the line quite across the sheet, (*transversâ chartâ,*) without any distinction of pages, and roll them up in a volume. *Suet. Cæs.* 56. Hence the use of *libellus* in the last sense.

A writing containing a complaint or claim against a person. Answering to a modern bill in equity. *Dig.* 2. 13. 1. *Cod.* 2. 2. 4.

A writing containing a formal accusation or complaint against a person, (*libellus accusatorius.*) *Dig.* 48. 5. 17. 1. *Id.* 48. 5. 29. 8.

A written application or petition to the emperor, (*libellus supplex.*) *Dig.* 19. 2. 19. 9. *Tayl. Civ. Law*, 230.

An appeal, in writing, from the sentence of a judge, (*libellus appellatorius.*) *Dig.* 49. 1. 1. 4.

LIBELLUS. Lat. In civil and old English law. A libel; a claim, in writing, of what is due to one. *Calv. Lex.*—The plaintiff's claim in an action; a bill of complaint.*—A writing containing the name of the plaintiff and the defendant, the subject which is demanded, and the ground of the demand. *Calv. Lex.* Otherwise termed *libellus conventionis*, (libel of convention or suit.) *Inst.* 4. 6. 24. Bracton seems to have borrowed the latter phrase in the following passage: *Nemo sine actione experitur, et hoc non sine breve sive* libello conventionali; no man tries his right [no man can get his claim legally determined] without action, and this cannot be without a writ or libel of suit, [bill.] *Bract.* fol. 112. The term *libellus conventionalis* may here not improperly be rendered *bill;* the two-fold procedure of the ancient practice, —"by writ" and "by bill,"—being thus clearly indicated.

LIBELLUS. Lat. In feudal law. An instrument of alienation or conveyance, as of a fief, (*feudum,*) or a part of it. *Feud. Lib.* 1, tit. 13. *Id. Lib.* 2, tit. 44.

LIBELLUS FAMOSUS. Lat. In the civil law. A defamatory publication; a publication injuriously affecting character; a libel. *Inst.* 4. 4. 1. *Dig.* 47. 10. *Cod.* 9. 36.

This term was introduced into the law of England as early as the time of Bracton, and is used by Lord Coke in the title of one of the cases in his reports. *Bract.* fol. 105. 5 *Co.* 125. In the civil law, the epithet *famosus* is almost uniformly coupled with *libellus.* Sometimes the expression is *libellus ad infamiam. Inst.* 4. 4. 1.

LIBER. Lat. A book; a collection of law. See *infra.*

A distinct part or principal division of a work. The Institutes, Code and Digests are divided into *libri*, (books,) which are again divided into *tituli*, (titles.)

LIBER. Lat. In the Roman law. A book. Librorum *appellatione continentur omnia volumina, sive in charta, sive in membrana sint, sive in quavis alia materia;* under the application of *books* are included all volumes, whether written on paper, or on parchment, or on any other material. *Dig.* 32. 52, pr. et per tot.

LIBER ASSISARUM. L. Lat. The Book of Assises. A collection of cases that arose on assises and other trials in the country. It was the fourth volume of the reports of the reign of Edward III. 3 *Reeves' Hist.* 148. It is the fifth part of the published series of the Year Books.

LIBER FEUDORUM. L. Lat. The Book of Feuds or Fiefs. *Crabb's Hist.* 70. Properly, *Libri Feudorum;* the collection consisting of two books. See *Feudorum Libri.*

LIBER JUDICIALIS. L. Lat. Judgment book, or Dome book. 1 *Bl. Com.* 64. See *Dome book.*

LIBER NIGER. Lat. Black book. A name given to several ancient records. See *Black book.*

LIBER NIGER SCACCARII. L. Lat. The Black Book of the Exchequer, attributed to Gervase of Tilbury. 1 *Reeves' Hist.* 220, note.

LIBER RUBER SCACCARII. L. Lat. The Red Book of the Exchequer. 1 *Reeves' Hist.* 220, note. See *Red book.*

LIBER. Lat. In old English law. Free. See *infra.*

A freeman. *Fleta*, lib. 4, c. 11, § 23.

Exempt from the power or jurisdiction of another; exempt from a general charge or burden; exempt from a servitude or service. *Fleta*, lib. 4, c. 18, § 1.

Exclusive of a common right; privileged. See *infra.*

LIBER BANCUS. L. Lat. In old English law. Free bench. *Bract.* fol. 97 b.

LIBER HOMO. Lat. In the civil law. A freeman. *Omnes homines aut* liberi *sunt aut servi;* all men are either

free or slaves. *Inst.* 1. 3, pr. See *Fleta*, lib. 1, c. 1, § 2. Liber homo *bonâ fide serviens;* a freeman serving in good faith. *Dig.* 41. 1. 19.

In old English law. A freeman. *Omnis* homo *aut est* liber *aut est servus;* every man is either free or a slave. *Bract.* fol. 4 b. *Omnis* homo *aut est omnino* liber, *aut omnino servus, nec habetur medium;* every man is either wholly free, or wholly a slave, nor is there a medium. *Fleta*, lib. 4, c. 11, § 22. The term *liber homo*, however, did not import freedom in the modern sense, for a man might be *another's freeman*, as well as another's slave. *Poterit quis esse servus unius, et* liber homo *alterius. Bract.* fol. 25. Magna Charta distinguishes the *liber homo* from the *mercator*, (merchant,) and the *villanus*, (villein.) *Mag. Cart.* 9 Hen. III. c. 14.

In old European law. An allodial proprietor, as distinguished from a vassal or feudatory. This was the sense of the term in the laws of the barbarous nations of Europe. 1 *Rob. Charles* V. 177.

LIBER ET LEGALIS HOMO. L. Lat. In old English law. A free and lawful man. A term applied to a juror, from the earliest period. *Bract.* fol. 14 b, 179 b. *Fleta*, lib. 4, c. 5, § 4. *Id.* lib. 6, c. 25, § 4. *Co. Litt.* 155 a. 3 *Bl. Com.* 340, 362.

LIBERA. Lat. [fem. of *liber.*] Free. See *infra.*

LIBERA BATELLA. L. Lat. In old records. A free boat; the right of having a boat to fish in a certain water; a species of free fishery. *Plac. in Itin. apud Cestriam*, 14 Hen. VII.

LIBERI CHASEA, (or CHACIA.) L. Lat. In old English law. A free chase. *Reg. Jud.* 37. *Fleta*, lib. 2, c. 41, § 51.

LIBERA ELEEMOSYNA. L. Lat. In old English law. Free alms; frank-almoign. *Bract.* fol. 27 b.

LIBERA FALDA. L. Lat. In old English law. Frank fold; free fold; free foldage. 1 *Leon.* 11.

LIBERA LEX. L. Lat. In old English law. Frank law; free law; otherwise called *lex terræ*, (q. v.) Called *libera*, according to Lord Coke, to distinguish men who enjoy it, and whose best and freest birthright it is, from them that by their offences have lost it. *Co. Litt.* 94 b. *Amittere liberam legem*, (q. v.;) to lose one's frank-law. 3 *Bl. Com.* 340. 4 *Id.* 136. *Crabb's Hist.* 318, 319. *Co. Litt.* 294 b. *Fleta*, lib. 4, c. 8, § 2.

LIBERA PISCARIA. L. Lat. In old English law. A free fishery. *Co. Litt.* 122 a. See *Free fishery.*

LIBERA WARRENA. L. Lat. In old English law. Free warren, (q. v.)

LIBERARE. Lat. In the civil law. To free or set free; to liberate; to give one his liberty. *Calv. Lex.*

In old English law. To deliver, transfer, or hand over. Applied to writs, panels of jurors, &c. *Bract.* fol. 116, 176 b. *Stat. Westm.* 2, c. 39.

Liberata *pecunia non* liberat *offerentem.* Delivered or tendered money does not release the party offering. *Co. Litt.* 207 a. The word, in this passage, has both its classical and its technical sense.

LIBERATE. L. Lat. In old English practice. An original writ issuing out of chancery to the treasurer, chamberlains and barons of the exchequer, for the payment of any annual pension, or other sum. *Reg. Orig.* 193. *Cowell.*

A writ issued to a sheriff, for the delivery of any lands or goods taken upon forfeits of recognizance. 4 *Co.* 64 b, *Fulwood's case.*

A writ issued to a gaoler, for the delivery of a prisoner that had put in bail for his appearance. *Cowell.*

LIBERATIO. Lat. In the civil law. Acquittance or discharge; payment, (*solutio.*) Liberationis *verbum eandem vim habet quam* solutionis. *Dig.* 50. 16. 47. A release. *Id.* 46. 3. *Cod.* 8. 43.

LIBERATIO. L. Lat. In old English law. Livery; money paid for the delivery or use of a thing. *Nisi reddat* liberationem *antiquitus statutam;* unless he pay the livery ordained of old. *Magna Charta*, 9 Hen. III. c. 21.

In old Scotch law. Livery; a fee given to a servant or officer. *Leg. Malc. Mackenneth*, c. 4. *Skene de Verb. Sign.*

LIBERE. Lat. Freely. A formal word in old conveyances. *Bract.* fol. 35. *Tenere liberè;* to hold freely. These words, in a gift of land to a villein, had the effect of making him a freeman. *Id.* fol. 24 b. *Fleta*, lib. 3, c. 13, § 1.

LIBERI. Lat. In Saxon law. Freemen; the possessors of allodial lands. 1 *Reeves' Hist. Eng. Law*, 5.

LIBERI. Lat. In the civil law. Children. The term included grandchildren

and their descendants. *Dig.* 50. 60. 220, pr. *Inst.* 1. 14. 5.

LIBERI HOMINES. Lat. In civil and old English law. Freemen. *Omnes homines aut* liberi *sunt, aut servi. Inst.* 1. 3, pr. See *Liber homo.*

Owners of land. So translated in *Wright on Tenures*, 66, and note.

LIBERTAS. Lat. In civil and old English law. Liberty; freedom. *Libertas est naturalis facultas ejus quod cuique facere libet, nisi si quid vi aut jure prohibetur;* liberty is the natural power of doing whatever one pleases, except what is prohibited by force or law. *Dig.* 1. 5. 4, pr. This definition was taken from the ninth book of the Institutes of Florentinus, and was adopted in the Institutes of Justinian, without change, except that some copies have *quod*, instead of *si quid. Inst.* 1. 3. 1. Bracton has adopted the definition of the civil law, with a slight modification, thus: *Est autem* libertas *naturalis facultas ejus quod cuique facere libet,* [*quod voluerit,*] *nisi quod de jure vel vi prohibetur. Bract.* fol. 46 b. Fleta has followed Bracton nearly *verbatim*, omitting the words *quod voluerit*, which appear to be interpolated. *Fleta*, lib. 1, c. 2. Lord Coke copies Fleta. *Co. Litt.* 116 b. See *Civil liberty.*

Libertas inestimabilis res est. Liberty is an inestimable thing; a thing above price. *Dig.* 50. 17. 106. *Fleta*, lib. 2, c. 51, § 13.

Libertas non recipit æstimationem. Freedom does not admit of valuation. *Bract.* fol. 14.

Libertas omnibus rebus favorabilior est. Liberty is more favored than all things, [any thing.] *Dig.* 50. 17. 122.

Quoties dubia interpretatio libertatis est, secundum libertatem respondendum est. Whenever the interpretation of liberty is a matter of doubt, the answer must be in favor of liberty. *Dig.* 50. 17. 20.

In obscura voluntate manumittentis, favendum est libertati. Where the will of a person manumitting is obscure, we should lean to the side of liberty. *Dig.* 50. 17. 179.

LIBERTAS. L. Lat. In old English law. A liberty; a privilege; an exemption; a franchise. *Bract.* fol. 55 b, 56. *Fleta*, lib. 2, c. 67, § 13. See *Liberty, Franchise.*

LIBERTATES. Lat. Liberties. This word in Magna Charta signifies, according to Lord Coke,

1. The laws of the realm.

2. The freedom that the subjects of England have.

3. The franchises and privileges which the subjects have of the gift of the king. *Mag. Chart.* c. 29. 2 *Inst.* 47.

LIBERTINUS. Lat. In the civil law. A freed-man; one who was manumitted from lawful servitude. *Dig.* 1. 5. 6. *Inst.* 1. 5, pr. See *Tayl. Civ. Law*, 429, 430.

LIBERTUS. Lat. In the civil law. A freed-man. *Inst.* 3. 8. Used indifferently with *libertinus*, (q. v.) See *Tayl. Civ. Law*, 429, 430.

LIBERTY. See *Civil liberty.*

LIBERTY. [Lat. *libertas;* L. Fr. *fraunchise.*] In English law. A privilege held by royal grant or prescription, whereby men enjoy some benefit or favor beyond the ordinary subject. *Cowell.* A franchise, (q. v.) 2 *Bl. Com.* 37. Such were the old liberties of Soke and Sake, Toll and Them, Infangthefe and Outfangthefe, &c. *Bract.* fol. 56. Bracton describes them as privileges, which, though properly belonging to the crown, yet could be separated from the crown, and transferred to private persons by the special favor of the sovereign. *Id.* fol. 55 b.

A privilege allowed to be exercised over another man's estate. "A man's right of dominion over his own estate is never called a liberty." Lord Ellenborough, 10 *East*, 189.

A place or district within which certain exclusive privileges may be exercised; a place of exclusive jurisdiction.* 2 *Bl. Com.* 37, 38. See 2 *Mod.* 48, 49.

LIBERUM. Lat. Free. See *infra.*

LIBERUM CORPUS. Lat. A free body; the body or life of a freeman. **Liberum corpus nullam recipit æstimationem.** *Dig.* 9. 3. 7. Otherwise, **Liberum corpus æstimationem non recipit.** The body of a freeman does not admit of valuation; the life of a freeman is above all valuation. 3 *Kent's Com.* 365.

LIBERUM MARITAGIUM. L. Lat. In old English law. Frank-marriage. *Bract.* fol. 21. See *Frank-marriage.*

LIBERUM SERVITIUM. L. Lat. In old English and feudal law. Free service; that is, certain service. *Per* liberum servitium *unius denarii per annum;* by the free service of one penny yearly. *Reg. Orig.* 1. A villein might hold by this kind of service, without its conferring freedom.

Bract. fol. 24 b. *Fleta*, lib. 3, c. 13, § 1. See *Free services.*

LIBERUM SOCAGIUM. L. Lat. In old English law. Free socage. *Bract.* fol. 207. 2 *Bl. Com.* 61, 62. See *Free socage.*

LIBERUM TENEMENTUM. L. Lat. In old English law. Freehold; free or frank tenement; a free holding; an estate *held by a freeman.** *Bract.* fol. 18, 26, 31, 45. 2 *Bl. Com.* 104. 4 *Kent's Com.* 23. An estate in fee, for life, or other indeterminate period. *Bract.* fol. 207, 224. So called in contradistinction to *villenagium*, (villeinage.) *Id. ibid.*

In pleading. A plea of freehold. A plea by the defendant in an action of trespass to real property, that the *locus in quo* is his freehold, or that of a third person, under whom he acted. 1 *Tidd's Pr.* 645. See *Steph. Pl.* 315. 1 *Chitt. Pl.* 503. 1 *Greenl. on Evid.* § 626.

LIBRA. Lat. [Sax. *punde.*] In old English law. A pound. *Spelman. Viginti denarii fac' unciam, et duodecim unciæ faciunt* libram *viginti solid' in pondere et numero;* twenty pennies make an ounce, and twelve ounces make a pound in weight and in number. *Fleta*, lib. 2, c. 12, § 1. See *Pound.*

LIBRA ARSA. L. Lat. In old English law. A pound burned; that is, melted, or assayed by melting, to test its purity. *Libræ arsæ et pensatæ;* pounds burned and weighed. A frequent expression in Domesday, to denote the purer coin in which rents were paid. *Spelman. Cowell.*

LIBRA NUMERATA. L. Lat. In old English law. A pound counted; that is, paid or reckoned by tale, (*ad numerum,*) instead of being weighed. *Spelman.*

LIBRA PENSA, (or PENSATA.) L. Lat. In old English law. A pound weighed, or tried by weight. *Spelman.* See *Libra arsa.*

LIBRARIUS. Lat. In the Roman law. A writer or amanuensis; a copyist. *Dig.* 50. 17. 92. See *Calv. Lex.*

LIBRATA. L. Lat. [from *libra*, a pound.] In old English law. A quantity of land yielding a pound rent per annum; a pound-land.* *Bract.* fol. 16. *Reg. Orig.* 1 b, 94. *Fleta*, lib. 5, c. 5, 41. *Cowell*, voc. *Fardingdeal.*

LIBRIPENS. Lat. In the Roman law. A weigher, or balance-holder. The person who held a brazen balance in the ceremony of emancipation *per æs et libram. Inst.* 2. 10. 1. *Adam's Rom. Ant.* 52.

LI. LO. An abbreviation of *licentia loquendi*, formerly used in practice to signify an imparlance. *Towns. Pl.* 159.

LICENSE. [Lat. *licentia.*] Permission; authority. Marshall, C. J. 9 *Wheaton's R.* 213. A grant of permission; a power or authority given to another to do some lawful act. *Wharton's Lex.* As to carry on certain trades; to practice a profession; and, in England, to marry without publication of banns. 1 *Bl. Com.* 439. 2 *Steph. Com.* 286.

An authority to do a particular act, or series of acts, upon another's land, without possessing any estate therein. 3 *Kent's Com.* 452. Distinguished from an easement. *Id. ibid.*

LICENTIA. Lat. [from *licere*, to be lawful.] License; liberty; permission. See *infra.*

LICENTIA CONCORDANDI. L. Lat. In old practice and conveyancing. License or leave to agree; one of the proceedings on levying a fine of lands. 2 *Bl. Com.* 350. See *Fine of lands.*

LICENTIA LOQUENDI. L. Lat. In old practice. Leave to speak, [i. e. with the plaintiff;] an imparlance; or rather leave to imparl. 3 *Bl. Com.* 299. See *Imparlance.*

LICENTIA SURGENDI. L. Lat. In old English practice. License to arise; permission given by the court to a tenant in a real action who had cast an essoin *de malo lecti*, to *arise* out of his bed; which he could not do without such permission, and after being viewed by four knights appointed for the purpose. *Bract.* fol. 355. *Id.* 353—359. *Fleta*, lib. 6, c. 11, § 1.

The name of the writ issued in such cases. *Reg. Orig.* 8 b.

LICENTIA TRANSFRETANDI. L. Lat. In old English law. Leave to cross the sea; permission to cross the Strait of Dover, (*transire fretum.*) *Reg. Orig.* 193 b. See *De licentia transfretandi.*

LICERE. Lat. To be lawful; to be allowed or permitted by law. *Calv. Lex.*

LICERE, LICERI. Lat. In the Roman law. To offer a price for a thing; to bid for it. The buyer or bidder asked, "*Quanti licet?*" (for how much may I have it?) *Adam's Rom. Ant.* 251.

LICET. Lat. It is lawful; it is allowable; it is permitted. **Non omne quod licet honestum est.** [It is] not every thing that is lawful, [that] is becoming. *Dig.* 50. 17. 144. **Non debet, cui plus licet, quod minus**

est, non licere. It ought not [to be] that he who is allowed to do the greater, shall not be allowed to do the less. *Id.* 50. 17. 21.

LICET. Lat. Although. Held to import a direct affirmation. *Dyer*, 113 b. *Plowd.* 122 a, 125 a, 127 a. 3 *Leon.* 67, case 99.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Although a grant of a future interest be inoperative, yet a declaration precedent may be made, which may take effect provided a new act intervene. *Bacon's Max.* 60, 61, reg. 14.

LICET SÆPIUS REQUISITUS. L. Lat. (Although often requested.) In pleading. A phrase used in the old Latin forms of declarations, and literally translated in the modern precedents. *Yelv.* 66. 2 *Chitt. Pl.* 90. 1 *Id.* 331. The clause in a declaration, which contains the general averment of a request by the plaintiff of the defendant to pay the sums claimed, is still called the *licet sæpius requisitus*. *Id.* See 5 *Ohio St. R.* 87.

LICITARE. Lat. [frequent. of *licere*, q. v.] In the Roman law. To offer a price at a sale; to bid; to bid often; to make several bids, one above another. *Calv. Lex.*

LICITATION. [Lat. *licitatio*, from *licitare*, q. v.] In the civil law. An offering for sale to the highest bidder, or to him who will give most for a thing. An act by which co-heirs or other co-proprietors of a thing in common and undivided between them, put it to bid between them, to be adjudged and to belong to the highest and last bidder, upon condition that he pay to each of his co-proprietors a part in the price equal to the undivided part which each of the said co-proprietors had in the estate *licited*, before the adjudication. *Pothier, Contr. of Sale*, num. 516, 638.

LICITATOR. Lat. [from *licitare*, q. v.] In the Roman law. A bidder at a sale. See *Licere*.

LICITUM. Lat. [from *licere*, to be lawful.] Lawful; permitted by law.

Licita bene miscentur, formula nisi juris obstet. Lawful acts [done by several authorities] are well mingled, [i. e. become united or consolidated into one good act,] unless some form of law forbid. *Bacon's Max.* 94, reg. 24. "The law giveth that favor to lawful acts, that although they be executed by several authorities, yet the whole act is good. As if tenant for life, the remainder in fee, be, and they join in granting a rent, that is *one solid* rent out of both their estates, and no double rent, or rent by confirmation." *Id. ibid.*

Lord Bacon's exposition of this maxim sufficiently explains its meaning; but its very elliptical form has sometimes led to mis-translation. See *Branch's Princ. Wharton's Lex.*

To LIE. [L. Lat. *jacere*, q. v.] In practice. To be applicable; to be proper to be used. An action is said *to lie* in a case in which it may properly be brought. 3 *Steph. Com.* 460.

To LIE IN. To be capable of; to be the subject or subject matter of. Corporeal hereditaments must at common law pass by force of the livery of seisin, or actual delivery of possession, and are hence said to *lie in livery*. Incorporeal hereditaments, not being capable of livery, pass by the mere delivery of the deed of conveyance, or grant, and are hence said to *lie in grant*. 2 *Bl. Com.* 317. 1 *Steph. Com.* 474. 2 *Hilliard's Real Prop.* 297.

To consist in. Rent, which is yielded or *paid* as a thing due, is said to *lie in render;* common, which the party entitled to is to *take* for himself, is said to *lie in prender*. 2 *Steph. Com.* 23. See *Render, Prender.*

To LIE TO. [L. Lat. *adjacere.*] To adjoin. A cottage must have had four acres of land *laid to* it. See 2 *Show.* 279.

LIEFTENANT. An old form of *lieutenant*, and still retained as the vulgar pronunciation of the word. The form is important as showing the easy convertibility of the letter *u* into *f*, which has been noticed in other places. See *Fief, Fee.*

LIEGE. [L. Fr. *liege, lige;* L. Lat. *ligius*, from Lat. *ligare*, to bind; Ital. *liga*, a bond.] In feudal and English law. Bound; bound in fealty to a lord; bound to that exalted kind of fealty which was without any saving of the rights of other lords, and hence called *ligeance* or allegiance; bound to serve the king as lord paramount. The feudatory or subject thus *bound* was called *liege man*, and the superior (who was considered as reciprocally *bound* to the duty of protection,) *liege lord*, though the simple word *liege* was also commonly applied to both. See *Ligius*, and *infra.*

A liege lord; the king as sovereign lord. See *supra.* "My *liege*" was the usual expression in addressing the sovereign.

A liege-man. See *supra*. The "king's *lieges*" are his subjects. This term is still used in Scotch law. 1 *Brown's R.* 508. *Arkley's R.* 440. Anciently, private persons had their *lieges*. *Blount.*

LIEGE. [L. Fr. *lige;* L. Lat. *ligius.*] In old records. Full; absolute; perfect; pure. *Liege* widowhood was pure widowhood. *Paroch. Ant.* 190. *Cowell.*

In Scotch law. Lawful. See *Liege poustie.*

LIEGE HOMAGE. In feudal law. That kind of homage which is due to the sovereign alone, as supreme lord. 1 *Bl. Com.* 367. See *Homagium ligium.*

LIEGE LORD. A sovereign lord; the sovereign. *Spelman*, voc. *Ligantia.*

LIEGE MAN. A subject, (*subditus.*) *Spelman*, voc. *Ligantia.*

LIEGE POUSTIE. In Scotch law. Lawful power; a state of health which gives a person lawful power of disposition by will. *Bell's Dict.* A *liege poustie* conveyance is a deed executed when the grantor is in health, and capable of giving his heritage to whom he pleases. It is used in this sense in contradistinction to a *death-bed* deed. *Id.* voc. *Approbate and reprobate.* The term appears to be a corruption or accommodation of *ligia potestas*, (q. v.)

LIEN. L. Fr. [from *lier*, *liger*, to tie.] In old English law. A bond or tie. *Homage est un* lien *de droit dount home est* lie *et tenus;* homage is a bond of right whereby a man is bound and holden. *Britt.* c. 68. *Obligacion est un* lien *de droit, dount ascun est* lie, &c.; obligation is a bond of right whereby one is bound, &c. *Id.* c. 28.

LIEN. [L. Fr. *lien*, see *supra.*] A right to possess and retain property, until some charge attaching to it is paid or discharged. 1 *Story's Eq. Jur.* § 506. See 2 *Steph. Com.* 132.—A right in one man to retain that which is in his possession belonging to another, until certain demands of him, the person in possession, are satisfied. *Story on Agency*, § 352, citing Grose, J. 5 *East's R.* 227, 235. 2 *Story's R.* 144. A lien is not in strictness either a *jus in re*, or a *jus ad rem;* that is, it is not a property in the thing itself, nor does it constitute a right of action for the thing. It more properly constitutes a charge upon the thing. Story, J. 2 *Story's R.* 145. 1 *Story's Eq. Jur.* § 506. See *Cross on Lien*, 2. *United States Digest*, Lien.

In maritime law, liens exist independently of possession, either actual or constructive. Grier, J. 7 *Howard's R.* 618.

LIER, *Lyer.* L. Fr. [from Lat. *ligare*, to tie, or bind.] To bind. *Lie;* bound. *Britt.* c. 28, 68. *A ceo lies;* bound thereto. *Art. sup. Chart.* c. 11. *Le Roy est* lie *par son serment à faire ses liges droit;* the king is bound by his oath to do his lieges justice. *Yearb.* H. 8 Hen. VI. 6.

LIER. L. Fr. [from Lat. *legere.*] To read. *A lier;* to be read. *Art. sup. Chart.* c. 1. *Lee;* read. *Yearb.* M. 4 Edw. III. 5.

LIEU, *Leu, Liu, Lyu.* L. Fr. [from Lat. *locus.*] A place. *Britt.* c. 27.

LIEU CONUS. L. Fr. In old pleading. A known place; a place well known and generally taken notice of by those who dwell about it, as a castle, a manor, &c. *Whishaw.* 1 *Ld. Raym.* 259. "A liberty is in the nature of a *lieu conus.*" North, C. J. 2 *Mod.* 48.

LIEUTENANT, LIEU TENANT. L. Fr. One holding the place of another; a representative, deputy or substitute. *Et que le mareschal de nostre hostel* tiegne nostre lieu *dedans la verge*, &c.; and that the marshal of our household hold our place within the verge, &c. *Britt.* fol. 1 b. See *Locum tenens.*

LIFE ANNUITY. An annual income, the payments of which depend on the continuance of any given life or lives. *Wharton's Lex.* See 3 *Kent's Com.* 460. *Ellis on Fire and Life Insurance.*

LIFE ASSURANCE, (or INSURANCE.) A species of insurance, by which the insurer, in consideration of a sum in gross, or of periodical payments, undertakes to pay a certain sum, or an annuity, depending upon the death of a person whose life is insured. 3 *Kent's Com.* 365. See *Angell on Fire and Life Ins.* c. 12, § 274. See *Insurance, Life policy.*

LIFE POLICY. A policy which usually engages, that in consideration of a periodical payment of premium, the company will pay, on the death of some individual, or on his death within a limited period, (as the case may be,) a certain sum of money therein specified; that is, will pay it to the party effecting an insurance, (supposing it to be effected by a stranger having an interest in the life insured,) or to the executors or administrators of the party whose life is insured, supposing him to effect it for his own benefit. 2 *Steph. Com.* 180, 181. See *Ang. on Fire and Life Ins.* c. 12, § 284.

LIFE ESTATE. An estate held for the life of the party holding it, or of some other person; a freehold estate, not of inheritance.* 4 *Kent's Com.* 23, 25. See *Estate for life.*

LIFE-RENT. In Scotch law. An estate for life. *Bell's Dict.* Terce (dower) and curtesy are called legal life-rents. *Id. ibid.* 1 *Forbes' Inst.* part 2, p. 144, 145.

LIFE-RENTER. In Scotch law. A tenant for life. A person entitled to use and enjoy a subject during life, without destroying or wasting its substance. *Bell's Dict.*

LIGA. L. Lat. In old European law. A league or confederation, (*fœdus, confœderatio.*) *Spelman.*

LIGAMEN. Lat. [from *ligare*, to tie.] In old English law. A bond or tie. *Dissolvi eo* ligamine *quo* ligatum *est;* to be dissolved by the same tie with which [in the same manner in which] it was bound. *Bract.* fol. 78 b.

LIGAN. [from *ligare*, to tie.] In old English law. Goods sunk in the sea, but *tied* to a cork or buoy, in order to be found again. 5 *Co.* 106. 1 *Bl. Com.* 292. *Jacobsen's Sea Laws*, 541.

Spelman writes this word *lagon*, and derives it from the Sax. *liggan*, to lie, signifying that which *lies* on or near the shore. *Lagan*, (q. v.) is used in Bracton.

LIGARE. Lat. To tie, or bind. *Bract.* fol. 369 b.

To enter into a league or treaty, (*inire fœdus.*) *Spelman.*

LIGEA. L. Lat. In old English law. A liege-woman; a female subject. *Reg. Orig.* 312 b.

LIGEANCE, *Ligeancy.* [from L. Lat. *ligantia, ligiantia.*] In old English law. The bond of fidelity between the subject and sovereign, (*vinculum arctius inter subditum et regem, utrosque invicem connectens.*) *Spelman.*—The duty of obedience and fidelity which a subject owes to his sovereign.* *Cowell. Blount.*—The true and faithful obedience of a liegeman or subject to his liege lord or sovereign. *Co. Litt.* 129 a. The old form of *allegiance*, (q. v.)

The dominions or territory of the king. *Stat.* 25 *Edw.* III. st. 2. An alien is a subject that is born out of the ligeance of the king, and under the ligeance of another. 7 *Co.* 16 a, *Calvin's case.*

LIGIANTIA, *Ligeantia.* L. Lat. [from *ligare*, to bind.] In old English, Norman and Scotch law. Ligeance or allegiance. *Glanv.* lib. 7, c. 10. *Reg. Maj.* lib. 2, c. 44. *Skene de Verb. Sign. Grand Coustum. Norm.* c. 43. *Spelman.*

LIGHT. [Lat. *lumen.*] A right to have the access of the sun's rays to one's windows, free from any obstruction by the occupier of the adjoining land. 2 *Steph. Com.* 13. 3 *Kent's Com.* 448. 2 *Hilliard's Real Prop.* 81. See *Ancient lights, Lumen.*

LIGIUS. L. Lat. [from *ligare*, to bind.] In old English and European law. Bound; bound to fidelity, fealty or obedience; liege; a liege; a subject. *Spelman.*

Lawful; perfect. *Ligia potestas;* lawful power, full capacity in law, absolute power of disposal. *Fleta*, lib. 6, c. 33, § 3. *Cowell*, voc. *Liege. Ligia viduitas;* pure widowhood. *Id. Fleta*, lib. 5, c. 37, § 5. *Britt.* c. 110.

LIGNAGIUM. L. Lat. [from *lignum*, wood.] In old English law. A right to cut fuel in woods. *Whishaw.*

LIGNE. L. Fr. Line. *La* ligne *collateral, et non pas la* ligne *droicte. Grand Coust. de Norm.* ch. 25, gloss. *Blackst. L. Tr.* 25.

Sex. *Britt.* c. 119. *Kelham.*

LIGNUM. Lat. [Gr. ξύλον.] In the civil law. Wood; fire-wood; any thing prepared for burning, (*quicquid comburendi causâ paratum est.*) *Dig.* 32. 55, pr. It was distinguished from *materia*, material for building; timber. *Id. ibid.* See *Id.* per tot. for the construction of the word.

In old English law. Dead wood, or wood cut, as distinguished from *arbor.* See *Arbor.*

LIGULA. L. Lat. In old English law. A copy, exemplification or transcript of a court-roll or deed. *Cowell.*

LIMENARCHA. Græco-Lat. In the Roman law. An officer who had charge of a harbor or port, (Gr. λιμήν.) *Dig.* 50. 4. 18. 10. *Cod.* 7. 16. 38.

LIMITARE. Lat. [from *limes*, a bound.] In old English law. To limit; to fix a boundary or period. *Hodie fere omnes* [*actiones*] *infra certa tempora* limitantur; at this day almost all actions are limited within certain periods. *Bract.* fol. 102 b.

LIMITATIO. Lat. [from *limitare*, q. v.] In old English law. Limitation; a limitation. *Omnes actiones in mundo infra certa tempora habent* limitationem; all actions in the world have a limitation within certain periods of time. *Bract.* fol. 52.

LIMITATION. [from Lat. *limitatio*, q. v.] A setting a bound or limit; a fixing a period.

LIMITATION OF ACTIONS. The restriction, by statute, of the right of action to certain periods of time, beyond which, except in certain specified cases, it will not be allowed. The statutes fixing such periods or limits are termed *statutes of limitation*, (q. v.) See *Angell on Limitation. United States Digest*, Limitation of Actions.

LIMITATION OF ASSISE. In old practice. A certain time prescribed by statute, within which a man was required to allege himself, or his ancestor, to have been seised of lands sued for by a writ of assise. *Cowell.*

LIMITATION OF ESTATE. The definition or circumscription in any conveyance, of the interest which the grantee is intended to take. 1 *Steph. Com.* 278, note (*l*).—The express confinement and limitation of an estate by the words of its creation, so that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail:* as when land is granted to a man *so long as* he is parson of Dale, or *while* he continues unmarried, or *until* out of the rents and profits he shall have made 500*l.* and the like. In such case, the estate determines as soon as the contingency happens, (when he ceases to be parson, marries a wife, or has received the 500*l.*) and the next subsequent estate, which depends upon such determination, becomes immediately vested, without any act to be done by him who is next in expectancy. 2 *Bl. Com.* 155. For the distinction between a limitation and a condition, see *Shep. Touch.* (by Preston,) 117. 4 *Kent's Com.* 126, 127. 1 *Hilliard's Real Prop.* 370.

LIMITED ADMINISTRATION. An administration of a temporary character, granted for a particular period, or for a special or particular purpose. *Holthouse.*

LIMITED DIVORCE. A divorce for a limited time; a separation from bed and board. 2 *N. Y. Rev. St.* [146,] 80.

LIMITED PARTNERSHIP. A partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and by whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed. 3 *Kent's Com.* 34. 1 *N. Y. Rev. St.* [764,] 753.

LINARIUM. L. Lat. [from *linum*, flax.] In old records. A place where flax is sown; a flax-plat. *Pat.* 22 *Hen.* IV. par. 1, m. 33. *Blount.*

LINEA. Lat. In civil and old English law. A line; a series of persons descending from a common stock; (*series personarum à communi stipite descendentium.*) *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 153. It was *ascendens* as well as *descendens. Hale's Anal.* sect. xviii. *Fleta*, lib. 6, c. 1, § 11.

LINEA OBLIQUA. Lat. In the civil law. The oblique line. More commonly termed *linea transversalis*, (q. v.)

LINEA RECTA. Lat. In the civil and old English law. The right line; the direct line. *Bract.* fol. 67. *Fleta*, lib. 6, c. 1, § 11. A line of persons in which the one is descended mediately or immediately from the other. 1 *Mackeld. Civ. Law*, 138, 139, § 139. A line which includes progenitors and their offspring, (*quæ genitores et genitos complectitur.*) *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 153. *Recta*, in this application, has also the sense of upright or perpendicular, the right line being represented in diagrams by a vertical line crossed by others. See *Linea.*

Linea recta semper præfertur transversali. The right line is always preferred to the collateral. *Co. Litt.* 10.

LINEA TRANSVERSALIS. Lat. In the civil and old English law. The transverse or cross line; a line *crossing* the right or perpendicular line; a line proceeding or drawn from the right line, *on the side* of it, (*à latere*,) either at right angles or obliquely; the oblique or collateral line. *Bract.* fol. 67, 68. *Fleta*, lib. 6, c. 1, § 11.

LINEAL. In a direct line from an ancestor. *Webster.*

LINEAL CONSANGUINITY. That kind of consanguinity which subsists between persons, of whom one is descended in a *direct line* from the other; as between a particular person and his father, grandfather, great-grandfather, and so upward, in the direct ascending line; or between the same person and his son, grandson, great-grandson, and so downwards in the direct descending line. 2 *Bl. Com.* 203.

LINEAL DESCENT. The descent of one person from another; as a son from a

father, in the right or direct line. See *Lineal consanguinity.*

The descent of an estate, or the right to it, in the right line of persons, that is, from grandfather to father, from father to son, from son to grandson, &c.* 2 *Archb. N. Prius*, 351.

LINEAL WARRANTY. A warranty of land made by a person from, or through whom the title to the land warranted was derived, or might by possibility have been derived by the heir.* 2 *Bl. Com.* 301. 4 *Kent's Com.* 469. 2 *Hilliard's Real Prop.* 360. A warranty made by a person in the line of the title.* See *Collateral warranty.*

LINES AND CORNERS. In surveying and conveyancing. Boundary lines and their terminating points, where an angle is formed by the next boundary line. 4 *Bibb's R.* 133. 3 *Littell's R.* 101, 152.

LINGUA. Lat. A tongue; speech. Applied, in old English law, to the verdict of a jury. *Ponit se super* linguas *vestras de hoc de bono et malo;* of this he puts himself upon your tongues, for good and for evil. *Bract.* fol. 143 b.

LINUM. Lat. In civil and old English law. Flax. *Dig.* 32. 70. 10, 11. *Reg. Orig.* 99. Translated in Fitzherbert, lime. *F. N. B.* 90 K, 91.

LIQUERE. Lat. In the civil law. To be clear, evident, or satisfactory. When a *judex* was in doubt how to decide a case, he represented to the prætor under oath, *Sibi non liquere,* (that it was not clear to him,) and was thereupon discharged. *Calv. Lex. A. Gellius, Noct. Att.* xiv. 2.

LIQUET. Lat. [from *liquere,* q. v.] It is clear or apparent; it appears. *Satis liquet;* it sufficiently appears. 1 *Stra.* 412.

LIQUIDATE. To clear away; to lessen; to pay. "To *liquidate* a balance means to *pay* it." Story, J. 8 *Wheaton's R.* 338, 362.

LIQUIDATED DAMAGES. A fixed sum of money expressly and specifically agreed upon between the parties to a contract, to be paid in the event of the nonperformance of the contract by either. It is generally distinguished from a penalty, but is sometimes treated as a penalty, even when the expression *liquidated damages* is used. See 4 *Burr.* 2225. *Sedgwick on Damages,* 417, (3d ed.) ch. 16.

LIQUIDO. Lat. Clearly; evidently; manifestly. *Calv. Lex. Liquido jurare;* to swear from a full knowledge of the subject; to swear without hesitation, or in clear and absolute terms.* *Id.*

LIRE. L. Fr. To read; to be read. *A* lire *quatre foiz par an. Artic. sup. Chart.*

LIRRA. L. Fr. It shall be lawful. *Lirroit;* it should be lawful. *Kelham. L. Fr. Dict.*

LIS. Lat. A controversy or dispute. See *Lis mota.*

A suit at law; an action; a controversy carried on in form of law.* In the civil law, this was a more general term than *actio.* Litis *nomen omnem* actionem *significat;* the term *lis* signifies every kind of action. *Dig.* 50. 16. 36. *Co. Litt.* 292.

LIS MOTA. Lat. A dispute arisen; a controversy originated. A term frequently used in the discussion of evidence in matters of pedigree, and repeatedly held by the courts to import not an *actual suit commenced,* but a *dispute* or controversy originating *prior* to the commencement of judicial proceedings. Wood, B. 4 *Campb.* 406. Lawrence, J. *Id.* 409. Mansfield, C. J. *Id.* 417. Bayley, J. 4 *M. & S.* 497. *Hubback's Evid. of Succession,* 664, 665. 1 *Greenl. on Evid.* § 131. See 1 *Peters' R.* 328, 337; Trimble, J.

Lis mota carries with it the further idea of a controversy upon the same particular subject in issue. 1 *Greenl. Ev.* § 132.

LIS PENDENS. L. Lat. In the civil law. A suit pending. A suit was not said to be pending before that stage of it called *litis contestatio,* (q. v.) 1 *Mackeld. Civ. Law,* 205, § 203. *Calv. Lex.*

In modern law. A pending suit; the actual pendency of a suit, or other judicial proceeding. 2 *Kent's Com.* 122.

In equity. A pending suit. A notice of *lis pendens* is one of the proceedings in a foreclosure suit. 2 *Barbour's Chan. Pr.* 178, 601. A subpœna served and a bill filed is a *lis pendens* against all persons. *Cross on Lien,* 140. Where a man is to be affected by a pending suit, there ought to be a close and continued prosecution of it. 1 *Vern.* 286. In order to constitute a *litis pendentia,* there must be a continuance of *litis contestatio,* and something must be done to keep it alive and in activity. 1 *Russ. & Myln.* 617.

LIST. In practice. A calendar of causes for argument or trial.

LIST. L. Fr. It may be; it is lawful.

Britt. c. 70. *Come bien luy list;* as was lawful for him to do. *Yearb.* M. 8 Edw. III. 2.

LITE PENDENTE. Lat. Pending the suit. *Fleta*, lib. 2, c. 54, § 23.

LITEM SUAM FACERE. Lat. In the Roman law. To make a suit his own. Where a *judex*, from partiality or enmity, evidently favored either of the parties, he was said *litem suam facere. Adam's Rom. Ant.* 269. *Calv. Lex.* He was in such case considered as guilty of a *quasi* malfeasance, (*quasi ex maleficio obligatus*,) and was liable to a penalty, though he might have acted merely through imprudence. *Inst.* 4. 5, pr.

LITERA. Lat. In old English law. A letter. *Litera acquietantiæ;* a letter of acquittance. *Reg. Orig.* 150. *Litera cambii;* a letter of exchange. *Id.* 194. See *Literæ.*

The letter, as distinguished from the meaning of a writing. *Fleta*, lib. 2, c. 56, § 20. See **Qui hæret in litera**, &c.

Litter for horses. *Fleta*, lib. 2, c. 20.

LITERA PISANA. Lat. The Pisan letter. A term applied to the old character in which the copy of the Pandects formerly kept at Pisa, in Italy, was written. *Spelman.*

LITERATURA. Lat. [from *litera*, a letter.] In old English law. Education; learning; knowledge of letters. *Ad* literaturam *ponere;* to put to learning; to put to school. *Paroch. Ant.* 401. *Cowell. Minus sufficiens in* literatura; deficient in learning. The form of a bishop's return, where he refuses a clerk as being unfit to discharge the pastoral office for want of learning. 1 *Bl. Com.* 389, 390.

LITERÆ. Lat. Letters. A term applied, in old English law, to various instruments in writing, public and private. See *infra.*

LITERÆ DIMISSORIÆ. L. Lat. Dimissory or dismissory letters. See *Dimissoriæ literæ.*

LITERÆ MORTUÆ. Lat. Dead letters; fulfilling words of a statute. Lord Bacon observes that, "there are, in every statute, certain words which are as veins, where the life and blood of the statute cometh, and where all doubts do arise, and the rest are *literæ mortuæ*, fulfilling words." *Bac. Read. Uses, Works*, iv. 189.

LITERÆ (or LITTERÆ) PATENTES. L. Lat. In old English law. Letters patent; literally, open letters, (Fr. *lettres ouvertes.*) *In cujus rei testimonium has* literas *nostras fieri fecimus* patentes; In witness whereof, we have caused these our *letters* to be made *patent. Reg. Orig.* 4 b. *Bract.* fol. 72 b. *Literæ patentes regis non erunt vacuæ;* the king's letters patent shall not be void. 1 *Bulstr.* 6.

LITERÆ PROCURATORIÆ. L. Lat. In old English law. Letters procuratory; letters of procuration; letters of attorney. *Bract.* fol. 40, 43. The written authority given to an attorney in fact, or procurator; still sometimes called a *letter of attorney*, and anciently termed in English a *writ. Bract.* fol. 40.

LITERÆ RECOGNITIONIS. L. Lat. In maritime law. A bill of lading. *Jacobsen's Sea Laws*, 172.

LITERÆ SIGILLATÆ. L. Lat. In old English law. Sealed letters. The return of a sheriff was so called. *Fleta*, lib. 2, c. 64, § 19.

LITIGANT. [Lat. *litigans*, from *litigare*, q. v.] A person engaged in a law-suit; a party to a suit.

LITIGARE. Lat. To litigate; to carry on a suit, (*litem agere*,) either as plaintiff or defendant; to claim or dispute by action; to test or try the validity of a claim by action.

LITIGATE. [from Lat. *litigare*, q. v.] To dispute or contend in form of law; to carry on a suit.

LITIGIOUS. In English ecclesiastical law. The subject of contending claims.* If two presentations be offered to the bishop upon the same avoidance, the church is said to become *litigious.* 3 *Bl. Com.* 246.

LITIGIOUS RIGHT. In the civil law. A right which cannot be exercised without undergoing a law-suit. *Civ. Code of Louis.* Art. 3522, num. 22. *Pothier, Contr. of Sale*, num. 584.

LITIGIUM. Lat. [from *litigare.*] In the civil and old English law. Litigation; the contest between the parties to a suit; a suit or controversy. *Litigio pendente. Dig.* 4. 8. 49, pr. Bracton uses the word to denote that part of an action which commenced with the appearance of the defendant, and terminated with the judgment of the court. *Ad primam diem* litigii. *Bract.* fol. 444. *Tempore* litigii, *in ipso judicio, et ante judicium redditum, pendente* litigio. *Id.* fol. 436 b. It is used in the Books of Feuds. *Lib.* 2, tit. 15.

LITIS CONTESTATIO. In the civil

and canon law. Contestation of suit; the process of contesting a suit by the opposing statements of the respective parties; the process of coming to an issue; the attainment of an issue; the issue itself. See *Contestatio litis.*

In the practice of the ecclesiastical courts, —the general answer made by the defendant, in which he denies the matter charged against him in the libel. *Hallifax, Anal.* b. 3, c. 11, num. 9. 2 *Browne's Civ. & Adm. Law*, 358, and note.

LITIS DOMINIUM. Lat. In the civil law. Ownership, control or direction of a suit. A fiction of law by which the employment of an attorney or proctor, (*procurator,*) in a suit was authorized or justified, he being supposed to become, by the appointment of his principal, (*dominus*) or client, the *dominus litis. Heinecc. Elem. Jur. Civ.* lib. 4, tit. 10, §§ 1246, 1247.

LITTORAL. [from Lat. *littus* or *litus*, the *shore.*] Belonging to the shore; on the sea-shore. A *littoral* proprietor is a proprietor of land on the shore of the sea. 17 *Howard's R.* 426.

LITTUS. Lat. See *Litus.*

LITTUS MARIS. Lat. In old English law. The sea-shore. "It is certain that that which the sea overflows, either at high spring tides or at extraordinary tides, comes not, as to this purpose, under the denomination of *littus maris*, and consequently the king's title is not of that large extent, but only to land that is usually overflowed at ordinary tides. That, therefore, I call the *shore* that is between the common high-water and low-water mark, and no more." *Hale de Jur. Mar.* pars 1, c. 4.

LITURA. Lat. [from *linere*, to daub.] In the civil law. An obliteration or blot in a will or other instrument. *Dig.* 28. 4. 1. 1.

LITUS, *Littus.* Lat. In the civil law. A shore or coast; the sea-shore. Litus *est quousque maximus fluctus à mari pervenit;* the shore is as far as the largest wave from the sea reaches. *Dig.* 50. 16. 96. This definition of the Digests is said to have been first established by Cicero, in a case where he acted as an arbiter. *Id. ibid.* But see *Cic. Topic.* vii. quoted in *Callis on Sewers*, 66, note. It is somewhat varied in the Institutes, thus: *Est* litus *maris quatenus hibernus fluctus maximus excurrit;* that is the sea-shore as far as the largest winter-wave extends, or runs up. *Inst.* 2. 1. 3. See *Dig.* 50. 16. 112. *Ang. on Tide-Waters*, 67, ch. 3. See *Littus maris, Shore.*

LITUS, *Liddus, Lito.* L. Lat. In old European law. A kind of servant; one who surrendered himself into another's power, (*servus deditítius.*) *Spelman.*

LIVERER. L. Fr. To deliver. *Kelham. Livere;* delivered. *Britt.* c. 48. *Liveres. Id.* c. 2. *Livromus;* we delivered. *Yearb.* H. 12 Hen. VI. 7.

LIVERISON. L. Fr. Delivery. *Britt.* c. 45.

LIVERY. [L. Lat. *deliberatio;* Lat. *traditio.*] In English law. Delivery. See *Livery of seisin.*

A writ which lay for an heir to obtain possession of lands. *Cowell.*

The privilege of a particular company. "*Livery* and clothing" of a company. *Say.* 274. See 12 *East*, 22. See *Commonalty.*

LIVERY OF SEISIN. [L. Fr. *liverie de seisin, bail de seisin;* L. Lat. *deliberatio seysinæ.*] Delivery of seisin; delivery of corporeal possession of lands or tenements conveyed to another; a material ceremony in the old conveyance by feoffment, without which the feoffee had but a mere estate at will. 2 *Bl. Com.* 311. Livery in deed, or actual livery, was performed by the feoffor, or his attorney, entering on the land, with the charter of feoffment, and after declaring the contents of the feoffment in the presence of witnesses, delivering to the feoffee a clod or turf, or a twig or bough there growing, (or, if it were a house, delivering the ring or latch of the door,) in the name of seisin of all the lands contained in the deed. 2 *Bl. Com.* 315. 4 *Kent's Com.* 480. *Litt.* sect. 59, 60. *Co. Litt.* 48.

Livery of seisin is constantly termed by Britton *bail* of seisin, (*bail de seisine.*) *Britt.* c. 40. See *Bail.* In American law, it is almost unknown. 2 *Hilliard's Real Prop.* 293, 295.

LIVORARE. L. Lat. In old European law. To beat; to bruise by beating. *Marculf.* lib. 1, form. 29.

LOAN, (or LOAN FOR USE.) [Sax. *hlæn;* Lat. *commodatum.*] A bailment of goods to be used by the bailee temporarily, or for a certain time, without reward. *Story on Bailm.* § 6. See *Commodatum.*

LOBIUM. L. Lat. In old records. A parlor, or withdrawing room. *Spelman.*

LOCAL. [L. Lat. *localis*, from *locus*,

place.] Relating to place; expressive of place; belonging or confined to a particular place. Distinguished from *general*, *personal* and *transitory*.

LOCAL ACTION. In practice. An action which must be brought in a particular *place* or county.* An action founded on such a cause as necessarily refers to some particular locality. 3 *Steph. Com.* 463. Of this nature are all actions for the recovery of land, and actions for injuries to real property. An action is *local*, if all the principal facts on which it is founded be local. *Steph. Pl.* 289.

LOCAL ALLEGIANCE. A temporary kind of allegiance, depending on place.* That kind of allegiance which in England is due from an alien or stranger born, for so long time as he continues within the king's dominion and protection. 1 *Bl. Com.* 370. So, in the United States, during the residence of aliens amongst us, they owe a local allegiance, and are equally bound with natives to obey all general laws for the maintenance of peace and the preservation of order, and which do not relate specially to our own citizens. 2 *Kent's Com.* 63, 64.

"LOCAL STATUTES regard such things as are really upon the spot in England, as the Statute of Frauds, which respects lands situate in this kingdom." Lord Mansfield, C. J. 1 *W. Bl.* 246.

LOCAL VENUE. In pleading. A venue which must be laid in a particular county. When the action could have arisen only in a particular county, it is local, and the venue must be laid in that county. 1 *Tidd's Pr.* 427. See *Local action*, *Venue*.

LOCARE. Lat. In the civil and old English law. To let for hire, as a house, land or other thing; to deliver or bail a thing for a certain reward or compensation. *Dig.* 19. 2. 3, 4, *et seq.* *Bract.* fol. 62. *Fleta*, lib. 2, c. 59, § 1.

LOCARIUM. L. Lat. In old European law. The price of letting; money paid for the hire of a thing; rent. *Spelman.*

LOCATE. [from Lat. *locus*, place.] In American law. To place; to fix, ascertain or designate the place (*locus*) of a thing; to describe the place or situation of a certain piece or tract of land. See *Location*.

To mark out the boundaries, or identify the place or site of a piece of land, according to a description before given. "If a patent calls for a boundary, the plaintiff may *locate* the land according to the boundaries." 1 *Harr. & McH.* 359, *arg.*

To place one's self upon land; to settle on it, or take actual possession.

LOCATIO. Lat. [from *locare*, to let.] In the civil law. A letting for hire; a bailment or delivery of a thing for a certain compensation. *Inst.* 3. 25. *Dig.* 19. 2. 2. 1. Translated in Scotch law, *location*. 1 *Stair's Inst.* b. 1, tit. 15, sect. 1, 5, 6. *Story on Bailm.* §§ 8, 368. Sometimes called *locatum*, (q. v.)

LOCATIO-CONDUCTIO. Lat. In the civil law. A compound word used to denote the contract of bailment for hire, expressing the action of *both* parties, viz. a letting by the one, and a hiring by the other. 2 *Kent's Com.* 586, note. *Story on Bailm.* § 368.

In the Roman civil law, and in Bracton and Fleta, this phrase is composed of distinct words, *locatio et conductio*. *Inst.* 3. 25. *Dig.* 19. 2. 1. *Bract.* fol. 62. *Fleta*, lib. 2, c. 59, § 1.

LOCATIO CUSTODIÆ. Lat. A letting to keep; a bailment or deposit of goods for hire. *Story on Bailm.* § 442.

LOCATIO OPERIS FACIENDI. Lat. A letting out of work to be done; a bailment of a thing for the purpose of having some work and labor or care and pains bestowed on it for a pecuniary recompense. 2 *Kent's Com.* 586, 588. *Story on Bailm.* §§ 370, 421, 422.

LOCATIO OPERIS MERCIUM VEHENDARUM. Lat. A letting of work to be done in the carrying of goods; a contract of bailment by which goods are delivered to a person to carry for hire. 2 *Kent's Com.* 597. *Story on Bailm.* §§ 370, 457.

LOCATIO REI. Lat. A letting of a thing to hire. 2 *Kent's Com.* 586. The bailment or letting of a thing to be used by the bailee for a compensation to be paid by him. *Story on Bailm.* § 370.

LOCATION. [from *locate*, q. v.] In American land law. The designation of the boundaries of a particular piece of land, either upon record, or on the land itself. 1 *Bibb's R.* 84.

The finding and marking out the bounds of a particular tract of land, upon the land itself, in conformity to a certain description contained in an entry, grant, map, &c.; such description consisting in what are termed *locative calls*, (q. v.)

LOCATIVE CALLS. In American land law. Calls for the purpose of location; calls which designate the particular boundaries of lands, as distinguished from general description.* See *Call.* Those calls in entries of lands, the object of which is to ascertain and identify the land for the purpose of *location.* References in entries and grants of land to certain particular physical objects (as trees, streams, &c.) which exactly describe the land to be located.* Marshall, C. J. 2 *Wheaton's R.* 206, 211. Marshall, C. J. 10 *Wheaton's R.* 454, 463. See 7 *Peters' R.* 171. 18 *Wendell's R.* 157.

LOCATOR. Lat. [from *locare*, to let; Fr. *locateur*, *loueur*, *bailleur.*] In the civil law. A letter; one who lets; the correlative of *conductor*, (a hirer.) *Inst.* 3. 25, pr. *Dig.* 19. 2. 9, pr. *Cod.* 4. 65. 13, 15. He, who being the owner of a thing, lets it out to another for hire or compensation. *Story on Bailm.* § 369. Used in Scotch law. 1 *Stair's Inst.* b. 1, tit. 15, §§ 1, 5, 6.

LOCATOR. In American land law. One who locates land, or intends or is entitled to locate. 1 *Bibb's R.* 81. 1 *Littell's R.* 187. See *Location.*

LOCMAN. Fr. In French marine law. A pilot. *Ord. Mar.* liv. 4, tit. 3, art. 1.

LOCUM TENENS. L. Lat. [L. Fr. *lieu tenant.*] In old English law. A lieutenant, deputy or representative. *Reg. Orig.* 17. *Fleta*, lib. 2, c. 64, § 2. Literally, a place holder; one who holds the place of another.* *Locum tenens decani et vices ejus gerens;* holding the place of the dean, and performing his duties. *Yearb.* M. 9 Edw. III. 33. *Locum tenens regni;* lieutenant of the realm. 8 *Co.* 21 b, *The Prince's case.* 1 *P. Wms.* 712.

LOCUM TENERE. Lat. In old statutes. To hold place; to be applicable. *Et sciendum est quod istud statutum* tenet locum *de terris venditis*, &c. and it is to be known that this statute has application to lands sold, &c. *Stat. Quia Emptores*, c. 3. *Locum habere*, (to have place,) had the same meaning. *Fleta*, lib. 4, c. 1, § 16.

To have place; to take effect, as to time. *Et incipiet* locum tenere *ad festum Sancti Andreæ apostoli;* and it shall begin to take effect at the feast of St. Andrew the apostle. *Stat. Quia Emptores*, c. 3.

LOCUPLES. Lat. In the civil law. Able to respond in an action; good for the amount which the plaintiff might recover. *Dig.* 50. 16. 234. 1.

LOCUS. Lat. [Fr. *lieu.*] A place; the place. See *infra.*

LOCUS. Lat. In the civil law. A place; a piece or portion of land, or of an estate, (*fundus.*) *Dig.* 50. 16. 60.

LOCUS CONTRACTUS. Lat. The place of a contract; the place where a contract is made. **Locus contractus regit actum.** The place of the contract governs the act; the law of the place where it is made governs it as to construction, wherever it is attempted to be carried into effect. Personal contracts are to have the same validity, interpretation and obligatory force in every other country, which they have in the country where they are made. 2 *Kent's Com.* 458.

LOCUS DELICTI. Lat. The place of the offence; the place where an offence was committed. 2 *Kent's Com.* 109.

LOCUS IN QUO. Lat. [Fr. *la lieu ou.*] In pleading. The place in which; the place where. 6 *Mod.* 158, 198. 1 *Leon.* 60. A term used in actions of trespass to denote *the place in which* the trespass was committed. 1 *Archb. N. Prius*, 314. See 1 *Salk.* 94.

LOCUS PARTITUS. Lat. In old English law. A place divided. A division made between two towns or counties, to make out in which the land or place in question lies. *Fleta*, lib. 4, c. 15, num. 1. *Cowell.* See *Jocus partitus.*

LOCUS PŒNITENTIÆ. Lat. In the civil law. Place or room for repentance; room to retract; opportunity allowed a party to withdraw from a contract, before it is completed. *Inst.* 3. 24, pr. A phrase adopted by Bracton, and extensively used in modern law. *Bract.* fol. 61 b. *Fleta*, lib. 2, c. 58, § 3.

LOCUS PUBLICUS. Lat. In the civil law. A public place. *Dig.* 43. 8. 1. *Id.* 43. 8. 2. 3.

LOCUS REI SITÆ. L. Lat. The place where a thing is situated. In proceedings *in rem*, or the real actions of the civil law, the proper forum is the *locus rei sitæ.* Story, J. 2 *Gallison's R.* 191, 197.

LOCUS SIGILLI. Lat. The place of the seal; the place occupied by the seal of written instruments. Usually abbreviated to L. S.

LODEMANAGE. In old English law. The hire of a pilot for conducting a ship

from one place to another. *Cowell.* Blount calls it *lodemerege.*

LODGER. One who occupies hired apartments in another's house; a tenant of part of another's house. See *Lodgings.*

LODGINGS. Habitation in another's house. *Wharton's Lex.* Apartments in another's house, furnished or unfurnished, occupied for habitation; the occupier being termed a *lodger.*

LODS ET VENTES. Fr. In old French and Canadian law. A fine payable by a *roturier*, on every change of ownership of his land; a mutation or alienation fine. *Steph. Lect.* 351. *Dunkin's Address*, 54, 60.

LOGOGRAPHUS. Græco-Lat. In the Roman law. A public clerk, register or book-keeper; one who wrote or kept books of accounts. *Dig.* 50. 4. 18. 10. *Cod.* 10. 69.

LOI, *Loy.* L. Fr. Law. *Conf. Cart.* 25 Edw. I.

LOIAL. L. Fr. Lawful. *Kelham. Loialx gents de la visne ou tiel fait si fist;* lawful people of the neighborhood where the fact was done. *Rot. Parl.* 4 Hen. IV. cited 1 *Rep. in Ch.* appx. *Loialment;* lawfully. *Britt.* c. 54.

LOIER, *Loyer.* L. Fr. Fee; reward. *Kelham.*

LOKE. O. Eng. Lock; a lock. Ofte treste lokes maketh treuue hynnen. Safe locks often make trusty servants. An old English proverb. *Fleta*, lib. 2, c. 72, § 3.

LOMBARDS. A name given to the merchants of Italy, numbers of whom, during the twelfth and thirteenth centuries, were established as merchants and bankers in the principal cities of Europe. 1 *Robertson's Charles* V. Appendix, note xxx. 1 *Duer on Ins.* 33. Introd. Disc. Lect. ii. In a case in the Year Books, a writ was brought *vers les* Lombards *de Londres*, (against the Lombards of London.) *Præcipe societati* Lombardorum *Lond' mercatorum de Florence;* (command the company of Lombards of London, merchants of Florence.) The defendants were called by the crier, "*Le felowship de Lombards.*" Two Lombards of London appeared. This was objected to as no appearance. *Yearb.* T. 19 Hen. VI. 11.

LONDRES, *Londre.* L. Fr. London. *Yearb.* P. 1 Edw. II. p. 4.

Longa possessio est pacis jus. Long possession is the law of peace. *Branch's Princ. Co. Litt.* 6.

Longa possessio jus parit. Long possession begets right. *Fleta*, lib. 3, c. 15, § 6.

Longa possessio parit jus possidendi, et tollit actionem vero domino. Long possession produces the right of possession, and takes away from the true owner his action. *Co. Litt.* 110 b.

LONGTEYNE, *Lointagnes.* L. Fr. Remote; distant. *Britt.* c. 44. *Kelham.*

Longum tempus, et longus usus qui excedit memoria hominum, sufficit pro jure. Long time and long use, exceeding the memory of men, suffices for right. *Branch's Princ. Co. Litt.* 115 a.

LONGURE. L. Fr. Length. *Britt.* c. 63.

LOQUELA. L. Lat. [from *loqui*, to speak.] In old English practice. A plaint, plea or suit. *Si* loquela *fuerit in curia baronis;* if the plaint were in a court baron. *Bract.* fol. 363 b. *Reg. Orig.* 18 b.

A plaint or declaration; the first pleading of a plaintiff. 1 *Reeves' Hist.* 248.

A statement; saying or affirmation. *Magna Charta*, c. 28. *Fleta*, lib. 2, c. 63, § 10.

An imparlance. *Cowell. Blount.*

Loquendum ut vulgus, sentiendum ut docti. We must speak as the common people, we must think as the learned. 7 *Co.* 11 b, *Calvin's case.* In construction of law, words may be taken in their ordinary sense; but when technically used, as in pleading, they are to be taken technically.* See 4 *Co.* 46 b. 3 *Keb.* 20. *Het.* 101.

LORD. [Sax. *hlaford;* Lat. *dominus;* Fr. *seigniour;* Gr. κυριος.] In English law. A title of honor or nobility belonging properly to the degree of baron, but applied also to the whole peerage, as in the expression, "the House of Lords." 1 *Bl. Com.* 396—400.

A title of office, as Lord Mayor, Lord Commissioner, &c.

In feudal law. A feudal superior or proprietor; one of whom a fee or estate is held. See *Fee, Tenure.*

LORD ADVOCATE. The chief public prosecutor of Scotland. 2 *Alison's Crim. Pr.* 84.

LORDSHIP. [Lat. *dominium.*] In old English law. A seigniory; the domain or estate of a lord.

A title of honor applied to a nobleman, not a duke; to judges, and some other persons in authority and office. *Wharton's Lex.*

LOST OR NOT LOST. In commercial law. A clause introduced into marine

policies of insurance, (and said to be peculiar to the English policies,) to show that the contract is intended to embrace losses which may have happened before the policy is subscribed. 1 *Phillips on Ins.* 438. 3 *Kent's Com.* 258, 259.

LOT. [Sax. *hlot.*] In old English law. A contribution; a portion or share of a tribute, or any payment which one is bound to make with others, (*pars tributi sive solutionis alicujus, quam inter alios quis tenetur præstare.*) *Spelman.* Frequently used with the word *scot.* "*Ane hlot and an scote.*" *Id.* Hence *Scot* and *lot*, (q. v.)

LOU. L. Fr. Where. *L. Fr. Dict.*

LOUR, *Leour, Ler, Lirr, Loar, Lor, Lur, Lure, Lurr.* L. Fr. Their. *Kelham.*

LOW JUSTICE. In old European law. Jurisdiction of petty offences, as distinguished from *high justice*, (q. v.)

LOW WATER. The furthest receding point of ebb-tide. Wayne, J. 13 *Howard's R.* 417. See *Id.* 425, Nelson, J.

LOW-WATER MARK. That part or line of the sea-shore to which the waters recede, at ordinary low-tide. *Angell on Tide-Waters*, 68—73, ch. 3.

LOWER. L. Fr. A fee or reward; a bribe. *Britt.* fol. 3 b. *Id.* c. 21, 24.

LOWERS. Fr. In French maritime law. Wages. *Ord. Mar.* liv. 1, tit. 14, art. 16.

LOY. L. Fr. In old English law. Law. *La* loy *de la terre. Conf. Cartar.* 25 Edw. I.

LOYAL. L. Fr. In old English law. Lawful. *N'est* loyal *pur luy;* it is not lawful for him. *Dyer*, 36 b, (Fr. ed.) *T. Jon.* 24. "Nearest and most *loyal* friends of the intestate." *Stat.* 31 *Edw.* III. c. 11, cited 1 *P. Wms.* 42, 45, arg.

LOYALMENT. L. Fr. Lawfully. *Dyer*, 102, (Fr. ed.)

LUCID INTERVAL. An interval of reason enjoyed by an insane person, or lunatic. The expression is a very literal translation of the *lucidum intervallum* of Bracton and the Register. *Bract.* fol. 12, 43. *Reg. Orig.* 267 a.

LUCRATIVE SUCCESSION. In Scotch law. A kind of passive title by which a person accepting from another, without any onerous cause, [or without paying value,] a disposition of any part of his heritage, to which the receiver would have succeeded as heir, is liable to all the grantor's debts contracted before the said disposition. 1 *Forbes' Inst.* part 3, p. 102. *Bell's Dict.*

LUCRATUS. Lat. [from *lucrum*, gain.] In Scotch law. A gainer. *Kames' Equity*, b. 1, part 1, sec. 2, art. 1.

LUCRI CAUSA. Lat. For the sake of gain. An expression quoted by Blackstone, as used in the civil law definition of theft, to express the motive of the act. 4 *Bl. Com.* 232. The words of the Institutes, in the passage referred to, are *lucri faciendi gratiâ*, (for the sake of making gain.) *Inst.* 4. 1. 1. The expression itself has since been held inapplicable in the common law. *Russ. & R. C. C.* 292. See 2 *Russell on Crimes*, 3. *Lewis' U. S. Crim. Law*, 450.

LUCRUM CESSANS. Lat. In Scotch law. A ceasing gain, as distinguished from *damnum datum*, an actual loss. *Kames' Equity*, b. 1, part 1, ch. 1, sect. 2.

LUCTA. Lat. In old English law. A wrestling-match. *Fleta*, lib. 2, c. 72, § 9.

LUM. L. Fr. A man. *LL. Gul. Conq.* l. 41.

LUCTUOSA HÆREDITAS. Lat. A sad inheritance. See *Hæreditas luctuosa.*

LUCTUS. Lat. In the Roman law Mourning. See *Annus luctûs.*

LUMEN. Lat. In the civil law. Light; the light of the sun or sky; the privilege of receiving light into a house. *Dig.* 8. 2. 10, 15—17. Distinguished from *prospectus*, (prospect.) *Id.* 8. 2. 16.

A light or window. See *Lumina.*

LUMINA. Lat. [plur. of *lumen*, q. v.] In the civil law. Lights; windows; openings to obtain lights for one's building. *Dig.* 8. 2. 10, 15, 17, 23. 1 *Mackeld. Civ. Law*, 340, § 311.

LUNACY. [L. Lat. *morbus lunaticus.* See *Lunatic.*] Insanity or madness. Properly, that kind of insanity which is broken by intervals of reason. See *Lunatic.*

Mr. Stock, in his Treatise on the Law of *Non Compotes Mentis*, adopts lunacy as the general term to denote all the varieties of mental disorder, not fatuous. Introd. p. 8.

LUNATIC. [L. Lat. *lunaticus*, from *luna*, the moon.] An insane person; one who has lost the use of his reason. Properly, one who has lucid intervals, (*qui gaudet lucidis intervallis;*) sometimes enjoying his senses and sometimes not, and that frequently depending, as some have imagined, upon the change of the *moon.** 4 *Co.* 124 b, *Beverley's case.* 1 *Bl. Com.* 304. 3 *Steph. Com.* 530. In New-York, this term is declared by statute to extend

to every person of unsound mind, other than idiots. 2 *Rev. Stat.* [143, § 29,] 77, § 28. This accords with the arrangement of Mr. Stock. See *Lunacy.*

The influence of the moon in bringihg on the paroxysms of lunacy is now generally exploded in science; and yet it is singular that, in most languages, the word corresponding with *lunatic* is similarly derived; as Gr. σεληνιακὸς, from σελήνη; Lat. *lunaticus*, from *luna;* Germ. mondsuchtig; Eng. moon-sick. *Stock on Non Comp. Ment.* Introd. 8, 9, note.

LUNDRESS. In old English law. A silver penny, so called because it was to be coined only at London, (*à Londres,*) and not at the country mints. *Lowndes' Essay on Coins*, 17. *Cowell.*

LUPULICETUM. L. Lat. In old English law. A hop ground, or place where hops grow. *Co. Litt.* 4 b.

LUS, *Luz.* L. Fr. Places. *Kelham.*

LUSHBOROW, *Lushburgh.* In old English law. A base sort of money, coined beyond sea in the likeness of English coin, and introduced into England in the reign of Edward III. Prohibited by statute 25 Edw. III. st. 4. *Spelman. Cowell.*

LUTOSA. Lat. [from *lutum*, clay, mud.] In old pleading. Miry; muddy; impassable as a road. *Cro. Car.* 366.

LUTUM. Lat. Clay. *Dyer*, 90.

LUY. L. Fr. Him; her; it. *L. Fr. Dict.*

LYEF-YELD. Sax. In old records. Lief-silver or money; a small fine paid by the customary tenant to the lord, for *leave* to plow or sow, &c. *Somner's Gavelk.* 27.

LYER, *Lier.* L. Fr. To read. *L. Fr. Dict.*

To tie or bind. *Kelham.*

LYTÆ. Græco-Lat. [from Gr. λύω, to loose or solve.] In the old Roman law. A name given to students of the civil law in the fourth year of their course, from their being supposed capable of *solving* any difficulty in law. *Tayl. Civ. Law*, 39.

M.

M. The letter with which persons convicted of manslaughter, and admitted to the benefit of clergy, were marked or branded on the brawn of the left thumb. *Stat.* 4 *Hen.* VII. c. 13. *Cowell.* See *Burning in the hand.*

MACEGRIEFS, *Macegrefs.* L. Fr. [from *mace*, flesh, and *griffer*, to snatch.] In old English law. Those who willingly bought and sold stolen flesh, knowing it to be stolen. *Britt.* c. 29, 30. *Spelman. Blount.*

MACER, (or MACE-BEARER.) An officer attending on the Scotch courts. *Bell's Dict.* 2 *Swinton's R.* 363.

MACHAMIUM, *Mechamium.* L. Lat. [from Fr. *mehaigne.*] In old Scotch law. Maihem; Scotticè, *manzie. Reg. Maj.* lib. 4, c. 4. *Skene de Verb. Sign.*

MACHECARIUS, *Macarius.* L. Lat. In old English law. A fleshmonger; a butcher. *Spelman. Cowell.* Called in the Statutum Walliæ, *macerarius. Barringt. Obs. Stat.* 124.

"MACHINE," in patent law, includes every mechanical device, or combination of mechanical powers and devices, to perform some function and produce a certain effect or result. But where the result or effect is produced by chemical action, by the operation or application of some element or power of nature, or of one substance to another, such modes, methods or operations are called *processes.* A new process is usually the result of discovery; a machine, of invention. Grier, J. in Corning *v.* Burden, 15 *Howard's R.* 252, 267. See *Invention.*

MACHOLUM. L. Lat. In old European law. A barn or granary open at the top, (*sine tecto.*) *Spelman.*

A rick or stack of corn, (grain.) *Id.*

MACINARE. L. Lat. In old European law. To grind. *Spelman.*

MACULARE. L. Lat. In old European law. To wound. *L. Alam.* tit. 61, § 1. *Spelman.*

MADLE. L. Fr. Male. *Britt.* c. 119. *Yearb.* M. 9 Edw. III. 59.

MÆREMIUM, *Meremium, Maremium, Maheremium.* L. Lat. [from L. Fr. *marisme*, timber.] In old English law. Timber; wood for the construction of houses or ships. *Blount. Bract.* fol. 122. *Fleta*, lib. 1, c. 20, § 114. See *Maheremium, Maremium.*

MÆGBOTE. Sax. [from *mæg*, a kinsman, and *bote*, a compensation.] In Saxon law. A recompense or satisfaction for the slaying or murder of a kinsman, (*compensatio pro cognato interfecto.*) *Spelman.*

MAGIS. Lat. More. **Magis dignum trahit ad se minus dignum.** The more worthy draws to itself the less worthy. *Yearb.* T. 20 Hen. VI. 2, arg.

MAGISTER. Lat. [from *magis*, more, denoting superiority.] A master; a ruler; a chief or superior. One who is elevated above others by office, position, or attainments.* One whose authority and example we follow; one upon whom the chief care of any matter devolves. *Calv. Lex.*

Magister rerum usus. Use is the master of things. *Co. Litt.* 229 b. Usage is a principal guide in practice. *Wing. Max.* 752, max. 203.

A title of office in the Roman empire. *Magister equitum;* master of the horse. *Cod.* 1. 29. 1. *Calv. Lex. Magister libellorum;* master of requests. *Id. Magister palatii*, or *officiorum;* master of the palace or of the offices. An officer resembling the modern Lord Chamberlain. *Tayl. Civ. Law*, 37.

MAGISTER. Lat. One who has attained a degree of eminence in any science, or in literature. *Spelman.* Hence the degree of *master*, (as master of arts,) which anciently was equivalent to *doctor. Id.*

MAGISTER CANCELLARIÆ. L. Lat. In old English law. Master of the chancery; master in chancery. These officers were said to be called *magistri*, because they were priests. Whitlock, J. *Latch*, 133.

MAGISTER NAVIS. Lat. In the civil law. The master of a ship or vessel. *Inst.* 4. 7. 2. He to whom the care of the whole vessel is committed, (*cui totius navis cura mandata est.*) *Dig.* 14. 1. 1. 1, 5. *Story on Agency*, § 36. *Loccen. de Jur. Mar.* lib. 2, c. 1, s. 9.

MAGISTER SOCIETATIS. Lat. In the civil law. Master of a partnership; manager, director or general agent of a partnership. A person specially appointed by the members of a partnership to administer its affairs. *Story on Partn.* § 95.

MAGISTRALIA BREVIA. L. Lat. In old English practice. Magisterial writs; writs adapted to special cases, and so called from being framed by the *masters* or principal clerks of the chancery. *Bract.* fol. 413 b. *Crabb's Hist.* 547, 548.

MAGISTRATE. [from Lat. *magistratus*, q. v.] A person clothed with power as a public civil officer. Story J. 2 *Sumner's R.* 401, 404.—A public civil officer, invested with the executive government or some branch of it. *Webster.* An alderman is, in the strictest sense, a magistrate. 2 *Sumner's R.* 401. An American consul at a foreign port is a magistrate. 13 *Pick. R.* 523.

MAGISTRATUS. Lat. [from *magister*, a master.] In the civil law. A magistrate, (Gr. ἀρχων.) *Calv. Lex.* A judicial officer who had the power of hearing and determining causes, but whose office properly was to inquire into matters of law, as distinguished from fact. *Hallifax, Anal.* b. 3, c. 8.

Magistracy; the office or place of a magistrate. *Id.*

MAGNA ASSISA. L. Lat. In old English law. The grand assise. *Glanv.* lib. 2, c. 11, 12. See *Grand assise.*

MAGNA AVERIA. L. Lat. In old pleading. Great beasts, as horses, oxen, &c. *Cro. Jac.* 580.

MAGNA CHARTA, (or CARTA.) L. Lat. [L. Fr. *la Graunde Chartre.*] The Great Charter. The celebrated charter of English liberties, called by Spelman, *augustissimum Anglicarum libertatum diploma et sacra anchora*, granted by King John, June 15, 1215, at Runningmede or Runemede, and confirmed, with some alterations, by Henry III. in the 9th year of his reign. This charter of Henry III. is the Great Charter which is always referred to as the basis of the English constitution; the charter of John being only remembered as a monument of antiquity. 1 *Reeves' Hist. Eng. Law*, 209, 231. *Crabb's Hist.* 133. The charter of Henry is the oldest printed statute now extant in England. 1 *Bl. Com.* 85. The original charter of John is still preserved in the British Museum.

Spelman, who has given a sketch of its history in his Glossary, observes that it was called *Magna* (Great) from its superiority in size to the *Charta de Foresta*, which was granted about the same time. Other reasons for the name have, however, been given. *Cowell.* Lord Coke has written an elaborate commentary upon it in his Institutes. 2 *Inst.* According to the same author, it has been confirmed above thirty times. *Co. Litt.* 81. 5 *Co.* 64.

Magna fuit Magnæ quondam reverentia Chartæ. Great was the reverence formerly paid to the Great Charter. 2 *Inst.* proœm.

Magna Charta and the Carta de Foresta have been carefully edited by Sir William Blackstone, with an Introductory Discourse, in which he has traced the history of these charters from the original Articles or heads of Agreement at the Congress in Runningmede, upon which King John's charter was founded, to their final establish-

ment in the 29th year of King Edward the First.

The documents printed in this valuable edition are,

I. The original Articles of Magna Carta, (*Articuli Magne Carte Libertatum, sub sigillo Regis Johannis,*) consisting of forty-nine heads; printed from the original formerly in the possession of Bishop Burnet.

II. The Magna Carta of King John (framed from the foregoing articles) printed from one of the Cottonian originals in the British Museum, with various readings taken from the other Cottonian original, and the Red Book of the Exchequer at Westminster.

III. The Magna Carta granted in the first year of Henry III. printed from the original in the archives of the cathedral at Durham, with various readings from an entry in the Red Book of the Exchequer at Dublin.

IV. Another Magna Carta of Henry III. granted A. D. 1217; printed from the original in the Bodleian Library at Oxford, with various readings from a MS. chronicle of the city of London.

V. The Magna Carta of 9 Hen. III. printed from an original in the possession of John Talbot, Esq., with various readings from another original in the church at Durham, an entry in the Red Book of the Exchequer at Westminster, a charter of Inspeximus, 28 Edward I. in the archives of Oriel College in Oxford, and another in the archives of the collegiate church of Westminster, and two enrolments in the Tower of London.

VI. The Carta de Foresta, 9 Henry III. printed from an original in the archives of the cathedral at Durham, with various readings from two charters of Inspeximus, 28 Edward I., and two enrolments in the Tower of London.

VII. The Carta Confirmationis, 21 Henry III.

VIII. The Carta Confirmationis, 49 Henry III.

IX. The fifth chapter of the Statute of Marleberge, 52 Henry III.

X. The Confirmatio Cartarum, 25 Edward I.

XI. The first part of the Articuli super Cartas, 28 Edward I. with some other instruments illustrative of the subject. See *Blackstone's Law Tracts.*

MAGNA CULPA. Lat. In the civil law. Great or gross fault. **Magna culpa dolus est.** Gross fault is fraud. *Dig.* 50. 16. 226. Otherwise termed *lata culpa.*

MAGNA NEGLIGENTIA. Lat. In the civil law. Great or gross negligence. **Magna negligentia culpa est, magna culpa dolus est.** Gross negligence is fault; gross fault is fraud. *Dig.* 50. 16. 226.

MAGNA PRECARIA. L. Lat. In old English law. A great or general reap-day. *Cowell. Blount.* See *Precaria.*

MAGNA SERJANTIA. L. Lat. In old English law. Grand serjeanty. *Fleta,* lib. 2, c. 4, § 1.

MAGNUM CAPE. L. Lat. In old practice. Great or grand *cape. Fleta,* lib. 6, c. 14, § 2. 1 *Reeves' Hist.* 418. See *Grand cape.*

MAGNUM CENTUM. L. Lat. In old records. The great hundred; six-score, or one hundred and twenty. *Cart.* 20 *Hen.* III. m. 1. *Cowell.*

MAGNUM CONCILIUM. L. Lat. In old English law. The great council; the general council of the realm; afterwards called parliament. 1 *Bl. Com.* 148. 1 *Reeves' Hist.* 62. *Spelman.*

The king's great council of barons and prelates. *Spelman. Crabb's Hist.* 228.

MAGNUS ROTULUS STATUTORUM. L. Lat. The great Statute Roll. The first of the English statute rolls, beginning with Magna Charta, and ending with Edward III. *Hale's Hist. Com. Law,* 16, 17.

MAGRE, *Maugre.* L. Fr. Against the will; in spite of; notwithstanding. *Kelham.* A contraction of *mal gree,* (q. v.) Used by Littleton in its modern form, *maugre. Litt.* sect. 672.

MAHEME, *Mahem.* L. Fr. Maihem. *Britt.* c. 25.

MAHEMIARE. L. Lat. In old English law. To maim. *Bract.* fol. 144 b, 145. *Mahemiator;* a maimer; the maimer. *Fleta,* lib. 1, c. 40, § 4.

MAHEMIUM. L. Lat. In old English law. Maihem. Mahemium *dici poterit, ubi aliquis in aliqua parte sui corporis effectus sit inutilis ad pugnandum;* it may be called maihem, when any person is in any part of his body disabled [made useless] to fight. *Bract.* fol. 145. Fleta copies this passage with the following modification: *Mahemium dici poterit, ubi aliquis in aliqua parte sui corporis* læsionem acceperit per quam *effectus sit,* &c. *Fleta,* lib. 1, c. 40.

A blemish or fault. *Fleta*, lib. 2, c. 58, § 6. See *Id.* lib. 1, c. 34, § 24.

MAIHEREMIUM. L. Lat. In old English law. Wood or timber. *Fleta*, lib. 2, c. 41, § 9.

MAIHLBRIEF. Germ. In maritime law. A contract for the building of a vessel, specifying the denomination and size of the vessel, the time when she is to be completed, and the time and manner of payment. *Jacobsen's Sea Laws*, 2—8. There is no corresponding term for this contract in English.

MAIDEN. In Scotch law. An instrument formerly used in beheading criminals. It resembled the French guillotine, of which it is said to have been the prototype. *Wharton's Lex.*

MAIDEN ASSIZE. In English practice. An assize at which no capital conviction takes place. In such a case, the sheriff of the county presents the judges with white gloves. *Wharton's Lex.*

MAIDEN RENTS. In English law. A fine paid by the tenants of some manors on their marriage, and said to have been given to the lord for his omitting the custom of the *marcheta*, (q. v.) *Cowell. Blount.*

A fine paid for license to marry a daughter. *Id.*

MAIHEM, *Mayhem*, *Mahem*, *Maim.* [L. Fr. *mahem*, *maheme;* L. Lat. *mahemium*, *maihemium*, *machamium*, *mechamium;* Sc. *manzie.*] In criminal law. The violently depriving another of the use of a member proper for his defence in fight. 3 *Bl. Com.* 121. The violently depriving another of the use of such of his members as may render him the less able in fighting, either to defend himself or to annoy his adversary. 4 *Id.* 205. Such as the cutting off, or disabling or weakening a man's hand or finger, or striking out his eye or foretooth. *Id. ibid.* But breaking a molar tooth, or cutting off an ear or nose, is no maihem at common law, because they do not weaken, but only disfigure him. *Id.* 206. These rules are taken, with very little change, from Bracton. *Bract.* fol. 145. See *Britt.* c. 25. *Fleta*, lib. 1, c. 40. *Wharton's Am. Crim. Law*, b. 4, ch. 4.

MAIHEMARE. L. Lat. In old English law. To maim. *Keilw.* 95.

MAIHEMIUM. L. Lat. In old criminal law. Maihem. Maihemium *est membri mutilatio; et dici poterit ubi aliquis in aliquâ parte sui corporis effectus sit inutilis ad pugnandum.* Maihem is the mutilation of a member; and it may be called maihem when any person is in any part of his body disabled from fighting. *Co. Litt.* 126. This is a quotation from Bracton, who writes the word *mahemium*, (q. v.)

Maihemium *est inter crimina majora minimum, et inter minora maximum.* Maihem is the least among the greater crimes, and the greatest among the lesser. *Co. Litt.* 127.

Mahemium *est homicidium inchoatum.* Maihem is inchoate homicide. 3 *Inst.* 118.

MAIL, *Maile*, *Maill.* [plur. *mailles*, *meals*, *mealis.*] Sc. In Scotch law. Rent; a rent or tribute. A tenant who pays a rent (*firmarius,*) is called a mail-payer, mailer or mail-man. *Skene de Verb. Sign.* voc. *Firmarius.*

MAILE, *Maille*, *Maylle*, *Mail.* L. Fr. In old English law. A half-penny. *Litt.* sect. 235, 565. *Britt.* c. 4, 30. *LL. Gul. Conq.* l. 4.

MAILE. In old English law. A tribute, a rent. *Spelman.* See *Black mail.*

MAILLS AND DUTIES. In Scotch law. The rents of an estate. *Bell's Dict.*

MAIM. An old form of maihem. *Finch's Law*, b. 3, c. 12.

MAIN. Fr. [from Lat. *manus.*] A hand. More commonly written *meyn*, (q. v.)

MAIN-A-MAIN. L. Fr. Immediately. *Kelham.*

MAINABLE. L. Fr. Amenable; distrainable. *Kelham.*

MAINBOUR, *Manburnie.* Fr. and Sax. [from Fr. *main*, hand, and Sax. *borh*, pledge.] In old French law. Pledge; a pledge or surety. Answering to the Sax. *handborow*, (q. v.) and English *mainprise*, (q. v.) *Spelman.*

MAINOUR, *Manour*, *Meinour*, *Meynour*, *Meynovere.* L. Fr. [from *manier*, to handle.] In old English law. A thing that a thief takes away or steals. *Cowell.* A thing *in hand.** A thief was said to be "taken with the *mainour*," when he was taken with the thing stolen about him, or, as it were, *in his hand. Cowell. Pl. Cor.* 179, 149, 186, 194. *Stat. Westm.* 1, c. 15. 2 *Inst.* 188. 4 *Bl. Com.* 307. 3 *Id.* 71. The word seems to have corresponded with the Sax. *handhabend*, (q. v.) The expression "taken with the mainour," is a close translation of the *cum manuopere captus* of Fleta, (lib. 2, c. 52, § 42,) and the *pris ove*

meynovere of the statute of 1 Hen. IV. c. 20; and Mr. Barrington considers *meynovere* to be the true form of the word. *Obs. Stat.* 350. A later form of the expression was, "taken *in* the mainour (or manor.") 1 *Show.* 57. *Comb.* 159, 160. The word *mainour* was afterwards corrupted into the English *manner;* and the expression "taken in the *manner*" occurs in some of the books. *Crabb's Hist.* 154.

MAINOVRE, *Maynover.* L. Fr. [from *main*, hand, and *oeuvre*, work.] The labor of the hand; manual labor. *Cowell.* But see *Meynovere.*

MAINPERNABLE. In old English law. That may be let to bail. *Cowell.*

MAINPERNOR, *Maynpernour*, *Meinpernour.* L. Fr. and Eng. [from *main*, hand, and *pernor*, taker; L. Lat. *manucaptor.*] In old practice. A surety for a prisoner's appearance; a kind of bail taken under the writ of *mainprise.* So called, from the prisoner's being delivered into his hand. *Mainpernors*, according to Blackstone, differ from *bail*, in that a man's bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day. *Bail* are only sureties that the party be answerable for the special matter for which they stipulate; *mainpernors* are bound to produce him to answer all charges whatsoever. 3 *Bl. Com.* 128. Other distinctions are made in the old books. See *Cowell.*

MAINPRISE, *Meynprise*, *Maynpryse*, *Mainpris*, *Meynpris.* L. Fr. and Eng. [from *main*, hand, and *prise*, a taking; L. Lat. *manucaptio.*] In old practice. The taking or receiving a man into friendly custody, that otherwise is or might be committed to prison, upon security given for his forthcoming at a day assigned. *Cowell.* The old writ of *mainprise* was a writ directed to the sheriff, (either generally, when any man was imprisoned for a bailable offence, and bail had been refused; or specially, when the offence or cause of commitment was not properly bailable below,) commanding him to take sureties for the prisoner's appearance, called *mainpernors*, (q. v.) and to set him at large. 3 *Bl. Com.* 128.

Security for debt. *Il trove* mainpris *à payer le dett. Mem. in Scacc.* H. 24 Edw. I.

MAINSWORN. In old English law. Perjured or forsworn, with one's *hand* (Fr. *main,*) upon the book. *Hob.* 125. Said to be peculiar to the North of England. *Id. ibid.*

MAINTAINOR. In criminal law. One that maintains or seconds a cause depending in suit between others, either by disbursing money, or making friends for either party towards his help. *Stat.* 19 *Hen.* VII. c. 14. *Blount.* One who is guilty of *maintenance*, (q. v.)

MAINTENANCE. L. Fr. and Eng. [from Fr. *main*, hand, and *tener*, to hold; L. Lat. *manutentio*, *manutenentia.*] In criminal law. An officious intermeddling in a suit that no way belongs to one, by maintaining or assisting either party with money, or otherwise, to prosecute or defend it. 4 *Bl. Com.* 134. *Termes de la Ley.* 4 *Kent's Com.* 447, note. Literally, a taking in hand; a bearing up, or upholding of quarrels and sides, to the disturbance or hindrance of common right. *Co. Litt.* 368 b. Champerty is a species of maintenance, and the terms are frequently used together. See *Champerty.*

MAINTENANT. L. Fr. Presently. *Litt.* sect. 127. *Kelham.*

MAIOR. An old form of mayor. *Mem. in Scacc.* II. 22 Edw. I.

MAIRE. L. Fr. In old English law. Mayor; a mayor. An officer classed with justices and sheriffs. *E à nos justices, viscountes, e* maires, *e autres ministres. Conf. Cartar.* 25 Edw. I.

MAIRE, *Mair.* In old Scotch law. An officer to whom process was directed. Otherwise called "mair of fie [fee,"] and classed with the "serjand." *Skene de Verb. Sign.* voc. *Recordum.*

MAIRE, *Maere.* L. Fr. Mother. Old forms of *mere.*

MAISTER. An old form of *master.* See the old treatise of the "Maisters of the Chauncerie," in Hargrave's Law Tracts.

MAITRE. Fr. In French maritime law. Master; the master or captain of a vessel. *Ord. Mar.* liv. 2, tit. 1, art. 1.

MAJESTAS. Lat. In the Roman law. Majesty; the sovereign authority of the state. *Hallifax, Anal.* b. 3, c. 12, num. 18. The term was applied indifferently to that person, or part of the people, where the supreme authority rested. *Tayl. Civ. Law*, 37.

An offence against sovereignty; more commonly termed *crimen majestatis*, or *crimen læsæ majestatis.* An offence committed against the Roman people, or against its safety. *Dig.* 48. 4. 1. *Cod.* 9. 8.

MAJESTIE. L. Fr. Majesty, or high treason. A term used in the Mirror, taken probably from the *majestas* of the Roman law. *Crabb's Hist. Eng. Law*, 302. 2 *Reeves' Hist.* 349.

MAJOR. Lat. Greater; the greater.

Major numerus in se continet minorem. The greater number contains in itself the less. *Bract.* fol. 16.

Majori summæ minor inest. In the greater sum the less is included. 2 *Kent's Com.* 618. *Story on Agency*, § 172.

MAJOR. Lat. In the civil law. One of full age. *Dig.* 4. 4. 3. 1, 2. *Major annis viginti quinque;* above twenty-five years. *Id.* 4. 4. 43. This word has not, like *minor*, been adopted in English, but the French has *majeure.*

MAJOR. L. Lat. [Germ. meyer.] In old English law. A mayor. *Spelman.* See *Custos.*

Major et communitas; mayor and commonalty. 8 *Co.* 121 b. *Le* major *et la cominalty. Yearb.* T. 10 Edw. III. 3.

MAJOR ANNUS. Lat. The greater year; the bissextile year, consisting of 366 days. *Bract.* fol. 359 b.

MAJORES. Lat. In old English law. Greater persons; persons of higher condition or estate. *Stat. Marlbr.* pr. *Id.* c. 1. *Fleta*, lib. 2, c. 47, § 13.

MAJORA REGALIA. Lat. In feudal law. The greater or higher prerogatives of the crown. 1 *Bl. Com.* 241.

MAJUS. Lat. Greater. *Majus est delictum seipsum occidere quam alium;* it is a greater crime to kill one's self than to kill another. 3 *Inst.* 54.

Majus dignum trahit ad se minus dignum. The more worthy draws to itself the less worthy. *Co. Litt.* 43, 355 b. *Bract.* fol. 175. *Noy's Max.* 6, max. 18.

Omne majus continet in se minus. Every greater contains in itself the less. *Wingate's Max.* 206, max. 59. *Story on Agency*, § 172.

MAJUS JUS. L. Lat. In old practice. Greater right, or more right. A plea in the old real actions. 1 *Reeves' Hist.* 476. *Majus jus merum;* more mere right. *Bract.* fol. 31.

To MAKE. [Lat. *facere;* Fr. *faire.*] To do or perform; to do in form of law. "To *make* oath" is to swear in a prescribed form of law. "To *make* default" is to fail to appear or answer. So in the old phrases "to *make* the duel," "to *make* a fine," "to *make* law," &c.

To MAKE. To have effect. "To *make* for" a party, is to support him. "That case *makes* for me." *Hardr.* 133, arg. See *Facere, Facit.*

To MAKE FAITH. In old Scotch law. To make oath; to swear with the right hand uplifted, that one will declare the truth. 1 *Forbes' Inst.* part 4, p. 235.

To MAKE LAW. [L. Lat. *facere legem;* L. Fr. *faire*, or *parfaire ley.*] In old English practice. To deny under oath the statement or charge of a complaining party; such oath being supported by the oaths of a certain number of persons called *compurgators.* Blackstone supposes the meaning of this phrase to be, "to take the benefit which the law has allowed." 3 *Bl. Com.* 341. But *law*, in this connection, seems to have its ancient technical meaning of *oath.* See *Law, Lex.*

To MAKE OVER. In conveyancing. To transfer; to put out of one's possession; to alienate. This expression corresponds with the Gr. εκποιειν, (q. v.)

MAKING LAW. In old practice. The formality of denying a plaintiff's charge under oath, in open court, with compurgators. One of the ancient methods of trial, frequently, though inaccurately, termed *waging* law, or *wager of law.* 3 *Bl. Com.* 341. It was the process of complying with wager of law. See *Wager of law.*

MAKER. In mercantile law. The person who makes a promissory note. *Story on Notes*, § 3.

MAL DE VENUE. L. Fr. Illness in coming. One of the old essoins. See *Malum.*

MAL GREE. L. Fr. Against the will; without the consent. *Bon gree ou* mal gree *le tenant;* with the consent or without the consent of the tenant. *Britt.* c. 41. Hence the single word *malgre*, and more modern *maugre*, (qq. v.) See *Gree.*

MALA. Lat. [fem. sing. of *malus*, bad.] Bad. See *Malus.*

MALA FIDES. Lat. Bad faith. The opposite of *bona fides*, (q. v.) *Malâ fide;* in bad faith. *Malæ fidei possessor;* a possessor in bad faith. 1 *Mackeld. Civ. Law*, 310, 311, § 289.

MALA GRAMMATICA. L. Lat. Bad grammar.

Mala grammatica non vitiat chartam. Bad grammar does not vitiate a deed. *Wingate's Max.* 18, max. 13. 9 *Co.* 48 a. 2 *Bl. Com.* 379. Neither false English nor bad Latin will destroy a deed, when

the meaning of the party is apparent. *Id. ibid.* The grammatical construction is not always, in judgment of law, to be followed. *Broom's Max.* 299, [535.] See *Bad English.*

MALA PRAXIS. L. Lat. Mal-practice; unskilful management or treatment. Particularly applied to the neglect or unskilful management of a physician, surgeon, or apothecary. 3 *Bl. Com.* 122. This is a great misdemeanor and offence at common law. *Id. ibid.* 1 *Ld. Raym.* 214.

MALA TOLTA. L. Lat. [L. Fr. *mal tolt.*] In old English law. An evil, unjust or oppressive toll or tax; a thing unjustly taken, (*res injuste ablata, seu (ut tunc loquebantur,) tolta vel tulta. Dufresne, Gloss.* voc. *Tolta mala.*

MALA. Lat. [pl. of *malum*, bad.] Bad or evil things; offences; wrongs. See *infra.*

MALA IN SE. L. Lat. Wrongs in themselves; acts morally wrong; offences against conscience. 1 *Bl. Com.* 57, 58. 4 *Id.* 8.

MALA PROHIBITA. L. Lat. Prohibited wrongs or offences; acts which are made *offences* by positive laws, and *prohibited* as such. 1 *Bl. Com.* 57, 58. 4 *Id.* 8.

MALE. Lat. [from *malus*, bad.] Badly; unfavorably. See *Male creditus.*

MALE. L. Fr. [from Lat. *malus*, bad.] Bad; ill. See *Malefeasance, Maletolt.*

MALE CREDITUS. L. Lat. In old English law. Unfavorably thought of; in bad repute or credit. *Bract.* fol. 116, 154.

Maledicta est expositio quæ corrumpit textum. That is a cursed interpretation which corrupts the text. 4 *Co.* 35 a, *Bozoun's case. Broom's Max.* 268, [480.]

MALEFACTOR. Lat. [from *malefacere*, to do wrong.] In old English law. A wrong-doer; an offender; a criminal; a convicted criminal. *Bract.* fol. 104 b. *Fleta*, lib. 1, c. 20, §§ 35, 120.

MALEFEASANCE, *Malfeasance, Malfesance, Malfeazance, Malfaisance.* L. Fr. and Eng. [from *male*, ill, and *faisance*, a doing; Lat. *maleficium.*] A doing of evil; ill conduct; the doing of what one ought not to do. *Cro. Jac.* 266. 1 *Tidd's Pr.* 4.

MALE FAME. L. Fr. Bad character. *Stat. Westm.* 1, c. 12.

MALEFICIUM. Lat. [from *malefacere*, to do wrong.] In the civil law. Wrong-doing; wrong; tort; the commission of an offence; malfeasance. *Inst.* 4. 1, pr. *Bract.* fol. 99, 101, 103.

Maleficia propositis distinguuntur. Evil deeds are distinguished from evil purposes. *Jenk. Cent.* 290, case 9. This is the translation given in Branch's Principia; but as used by Jenkins, the proper translation seems to be, "Wicked deeds are distinguished by their purposes." The putting of ratsbane to kill vermin is not felony, although a man should take it and die of it. *Jenk. Cent. ub. sup.*

MALETOLT, *Mal tolt, Maletot, Male toute.* L. Fr. [L. Lat. *mala tolta*, q. v.] In old English law. An undue or excessive toll, tribute or imposition. Called in Magna Charta (9 Hen. III. c. 30; Johan. c. 41,) *malum toltum*, or *mala tolta*, an evil toll. Lord Coke translates it *male tent. Stat. de Tallagio non concedendo*, c. 3. See *Barr. Obs. Stat.* 174.

MALETOUTE. L. Fr. [L. Lat. *mala tolta.*] In old English law. A tax of 40*s.* on every woolsack exported. *Blackst. Mag. Cart.* Intr. xciv. See *Conf. Cartar.* 25 Edw. I. This word was not always used in a bad sense. *Outre le droiturel* maletoute *de demy marke;* over and above the rightful custom of half a mark. *Rot. Parl.* 27 Edw. III. See 2 *How. State Trials*, 425.

MALFETRIA. Span. In Spanish law. Offence. *White's New Recop.* b. 2, tit. 19, c. 1, § 1.

MALICE. L. Fr. and Eng. [from Lat. *malitia*, q. v.] In criminal law and general practice. Wickedness of purpose; a spiteful or malevolent design against another; a settled purpose to injure or destroy another.

Any formed design of doing mischief. 1 *Hale's P. C.* 455, (Am. ed. note.) 2 *Stra.* 766.—Any evil design in general. 4 *Bl. Com.* 198.—A disposition or inclination to do a bad thing, (*un disposition à faire un male chose.*) 2 *Roll. R.* 461.—General wickedness of heart; inhuman or reckless disregard of the lives or safety of others, as when one coolly discharges a gun, or throws any dangerous missile among a multitude of people, or strikes, even upon provocation, with a weapon that must produce death.* 4 *Bl. Com.* 199, 200. See *U. S. Digest*, Homicide. *Whart. Am. Cr. Law*, §§ 944—967.

Deliberate disregard of the rights of others; as when one carries on the trade

of melting tallow, to the annoyance of the neighboring dwellings. Abbott, C. J. 3 *Barn. & Cress.* 584.

Wilfulness. 4 *Mason's R.* 115. The doing any act without a just cause. 1 *Chitt. Gen. Pr.* 46. Otherwise called malice *in law*. Pollock, C. B. 12 *Mees. & W.* 787. 2 *Greenl. Ev.* § 453. Malice, in the legal acceptation of the word, is not confined to personal spite against individuals, but consists in a conscious violation of the law, to the prejudice of another. Lord Campbell, 9 *Cl. & Fin.* 321. Malice, in its legal sense, means a wrongful act done intentionally, without just cause or excuse. Bailey, J. 4 *Barn. & Cress.* 255. Shaw, C. J. 9 *Metcalf's R.* 93, 104, 105. 1 *Greenl. Ev.* § 34, note. And malice may not only be presumed from the total absence of probable cause, but also from gross and culpable negligence in omitting to make suitable and reasonable inquiries. Story, J. 3 *Story's R.* 1, 7.

MALICE AFORETHOUGHT, otherwise called MALICE PREPENSE. [L. Lat. *malitia præcogitata.*] In criminal law. Malice previously and deliberately entertained. This is essential to constitute the crime of murder. 4 *Bl. Com.* 198.

MALICIOUS ABANDONMENT. In criminal law. The desertion of a wife or husband without just cause.

MALICIOUS INJURY. In criminal law. An injury committed out of spite or ill-will against another; an injury committed wantonly, wilfully, or without cause.* 1 *Chitt. Gen. Pr.* 136.

MALICIOUS PROSECUTION. In practice. The procuring the indictment or arrest of a person, maliciously and without probable cause. 3 *Chitt. Bl. Com.* 126. 1 *Archb. N. Prius*, 446. 3 *Story's R.* 1. *U. S. Digest*, Malicious Prosecution.

MALITIA. Lat. [from *malus*, bad.] In criminal law. An express evil design. 4 *Bl. Com.* 199. Wickedness of purpose; malice. See *Malice. Malitia excogitata;* meditated malice. *Fleta*, lib. 1, c. 28, § 16. *Malitia præcogitata;* malice aforethought, evil intended beforehand. 4 *Bl. Com.* 198, 200.

Malitia supplet ætatem. Malice supplies [or makes up for] age; wickedness of design supplies the want of age. *Dyer*, 104 b. An infant between the ages of seven and fourteen may be guilty of felony and punished capitally, if shown to be possessed of a mischievous discretion, or to be *doli capax.* 1 *Bl. Com.* 464, 465. 4 *Id.* 22, 23, 212. *Broom's Max.* 149, [232.]

Malitiis hominum est obviandum. The wicked or malicious designs of men must be thwarted. 4 *Co.* 15 b.

MALITIOSE. L. Lat. In old English law. Maliciously. *Comb.* 116.

MALLARE. L. Lat. [from *mallum*, q. v.] In old European law. To cite or summon to court, (*in mallum vocare.*) *L. Salic.* tit. 52, § 2. *L. Alaman.* tit. 36, § 3. *L. Boior.* tit. 1, c. 11, § 2. *Spelman.*

MALLOBERGIUM. L. Lat. [from *mallum*, a court, and *bergium*, borough, city or people.] In old European law. A meeting of the people in public or general assembly. *Spelman.*

MALLUM, *Mallus.* L. Lat. In old European law. A court of the higher kind, (*placitum majus,*) in which the more important business of the county was dispatched by the count or earl, (*comes.*) *Spelman. L. Alaman.* tit. 36, § 3. *Formul. Solen.* 173.

A public national assembly. 1 *Rob. Charles* V. Appendix, note xl.

Spelman considers this word to be of Saxon origin, but the radical import of it to be doubtful. The Sax. *mœl* has the several meanings of an assembly, a plea or plaint, law or judgment, and a banquet.

MALT TAX. An excise duty upon malt in England. 1 *Bl. Com.* 313. 2 *Steph. Com.* 581.

MAL-TOLTE. Fr. In old French law. A term said to have arisen from the usurious gains of the Jews and Lombards, in their management of the public revenue. *Steph. Lect.* 372.

MALUM. Lat. Evil; wickedness; an evil; an offence or wrong.

Malum non præsumitur. Wickedness is not presumed. *Branch's Princ.* 4 *Co.* 72 a.

Malum quo communius eo pejus. The more common an evil is, the worse it is. *Branch's Pr.*

MALUM. L. Lat. [L. Fr. *mal.*] In the old law of essoins. A misfortune; an infirmity; a sudden indisposition, by which a party was prevented from appearing in court when summoned. See *Essoin.*

Malum lecti; (Fr. *mal de lit;*) misfortune or sickness of bed; that kind of infirmity or indisposition by which a party was confined to his bed; ordinary sickness

or indisposition. *Spelman. Bract.* fol. 344 b. See *De malo lecti, Essoin.*

Malum veniendi; (Fr. *mal de venue.*) misfortune or sickness of [in] coming; sickness or accident happening to a party on his way to court. *Bract.* fol. 339, *et seq.* Called by Spelman, *malum viæ. Spelman,* voc. *Essoniare.*

MALUM. Lat. In the Roman law. A mast; the mast of a ship. *Dig.* 50. 17. 242, pr. Held to be part of the ship. *Id. ibid.*

MALUM IN SE. Lat. A wrong in itself; an act or case involving illegality from the very nature of the transaction, upon principles of natural, moral and public law. *Story on Agency,* § 346. Otherwise called *malum per se. Vaugh.* 332.

MALUM PROHIBITUM. Lat. A wrong prohibited; an act prohibited as wrongful; an act involving an illegality resulting from positive law. *Story on Agency,* § 346. See *Vaugh.* 330, 332, 358.

MALUS. Lat. Bad; evil; wicked; unlawful.

Malus usus abolendus est. A bad or invalid custom is [ought] to be abolished. *Litt.* sect. 212. *Co. Litt.* 141. 1 *Bl. Com.* 76. *Broom's Max.* 418, [715.] The qualities of a *good* custom are enumerated by Blackstone, *ub. sup.* "Every use is evil that is against reason." *Co. Litt.* 141 a.

MALVEILLES. L. Fr. Misdemeanours. *Kelham. Cowell.*

MALVEIS, *Malveys.* L. Fr. In old practice. Bad; defective; faulty. *Malveis briefe. Yearb.* T. 5 Edw. III. 23. II. 2 Edw. II. 33.

MALVEIS PROCUROURS. L. Fr. A term applied, in old statutes, to those who used to pack juries by nomination or other practice. *Artic. sup. Chart.* c. 10. 2 *Inst.* 561.

MALVERSATION. [from Lat. *male,* ill, and *versari,* to behave.] Evil conduct; misconduct; corruption or extortion in office. *Webster.*

MAMIUM. L. Lat. In old English law. Maihem or maim; mutilation. *Keilw.* 95.

MAN. [Lat. *homo.*] In feudal law. A vassal; a tenant or feudatory. The Anglo-Saxon relation of *lord and man* was originally purely personal, and founded on mutual contract. 1 *Spence's Chancery,* 37.

MANAGIUM. L. Lat. [from L. Fr. *manage,* a dwelling.] In old records. A mansion house, or dwelling place. *Cowell. Blount.*

MANASSE. L. Fr. In old English law. Menace; threat. *Keilw.* 52 b.

MANBOTE. Sax. [from *man,* vassal, and *bote,* compensation.] In Saxon law. A pecuniary compensation paid to a lord for killing his *man,* that is, his vassal or tenant. *LL. Inæ,* c. 75. *Spelman. LL. Gul. Conq.* l. 8.

MANCA. L. Lat. [Sax. *mancs.*] A Saxon coin of the value of thirty pence. *Spelman,* voc. *Mancusa.*

MANCARE. L. Lat. In old European law. To mutilate. *L. Alam.* tit. 12, § 1. *Spelman.*

MANCEPS. Lat. In the Roman law. A purchaser, one who *took* the article sold in his *hand,* (*qui manu cepit;*) a formality observed in certain sales. *Calv. Lex. Adam's Rom. Ant.* 55. See *Mancipatio.*

A farmer of the public taxes. *Id.*

MANCIPARE. Lat. [from *manus,* hand, and *capere,* to take.] In the Roman law. To sell, alienate or make over to another; to sell with certain formalities. See *Mancipatio.*

To sell a person; one of the forms observed in the process of emancipation. See *Emancipation.*

MANCIPATIO. Lat. [from *mancipare,* q. v.] In the Roman law. A kind of sale in the presence of five witnesses, accompanied with delivery of possession or seisin; the purchaser *taking* the thing sold in his *hand.* It took place among Roman citizens only, and was confined to certain property called *res mancipi* or *mancipia. Calv. Lex. Adam's Rom. Ant.* 55, 58.

The imaginary sale of a son in the ceremony of emancipation; so called, because the natural father gave over (*mancipabat,* i. e. *manu tradebat*) his son to the purchaser, adding these words, *Mancupo tibi hunc filium qui meus est. Adam's Rom. Ant.* 52. *Cooper's Just. Inst.* Notes, *442, 443.

MANCIPI RES. Lat. In old Roman law. A name given to one of the leading divisions of private property, the precise meaning of which is not settled. Ulpian defines or describes it as embracing estates in Italy, (*prædia in Italico solo,*) which were acquired by mancipation, usucapion or adjudication, those rights of country estates called servitudes, slaves and working animals. *Calv. Lex.* Gibbon explains it to mean things originally taken in war

(*manu capti*,) and which were sold in the particular form called *mancipatio*, in order to assure the purchaser that they had been the property of an enemy, and not of a fellow citizen. 3 *Gibbon's Rom. Emp.* 176, (Am. ed. 1844.)

MANCIPIUM. Lat. In the Roman law. A slave; so called, because *taken* from the enemy by *hand*, (*quod ab hostibus* manu capiantur.) *Dig.* 1. 5. 43. *Inst.* 1. 3. 3. *Cod.* 4. 56, 57. 1 *Bl. Com.* 423.

A sale. The same as *mancipatio*, (q. v.)

MANCOMUNAL. Span. In Spanish law. An obligation is said to be *mancomunal*, when one person assumes the contract or debt of another, and makes himself liable to pay or fulfil it. *Schmidt's Civ. Law*, 120.

MANCUS. L. Lat. In Saxon law. A coin of the value of thirty pence, or 7s. 6d. *Spelman.*

MANDAMIENTO. Span. In Spanish law. Commission; authority or power of attorney. A contract of good faith, by which one person commits to the gratuitous charge of another, his affairs, and the latter accepts the charge. *White's New Recop.* b. 2, tit. 12, c. 1.

MANDAMUS. Lat. (We command.) In practice. A writ which issues out of a superior court, directed to any person, corporation, or inferior court, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court issuing it has previously determined, or at least supposes to be consonant to right and justice.* 3 *Bl. Com.* 110. It is a high prerogative writ, and of a most extensively remedial nature. *Id. ibid.* Cowen, J. 4 *Hill's* (N. Y.) *R.* 581. It is used principally for public purposes, and to enforce the performance of public rights or duties; as to compel inferior courts to do some act belonging to their duty in order to prevent a delay or denial of justice; to compel the admission or restoration of the applicant to any office or franchise of a public nature, &c. It lies, however, to enforce some private rights when withheld by public officers, as to compel a clerk to record a deed, to compel a corporation to exhibit their books to a corporator, and the like. 3 *Bl. Com.* 110, 264. 3 *Steph. Com.* 681. See the cases in which it lies enumerated in 1 *Chitt. Gen. Pr.* 789—806. *United States Digest*, Mandamus. In general, it can be properly employed only where a party has a legal right, and there is no other adequate legal remedy; and it does not lie where a party has a remedy by action. 2 *Cowen's R.* 444. 18 *Wendell's R.* 575. 21 *Id.* 20. 2 *Hill's* (N. Y.) *R.* 45. 5 *Id.* 616. 6 *Id.* 243. And it can issue only in cases where the act to be done is merely ministerial, and with regard to which, nothing like judgment or discretion in the performance of his duties is left to the officer. 17 *Howard's R.* 284.

A *mandamus* has been held to be a *suit*, within the Constitution of the United States; for it is a litigation of a right in a court of justice, seeking a decision. 2 *Peters' R.* 449. 14 *Id.* 564.

The writ derives its name from its emphatic word, when framed in Latin; *Nos igitur—tibi* mandamus, *firmiter injungendo*, &c. See *Bohun's Instit. Leg.* 163.

MANDANS. Lat. [from *mandare*, q. v.] In the civil law. One who gives a thing in charge to another; one who requires, requests or employs another to do some act for him. *Inst.* 3. 27. 1, *et seq.*

MANDANT. Fr. [from Lat. *mandans*, q. v.] In French and Scotch law. The employing party in the contract of *mandatum*, or mandate. *Story on Bailm.* § 138.

MANDARE. Lat. In old practice. To command. Hence the term *mandamus*, (q. v.) although *præcipere* or *præcipimus*, (qq. v.) was the usual word in writs.

To commit. *Mandare executioni;* to commit to execution, to put in execution. *Clerke's Prax. Cur. Adm.* tit. 58, 59.

To make return to a writ. *Si fraudulenter* mandavit *quod ille qui attachiari debuit non fuit inventus in ballivâ suâ;* if he has fraudulently returned that he who ought to be attached was not found in his bailiwick. *Bract.* fol. 441 b. *Si vice comes* mandaverit; if the sheriff have returned. *Stat. Westm.* 2, c. 9.

In the civil law. To give in charge; to commit to one's care; to request another to do some act for one. *Dig.* 17. 1. 2. **Qui mandat ipse fecisse videtur.** He who requests [another to do an act for him] is supposed to have done it himself. *Story on Bailm.* § 147.

Mandata licita recipiunt strictam interpretationem, sed illicita latam et extensam. Lawful commands receive a strict interpretation, but unlawful commands a broad and extended one. *Bac. Max.* reg. 16.

MANDATAIRE. Fr. In French law.

A person employed by another to do some act for him; a mandatary. *Pothier, Tr. de Mandat*, art. prel. n. 1.

MANDATARIUS. Lat. [from *mandare*, q. v.] In the civil law. A mandatary. **Mandatarius terminos sibi positos transgredi non potest.** A mandatary cannot exceed the limits assigned him. *Jenk. Cent.* 53.

MANDATARY. [Lat. *mandatarius*, from *mandare*, q. v.] One to whom a charge or commandment is given. *Cowell.*

In the law of bailment. One who is employed by another to do some act for him without reward, in regard to some personal property bailed or delivered to him.* One who undertakes to do an act for another, without reward. 2 *Kent's Com.* 569, 570.

MANDATE. [from Lat. *mandatum*, q. v.] A kind of bailment when one undertakes, without recompense, to do some act for another, in respect to the thing bailed. 2 *Kent's Com.* 568.—A bailment of goods without reward, to be carried from place to place, or to have some act performed about them. *Story on Bailm.* § 5. *Jones on Bailm.* 36. It is also called, after the civil law, *mandatum*, (q. v.) The word *mandate* is borrowed from the Scotch law. See *Bell's Dict.* In old English law, the word *commandment* was used. 2 *Leon.* 75.

In practice. A judicial command; that part or clause of a writ containing the words "We command you," &c.

MANDATO. Span. [from Lat. *mandatum*, q. v.] In Spanish law. The contract of mandate. *Escriche, Dicconario Razonado. Schmidt's Civ. Law*, 197.

MANDATOR. Lat. [from *mandare*, q. v.] In the civil law. One who gives a thing in charge to another; one who employs another to do some act for him in regard to property bailed.* *Cod.* 8. 41. 10. *Story on Bailm.* § 138. Called, also, *mandans*, (q. v.) In old English law, a *commander*. 2 *Leon.* 75.

MANDATUM. Lat. [from *mandare*, q. v.] In the civil law. That kind of bailment in which the one party (*mandans*,) gives something in charge (*mandat*,) to the other to do for him; and the latter (*mandatarius*,) undertakes to do the act without recompense.* *Inst.* 3. 27, pr. *et per tot. Dig.* 17. 1. *Cod.* 4. 35. 2 *Kent's Com.* 568. *Story on Bailm.* § 137. *Jones on Bailm.* 36.

In old practice. The mandate or warrant of a court. *Clerke's Prax. Cur. Adm.* tit. 1, 9.

MANDAVI BALLIVO. L. Lat. (I have commanded, or made my mandate to the bailiff.) In English practice. The return made by a sheriff, where the bailiff of a liberty has the execution of a writ, that he has commanded the bailiff to execute it. 1 *Tidd's Pr.* 309. 2 *Id.* 1025.

MANELETA. L. Lat. [Sc. *guld.*] In old Scotch law. A noxious weed growing among corn or grain. *Skene de Verb. Sign.*

MANENS, (plur. MANENTES.) L. Lat. [from *manere*, to remain or stay.] In Saxon and old English law. A kind of tenant inhabiting a manse, (*mansi incola;*) an agricultural tenant, (*qui hydan colit.*) *Spelman.* The ceorls are mentioned in the later Anglo-Saxon charters, under the name of *manentes*. 1 *Spence's Chancery*, 50.

MANERA. Span. In Spanish law. Manner or mode. (Lat. *modus.*) *Las Partidas*, part. 4, tit. 4, l. 2.

MANERIUM. L. Lat. [from *manere*, to remain or abide.] In old English law. A manor. *Spelman. Bract.* fol. 434. See *Fleta*, lib. 6, c. 51. Manerium *dicitur à* manendo, *secundum excellentiam; sedes magna, fixa et stabilis.* It is called *manor* (*manerium*,) from *manendo*, (abiding,) *par excellence;* a large seat or place of abode, fixed and permanent. *Co. Litt.* 58 a. It might consist of several vills or hamlets. *Fleta*, lib. 4, c. 15, § 9. *Id.* lib. 6, c. 51. *Bract. ub. sup.*

A manor house. *Spelman.* See *Manor.*

MANIFEST. In commercial law. One of a ship's papers, containing a specification of the nature and quantity of the cargo laden, the place where it was taken on board, and the port for which it is destined, with other particulars; sometimes called a *sea-letter.** *Jacobsen's Sea Laws*, 301. This paper is expressly required for the custom-house by the English and American statutes, which prescribe its form and contents. *Stat.* 3 & 4 *Will.* IV. c. 52. *Act of Congress*, March 2, 1799. 1 *Laws of U. S.* (Story & Sharswood's ed.) 573, 593.

MANIFESTUS. Lat. Clear; evident; manifest.

Manifesta probatione non indigent. Manifest things need no proof. 7 *Co.* 40 b, *Bedell's case.*

MANIFICUS. L. Lat. [from *manus*, hand, and *facere*, to do.] In old English

law. Done with the hand; manual. *Opus manificum;* manual work, such as making a hedge or ditch, ploughing, &c. *Fleta*, lib. 2, c. 48, § 3.

MANNER. A thing stolen, in the hand of the thief; a corruption of *mainour*, (q. v.)

MANNING. [Sax. *maninge.*] A translation of *mannina;* a term used in the barbarian codes to denote a summons or summoning to court. *Spelman*, voc. *Mannina.*

In old records. A day's work of a man. *Cowell.*

MANNIRE. L. Lat. [from Sax. *manien*, to summon.] In old European law. To cite or summon to court, (*in legem vocare.*) *L. Salic.* tit. 1, §§ 1, 2, 3. *Spelman.*

MANOPERA, MANOPUS. L. Lat. [from *manus*, hand, and *opera*, *opus*, work.] In old European law. Work done by hand, (*quod manu perficitur;*) manual labor. *Spelman.* The same with *opus manificum.* See *Manificus.*

In old English law. A day's work. *Id.* Used also as the barbarous Latin for *mainour*, (q. v.) *Cowell.*

MANOR. [L. Fr. *maner*, *manoir*, *maneire;* L. Lat. *manerium*, q. v.] In English law. A feudal estate of a noble kind (*feodum nobile,*) granted partly to tenants in consideration of certain services, and partly reserved to the lord for the use of his family, with a jurisdiction over the tenants for the lands granted them; formerly called a barony, and in modern times a lordship, (*dominium.*) *Spelman.* —A district of ground held by a lord or great personage, who kept to himself such parts of it as were necessary for his own use, which were called *terræ dominicales* or demesne lands, and distributed the rest to freehold tenants, to be held of him in perpetuity. 1 *Steph. Com.* 202. 2 *Bl. Com.* 90. See 1 *Crabb's Real Prop.* 71, § 88. See *Fleta*, lib. 2, cc. 72—88, for a minute description of a manor and manor life in England, about the time of Edward I.

A franchise, or right to hold courts and have suit and service rendered, or quit rents paid by copyholders and others. 1 *Chitt. Gen. Pr.* 166.

In the United States, a manor is a tract of land occupied by tenants who pay a fee-farm rent to the proprietor, sometimes in kind; and sometimes perform certain stipulated services. In the province of New-York, large tracts of land were formerly granted as manors, with all the manorial rights and incidents. In the county of Westchester were the manors of Fordham, Pelham, Scarsdale, Philipsburg, Cortlandt and others. The manorial tenures in other parts of the State have occasioned much litigation, but have, with some modifications, continued to the present day.

Spelman derives this word, through the L. Lat. *manerium*, from *manendo*, (remaining, or abiding,) because the lord was accustomed to reside permanently (*manere*) on the manor as well as the tenants; and hence the latter were anciently called *manentes.* Lord Coke suggests the same etymology, though he prefers another from the Fr. *mesner*, to guide, the tenants being under the lord's guidance and direction. *Co. Litt.* 58 a. *Co. Cop.* sect. 31. See *Manerium.*

MANRENT. In Scotch law. The service of a man or vassal. A bond (band or letter) of manrent was an instrument by which a person, in order to secure the protection of some powerful lord, bound himself "in manrent and service to be leil and trew *man* and servant" to such lord, specifying the services. Sir Walter Scott, who has given some forms of these bonds, observes that the proper spelling is *manred.* *Minstrelsy of Scottish Border*, "Lord Maxwell's Goodnight." Skene calls homage "a band of man-rent." *De Verb. Sign.* voc. *Homagium.*

MANSA. L. Lat. The same as *mansus*, (q. v.)

MANSE. [L. Lat. *mansa*, *mansus*, *mansum*, qq. v.] In old English law. A habitation or dwelling, generally with land attached. *Spelman*, voc. *Mansus.*

A residence or dwelling-house for the parish priest, (*mansus presbyteri;*) a parsonage or vicarage house. *Paroch. Ant.* 431. *Cowell.* Still used in Scotch law, in this sense. *Bell's Dict.*

MANSELLUM. L. Lat. In old European law. A little manse or dwelling. *Marculf.* lib. 2, form. 36. *Spelman.*

MANSIA. L. Lat. In Saxon law. A dwelling; a country habitation, (*sedes rustica;*) embracing not only buildings, but sufficient land for the support of a family. *Chart. Reg. Kenulph.* cited in *Spelman.*

MANSIO. L. Lat. [from *manere*, to stay.] In old European law. An inn; a place of entertainment and accommodation for travellers. *Capitul. Carol.* lib. 6, c. 81. *Formul. Solen.* 33. *Spelman.*

In old English law. A dwelling; a mansion; which might be constructed of several houses, (*mansio esse poterit constructa ex pluribus domibus.*) *Bract.* fol. 434. See the distinction between *mansio* and *manerium*. *Id. ib. Fleta*, lib. 6, c. 51.

MANSION. [from Lat. *mansio*, q. v.] A dwelling-house. 1 *Chitt. Gen. Pr.* 167.

In old English law. Residence; dwelling. "Mansion or habitation will not indenize him." *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 328.

MANSION-HOUSE, in its common sense, not only includes the dwelling-house, but also all out-houses, as barn, stable, cow-house, dairy-house, if they be parcel of the mansion, though they be not under the same roof, or joining or contiguous to it. 1 *Hale's P. C.* 558, 559. 1 *Chitt. Gen. Pr.* 168.

MANSIUNCULA. L. Lat. [dimin. of *mansio*, a dwelling.] In old English law. A little dwelling. *Fleta*, lib. 4, c. 22, § 6.

MANSLAUGHTER. In criminal law. The unlawful killing of another, without malice, either express or implied; which may be either voluntarily, upon a sudden heat, or involuntarily, but in the commission of some unlawful act. 1 *Hale's P. C.* 466. 4 *Bl. Com.* 191. See *Wharton's Am. Crim. Law*, §§ 931—933. *Lewis' U. S. Crim. Law*, 348, *et seq.*

This term is a literal translation of the L. Lat. *homicidium*, though it does not fully answer to the English *homicide*, being only a species of that crime.

MANSUETUS. Lat. [from *mansuescere*, to tame.] In the civil law. Tame; tamed; as though accustomed to come to the hand, (*quasi ad* manum *venire* suetus.) *Dig.* 3. 1. 1. 6. *Festus*, 9. 2 *Bl. Com.* 391. *Bract.* fol. 8 b, 9. *Calv. Lex.* The opposite of *ferus*.

MANSUM. The same as *Mansus*, (q. v.)

MANSURA. L. Lat. In old European law. A dwelling or house; the same as *mansus*, (q. v.) *Spelman.*

MANSUS, *Mansum*, *Mansa*. L. Lat. [from *manere*, to stay or dwell.] In old European law. A dwelling with a sufficient portion of land for the support of one family; corresponding with the *familia* of Bede, and the *hida* of the Saxons. Otherwise called *colonica*, (q. v.;) a country dwelling. *Spelman.* Montesquieu supposes that it was a particular portion of land belonging to a farm where there were bondmen. *Esprit des Loix*, liv. 30, c. 13.

A portion of land sufficient to be worked by a yoke of oxen for a year. This was the sense of the word in Italy, according to an old vocabulary cited by Spelman. The same with the English oxgang (q. v.) or bovate.

A house or dwelling without land; a house in a city; a messuage. *Spelman.*

MANUCAPERE. L. Lat. [from *manus*, hand, and *capere*, to take.] In old law and practice. To become surety; to offer one's self as a surety to redeem another from imprisonment, and to have him in court at an appointed day. *Spelman.* To become bail for another; literally, to *take in hand*. *Cro. Jac.* 97. But see 1 *Stra.* 200, arg.

Spelman observes that *manucapere* is the proper correlative of *balliare*, (to bail,) and not its equivalent; the office of the sureties being to *receive* the party into their hands, and to *deliver* him. This corresponds with the technical idea of bail, which is said to be the act of the court. 1 *Salk.* 8. 1 *Tidd's Pr.* 238.

MANUCAPTIO. L. Lat. [from *manucapere*, q. v.] In old English law. Manucaption; surety or security. *Fleta*, lib. 1, c. 27, § 18.

MANUCAPTION. [L. Lat. *manucaptio*, q. v.] In practice. The same with *mainprise*, (q. v.) which is similarly derived.

MANUCAPTOR. L. Lat. [from *manucapere*, q. v.] In old English law. A surety for another's appearance. *Fleta*, lib. 1, c. 26, § 19. The same with *mainpernor*, (q. v.) which is similarly derived. Sometimes applied, as an English word, to ordinary bail. "Manucaptors are but gaolers *pro tempore*." 2 *Show.* 202.

MANU BREVI. Lat. With a short hand; shortly; directly; by the shortest course; without circuity. *Manu longa;* indirectly; circuitously. Terms used by the civilians. *Calv. Lex.*

MANUFACTURE. [from Lat. *manus*, hand, and *factura*, a making.] The process of making a thing by art. Buller, J. 2 *H. Bl.* 463, 471.

A thing made by art. *Id. ibid.*

MANUFIRMARE. L. Lat. In old European law. To confirm with one's hand or signature, (*subscribendo roborare.*) *Spelman.*

MANU FORTI. Lat. With strong hand. A term used in old writs of trespass. *Manu forti et cum multitudine gentium;* with strong hand and multitude of people. *Reg. Orig.* 183.

MANUMISSION. [Lat. *manumissio*, from *manumittere*, q. v.] In the Roman law. The giving a slave or bondman his liberty; the discharging one from the power of another. *Manumission*, as explained by Ulpian in his Institutes, was a sending out of *hand*, (*de manû missio;*) that is, a giving of liberty, (*datio libertatis.*) As long as a person was in servitude, he was subject to the *hand* and power of his master, (*manui et potestati suppositus est,*) but when manumitted, he was released from such power, (*manumissus liberatur potestate.*) *Dig.* 1. 1. 4. This passage is copied in the Institutes of Justinian, with a slight variation. *Inst.* 1. 5, pr.

In old European law. The enfranchisement of a slave; the freeing a villein out of his bondage. 1 *Rob. Charles* V. 32, and Appendix, note xx. *Fleta*, lib. 4, c. 11, §§ 17, 21. *Cowell.*

MANUMITTERE. Lat. [from *manus*, the hand, and *mittere*, to send.] In civil and old European law. To set free; to send, dismiss or discharge *out of the hand*, or power; to manumit. *Fleta*, lib. 4, c. 11, §§ 17, 21. See *Manumission.* Manumittere *idem est quod extra* manum *vel potestatem ponere;* to manumit is the same as to put out of the hand or power. *Co. Litt.* 157.

MANUOPERA. L. Lat. An old form of *mainour*, (q. v.) Stolen goods taken upon a thief apprehended in the fact. *Cowell.* Properly, *manuopere*, (abl. of *manuopus.*) *Cum* manuopere *capti;* taken with the *mainour. Fleta*, lib. 2, c. 52, § 42.

MANUPASTUS. L. Lat. [L. Fr. *maynpast.*] In old English law. A household, or family. *Spelman. Bract.* fol. 124 b. *Fleta*, lib. 2, c. 52, § 7.

A domestic servant. *Spelman. Vaugh.* 115.

MANUPES. L. Lat. In old records. A foot of full and legal measure. *Cart. Ric.* I. cited in *Cowell.*

MANURABLE. [from *manure*, q. v.] In old English law. Capable of being had or held in hand; capable of manual occupation; capable of being cultivated; capable of being touched; tangible; corporeal. "Corporeal things are such as are *manurable.*" *Hale's Anal.* sect. xxiv.

MANURE. L. Fr. and Eng. [from *main*, the hand.] In old English law. To occupy; to use or cultivate; to have in manual occupation; to bestow manual labor upon. "Let him keep it [the tenement] a year and a day without *manuring.*" "He shall enter and *manure* those lands and tenements as his own." *Cowell*, voc. *Gavelet.* Perhaps another form of *mainoverer*, to work with the hand.

MANUS. Lat. and L. Lat. In old English law. A hand. An oath, as taken with the *hand* on the Gospels. *Spelman.*

A person making oath; a compurgator. *Jurare duodecima* manu; to swear by the twelve-hand; to swear by the oaths of twelve, that is, eleven compurgators besides the party himself.

A degree or condition. *Manûs mediæ;* of a middle rank. *Manûs infimæ;* of the lowest class. *Cowell.*

In the civil law. Power or authority. See *Manumission.*

MANUS MORTUA. L. Lat. A dead hand; mortmain. *Spelman.*

MANUTENENTIA. L. Lat. In old English law. Maintenance. *Spelman*, voc. *Manutenere.*

MANUTENERE. L. Lat. [from *manus*, the hand, and *tenere*, to hold; Fr. *maintenier.*] In old English law. To maintain; to support, assist or defend; to take one's part; to assist one in carrying on his suit. *Spelman. Manutenere placitum—querelam;* to maintain one's plea—plaint. *Reg. Orig.* 182, 189. *Fleta*, lib. 2, c. 66, § 23.

Spelman supposes this word to have been introduced by the Normans.

MANWORTH. In old English law. The price or value of a man's life or head. *Cowell.*

MANZIE. Sc. [L. Lat. *machamium.*] In old Scotch law. Maihem; mutilation of the body of a person. *Skene de Verb. Sign.* voc. *Machamium.*

MARA. L. Lat. In old records. A mere or moor; a lake, pool or pond; a bog or marsh that cannot be drained. *Cowell. Blount. Spelman.*

MARAS, *Mares, Marreys, Maries, Marys.* L. Fr. A marsh, or marshy ground.

MARASTRE. L. Fr. A mother-in-law. *Kelham.* A step-mother. *Britt.* c. 119.

MARCA. L. Lat. A mark; a coin of the value of 13s. 4d. *Spelman.* See *Mark.*

MARCA, *Marcha, Marchia.* L. Lat. A limit or bound; a boundary line or border. *Spelman.*

MARCATA. L. Lat. [from *marca*, q. v.] In old English law. That which is

of the value of a mark; a mark's worth. *Glanv.* lib. 12, c. 5.

Land of the annual value or income of one mark. *Spelman.*

MARCH. In Scotch law. A boundary line, or border. *Bell's Dict.* The word is also used in composition; as *march-dike, march-stone.*

MARCHE. L. Fr. A market. *Britt.* c 2. *Stat. Westm.* 1, c. 23, 31.

MARCHERS. In old English law. Noblemen who lived on the marches of Wales or Scotland, and who, according to Camden, had their private laws, as if they had been petty kings; which were abolished by the statute 27 Hen. VIII. c. 26. Called also Lords Marchers. *Cowell.*

MARCHES. [L. Lat. *marchia;* Lat. *limites, confinia, contermina.*] Limits; confines; bounds or borders; particularly the borders between England and Wales, and those between England and Scotland. *Cowell. Litt.* sect. 156. *Co. Litt.* 106 b. See *Bacon's Arg.* Jurisdiction of the Marches, *Works*, iv. 257.

MARCHETA, *Marchetum, Merchetum, Marchet, Merchet.* In old Scotch law. A custom for the lord of a fee to lie the first night with the bride of his tenant. Abolished by Malcolm III. *Skene de Verb. Sign. Spelman.* 2 *Bl. Com.* 83.

A fine paid by the tenant for the remission of such right, originally a mark or half a mark of silver. *Spelman.*

In old English law. A fine paid for leave to marry, or to bestow a daughter in marriage. *Cowell.*

The etymology of this word is variously given; from Germ. and old Scotch *march*, a horse; Lat. *marca*, a mark; and Brit. *merch*, a maid. *Spelman.* The first of these is approved by Skene. *De Verb. Sign.*

MARCHIA. L. Lat. In old English law. A march, or border. *Spelman*, voc. *Marca.* The border between England and Wales. *Mag. Cart. Joh.* c. 56.

In feudal law. The dignity or territory of a *marchio. Feud. Lib.* 1, tit. 14. *Lib.* 2, tit. 10.

MARCHIARE. L. Lat. In old records. To adjoin, or border upon. *Cowell.*

MARCHIO. L. Lat. In old records. An inhabitant of a border, or border district. *Spelman.*

In English law. A marquess. 1 *Bl. Com.* 397. *Bacon's Arg.* Jurisdiction of Marches.

In old German law. A margrave, (*comes limitaneus.*) *Calv. Lex. Skene de Verb. Sign.* voc. *Baro.*

In feudal law. One who was invested with the fief or dignity called a *marchia. Feud. Lib.* 2, tit. 10.

MARCULFUS. A monk of the seventh century, whose collections of *Formulæ*, (embracing forms both judicial and extra-judicial) is of great celebrity. 1 *Mackeld. Civ. Law*, 79, § 91. *Steph. Plead.* Appendix, Note (2.)

MARE. Lat. The sea. *Mare Græcorum;* the sea of the Greeks, or Grecian Sea; the Mediterranean. *Bract.* fol. 338.

MARE CLAUSUM. Lat. The sea closed, or close, that is, not open or free. The title of Selden's great work, intended as an answer to the *Mare Liberum* of Grotius; in which he undertakes to prove the sea to be capable of private dominion. 1 *Kent's Com.* 27. *Hargr. Law Tracts*, 10.

MARE LIBERUM. Lat. The sea free. The title of a work written by Grotius against the Portuguese claim to an exclusive trade to the Indies, through the South Atlantic and Indian oceans; showing that the sea was not capable of private dominion. 1 *Kent's Com.* 27.

MAREMIUM, *Maresmium, Maresnium.* L. Lat. [from Fr. *marreim, marrein*, or *marisne.*] In old English law. Timber. *Co. Litt.* 53 a. See *Mæremium.*

MARESCALCIA. L. Lat. In old English law. Marshalsea; the office of marshal. A species of grand serjeanty, granted in fee to the Earl [now Duke] of Norfolk. *Fleta*, lib. 2, c. 4, § 1.

MARESCALLUS, *Marescalcus, Marascalcus, Mariscaldus.* L. Lat. [from Teut. marre, or marth, a horse, and schalk, an attendant or servant.] In old European law. A horse-keeper or hostler; a groom of the stable, (*equorum minister, agaso, stabularius.*) One who had charge of a certain number of horses. *Spelman. L. Alaman.* c. 79. *Capitul. Carol. Calv.* c. 13. A marescal, mareshal, or marshal.

An officer of the imperial stable, who served under the *comes stabuli. Spelman.* A riding master, or equerry. *Id.*

A military officer who acted as inspector and quartermaster; and whose duty was to array or *marshal* the host in order of battle, and to lead the van, particularly as commander of the cavalry; (*hostem lustrare, castrametationi locum seligere, pugnæ ineundæ rationem decernere, primam aciem*

educere, equestribusque præfectus turmis, pugnæ initium accendere.) *Spelman.* See *Fleta*, lib. 2, c. 4, § 3.

In old English law. An officer of the palace or royal household, who guarded the sovereign's person, and maintained the peace of the household. *Spelman.* See *Fleta*, lib. 2, cc. 4, 5, 15.

An officer of the Court of Exchequer. *Id.* lib. 2, c. 30.

An officer of a manor. *Id.* lib. 2, c. 74.

A high officer of state, with certain judicial powers. See *Marshal.*

A ministerial office of justice. See *Marshal.*

MARESCHAUCIE. L. Fr. Marshalsea; the office or jurisdiction of the mareshal or marshal. *Britt.* fol. 1 b.

MARESHAL. L. Fr. Marshal; a high officer of the royal household. *Britt.* fol. 1 b.

MARETTUM. L. Lat. [from *mare*, the sea, and *tegere*, to cover; or from Fr. *maret*, a marsh.] In old English law. A moorish and gravelly ground, which the sea covers and overflows at a full sea. *Co. Litt.* 5 a. Lord Hale applies the term to the shore as covered by the ordinary flux of the sea. *Hale de Jur. Mar.* pars 1, c. 6.

MARGINAL NOTE. In Scotch conveyancing. An addition made to a deed, and put on the margin of the deed, either where there has been an omission in transcribing the deed, or where the parties have made an alteration in their original intention. *Bell's Dict.*

MARI, *Mary, Marrie.* L. Fr. [from Lat. *maritus.*] A husband. *Britt.* c. 106, 107.

MARIAGE. L. Fr. [from *marier*, to marry.] In old English and feudal law. The right of marriage; the power of disposing of an infant ward in matrimony. *Britt.* c. 67.

A marriage portion. *Id.* c. 103. *Kelham.*

MARIER. L. Fr. To marry. *Ne se pussent* marier *sans nostre conge;* may not marry without our leave. *Britt.* c. 67.

Marie; married. *Marie ou dismarie;* married or unmarried. *Yearb.* M. 9 Edw. III. 43.

MARINARIUS. L. Lat. In old records. A mariner; a seaman. *Cowell.*

MARINELLUS. L. Lat. In old English law. A mariner. *Mem. in Scacc.* P. 24 Edw. I.

MARINE INSURANCE. A contract of indemnity against the perils of the sea. 1 *Duer on Ins.* Introd. Disc. Lect. 1.—A contract whereby, for a consideration stipulated to be paid by one interested in a ship, freight or cargo, subject to the risks of marine navigation, another undertakes to indemnify him against some or all of those risks, during a certain period or voyage. 1 *Phillips on Ins.* 1.—A contract whereby one party, for a stipulated premium, undertakes to indemnify the other against certain perils or sea-risks to which his ship, freight and cargo, or some of them, may be exposed during a certain voyage, or a fixed period of time. 3 *Kent's Com.* 253.

Maris et feminæ conjunctio est de jure naturæ. The union of male and female is by [founded on] the law of nature. 7 *Co.* 13 b, *Calvin's case.*

MARISCUS. L. Lat. [from Fr. *mares*, or *marets.*] In old English law. A marsh, or marish, as Coke writes it; a fen. *Co. Litt.* 4 a, 5 a. *Shep. Touch.* 95. *Fleta*, lib. 2, c. 41, § 2.

MARITAGIUM. L. Lat. In feudal and old English law. Marriage; the right of a lord to dispose of his infant ward in matrimony. *Bract.* fol. 88 b, 89. *Maritagium habere;* to have the free disposal of an heiress in marriage. *Cowell.*

A portion given with a woman to her husband in marriage. *Glanv.* lib. 7, c. 1. 1 *Reeves' Hist.* 103. *Spelman. Terra quæ sic datur propter nuptias dicitur* maritagium; land which is thus given on account of marriage, is called *maritagium. Bract.* fol. 21. *Fleta*, lib. 3, c. 11.

MARITARE. L. Lat. In old English law. To marry. *Magna Charta*, c. 7.

MARITIMA ANGLIÆ. L. Lat. In old English law. The emolument or revenue coming to the king from the sea, which the sheriffs anciently collected, but which was afterwards granted to the admiral. *Pat.* 8 *Hen.* III. m. 4. *Spelman.*

MARITIMA INCREMENTA. Lat. In old English law. Marine increases. Lands gained from the sea. *Hale de Jur. Mar.* pars 1, c. 4.

MARITIME CAUSES. Causes of action originating on the high seas, or growing out of maritime contracts. 1 *Kent's Com.* 367—380.

MARITIME LAW. [Lat. *jus maritimum.*] The law of the sea; sea law. Otherwise termed *commercial* law, and *marine* law. 3 *Kent's Com.* 1—20. Sometimes considered as a branch of commercial law, relating more particularly to navigation, the ownership and employment of

vessels, the rights and duties of seamen, &c.

MARITUS. Lat. A husband; a married man. *Calv. Lex.*

MARK. [L. Lat. *marca*, from Sax. *mearc*, a mark or sign.] In Saxon law. A silver coin of the value of thirty pence, or 2*s.* 6*d.* *Co. Litt.* 294 b. More properly called *mancus*. *Spelman*, voc. *Marca.*

In old English law. A silver coin of the value of 13*s.* 4*d.* *Id. ibid.*

MARK. In conveyancing. A character made by illiterate or disabled persons, in executing deeds, affidavits and other writings. Usually the sign of the cross, made in a blank space left for that purpose, in the middle of the name as written for the party. An old Saxon custom, as Blackstone observes. 2 *Bl. Com.* 305.

In England, and most of the United States, a mark is a sufficient signature to a will. 8 *Ad. & Ell.* 94. 3 *Nev. & Per.* 228. 3 *Curteis' R.* 752. 5 *Johns. R.* 144. 1 *Williams on Exec.* 63. 1 *Jarman on Wills*, 69, (112, Perkins' ed. note.) 2 *Greenl. Ev.* § 674. In Pennsylvania, it has been held insufficient. *Purdon's Dig.* 971. (But see *Id.* 844, § 7, ed. 1857.) 7 *Penn. Law Journ.* 21.

MARKET. [O. Sc. *mercat;* L. Fr. *marche;* L. Lat. *mercatum*, *mercatus*, *marcatus*, from *merx*, merchandise.] In English law. A place for the public sale of commodities; a place of public traffic; (*locus publicæ mercationis.*) *Spelman.*

In English law. The franchise or privilege by which a town is enabled to keep a market. *Cowell. Blount.* 1 *Crabb's Real Prop.* 525, § 679. Every fair is a market, but not *è contra.* 2 *Inst.* 401.

MARKET OVERT. [Fr. *overt*, open.] In English law. Open market; a place or shop for the open sale of goods.* "An open, public and legally constituted market." Jervis, C. J. 18 *C. B.* (9 *J. Scott,*) 601. The market place or spot of ground, set apart by custom for the sale of particular goods is, in the country, the only market *overt;* but in London, every shop in which goods are exposed publicly to sale is market overt, for such things only as the owner professes to trade in. *Godb.* 131. 5 *Co.* 83. 2 *Bl. Com.* 449.

These markets are of Saxon origin, and depend on custom; and it is a general rule of law that all sales and contracts of any thing vendible in fairs or markets overt, shall not only be good between the parties, but also be binding upon those that have any right or property therein. 2 *Bl. Com. ub. sup.* See the exceptions to this rule stated, *Id.* 449—451. 2 *Steph. Com.* 124—126. 1 *Crabb's Real Prop.* 528—530, § 682. In American law, markets overt are not recognised. 1 *Johns. R.* 471, 480. 2 *Kent's Com.* 324.

MARKET TOWN. In English law. A town entitled to hold a market. 1 *Steph. Com.* 115.

MARKET ZELD, (properly *Market geld.*) In old records. The toll of a market. *Cowell.*

MARKSMAN. In practice and conveyancing. One who makes his mark; a person who cannot write, and only makes his mark in executing instruments. *Arch. N. Pract.* 13. 2 *Chitt. R.* 92. See *Mark.*

MARLA. L. Lat. In old English law. Marl. *Fleta*, lib. 2, c. 76, § 2. *Marlare;* to marl. *Id. ibid.*

MARLBRIDGE, *Statute of.* A celebrated English statute, passed in the fifty-second year of the reign of Henry III. A. D. 1267, at Marlbridge, afterwards called Marlborough, a town in Wiltshire; containing provisions in regard to tenures, and for the better administration of justice, abolishing fines for beau-pleader, introducing the writ of entry in the *post*, &c. 2 *Reeves' Hist.* 62—76. *Crabb's Hist.* 156, 157. In Fleta, it is called the statute of Marleberge. Lib. 2, c. 66, § 18; c. 47, § 13. Whether Marlbridge was the same with the present Marlborough, has been doubted. *Barringt. Obs. Stat.* 66.

MARLERA. L. Lat. In old English law. A marl-pit. *Cart. de Forest.* c. 12.

MARLERIUM, MARLETUM. L. Lat. In old records. A marl-pit. *Blount. Spelman.*

MARQUE. Fr. and Eng. [from Germ. marche, a boundary.] In public law. The frontier, border or boundary line of a country. See *Marches, Letters of Marque.*

Permission to pass the frontier of a country, in order to make reprisals. 1 *Bl. Com.* 258. Generally used as synonymous with *reprisal. Id. ibid.*

MARQUESS, *Marquis.* [L. Lat. *marchio;* from Germ. marche, a border.] In English law. A degree of nobility next to that of duke. So called from the ancient office of the marquess to guard the frontiers and limits [marches or borders] of the kingdom, particularly those on the

side of Wales and Scotland. 1 *Bl. Com.* 397.

MARR'. Abbrev. of *marescallo.* A word written on the margin of old records on *habeas corpus.* Selden, arg. 3 *How. St. Trials*, 105.

MARRIAGE. [L. Fr. *mariage;* Lat. *matrimonium, nuptiæ.*] The legal union of a man and woman for life. *Webster.*—The union of a man and woman, in a state of habitual and inseparable intercourse for life; (*viri et mulieris conjunctio, individuam vitæ consuetudinem continens.*) *Inst.* 1. 9. 1.—A contract according to the form prescribed by law, by which a man and woman capable of entering into such contract, mutually engage with each other to live their whole lives together in the state of union which ought to exist between a husband and wife. *Shelford, Marr. & Div.* 1.

MARRIAGE. [L. Fr. *mariage;* L. Lat. *maritagium.*] In feudal law. The power which the lord or guardian in chivalry had, of disposing of his infant ward in matrimony. 2 *Bl. Com.* 70.

MARRIAGE BROKAGE. The procurement of a marriage between persons, for a consideration.

The consideration paid or agreed to be paid for bringing about a marriage. See 1 *Story's Eq. Jur.* §§ 260—264.

MARRIAGE ARTICLES. Articles of agreement between parties contemplating marriage, intended as preliminary to a formal marriage settlement, to be drawn after marriage. *Atherley on Marriage Settlements*, 92.

MARRIAGE SETTLEMENT. A settlement made by a husband out of his estate, before or after marriage, for the benefit of his wife, or of his wife and children. 2 *Steph. Com.* 307. 2 *Kent's Com.* 172—178.—A settlement in writing, usually made before marriage and in consideration of it, by which the estate of either or both of the parties is settled or limited to be enjoyed in a certain way; as upon the husband and issue, or upon the wife and issue, or upon the husband for life, remainder to the wife for life, remainder to the issue, or otherwise, as may be agreed upon. See *Atherley on Marr. Settlements*, 92, *et seq. Mac Queen on Husb. & Wife*, 257, *et seq.*

MARSHAL, *Mareschal.* [Sc. *marischall;* L. Fr. *mareshal, marescal, mariscal;* L. Lat. *marescallus, marascalcus;* from Germ. marth, a horse, and schalc, an attendant.] In English law. The title of several officers with judicial or ministerial powers; as,

The earl marshal, or lord mareschal, a high officer of state, who presided in the court of chivalry. 3 *Bl. Com.* 68.

The marshal of the king's house, or knight marshal, whose special authority is in the king's palace, to hear and determine all pleas of the crown, and to punish faults committed within the verge, and to hear and judge of suits between those of the king's household. *Holthouse.*

The marshal of the king's bench prison, who had the custody of that prison. *Id.* See *Marescallus.*

In American law. The ministerial officer of the courts of the United States, with duties similar to those of a sheriff. 1 *Kent's Com.* 309.

An officer with duties similar to those of a petty constable.

*** The term *marshal*, though of later and humbler origin than *constable*, is derived essentially from the same source; *marascalcus* signifying an attendant upon *horses*, as *comes stabuli* (afterwards *constabularius*) denoted a superintendent of the *stable.* See *Marescallus.* Both titles seem to have risen in dignity by a similar progress, which Spelman has distinctly traced. When the *comes stabuli* was advanced to the rank of a military commander, the *marescal* (from his superior skill in the management of horses,) came to be employed in various military capacities; as to inspect the army, to select positions for encampment, to determine the array or order of battle, and finally to lead the van as commander of the cavalry. Rising into higher eminence, the *marshal* finally became an officer of the palace, charged with the protection of the sovereign's person and the preservation of the peace of the household, for which purpose he was allowed to hold a court, and at length became one of the great officers of state. It was at this period of its history that the office, with its title, was introduced into England by the Normans.

Spelman, describing the office as it existed in England in his day, found traces of its original character subsisting in the circumstances that the earl marshal was entitled to receive from every person made a knight, a saddled *palfrey*, and that stray *horses* were among his perquisites. And see *Fleta*, lib. 2, c. 4, § 4; c. 5, § 8. No affinity, however, can be traced between

the original meaning of the word and its application in modern law. What may now be called its radical meaning dates from the later period, when the marshal, among his other military duties, had the important one of *arraying* the army for battle. Hence "to marshal" now signifies *to set in order*, as in the common equity phrase, "marshalling of assets." So, in popular language, a marshal is a person chosen to *arrange the order*, and direct the route of a procession.

To MARSHAL. To arrange, rank, or set in order. 1 *Story's Eq. Jur.* § 558. See *infra*. A term derived from the ancient office of the marshal. See *Marshal*.

To arrange words in a certain order; to construe. "The law will *marshal* words, *ut res magis valeat*." Hill, B. *Hardr.* 92. "The wisdom of the law useth to transpose words according to the sense; and not so much to respect how the words do take place, but how the acts which are guided by those words may take place." *Bacon's arg.* Case of Revocation of Uses, *Works*, iv. 248. "The law shall *marshal* the acts against the order of the words." *Id. ibid.* "The law will rather invert the words than pervert the sense." *Id.* 249.

MARSHALLING OF ASSETS. In equity. The arranging or ranking of assets in the due order of administration. 1 *Story's Eq. Jur.* § 558.—Such an arrangement of the different funds under administration as shall enable all the parties having equities thereon, to receive their due proportions, notwithstanding any intervening interests, liens, or other claims of particular persons to prior satisfaction out of a portion of these funds. *Id. ibid.*—The arrangement or ranking of assets in a certain order towards the payment of debts. 4 *Kent's Com.* 421.

MARSHALLING OF SECURITIES. In equity. That principle of arrangement by which a party having a lien on or interest in a certain fund, may compel a party having a lien on or interest in the same fund, and also on another fund, to resort, in the first instance, to such other fund for satisfaction, whenever it will not trench upon the rights or operate to the prejudice of the party entitled to the double fund.* 1 *Story's Eq. Jur.* § 663.

MARSHALSEA. [L. Lat. *marescallia*.] In English law. The court or seat of the marshal. A court originally held before the steward and marshal of the king's house, and instituted to administer justice between the king's domestic servants, that they might not be drawn into other courts, and thereby the king lose their service. 3 *Bl. Com.* 76. It is now united with the Palace Court, and held once a week in the borough of Southwark. *Id. ibid.* 3 *Steph. Com.* 444.

MARTE SUO DECURRERE. Lat. To run by its own force. A term applied in the civil law to a suit, when it ran its course to the end, without any impediment. *Calv. Lex. Brissonius.*

MARTIAL LAW. A system of rules for the government of an army, or adopted in times of actual war. An arbitrary kind of law or rule, sometimes established in a place or district occupied or controlled by an armed force, by which the civil authority and the ordinary administration of the law are either wholly suspended, or subjected to military power.* It is founded on paramount necessity, and proclaimed by a military chief. 1 *Kent's Com.* 341, note. It is quite a distinct thing from *military* law, with which it is sometimes confounded. *Id. ibid.* See *Hale's Hist. Com. Law*, 42, 43, and note, (Runnington's ed.) 1 *Bl. Com.* 413. Lord Loughborough, 2 *H. Bl.* 69, 98.

MARUS. L. Lat. In old Scotch law. A maire; an officer or executor of summons. Otherwise called *præco regis*. *Skene de Verb. Signif.*

MASCULINE. [Lat. *masculinus*, from *mas*, male.] Belonging to, or descriptive of the male sex. The masculine frequently includes the feminine; as "man" includes "woman." In the Digests, the rule is laid down in broader terms. *Semper sexus masculinus etiam femininum sexum continet;* the masculine sex always includes the feminine. *Dig.* 32. 62. *Mulorum appellatione etiam mulæ continentur;* under the appellation of mules are included she-mules. *Id. ibid. Equis legatis et equæ continentur;* under a bequest of horses are included mares. *Id.* 32. 65. 6.

MASSA. Lat. In the civil law. A mass; an unwrought substance, such as gold or silver, before it is wrought into cups or other articles. *Dig.* 47. 2. 52. 14. *Fleta*, lib. 2, c. 60, §§ 17, 22.

MASSA. L. Lat. In old European law. A manse. The same as *mansus*, (q. v.) *Spelman*, voc. *Mansus*. *Regist.*

S. Greg. cited *ibid.* Spelman supposes it to be the origin of the Fr. *mese*, and English *messuage.*

MAST. To fatten with mast, (acorns, &c.) 1 *Leon.* 186.

MAST-SELLING. In old English law. The practice of selling the goods of dead seamen at the mast. Held void. 7 *Mod.* 141.

MASTER. [L. Fr. *maistre;* from Lat. *magister*, q. v.] One having authority; one who rules, directs, instructs or superintends; one having superior skill to others; a head or chief; an instructor; an employer. Applied to several judicial officers. See *infra.*

MASTER IN CHANCERY, (anciently MASTER OF THE CHANCERY.) [L. Lat. *magister cancellariæ.*] In equity practice. An important officer of courts of equity, who acts as assistant to the chancellor or judge, and whose principal duty consists in *inquiring* into various matters referred to him for the purpose, and *reporting* thereon to the court. *Wharton's Lex. Holthouse.* In England, there are twelve of these masters, of whom the Master of the Rolls is the chief.

These officers were originally the chief clerks of the chancery, (*clerici de prima forma,*) who acted as the assessors or council of the Lord Chancellor, (*collaterales et socii cancellarii.*) 2 *Reeves' Hist.* 251. According to Mr. Spence, they obtained the title of *masters* in the reign of Edward III. 1 *Spence's Chancery*, 360. But they appear to have had the title of *præceptores* at a much earlier period. 2 *Reeves' Hist. ub. sup. Crabb's Hist.* 184.

MASTER AT COMMON LAW. In English law. An officer of the superior courts of common law, (each court having five,) whose principal duties, when attending court, consist in taking affidavits sworn in court, in administering oaths to attorneys on their admission, and in certifying to the court, in cases of doubt or difficulty, what the practice of the court is. Their principal duties out of court consist in taxing attorneys' costs, in computing principal and interest on bills of exchange, promissory notes and other documents, under rules to compute, in examining witnesses who are going abroad for the purpose of obtaining their testimony, in hearing and determining rules referred to them by the court in the place of the court itself, and in reporting to the court their conclusions with reference to the rules so referred to them. *Holthouse.*

MASTER OF THE CROWN OFFICE. In English law. The Queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecutes at the relation of some private person, or common informer, the crown being the nominal prosecutor. *Wharton's Lex.*

MASTER OF THE ROLLS. [L. Lat. *magister rotulorum.*] In English law. An assistant judge of the Court of Chancery, who holds a separate court ranking next to that of the Lord Chancellor, and has the keeping of the rolls and grants which pass the great seal, and the records of the chancery. He was originally appointed only for the superintendence of the writs and records appertaining to the common law department of the court, and is still properly the chief of the masters in chancery. 3 *Steph. Com.* 417. *Wharton's Lex.*

MASTER OF A SHIP. [Lat. *magister navis*, (q. v.) *navicularius, navarchus, nauclerus.*] In maritime law. A person having the command of a merchant vessel and the government of her crew; hence commonly styled *captain.* A person entrusted with the care and navigation of a vessel and cargo, appointed by the owner, and acting as his confidential agent.* 3 *Kent's Com.* 158, 161. *Abbott on Ship.* [118,] 151.

MASURA. L. Lat. [from *massa*, q. v.] In old English law. A house and ground; a piece of ground belonging to a house; a house in a city. *Spelman.*

An old decayed house or wall; the ruins of a building. *Cowell.*

MATE. In maritime law. The next officer to the master on board a vessel, who, on his death, or in his absence, succeeds *virtute officii* to the care of the ship, and the government and management of the crew. 3 *Kent's Com.* 176. He does not, however, cease to be mate in such cases, but has thrown upon him cumulatively the duties of master. *Id. ibid.*

MATERFAMILIAS. Lat. In the civil law. The mother or mistress of a family. *Calv. Lex.*

A chaste or virtuous woman, whether married or a widow. Matrem familias *à ceteris feminis mores discernunt;* morals distinguish a *materfamilias* from other women. *Dig.* 50. 16. 46. 1. *Id.* 48. 5. 10, pr.

MATERIA. Lat. In the civil law. Materials; as distinguished from *species*, or the *form* given by labor and skill. *Dig.* 41. 1. 7. 7—12. *Fleta*, lib. 3, c. 2, § 14.

Materials (wood) for building, as distinguished from *lignum*. *Dig.* 32. 55, pr.

MATERIA. L. Lat. Matter; substance; subject matter. 3 *Bl. Com.* 322.

MATERIAL MEN. In maritime law. Persons who furnish and construct materials for the outfit or repair of vessels. 1 *Kent's Com.* 379. 2 *Id.* 168—170. Such as ship-builders, rope-makers, &c. *Jacobsen's Sea Laws*, 357, note. *U. S. Digest*, Material men.

MATERTERA. Lat. [Gr. μητραδελφη.] In the civil law. A maternal aunt; a mother's sister, (*matris soror.*) *Inst.* 3. 6. 1. *Bract.* fol. 68 b.

MATERTERA MAGNA. Lat. In the civil law. A great aunt; a grandmother's sister, (*aviæ soror.*) *Dig.* 38. 10. 10. 15.

MATERTERA MAJOR. Lat. In the civil law. A greater aunt; a great grandmother's sister, (*proaviæ soror;*) a father's or mother's great aunt, (*patris vel matris matertera magna.*) *Dig.* 38. 10. 10. 16. Called *promatertera*. *Id.* 38. 10. 1. 7.

MATERTERA MAXIMA. Lat. In the civil law. A greatest aunt; a great great grandmother's sister, (*abaviæ soror;*) a father's or mother's greater aunt, (*patris vel matris matertera major.*) *Dig.* 38. 10. 10. 17. Called *abmatertera*. *Id.* 38. 10. 3.

MATRIMONIAL CAUSES. In English ecclesiastical law. Causes of action or injuries respecting the rights of marriage. One of the three divisions of causes or injuries formerly cognizable by the ecclesiastical courts; comprising suits for jactitation of marriage, and for restitution of conjugal rights, divorces and suits for alimony. 3 *Bl. Com.* 92—94. 3 *Steph. Com.* 712—714.

MATRIMONIALITER. L. Lat. In the way of marriage. *Bract.* fol. 302 b.

MATRIMONIUM. Lat. In the civil law. Matrimony; marriage; the conjunction of man and woman, (*maris atque feminæ conjunctio.*) *Dig.* 1. 1. 1. 3. Justinian makes it synonymous with *nuptiæ*, and defines them both—*viri et mulieris conjunctio, individuam vitæ consuetudinem continens*, (the union of a man and a woman in a state of habitual and inseparable intercourse during life.) *Inst.* 1. 9. 1. See *Tayl. Civ. Law*, 268.

Matrimonia debent esse libera. Marriages ought to be free. A maxim of the civil law. 2 *Kent's Com.* 102.

MATRIX ECCLESIA. Lat. A mother church; a cathedral church, in respect of the parochial churches within the same diocese, or a parochial church, in respect of the chapels depending on her. *Cowell.*

MATTER IN DEED. Matter contained in a deed, or writing under seal between two or more parties, which is regarded as a private act. *Co. Litt.* 380 b. *Steph. Pl.* 197. Called by Lord Coke (*ub. sup.*) matter *in fait.*

MATTER IN PAIS. Matter in the country. This term is used by Blackstone as synonymous with *matter in deed.* 2 *Bl. Com.* 294. But it is generally distinguished, and applied to matters not transacted in writing. *Steph. Pl.* 197. 2 *Smith's Lead. Cas.* 458.

Matter en ley ne serra mise en bouche del jurors. Matter in law shall not be put into the mouth of jurors. *Jenk. Cent.* 180, case 61. Another form of the maxim, **Ad quæstionem legis non respondent juratores.**

MATTER OF RECORD. Matter entered on record, or appearing on the records of a court, comprising all judicial acts; such as a judgment or pleading in an action, a recognizance acknowledged before a court, and the old proceedings by fine, statute merchant, &c. *Co. Litt.* 380 b. *Steph. Pl.* 197.

MATURITY. In mercantile law. The time when a bill of exchange or promissory note becomes due. *Story on Bills*, § 329.

MATURUS. Lat. Ripe; mature or perfect. *Maturiora sunt vota mulierum quam virorum;* the desires of women are more mature [sooner matured] than those of men. 6 *Co.* 71 a. *Bract.* fol. 86 b.

MAUGRE. L. Fr. In spite of; against the will of. *Litt.* sect. 672. See *Malgre, Mal gree.*

MAUNDER. L. Fr. [from Lat. *mandare*, q. v.] In old English law. To command. *Stat. Westm.* 1, c. 45.

To return (a writ.) *Id. ibid.* The word occurs in both these senses in the following passage: *Et sil* maunde *que il ad fait l'execution en due maner,—adonques soit* maunde *au viscount que*, &c.; and if he return that he hath done execution in due manner,—then shall it be commanded to the sheriff that, &c. *Id. ibid.*

MAUNGER. L. Fr. To eat; eating. *Maunger des jurours. Dyer*, 37 b, (Fr. ed.)

MAUVEISE, *Mauveys.* L. Lat. False; fraudulent. *Britt.* c. 15. *Mauvestie;* a fraud. *Id. Mauveysement musce;* fraudulently concealed. *Id.* fol. 3 b.

Bad; defective; informal. *La breve est mauveys. Yearb.* H. 2 Edw. II. 33.

MAXIM. [L. Fr. *maxime;* from Lat. *maximus*, greatest.] A general principle; a postulate or axiom; a rule of general or universal application, upon which other rules are founded.* *Co. Litt.* 11 a. Called by Lord Coke, "a sure foundation or ground of art, and a conclusion of reason;" so called, *quia* maxima *est ejus dignitas, et certissima auctoritas, atque quod* maxime *omnibus probetur;* (because its dignity is greatest and its authority most sure, and because it is most highly approved by all.) *Co. Litt. ub. sup.* Lord Bacon observes that "the conclusions of reason of this kind are worthily and aptly called by a great civilian, *legum leges*, laws of laws, for that many *placita legum*, that is, particular and positive learnings of laws, do easily decline from a good temper of justice, if they be not rectified and governed by such rules." *Bacon's Max.* Pref. See 2 *Kent's Com.* 552—555.

Maxime paci sunt contraria, vis et injuria. The greatest enemies to peace are force and wrong. *Co. Litt.* 161 b.

"MAY," in the construction of public statutes, is to be construed "*must*" in all cases where the legislature mean to impose a positive and absolute duty, and not merely to give a discretionary power. 1 *Peters' R.* 46, 64. 3 *Hill's* (N. Y.) *R.* 612, 615. See 9 *Grattan's R.* 391. The word "may," in a statute, means *must* or *shall*, when the public interest or rights are concerned, or the public, or third persons, have a claim, *de jure*, that the power shall be exercised. 1 *Vern.* 153. 1 *Kent's Com.* 467, note. See 24 *Mississippi R.* 657.

MAYHEM. Otherwise written *Maihem*, (q. v.)

MAYN. L. Fr. A hand; handwriting. *Britt.* c. 28.

MAYNOVER. L. Fr. A work of the hand; a thing produced by manual labor. *Yearb.* M. 4 Edw. III. 38.

MAYOR. [L. Lat. *major;* L. Fr. *maire;* Germ. meyer; from Lat. *major*, greater.] The chief magistrate of a city [or borough.] *Cowell.* The chief officer of a municipal corporation. *Spelman.* Answering to the *portgreve* and *burgreve* of the Saxons, and the *bailiff* of the Anglo-Normans.

**** Spelman observes that he did not find this word used in England, prior to the Norman invasion, nor was it applied to any corporation until A. D. 1189, when Richard I. changed the bailiffs of London into a *mayor;* in imitation of which King John, A. D. 1204, made the bailiff of King's Lynn, a *mayor.* The Saxon title of *portgreve*, or *portgerefe*, is given to the chief magistrate of London in a charter granted to the city by William the Conqueror. *Camd. Brit.* 325. See *Portgreve.* According to Cowell and Blount, (who quote Camden,) Richard I. ordained two bailiffs instead of this portgreve, and it was John who changed the bailiffs into *mayor. Mayor* (*major* or *maior*) had become an ordinary title in the time of Bracton. *Bract.* fol. 57. The titles *portreeve* and *boroughreeve* continued in some places down to the passage of the late Municipal Reform Act, 5 & 6 Will. IV.

Mayor is derived by Spelman from the Lat. *major*, (greater,) denoting that he held the *chief rank* among his colleagues in office, whether aldermen, burgesses or jurats, who anciently constituted his council. This appears to be the true etymology. See *Custos.* Cowell and Blount, who trace the word to the Brit. *meyr*, make it to be derived from *miret*, to keep or guard. Webster pronounces the derivation from Lat. *major* an error, and traces the word to the Armoric *mear*, and Welsh *maer*, one that keeps or guards.

MAYORAZGO. Span. In Spanish law. The right to the enjoyment of certain aggregate property, left with the condition therein imposed, that they are to pass in their integrity perpetually, successively to the eldest son. *Schmidt's Civ. Law*, 62. A species of entail.

MEAN. [Lat. *medius;* Fr. *mesne.*] Intermediate. See *Mesne.*

MEANDER. To pursue a winding course, as a river or stream.

To follow the course of a stream, according to its windings. To survey a stream according to its actual course. A term in western land law. See 2 *Wisconsin R.* 308, 317, and the statute there cited.

MEASE, *Mese.* [L. Fr. *mese, meason;* from Germ. mesz.] In old English law.

A messuage or dwelling-house. *Spelman. Cowell. Finch's Law*, b. 1, ch. 3, num. 28.

MEASURE OF DAMAGES. The rule, or rather the system of rules, governing the adjustment or apportionment of damages as a compensation for injuries in actions at law. See *Sedgwick on the Measure of Damages*, passim.

MEDFEE. In old English law. A bribe or reward; a compensation given in exchange, where the things exchanged were not of equal value. *Cowell.*

"MEDALS," in a will, has been held to pass curious pieces of current coin kept by a testator with his medals. 3 *Atk.* 202. 2 *Williams on Exec.* 1032.

MEDIA ANNATA. Span. In Spanish law. Half-yearly profits of land. 5 *Texas R.* 34, 79.

MEDIA NOX. Lat. In old English law. Midnight. *Ad mediam noctem;* at midnight. *Fleta*, lib. 5, c. 5, § 31.

MEDIATOR. L. Lat. [from *medius*, middle.] In old English law. An arbitrator. *Dyer*, 111.

MEDICAL JURISPRUDENCE. The science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. Otherwise called *forensic medicine. Wharton's Lex.* A sort of mixed science, which may be considered as common ground to the practitioners both of law and physic. 1 *Steph. Com.* 8.

MEDIETAS. L. Lat. [from *medius*, middle.] In old English law. A moiety; one half. *Fleta*, lib. 2, c. 57, § 10. A half part, divided and separated; as *dimidium* was the half a thing before division. *Latch*, 224. But see 6 *Mod.* 231. Sometimes Englished, *mediety.* 1 *W. Bl.* 490.

MEDIETAS LINGUÆ. L. Lat. In old practice. Moiety of tongue; half-tongue. Applied to a jury empanelled in a cause, consisting the one *half* of natives, and the other *half* of foreigners. *Comb.* 20. See *De medietate linguæ.*

MEDITATIO FUGÆ. Lat. In Scotch law. Contemplation of flight; intention to abscond. 2 *Kames' Equity*, 14, 15. *Bell's Dict.*

MEDIUM TEMPUS. L. Lat. In old English law. Mean time; mesne profits. *Cowell.*

MEDIUS. Lat. In old English law. Mean; intermediate; between two.

A mesne; an intermediate lord. *Tenens habens* medium *inter ipsum et capitalem dominum;* a tenant having a mesne between himself and the chief lord. *Stat. Westm.* 2, c. 6. *Fleta*, lib. 2, c. 50.

In old continental law. A man of middle condition. *L. Alam.* tit. 67.

MEDLETUM, *Melletum.* L. Lat. [from Fr. *mesler*, to mix or mingle.] In old English law. A mixing together; a medley or *melee;* an affray or sudden encounter.

An offence suddenly committed in an affray, (*culpa quam quis inopinatè commiserit, rixando et pugnando.*) *Spelman. Glanv.* lib. 1, c. 2. *Bract.* fol. 154 b. The English word *medley* is preserved in the term *chance-medley.*

An intermeddling, without violence, in any matter or business. *Spelman.*

MEEN. L. Fr. Mesne; a mesne lord. *Britt.* c. 27.

MEER. L. Fr. The sea. *Wrek de meer;* wreck of the sea. *Britt.* c. 21, 33.

MEES. L. Fr. A house or dwelling. *Britt.* c. 40, 72, fol. 102 b.

MEIGNEE, *Meiny.* L. Fr. Family; household. *Kelham.*

MEIN. L. Fr. A hand. *Meins mises sur seintz;* hands laid upon the holy (Gospels.) *Kelham.*

MEINDRE AGE. L. Fr. Minority; lesser age. *Kelham.*

MEINS. L. Fr. Less; least. *Kelham.*

MEITE, *Meited.* L. Fr. Moiety; a moiety or half. *LL. Gul. Conq.* ll. 31, 45.

MEJORADO. Span. In Spanish law. Preferred; advanced. *White's New Recop.* l. 3, tit. 10, c. 1, § 4.

MELDFEOH. Sax. [from *meld*, information, and *feoh*, a reward.] In Saxon law. A reward given to an informer. *LL. Inæ, MS.* c. 20. *Spelman.*

MELIOR. Lat. Better; the better. *Melior res;* the better, (best) thing or chattel. *Bract.* fol. 60. See *Potior.*

Melior est justitia vere prævenions quam severe puniens. That justice which absolutely prevents [a crime] is better than that which severely punishes it. 3 *Inst.* Epil.

Melior est conditio possidentis. The condition of the party in possession is the better one. *Fleta*, lib. 6, c. 39, § 7. **Quum de lucro duorum quæratur, melior est causa possidentis.** *Dig.* 50. 17. 126. 2.

Melior est conditio possidentis, et rei quam actoris. The condition of the party in possession is the better one, and that of a

defendant is better than that of a plaintiff. 4 *Inst.* 180. *Best on Evid.* 293, § 252.

Melior est conditio possidentis ubi neuter jus habet. Where neither has the right, the condition of the party in possession is the better. *Jenk. Cent.* 118, case 36.

Meliorem conditionem suam facere potest minor, deteriorem nequaquam. A minor can make his condition better, but by no means worse. *Co. Litt.* 337 b.

MELIORATIO. Lat. [from *melior*, better.] In old English law. A melioration; a making better; an improvement or betterment. *Bract.* fol. 75. *Stat. Marlbr.* pr. See *Feud. Lib.* 2, tit. 28, § 2.

MELIUS. Lat. Better; the better. *Melius averium;* the better [best] beast. *Bract.* fol. 60. *Secundum vel tertium melius;* second or third best. *Fleta*, lib. 2, c. 57, § 1.

Melius est omnia mala pati quam malo consentire. It is better to suffer all wrongs, [any wrong] than to consent to wrong. 3 *Inst.* 23, marg.

Melius est recurrere quam male currere. It is better to run back than to run badly; it is better to retrace one's steps, than to proceed improperly. 4 *Inst.* 176.

Melius est in tempore occurrere, quam post causam vulneratam remedium quærere. It is better to meet a thing in time, than after an injury inflicted, to seek a remedy. *Fleta*, lib. 6, c. 37, § 15. 2 *Inst.* 299.

MELIUS INQUIRENDUM, (or INQUIRENDO.) L. Lat. (To be better inquired.) In old English practice. The name of a writ issued to the escheator, commanding him to make a further inquiry or to take a new inquisition respecting a matter; as to inquire who was the next heir of a party who died seised of lands, &c. *Reg. Orig.* 293. *F. N. B.* 255 C.

MELLER. L. Fr. To mix or blend; to meddle with; to interfere or interpose. *Kelham.*

MELLETUM, *Medletum.* L. Lat. [from L. Fr. *meller*, q. v.] In old Scotch law. Dissension; contest or strife. *Skene de Verb. Sign.* See *Medletum.*

MEMBRANA. Lat. In the civil law. Parchment. *Dig.* 32. 52.

In old English law. A skin of parchment. The English rolls are composed of several of these skins; and their contents are frequently distinguished according to the skin on which they are written. Thus, *Mag. Rot. Stat.* membr. 40. *Rot. Cart.* 28 Edw. I. membr. 16. *Hale's Hist. Com. Law*, 17.

MEMORANDUM. Lat. [from *memorare*, to remember.] To be remembered; be it remembered. A formal word with which the body of a record in the court of King's Bench anciently commenced: "Memorandum *quod alias, scilicet termino,*" &c. and which has been literally translated in modern records, "Be it remembered that heretofore, to wit, in the term," &c. *Towns. Pl.* 486. *Bohun's Instit. Legalis.* 32. 2 *Tidd's Pr.* 719. The whole clause is now, in practice, termed, from this initial word, the *memorandum*, and its use is supposed to have originated from the circumstance that proceedings "by bill," (in which alone it has been employed) were formerly considered as the by-business of the court. *Gilb. C. Pleas*, 47, 48.

The term *memorandum* is also sometimes applied to a special clause in an instrument, to which attention is particularly required, as in a policy of insurance; and it has now become an ordinary word signifying a brief note in writing of some transaction, or an outline of an intended instrument, or an instrument drawn up in a brief and compendious form.

MEMORANDUM. A clause in a marine policy of insurance, declaring that certain enumerated articles, and any other articles that are perishable in their own nature, shall be free from average under a given rate, unless general, or the ship be stranded. 3 *Kent's Com.* 294, 295. 2 *Phillips on Ins.* 467. This clause was first introduced into the London policies in May, 1749. *Id.* note.

MEMORANDUM. A writing required by the Statute of Frauds, to bind the parties to agreements in certain specified cases. 2 *Kent's Com.* 510. It may be either all on one paper, or on several papers, if sufficiently connected, and it must contain the substance of the agreement; that is to say, the parties, the consideration, and the subject matter, as well as the promise and signature. See *Blackburn on the Contract of Sale*, c. 4.

MEMORANDUM CHECK. A check intended not to be presented immediately for payment; such understanding being denoted by the word *mem.* written upon it. But it has been held that the making of a check in this way does not affect its negotiability, or alter the right of the holder to present it to the bank, and de-

mand payment immediately. 11 *Paige's R.* 612.

MEMORIA. Lat. In old English law. Memory; faculty of remembrance; mental soundness generally. *Utrum compos sui et bonæ* memoriæ, *cum sano intellectu et sensu integro;* whether having power of himself, and of good memory, with sound understanding, and perfect sense. *Bract.* fol. 15 b. *Vel esse sanæ mentis, vel non bonæ* memoriæ; or to be not of sound mind, or not of good memory. *Id.* fol. 43. *Fleta*, lib. 3, c. 7, § 1.

In old records. A monument or sepulchre. *Cowell. Spelman.*

MEMORIE. L. Fr. [from Lat. *memoria*, q. v.] Memory; mind or understanding. *Ne fuit mie en droit* memorie *en temps du feffement;* was not in his right mind at the time of the feoffment. *Britt.* c. 80.

MEMORY. [Lat. *memoria;* L. Fr. *memorie.*] Used generally with the word *mind*, to denote full possession of the intellectual powers, as in the expression, "sound and disposing mind and memory," and the "*sanæ mentis et bonæ* memoriæ" of the ancient law. The Fr. *memorie*, however, was sometimes singly used in this comprehensive sense, as in the phrase *de non sane memorie*, (q. v.) See *Memorie.*

MEMORY (or TIME OF MEMORY.) In English law. A period fixed by the statute of Westminster 1, A. D. 1276, to commence from the beginning of the reign of Richard I. 2 *Chitt. Bl. Com.* 30, 31, and note. 1 *Steph. Com.* 45. See preamble to stat. 2 & 3 Will. IV. c. 71.

MENAUNTISE. L. Fr. A place of residence. *Britt.* c. 120.

MENDACIUM. Lat. [from *mendax*, lying.] In old English law. Falsehood; a falsehood or lie; a false statement made with intent to deceive; (*falsa significatio vocis, cum intentione fallendi.*) *Fleta*, lib. 5, c. 22, § 6. Fleta enumerates eight kinds of falsehoods. *Id. ibid.* See *Grotius de Jur. Bell.* lib. 3, c. 1, § 9.

MENEE, *Meyne.* L. Fr. [from *mener*, q. v.] A leading. *Ovesque la* menee *de corns et de bouche;* with the leading of horns and of mouth. *Britt.* c. 12, 27. A description of the ancient hue and cry which was *led* by a number of men, sounding horns and shouting.

MENER, *Mesner, Menir.* L. Fr. To lead; to conduct or manage; to bring; to drive; to carry. *Pris et* mene *à nostre gaole;* taken and carried to our gaol. *Britt.* c. 29.

MENETUM. L. Lat. In old Scotch law. A stock-horn; a horn made of wood, "with circles and girds of the same." *Skene de Verb. Sign.*

MENIAL. A term applied to a domestic servant, as being *intra mœnia*, (within the walls.) 1 *Bl. Com.* 425.

MENS. Lat. Mind; understanding. *Calv. Lex. Mente captus;* of unsound mind. *Id. Fleta*, lib. 3, c. 3, § 10.

Will; meaning; intention. *Id.* **Mens testatoris in testamentis spectanda est.** The intention of the testator is to be regarded in wills. *Jenk. Cent.* 277. **Actus non facit reum, nisi mens sit rea,** (q. v.) See *Animus.*

MENS LEGISLATORIS. Lat. The intention of the law-maker. *Suarez de Leg.* lib. 6, c. 1. *Bl. L. Tr.* 3.

MENSA. Lat. In the civil law. A table; the table of a money-changer. *Dig.* 2. 14. 47.

MENSA. Lat. In old English law. A table; board. See *A mensa et thoro.*

MENSIS. Lat. In civil and old English law. A month. *Dig.* 50. 17. 101. *Mensis vetitus;* the prohibited month; fence-month, (q. v.)

MENSOR. Lat. [from *metiri*, to measure.] In the civil law. A measurer of land; a surveyor. *Dig.* 11. 6. *Id.* 50. 6. 6. *Cod.* 12. 28.

MENSULARIUS. Lat. [from *mensa*, a table.] In the civil law. A money-changer or dealer in money, (*nummularius.*) *Dig.* 2. 14. 47. 1.

MENSURA. Lat. In old English law. A measure. *Una* mensura *vini sit per totum regnum nostrum, et una* mensura *cervisiæ, et una* mensura *bladi;* there shall be one measure of wine throughout our whole realm, and one measure of ale, and one measure of grain. *Magna Charta*, 9 Hen. III. c. 25.

A bushel. *Cowell.*

MENSURA DOMINI REGIS. L. Lat. The king's measure. *Fleta*, lib. 2, c. 12, § 1. Otherwise called *mensura regalis;* the standard measure kept in the exchequer. *Cowell.* 1 *Bl. Com.* 276.

MENTIRI. Lat. To lie; to assert a falsehood. *Mentiri est contra* mentem ire; to lie is to go against the mind. An etymology of the civilians, adopted in some of the old reports. *Calv. Lex.* 3 *Bulstr.* 260.

MERCANDISA, *Merchandisa*, *Mercandisia*. L. Lat. In old English law. Merchandize; all goods and wares exposed to sale in fairs or markets. *Paroch. Antiq.* 311. *Magna Charta*, 9 Hen. III. c. 14. *Bract.* fol. 57.

MERCANTILE LAW. The law of trade; that branch of law which defines and enforces the rights and duties of merchants or mercantile persons; embracing the law of partnership, of principal and agent, of bills and notes, of sale, of bailment, guaranty, and lien, the law of shipping, of insurance, &c.

MERCAT. An old form of *market*, common in Scotch law, closely formed from the Lat. *mercatum*, (q. v.)

MERCATIO. Lat. [from *mercari*, to buy.] A buying; a trafficking or trading.

MERCATOR. Lat. [from *mercari*, to buy.] In civil and old English law. A trader; a merchant. Strictly, a buyer. It included all sorts of traders or buyers and sellers. *Cowell. Mag. Chart.* 9 Hen. III. cc. 14, 30. 2 *Show.* 325. *Bract.* fol. 334. The Lombards, in the thirteenth century, were called *mercatores* and *campsores*. 1 *Rob. Charles* V. Appendix, Note xxx. See *Merchant*.

A mercer. 2 *Show.* 326.

MERCATUM, *Mercatus*, *Mercadum*, *Marcatum*, *Marcadum*. L. Lat. [from *mercari*, to buy.] In old European law. A place of public buying and selling; a place of trade or traffic; a market; (*forum rerum venalium, locus publicæ mercationis.*) *Spelman. Marcatum*, *mercadum*, and *marcadum* are used in continental law. *Mercatum* is used by Bracton and other English writers. *Bract.* fol. 56 b, 235. *Fleta*, lib. 4, c. 28, §§ 13, 14. *Mercatus* occurs in the civil law. *Cod.* 4. 60. 1.

MERCEN-LAGE, *Merchen-lage*, *Merchen-lae*. [Sax. *Myrcnalag;* L. Lat. *Merchenelega.*] The Mercian law, or law of the Mercians. One of the three principal systems of laws which prevailed in England, in the times of the Saxons; being that which was observed in many of the midland counties, and those bordering on the principality of Wales. *Spelman.* 1 *Bl. Com.* 65.

MERCES. Lat. In the civil law. Hire or compensation; the reward of labor, whether money or other thing. *Dig.* 19. 2. 2. *Calv. Lex.*

MERCHANDIZE. [L. Lat. *merchandisa, mercandisa;* Lat. *merx.*] Articles of trade or traffic; subjects of commerce; things bought and sold, or bought to be sold again.* "The term *merchandize* is usually, if not universally, limited to things that are *ordinarily* bought and sold, or are ordinarily the subjects of commerce and traffic." "The fact that a thing is *sometimes* bought and sold, is no proof that it is merchandize." Story J. 2 *Story's R.* 16, 53. "The term *merchandize* is usually applied to specific articles, having a sensible intrinsic value, bulk, weight or measure in themselves, and not merely evidences of value." *Id.* 54. On this ground, bank bills were held not to be merchandize. *Id. ibid.* See 6 *Wendell's R.* 335. On the other hand, silver dollars were held to be merchandize. 2 *Mason's R.* 467. In other cases, a broader meaning has been claimed for the word. 3 *Metcalf's R.* 365, 367, Wilde, J.

MERCHANT. [L. Fr. *marchant;* Lat. *mercator*, from *mercari*, to buy.] Strictly, a buyer; one who buys to sell, or buys and sells; a trader; one who deals in the purchase and sale of goods; a dealer in merchandize.

One who traffics or carries on trade with foreign countries; one who exports and imports goods, and sells them by wholesale. *Webster.* This is considered by Webster the proper sense of the word; but there is nothing in the etymology, or in the application of the equivalent words in Latin and French, which warrants such a restriction of meaning. It appears to have grown out of mercantile usage, and it is very properly said by the editor of Cowell, that *mercator*, the Latin equivalent, embraced all sorts of traders or buyers and sellers, and that the Scotch, in calling their pedlars *merchants*, keep the primitive use of the word. Indeed, Bracton expressly applies the term *mercator* to those itinerant chapmen for whose benefit the courts of *pepoudrous* or *piepouders* were held. *Bract.* fol. 334. In 2 *Show.* 326, it was said, "in the country, every shop-keeper is styled a *merchant*."

MERCIMONIA. Lat. In old writs. Wares. *Mercimonia et merchandizas;* wares and merchandizes. *Reg. Brev.* Appendix, 10.

MERCIMONIATUS ANGLIÆ. L. Lat. In old records. The impost of England upon merchandize. *Cowell.*

MERCY. L. Fr. and Eng. [L. Fr. *merci;* L. Lat. *misericordia.*] In old

practice. The arbitrament or discretion of the king, lord or judge, in punishing any offence, not directly censured by the law. *Cowell.* To be "in *mercy*" seems to have originally signified, to be subject to the discretion of the king, &c. as to the amount of punishment. Hence were framed the Fr. *amercir*, and English *amerce*, and *amercement*, denoting the imposition of a pecuniary punishment in *general* terms. See *Amerce*, *Amercement*, *In mercy*. Occasionally, however, it was used to denote a fixed sum. *Soit en nostre* mercy *à cent sous;* shall be in our mercy at a hundred shillings. *Britt.* c. 22, fol. 59.

MERE. Sax. A marsh. *Spelman.*

MERE. L. Fr. Mother. *Aele*, mere, *fille;* grandmother, mother, daughter. *Britt.* c. 89, fol. 180 b.

MERE RIGHT. [L. Lat. *merum jus;* L. Fr. *meer droit.*] The mere right of property in land; the *jus proprietatis*, without either possession or even the right of possession. 2 *Bl. Com.* 197. The abstract right of property.

MERE-STONE. In old English law. A stone for bounding or dividing lands. *Yearb.* P. 18 Hen. VI. 5.

MEREMIUM. L. Lat. [from L. Fr. *meresme, mereme.*] In old English and Scotch law. Timber. *Ad buscam*, meremium, *corticem vel carbonem emendum;* to buy brush-wood, timber, bark or coal. *Cart. de For.* c. 14. *Skene de Verb. Sign.* See *Mæremium.*

MERENNIUM, *Merennum.* L. Lat. In old records. Timber. *Cowell.* A corruption of *meremium*, (q. v.)

MERGER. [from Fr. *merger*, to drown, from Lat. *mergere*, to plunge.] The drowning, sinking, absorption or extinguishment of one estate in another.* The extinguishment by act of law, of one estate in another, by the union of the two estates. *Preston on Merger*, 7. The consolidation of a greater estate with a less.* "It is a general principle of law, that where a greater estate and a less coincide and meet in one and the same person, without any intermediate estate, the less is immediately annihilated, or, in the law phrase, is said to be *merged*, that is, sunk or drowned in the greater. Thus, if there be tenant for years, and the reversion in fee simple descends to, or is purchased by him, the term of years is *merged* in the inheritance, and shall never exist any more." 2 *Bl. Com.* 177. 1 *Steph. Com.* 293. 4 *Kent's Com.* 99. 2 *Crabb's Real Prop.* 1057, § 2447. *Lee on Abstracts*, 255. So, a term for years may *merge* in another term that is immediately reversionary to, or expectant upon it. *Id. ibid.* 4 *Kent's Com.* 99.

The absorption or extinguishment of one contract in another. Where an engagement has been made by way of simple contract, and afterwards the same engagement is entered into between the same parties by deed, the simple contract is *merged* in the deed, and becomes totally extinguished.* *Smith on Contracts*, 18. 2 *Penn. R.* 533. 1 *Watts & Serg. R.* 83.

MERIDIES. L. Lat. In old English law. Noon. *Fleta*, lib. 5, c. 5, § 31.

MERISME, *Mœrisme.* L. Fr. Timber. *Yearb.* H. 9 Edw. III. 4. *Kelham.*

MERESME, *Mereme.* L. Fr. Timber. *Yearb.* H. 9 Edw. III. 4. P. 7 Hen. VI. 47.

MERITS. In practice. Matter of substance in law, as distinguished from matter of mere form; a substantial ground of defence in law. A defendant is said "to swear to *merits*," or "to make affidavit of *merits*," when he makes affidavit that he has a good and sufficient or substantial defence to the action on the merits. 3 *Chitt. Gen. Pr.* 543, 544. *Merits*, in this application of it, has the technical sense of merits *in law*, and is not confined to a strictly moral and conscientious defence. *Id.* 545. 1 *Burr. Pr.* 214.

MERS. In old English law. Marshy ground. *Spelman.*

MERTON, *Statute of.* A celebrated English statute, passed in the 20th year of the reign of Henry III. A. D. 1253. So called, because the parliament was then holden at the monastery or priory of the canons regular of Merton, in Surrey, seven miles distant from the city of London. 2 *Inst.* 79. *Barringt. Obs. Stat.* 46. Mr. Barrington observes that it seems to be only an ordinance. *Id. Hale's Hist. Com. Law*, 9, 10, note, (Runnington's ed. 1820.) It is the first of those old statutes which Sir Matthew Hale describes as not being of record, but only their memorials preserved in ancient printed and MS. books of statutes. *Id.* 18. Bracton calls it the *Constitutio de Merton. Bract.* fol. 227.

MERUM. Lat. In old English law. Mere; naked or abstract. *Merum jus;* mere right. *Bract.* fol. 31. *Majus jus merum;* more mere right. *Id. ibid.* See *Mere right.*

MERUM IMPERIUM. Lat. In the civil law. The simple power of punish-

ment. *Halifax, Anal.* b. 3, c. 8, num. 5.

MERX. Lat. Merchandize; moveable articles that are bought and sold; articles of trade. See *infra.*

Merx est quicquid vendi potest. Merchandize is whatever can be sold. Every personal thing for which merchants traffic may be called merchandize. *Com.* 355. 3 *Wooddes. Lect.* 263. Wilde, J. 3 *Metcalf's R.* 365, 367. The broad terms of this maxim are qualified by the following.

Mercis appellatio ad res mobiles tantum pertinet. The term merchandize belongs to moveable things only. *Dig.* 50. 16. 66.

Mercis appellatione homines non contineri. Men are not included under the denomination of merchandize. *Dig.* 50. 16. 207. Man is never comprehended under the name of merchandize. *Emer. Tr. des Ass.* ch. 8, sect. 4.

MERYM, *Merime, Merisme, Maerisme, Merrien, Merin.* L. Fr. Timber. *Kelham.*

MES, *Meas, Mas.* L. Fr. But. *Britt. passim. Litt. passim. Kelham. Mes vide;* but see. *T. Raym.* 11. *Mes adjornat;* but it is adjourned. *Id.* 201, 208.

MESQUE. L. Fr. Except; unless. *Fet Assaver,* § 23.

MES. tof. mo. co. gar. ter. pra. pas. bos. brue. mora, Junca. maris. alne. rus. re. sectare priora.

A rhyming couplet artificially constructed by the old practitioners in real actions, for the more easy remembrance of the rule requiring the various parcels of land which might be demanded in a writ of right, to be named in a certain *order.* It consists of the first syllables of the following words: *Mes*suagium, *tof*tum, *mo*lendinum, *co*lumbare, *gar*dinum, *ter*ra, *pra*tum, *pas*tura, *bos*cus, *brue*ra *mora*, *Junca*ria, *maris*cus, *alne*tum, *rus*caria, *re*ditus; (in English, messuage, toft, mill, dovehouse, garden, land, meadow, pasture, wood, heath, moor, rush-ground, marsh, alder-ground, broom-ground, rent;) the words *sectare priora* (follow the first syllables) denoting how it was to be read. *F. N. B.* 2 C. In the Register, the complementary syllables are written over each of the abbreviations. *Reg. Orig.* 2.

MESAVENTURE. L. Fr. A mischance. Defined by Britton to be, where persons die by falling from trees, ships, carts, horses, mills, &c. *Britt.* c. 7, fol. 6, 15 b. See *Misadventure.*

MISCREAUNTES. L. Fr. In old English law. Apostates; unbelievers; infidels. Classed by Britton with the worst criminals; as murderers, robbers, prison-breakers, sorcerers, poisoners, &c. *Britt.* c. 29. Hence the term *miscreant.* 4 *Bl. Com.* 44. Otherwise written *mescroyantz. Id. ibid.* note.

MESCRU. L. Fr. Suspected of crime; guilty. *Britt.* c. 1, 4.

MESE, *Mees, Meas.* L. Fr. In old English law. A house. *Litt.* sect. 69, 71, 701. Derived by Spelman, with the L. Lat. *messuagium,* from the O. Lat. *massa,* another form of *mansa* or *mansus. Spelman,* voc. *Mansus.*

MESFAIT. L. Fr. A misdeed; an offence. *Britt.* c. 29, fol. 71 b.

MESFESOUR. L. Fr. A wrong-doer; an offender; a criminal. *Britt.* c. 15, 22, 29.

MESME. L. Fr. The same. Frequently contracted to m̄. *Reg. Orig.* 17, nota.

MESNALTY, *Mesnality.* In old English law. The estate or right of a *mesne,* (q. v.) *Termes de la Ley.*

MESNE. L. Fr. and Eng. [Lat. *medius.*] Middle; intermediate; between two persons or proceedings. See *Medius* and *infra.*

An intermediate lord; a lord who stood between a tenant and the chief lord; a lord who was also a tenant. "Lord, *mesne,* and tenant; the tenant holdeth by four pence, and the mesne by twelve pence." *Co. Litt.* 23 a.

MESNE LORD. In old English law. A middle or intermediate lord; a lord who held of a superior lord. 2 *Bl. Com.* 59. More commonly termed a *mesne,* (q. v.)

MESNE PROCESS. In practice. Intermediate process; process intervening between the beginning and end of a suit. 3 *Bl. Com.* 279. Process not only for the plaintiff against the defendant, but for either of them against any other whose presence in the court may be necessary for them; as against juries, witnesses, or to execute judgments given. *Finch's Law,* b. 4, ch. 43.

The writ of *capias ad respondendum.* Called *mesne,* to distinguish it on the one hand, from the original process by which a suit was formerly commenced; and on the other, from the final process of execution. 3 *Bl. Com.* 279.

MESNE PROFITS. [L. Lat. *media proficua.*] In practice. Intermediate profits; profits which have been accruing between two given periods. *Holthouse.* Profits of land, which a tenant has received

during the period of his wrongful possession; and which, after a recovery in ejectment, may be recovered by an action of trespass. 3 *Bl. Com.* 205. In New-York, a proceeding by suggestion has been substituted for an action. 2 *Rev. St.* [310,] 236, § 44.

MESNER. L. Fr. To lead; to conduct or manage. *Kelham.* See *Mener.*

MESPRENDRE. L. Fr. To misbehave; to do amiss; to offend. *Kelham.*

To mistake. *Id.* This is the literal meaning.

MESPRISION. L. Fr. [from *mesprendre*, q. v.] Mistake; a mistaking. *Par* mesprision *de nosmes nomables;* by mistake of names that should be named. *Britt.* c. 48, fol. 123 b.

MESS BRIEF. Germ. In Danish sea law. One of a ship's papers; a certificate of admeasurement granted at the home port of a vessel, by the government or by some other competent authority. *Jacobsen's Sea Laws*, 51.

MESSIS. Lat. A harvest or crop. **Messis sementem sequitur.** The crop belongs to [follows] the sower. A maxim in Scotch law. Where a person is in possession of land which he has reason to believe is his own, and sows that land, he will have a right to the crops, although before it is cut down, it should be discovered that another has a preferable title to the land. *Bell's Dict.*

MESSOINGES. L. Fr. Lies. *Kelham.*

MESSOR. Lat. In old English law. A reaper. *Fleta*, lib. 2, c. 73, § 4. See *Id.* c. 84.

MESSUAGE. [L. Lat. *messuagium, mesuagium;* L. Fr. *mease, meason.*] A dwelling-house, with some adjacent land assigned to the use thereof. *Cowell. Spelman.*—A dwelling-house with the adjacent buildings, including garden, orchard and curtilage.* *Co. Litt.* 5 b, 6. *Burton's Real Prop.* 175, pl. 546. Held, in some of the old cases, to be a word of larger import than *house;* the latter word comprehending buildings only. *Keilw.* 57. But this is now overruled in England. 2 *Term R.* 498. 1 *Crabb's Real Prop.* 74, § 89. And see *Cro. Jac.* 634. Which is merely restoring the ancient interpretation of the word; it having been held, as far back as the Year Books, that there was no difference between a house and a messuage. Fairfax, J. *M.* 21 *Edw.* IV. 62. *Thel. Dig.* lib. 8, c. 1, ¶ 6. See *acc.* 4 *Penn. St.* (Barr's) *R.* 93. 2 *Hilliard's Real Prop.* 338. See *House, Messuagium.*

This word, which is still of constant occurrence in conveyances and wills, is derived by Spelman from the L. Lat. or Ital. *massa*, (q. v.) or old Fr. *mas*, answering to the L. Fr. *mese*, (q. v.)

MESSUAGIUM, *Mesuagium.* L. Lat. A messuage. *Reg. Orig.* 1. *Cro. Jac.* 634. *Messuagium sive domus*, (a messuage or house,) are one and the same. *Id. ibid.* This identity of signification is confirmed by the use of *mesuagium* in the Magna Charta of 9 Hen. III. as the synonyme of *domus*, in the charter of King John, c. 7.

MESTER, *Mestre, Meister.* L. Fr. Need; occasion. *Si* mester *soit;* if need be. *Britt.* c. 1. *Il n'est pas* mestre; there is no need. *Yearb.* P. 6 Edw. III. 5.

MESTIER. L. Fr. Business; occupation. *Un coroner que face le* mestier *de la corone;* a coroner who shall attend to the affairs of the crown. *Britt.* fol. 2.

MESURE. L. Fr. Measure. *Britt.* c. 30.

META. Lat. The goal of a Roman race-course; a mark or object about which the chariots turned, and where the course ended.

In old English law. A boundary line; a border or terminus. Properly, a visible object, standing upon the line, as a stone or tree, and showing where it ended; a butt. See *Butts and bounds. Bundæ et* metæ, *et rationabiles divisæ quæ ponuntur in terminis et finibus agrorum, ad distinguendum prædia et dominia vicinorum;* bounds and metes and reasonable divisions which are set on the borders and limits of lands, in order to distinguish the estates and properties of neighbors. *Bract.* fol. 166 b, 167. *Fleta*, lib. 2, c. 41, § 30. *Pro* metis *et terminis ponendis. Mag. Rot.* 3 Hen. III. rot. 14 b.

METALLUM. Lat. In the Roman law. Metal; a mine.

Labor in mines, as a punishment for crime. *Dig.* 40. 5. 24. 5. *Calv. Lex.*

METATUS. L. Lat. In old European law. A dwelling; a seat; a station; quarters; the place where one lives or stays. *Spelman.*

METES. See *Abuttals.*

METES AND BOUNDS. [L. Lat. *metæ et bundæ, metæ et termini.*] In conveyancing. The boundary lines of lands, with their terminating points or angles;

terminal lines, with their distinctive objects; end lines and side lines. Called, in old Scotch law, *meths and marches*. *Skene in Reg. Maj.* lib. i. c. 10. See *Butts and bounds*.

METHOD, in patent law, construed. Boulton & Watt *v.* Bull, 2 *H. Bl.* 463.

ΜΗΤΡΑΔΕΛΦΟΣ, *Μητράδελφος*. Gr. [from *μήτηρ*, mother, and *ἀδελφος*, brother.] In the civil law. A maternal uncle, (*avunculus*;) a mother's brother. *Inst.* 3. 6. 1.

ΜΗΤΡΑΔΕΛΦΗ, *Μητράδελφη*. Gr. [from *μήτηρ*, mother, and *ἀδελφη*, sister.] In the civil law. A maternal aunt, (*matertera*;) a mother's sister. *Inst.* 3. 6. 1.

METROPOLIS. Græco-Lat. and Eng. [Gr. *μητρόπολις*, from *μήτηρ*, mother, and *πόλις*, city.] A mother city; one from which a colony was sent out. *Calv. Lex.*

The capital of a province. *Id.*

METROPOLITAN. In English law. One of the titles of an archbishop. Derived from the circumstance that archbishops were consecrated at first in the metropolis of a province. 4 *Inst.* 94.

METTRE. L. Fr. [from Lat. *mittere*, q. v.] To put; to place or set; to fix. Mettre *en escript*; to put in writing. *Britt.* fol. 1. *Se pusse* mettre *en jure*; may put himself on a jury. *Id.* c. 68. *Si il se* mette *en pays*; if he put himself on the country. *Id.* c. 15.

To put (a case;) to suppose. *Mettons*; put, suppose. *Yearb.* M. 3 Hen. VI. pl. 16. *Mettomus*; let us suppose or admit. *Dyer*, 86. See *Mitter*.

METUS. Lat. In the civil law. Fear. By this was meant not every kind of apprehension (*non quemlibet timorem*,) but the fear of some serious evil (*majoris malitatis*.) *Dig.* 4. 2. 5. It was not the fear of a foolish man (*non vani hominis*,) but a reasonable apprehension that might be felt by a man of the greatest coolness, (*sed qui merito et in homine constantissimo cadat*.) *Id.* 4. 2. 6.

METUS. Lat. In old English law. Fear; apprehension of danger, present or expected, (*præsentis vel futuri periculi causa*;) not the fear of a foolish and timorous person, but such as may influence a steady man, (*talem qui cadere possit in virum constantem*;) such a state of apprehension, as may include peril of death and bodily suffering; (*talis enim debet esse metus qui in se contineat mortis periculum et corporis cruciatum*.) *Bract.* fol. 16 b. *Fleta*, lib. 3, c. 7, § 1. 1 *Bl. Com.* 131.

MEU. L. Fr. Moved; commenced, as a suit. *Kelham. Britt.* c. 126.

MEULX, *Meux*, *Meuz*, *Meutz*, *Meultz*. L. Fr. Better. *Kelham.*

MEUM. Lat. Mine. *Dig.* 50. 16. 91.

MEYN, *Mayn*. L. Fr. Hand. *De* meyn *en meyn*; from hand to hand. *Kelham.*

An oath. *A sa soule* meyn; on his own single oath. *Id.*

Mean, intermediate. *En le meyn temps*. *Id.*

MEYNOVERE. L. Fr. The same with *mainour*, (q. v.)

MEYNOVERER. L. Fr. To occupy; to manure, (q. v.) *Britt.* c. 40, fol. 104.

MEYNPAST. L. Fr. A household or family. *Britt.* c. 1. See *Manupastus*.

MEYNPERNOUR. L. Fr. A mainpernor. *Britt.* c. 1, 21.

MEYNS. L. Fr. [from Lat. *minus*.] Less; insufficiently; not. Meyns *avysement maunde*; ill advisedly sent. *Kelham.* *Meyns sachantz*; illiterate. *Id.* *Au meyns*; at least. *Id.*

MEYS. L. Fr. A month. *Kelham.*

MI, *My*. L. Fr. [from Lat. *medius*.] Half; middle. *Kelham. L. Fr. Dict.*

MI'A. A contraction of *misericordia*. *Comb.* 352. 1 *Inst. Cler.* 11.

MICHAELMAS TERM. One of the four terms of the English courts of common law, beginning on the second day of November and ending on the twenty-fifth. 3 *Steph. Com.* 562.

MICHEL-GEMOT. Sax. Great meeting. One of the names of the general council of the kingdom in the times of the Saxons. 1 *Bl. Com.* 147.

MICHEL-SYNOTH. Sax. Great council. One of the names of the general council of the kingdom in the times of the Saxons. 1 *Bl. Com.* 147.

MIDDLE THREAD. [L. Lat. *medium filum*; L. Fr. *fil de myleu*.] An imaginary line drawn through the middle of a stream in the direction of its length.* Story, J. 3 *Sumner's R.* 170, 178.

MIE. L. Fr. Not; ill. *Kelham.*

Middle. *Id.* See *Mi*.

MIELZ, *Mieltz*, *Miez*, *Miex*. L. Fr. Best; better. *Kelham.*

MIENDRE. L. Fr. Less; least. *Kelham.*

MIERE, *Mier*, *Mire*. L. Fr. Mother. Old forms of *mere*. *Kelham.*

MIESES. Span. [from Lat. *messis*?] In Spanish law. Crops of grain. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

MIGRARE. Lat. To remove from one place to another; to migrate or emigrate. *Migrans jura amittat ac privilegia et immunitates domicilii prioris;* one who emigrates will lose the rights, privileges and immunities of his former domicil. *Voet, Com. ad Pand.* tom. i. 347. 1 *Kent's Com.* 76.

MILES. Lat. In the civil law. A soldier. Derived by Ulpian either from *militia*, (hardship,) or from *multitudo*, or from *malum*, (evil, which they often avert,) or from *mille*, (a thousand.) *Dig.* 29. 1. 1. 1.

MILES. L. Lat. In old English law. Knight; a knight; (Lat. a soldier.) So called, because the knights (*milites*,) formed a part of the royal army, in virtue of their feudal tenures. 1 *Bl. Com.* 404. See *Id.* 272. A knight bachelor. 1 *Salk.* 6, pl. 14. See *Milites.*

MILIARE. L. Lat. In old English law. A thousand. *Fleta*, lib. 2, c. 12, § 2.

MILITARY CAUSES. In English law. Causes of action or injuries cognizable in the court military, or court of chivalry. 3 *Bl. Com.* 103.

MILITARY COURTS, in English law, include the ancient *court of chivalry* and modern *courts martial*, (qq. v.) 3 *Bl. Com.* 68, 103.

MILITARY FEUDS, (FIEFS or FEES.) In old English law. The genuine or original feuds or feudal estates, which were all of a military nature, and in the hands of military persons, being held by the tenure of military service.* 2 *Bl. Com.* 57.

MILITARY LANDS. In American law. Lands granted to soldiers for military services. *United States Digest*, Military and Bounty Lands.

MILITARY LAW. A system of regulations for the government of an army.* A system of regulations for the government of the armies in the service of the United States, authorized by the Act of Congress of April 10th, 1806, and known as the Articles of War. 1 *Kent's Com.* 341, note. It is quite a distinct thing from martial law. *Id. ibid.*

MILITARY TENURES. In English law. The ancient tenures by knight service and escuage, which were abolished by the statute 12 Car. II. c. 24. 2 *Bl. Com.* 77.

MILITES. L. Lat. [plur. of *miles*, knight.] In old English law. Knights. *Cum* militibus *comitatuum;* with the knights of the shires. *Mag. Cart.* 9 Hen. III. c. 12. *Cum quatuor* militibus *cujuslibet comitatûs;* with four knights of every shire. *Mag. Cart. Johan.* c. 18.

In old Scotch law. Freeholders. *Skene de Verb. Sign.*

MILITIA. Lat. and Eng. [from *miles*, a soldier.] Military service. The national soldiery of a country, as distinguished from the standing military force; consisting of the able-bodied male inhabitants of a prescribed age, who are enrolled, officered, mustered and trained according to law, but are called into active service only on emergent occasions, such as insurrection or invasion, for the public defence. *Act of Congress*, May 8, 1792. *United States Digest*, Militia. 1 *Kent's Com.* 262, 266.

"MILL," is a tenement. *Burr. Sett. Cas.* 107, 108.

"MILL," held to mean not merely the building in which the business is carried on, but the site, dam, and other things connected with the freehold. Story, J. 3 *Mason's R.* 280. The grant of a *saw-mill* or grist-mill, with its privileges and appurtenances, will pass the land under it, and that required for the use of the mill; also the head of water necessary to its enjoyment, and the right of flowing back upon other lands of the grantor. 3 *Shepl. R.* 218. 5 *Id.* 281. So, in the case of a devise of a mill and the appurtenances. 3 *Mason's R.* 280. 1 *Serg. & Rawle's R.* 169. See *Angell on Water-Courses*, §§ 153—157.

"MILL SITE." The grant of a *mill site* passes all the land covered by the mill. 2 *Appl.* 61. The exception in a lease, of a *mill site*, includes not merely an easement, but the soil of the mill site, and all the land necessary for the pond and for carrying on the mill. 6 *Cowen's R.* 677. See *Ang. on Water-Courses*, § 153 *a.*

MILLENA. L. Lat. [from Lat. *mille*, a thousand.] In old English practice. A thousand. *Towns. Pl.* 171.

MILNE. An old form of *mill;* as *millner* was of *miller. Plymouth Col. Laws*, 1636, 1638. It appears to be immediately derived from the Fr. *molin*, (q. v.)

MINA. L. Lat. In old English law. A measure of corn or grain. *Cowell. Spelman.*

MINARE. L. Lat. In old records. To mine or dig mines. *Cowell. Minator;* a miner. *Id.*

To drive. *Spelman. Minator carucæ;* a plough-driver. *Cowell.*

MIND AND MEMORY. A phrase applied to testators, denoting the possession of mental capacity to make a will. In order to make a valid will, the testator must have a sound and disposing *mind and memory.* In other words, he ought to be capable of making his will, with an understanding of the nature of the business in which he is engaged,—a recollection of the property he means to dispose of,—of the persons who are the objects of his bounty, and the manner in which it is to be distributed between them. Washington, J. 3 *Wash. C. C. R.* 385, 386.

"MINE," held to have the sense of *quarry.* 14 *Mees. & W.* 859, 872, Parke, B. quoting *Jacob.*

MINERA. L. Lat. In old English law. A mine. *Co. Litt.* 6 a. *Fleta*, lib. 2, c. 41, § 8. 4 *Mod.* 143.

"MINERALS," held to include all fossil bodies or matters dug out of mines. 14 *Mees. & W.* 859. Such as beds of stone which may be dug by winning or quarrying. *Id. ibid.* Parke, B.

MINIME. Lat. In the least degree; least of all; by no means; not at all. **Minime mutanda sunt quæ certam habuerunt interpretationem.** Things which have had a certain interpretation, [whose interpretation has been settled, as by common opinion,] are not to be altered. *Co. Litt.* 365. *Wingate's Max.* 748, max. 202.

MINIMENT. An old form of *muniment*, (q. v.) *Blount.*

MINIMUS, *Minimum.* Lat. The least; the smallest. **Minima pœna corporalis est major qualibet pecuniaria.** The smallest corporal punishment is greater than any pecuniary one. 2 *Inst.* 220.

Minimum est nihilo proximum. The least is the nearest to nothing. *Bacon's Arg.* Low's case of Tenures.

MINISTER. Lat. and Eng. [L. Fr. *ministre.*] An assistant; an attendant.* A servant. *Hob.* 125. One who executes the orders of another.* A chief servant; an agent. *Webster.*

An officer of justice, charged with the execution of the law, and hence termed a ministerial officer; such as a sheriff, bailiff, coroner, sheriff's officer. *Britt.* c. 21. The Roman prætor's attendants were called *ministri. Adam's Rom. Ant.* 133. In the old books, the term is applied to all officers assisting in the administration of justice, such as clerks, serjeants, attorneys, &c. and even to the justices themselves. *Britt. ub. sup. Stat. Westm.* 1, c. 25. 2 *Inst.* 208.

In Saxon law. A thane. *Spelman.*

In international law. A diplomatic agent or representative; as a minister plenipotentiary, a resident minister. *Wheaton's Intern. Law*, 264, [273.] 1 *Kent's Com.* 39, 40.

MINISTERIAL. [from *minister*, q. v.] Attendant upon; subservient, subordinate. "Those magistrates who have a certain *imperium*, but without jurisdiction, are called *ministerial* officers." *Hale's Anal.* sect. xii.

MINISTERIUM. Lat. [from *minister*, q. v.] Ministry; attendance; service; office. *Calv. Lex. Spelman.*

MINOR. Lat. Less; younger. See *Minus.*

MINOR. Lat. and Eng. A minor, or infant. A term derived from the civil law, which described a person under a certain age, as *less than* so many years. Minor *viginti quinque annis;* one less than twenty-five years of age. *Inst.* 1. 14. 2. The correlative term was *major*, (as *major viginti quinque annis,*) but this has not been adopted in English. Bracton and Fleta use the word *minor* alone, in its modern sense of *infant. Bract.* fol. 340 b. *Fleta*, lib. 2, c. 60, § 26.

Minor jurare non potest. A minor cannot make oath. *Co. Litt.* 172 b. An infant cannot be sworn on a jury. *Litt.* sect. 259. A maxim of practice, taken even anciently in a qualified sense. *Co. Litt. ub. sup.* It seems to be derived from the rule of the civil law, **Pupillo non defertur jusjurandum.** *Dig.* 12. 2. 34. 2.

Minor 17 annis non admittitur fore executorem. A person under seventeen years is not admitted to be an executor. 6 *Co.* 67, *Sir Moyle Finch's case.* A rule of ecclesiastical law. See *Age.*

Minor minorem custodire non debet, alios enim præsumitur male regere qui seipsum regere nescit. A minor ought not to be guardian to a minor, for he who knows not how to govern himself, is presumed to be unfit to govern others. *Co. Litt.* 88 b.

MINOR. Lat. In old English law. A person of lower condition. *Fleta*, lib. 2, c. 47, §§ 13, 15.

MINOR ÆTAS. Lat. In old English law. Minority or infancy. *Cro. Car.* 516. Literally, lesser age.

MINOR FACT. In the law of evi-

dence. A relative, collateral or subordinate fact; a circumstance. *Wills, Circ. Evid.* 27. *Burr. Circ. Evid.* 121, note, 582.

MINORA REGALIA. L. Lat. In English law. The lesser prerogatives of the crown, including the rights of the revenue. 1 *Bl. Com.* 241.

MINORITY. [Lat. *minor ætas*, contracted into *minoritas*.] The state of being under, or *less than* a certain age; in the civil law, under twenty-five, (*minor viginti quinque annis*;) in the common law, under twenty-one. See *Infancy, Minor.*

MINUERE. Lat. [from *minus*, less.] In the civil law. To make less; to diminish or reduce. *Dig.* 4. 5. 2. 2.

MINUM. L. Lat. A technical word used in old practice, when the records were written in Latin, descriptive of the marks or strokes composing the letters *i*, *m*, *n*, and *u*, and obviously made up from those letters. If a word ended with *um*, it was said to have five *minums* at the end. 1 *Inst. Cler.* 15.

MINUS. Lat. Less. In many phrases of the civil law, this word had the sense of *not*. Thus, a debt was said to be *minus solutum*, though none of it had been paid. *Minus solutum intelligitur etiam si nihil esset solutum. Dig.* 50. 16. 32. So, if paid at a later time than was agreed on. **Minus solvit qui tardius solvit.** *Dig.* 50. 16. 12. 1. So, in some common law phrases. *Minus satis;* insufficient. *Cro. Jac.* 552. *Minus sufficiens in literatura;* incompetent in point of learning. 1 *Bl. Com.* 390. 4 *Mod.* 134.

In eo quod plus sit, semper inest et minus. In the greater is always included the less also. *Dig.* 50. 17. 110.

MINUTE. L. Fr. [from *mi*, middle, and *nuyt*, night.] Midnight. *Britt.* c. 80.

MINUTE TITHES. [L. Lat. *minutæ*, or *minores decimæ*.] In old English law. Small tithes, such as usually belong to the vicar; as herbs, seeds, eggs, honey, wax, &c. *Cowell.* 2 *Inst.* 649.

MINUTES. In Scotch practice. A pleading put into writing before the Lord Ordinary, as the ground of his judgment. *Bell's Dict.*

MINUTIO. Lat. [from *minuere*, q. v.] In the civil law. A lessening; diminution or reduction. *Dig.* 4. 5. 1.

MINUTUS. L. Lat. In old English law. Small. *Minutis curiis;* in small courts. *Fleta*, lib. 2, c. 61, § 20.

MIRROR OF JUSTICES, commonly called THE MIRROR. The title of an old treatise written in law French, and generally attributed to Andrew Horne, who was chamberlain of London in the time of Edw. II. though the share which Horne had in the work has been a matter of dispute. Lord Coke supposes that the greater part of it was written before the Conquest, and that Horne added many things to it in the reign of Edward I. 9 *Co.* pref. 10 *Id.* pref. Dugdale supposes that Horne composed the work from an old law tract called *Speculum Justitiariorum. Dugd. Orig. Jur.* 23. Mr. Reeves is of the opinion that a great part of it was written after Fleta and Britton. 2 *Reeves' Hist.* 358. It was first published in 1642. *Crabb's Hist.* 224, 225. Mr. Barrington remarks that the word *mirror*, (Lat. *speculum;* Germ. spiegel,) is used as the title of some of the oldest law books. *Obs. Stat.* 1, 2, note [*b*.]

MIS'. An abbreviation of *misis*. 1 *Inst. Cler.* 11.

MISA. L. Lat. In old English law. The mise or issue in a writ of right. *Spelman.* See *Mise.*

In old records. A compact or agreement; a form of compromise. *Cowell.*

MISÆ. L. Lat. [from L. Fr. *mise*, q. v.] In old practice. Costs of suit; charges. *Spelman. T. Raym.* 20. *Cum* misis *et custibus. Fleta*, lib. 2, c. 64, § 13. *Pro* misis *et custagiis. Dyer*, 75, (Fr. ed.) Kitchin and West are referred to in Cowell, as using the singular *misa*, but this was rare.

Expenses generally. *Fleta*, lib. 2, c. 82, § 2.

MISADVENTURE. [L. Fr. *mesaventure;* L. Lat. *infortunium*.] In criminal law. Mischance; misfortune or accident. See *Mesaventure.* This term is differently defined by Britton, Staundford and West. *Britt.* c. 7. *Staundf. Pl. Cor.* lib. 1, c. 8. *West's Symbol.* part. 2, tit. Indictment, sect. 48—50. *Cowell.*

MISCONTINUANCE. In practice. An improper continuance; want of proper form in a continuance. Cowell makes it to be the same with *discontinuance.*

MISCREANT. In old English law. An apostate; an unbeliever; one who totally renounced Christianity. 4 *Bl. Com.* 44.

MISDEMEAN. In old English law. To use improperly; to abuse. "If he

misdemean an authority." *Finch's Law*, b. 1, ch. 3, num. 63.

MISDEMEANOUR, *Misdemesnor:* In criminal law. A less heinous species of crime; an indictable offence, not amounting to felony. 4 *Chitt. Bl. Com.* 5, and note.

According to Blackstone, crime and misdemeanour, properly speaking, are mere synonymous terms. 4 *Bl. Com. ub. sup.* 4 *Steph. Com.* 57.

MISE. L. Fr. Cost or expense. *Cowell.* But it is most commonly used in the plural, (*mises,*) like the L. Lat. *misæ. Britt.* c. 17. *Kelham.*

MISE. L. Fr. and Eng. [L. Lat. *missum.*] In old English practice. The issue in real actions, particularly in writs of right. So called, because both parties *put* themselves upon the mere right, and the whole cause was *put* [*missa*] upon this point. *Co. Litt.* 294 b. Lord Coke seems to consider this word to be derived from the Lat. *mittere*, to put. But it appears to be essentially French, from *mettre*, to put. *Crabb's Hist.* 422. *Et il joyne le* mise *sur le mere droit;* and he join the mise upon the mere right. *Litt.* sect. 478. *Le* mise *est joyne en le bank. Id.* sect. 514. The word is still used in practice, in some of the United States. 10 *Grattan's R.* 350.

MISE-MONEY. In old records. Money given by way of contract or composition to purchase any liberty, &c. *Cowell. Blount.*

Misera est servitus, ubi jus est vagum aut incertum [incognitum.] It is a wretched state of slavery, where the law is shifting or uncertain, [unknown.] 4 *Inst.* 246. It is one of the genuine marks of servitude, to have the law, which is our rule of action, either concealed or precarious. 1 *Bl. Com.* 416. Obedience to law becomes a hardship, when the law is unsettled or doubtful. *Broom's Max.* 62.

MISERABILE DEPOSITUM. Lat. In the civil law. A sad or lamentable deposit; one made under circumstances of sorrow or misfortune, such as insurrection, fire, shipwreck, &c. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, § 812. *Loccen. de Jur. Mar.* lib. 1, c. 7, sect. 13.

MISERERE. Lat. Have mercy. The first word (in the Latin version) of the fifty-first psalm, from which the whole psalm was called the *Miserere*, or psalm of mercy. It was the first verse of this that the ordinary commonly gave to such malefactors to read, as had the benefit of clergy allowed them by law. *Cowell.*

MISERICORDIA. L. Lat. In old practice. Mercy. See *In misericordia, Mercy.*

An amercement. The old writ *De moderata misericordia* lay where a man had been outrageously amerced, to moderate or mitigate it. *F. N. B.* 75. *Si inciderit in* misericordiam; *et nulla prædictarum* misericordiarum *ponatur, nisi per sacramentum proborum et legalium hominum de visneto;* if he fall into mercy; and none of the aforesaid amercements shall be imposed unless by the oath of good and lawful men of the visne. *Mag. Cart.* 9 Hen. III. c. 14. *Id. Johan.* c. 20.

MISES, *Myses.* L. Fr. Expenses or costs. 2 *Inst.* 528. *Sauve al trovour ses* mises, *et ses costages renables;* saving to the finder his expenses and his reasonable costs. *Britt.* c. 17.

Tasks; taxes; talliages or takings. *Stat. Confirm. Chart.* c. 5. 2 *Inst.* 528.

MISFEASANCE. [L. Fr. *mesfaisance.*] A misdeed or trespass. *Cro. Car.* 498. *Cowell.*

The doing what a party ought to do, improperly. 1 *Tidd's Pr.* 4. The improper performance of some act which a man may lawfully do. 3 *Steph. Com.* 460.

MISHERSING. In old English law. The being quit of amercements for plaints in any courts, not regularly or properly preferred. *Spelman.*

MISJOINDER. In practice. Improper joinder or union. Used to denote the improper union of parties as plaintiffs or defendants in an action, and the improper union of causes of action in one suit. 1 *Chitt. Pl.* 13, 44, 66, 86, 205.

MISKENNING. In Saxon and old English law. An unjust or irregular summoning to court; to speak unsteadily in court; to vary in one's plea. *Cowell. Blount. Spelman.*

MISLIER, *Mislyer.* L. Fr. To choose the wrong; to mistake. *Kelham. L. Fr. Dict.*

MISNOMER. [from Fr. *mes*, amiss, and *nomer*, to name.] The using one name for another; a misnaming. The misnomer of a defendant is ground for pleading in abatement. 1 *Chitt. Pl.* 248, 451. In England, this is no longer allowed in personal actions. *Id. ibid. Stat.* 3 & 4 *Will.* IV. c. 42, § 11. As to the effect of misnomer in a deed, see *Shep. Touch.* (by Preston,)

233, 245, 373. As to the effect of misnomer in a will, see *Id.* 416. 1 *Jarman on Wills*, 330, (328, Perkins' ed. note.)

MISPLEADING. Error in pleading; informal pleading, as pleading *not guilty* to an action of debt, instead of *nil debet.* 1 *Salk.* 365. 2 *Tidd's Pr.* 924. 1 *Chitt. Pl.* 682.

MISPRISION. [L. Fr. *mesprision*, q. v.] In old practice. Neglect; oversight; mistake; as the misprision of a clerk in writing or keeping a record. *Stat.* 14 *Edw.* III. c. 6, st. 1. *Stat.* 8 *Hen.* VI. c. 15. *Crompt. Jur.* fol. 20. *Cowell. Blount.*

In criminal law. Neglect or light account made of a crime; omission to reveal it. *Misprision of treason* is the bare knowledge and concealment of treason, without any degree of assent thereto, for any assent makes the party a principal traitor. 4 *Bl. Com.* 120. 4 *Steph. Com.* 200. *Misprision of felony* is the concealment of a felony committed by another, without such previous concert with, or subsequent assistance of the latter, as will make the party concealing an accessory before or after the fact. 4 *Steph. Com.* 260. These are misprisions in the proper sense of the term. Contempts and high misdemeanors were formerly termed *positive misprisions.* 4 *Bl. Com.* 121.

MISRECITAL. In conveyancing. Error in the recital of an instrument. As to the effect of misrecital, see *Shep. Touch.* (by Preston,) 77.

MISREPRESENTATION. A false or erroneous representation. A misrepresentation of a material fact, whether it be made through mistake or design, avoids a policy of insurance underwritten on the faith thereof. 1 *Story's R.* 57. See *Representation.*

MISSATICUM. L. Lat. [from *mittere*, to send.] In old European law. A message, (*nuncium.*) *Spelman.*

The jurisdiction, circuit or territory of a *missus*, (q. v.) *Id.*

MISSILIA. Lat. [from *mittere*, to send or throw.] In the Roman law. Gifts or liberalities, which the prætors and consuls were in the habit of *throwing* among the people. *Inst.* 2. 1. 45.

MISSING SHIP. In maritime law. A vessel is so called when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. 2 *Duer on Ins.* 469. It is identical in meaning with the phrase "out of time," but is used by merchants and insurers in a different sense. *Id. ibid.*

MISSIO. Lat. [from *mittere*, to send or put.] In the civil law. A sending or putting. *Missio in bona;* a putting the creditor in possession of the debtor's property. 1 *Mackeld. Civ. Law*, 378, § 344. 4 *Reeves' Hist.* 20. 2 *Kames' Equity*, 208.

Missio judicum in consilium; a sending out of the *judices* (or jury,) to make up their sentence. *Hallifax, Anal.* b. 3, c. 13, num. 31.

MISSIVES. In Scotch practice. Writings passed between parties as evidence of a transaction. *Bell's Dict.*

MISSUS, (plur. MISSI.) L. Lat. [from *mittere*, to send.] In old European law. A legate; a messenger, (*nuncius;*) a commissary, or commissioner, (*commissarius;*) a deputy, substitute or representative, (*vicarius;*) an attorney. *Spelman.* One who was *sent* on the business of another.

Missus regalis; a king's legate, commissary or commissioner; a king's justice. *Spelman.*

Missus dominicus; a king's justice or commissioner; an extraordinary and itinerant judge. *Spelman. Esprit des Loix*, liv. 28, c. 28. 1 *Rob. Charles* V. Appendix, note xxiii. See *Steph. Lect.* 81, 197.

MIST. L. Fr. Put. See *Mitter.*

MISTAKE, in equity, as distinguished from *accident*, is some unintentional act, or omission or error, arising from ignorance, surprise, imposition or misplaced confidence. 1 *Story's Eq. Jur.* § 110.

MISTERIUM. L. Lat. [from L. Fr. *mestier.*] A trade or occupation; a mystery. *Spelman.*

MISTRIAL. In practice. A false or erroneous trial, as where it is in a wrong county. *Cro. Car.* 284.

MISUSER. Abuse of an office or franchise. 2 *Bl. Com.* 153.

MITIOR SENSUS. L. Lat. The milder or more favorable sense. It was the old rule to construe slanderous words in the mildest sense, and to arrest the judgment if it was found possible to take them in any other sense than that of imputing a felony, or infamous misdemeanor. See 4 *Co.* 13 a. The old doctrine of *mitior sensus* is now, however, altogether exploded; and where words may be taken in a double sense, the court, after verdict, will always construe them in that sense which

may support the verdict. *Cooke's Law of Defamation*, 13. 8 *Mod. R.* 24, 240.

Mitius imperanti melius paretur. The more mildly one commands, the better is he obeyed. 3 *Inst.* 24.

MITTA. L. Lat. [from Sax. *mitten.*] An ancient Saxon measure in use before the Conquest, the quantity of which is not known with certainty; some holding it to be the same with *corus*, others with *modius*, (a bushel,) and others that it was a measure of ten bushels. *Blount. Cowell. Spelman.*

MITTER. L. Fr. To put (a case;) to suppose. *Mountague* mist *cest case. Dyer*, 23 b.

MITTER AVANT. L. Fr. In old practice. To put before; to present before a court; to produce in court. *Mist avant un fait;* produced a deed. *Yearb.* M. 5 Edw. III. 119.

MITTER LE DROIT. L. Fr. In old English law. To put or pass the right; passing the right. 2 *Bl. Com.* 325. *En ascun cas, un releas urera de* mitter *tout* le droit *que il que fait le releas ad, à celuy à que le release est fait;* in some cases, a release shall enure to put all the right which he who maketh the release hath, to him to whom the release is made. *Litt.* sect. 306. See *Hale's Anal.* sect. xxxv.

MITTER L' ESTATE. L. Fr. In old English law. To put or pass the estate; passing the estate. *Ascun foits un releas prendra effect et urera pur* mitter l' estate *de celuy que fist le release à celuy à que le releas est fait;* sometimes a release shall take effect and enure to put the estate of him which makes the release, to him to whom the release is made. *Litt.* sect. 305. 2 *Bl. Com.* 325. See *Release.*

MITTERE. Lat. To send; to put. *Mittere in confusum;* to put in hotchpot; to put into a common stock. *LL. Longobard.* b. 2, tit. 14, c. 15. 2 *Bl. Com.* 190. *Nec super eum* mittemus; nor will we send upon him; that is, we will not send any judge or commissioner to condemn him. *Magna Charta*, c. 29. 2 *Inst.* 46. 1 *Reeves' Hist.* 249. See *Missus dominicus. Quod me extunc possim in terram illam mittere;* that I may thereafter put myself into that land. *Fleta*, lib. 3, c. 9, § 18.

MITTIMUS. L. Lat. [from *mittere*, q. v.] (We send.) In old practice. A writ by which records were removed and transferred from one court to another. *Reg. Orig.* 169 b, 170.

In criminal practice. A precept or warrant granted by a justice, for committing an offender to gaol, where bail is not allowed, or cannot be obtained.* 4 *Bl. Com.* 300.

MITTOMUS. L. Fr. [from *mitter*, q. v.] Let us suppose; put the case; admit. *Litt.* sect. 302.

MIXED ACTION. [Lat. *actio mixta*, or *mista.*] In the civil law. An action in which some specific thing was demanded, and also some personal obligation claimed to be performed; or, in other words, an action which proceeded both *in rem* and *in personam. Inst.* 4. 6. 20. *Hallifax, Anal.* b. 3, c. 1, num. 5.

An action in which each party was an actor; such as the actions of *finium regundorum, familiæ erciscundæ, communi dividundo*, and the like. *Dig.* 44. 7. 37. 1.

In the common law. An action partaking of the nature both of a real and a personal action; wherein some real property is demanded, and also damages for a wrong sustained. 3 *Bl. Com.* 118. Now abolished in England, with the exception of the action of ejectment. *Stat.* 3 & 4 *Will.* IV. c. 27.

MIXED, (or COMPOUND) LARCENY. In criminal law. That kind of larceny which also includes in it the aggravation of a taking from one's house or person. 4 *Bl. Com.* 229. See *Larceny.*

MIXED TITHES. In English law. That species of tithes which consists of natural products, but nurtured and preserved in part by the care of man; as of wool, milk, &c. 2 *Bl. Com.* 24.

MIXTUM IMPERIUM. Lat. In old English law. Mixed authority; a kind of civil power. A term applied by Lord Hale to the *power* of certain subordinate civil magistrates, as distinct from jurisdiction. *Hale's Anal.* sect. xi.

MOBILIA. Lat. Moveables; moveable things; otherwise called *res mobiles.* In the civil law, this term properly denoted inanimate objects; animals being designated as *moventes*, or *se moventes*, (things moving themselves.) In a more general sense, however, it included both. *Dig.* 50. 16. 93. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 389. *Fleta*, lib. 2, c. 57, § 6.

Mobilia personam sequuntur, immobilia situm. Moveable things follow the person, immovables their site or locality. 1 *Hub.*

Prælec. 278. 2 *Id.* 542. *Hub. de Conflict. Leg.* sec. 15. Wills of *chattels*, executed according to the laws of the place of the testator's *domicil*, will pass personal property in all other countries, though not executed according to their laws. But wills concerning *land* must be executed according to the prescribed formalities of the state in which the land is situated. 4 *Kent's Com.* 513. See 2 *Id.* 67. 2 *Greenl. Evid.* § 668. An established maxim of public or international law. *Bynk. Quæst. Jur. Priv.* lib. 1, c. 16. *Phillimore on Domicil*, 6.

MOBILIS. Lat. [from *movere*, to move.] Moveable. See *Res mobiles.*

MODALIS. L. Lat. [from *modus*, q. v.] In old English law. Having the character of a *modus;* qualified; enlarged or restricted. *Non conditionalis nec modalis;* not conditional nor qualified. *Bract.* fol. 23.

MODERAMEN INCULPATÆ TUTELÆ. Lat. In the Roman law. The regulation of justifiable defence. A term used to express that degree of force in defence of the person or property, which a person might safely use, although it should occasion the death of the aggressor. *Calv. Lex. Bell's Dict.* Otherwise called *inculpatæ tutelæ moderatio. Cod.* 8. 4.

MODIUS. Lat. In old English law. A bushel. *Cowell. Spelman.*

A larger measure, of uncertain quantity. *Id.*

A measure of land. *Id.*

MODO ET FORMA. L. Lat. In manner and form. Words used in the old Latin forms of pleading by way of traverse, and literally translated in the modern precedents, importing that the party traversing denies the allegation of the other party, not only in its general effect but in the exact *manner and form* in which it is made. *Steph. Pl.* 189, 190. As to the effect of this expression, and how it is to be supported by proof, see *Id. ibid.* Even in the old law, *modo et forma* were, in many cases, mere words of form. *Litt.* sect. 483, 485.

MODUS. Lat. In old conveyancing. Mode; manner; the arrangement or expression of the terms of a contract or conveyance; the settling of the *manner* in which an agreement shall be made, or the *manner* in which land shall pass; the expression, by a grantor of land, of the particular *manner* in which the land given shall be held, or what estate shall be had in it, as whether it shall be held for years, for life or in fee; whether by one, or by several; and if by several, whether simultaneously, or successively, &c. *Bract.* fol. 17. And see the maxim, *infra.*

A qualification, involving the idea of variance or departure from some general rule or form, either by way of restriction or enlargement, according to the circumstances of a particular case, the will of a donor, the particular agreement of parties, and the like. See *infra.*

Bracton furnishes the best as well as the oldest illustration of this sense of the term, which was chiefly applied in his time to the then prevailing form of conveyance called *donatio*, or gift. A simple and pure gift was one made without any qualification or condition annexed to it, (*simplex et pura dici poterit, ubi nulla est adjecta conditio nec modus;*) as where a man gave land to another for his homage and service, to have and to hold to him and his heirs, of the donor and his heirs, rendering therefor annually so much, at such periods, &c. This was the ordinary form of donation, in accordance with the general rules of law of the period. But the donor might depart from this form if he chose, and *enlarge* the gift, (in Bracton's words,) by making others *quasi* heirs, who were not in fact heirs, (*augere poterit donationem, et facere alios quasi hæredes, licet revera hæredes non sunt;*) as if he were to say in the gift, "to have and to hold to such a one and his heirs, or to whomsoever he may chose to *give or assign* such land," or, in other words, admitting *assigns* in addition to heirs. And so, on the other hand, he might restrict or limit (*coarctare*) the descent of the land to certain heirs, in exclusion of others. *Bract.* fol. 17, 17 b. It was this species of variation or qualification which was expressed by the technical term *modus*, and this *modus* of the gift was so habitually allowed to prevail even against the general rule of law, as to give rise to two leading maxims which follow.

Modus is sometimes translated *form*, but not, as it appears, with accuracy; *form* being the proper translation of the Lat. *forma*, from which *modus* is often distinguished. See *Modo et forma.* Strictly, *modus* denotes the substance of the arrangement; *forma*, its verbal expression.

Modus et conventio vincunt legem. Manner and agreement overrule law. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9, § 1. *Co. Litt.*

19 a, 116 a, 180. The qualifying manner (*modus*) in which a grantor or donor declares that the thing given or granted shall pass, be held or enjoyed, and the particular arrangement of the terms of a contract (*conventio*) between parties, will be allowed to prevail against a general rule of law. Parties may qualify and even abridge their rights by special agreement.* The conditions annexed to a grant or devise, the covenants inserted in a conveyance or lease, and the agreements, whether in writing or by parol, entered into between parties, have, when duly executed and perfected, and subject to certain restrictions, the force of law over those who are parties to such instruments or agreements. *Broom's Max.* 303, [538.] *Story on Partn.* § 134. This maxim applies to all contracts not offensive to sound morals, or [contrary] to positive prohibitions by the legislature. *Story on Bailm.* § 32.

Modus legem dat donationi. Manner gives law to a gift. *Bract.* fol. 17 b. *Fleta*, lib. 3, c. 9, § 1. *Co. Litt.* 19 a. *Wright on Ten.* 21. *Broom's Max.* [347.] The *manner* in which an estate is declared to be given by a feoffment (or gift) governs its operation, and the course of the estate under it. If given to a man and his heirs, a fee is passed by the force of these words. But if given to a man, without limiting or expressing any estate, [or, as it may be said, without declaring any *modus*,] the grantee has barely an estate for life.* 2 *Bl. Com.* 310.

Both the above maxims are constantly quoted in modern law, especially the first, which may be considered as the fundamental principle of the law relating to contracts. *Broom's Max.* 303. Originally, they were rules of the old English law of real estate, and, according to Blackstone, the latter was derived from the feudal maxim, **Tenor est qui legem dat feodo.** 2 *Bl. Com.* 310. It is interesting to trace them both to the following passage of Bracton, which is quoted to complete the illustrations already given: MODUS *enim* LEGEM DAT DONATIONI, *et modus tenendus est contra jus commune, et contra legem, quia* MODUS ET CONVENTIO VINCUNT LEGEM; *ut si dicatur, do tali tantam terram cum pertinentiis in N. habendam et tenendam sibi et hæredibus suis quos de carne sua, et uxore sibi desponsata, procreatos habuerit. Vel sic: Do tali et tali uxori suæ, vel cum tali filia mea, &c. Habendum et tenendum sibi et hæredibus suis de carne talis uxoris, vel filiæ exeuntibus, vel procreatis vel procreandis; quo casû cum certi hæredes exprimantur in donatione, videri poterit quod tantum fit descensus ad ipsos hæredes communes, per* MODUM *in donatione appositum, omnibus aliis hæredibus suis à successione penitus exclusis,* QUIA HOC VOLUIT DONATOR. The manner or qualification gives law to the gift, and the manner is to be observed against common right and against law, because manner and agreement overrule law. As if it be said, "I give to such a one so much land, with the appurtenances, in N. to have and to hold to him and his heirs whom he shall have begotten of his own body and his wife that is espoused to him." Or thus, "I give to such a one, and such a one his wife, or with such a one my daughter, &c. to have and to hold to him and his heirs of the body of such wife or daughter issuing, or begotten, or to be begotten." In which case, since certain heirs are expressed in the donation, it will be seen that the descent [of the land] takes place only to the said heirs in common, by the *modus* or qualification annexed in the donation, all the other heirs being wholly excluded from the succession, *because the donor willed this.* *Bract.* fol. 17 b.

MODUS. L. Lat. In old conveyancing. A consideration; the consideration of a conveyance, technically expressed by the word *ut*. *Do tali tantam terram, &c.* UT *det mihi tantum, vel* UT *inveniat mihi necessaria;* I give to such a one so much land, &c. that he may give [for him to give—in consideration of his giving] me so much, or find me necessaries. *Bract.* fol. 18. This was a *modus* in its proper sense, as distinguished from *conditio*, (a condition,) though Lord Coke has held them to be synonymous. If the party wished to superadd a *condition*, the conveyance proceeded in the following terms: *quod nisi accipiens tradenti teneat quod convenit, statim liceat sibi se ponere in terram illam, &c.;* that unless the party receiving possession should keep his covenant with the other, [that is, as to the payment of the *modus*,] it should be lawful for the latter immediately to put himself in possession of the land, &c. *Bract. ub. sup.*

MODUS DECIMANDI, (or simply MODUS.) L. Lat. In English ecclesiastical law. A particular manner of tithing growing out of custom, different from the general law of taking tithes in kind. 2 *Bl. Com.* 29. 13 *Mees. & W.* 822.

MODUS DE NON DECIMANDO.

L. Lat. In English ecclesiastical law. A prescription for not tithing; a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 *Bl. Com.* 31. This application of the word *modus* is very reasonably objected to, as inaccurate. 2 *Chitt. Bl. Com.* 31, note. See 15 *Mees. & W.* 419.

MODUS LEVANDI FINES. L. Lat. The manner of levying fines. The title of a short statute in French, passed in the 18th year of Edward I. 2 *Inst.* 510. 2 *Bl. Com.* 349.

MOEBLE. L. Fr. Moveable. *Biens moebles;* moveable goods. *Britt.* c. 11. *Biens* moebles *et nient* moebles. *Id.* c. 98.

MOERYER. L. Fr. To die. *Kelham. Si l'engendrure* moerge; if the issue die. *Britt.* c. 102.

MOHATRA. L. Lat. In the civil law. The name of a kind of contract by which one of the parties sells a thing to the other upon credit, and immediately or soon after, either by himself or by means of an agent, buys it back for a less sum in ready money than the price for which he sold it, for which the other party still remains his debtor. *Pothier, Contr. of Sale,* num. 38. This is condemned in the books as a mere mode of disguising, under the false appearance of a sale, an usurious loan of the sum of money paid. *Id. ibid. Heinecc. Elem. Jur. Civ.* lib. 4, tit. 7, § 1227.

MOIETY. [L. Fr. *moite, moitee, moyte, moytie, moytee, moigte;* L. Lat. *medietas.*] A half; one of two equal parts. *Co. Litt.* 34 a, b.

MOLENDINUM. L. Lat. [from Lat. *molere,* to grind.] In old English law. A mill. *Reg. Orig.* 96. *Fleta,* lib. 2, c. 71, § 8.

Molendinum bladonicum; a corn-mill. *Cowell.*

Molendinum ventriticum (or *ventritium;*) a wind-mill. *Id. Fleta,* lib. 4, c. 1, § 20.

Molendinum aquaticum; a water-mill. *Cowell.*

MOLIN. L. Fr. A mill. *Molin eweret;* a water-mill. *Yearb.* P. 8 Edw. III. 9.

MOLINUM, *Molinus.* L. Lat. In old European law. A mill. *L. Wisigoth.* lib. 8, tit. 4, l. 30. *L. Salic.* tit. 24, § 1. An older form of *molendinum,* and perhaps the origin of the L. Fr. *molin* or *molyn,* (qq. v.) It occurs also in Domesday Book. *Spelman.*

MOLITURA, *Multura.* L. Lat. In old records. A toll paid for grinding; a multure. *Paroch. Ant.* 120. *Cowell.*

A grist or sack of corn brought to the mill to be ground. *Id.*

MOLLITER MANUS IMPOSUIT. L. Lat. (He) gently laid hands upon. Formal words in the old Latin pleas in actions of trespass and assault, where a defendant justified laying hands upon the plaintiff, as where it was done to keep the peace, &c. The phrase is literally translated in the modern precedents, and the original is retained as the name of the plea in such cases. 3 *Bl. Com.* 21. 1 *Chitt. Pl.* 501, 502. *Id.* 1071.

MOLMUTIAN, (or MOLMUTIN) LAWS. Laws ascribed to Dunwallo Molmutius, sixteenth king of the Britons, (who is said to have begun his reign 444 years before Christ.) *Cowell. Blount.*

MOLT. L. Fr. [from Lat. *multus,* much.] Much; many; very. *Est* molt *grant folye;* it is very great folly. *Fet Assaver,* § 35. *Moltz;* (pl.) many. *Id.* § 32.

MOLUTUS. L. Lat. [corrupted from Lat. *molitus,* from *molere,* to grind.] In old English law. Ground; sharpened by grinding; sharp. *Arma moluta;* sharp weapons, as swords and battle-axes. *Bract.* fol. 144 b. *Spelman.* Fleta has *emolitorum.* Lib. 1, c. 31, § 6.

MOLYN, *Molin.* L. Fr. [from L. Lat. *molinum?*] A mill. *Britt.* c. 1. *Molyn ventresse;* a wind-mill. *Kelham. Britt.* c. 42.

MOMENTUM. In the civil law. An instant; an indivisible portion of time, (Gr. ἄτομος.) *Calv. Lex.*

A portion of time that might be measured, a division or subdivision of an hour, answering in some degree to the modern *minute,* but of longer duration. According to Accursius, ten moments (*momenta*) made a point, (*punctum,*) and four points an hour. *Calv. Lex.* Hence, no doubt, the rule stated in Bracton, that an hour consists of forty moments, (*hora fit ex quadraginta momentis,*) which has been so far misunderstood as to be pronounced a misprint. *Bract.* fol. 264, 359 b. *Fleta,* lib. 5, c. 5, § 31. See *Hour, Hora.*

MOMENTANEUS. L. Lat. In old English law. Momentary. *Seysina momentanea. Bract.* fol. 273.

MONACHUS. Græco-Lat. [Gr. μοναχός, from μόνος, alone.] In the civil law. A monk. See *Nov.* 5.

MONASTERIUM. Græco-Lat. and L. Lat. [Gr. μοναστήριον.] In civil and old

English law. A monastery; a church. *Nov.* 5. *Spelman.* Hence, according to Spelman, the Sax. *mynster* and *munster.* And probably, also, the L. Fr. *monstre,* (q. v.)

MONATH, *Moneth.* Sax. [from *mona,* the moon.] Month; a month. *Beda,* lib. *de temp. rat.* c. 13. *Spelman.*

MONEIA. L. Lat. [from L. Fr. *monnoye.*] In old English law. Money. This form occurs in Domesday, and is doubtless the immediate origin of the modern English word. *Spelman.*

MONETA. Lat. [from *monere,* to warn, because by the impression upon it we are warned whose it is, (that is, by whom coined,) and what is its value.] In civil and old English law. Money. *Falsa moneta;* counterfeit money. *Cod.* 9. 24. *Monetam conterfactam. Mem. in Scacc.* M. 22 Edw. I. *De* moneta *et chambio domini regis;* of the money and exchange of the lord the king. *Bract.* fol. 117.

MONETARE. L. Lat. [from *moneta,* q. v.] In old English law. To coin money. **Monetandi jus comprehenditur in regalibus quæ nunquam a regio sceptro abdicantur.** The right of coining money is comprehended among those royal prerogatives which are never relinquished by the royal sceptre. *Dav. R.* 18.

Monetarium; a mint. *Towns. Pl.* 180, 260.

Monetarius; a moneyer, or coiner. *Fleta,* lib. 1, c. 22, § 6. See *Monier.*

MONETH. An old form of *month.* 3 *Leon.* 16.

MONEY, MONEYS. [Lat. *moneta,* q. v.] Cash; that is, gold and silver, or the lawful circulating medium of the country, including bank notes, when they are known and approved of, and used in the market as cash. *Co. Litt.* 207 a. Lord Ellenborough, 13 *East,* 20. Kent, C. 1 *Johns. Ch. R.* 236. The word "moneys" in a will does not comprehend bonds, mortgages, and other choses in action, when there is nothing in the will to show that the testator intended to use the word in that extended sense. 14 *Johns. R.* 1.

MONEY OF ADIEU. In French law. A kind of carnest money. Explained by Pothier to be so called, because it is a piece of money given by the buyer to the seller, when the parties, after having concluded their bargain, separate and say "*Adieu.*" *Poth. Contr. of Sale,* num. 507. But is it not rather a French form of the Lat. *denarius Dei,* and English *God's penny?* (qq. v.)

MONEY COUNTS. In pleading. A species of common counts, so called from the subject matter of them; embracing the *indebitatus assumpsit* count for money lent and advanced, for money paid and expended, and money had and received, together with the *insimul computassent* count, or count for money due on an account stated. 1 *Burr. Pr.* 132.

MONIED CORPORATION. Construed by statute, in New-York, to mean "every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances." 1 *Rev. Stat.* [598, § 51,] 601, § 61. See 3 *Comstock's R.* 479.

MONIER, *Moneyer.* [L. Lat. *monetarius.*] In old English law. A minister of the mint, who made and coined the king's money. There were several of these *moniers* or workmen; "some to shear the money, some to forge it, others to beat it broad, some to round it, and some to stamp or coin it." *Cowell,* vocc. *Moniers, Mint.*

A banker; one who dealt in money. *Cowell.*

MONIALA. L. Lat. In old English law. A nun. *Stat. Westm.* 2, c. 34. In Fleta, the word is written *monialis.* Lib. 1, c. 39, § 4. *Id.* lib. 2, c. 1, § 11.

MONITION. [Lat. *monitio,* from *monere,* to warn.] In admiralty practice. The summons to appear and answer, issued on filing the libel; which is either a simple monition *in personam,* or an attachment and monition, *in rem. Benedict's Adm. Pr.* 228, 239. It is sometimes termed monition *viis et modis,* and has been supposed to be derived from the old Roman practice of summoning a defendant. Johnson, J. 10 *Wheaton's R.* 490.

MONMAISTRE. L. Fr. My master. A term of respect applied to a judge. *Yearb.* M. 3 Hen. VI. 12, 15.

MONOMACHIA. Græco-Lat. [from Gr. μόνος, alone or single, and μάχη, fight.] Single fight; a combat between two; (*singularis pugna inter duos.*) Sometimes used as another name for the *duellum* or judicial combat; but applied by Lord Coke to the modern duel. 3 *Inst.* 157.

MONOPOLIUM. Græco-Lat. [from Gr. μόνος, alone, and πωλειν, to sell.] The sole power, right, or privilege of sale; monopoly; a monopoly. *Calv. Lex. Cod.* 4.

59. *Grot. de Jur. Bell.* lib. 2, c. 12, § 16. Monopolium *dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad suum libitum statuens;* it is called *monopoly*, when one single person buys up the whole of a commodity, fixing on it a price at his pleasure. 11 *Co.* 86 b.

MONOPOLY. [from Lat. *monopolium*, q. v.] The exclusive privilege of selling any commodity. Defined in English law to be "a license or privilege allowed by the king for the sole buying and selling, making, working or using of any thing whatsoever; whereby the subject in general is restrained from that liberty of manufacturing or trading which he had before." 4 *Bl. Com.* 159. 4 *Steph. Com.* 291.

Any exclusive right or privilege.

MONOYE, *Monnoye.* L. Fr. Money. *De fauseours de sealx et de monoye. Britt.* c. 4.

MONSTER. [Lat. *monstrum, partus monstrosus.*] A prodigious birth; a human birth or offspring not having the shape of mankind; which cannot be heir to any land, albeit it be brought forth in marriage. *Bract.* fol. 5. *Co. Litt.* 7, 8. 2 *Bl. Com.* 246.

MONSTER, *Monstre, Mouster, Mustre.* L. Fr. A church; a monastery. *Britt.* c. 1.

MONSTRANS DE DROIT. L. Fr. In English law. A showing or manifestation of right; one of the common law methods of obtaining possession or restitution from the crown, of either real or personal property. It is the proper proceeding when the right of the party as well as the right of the crown appears upon record, and consists in putting in a claim of right grounded on facts already acknowledged and established, and praying the judgment of the court, whether upon these facts, the king or the subject hath the right. 3 *Bl. Com.* 256. 4 *Co.* 54 b. A proceeding under this name is in use in Virginia. 12 *Grattan's R.* 564.

MONSTRANS DE FAITS. L. Fr. In old English practice. A showing of deeds; a species of profert. *Cowell. Hale's Anal.* sect. xxxv.

MONSTRAT per vultum quid sit sub corde sepultum.

He shows by his countenance what is buried in his heart. An old verse quoted by Fleta, lib. 3, c. 15, § 10.

MONSTRAVIT, (he hath showed,) and MONSTRAVERUNT, (they have showed.) In old English practice. A writ for the relief of tenants in ancient demesne, where they had been distrained to do to their lords other services or customs than they or their ancestors had used to do. *Reg. Orig.* 14. *F. N. B.* 14 D. So called from the word with which the body of the writ commenced.

MONSTRE. L. Fr. Shows. See *Ceo.*

MONTES. Span. In Spanish law. Forests or woods. *White's New Recop.* b. 2, tit. 1, c. 6, § 1.

MONTH. [O. Eng. *moneth*, from Sax. *monath;* Lat. *mensis.*] A well known division of a year, being either a *lunar* month, consisting of twenty-eight days or four weeks, or a *calendar* month, consisting of from twenty-eight to thirty-one days.* *Co. Litt.* 135 b. 2 *Bl. Com.* 141.

By the common law of England, a *month* is, in matters temporal, a *lunar* month. 1 *Steph. Com.* 265. 2 *Bl. Com.* 141. The reason of which rule is explained to be, "not only because it is always one uniform period, but because it falls naturally into a quarterly division by weeks." Therefore a lease for "twelve months" is only for forty-eight weeks; but if it be for "*a* twelve-month," in the singular number, it is good for the whole year. *Id. ibid.* In statutes and deeds, "*month*" means a *lunar* month, unless expressly described as *calendar*, or so appearing from the context. *Com. Dig.* Ann, B. 1 *M. & S.* 113. So, in all contracts, unless a contrary intention appear, or unless a general understanding of trade to the contrary be proved. *Willes' R.* 585. 4 *Mod.* 185. 1 *Stra.* 446. So, in all legal proceedings, unless the month be expressly described as *calendar.* 3 *Burr.* 1455. 1 *Bla. R.* 450. *Dougl.* 463, 446. 2 *Chitt. Bl. Com.* 140, note.

In ecclesiastical matters, on the other hand, "*month*" means a *calendar* month. 2 *Roll. Abr.* 521, 51. 6 *Co.* 61 b, *Catesby's case. Hob.* 179. 1 *Bla. R.* 450. 1 *Steph. Com.* 265. So, by the custom of trade, as in case of bills of exchange and promissory notes, a *month* is deemed a *calendar* month. 3 *Brod. & B.* 187. This, indeed, is the universal rule of the commercial world, in regard not only to negotiable instruments, but all commercial contracts. *Story on Bills*, § 330.

In the United States, the old English rule is considerably impaired, and the term "month" usually computed, and especially in statutes and judicial proceedings, as *calendar.* 4 *Kent's Com.* 94, 95,

note. 4 *Dallas' R.* 142. 5 *Grattan's R.* 285. 21 *Alabama R.* 47. In Georgia, however, the English rule has been followed. *Dudley's R.* 107. In New-York, it has been expressly reversed, it being declared by statute that whenever the term "month" or "months" is or shall be used in any statute, act, deed, verbal or written contract, or any public or private instrument whatever, it shall be construed to mean a calendar and not a lunar month, unless otherwise expressed. 1 *Rev. Stat.* [606,] 615, § 4.

MONUMENTUM, *Monimentum.* L. Lat. In the civil and common law. A monument; a memorial; a chronicle or record. *Calv. Lex. Monumenta quæ nos* recorda *vocamus sunt veritatis et vetustatis vestigia;* the memorials which we call records are the traces of truth and of antiquity. *Co. Litt.* 118.

MONYA. In Norman law. Moneyage. A tax or tribute of one shilling on every hearth, payable to the duke every three years, in consideration that he should not alter the coin. *Hale's Hist. Com. Law*, 148, and note.

MOOT. [L. Lat. *mota*, from Sax. *gemote*, a meeting or court, according to Spelman; from Lat. *movere*, to move or agitate, according to Mr. Crabb.] In English practice. An argument of causes by way of exercise; an argument of fictitious causes, with formalities resembling those of a court. *Moots* were a sort of exercise in the inns of courts, usually performed by students of a certain standing, preparatory to their commencing practice. *Crabb's Hist.* 564. Plowden observes, in his preface, that he was a constant attendant "at *moots* and lectures," while a student.

To MOOT, (anciently, To MOTE.) To argue (*placitare;*) to argue by way of exercise; to argue a fictitious case in form of law. See *Moot.*

To agitate a point by argument, without determining it; to raise a question for argument.

MOOT. (adj.) A subject for argument; unsettled; undecided. As a *moot* case, a *moot* point.

MOOTING. The exercise of arguing questions of law or equity, raised for the purpose. See *Moot.*

MOOT COURT. A court held for the arguing of moot cases or questions.

MOOT HALL. The place where moot cases were argued.

MOOT HILL. [L. Lat. *mallobergium*, *mons placiti.*] In old English law. A hill of meeting or council; an elevated place in the open air, where public assemblies or courts were held by the Britons. *Wharton's Lex.* In Scotland they were called *Mute hills*, as the famous Mute hill of Scone. *Spelman*, voc. *Mallobergium.* In Ireland, *Parly hills. Id. ibid.* See *Mote, Mute.*

MOOT MAN. One who argued moot cases in the inns of court.* One who argued readers' cases in inns of chancery, both in terms and grand vacations. 3 *Co.* pref. From these mootmen, after eight years' study, or thereabouts, were chosen utter barristers. *Id.*

MORA. Lat. In the civil law. Delay; default; neglect; culpable delay or default. *Calv. Lex.* 1 *Kames' Equity*, 324. See *In mora.*

Delay in fulfilling an obligation, as in the payment of money. *Dig.* 32. 1. 32. Said to be of difficult definition. *Id.* pr. *Nulla intelligitur* mora *ibi fieri, ubi nulla petitio est;* no delay is understood to be made where there is no demand. *Id.* 50. 17. 88.

Mora reprobatur in lege. Delay is reprobated in law. *Jenk. Cent.* 51, case 97.

MORA. L. Lat. In old English law. A moor; a more barren and unprofitable ground than a marsh. *Reg. Orig.* 2. *Fleta*, lib. 2, c. 71, § 7. *Co. Litt.* 5 a. *Shep. Touch.* 95.

Mora mussa; a watery or boggy moor; a moss or morass. 2 *Mon. Angl.* 306 b. *Cowell.*

MORAL CERTAINTY. In the law of criminal evidence. That degree of assurance which induces a man of sound mind to act, without doubt, upon the conclusions to which it leads. *Wills' Circ. Evid.* 7.—A certainty that convinces and directs the understanding, and satisfies the reason and judgment of those who are bound to act conscientiously upon it. Shaw, C. J. in Commonwealth *v.* Webster, *Bemis' Report of the trial*, 470.—A high degree of impression of the truth of a fact, falling short of absolute certainty, but sufficient to justify a verdict of guilty, even in a capital case. See *Burr. Circ. Ev.* 198—200.

MORARI. Lat. In old English law. To delay; to pause or rest. *Moratur in lege;* (he) rests or pauses in law; (he) demurs. See *Demorari.*

MORBUS. Lat. In the civil law. Disease; sickness. Defined by Sabinus (quoted by Ulpian in the Digests,) *habitum cujusque corporis contra naturam, qui usum ejus ad id facit deteriorem, cujus causâ natura nobis ejus corporis sanitatem dedit;* an unnatural habit of body, which impairs its use for that purpose for which nature gave us soundness of body. *Dig.* 21. 1. 1. 7. It was distinguished from *vitium*, (fault or vice.) *Id. ibid.* See *Dig.* 50. 16. 101. 2.

MORBUS SONTICUS. Lat. In the civil law. A sickness which rendered a man incapable of attending to any business, (*qui cuique rei nocet.*) *Dig.* 50. 16. 113. 1 *Mackeld. Civ. Law*, 137, § 127, note.—A sickness of the severer kind, having the power of causing great pain. *A. Gellius, Noct. Att.* lib. 20, c. 1.—A sickness which excused a non-appearance in court. *Calv. Lex. Adam's Rom. Ant.* 245, 272. Bracton uses this term in treating of the law of essoins, but gives it the meaning of an incurable disease. *Bract.* fol. 344 b. See *Sonticus.*

MORBOSUS. Lat. [from *morbus*, q. v.] In the civil law. Diseased. See *Dig.* 21. 1. 1—16.

MORE COLONICO. Lat. In old pleading. In husband-like manner. *Towns. Pl.* 198.

MORE OR LESS. [Lat. *sive plus, sive minus.*] A phrase frequently used in describing the quantity of land conveyed by a deed or lease; as, "containing by estimation — acres, *more or less*;" or, "containing in breadth, in front and rear, — feet, and in length on each side, — feet, be the same *more or less.*" It imports that the quantity conveyed is uncertain, or is not warranted; and is adopted by way of precaution in cases where it is possible that there may be a deficiency on actual admeasurement, and the party does not mean to bind himself as to the quantity. In such an event, a small deficiency or a reasonable difference would not be regarded, but a large deficiency, such as 100 acres short, in land described as "349 acres, more or less," would not be tolerated. 2 *Russ. R.* 570. 2 *B. & Adol.* 106. 1 *Chitt. Gen. Pr.* 180. It imports, on the other hand, that in case of the quantity of land proving to be *more* than that described, the grantee or lessee is to have the benefit of it; but in this case, also, it is to be understood within reasonable limits. Thus, it was held that the description of "a house in B. and *ten* acres of land there, *sive plus, sive minus*," would not include *thirty* acres usually occupied with the house. *Owen*, 133. See 1 *Ves. & Bea.* 375. *Coventry on Conveyancers' Evidence*, 34, 35. 2 *Johns. R.* 37. 8 *Paige's Ch. R.* 312. See *Plurisve.*

Where a party covenants to make a deed to a certain quantity of land "more or less," these words mean that where there is only an inconsiderable deficiency as to the quantity of land, the vendor is not to submit to a deduction from the amount of the purchase money, if the tract of land contains less than the amount; nor is the purchaser to pay more than the sum stipulated, if the tract contains a greater number of acres. The risk in this respect is mutual. The vendor risks as to the sum of money, and the vendee as to the quantity of the land. Phipps *v.* Tarpley, 24 *Mississippi R.* 597. In this case, the tract was represented by the vendor to contain 1,000 acres, whereas, upon a survey, it fell short about 80 acres. This was held to be an inconsiderable deficiency. *Id. ibid.* In Texas, the words "more or less" have been held to cover a deficiency of 5 out of 41 acres. 13 *Texas R.* 223. They are sometimes rejected. See 20 *Howard's R.* 413.

MORGANATIC MARRIAGE. In old European law. A marriage between a man of superior, and a woman of inferior rank, in which it was stipulated that the latter and her children should not enjoy the rank or inherit the possessions of her husband. *Brande. Shelford, Marr. & Div.* 9, 10. This kind of marriage still subsists in Germany, under the appellation of a *left-handed* marriage. *Id. ibid.* The earliest and clearest description of it is to be found in the Books of Feuds, in which it is treated as a Milanese custom. *Feud. Lib.* 2, tit. 29.

Some have derived this word from the Goth. *morgjan*, to shorten, but Spelman traces it to *morgangiva*, (q. v.)

MORGANGIVA, *Morgengeba.* L. Lat. [Lomb. *morgingap;* Sax. *morgan gyfe;* from *morgin*, morning, and *gab*, a gift.] In old European law. A *gift* made to a wife on the *morning* of the nuptial day; a species of dower, which Spelman compares to the English dower *ad ostium ecclesiæ.* This word occurs in the laws of the Burgundians, Alamanni, Ripuarians and

Lombards, and also in the laws of Canute. *LL. Canuti*, c. 71. *Spelman.*

MORGEN. Anglo-Dutch. In old New-York law. A measure of land, equal to about two acres. *O'Callaghan's New-Netherlands*, vol. 2. Appx. 593.

MORGENGAB. Germ. In German or Dutch law. Morning gift; a species of dower. A gift made to the wife on the morning after the marriage. *Skene de Verb. Signif.* voc. *Dos.* See *Grot. de Jur. Bell.* lib. 2, c. 7, § 8, n. 3. See *Morgangiva.*

MORIER, *Mourir*, *Moeryer*, *Moire*, *Muire*, *Murer*, *Murger.* L. Fr. [from Lat. *morior*, *moriri*, to die.] To die. *Kelham. L. Fr. Dict. Moront*, *moreaunt;* they die. *Id. Morant;* dying. *Id. Morera;* shall die. *Id. Morust;* died. *Id.*

MORINA. L. Lat. In old English law. Murrain; a disease of sheep. *Fleta*, lib. 2, c. 79, § 6.

MORS. Lat. Death. Mors *dicitur ultimum supplicium;* death is called the last punishment, the extremity of punishment. 3 *Inst.* 212.

Mors omnia solvit. Death dissolves all things. *Jenk. Cent.* 160, case 2. Applied to the case of the death of a party to an action. *Id.*

MORSELLUM TERRÆ. L. Lat. In old records. A small parcel or bit of land. *Cowell.*

MORT D' ANCESTOR. L. Fr. The name of a species of assise, founded on the *death* of an *ancestor.* See *Assise of mort d' ancestor.*

MORTGAGE. L. Fr. and Eng. [from *mort*, dead, and *gage*, security; L. Lat. *mortuum vadium.*] In old English law. A dead or unproductive pledge; a pledge of moveables or immoveables by one person to another, as a security for a debt. Called *dead*, because the contract was that the fruits or rents arising from the thing pledged should not go towards paying off the demand for which it was pledged; or, in Glanville's words, *cujus fructus vel reditus interim percepti in nullo se acquietant. Glanv.* lib. 10, c. 6. 1 *Reeves' Hist.* 161. It was thus distinguished from what was called a living pledge, (*vivum vadium*, or *vif gage*,) in which the rents and profits went towards the discharge of the debt. *Crabb's Hist.* 108.

In modern law. The conveyance of an estate, by way of pledge for the security of debt, and to become void on payment of it. 4 *Kent's Com.* 135. A conveyance of lands, chattels or other subjects of property as a security for a debt, upon a *condition*, which in substance is that if the sum due shall be paid at a certain time the conveyance shall be void, otherwise to become absolute; the latter alternative, however, taking effect subject to the right or *equity of redemption*, (q. v.)* 2 *Bl. Com.* 157—159. 4 *Kent's Com.* 135, 162, *et seq.*—A debt by specialty, secured by a pledge of lands, of which the legal ownership is vested in the creditor, but of which, in equity, the debtor and those claiming under him remain the actual owners, until debarred by judicial sentence or their own laches. *Coote on Mortgages*, 1. See 1 *Steph. Com.* 282—285. 2 *Crabb's Real Prop.* 845, § 2202.

The term *mortgage* has a definite, technical legal signification, and imports a defeasance and an equity of redemption. 1 *Wisconsin R.* 420. See 6 *Texas R.* 110, 294. As to when a deed will be considered a mortgage, see 12 *Howard's R.* 139. 1 *Wisconsin R.* 527. And see *United States Digest*, Mortgage.

According to Littleton, Coke and others, a mortgage is so called, (*dead* pledge,) because in case of non-payment of the debt at the time limited, the land was forever *dead*, and gone from the mortgagor, and in case of payment it became *dead* as to the mortgagee. *Litt.* sect. 332. *Co. Litt.* 205 a. 2 *Bl. Com.* 158. But the explanation of Glanville (*supra*) gives a much more satisfactory account of the origin of the word. *Coote on Mortgages*, 9—11. This word seems to have been sometimes written *morgage*, before the pure French form was adopted. *Litt. ub. sup. Spelman*, voc. *Mortuum vadium.* See *Mortgage.*

MORTGAGE OF GOODS. A conveyance of goods in gage, or mortgage, by which the whole legal title passes conditionally to the mortgagee; and if the goods are not redeemed at the time stipulated, the title becomes absolute in law, although equity will interfere to compel a redemption. *Story on Bailm.* § 287. It is distinguished from a *pledge* by the circumstance that possession by the pledgee is not, or may not be, essential to create or to support the title. *Id. ibid.* See 2 *Kent's Com.* 522—532. 4 *Id.* 138.

MORTGAGEE. The party to whom a mortgage is made or given; the party

taking a mortgage, in whom the legal estate vests, subject to be defeated upon performance of the condition. 4 *Kent's Com.* 154. Written *morgagee* in *Yearb.* M. 7 Hen. VI. 26.

MORTGAGOR. The party who gives a mortgage; the party mortgaging, and who in equity is considered as the real owner, until a decree of foreclosure. 4 *Kent's Com.* 159. Written *morgageor* in *Yearb.* M. 7 Hen. VI. 26.

MORTIFICATION. In Scotch law. A term nearly synonymous with *mortmain*. *Bell's Dict.* 5 *Bell's Ap. Cas.* 409. Lands are said to be *mortified* for a charitable purpose.

MORTMAIN. L. Fr. [from *mort*, dead, and *main*, hand; L. Lat. *mortua manus*.] A dead hand; a condition of property in which it is held without the power of change or alienation.* A term originally applied to the possession of land by ecclesiastical bodies, the members of which (being professed,) were reckoned *dead* persons in law. 2 *Bl. Com.* 479. Afterwards applied to purchases and acquisitions by *any* corporate body. *Stat.* 15 *Ric.* II. c. 5. Hence the statutes prohibiting conveyances of lands by deed or will to a corporation, were termed *statutes of mortmain*, or *mortmain acts*. 2 *Bl. Com.* 268—274. 2 *Kent's Com.* 282, 283, and notes.

MORTUARIUM. L. Lat. [from *mors*, death.] In old English law. A mortuary, (q. v.) *Fleta*, lib. 2, c. 60, § 30.

MORTUARY. [L. Lat. *mortuarium*, from *mors*, death.] In English law. A customary gift claimed by, and due to the minister in very many parishes, on the death of his parishioners; a sort of ecclesiastical heriot. 2 *Bl. Com.* 425. See *Heriot*. Otherwise called a *corse-present*, (q. v.) and in the laws of King Canute *soul-scot*, (q. v.) It seems to have originally been (like a lay heriot,) only a voluntary bequest to the church, being intended, according to Lyndewode, as a kind of expiation and amends to the clergy for the personal tithes and other ecclesiastical duties, which the laity, in their lifetime, might have neglected or forgotten to pay, and it was usually the second best beast or chattel, the best being reserved to the lord. 2 *Bl. Com.* 425. In Bracton's time, however, it had become "rivetted into an established custom," and the bequest of a mortuary was held to be a necessary ingredient in every testament of chattels. *Bract.* fol. 60. The statute of 21 Hen. VIII. c. 6, reduced these mortuaries to a certainty, by fixing an equivalent to be paid in money, according to the value of the property of the deceased, and upon this statute stands the law of mortuaries to this day. 2 *Bl. Com.* 427. 3 *Steph. Com.* 147.

MORTUUM VADIUM. L. Lat. In old English law. A dead pledge; a *mort gage*, or mortgage. Mortuum vadium *dicitur illud cujus fructus vel reditus interim percepti in nullo se acquietant;* that is called a dead pledge, the profits or rents of which, received in the mean time, in no respect discharge it. *Glanv.* lib. 10, c. 6.

MORTUUS. Lat. Dead. *Bract.* fol. 301 b. **Mortuus exitus non est exitus.** A dead issue is no issue. *Co. Litt.* 29. A child born dead is not considered as issue.

A return made by a sheriff, that the party named in the process directed to him is dead. 4 *Watts' R.* 270, 276.

MOSTRENCOS. Span. In Spanish law. Strayed goods; estrays. *White's New Recop.* b. 2, tit. 2, c. 6.

MOT. Fr. A word. *De* mot *en* mot; word for word. *Britt.* c. 22.

MOT BELL. Sax. Meeting-bell; a bell used by the Saxons to summon the people to the *folcmote*. *Spelman.* See *Folcmote*.

MOT-WORTHY. O. Eng. A common-councilman. *Cowell*, voc. *Concionator*.

MOTE. Sax. [L. Lat. *mota;* a contraction of *gemote*, Sc. *mute*, q. v.] In Saxon law. A court; a meeting or assembly. *Spelman*, vocc. *Mota*, *Gemotum*.

MOTION. [Lat. *motio*, from *movere*, to move.] In practice. An application (founded generally on *affidavit*,) made to the judge or judges of a court, *viva voce*, in open court, for the purpose of obtaining a rule or order directing some act to be done in favor of the applicant. It is usually an incidental proceeding to an action, but it may be wholly unconnected with that kind of remedy.* 3 *Steph. Com.* 679, 680. 1 *Tidd's Pr.* 478.

MOTIVE. [from Lat. *movere*, to move, or stir.] In the law of evidence. That which *moves* or influences the mind or will; an emotion, passion or desire which incites or impels to action.

In criminal evidence. An unlawful desire or emotion, awakened by the perception or contemplation of some external

object, or end to be attained by action. This ultimate object is, in fact, the cause or spring of the motive itself, and has sometimes been called the *exterior* or external motive, as distinguished from the desire or passion it creates, which is termed the *interior* or internal motive. See 3 *Benth. Jud. Ev.* 183. It is, in other words, the *inducement*, or that which *leads* or tempts the mind to indulge the criminal desire. *Burr. Circ. Evid.* 283, 284.

MOTUM. Lat. [from *movere*, to move.] In old English law. Moved; stirred; put in motion; commenced. *Placitum motum;* plea moved; suit commenced. *Fleta*, lib. 6, c. 23, § 10.

MOULDRE. L. Fr. To grind. *Yearb.* M. 4 Edw. III. 71.

MOULT, *Molt, Mult.* L. Fr. [from Lat. *multus.*] Many; much. *Kelham.* (Plur. *mults, moldes, mous. Id.*)

MOUN. L. Fr. My. *Moun piere.* My father. *Yearb.* M. 3 Edw. II. 49.

MOUNSTER, *Mouster, Muster.* L. Fr. [from Lat. *monasterium.*] In old English law. A church; a minster or monastery. *Al huys d'mouster;* at the church door. *Britt.* c. 110.

MOUNTAUNT. L. Fr. Ascending. *Britt.* c. 119.

MOVANT, *Movaunt.* L. Fr. Moving. *Britt.* c. 1.

MOVE. To occasion; to contribute to; to tend or lead to. The forewheel of a wagon was said "to *move* to the death of a man." *Say.* 249. See *Deodand.*

MOVEABLES. [L. Fr. *moebles;* Span. *muebles;* Lat. *mobilia, res mobiles.*] Things moveable; moveable or personal chattels, which may be annexed to, or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 *Bl. Com.* 387. *Moveables* consist, first, of inanimate things, as goods, plate, money, jewels, implements of war, garments and the like, or vegetable productions, as the fruit or other parts of a plant when severed from the body of it, or the whole plant itself when severed from the ground; secondly, of animals which have in themselves a principle and power of motion. 2 *Steph. Com.* 67.

In the civil law, moveables (*mobilia,*) properly denoted inanimate things; animals being distinguished as *moventia*, things moving. But this distinction was not always observed. *Dig.* 50. 16. 93. *Calv. Lex. Brissonius.* See *Moventes.*

"Moveables," in a will, pass all the personal goods, both quick and dead, which either *move* themselves, as horses, sheep and the like, or may be *moved* by another, as plate, household stuff, corn in garners and barns or in the sheaf, &c.; also all bonds and specialties. *Shep. Touch.* 447. But "moveables" will not carry corn nor fruit growing on the ground, nor stone nor timber prepared for building. *Ward on Legacies*, 210.

MOVEABLES, in Scotch law, are opposed to *heritage.* So that every species of property, and every right a man can hold, is by that law either heritable or moveable. *Bell's Dict.*

MOVENTES. Lat. [pl. of *movens*, from *movere*, to move.] In old English law. Moving things. *Se moventes;* things moving themselves; animated objects, as distinguished from *mobilia*, (moveables.) *Fleta*, lib. 2, c. 57, § 6.

MOVERE. Lat. To move; to set in motion; to stir or agitate; to originate or commence. *Movere litem;* to commence a suit. *Alia vice movit ei litem de eadem terra;* on another occasion commenced a suit against him for the same land. *Bract.* fol. 271 b, 274. So, in law French, *en toutz pleas* meus *et à* mover; in all pleas moved and to be moved. *Britt.* c. 126. To begin a controversy or dispute, before resorting to law. See *Lis mota.*

MOYEN, *Moien.* L. Fr. Mean; intermediate. *Kelham.*

MOYS, *Moyes, Meyes.* L. Fr. A month. *Kelham.*

MOYTE. L. Fr. Half; a moiety. *Britt.* c. 119.

MUEBLES. Span. In Spanish law. Moveables; all sorts of personal property. *White's New Recop.* b. 1, tit. 3, c. 1, § 2.

MUET. L. Fr. [from Lat. *mutus*, q. v.] Dumb. *Ne sourds ne* meutz; nor deaf nor dumb persons. *Britt.* c. 34.

MUILLERE. L. Fr. [from Lat. *mulier*, q. v.] The son of a lawful wife; a mulier. *Frere* muillere *et frere bastard. Britt.* c. 70.

MUIRBURN. Sc. In Scotch law. The offence of setting fire to a muir or moor. 1 *Brown's R.* 78—116.

MULCT. [Lat. *mulcta.*] A pecuniary puuishment; a fine. See *Mulcta.*

MULCTA. Lat. In the civil law. A mulct or fine; a pecuniary punishment. See the distinction between *mulcta* and *pœna*, *Dig.* 50. 16. 131, 244. **Mulcta dam-**

num famæ non irrogat. A mulct does not involve loss of character. *Cod.* 1. 54. *Calv. Lex.*

MULIER. Lat. In the civil law. A woman, in general, (*quælibet femina.*) *Calv. Lex.* 8 *Co.* 102 a.

A marriageable virgin, (*virgo viripotens.*) *Dig.* 50. 16. 13.

A woman not a virgin. *Spiegelius.* 8 *Co.* 102 a.

A married woman; a wife, (*uxor.*) *Calv. Lex.* 8 *Co.* 102 a.

A mother. *Dig.* 21. 1. 14. 7.

MULIER. L. Lat. In old English and Scotch law. A lawful son; the son of a *mulier*, or lawful wife. *Co. Litt.* 243 b. 8 *Co.* 102 a. 2 *Bl. Com.* 248. Called by Glanville and Skene, *filius mulieratus. Glanv.* lib. 7, c. 1. *Skene de Verb. Signif.*

Mulier puisnè; a younger lawful son. A term constantly used in the old books in contrast with *bastard eignè*, (an elder bastard son.) 2 *Bl. Com.* 248.

In old records. A wife, or married woman, used as an addition in deeds. *Omnibus—Domina Johanna de Foresta*, mulier, *salutem;* To all, &c. the lady Johanna de Forest, married woman, Greeting. *Old deed*, cited in *Blount.*

MULIERTY. [Fr. *mulerie.*] In old English law. The state or condition of a *mulier*, or lawful issue. *Co. Litt.* 352 b. The opposite of bastardy. *Blount.*

MULNES. L. Fr. Middle. *Le* mulnes *frere;* the middle brother. *Litt.* sect. 5.

MULTA (or MULTURA) EPISCOPI. L. Lat. [from Lat. *mulcta.*] In old English law. A bishop's fine; a fine given to the king, that a bishop might have power to make his last will and testament, and to have the probate of other men's, and the granting administrations. 2 *Inst.* 491. *Cowell.*

Multa conceduntur per obliquum, quæ non conceduntur de directo. Many things are allowed indirectly which are not allowed directly. 6 *Co.* 47, *Dowdale's case.*

Multa in jure communi contra rationem disputandi, pro communi utilitate introducta sunt. Many things have been introduced into the common law with a view to the public good, which are inconsistent with sound reason. *Co. Litt.* 70 b. *Broom's Max.* 67, [117.] See *Dig.* 9. 2. 51. 2.

Multa transeunt cum universitate, quæ non per se transeunt. Many things pass with the whole, which do not pass separately. *Co. Litt.* 12 a.

MULTIPLE POINDING. In Scotch law. Double poinding; double distress. The name of an action resembling a bill of interpleader. *Bell's Dict.*

MULTIFARIOUS. [Lat. *multifarius*, from *multus*, many, and *ferre*, to bear, or *fari*, to speak.] In equity pleading. Composed of a variety of distinct and independent matters. See *Multifariousness.*

MULTIFARIOUSNESS. In equity pleading. The fault of improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting, in one bill, of several matters perfectly distinct and unconnected, against one defendant, or the demand of several matters of a distinct and independent nature against several defendants, in the same bill. *Story's Eq. Pl.* § 271, *et seq.* See *Mitford's Chanc. Pl.* 181, (208, 216, Moulton's ed. notes.)

MULTIPLEX. Lat. Manifold. **Multiplex [et] indistinctum parit confusionem; et questiones [quo] simpliciores eo lucidiores.** That which is manifold and without distinction begets confusion; and the more simple questions are, the clearer are they. *Hob.* 335.

Multiplicata transgressione crescat pœnæ inflictio. As transgression is multiplied, the infliction of punishment should increase. 2 *Inst.* 479.

MULTIPLICITY. [from Lat. *multiplex*, from *multus*, many, and *plicare*, to fold.] A state of being many. *Webster.* That quality of a pleading which involves a variety of matters or particulars; undue variety. 2 *Saund. R.* 410.

A multiplying or increasing. *Story's Eq. Pl.* § 287.

MULTITUDE. L. Fr. and Eng. In old English law. An assembly or collection of persons for some unlawful purpose. Defined by some of the old writers to consist of ten or more; (*multitudinem decem faciunt.*) Lord Coke mentions this, but observes that he could never read it restrained by the common law to any certain number, but left to the discretion of the judges. *Co. Litt.* 257 a.

Multitudo errantium non parit errori patrocinum. The multitude of those who err furnishes no countenance or excuse for error. 11 *Co.* 75 a, *Magdalen College case. Hardr.* 98, arg. It is no excuse for error that it is entertained by numbers.

Multitudo imperitorum perdit curiam.

The great number of unskilful practitioners ruins a court. 2 *Inst.* 219.

MULTO. L. Lat. In old English law. A sheep; a wether. *Fleta*, lib. 2, c. 79, § 4. *Cowell.*

MULTURE. [L. Lat. *multura, molitura*, from *molere*, to grind.] In old English law. A grinding of grain at a mill; the grain ground.

The toll or fee due for grinding grain. 2 *Mon. Angl.* 825. *Cowell.* Called *multer* in an old award, 28 Hen. IV. cited by *Blount.*

In Scotch law. A duty paid for grinding in any mill. 1 *Forbes' Inst.* part. 2, p. 140. A quantity of grain payable to the proprietor of a mill, for grinding grain. *Bell's Dict.*

MULVEYN. L. Fr. Middle. *Mulveyn fitz;* a middle son; one born between two others. *Britt.* c. 107.

MUND, *Munde.* Sax. [L. Lat. *mundium.*] In Saxon law. Protection; defence; peace; (*tutela, defensio, protectio, pax, patrocinium.*) When the king took a church, monastery or borough, or any man or company, or their effects or estates into his protection, it was said to be *on cynges munde*, under the king's protection, (*in regis mundio.*) *Spelman.*

MUNDBRICE, *Mundbrich.* Sax. [from *mund*, protection, and *brice*, a breach.] In Saxon law. Violation of the *mund* or king's protection. *Spelman.* See *Mund.* Sometimes confounded with *grithbrice*, or *grithbrech*, (q. v.)

Mundbrich is also defined a breaking of enclosures; *mounds* or banks of earth being anciently used for such purposes. *Spelman.*

MUNDEBURDE, *Mundbyrd.* Sax. [from *mund*, protection, and *bord, borh*, a pledge; L. Lat. *mundeburdum, mundoburdum, mundiburdium.*] In Saxon and old European law. A pledge or security for protection, (*patrocinii fidejussio.*) *Spelman.* 1 *Spence's Chancery*, 35, note.

MUNDIUM. L. Lat. In old French law. A tribute paid by a church or monastery to their seignorial avoués and vidames, as the price of protecting them. *Steph. Lect.* 236.

MUNICEPS. Lat. [pl. *municipes*, from *munus*, office, and *capere*, to take.] In Roman law. One who was entitled to hold office. Municipes *dici quod* munera *civilia* capiant. *Dig.* 50. 16. 18. One who was admitted into a state, with the privilege of holding office. *Proprie* municipes *appellantur* muneris participes, *recepti in civitatem, ut* munera *nobiscum facerent. Id.* 50. 1. 1. A citizen of a foreign town or *municipium;* so called from the privilege of *enjoying office* at Rome. *Adam's Rom. Ant.* 47, 77. See *Municipium.*

A townsman; one born in the same *municipium.* This was a later, but improper sense. *Dig.* 50. 1. 1. *Id.* 50. 16. 228.

MUNICIPAL. [Lat. *municipalis*, from *municipium*, q. v.] Belonging to a city, town or place having the right of local government; belonging to, or affecting a particular state or separate community. Local; particular; independent. See *Municipium.*

MUNICIPAL CORPORATION. [L. Lat. *villa corporata.*] A public corporation; a corporation created by government for political purposes, and having subordinate legislative powers to be exercised for local purposes, such as a county, city, town or village.* 2 *Kent's Com.* 275. See *Public corporation.*

MUNICIPAL CORPORATION ACT. In English law. The statute 5 & 6 Will. IV. c. 76, for regulating the municipal corporations in England and Wales. 3 *Steph. Com.* 191, *et seq.*

MUNICIPAL LAW. [Lat. *jus municipale, lex municipalis.*] The rule or law by which a particular district, community or nation is governed. 1 *Bl. Com.* 44. The particular law of a state or nation; as distinguished from public or international law.*—A rule of civil conduct, prescribed by the supreme power in a state. 1 *Bl. Com. ub. sup.* 1 *Kent's Com.* 447. A municipal law, according to the American theory of government, is the expression of the legislative will of the state according to the forms of the constitution. 25 *Mississippi R.* 625.

In a stricter sense,—the local law of a particular place, such as a city or town. Originally, the law of a *municipium*, (q. v.) or free town. *Calv. Lex.* voc. *Municipalis.*

MUNICIPIUM. Lat. [from *munus*, office or honor, and *capere*, to take.] In Roman law. A foreign town to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of *enjoying offices* and honors there; a free town. *Butler's Hor. Jur.* 29. *Adam's Rom. Ant.* 47, 77.

A free or privileged town; one that had

the right of being governed by its own laws and customs. *Id.* 77. Hence the Lat. *municipalis*, and Eng. *municipal*, (q. v.)

In old English law. A castle. *Spelman.*

MUNIMENTS. [L. Lat. *munimenta*, *munimina*, from *munire*, to defend.] The evidences or writings whereby a man is enabled to *defend* the title of his estate. *Blount.* 9 *Co.* 18. Title deeds and papers; evidences of title. Corrupted to *miniments*, which seems to have once been the common form of the word. The Lat. *munimenta* and *munimina* occur in this sense in the laws of the Lombards. *L. Longobard.* tit. 35, l. 9. *Spelman.*

MUNIMENT HOUSE. A place for the safe-keeping of muniments, (q. v.) "A little room of strength" in cathedral and collegiate churches, castles, colleges, &c. purposely made for keeping the seal, evidences, charters, &c. of such church or college. *Blount.*

MUNUS. Lat. In the civil law. A gift or present, (*donum*, q. v.) *Dig.* 50. 16. 18. See the distinction between *munus* and *donum*, *Id.* 50. 16. 194. 214.

A charge or duty, (*onus.*) *Id.* 50. 16. 18. Hence *immunitas. Id.*

An office (*officium.*) *Id. ibid. Id.* 50. 4. 1, 14, 18. And see *Calv. Lex.*

In feudal law. The name first given to what was afterwards termed *beneficium*, and finally *feudum. Spelman.* A feudal estate, in its original character of a mere gratuitous donation. *Cowell*, voc. *Benefice.*

MUR, *Mure.* L. Fr. [from *murus.*] A wall. *Par* mure *ou par haye;* by a wall or by a hedge. *Britt.* c. 61. Mur *abatu;* a wall beaten or thrown down. *Id. ibid.*

MURAGE. L. Fr. and Eng. [L. Lat. *muragium*, from *murus*, Fr. *mur*, a wall.] In old English law. A toll or tribute levied for the building or repairing of public walls. *Stat. Westm.* 1, c. 30. 2 *Inst.* 222.

MURDER. [L. Fr. *murdre;* L. Lat. *murdrum;* from Teut. *moerda*, or Sax. *morthor.*] In old English law. The secret killing of one human being by another. Homicide privately perpetrated, no one being present, knowing, hearing or seeing it, (*homicidium quod nullo præsente, nullo sciente, nullo audiente, nullo vidente, clam perpetratur.*) *Bract.* fol. 134 b. See *Fleta*, lib. 1, c. 23, § 6; c. 30, § 1.

The private slaying of foreign and known persons, (*occulta extraneorum et notorum hominum occisio,*) wickedly perpetrated by the hand of man, and which is committed, no one knowing or seeing, except only the slayer and his aiders and abetters, and in such a manner that the hue and cry does not immediately follow, (*ita quod non statim assequatur clamor popularis.*) *Bract.* fol. 134 b. *Fleta*, lib. 1, c. 30, § 1. This was the technical definition of murder in the time of Bracton, founded on another signification of the term, (see *infra,*) and the old law of Englishery. As early as Britton, however, it was modified to mean, "the slaying of an unknown person, feloniously done, when it cannot be known by whom it was committed," (*occision de home disconu, felonisement faite, dount home ne poit saver par que ne par quex.*) *Britt.* c. 6.

A fine or amercement imposed upon the vill or hundred where a person was found killed by another, unless the fact of the slain person having been English (technically called *Englishery*) was duly presented before the justices.

The origin of this imposition (or *murdrum*) is thus explained by Bracton: After the subjugation of England by Canute the Dane, the English barons pledged themselves, in consideration of his sending back his army to Denmark, that as many followers as he chose to retain with him in England, should remain entirely unmolested, and for greater security on this point agreed that if an Englishman should kill a Dane and escape, so that he could not be taken, there should be paid for him sixty-six marks, to be collected in the vill where the slain person was found, or in the hundred, if the vill were too poor to pay it. *Bract.* fol. 134 b. After the conquest by the Normans, a similar regulation was established for the protection of the king's Norman followers or subjects; a fine (called *murdrum,*) being imposed upon the neighborhood, (*patria*) where a Frenchman (*Francigena,*) was found killed, and the slayer was unknown; and to render this the more effectual, it was declared by law that the slain person was always to be presumed to be French, unless the fact of his or her being English was formally presented and proved. Hence the law of Englishery, (q. v.) once so important that the very definition of murder as a crime was made to turn upon the fact that the slain person

was a *foreigner*, (*extraneus.*) See the definition from Bracton, *supra.*

MURDER. [L. Lat. *murdrum*, L. Fr. *murdre*, Sc. *murther.*] In criminal law. The killing of a man with malice prepense. 1 *Hale's P. C.* 425. *Plowd.* 261.—The killing of one human being by another, with malice aforethought, express or implied.* The unlawful killing of any reasonable creature in being, and in the peace of the commonwealth, by a person of sound memory and discretion, with malice aforethought, express or implied.* 3 *Inst.* 47. 4 *Bl. Com.* 195, *et seq.*

This is substantially the definition of murder in American law, though, in some of the states, modifications have been introduced by statute. *Wharton's Am. Crim. Law*, §§ 930, 884, *et seq.* 1 *Hale's P. C.* 425, (Am. ed. note.) See 1 *Russell on Crimes*, 482, (Am. ed. 1850, note.)

*** The radical sense of the word *murder* is a *secret* killing; the term *gemurdrit* or *gamurdrit*, (q. v.) being thus used at the earliest period to which it can be traced. *L. Boior.* tit. 18, c. 2, § 3. So in England, the L. Fr. *murdre* occurs in old statutes in the sense of *concealment* or stifling. *Stat. Exet.* 14 Edw. I. And the L. Lat. *murdrare*, (q. v.) is used as an equivalent word by Fleta. Hence the general definition of murder given by Bracton,—a *secret* killing, where it cannot be known who the slayer is. *Bract.* fol. 121, 134 b. To this was superadded the idea of a *felonious* killing (*occisio nequiter perpetrata.*) *Id. ibid.* But the whole definition of the crime by the same author was made a technical one, by being based on that peculiar regulation of the times, called Englishery. It was in substance, "the secret and felonious killing of a *foreigner* (*occulta extraneorum occisio.*") *Id.* 134 b. This will account for the form of the definitions given by Staundford and others, after Englishery was abolished;—"the wilful and felonious killing of another, whether Englishman or foreigner, secretly or openly." *Staundf. Pl. Cor.* lib. 1, c. 2. *Cowell.*

"MURDER," "MURDERED." Necessary words in indictments for murder, as *murdrum* and *murdravit*, anciently were. 3 *Bl. Com.* 321. 4 *Id.* 307. *Wharton's Prec. of Indictments*, 42, *et seq.*

MURDRARE. L. Lat. In old criminal law. To murder. 3 *Bl. Com.* 321. *Murdravit;* murdered. A necessary word in old indictments for murder. 4 *Bl. Com.* 307. 5 *Co.* 122 b, *Long's case.* Lord Kenyon, 2 *East*, 30.

To hide, conceal or stifle. *Nullam veritatem celabo, nec celari permittam, vel* murdrari; I will conceal no truth, nor will I permit it to be concealed or stifled. *Fleta*, lib. 1, c. 18, § 4. Words of the oath of an inquisitor or juror. And see *Id.* §§ 8, 10.

MURDRE. L. Fr. Murder. *LL. Gul. Conq.* l. 26.

A fine so called. *Id. ibid.* See *Murdrum.*

MURDRITOR. L. Lat. [from *murdrare*, q. v.] In old English law. A murderer. *Murdritores;* murderers. *Bract.* fol. 115 b.

MURDRUM. L. Lat. [L. Fr. *murdre.*] In old criminal law. Murder. *Bract.* fol. 134 b. *Fleta*, lib. 1, c. 30, § 1. A word of art, formerly essential in indictments. 5 *Co.* 121 b, *Long's case.*

A fine or amercement imposed upon a vill, (town,) hundred, or neighborhood (*patria*) where a person was found slain, and not proved to be English, and the slayer was unknown. *Bract.* fol. 134 b, 135. 1 *Hale's P. C.* 425, note. See *Murder. Murdra omnia condono;* I forgive or remit all murders. *Chart. Hen.* I. A. D. 1100.

MURORUM OPERATIO. Lat. In old English law. Wall-work;* the service of work and labor done by inhabitants and adjoining tenants, in building or repairing the walls of a city or castle. *Paroch. Ant.* 114. *Cowell.*

MURTHRUM. L. Lat. In old Scotch law. Murther or murder. *Skene de Verb. Signif.*

MUSCE. L. Fr. Hidden; buried, as treasure. *Britt.* c. 1, 17. *En muscettes;* in secret; privately; clandestinely. *Id.* c. 101.

MUSTER. L. Fr. A monastery. *LL. Gul. Conq.* l. 17.

MUSTER ROLL. In maritime law. A list or account of a ship's company, required to be kept by the master or other person having care of the ship, containing the names, ages, national character and quality of every person employed in the ship. *Abbott on Ship.* [191, 192.] *Jacobsen's Sea Laws*, 161.

MUTA CANUM. L. Lat. In old English law. A pack of hounds. *Spelman.* See 2 *St. Trials*, 1164.

MUTATIO NOMINIS. Lat. In the civil law. Change of name. *Cod.* 9. 25.

MUTE. [from Lat. *mutus*, q. v.] Speechless; dumb; that cannot or will not speak. In English criminal law, a prisoner is said to *stand mute*, when, being arraigned for treason or felony, he either makes no answer at all, or answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise; or upon having pleaded not guilty, refuses to put himself upon the country. 4 *Bl. Com.* 324. But see, as to the last case, *Stat.* 7 & 8 *Geo.* IV. c. 28.

MUTE. Sc. In old Scotch law. A plea or action, (*placitum.*) The Mute-hill of Scone, (*mons placiti de Scona.*) See *Skene de Verb. Signif.*

MUTINY. Open resistance by soldiers or seamen, of their officers, or opposition to their authority. *Webster.*

MUTINY ACT. In English law. An act of parliament annually passed to punish mutiny and desertion. 1 *Bl. Com.* 415.

MUTUAL. Proceeding from both sides; reciprocal; interchanged.

MUTUAL CREDITS. In bankrupt law. Credits which must, from their nature, terminate in debts; as where a debt is due from one party, and credit given by him on the other for a sum of money payable at a future day, and which will then become a debt; or where there is a debt on one side, and a delivery of property with directions to turn it into money on the other. Gibbs, C. J. 8 *Taunt.* 499. 2 *Smith's Lead. Cas.* 179.

MUTUAL PROMISES. Promises simultaneously made by and between two parties; each being the consideration for the other.

MUTUALITY. Reciprocation; interchange. *Webster.* An acting by both of two parties; an acting in return.

MUTUARI. Lat. To borrow. *Mutuatus;* a borrowing. 2 *Arch. Pr.* 25.

MUTUS. Lat. In civil and old English law. Dumb; mute; a dumb person. *Dig.* 50. 17. 124. *Inst.* 3. 20. 7. *Fleta*, lib. 2, c. 56, § 19. *Mutus et surdus;* dumb and deaf. *Cro. Jac.* 105.

MUTUUM. Lat. In the civil law. A loan for consumption. 2 *Kent's Com.* 573.—A loan of consumable goods, called *res fungibiles*, lent on condition of a return in kind. *Hallifax, Anal.* b. 2, c. 15, num. 2. The subjects of this kind of loan were such articles as might be weighed, counted or measured, (*quæ pondere, numero, mensurave constant,*) as wine, oil, grain, coin, brass, silver or gold, and by the loan the property was transferred, and the value only was to be returned in property of the same kind. *Inst.* 3. 15, pr. *Dig.* 12. 1. 2. *Fleta*, lib. 2, c. 56, § 5. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 15, § 792. *Story on Bailm.* §§ 47, 283.

This loan is said in the Institutes to be called *mutuum*, because *ita à me tibi datur ut ex* meo tuum *fiat*, (it is given by me to you in such a way, that from mine it becomes yours.) *Inst. ub. sup.*

MY. L. Fr. Half; middle. *En* my *leu;* in the middle place; in the middle. *Britt.* c. 119. *Per* my *et per tout;* by the half or moiety, and by all. 2 *Bl. Com.* 182.

MYNUTE. L. Fr. Midnight. *Britt.* c. 80.

MYS. L. Fr. [from *mitter*, to put.] Put; sent; put in or inserted. Mys *à lour penaunce;* put to their penance. *Britt.* c. 4. Mys *en ferges;* put in irons. *Id.* c. 11. *P'oles* mys *en escritz;* words put in writings. *Id.* c. 39. *Que date soit* mys *del jour;* that a date be put in of the day. *Id. ibid.* Mys *en la gaole. Id.* c. 100. Mys *en certaine;* put in certain. *Dyer*, 55 b.

MYSTERY. [L. Lat. *misterium*, from L. Fr. *mestier*, an art or business.] A trade or occupation. *Spelman. Cowell.*

MYSTIC TESTAMENT. [Fr. *testament mystique ou ferme.*] A sealed testament. *Civ. Code of Louis.* art. 1567. *Cod. Nap.* 969.

N.

N. An abbreviation of *Novellæ*, the Novels of Justinian; used in citing them. *Tayl. Civ. Law*, 24.

N. L. An abbreviation of *Non liquet*, (q. v.)

NAAM. A taking, or distress. A word used in the Mirror, of the same signification with the L. Fr. *name*, and L. Lat. *namium*, (qq. v.) *Mirr.* lib. 2, c. de Naam. It seems to be neither Saxon nor French, but a compound of both.

NACION. L. Fr. Birth; origin. *De vile* nacion; of mean birth. *Britt.* c. 31. *En temps de sa* nacion; at the time of his birth. *Id.* c. 86.

NADGAIRES, *Naidgayers, Naidgaris.*

L. Fr. Lately; not long since; sometimes. *Artic. sup. Chart.* c. 17. *Kelham.*

NAIF. L. Fr. [L. Lat. *nativus*, a born slave.] A villein; a born slave, (*nee serfe.*) *Britt.* c. 31. *LL. Gul. Conq.* l. 33.

NAIFTE. L. Fr. [L. Lat. *naivitas, nativitas.*] Villeinage; naifty; the state of a person born a slave. *Britt.* c. 31.

NAIVITAS, *Nayvitas.* L. Lat. In old English law. Naifty; villeinage. *Fleta*, lib. 4, c. 2, § 8; c. 11, § 6.

NAM. Lat. For. This particle is frequently used as introductory to the quotation of a maxim, and sometimes erroneously treated as a part of the maxim quoted. 2 *Bl. Com.* 107, 379, 380. 3 *Id.* 188.

NAM. Sax. [from *naman*, to take.] In old English law. The taking of a pledge; a distress. *Spelman.* A component part of the word *withernam*, (q. v.) Hence the more common L. Fr. *name*, and Lat. *namium*, (qq. v.)

NAMARE. L. Lat. [from Sax. *nam*, q. v.] In old records. To take; to distrain; to take a distress. *Spelman. Skene de Verb. Sign.* The derivatives *namptus* and *namptum* were also used.

NAMATIO. L. Lat. [from *namare*, q. v.] In old English and Scotch law. A distraining, or taking of a distress; an impounding. *Spelman.* The English *namation* is given by Cowell and Blount.

NAME. L. Fr. [L. Lat. *namium*; from Sax. *nam*, q. v.] A taking; a distress; a thing or chattel distrained. Name *si est un general nosme à avers et à chateux, et à touts auters choses moebles que len poit prendre en nome de destresse; name* is a general word for beasts and chattels and all other moveable things which one may take in name of a distress. *Britt.* c. 27. *Vee de name*, (*vetitum namium.*) *Id.* c. 26.

NAMIUM. L. Lat. [from Sax. *nam*, q. v.] In old English law. A taking; a distress. *Spelman. Fleta*, lib. 2, c. 43, § 3.

Things, goods or animals, taken by way of distress. *Id. Simplex namium;* a simple taking or pledge. *Bract.* fol. 205 b. Called in old Scotch law, *namus. Stat.* 1 *Rob.* I. c. 7. See *Vetitum namium.*

NARR. In practice. A common abbreviation of *narratio*, (q. v.) The plaintiff's declaration in an action at law. 1 *Inst. Cler.* 11. 1 *Burr. Pr.* 118, 135. 7 *Penn. St.* (Barr's) *R.* 392.

NARRARE. L. Lat. In old practice. To relate or narrate; to state a plaintiff's case; to count; to declare. *Narrando;* counting. *Yearb.* M. 1 Edw. II. 2.

NARRATIO. Lat. [from *narrare*, to relate.] In old English practice. A count or declaration. So called as being a *narrative* by the plaintiff, of the facts of the case, as the ground of his action. *Bract.* fol. 283 b, 284. *Fleta*, lib. 6, cc. 16—20. 2 *Reeves' Hist.* 265—267. 3 *Bl. Com.* 293. Anciently delivered *ore tenus*, and called in English the *tale*, which is the literal meaning of the term *count. Steph. Pl.* Appendix, Note (56.) The use of *narratio* did not become general until after Bracton, who more commonly employs the term *intentio. Bract.* fol. 266 b, 281 b, 296 b, 319 b.

NARRATIVE. In Scotch conveyancing. That part of a deed which describes the grantor, and person in whose favor the deed is granted, and states the cause (consideration) of granting. *Bell's Dict.*

NARRATOR. L. Lat. [from *narrare*, q. v.] In old practice. A countor; an advocate or pleader. *Bract.* 412 a, 372 b. *Steph. Pl.* 24. *Fleta*, lib. 2, c. 37.

NASCITURUS. Lat. [from *nasci*, to be born.] In the civil law. An unborn child; a child to be born, or about to be born. 1 *Mackeld. Civ. Law*, 128, § 118, Kaufmann's note, *ibid. Tayl. Civ. Law*, 248.

NASTRE. L. Fr. Born. *Fols nastres;* born fools; idiots from birth. *Britt.* c. 34.

NATI ET NASCITURI. Lat. Born and to be born. An expression including all heirs, near and remote. *Fleta*, lib. 3, c. 8. See *Comb.* 154.

NATIO. Lat. In old records. A native place. *Cowell.*

NATIVA. L. Lat. In old English law. A neife, or female villein. So called, because for the most part bond by nativity. *Co. Litt.* 122 b.

NATIVE. [Lat. *nativus*, born, home born.] In English law. A natural born subject. 1 *Bl. Com.* 366.

In American law. A person born within the jurisdiction of the United States. 2 *Kent's Com.* 38.

NATIVE CITIZEN. A person born in the United States since the declaration of independence, or before, if he has removed here since that event; or the child of a citizen born abroad, if his parents have ever resided here. 2 *Hilliard's Real Prop.* 190, (196, 3d ed.)

NATIVI. L. Lat. Vassals or feudal tenants. So called, even before feuds became hereditary. *Wright on Tenures*, 14. Villeins. *Fleta*, lib. 2, c. 51. See *Nativus*.

NATIVITAS. L. Lat. [from *nativus*, q. v.] In old English law. Villeinage; that state in which men were born slaves. 2 *Mon. Angl.* 643. Called by Britton, *naifte*. *Britt.* c. 31. Otherwise written *naivitas*, (q. v.)

NATIVUS. L. Lat. [from *nasci*, to be born.] In old English law. A born slave; a villein born; a villein. *Glanv.* lib. 5, c. 1. *Spelman*. *Fleta*, lib. 2, c. 51.

NATURA. Lat. Nature. **Natura appetit perfectum; ita et lex.** Nature covets perfection; so does law also. *Hob.* 144.

Natura non facit saltum; ita nec lex. Nature makes no leap, [no sudden or irregular movement,] so neither does law. *Co. Litt.* 238. Applied, in old practice, to the regular observance of the degrees in writs of entry, which could not be passed over *per saltum*.

NATURAL ALLEGIANCE. In English law. That kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth; which is intrinsic and perpetual, and cannot be divested by any act of their own. 1 *Bl. Com.* 370, 371. 2 *Kent's Com.* 42.

In American law. The allegiance due from citizens of the United States to their native or adopted country, and which, it seems, cannot be renounced without the permission of government, to be declared by law. 2 *Kent's Com.* 43—49.

NATURAL-BORN SUBJECTS. In English law. Such persons as are born within the dominions of the crown of England, that is, within the ligeance, or, as it is generally called, the allegiance of the king. 1 *Bl. Com.* 366.

NATURAL CHILD. [Gr. νοθος.] In the civil law. A child by natural relation or procreation; a child by birth, as distinguished from a child by adoption. *Inst.* 1. 11, pr. *Id.* 3. 1. 2. *Id.* 3. 8, pr.

A child by concubinage, in contradistinction to a child by marriage. *Cod.* 5. 27. See *Nov.* 89. *Tayl. Civ. Law*, 270.

In English and American law. An illegitimate child; a child born out of lawful wedlock. *Cooper's Just. Inst.* *499. Bracton divides natural children into two kinds, legitimate and illegitimate. *Bract.* fol. 64. And see *Fleta*, lib. 6, c. 1, § 5.

NATURAL DAY. That period of time which begins at sunrise and ends at sunset; otherwise called a solar day. See *Day*. This seems to be sometimes confounded with an artificial day. *Dyer*, 131 a.

NATURAL FOOL. A person born without understanding; a born fool or idiot. Sometimes called, in the old books, a *natural*. See *Idiot*.

NATURAL FRUITS. [Lat. *fructus naturales*.] Fruits of land or other thing, produced solely by the powers of nature. See *Fructus naturales*.

NATURAL LAW. [Lat. *jus naturale*, *jus naturæ*.] The rule and dictate of right reason, showing the moral deformity or moral necessity there is in any act, according to its suitableness or unsuitableness to a reasonable nature. *Tayl. Civ. Law*, 99. See *Law of nature*.

NATURAL LIBERTY. The power of acting as one thinks fit, without any restraint or control, unless by the law of nature. 1 *Bl. Com.* 125.

NATURAL PRESUMPTION. In the law of evidence. That species of presumption, or process of probable reasoning, which is exercised by persons of ordinary intelligence, in inferring one fact from another, without reference to any technical rules. Otherwise called *præsumptio hominis*. *Burr. Circ. Ev.* 11, 12, 22, 24.

Presumption as applied to subjects not of a legal character, as distinguished from judicial presumption. *Id.* 11. See *Presumption*.

A presumption of fact. *Id.* 59.

NATURAL YEAR. [Lat. *annus naturalis*.] In old English law. That period of time in which the sun was supposed to revolve in its orbit, (*spatium quo suum sol pervolvat circulum;*) consisting of 365 days and one-fourth of a day, or six hours. *Bract.* fol. 359 b.

NATURALEZA. Span. In Spanish law. The state of a natural born subject. *White's New Recop.* b. 1, tit. 5, c. 2. Called *naturalidad*. *Id.* § 1.

NATURALIZATION. [Lat. *naturalizatio*.] The act of investing an alien with the rights and privileges of a native or natural-born subject or citizen.* *Co. Litt.* 129 a. 1 *Bl. Com.* 374. 2 *Kent's Com.* 64—67. See the Acts of Congress of April 14th, 1802, ch. 28; March 3d, 1813, ch. 184; March 22d, 1816, ch. 32;

May 26th, 1824, ch. 186; and May 24th, 1828, ch. 116.

NATURALIZED CITIZENS. In American law. Those who go through the prescribed process for naturalization; their minor children at that time in the country; or the widows and children of those who have taken the initiatory steps for naturalization, but have died before they were actually naturalized. 2 *Hilliard's Real Prop.* 190.

NAUCLERUS. Græco-Lat. [Gr. ναύκληρος, from ναῦς, a ship, and κλῆρος, lot.] In the civil law. The master or proprietor of a trading vessel. *Cod.* 11. 1. [2.] *Calv. Lex. Adam's Rom. Ant.* 440. *Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

NAUFRAGE. Fr. [Lat. *naufragium*, q. v.] In French law. Shipwreck, (*navis fractura.*) *Emerigon Tr. des Ass.* ch. 12, sect. 12, § 1.

NAUFRAGIUM. Lat. [from *navis*, a ship, and *frangere*, to break; L. Fr. *naufrage.*] In the civil law. Shipwreck; the breaking of a ship (*navis fractio;*) q. d. ship-break. *Dig.* 47. 9. *Cod.* 11. 5. *Calv. Lex. Loccen. de Jur. Mar.* lib. 1, c. 7. "A ship was *broken* at sea." *Hale de Jur. Mar.* pars 1, c. 7.

NAUGHT. In old practice. Bad; defective. "The bar is *naught.*" 1 *Leon.* 77. "The avowry is *naught.*" 5 *Mod.* 73. "The plea is undoubtedly *naught.*" Eyre, C. J. 10 *Id.* 329. See 11 *Id.* 179. Sometimes written "naughty." *Brownl. & Golds.* 97. See *Ill.*

NAULUM. Græco-Lat. [Gr. ναῦλον, from ναῦς, a ship.] In civil and maritime law. Freight; a sum paid for carrying goods or passengers over sea in a ship.* The consideration or premium promised to the master of a ship for carrying goods or persons from one place to another. *Roccus Notab. de Nav. et Naulo*, Not. ii. See *Freight.*

NAUPEGUS. Græco-Lat. [Gr. ναυπηγός, from ναῦς, a ship, and πήγνυμι, to fit together.] In the civil law. A shipwright, or ship carpenter. *Dig.* 50. 6. 6. *Calv. Lex. Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

NAUTA. Lat. [from Gr. ναῦς, a ship.] In the civil and maritime law. A sailor; one who works a ship. *Calv. Lex.*

Any one who is on board a ship for the purpose of navigating her, (*omnes qui navis navigandæ causâ, in nave sunt.*) *Dig.* 4. 9. 1. 2. *Roccus de Nav. & Naulo*, not. 9. 3 *Sumner's R.* 213.

The employer of a ship, (*qui navem exercet.*) *Dig.* 4. 9. 1. 2. *Story on Agency*, § 317, note.

NAVARCHUS. Græco-Lat. [Gr. ναύαρχος, from ναῦς, a ship, and ἀρχή, command.] In civil law. The master or commander of a ship; the captain of a man-of-war. *Cod.* 11. 1. 6. *Adam's Rom. Ant.* 440. *Calv. Lex.* 2 *Peters' Adm. Dec.* Appendix, lxxxiii.

NAVICULARIUS. Lat. [from *navis*, ship.] In the civil law. The master or captain of a ship. *Calv. Lex. Molloy de Jur. Mar.* 243. 2 *Peters' Adm. Dec.* 307, note. *Id.* Appendix, lxxxiii. See *Emerig. Tr. des Ass.* ch. 14, sect. 1.

NAVIGABLE. [Lat. *navigabilis*, from *navigare*, to sail, from *navis*, a ship.] That may be navigated or passed over in ships or vessels. But the term is also understood in a more restricted sense. See *Navigable river.*

That may be used for navigation. Said of a ship. See *Innavigable.*

NAVIGABLE RIVER or STREAM. A river or stream in which the tide ebbs and flows, or as far as the tide ebbs and flows. This is the common law definition of the term. The flux and reflux of the tide is the common law test of a navigable stream. And, by that law, fresh-water rivers do not come within the category of navigable rivers. Grier J. 20 *Howard's R.* 194. See *Id.* 299. 12 *Id.* 444. This doctrine has been adopted in several of the United States, as in New-York, Massachusetts, New-Hampshire, Connecticut, Maine, Maryland, Virginia, Ohio and Indiana. See *Angell on Water-Courses*, §§ 546, 547. In other states, as in Pennsylvania, North and South Carolina, Tennessee, Alabama and Mississippi, it has been rejected, and large public rivers used for navigation, whether tide-waters or not, are considered as coming under the denomination of *navigable.* 12 *Howard's R.* 444. 20 *Id.* 299. 14 *Id.* 91. 2 *Binney's R.* 475. 2 *Devereux R.* 30. 1 *McCord's R.* 580. 6 *Humphrey's R.* 358. 2 *Swan's R.* 9. 2 *Porter's R.* 436. 29 *Mississippi R.* 31, 34. *Angell on Water-Courses*, §§ 548, 549. This is in accordance with the civil law, in which, a navigable river is a river capable of being *navigated*, in the common sense of the term, and not merely a river in which the tide flows and reflows.

Id. § 550. See 3 *Kent's Com.* 412—418. 2 *Hilliard's Real Prop.* 90, 91.

Navigable streams are highways. *Gordon's Dig.* 318. See *Angell on Water-Courses*, §§ 545, 546. And a stream not navigable by boats, but floatable merely, is a public highway. 2 *Michigan* (*Gibbs*) *R.* 519, 525, 527.

NAVIGARE. Lat. [from *navis*, a ship, and *agere*, to move or work.] To navigate; to work or manage a ship; to perform a voyage; to sail.

NAVIGATION. [Lat. *navigatio*, from *navigare*, q. v.] The act of navigating or passing on water, in ships or other vessels. *Webster.*

The management of ships or vessels. 3 *Kent's Com.* 159.

Commerce or intercourse by means of shipping.* Marshall, C. J. 9 *Wheaton's R.* 189—196. See the Passenger cases in 7 *Howard's R.* 283, *et seq.*

NAVIGATION ACT. In English law. The celebrated statute of 12 Car. II. c. 18. 2 *Bl. Com.* 419. Repealed by the statute 6 Geo. IV. cc. 109, 110, 114. 3 *Steph. Com.* 272, 273.

NAVIL, *Navyl.* L. Fr. No; not. *Yearb.* P. 5 Edw. III. 5. P. 7 Edw. III. 10. T. 5 Edw. III. 34, 36.

NAVIRE. Fr. In French law. A ship. *Emerig. Tr. des Ass.* ch. 6, § 1.

NAVIS. Lat. [Gr. ναῦς.] A ship; a vessel. *Dig.* 21. 2. 44. *Id.* 47. 9.

NAVIS BONA. Lat. A good ship; one that was staunch and strong, well caulked, and stiffened to bear the sea, obedient to her helm, swift, and not unduly affected by the wind. *Calv. Lex.* citing *Seneca*, lib. 5, ep. 77. So, in modern bills of lading and other mercantile papers, a vessel is frequently termed "the good ship."

NE. L. Lat. and Fr. Not. See *infra.* The Lat. *ne* was used to express a negative condition. *Fleta*, lib. 4, c. 16, § 6.

NE ADMITTAS. L. Lat. (That you admit not.) In English practice. A writ which lies for the plaintiff in a *quare impedit*, where he suspects that the bishop will admit the defendant's or any other clerk, pending the suit; forbidding the bishop to admit any clerk whatever till such contention be determined. So called from the initial words in the Latin forms: *Prohibemus vobis* ne admittatis *personam*, &c. *Reg. Orig.* 31. *F. N. B.* 37, F. G. 3 *Bl. Com.* 248. Mr. Serjeant Stephen supposes this writ to be now superseded. 3 *Steph. Com.* 661, note (*q.*)

NE BAILA (BAILLA) PAS. L. Fr. (Did not deliver.) In old English practice. A plea in the action of detinue, denying the delivery of the thing sued for. *Crabb's Hist.* 424. *Yearb.* H. 6 Edw. II. 192.

NE DISTURBA PAS. L. Fr. (Does or did not disturb.) In English practice. The general issue or general plea in *quare impedit.* 3 *Steph. Com.* 663. *Steph. Pl.* 156, 158. 3 *Wooddes. Lect.* 9.

NE DONA PAS. L. Fr. (Did not give.) In old English practice. The general issue or general plea, in the writ of formedon. *Crabb's Hist.* 423. *Yearb.* M. 3 Edw. III. 29. P. 9 Edw. III. 26.

NE EXEAT REGNO, (that he go not out of the kingdom,) commonly called NE EXEAT. L. Lat. In equity practice. A writ issuing out of chancery, forbidding the person or persons to whom it is directed from leaving the kingdom or state. It was formerly used in England for state purposes, but has now become a mere process between private parties in an equity suit, and is used where one party wishes to prevent the other from withdrawing his person or property from the jurisdiction of the court, by going abroad. 2 *Steph. Com.* 524, note. 3 *Daniell's Chanc. Pr.* (Perkins' ed.) 1925. 2 *Story's Eq. Jur.* § 1464, *et seq.* See the original forms, *Reg. Brev.* Appendix, 54, 55.

NE GIST PAS EN BOUCHE. L. Fr. It does not lie in the mouth. A common phrase in the old books. *Yearb.* M. 3 Edw. II. 50.

NE INJUSTE VEXES. L. Lat. (That you do not unjustly vex.) In old English practice. A prohibitory writ, (now abolished,) founded on the tenth chapter of Magna Charta, which lay for a tenant distrained by his lord for more services than he ought to perform, commanding the lord that he do not distrain his tenant to do other services than those which of right he ought to do, or, in the words of the writ, *prohibiting* him from *vexing* the tenant concerning his freehold, &c. (*Prohibemus tibi* ne injuste vexes, *vel vexari permittas W. de libero tenemento*, &c.) *Reg. Orig.* 4. *F. N. B.* 10, C. F. 3 *Bl. Com.* 234.

NE QUID IN LOCO PUBLICO VEL ITINERE FIAT. Lat. That nothing shall be done, (put or erected) in a public

place or way. The title of an interdict in the Roman law. *Dig.* 43. 8.

NE RECIPIATUR. L. Lat. (That it be not received.) In practice. A proceeding by which a party to an action at law may prevent the other from doing some act, such as filing a writ or record, when it has not been done in due time. See 1 *Stra.* 63. *Bohun's Inst. Legalis*, 39, 200. In American practice, it has sometimes been adopted by a defendant, to prevent the filing of the plaintiff's trial record. 1 *Burr. Pr.* 232.

NE UNQUES ACCOUPLE EN LOI-ALL MATRIMONIE. L. Fr. (Never accoupled in lawful matrimony—never lawfully married.) In pleading. A plea by which the tenant in an action of dower, *unde nil habet*, might controvert the validity of the demandant's marriage with the person out of whose lands she claimed dower. *Roscoe's Real Act.* 220. So called from the words constituting the substance of the plea, when orally delivered in French. See *Britt.* c. 107. It seems to have at one time been called the plea or exception of *concubinage*. *Id. ibid.* Still used in some of the United States, as on petitions for the allotment of dower. 4 *Florida R.* 23.

NE UNQUES EXECUTOR (or ADMINISTRATOR.) L. Fr. (Never executor or administrator.) In pleading. A plea by which the defendant denies being an executor or administrator. 2 *Williams on Exec.* 1654. 2 *Greenl. Ev.* § 344.

NE UNQUES RECEIVOUR. L. Fr. (Never receiver.) In pleading. The general plea in actions of account, denying the fact of the defendant's being a receiver. 2 *Reeves' Hist.* 339. *Crabb's Hist.* 424.

NE UNQUES SEISE QUE DOWER. L. Fr. (Never seised of a dowable estate.) In pleading. The general issue in the action of dower *unde nil habet*, by which the tenant denies that the demandant's husband was *ever seised* of an estate of *which dower* might be had. *Roscoe's Real Act.* 219, 220.

NE VARIETUR. L. Lat. (That it be not changed, or let it not be changed.) A notarial phrase, the words of which are sometimes written by notaries upon bills and notes, for the purpose of ascertaining their identity; but held to be no restriction upon their negotiability. 8 *Wheaton's R.* 338.

"NEAR," in a penal law, construed strictly, yet not equivalent to *next*. 1 *W. Bl.* 20. "There must be a reasonable vicinity, of which the court will judge." *Id. ibid.*

NECE. L. Fr. A granddaughter. *Britt.* c. 119. See *Neveu.*

NECESSARIES. In the law of infancy. Such things and articles furnished to an infant as are useful and suitable to his state and condition in life, and not merely such as are requisite for bare subsistence. 6 *Mees. & W.* 42. 1 *Man. & Gr.* 550. 5 *Ad. & Ell.* 606. See *Macpherson on Infants*, 498—510. *Smith on Contracts*, 201, 205, and notes. 2 *Greenl. Evid.* § 365. The question what is, in the legal sense of the word, *necessary*, is, in each case, to be tried by a jury. *Smith on Contracts, ub. sup.*

NECESSARIUS. Lat. Necessary; unavoidable; indispensable; not admitting of choice or the action of the will; needful. See *Necessary.*

NECESSARY. [from Lat. *necessarius.*] That must be; that cannot be otherwise; indispensably requisite. *Webster.*

In a less strict sense,—needful; requisite; incidental; useful or conducive to. *Mr. Hamilton's Argument on the Constitutionality of a National Bank.* "It is a common mode of expression to say that it is *necessary* for a government or a person to do this or that thing, when nothing more is intended or understood, than that the interest of the government or person requires, or will be promoted by the doing of this or that thing." *Id. ibid.* The word "necessary" does not always import an absolute physical necessity, so strong, that one thing, to which another may be termed necessary, cannot exist without that other. It frequently imports no more than that one thing is convenient, or useful, or essential to another. To employ the means *necessary* to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means without which the end would be entirely unattainable. Marshall, C. J. 4 *Wheaton's R.* 316, 413. See 1 *Kent's Com.* 253, 254, note. "Necessary" is an adjective possessing degrees, and does not mean indispensable. Dupont, J. 6 *Florida R.* 29. And see 24 *Connecticut R.* 338.

NECESSARY DOMICIL. That kind of domicil which exists by operation of

law, as distinguished from voluntary domicil or domicil of choice. . *Phillimore on Domicil*, 27—97.

NECESSARY INTROMISSION. In Scotch law. That kind of intromission or interference where a husband or wife continues in possession of the other's goods after their decease, for preservation. *Wharton's Lex.*

NECESSITAS. Lat. Necessity; a force, power or influence which compels one to act against his will. *Calv. Lex. Brissonius.*

Necessitas culpabilis; culpable or blameable necessity. That kind of necessity which excuses a man who kills another *se defendendo.* So called by Lord Bacon, to distinguish it from the necessity of killing a thief or malefactor. *Bacon's Elem.* c. 5. 4 *Bl. Com.* 187.

Necessitas est lex temporis et loci. Necessity is the law of time and of place. 1 *Hale's P. C.* 54.

Necessitas facit licitum quod alias non est licitum. Necessity makes that lawful which otherwise is not lawful. 10 *Co.* 61 a. See **Quod alias non fuit, &c.**

Necessitas inducit privilegium quoad jura privata. Necessity carries with it a privilege as to private rights. *Bacon's Max.* 28, reg. 5. "The law chargeth no man with default where the act is compulsory and not voluntary, and where there is not a consent and election; and, therefore, if either there be an impossibility for a man to do otherwise, or so great a perturbation of the judgment and reason as, in presumption of law, man's nature cannot overcome, such necessity carrieth a privilege in itself." *Id. ibid. Broom's Max.* 6—11, [8, 14.] But it is to be noted that necessity privileges only *quoad jura privata;* for in all cases, if the act that should deliver a man out of the necessity be against the *commonwealth*, necessity excuses not. *Bac. Max.* 32.

Necessitas inducit privilegium quod jure privatur. 10 *Co.* 61 a, *The Bishop of Salisbury's case.* This seems to be a misstatement of the preceding maxim, Lord Bacon being referred to as the authority.

Necessitas non habet legem. Necessity has no law. *Plowd.* 18 a. "A common proverb." *Id. ibid.* "Necessity shall be a good excuse in our law, and in every other law." *Id.*

Necessitas publica major est quam privata. Public necessity is greater than private. *Bacon's Max.* 37, in reg. 5. "Death," observes Lord Bacon, in illustration of this maxim, "is the last and farthest point of particular necessity, and the law imposeth it upon every subject, that he prefer the urgent service of his prince and country before the safety of his life."

Necessitas quod cogit, defendit. Necessity defends or justifies what it compels. 1 *Hale's P. C.* 54. Applied to the acts of a sheriff, or ministerial officer, in the execution of his office. *Broom's Max.* 7, 8, [10.] See **Quod necessitas cogit, &c.**

Necessitas sub lege non continetur. Necessity is not embraced under any law. 2 *Inst.* 326. See *Fleta*, lib. 5, c. 23, § 14.

Necessitas vincit (communem) legem. Necessity overcomes the [common] law. 5 *Co.* 40 b, *Dormer's case.*

NECESSITUDO. Lat. In the civil law. An obligation; a close connexion; relationship by blood. *Calv. Lex.*

NECESSITY. [Lat. *necessitas.*] Irresistible power; compulsive force, physical or moral. *Webster.*—The influence or operation of superior power or irresistible force; the influence of a cause which cannot be avoided nor controlled.*—A constraint upon the will, whereby a man is urged to do that which his judgment disapproves, and which, it is to be presumed, his will (if left to itself) would reject. It is highly just and equitable, therefore, that a man should be excused for those acts which are done through unavoidable force and compulson. 4 *Bl. Com.* 27.

NECK-VERSE. A cant term for the verse which the ordinary gave a malefactor who prayed his clergy, to read; and by reading which he escaped hanging. *Foster's Crown Law*, 206, c. 7. See *Miserere, Clergy.*

> "Letter nor line know I never a one,
> Were't my *neck-verse* at Hairibee."
> *Scott's Lay of the Last Minstrel*, canto i.

NEE, *Ne.* L. Fr. [from Lat. *natus.*] Born. *Si il fuit* nee *en vie;* if it was born alive. *Britt.* c. 51. *Nee vife;* born alive. *Litt.* sect. 35.

NEF, *Noef, Nief.* L. Fr. New. *Kelham.*

NEFAS. Lat. That which is against right, or the divine law, (*fas.*) See *Fas.*

A wicked or impious thing or act. *Calv. Lex.*

NEFASTUS. Lat. [from *ne*, not, and *fastus*, q. v.] In Roman law. A term applied to a day on which it was unlawful

to administer justice. *Adam's Rom. Ant.* 129, 200.

NEFE, *Neef, Naef.* L. Fr. [from Lat. *navis.*] A ship. *Nefe siglaunt;* a vessel sailing. *Britt.* c. 1. *Neis;* ships. *Kelham.*

NEGARE. Lat. To deny. *Calv. Lex.* See **Factum negantis, &c.**

NEGATIF, *Negatyf.* L. Fr. A negative or denial; a contrary or opposite allegation. *Prover le negatyf. Britt.* c. 98.

NEGATIO. Lat. [from *negare*, q. v.] In civil and old English law. A negation, or denial; a negative. **Negatio conclusionis est error in lege.** The denial of a conclusion is error in law. *Wingate's Max.* 268, max. 77. Applied to a conclusion in its logical sense, as drawn from premises.

Negatio destruit negationem, et ambæ faciunt affirmationem. A negative destroys a negative, and both make an affirmative. *Co. Litt.* 146 b. Lord Coke cites this as a rule of grammatical construction, not always applying in law. *Id. ibid.*

NEGATIVE. A denial; a form or expression of denial; a proposition by which something is denied; a statement in the form or mode of denial. Two negatives do not make a good issue. *Steph. Pl.* 386, 387.

NEGATIVE PREGNANT. In pleading. A negative implying also an affirmative. *Cowell.*—Such a form of negative expression as may imply or carry within it an affirmative. *Steph. Pl.* 381. As if a man be said to have aliened land *in fee*, and he says *he has not aliened in fee*, this is a negative pregnant, for though it be true that he has not aliened in fee, yet it may be that he has made an estate *in tail. Cowell. Dyer*, 17 a.

A *negative pregnant* is considered as a fault in pleading; and the reason why it is so considered is, that the meaning of such a form of expression is ambiguous. Mr. Stephen gives the following example: "In trespass for entering the plaintiff's house, the defendant pleaded that the plaintiff's daughter gave him license to do so, and that he entered by that license. The plaintiff replied that *he did not enter by her license.* This was considered as a *negative pregnant;* and it was held that the plaintiff should have traversed the entry by itself, or the license by itself, and not both together. *Cro. Jac.* 87. It will be observed that this traverse might imply or carry within it, that a license was given, though the defendant did not enter by that license. It is, therefore, in the language of pleading, said to be *pregnant* with that admission, viz. that a license was given." *Steph. Pl.* 381.

NEGATIVE STATUTE. A statute expressed in negative terms; a statute which prohibits a thing from being done, or declares what shall *not* be done. See 1 *Bl. Com.* 142.

NEGATUM. Lat. [from *negare*, q. v.] Denied; the opposite of *concessum*, (q. v.) "Held by Dodridge, J. *et non fuit negatum*, that," &c. *Latch*, 149.

NEGLECT is used, in the law of bailment, as synonymous with *negligence*, (q. v.) *Jones on Bailm.* 9, 21, 118. But the latter word is the closer translation of the Lat. *negligentia*, (q. v.)

NEGLIGENCE. [from Lat. *negligentia*, q. v.] The omission of care or diligence.*—The want of ordinary diligence. *Story on Bailm.* § 17.—The omission of that degree of care which a man of common prudence takes of his own concerns. 2 *Steph. Com.* 131. This, according to Mr. Stephen, answers to what Sir William Jones calls *ordinary neglect. Id. ibid.* note. *Jones on Bailm.* 118, 119. But see *Negligentia.*

Negligence is commonly distinguished as of three degrees,—*slight, ordinary* and *gross.* But doubts have been expressed as to the practical utility of this division. See the opinion of Mr. Justice Curtis, 16 *Howard's R.* 469, 474.

NEGLIGENTIA. Lat. [from *negligere*, to neglect.] In the civil law. Negligence, want or omission of care or attention; inattention. This term hardly seems to correspond with what is called in English simple *negligence*, since it took a high degree of it to constitute *culpa*, or fault. **Magna negligentia culpa est.** *Dig.* 50. 16. 226. See *Culpa.*

Negligentia semper habet infortunium comitem. Negligence always has misfortune for a companion. *Co. Litt.* 246 b. *Shep. Touch.* 476.

NEGLIGENT ESCAPE. In practice. An escape from an officer's custody without his consent. 1 *Arch. Pr.* 85. An escape through negligence or inattention.

NEGOTIABILITY. In mercantile law. Transferable quality. That quality of bills of exchange and promissory notes, which renders them transferable from one person to another; and from possessing which, they are emphatically termed *negotiable*

paper. 3 *Kent's Com.* 74, 77, 89, *et seq.* See *Story on Bills*, § 60.

NEGOTIABLE. In mercantile law. Transferable or assignable; transferable by endorsement; that may be negotiated or transferred from one to another, so as to pass a right of action. A term constantly applied to bills of exchange, promissory notes, and checks, which are made negotiable by being made payable *to order* or *to bearer.* See *Negotiable instrument, Negotiable words.*

NEGOTIABLE INSTRUMENT. Any instrument, the right of action on which is, (by exception from the common rule,) freely assignable from man to man. 2 *Steph. Com.* 163. But see *Story on Bills*, § 62.

NEGOTIABLE WORDS. In mercantile law. Words necessary to render a bill of exchange, promissory note or check, negotiable; words which give a bill, note or check a negotiable quality. The usual word for this purpose in a bill or note, is "*order*," and in a check, "*bearer*;" as "to A. B. or *order*;" or, "to the *order* of A. B.;" "to A. B. or *bearer*," or, "to *bearer*." 3 *Kent's Com.* 77. *Story on Bills*, § 60. See 3 *Comstock's R.* 506.

NEGOTIARI. Lat. [from *negotium*, business.] To do or transact business; to trade or traffic; to negotiate.

NEGOTIATE. [from Lat. *negotiari*, q. v.] To pass from one to another in the way of business, (*negotium.*) To *negotiate* a bill or note, is to indorse and deliver it to another.

NEGOTIORUM GESTIO. Lat. In the civil law. Literally, a doing of business or businesses. A species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority. 2 *Kent's Com.* 616, note. *Inst.* 3. 28. 1. *Dig.* 3. 5. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 28, § 969. The intervention of a person, acting without authority in transacting the affairs of another. 2 *Duer on Ins.* 133.

NEGOTIORUM GESTOR. Lat. In the civil law. A manager of business. A name given to one who assumed the care of the affairs of another in his absence, without authority or mandate, (*qui* negotia absentis gessit—*sine mandato alienis* negotiis gerendis *se obtulit.*) *Inst.* 3. 28. 1.—A voluntary agent. 2 *Duer on Ins.* 134.—One who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c. *Story on Bailm.* § 189.

NEGOTIUM. Lat. A thing; a matter, business or affair; any thing that may occupy a person, (*illud quod nos habet occupatos.*) *Calv. Lex.*

Business; trade, (*mercatura.*) *Id.*

In the civil law. A suit; a contract. *Id.*

Negotia, (plur.) matters or affairs. See *Negotiorum gestio.*

NEIFE, *Neif.* [L. Lat. *nativa.*] In old English law. A female villein; a woman born in villeinage. 2 *Bl. Com.* 94. *Perkins*, ch. 5, s. 314. This is the proper form of the word, though it is also written *niefe* by Coke and others. See *Niefe. Neife de eu et trene;* a neife of water, and whip of three cords; such a bondwoman as was used to servile works and correction. *Co. Litt.* 25 b. See *De eu et trene.*

NEIFTY. In old English law. The condition of a neife. Derived probably from the Fr. *naifte*, (q. v.)

NEIPCE. Sc. In old Scotch law. A granddaughter. *Skene de Verb. Sign.* voc. *Eneya.*

NEMBDA. Teut. In Swedish and Gothic law. A jury. 3 *Bl. Com.* 349, 359. *Barringt. Obs. Stat.* 18, note [z.]

Neminem oportet esse sapientiorem legibus. No man ought to be wiser than the laws. *Co. Litt.* 97 b. No man (out of his own private reason,) ought to be wiser than the law, which is the perfection of reason. *Id. ibid.*

Nemo admittendus est inhabilitare seipsum. No man is to be admitted to incapacitate himself. *Jenk. Cent.* 40, case 77. No man shall be received to avoid his deed, by alleging that he was *non compos mentis* at the making of it. *Id. ibid. Yearb.* M. 5 Edw. III. 131. See 2 *Kent's Com.* 451, and note.

Nemo agit in seipsum. No man acts against himself. *Jenk. Cent.* 40, case 76. A man cannot be a judge and a party in his own cause. *Id. ibid.* **No man can do an act to himself.** *Finch's Law*, b. 1, ch. 3, n. 20.

Nemo alienæ rei, sine satisdatione, defensor idoneus intelligitur. No man is considered a competent defender of another's property, without security. A rule of the Roman law, applied in part in admiralty cases. 1 *Curtis' R.* 202.

Nemo alieno nomine lege agere potest. No

man can sue in another's name. A maxim of the civil law. *Dig.* 50. 17. 123.

Nemo allegans suam turpitudinem est audiendus. No one alleging his own baseness or infamy is to be heard (as a witness;) no person is allowed to give evidence of his own baseness or wickedness. 4 *Inst.* 279. This maxim (which is derived from the civil law,) is quoted in several of the old English cases, and has been recognised in American law. Gibson, C. J. 6 *Penn. St.* (Barr's) *R.* 473, 474. Story J. 3 *Story's R.* 516, 514. But Mr. Best, after an examination of the modern authorities, comes to the conclusion that in England it forms no part of the common law of the present day. *Best on Evid.* 412—416, § 373, 374.

Nemo bis punitur pro eodem delicto. No man is punished twice for the same offence. 4 *Bl. Com.* 315. 2 *Hawk. P. C.* 377.

Nemo cogitur rem suam vendere, etiam justo pretio. No man is compelled to sell his own property, even for a just price. 4 *Inst.* 275. Applied to things saleable in markets.

Nemo contra factum suum venire potest. No man can contravene or contradict his own deed. 2 *Inst.* 66. The principle of estoppel by deed. *Best on Evid.* 408, § 370.

Nemo dare potest quod non habet. No man can give that which he has not. *Fleta*, lib. 3, c. 15, § 8. 2 *And.* 92. **Nemo dat qui non habet.** *Jenk. Cent.* 250.

Nemo de domo sua extrahi debet. No man ought to be dragged from his own house. *Dig.* 50. 17. 103.

Nemo debet bis puniri pro uno delicto. No man ought to be punished twice for one offence. 4 *Co.* 43 a. 11 *Co.* 59 b, *Foster's case.* No man shall be placed in peril of legal penalties more than once upon the same accusation. *Broom's Max.* 138, [257.]

Nemo debet bis vexari [si constet curiæ quod sit] pro una et eadem causa. No man ought to be twice troubled or harassed [if it appear to the court that it is] for one and the same cause. 5 *Co.* 61 a, *Sparry's case.* No man can be sued a second time for the same cause of action, if once judgment has been rendered. See *Broom's Max.* 135, [241.] No man can be held to bail a second time at the suit of the same plaintiff, for the same cause of action. 1 *Chitt. Arch. Pr.* 476. No man who has once been indicted for an offence and acquitted, can be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment. *Broom's Max.* 137, [257.]

Nemo debet [potest] esse judex in propria causa. No man ought to [can] be a judge in his own cause. 12 *Co.* 114 a, *Earl of Derby's case.* A maxim derived from the civil law. *Cod.* 3. 5. Called a fundamental rule of reason and of natural justice. *Burr. Sett. Cas.* 194, 197.

Nemo debet immiscere se rei ad se nihil pertinenti. No one should intermeddle with a thing that in no respect concerns him. *Jenk. Cent.* 18, case 32.

Nemo debet locupletari aliena jactura. No one ought to be enriched by another's loss. 2 *Kent's Com.* 336. 1 *Kames' Equity*, 331. 2 *Id.* 145, 204, 205. Other forms of this maxim are, **Nemo debet locupletari ex alterius incommodo.** *Jenk. Cent.* 4, case 5. **Nemo ex alterius detrimento fieri debet locupletior.** 1 *Story's Eq. Jur.* § 558. **Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiorem.** *Dig.* 50. 17. 206. *Id.* 12. 6. 14.

Nemo debet rem suam sine facto aut defectu suo amittere. No man ought to lose his property without his own act or default. *Co. Litt.* 263 a.

Nemo duobus utatur officiis. No man should enjoy two offices (at the same time.) 4 *Inst.* 100. A justice can take no other office. *Id. ibid.*

Nemo est hæres viventis. No one is the heir of a living person. *Co. Litt.* 8 a, 22 b. No one can be heir during the life of his ancestor. *Broom's Max.* 223, [393.] No person can be the actual complete heir of another, till the ancestor is previously dead. 2 *Bl. Com.* 208. *Id.* 107, 170, 224. 4 *Kent's Com.* 212. 2 *Hilliard's Real Prop.* 540.

Nemo ex alterius facto prægravari debet. No man ought to be burdened in consequence of another's act. 2 *Kent's Com.* 646.

Nemo ex consilio obligatur. No man is bound in consequence of his advice. Mere advice will not create the obligation of a mandate. *Story on Bailm.* § 155.

Nemo ex proprio dolo consequitur actionem. No man acquires a right of action from his own wrong. *Broom's Max.* [221.]

Nemo ex suo delicto meliorem suam condi-

tionem facere potest. No man can improve his own condition by his own wrong. *Dig.* 50. 17. 134. 1.

Nemo inauditus condemnari debet si non sit contumax. No man ought to be condemned without being heard, unless he be contumacious. *Jenk. Cent.* 18, case 12, *in marg.*

Nemo in propria causa testis esse debet. No one ought to be a witness in his own cause. 3 *Bl. Com.* 371. 1 *Id.* 443. This maxim has been greatly impaired in modern law, by judicial decisions and statutory provisions, both in England and the United States. See Lord Denman's Act, 6 & 7 *Vict.* c. 85. *Best on Evid.* 159, § 125, *et seq.* 1 *Greenl. Ev.* § 329, *et seq.* *Id.* §§ 383—386, *et seq.* 1 *Phill. on Ev.* 45, 60. 3 *Id.* Cowen and Hill's notes, 44—60. (Notes 34—37.) 24 *Mississippi R.* 528, 538, and cases cited *ibid.*

Nemo militans Deo implicetur secularibus negotiis. No man who is warring for [in the service of] God should be involved in secular matters. *Co. Litt.* 70 b. A principle of the old law, that men of religion were not bound to go in person with the king to war.

Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance. *Co. Litt.* 129 a. *Broom's Max.* [52.] More briefly expressed, **Nemo potest exuere patriam.** *Fost. Cr. Law*, 184. See *Natural allegiance.*

Nemo plus commodi heredi suo relinquit quam ipse habuit. No one leaves a greater benefit to his heir than he had himself. *Dig.* 50. 17. 120.

Nemo plus juris ad [in] alium transferre potest quam ipse habet, [haberet.] No one can transfer more right to another than he has himself. *Dig.* 50. 17. 54. See *Id.* 50. 17. 175. 1. This maxim of the civil law has been adopted in the common law, and constitutes a leading principle of the alienation of property, both real and personal. 1 *Wooddes. Lect.* Introd. Lect. 5, lxxi. note. 5 *Co.* 113. *Co. Litt.* 309 b. *Wingate's Max.* 56. *Broom's Max.* [354.] 2 *Kent's Com.* 324. 4 *Id.* 10. *Story on Bailm.* §§ 328, 340. Called by Mr. Justice Thompson, "a plain dictate of common sense." 10 *Peters' R.* 161, 175. Otherwise expressed, **Nemo potest plus juris ad alium transferre quam ipse habet.** *Co. Litt.* 309 b.

Nemo potest contra recordum verificare per patriam. No one can verify by the country, against a record. 2 *Inst.* 380. The issue upon matter of record cannot be to the country. A maxim of old practice.

Nemo potest esse dominus et hæres. No man can be both owner and heir. *Hale's Hist. Com. Law*, c. 7. **Nemo ejusdem tenementi simul potest esse hæres et dominus.** 1 *Reeves' Hist. Eng. Law*, 106.

Nemo potest esse tenens et dominus. No man can be both tenant and lord (of the same tenement.) *Gilb. Ten.* 142. See **Nullus esse, &c.**

Nemo potest facere per alium quod per se non potest. No one can do that by another, which he cannot do of himself. *Jenk. Cent.* 237, case 14. A rule said to hold in original grants, but not in descents; as where an office descended to a woman, in which case, though she could not exercise the office in person, she might by deputy. *Id. ibid.*

Nemo potest facere per obliquum quod non potest facere per directum. No man can do that indirectly, which he cannot do directly. 1 *Eden*, 512.

Nemo potest mutare consilium suum in alterius injuriam. No man can change his purpose to another's injury. *Dig.* 50. 17. 75. *Broom's Max.* [29.]

Nemo præsumitur alienam posteritatem suæ prætulisse. No man is presumed to have preferred another's posterity to his own. *Wingate's Max.* 285, max. 79.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis. No man is presumed to be unmindful of his eternal welfare, and especially when at the point of death. 6 *Co.* 76 a, *Sir George Curson's case.* A party doing an act in contemplation of death, is presumed to act under a proper sense of the solemnity of his situation; that is, with sincerity of purpose.* No collusion can be averred upon a will. 6 *Co. ub. sup.*

Nemo prohibetur plures negotiationes sive artes exercere. No one is prohibited from following several kinds of business or several arts. 11 *Co.* 54 a, *Ipswich Tailors' case.* The common law doth not prohibit any person from using several arts or mysteries at his pleasure. *Id. ibid.*

Nemo prohibetur pluribus defensionibus uti. No one is prohibited from making use of several defences. *Co. Litt.* 304 a. *Wingate's Max.* 479, max. 120. Hence the allowance of several pleas on the part

of a defendant. *Id. ibid.* This rule is derived from that of the civil law, **Nemo prohibetur pluribus exceptionibus uti, quamvis diversæ sint.** *Dig.* 44. 1. 8.

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur. No wise man punishes in order that past things may be recalled, but that future wrongs may be prevented. 3 *Bulstr.* 173.

Nemo punitur pro alieno delicto. No man is punished for the crime of another. *Wingate's Max.* 336, max. 87.

Nemo punitur sine injuria, facto seu defalta. No one is punished unless for some wrong, act or default. 2 *Inst.* 287.

Nemo tenetur ad impossibile. No man is bound to do an impossibility. *Jenk. Cent.* 7, case 10. Held, on this ground, that when the king's command to the judges was contrary to law, it ought not to be obeyed. *Id. ibid.*

Nemo tenetur armare adversarium suum contra se. No man is bound to arm his adversary against himself; (as to furnish him with an instrument to enable him to state his cause of action.) *Bract.* fol. 34. An observation of Bracton, which Britton (c. 39,) has rendered in French, **Nul n'est tenu de armer son adversarie,** and which has passed into a maxim of the common law, though its strictness has been much relaxed in modern practice. *Co. Litt.* 36 a. *Wingate's Max.* 665, max. 171. *Best on Evid.* 487, § 442.

Nemo tenetur divinare. No man is bound to divine, or to have foreknowledge of a future event. 10 *Co.* 55 a. 4 *Id.* 28.

Nemo tenetur edere instrumenta contra se. No man is bound to produce writings against himself. A rule of the Roman law, adhered to in criminal prosecutions, but departed from in civil questions. *Bell's Dict.*

Nemo tenetur informare qui nescit, sed quisquis scire quod informat. No one is bound to give information on a subject of which he is ignorant, but every one is bound to know that which he gives information about. *Branch's Princ.*

Nemo tenetur jurare in suam turpitudinem. No one is bound to swear to the fact of his own criminality; no one can be forced to give his own oath in evidence of his guilt. *Bell's Dict.* See *Criminate.*

Nemo tenetur seipsum infortuniis et periculis exponere. No one is bound to expose himself to misfortunes and dangers. *Co. Litt.* 253 b. Hence a threat of bodily harm will excuse the performance of an act in law. *Id. ibid.*

Nemo tenetur seipsum accusare. No one is bound to accuse himself. *Wingate's Max.* 486. 1 *Bl. Com.* 443. **Nemo tenetur prodere seipsum.** No man is bound to betray himself. 1 *Greenl. Ev.* § 224.

Nemo videtur fraudare eos qui sciunt et consentiunt. No one seems [is supposed] to defraud those who know and assent [to his acts.] *Dig.* 20. 17. 145.

NEMY, *Nemi.* L. Fr. Not. *Nemy come heire;* not as heir. *Litt.* sect. 3.

NEPHEW. [from L. Fr. *neveu*, (q. v.) and so pronounced, according to the English authorities.] A brother's or sister's son. "All my *nephews* and nieces," in a bequest, held to include nephews and nieces of the half blood as well as of the whole blood. 2 *Jones' Eq. R.* 202.

In old English law. A grandson. (Lat. *nepos*, Fr. *neveu*, qq. v.)

NEPORQUANT. L. Fr. Nevertheless. *Fet Assaver*, § 46.

NEPOS. Lat. In the civil law. A grandson. *Supra, avus, avia; infra,* nepos, *neptis;* above, grandfather, grandmother; below, grandson, granddaughter. *Inst.* 3. 6. 1. Bracton uses *nepos* in the same sense. *Bract.* fol. 67, 68. In Britton it is rendered *neveu*, (q. v.) *Britt.* c. 119. The old Scotch *nepuoy* (q. v.) is probably derived from *nepos.*

NEPTIS. Lat. In the civil law. A granddaughter. *Inst.* 3. 6. 1. Bracton uses the word in the same sense. *Bract.* fol. 67, 68. In Britton, it is rendered *nece. Britt.* c. 119. In old Scotch law, the equivalent word was *neipce*, (q. v.)

NEPUOY. O. Sc. In Scotch law. A grandson. *Skene de Verb. Sign.* voc. *Eneya.*

NEQUITER. Lat. In old English law. Wickedly. *Fleta*, lib. 1, c. 31, §§ 6, 7, 8.

NESCIENCE. [from Lat. *nescire.*] Ignorance. 6 *Mod.* 286.

NETHER. O. Eng. Under; lower. Nether-vert; underwood. See *Vert.* "Nether" and "over" are used in the old books as distinctions of places. See *Yearb.* M. 9 Edw. III. 56.

NEUTRAL. [Lat. *neutralis*, from *neuter*, neither.] In international law. On neither side; taking neither side; belonging to neither side; indifferent between contending parties. A neutral nation or power is one that takes no part in a contest going on between others, who are called *belligerents.**

1 *Kent's Com.* 115. See *Wheat. Int. Law*, 480.

NEUTRALITY. In international law. A state of being neutral, or on neither side; a state of indifference between contending parties. 1 *Kent's Com.* 114. *United States Digest*, Neutrality.

NEVER INDEBTED. [L. Lat. *nunquam indebitatus.*] In English practice. A form of plea in actions of debt on simple contract, substituted by the late Pleading Rules in place of the plea of *nil debet*, (q. v.) *Reg. Hil. T.* 4 Will. IV. *Steph. Pl.* 156. The substance of it is that the defendant "*never* was *indebted* in manner and form as in the declaration alleged." *Id. ibid.* It is made the proper form of plea in cases where the defendant means to deny, in point of fact, the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would, by law, be implied. *Wharton's Lex.*

NEVEU. L. Fr. In old English law. A grandson. *Desouth le pleintife* (says Britton, describing a figure or diagram illustrative of the degrees of succession,) *soit mis un fitz ou fille, et celuy face le primer degree avalaunt; et desouth soit mis ou* neveu *ou nece, et celuy face le second degree;* under the plaintiff let there be put a son or daughter, and this makes the first degree descending, and under [the son or daughter,] let there be put a grandson or granddaughter, and this makes the second degree. *Britt.* c. 119.

Neveu is undoubtedly the original form of the modern *nephew*, though the latter word is now exclusively used to denote a brother's or sister's son.

NEW ASSIGNMENT. [L. Fr. *novel assignment.*] In pleading. A species of pleading on the part of a plaintiff, (most commonly occurring in actions of trespass,) sometimes termed a replication, (from its following the defendant's plea,) but which is, in fact, a re-statement of the cause of action alleged in the declaration, in a more minute and circumstantial manner, being in the nature of a new or repeated declaration. Its necessity arises from the very general mode of declaring allowed in such actions, in consequence of which, the defendant is sometimes led to apply his plea to a different matter from that which the plaintiff had in view; or, in other words, to plead an evasive plea. *Steph. Pl.* 220—228. 1 *Chitt. Pl.* 624.

NEW FOR OLD. A term in the law of insurance, applied to a deduction made in the adjustment of losses. In the case of a partial loss, the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for the repairs, and to allow the deduction of one-third *new for old* upon the balance. 3 *Kent's Com.* 339. *Stevens & Benecke on Average*, 374.

NEW STATUTES. See *Nova statuta.*

NEW TRIAL. In practice. A second (and, in some cases, a third) trial of a cause, granted by the court, on motion of the party dissatisfied with the result of the previous trial, upon a proper case being presented for the purpose.* A rehearing of the cause before another jury. 3 *Bl. Com.* 391.

New trials are granted on the ground either of *irregularity*, such as want of notice of trial; *misconduct* of the prevailing party or of the jury, during the trial; or on the *merits* of the cause itself; as where the jury have given a verdict against law or without evidence, or contrary to evidence, or have given exorbitant damages, or where the judge has erred in allowing or refusing evidence, or has misdirected the jury, or where a new and material fact has come to light since the previous trial. See 3 *Bl. Com.* 387, 392. 3 *Steph. Com.* 624—627. *Steph. Pl.* 94, 95. 1 *Burr. Pr.* 468. *United States Digest*, New trial.

NEW WORK. [Lat. *novum opus;* Fr. *nouvel œuvre.*] In the civil law. An edifice or other work newly commenced on any ground whatever. *Civil Code of Louis.* art. 852.

NEWSPAPER. A paper or publication conveying *news* or intelligence.

A printed publication, issued in numbers at stated intervals, conveying intelligence of passing events.

The term *newspaper* is popularly applied only to such publications as are issued in a single sheet, and at short intervals, as daily or weekly. It is not, however, the *form*, so much as the *subject matter* of a publication which seems properly to constitute it, in law, a newspaper. Hence publications consisting of more than one sheet, and issued in pamphlet form, at longer intervals, may, if principally, or in great part, devoted to the transmission of news, be considered, for certain purposes, as newspapers.

NEXI. Lat. [plur. of *nexus*, from *nectere*, to bind.] In the Roman law. Bound; bound persons. A term applied to such insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged. *Calv. Lex. Adam's Rom. Ant.* 49.

NEXT FRIEND. [L. Fr. *prochein ami;* L. Lat. *proximus amicus.*] In practice. A person, usually a near relative, by whom an infant sues at law or in equity. 1 *Tidd's Pr.* 99. 1 *Daniell's Ch. Pr.* 88—105.

NEXT OF KIN. [L. Fr. *prochein du saunk.*] Nearest of blood. A term applied, in the law of descent and distribution, to the nearest blood relatives of a deceased person, though it is sometimes construed to mean only those who are entitled to take under the statute of distributions, and sometimes to include other persons. 2 *Story's Eq. Jur.* § 1065 b. See 2 *Jarman on Wills*, 37, (28, Perkins' ed.) Nearness of kin is computed by the rule of the civil law, according to which, the father and son of the deceased stand in the first degree, the grandfather, grandson and brother in the second, the uncle and nephew in the third, cousins in the fourth, &c.; the deceased himself being the point or terminus from which the computation is made. 2 *Kent's Com.* 422. 4 *Id.* 412, *et seq.* See *Kin.*

NICHIL. An old form of *nihil*, (q. v.)

NICHOL. An old way of writing Lincoln. *Yearb.* H. 4 Hen. VI. 7.

NIEFE, *Nief.* L. Fr. [L. Lat. *nativa.*] In old English law. A female villein. *Feme que est villein est appel* niefe. *Litt.* sect. 186. A woman born in vassalage. *Barr. Obs. Stat.* 238, note [*k.*] But the proper form of the word seems to be *neife*, (q. v.)

NIEF. L. Fr. [Lat. *navis.*] In old English law. A ship. *Yearb.* H. 6 Edw. III. 15.

NIENT. L. Fr. Not; nothing. *Nient contristeant; nient obstant;* notwithstanding. *Litt.* sect. 396. *Nient le meins;* nevertheless. *Kelham.*

NIENT CULPABLE. L. Fr. [Lat. *non culpabilis.*] In pleading. Not guilty. The old French name for the general issue of not guilty.

NIENT DEDIRE. L. Fr. In old practice. To deny nothing; to suffer judgment by default. *Cowell.*

The name given to that clause in a suggestion, in which it is stated that the fact suggested is *not denied.* 1 *Tidd's Pr.* 606. 2 *Id.* 723.

NIENT LE FAIT. L. Fr. [L. Lat. *non est factum.*] In pleading. Not the deed. *Yearb.* H. 11 Hen. VI. 21. The name formerly given to the general issue of *non est factum. Crabb's Hist. Eng. Law*, 213, 423. 2 *Reeves' Hist.* 331. *Nient nostre fait;* not our deed. *Yearb.* T. 1 Edw. II. 18. *Nient son fait;* not his deed. H. 3 Hen. VI. 35. M. 21 Hen. VI. 9.

NIENT SEISI. L. Fr. In old pleading. Not seised. The general plea in the writ of annuity. *Crabb's Hist.* 424.

NIGHT. [L. Fr. *nuyt;* Lat. *nox.*] In the common law of burglary. That portion of time during which it is so dark (from the absence of daylight) that the countenance of a man cannot be discerned. 1 *Hale's P. C.* 350. 4 *Bl. Com.* 224. See *Burglary.* In this sense, *night* is distinguished from *day*, as a separate portion of time; but in the general sense, the night constitutes a part of the day. See *Day.* Night-time has always been an essential circumstance in the English law of burglary. *Tempus discernit prædonem à burgatore. Fleta*, lib. 1, c. 16, § 6.

By the English statutes 7 Will. IV. and 1 Vict. c. 86, s. 4, it is declared that as regards the offence of burglary, the *night* shall be considered as commencing at nine in the evening, and concluding at six in the morning of the next day. 4 *Steph. Com.* 147.

NIHIL, *Nichil, Nil.* Lat. Nothing. See *Nil.*

In practice. A return made by a sheriff to a writ of *scire facias*, that the bail or defendants have nothing (*nihil habent*) by which he can make known to them. 2 *Tidd's Pr.* 1124.

A return formerly made to process of attachment and *distringas* to compel the appearance of a defendant. 3 *Bl. Com.* 282.

A return or answer formerly made by a sheriff, on being apposed (that is, interrogated,) in the Exchequer concerning illeviable debts, that they were worth nothing. *Cowell.*

In American law. A return to an attachment in garnishee process. 4 *Penn. St.* (Barr's) *R.* 232.

Nihil consensui tam contrarium est quam vis atque metus. Nothing is so contrary

to consent as force and fear. *Dig.* 50. 17. 116.

Nihil dictum quod non dictum prius. Nothing is said which was not said before. Said of a case where former arguments were repeated. *Hardr.* 464.

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est. Nothing is more consonant to reason, than that a thing should be dissolved or discharged in the same way in which it was created. *Shep. Touch.* 323. As that the discharge of a debt or duty created by writing (or deed,) should be by writing (or deed) also. *Id. ibid.* See **Nihil tam convenieus, &c.**

Nihil facit error nominis, cum de corpore constat. An error of name works no prejudice, where it is clear as to the body [or subject matter intended.] *Dig.* 18. 1. 9. 1. This maxim of the civil law has been adopted in the common law, *corpus* being taken in the sense of a corporate body. 11 *Co.* 21 a, *Dr. Ayray's case.* A misnomer in a grant to a corporation does not avoid the grant, though the right name of the corporation be not used, provided the corporation really intended be made apparent. 2 *Kent's Com.* 292. Sometimes, the maxim is more generally applied, and in place of the word **corpore**, the words **persona** or **re** are used. *Shep. Touch.* (by Preston,) 236, 247. In the original text of the Digests, *corpus* is taken in the sense of subject matter.

Nihil in lege intolerabilius est [quam] eandem rem diverso jure censeri. Nothing is more intolerable in law, than that the same matter, thing or case, should be subject to different views of law. 4 *Co.* 93 a, *Slade's case.* Applied to the difference of opinion entertained by different courts, as to the law of a particular case. *Id. ibid.*

Nihil magis justum est quam quod necessarium est. Nothing is more just than that which is necessary. *Dav. R.* 12. *Branch's Princ.*

Nihil nequam est præsumendum. Nothing wicked is to be presumed. 2 *P. Wms.* 583.

Nihil perfectum est dum aliquid restat agendum. Nothing is perfect, while any thing remains to be done. 9 *Co.* 9 b, *Dowman's case.*

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit. Nothing can be demanded before the time when, by the nature of things, it can be paid. *Dig.* 50. 17. 186.

Nihil possumus contra veritatem. We can do nothing against truth. *Doct. & Stud.* dial. 2, c. 6.

Nihil quod est contra rationem est licitum. Nothing that is against reason is lawful. *Co. Litt.* 97 b.

Nihil quod est inconveniens est licitum. Nothing that is inconvenient is lawful. *Co. Litt.* 66 a, 97 b. A maxim very frequently quoted by Lord Coke, but to be taken in modern law with some qualification. *Broom's Max.* 84—86, [140.]

Nihil tam naturale est, quam eo genere quidque dissolvere quo colligatum est. Nothing is so natural as to dissolve a thing by the same kind of means, by which it was bound together. *Dig.* 50. 17. 35. See *Id.* 153. This maxim of the civil law is otherwise expressed by Bracton, **Nihil tam conveniens est naturali æquitati, quam unumquodque dissolvi eo ligamine quo ligatum est,** (Nothing is so consonant to natural justice, as that every thing should be dissolved by the same kind of tie with which it is bound;) and applied to the dissolution of the connection of homage by the same mutual consent by which it was created. *Bract.* fol. 78 b. The maxim in the latter form is constantly quoted by Lord Coke, and has been extensively adopted in the common law. 2 *Inst.* 359, 360. Every contract or agreement ought to be dissolved by matter of as high a nature as the first deed, or as that which first made it obligatory. 5 *Co.* 26 a, *Countess of Rutland's case.* 2 *Id.* 53 a. 4 *Id.* 57 b. *Shep. Touch.* 396. *Broom's Max.* 407, [681.] *Best on Evid.* 250, § 206. It does not apply, however, to the dissolution of the contract of partnership. *Story on Partn.* § 271. Other forms of this maxim occur in the books. **Nihil est tam naturale quam quidlibet dissolvi eo modo quo ligatur.** (Nothing is so natural as that a thing should be dissolved in the same way in which it was created;) contract by contract, deed by deed, record by record. *Jenk. Cent.* 166, case 20. **Quomodo quid constituitur, eodem modo dissolvetur.** *Id.* 74, case 40.

Nihil tam conveniens est naturali æquitati, quam voluntatem domini volentis rem suam in alium transferre, ratam haberi. Nothing is so agreeable to natural equity, as that the will or intention of an owner desiring to transfer his property to another,

should be ratified or confirmed. *Inst.* 2. 1. 40. *Dig.* 41. 1. 9. 3. This civil law maxim is quoted by Bracton, and from the latter writer by Lord Coke. 1 *Co.* 100 a, *Shelley's case.*

Nihil tam proprium imperio quam legibus vivere. Nothing is so becoming to authority, as to live in accordance with the laws. *Fleta*, lib. 1, c. 17, § 11.

NIL, (a contraction of NIHIL.) Lat. Nothing. *Nil sine prudenti fecit ratione vetustas;* antiquity did nothing without a good reason. *Co. Litt.* 65. See *Nihil.*

Nil temere novandum. Nothing should be rashly changed. *Jenk. Cent.* 163, case 9. No innovation should be rashly introduced.

NIL CAPIAT, (or, QUOD NIL CAPIAT, that he take nothing.) L. Lat. In practice. A name given to the judgment for the defendant in an action at law, where the issue has arisen on a pleading in bar. So called from the emphatic words of the entry of judgment in the old form: *Ideo consideratum est quod prædictus*—NIL CAPIAT *per breve sed quod sit in misericordia*, &c. Literally translated in the modern precedents: "Therefore it is considered that the said (plaintiff) *take nothing* by his writ (bill or declaration,) but that he be in mercy," &c. *Arch. Forms*, 129.

NIL DEBET. L. Lat. (He owes nothing.) In pleading. The name of the general issue in an action of debt on simple contract. 3 *Bl. Com.* 305. 1 *Burr. Pr.* 167. See 1 *Kent's Com.* 260, 261. So called from the emphatic words of the plea when framed in Latin: *Et dicit quod ipse* NON DEBET *præfato—præd.* 20*l. nec aliquem inde denarium*, &c. (And says that he does not owe the said — the aforesaid 20*l.* nor any penny thereof.) *Towns. Pl.* 483. *Nil debent;* they owe nothing. 10 *East*, 366.

In England, the plea of *nil debet* is not now allowed in any action. *Reg. Gen.* Hil. T. 4 Will. IV. See *Never indebted.*

NIL (or NIHIL) DICIT. L. Lat. (Says nothing.) In practice. A name given to the judgment entered on the default of a defendant to plead to the plaintiff's declaration. 3 *Bl. Com.* 397. 1 *Tidd's Pr.* 562. So termed from the emphatic words of the ancient entry on the record: *Et prædictus—venit et defendit*, &c. *et* NIHIL *in barram sive præclusionem actionis prædicti*—DICIT, *per quod*, &c. *Towns. Pl.* 432. Literally translated in the modern precedents, "And the said (defendant) — comes and defends, &c. and *says nothing* in bar or preclusion of the action of the said (plaintiff) whereby," &c. *Arch. Forms*, 336.

NIL HABUIT IN TENEMENTIS. L. Lat. (He had nothing in the tenements.) In old pleading. A plea in an action of debt upon a lease. 2 *Ld. Raym.* 1154.

Nimia subtilitas in jure reprobatur. Excessive subtlety is reprobated in law. 4 *Co.* 5 b, *Vernon's case. Wingate's Max.* 26. *Broom's Max.* [141.] The law discountenances curious and nice exceptions, tending to the overthrow or delay of justice. See **Apices juris non sunt jura.**

NIMIS. Lat. Too much; too.

NISI. Lat. Unless. *Nisi convenissent in manum viri;* unless they should come into the power of a husband; unless they should marry. A phrase applied in Roman law to women, who were subject to perpetual guardianship until married. 1 *Bl. Com.* 464. See *Rule nisi.*

NISI PRIUS. L. Lat. (Unless before, or unless sooner.) In practice. A common law phrase of high antiquity, unmeaning in its literal translation as at present applied, but of great significance in practice, and equally familiar to the jurisprudence of England and the United States; being constantly used to denote the system of *trial of issues of fact*, in civil cases, *before a jury*, as distinguished from the *argument of issues* and questions *of law before the court in bench.* Originally consisting merely of two ordinary words in a writ and record, it came to be used, from its convenience, as the name of the *writ* by virtue of which an issue of fact was tried, of the *record* used for the trial, of the *court* in which the trial was had, of the *jury*, of the *trial* itself, and finally of the whole *system* of trial, as already described.

*** The origin of this important phrase may be explained as follows: Originally, an action was triable only in the court where it was brought, and there the parties and the jurors were always summoned to appear. But it was provided by Magna Charta, in ease of the subject, that *assises of novel disseisin and mort d'ancestor*, (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to

be sent into every county, once a year, to take these assises there. 1 *Reeves' Hist. Eng. Law*, 246. These justices, it may be observed, continued to be called in Bracton's time by their original name of *justices itinerant* or in eyre, their court being also termed, as before, the *eyre* or *iter*. *Bract.* fol. 109, 110. The system of local trials, being found convenient, was soon applied not only to assises but to other actions, but, in consequence of the uncertainty which at that early period was found to attend the holding of the local courts, eyres or assises, (or, in Bracton's words, *quia bene poterit iter multipliciter impediri, revocari vel suspendi,*) the practice was continued of summoning the parties to appear as before in the superior court, at a certain day, or in the language of the record, giving them a day in the bench, (*in banco,*) UNLESS BEFORE (that day,) the justices itinerant should come to the places designated for the trial, (NISI *justitiarii itinerantes* PRIUS *venerint ad partes illas.*) *Bract.* fol. 110. The statute of Westminster 2, (13 Edw. I. c. 30, afterwards called the statute of Nisi Prius,) confirmed this practice, and introduced a similar *condition* into the process for summoning the jury, by providing that writs of *venire* for summoning juries to the superior courts should be in the following form: *Præcipimus tibi quod venire facias coram justitiariis apud Westm. in Octabis Scti Michaelis* NISI, talis et talis, tali die et loco ad partes illas venerint, *duodecim*, &c. [We command you that you cause to come before our justices at Westminster, on the octave of St. Michael, UNLESS such and such a one, at such a day and place, shall come to those parts, twelve, &c.] Mr. Serjeant Stephen considers this statute as the foundation of the present system of trial at *nisi prius*, and Mr. Spence supposes that the term *nisi prius* itself originated in its provisions. *Steph. Pl.* Appendix, Note (30.) 1 *Spence's Chancery*, 116, note. But the passage in Bracton, already referred to, and which is quoted by Blackstone, though not noticed by the writers just named, seems to carry back both the system and the term itself to a much earlier date. 3 *Bl. Com.* 352.

The words *nisi prius*, now generally treated as untranslatable or unmeaning, are, in their very simplicity, singularly expressive of the character of the system of local trials, at the remote period to which it has been traced. The trial was then a *contingency*, that might or might not happen, the justice might or might not come into the county, the circuit or *iter* might be in various ways prevented or suspended (*poterit iter multipliciter impediri, vel suspendi,*) or, in modern phrase, might *fall through*. Hence it was presented on the record, in the way of an *exception*, that might or might not have effect, and introduced, as it were, by the by, as something collateral and subordinate to the main course of the proceedings. And the *nisi prius* clause (as it is termed) has in practice retained this character of a condition or exception ever since, although the system of local trials itself has long been established on a permanent foundation. 3 *Bl. Com.* 352—354.

NISI PRIUS CLAUSE. In practice. A clause entered on the record in an action at law, and introduced also into the jury process, authorizing the trial of the cause in the particular county designated. It was first used by way of continuance, the parties having a day given them in the court above, *unless, before* (*nisi prius*) that day, the justices assigned to try the cause should come into the county. *Bract.* fol. 110. See *Nisi prius*. It was afterwards introduced into the process for summoning the jury (now called the *venire,*) which was hence termed the *writ of nisi prius*. In this way it came to be entered on the record made up for the trial, which was hence termed the *nisi prius record*, from which it was finally transferred to the judgment roll or record. In English practice, this clause has long been omitted in the *venire*, being inserted in the *distringas juratores*, (q. v.) which is now the effective process. Its form, as now entered on the record, is as follows: "Afterwards, on the — day of — &c. the jury between the parties aforesaid is respited here until the — day of —, UNLESS [the judge or judges of *nisi prius* and assise] shall FIRST come on the — day of —, at," &c. This is a very close translation of the old Latin entry:—*Jurata ponitur in respectum hic usque, &c.* NISI *dominus T. T. &c. die, &c.* PRIUS *venerit*, &c. *Towns. Pl.* 430.

The *nisi prius* clause has been used in American practice, though it is now in a great degree dispensed with.

NISI PRIUS COURT. A court held for the trial of issues of fact, before a jury and a single presiding judge.

NISI PRIUS RECORD. In practice. A record made up for the use of the court on a trial at *nisi prius*, serving both as a warrant to the judge who is to try the cause, and as a guide as to the nature of the issue to be tried. It consists of entries of the pleadings, and of the award of jury process, in a certain order and form, and is, in other words, a historical summary of the proceedings from the commencement of the action down to the time at which it is made up. In England, it is written on parchment, and is required to be sealed and passed, as it is termed, at the proper office, before it can be used. It derives its name from the clause of *nisi prius*, with which it concludes; by which the jury are respited or the cause continued to a certain day, *unless* the judge or judges of *nisi prius* and assise shall *first* come, on a certain day, at the place designated. *Steph. Pl.* 78—80. 2 *Tidd's Pr.* 775, 776. 3 *Steph. Com.* 589.

NISI PRIUS WRIT. The old name of the writ of *venire*, which originally, in pursuance of the statute of Westminster 2, contained the *nisi prius* clause. *Reg. Jud.* 28, 75. *Cowell.* The clause, however, as it appears in the forms, was not in the original *nisi prius* form, but in the alternative, the jury being directed to be summoned to come before the justices at Westminster, &c. *or* before the justices of assise IF they should SOONER come to the place of trial, on the day designated. The emphatic Latin words were not *nisi prius*, but *vel si prius.* See *Reg. Jud. ub. sup.*

NOBILE OFFICIUM. Lat. Noble office or privilege. A term in Scotch law, said not to admit of a precise definition. *Bell's Dict.* Bell describes it as that power or privilege of a court of equity, which enables it to give redress by abating the rigor of strict law.

NOCENT. [from Lat. *nocere.*] Guilty. "The *nocent* person." 1 *Vern.* 429.

NOCERE. Lat. To hurt or damage; to offend or annoy; to produce an inconvenience; (*damnum dare, incommodum adferre.*) *Calv. Lex.* Properly applied to persons. *Id.*

NOCIVUS. Lat. [from *nocere*, q. v.] In old practice. Hurtful; pernicious; noxious. Called, by Lord Mansfield, "a very technical term." 1 *Burr.* 337.

NOCTANDRE. L. Fr. By night. *Yearb.* M. 5 Edw. III. 31.

NOCTANTER. Lat. [from *nox*, night; L. Fr. *noctandre, nutauntre.*] By night. *Fleta*, lib. 4, c. 27, § 17.

NOCTES DE FIRMA. L. Lat. In English law. Nights of farm or rent; entertainments at night by way of rent. Otherwise expressed as *firmæ noctium. Spelman.* See *Firma.*

NOCTURNUS. Lat. [from *nox*, night.] In old English law. Nocturnal. *Fur nocturnus;* a night thief. *Fleta*, lib. 1, c. 16, § 6. This was not the same with a burglar, (*burgator.*) *Id.* See *Grotius, de Jur. Bell.* lib. 2, c. 1, § 12.

NOCUMENTUM. Lat. [from *nocere*, to annoy.] In old English law. A nuisance. *Bract.* fol. 221. *Nocumentum damnosum;* a nuisance occasioning loss or damage, (or *damnum sine injuria.*) *Id. ibid. Nocumentum injuriosum;* an injurious nuisance. *Id.* For the latter only a remedy was given. *Id.* See *Fleta*, lib. 4, c. 26, § 2.

NO'EN. A contraction of *nomen. No'is* of *nominis. Noi'e* of *nomine.* 1 *Inst. Cler.* 11.

NOLI PROSEQUI. An old, though incorrect form of *nolle prosequi. Com.* 312.

NOLIS. Fr. [from Lat. *naulum*, q. v.] In French law. Freight. The same with *fret. Ord. Mar.* liv. 3, tit. 3.

NOLISSEMENT. Fr. [from *nolis*, q. v.] In French marine law. Affreightment. *Ord. Mar.* liv. 3, tit. 1.

NOLLE. Lat. To be unwilling; to will not to do a thing; to refuse to do a thing. Used, in the civil law, to denote a voluntary act under full knowledge. *Calv. Lex.* A distinction was made between *nolle* and *non velle. Id.* **Ejus est nolle, qui potest velle,** (q. v.)

NOLLE PROSEQUI. Lat. (Will not prosecute.) In practice. The name of an entry made by a plaintiff in an action at law, where he wishes to discontinue the action, either wholly, or (more commonly) as to some of the counts of his declaration, or as to some of several defendants. 1 *Burr. Pr.* 148, 385. So termed from the emphatic words in the old forms, the plaintiff declaring that he *will not further prosecute* his suit as to the counts or defendants named. See 1 *Peters' R.* 46, 73, *et seq.* Story, J.

A proceeding on an indictment by which the prosecuting officer agrees to prosecute no farther, either as to the whole of the indictment, or as to some particular part of

it. 1 *Chitty's Crim. Law*, 478—480, (Perkins' ed. notes.)

NOMEMENT. L. Fr. Namely; to wit. *Britt.* c. 27. *Kelham.*

NOMEN. Lat. A name. Nomen *dicitur à* noscendo, *quia notitiam facit; Nomen* (a name) is so called from *noscendo* (knowing,) because it causes knowledge. 6 *Co.* 65 a, *Sir Moyle Finch's case.*

Nomen *est quasi rei* notamen; *Nomen* (a name) is, as it were, *notamen rei*, (the mark of a thing.) 11 *Co.* 20 b, *Dr. Ayray's case.* Calvin quotes the same etymology from *Diomed.* lib. 1, *Grammat.*

Præsentia corporis tollit errorem nominis. The presence of the body (or substantial thing itself,) takes away the effect of error in the name of it. *Bacon's Max.* 96, reg. 25.

Nomen non sufficit, si res non sit de jure aut de facto. A name is not sufficient, if there be not a thing [or subject for it,] *de jure* or *de facto.* 4 *Co.* 107 b, *Adams and Lambert's case.*

NOMEN. Lat. In the Roman law. A name; including, in the most general sense, the three names of *prænomen*, *nomen* (proper,) and *cognomen.* *Calv. Lex.* See *Cod.* 6. 23. 4.

In a strict sense,—the second of the three names which the Romans commonly had, following the *prænomen*, and marking the *gens* to which the individual belonged. It commonly ended in *ius;* as *Cornelius*, *Fabius*, *Octavius*, &c. *Adam's Rom. Ant.* 36. *Butler's Hor. Jur.* 28.

A debtor; the obligation of a debtor. *Vendere nomen;* to sell a name or obligation. *Calv. Lex. Cod.* 4. 10. 7. See *Cic. Att.* v. 21. *Horat. Sat.* i. 2, 16. *Id. Ep.* ii. 1, 105. The word *name* is still familiarly used in this sense.

A debt; the cause of a debt; an article of an account. *Adam's Rom. Ant.* 547, and the authorities cited *ibid.*

NOMEN. Lat. In old English law. A name; the name. The given or baptismal name of a person, as Matthew, Andrew, Peter, Paul. Distinguished from the *cognomen* (q. v.) or surname. See *Fleta*, lib. 4, c. 10, §§ 7, 9. Fleta mentions the *prænomen*, *agnomen* and *cognomen.* *Id.* § 9.

NOMEN COLLECTIVUM. Lat. A collective name, or term; a term expressive of a class; a term including several of the same kind; a term expressive of the plural as well as singular number. *Skinn.* 205. A term descriptive of person or interest, or both. Eyre, C. J. 1 *Bos. & Pull.* 243.

NOMEN GENERALE. Lat. A general name; the name of a *genus.* *Fleta*, lib. 4, c. 19, § 1.

NOMEN GENERALISSIMUM. L. Lat. A name of the most general kind; a name or term of the most general meaning. By the name of *land*, which is *nomen generalissimum*, every thing terrestrial will pass. 2 *Bl. Com.* 19. 3 *Id.* 172.

NOMEN JURIS. Lat. A name of law. A legal name or designation; a technical term. 2 *Swinton's R.* 429.

NOMINA. Lat. [plur. of *nomen*, q. v.] Names. Nomina *sunt notæ rerum.* Names are the marks of things. 11 *Co.* 20 b. Nomina *sunt symbola rerum.* Names are the symbols or signs of things. *Branch's Princ. Nomina significandorum hominum reperta sunt, qui si alio quolibet modo intelligantur, nihil interest;* names were invented for the purpose of designating persons, who, if they can be known in any other way, it makes no difference. *Inst.* 2. 20. 29.

Nomina si nescis perit cognitio rerum. *Et* nomina, *si perdas, certi distinctio rerum perditur.* If you are ignorant of names, [without a knowledge of names,] the knowledge of things perishes. And if you lose the names, the distinction of things is certainly lost. *Co. Litt.* 80 b. The names of things are, for avoiding of confusion, diligently to be observed. *Id. ibid.*

Nomina mutabilia sunt, res autem immobiles. Names are mutable, but things are immoveable, [immutable.] 6 *Co.* 66 a. Applied to the name of a manor, which might be acquired by knowledge of the country, without being the true and proper name.

NOMINA VILLARUM. Lat. Names of the villages. The name of a return made by the sheriffs of England into the exchequer, in the reign of Edward II. of the names of all the villages and their possessors in every county. *Cowell. Blount.*

NOMINAL PARTNER. One who appears, or is held out to the world as a partner, but who has no real interest in the firm or business. *Story on Partn.* § 80. One who allows his name to appear in the partnership firm, and be used in the business, and thereby holds himself out to the world as apparently having an interest in it; though he may have no actual interest

in the business or its profits.* 3 *Kent's Com.* 31, 32.

NOMINARE. Lat. [from *nomen*, name.] To name; to nominate; to appoint. *Calv. Lex.*

NOMINATE CONTRACTS. In the civil law. Contracts having a proper or peculiar name and form, and which were divided into four kinds, expressive of the ways in which they were formed; viz. 1. *real*, which arose, *ex re*, (from something done;) 2. verbal, *ex verbis*, (from something said;) 3. literal, *ex literis*, (from something written;) and 4. consensual, *ex consensu*, (from something agreed to.) *Calv. Lex. Hallifax, Anal.* b. 2, c. 14, num. 9. *Cooper's Just. Inst.* Notes, *584.

NOMINATIM. Lat. [from *nomen*, name.] In the civil law. By name, or other special designation, (*demonstratione corporis, opificii, officiive;*) specially; expressly. *Calv. Lex.* Lord Ellenborough, 12 *East*, 244.

NOMINE PŒNÆ. Lat. In the name of a penalty. In the civil law, a legacy was said to be left *nomine pœnæ*, where it was left for the purpose of coercing the heir to do or not to do something. *Inst.* 2. 20. 36.

In the common law, the term *nomine pœnæ* has been applied to a covenant inserted in a lease, that the lessee shall forfeit a certain sum on non-payment of rent, or on doing certain things, as ploughing up ancient meadow, and the like. 1 *Crabb's Real Prop.* 171, § 155. *Gilbert on Rents*, 140—145. 1 *Williams on Exec.* 697.

NOMOΣ, Νόμος. Gr. [from νέμειν, to give or distribute.] Law; so called, because *suum cuique* νέμει, (it gives to every one his due.) *Calv. Lex. Schrev. Lex.* See the definitions in *Dig.* 1. 3. 2.

NOMOTHETA. Græco-Lat. [Gr. νομοθέτης, from νόμος, law, and τιθέναι, to lay down.] A lawgiver; such as Solon and Lycurgus, among the Greeks, and Cæsar, Pompey and Sylla among the Romans. *Calv. Lex.*

NON. Lat. Not. The common particle of negation. In the civil law, it sometimes had the senses of *not only*, (*non solum,*) and *not so much*, (*non tantum, non tam.*) *Calv. Lex.*

NON ABILITY. Want of ability to do an act in law, as to sue. *Cowell.* A plea founded upon such cause. *Id.*

NON ACCEPTAVIT. L. Lat. He did not accept. See *Acceptare.*

NON-ACCESS. Non-existence of sexual intercourse. 1 *Sim. & Stu.* 153. *Sugden's Law of Property*, 182, 183. See *Access.*

Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram. Words ought not to be taken to import a false demonstration, which may have effect by way of true limitation. *Bacon's Max.* 59, reg. 13. "Though falsity of addition or demonstration doth not hurt where you give the thing a proper name, yet nevertheless, if it stand doubtful upon the words, whether they import a false reference and demonstration, or whether they be words of restraint that limit the generality of the former name, the law will never intend error or falsehood." *Id. ibid. Broom's Max.* [498.] Lord Ellenborough, 8 *East*, 91.

NON-AGE. Want of age; infancy; minority. See *Age.*

Non aliter a significatione verborum recedi oportet, quam cum manifestum est aliud sensisse testatorem. The ordinary meaning of words should not be departed from in any other case than where it is clear that the testator intended something different. *Dig.* 32. 69, pr.

NON ASSUMPSIT. L. Lat. (Did not undertake.) In pleading. The general issue in an action of assumpsit. So called from the emphatic words of the old Latin form: *Et idem—defendit vim et injuriam quando, &c. et dicit quod ipse* NON ASSUMPSIT *super se modo et forma prout idem—superius versus eum queritur. Et de hoc ponit se super patriam*, &c. (And the said (defendant) defends the wrong and injury when, &c. and says that he did not take upon himself (or undertake) in manner and form as the said (plaintiff) above complains against him. And of this he puts himself upon the country, &c.) *Towns. Pl.* 484. Where it is pleaded by several defendants, it is called *non assumpserunt.* 8 *East*, 311. The use of this plea has been much narrowed in England by the Pleading Rules. 1 *Chitt. Pl.* 513—517.

NON ASSUMPSIT INFRA SEX ANNOS. L. Lat. He did not undertake within six years. The plea of the statute of limitations, in the action of *assumpsit.* So called from the emphatic words of the old Latin form. See 2 *Greenl. Evid.* § 342, and note.

Non auditur perire volens. He who is desirous to perish is not heard. *Best on Evid.* 423, § 385. He who confesses himself guilty of a crime, with the view of meeting death, will not be heard. A maxim of the foreign law of evidence. *Id. ibid.*

NON BAILABLE. In practice. Not admitting of bail; not requiring bail. See *Bailable.*

NON CEPIT. Lat. He did not take. The general issue in replevin, where the action is for the wrongful *taking* of the property; putting in issue not only the taking, but the *place* in which the taking is stated to have been made. *Steph. Pl.* 157, 167.

NON CLAIM. In old English law. The omission or neglect of one that ought to challenge his right within a time limited, by which neglect he was barred of his right or of his entry. *Cowell. Termes de la Ley.* 2 *Bl. Com.* 354. 1 *Steph. Com.* 521.

NON COMPOS MENTIS. Lat. Not in possession, or not having power of one's mind, or mental faculties; of unsound mind or memory. *Litt.* sect. 405. *Fleta*, lib. 2, c. 61, § 16. This term is used by Blackstone as a synonyme of *lunatic* or *madman.* 1 *Bl. Com.* 304. 2 *Id.* 497. But Lord Coke interprets it in a wider sense, making it to include both an idiot and lunatic, as well as one that by sickness, grief, or other accident, wholly loses his memory and understanding. *Co. Litt.* 246 b, 247 a. Mr. Stock, in a treatise devoted expressly to the subject, adopts *non compos mentis* as the most general expression, embracing, and to a certain extent defining all states of mind contradistinguished from the rational one. *Stock on Non Comp. Mentis*, Introd. See 2 *Kent's Com.* 451, 453. 1 *Story's Eq. Jur.* § 223, 230.

NON CONCESSIT. L. Lat. He did not grant. The name of a plea pleaded by a stranger to a deed; estoppels not holding with respect to strangers. *Wharton's Lex.*

Non consentit qui errat. He who mistakes does not consent. *Bract.* fol. 44. See *Consentire.*

NON CONSTAT. L. Lat. It does not appear; it is not apparent or clear. *Cro. Car.* 52. 3 *East*, 111. 2 *P. Wms.* 643. *Non constat quid inde venit;* it does not appear what became of it. A reporter's note. *Hardr.* 65. *Non constabat;* it did not appear. Gibbs, C. J. 5 *Taunt.* 527.

NON CULPABILIS. L. Lat. Not guilty. The general issue in the action of trespass. 3 *Bl. Com.* 305. So called from the emphatic words of the old Latin form: "*Et dicit quod ipse* NON *est inde* CULPABILIS. *Et de hoc ponit,*" &c., (and says that he is not guilty thereof. And of this he puts, &c.) *Towns. Pl.* 484.

NON DAMNIFICATUS. L. Lat. Not damnified, or harmed. A plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified," &c. It is in the nature of a plea of performance; being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition. *Steph. Pl.* 360. See 8 *Grattan's R.* 539.

Non debet actori licere quod reo non permittitur. A plaintiff ought not to be allowed what is not permitted to a defendant. A rule of the civil law. *Dig.* 50. 17. 41.

Non debet adduci exceptio ejus rei cujus petitur dissolutio. A plea of the same matter, the dissolution of which is sought [by the action] ought not to be brought forward. 2 *Lord Raym.* 1433. *Broom's Max.* [125.] Otherwise expressed, **Exceptio rei cujus dissolutio petitur, nulla est.** *Jenk. Cent.* 37, case 71. See **Non potest, &c.**

Non debet [deberet] alii nocere, quod inter alios actum est, [esset.] A person ought not to be prejudiced by what has been done between others. *Dig.* 12. 2. 10.

Non debet cui plus licet, quod minus est non licere. He to whom the greater is lawful, ought not to be debarred from the less as unlawful. *Dig.* 50. 17. 21. *Broom's Max.* [130.] See **Cui licet quod majus, &c.**

Non decipitur qui scit se decipi. He is not deceived who knows himself to be deceived. 5 *Co.* 60 b, *Gooch's case.*

NON DEMISIT (or DIMISIT.) L. Lat. (He) did not demise. The name of a plea in an action of debt for rent on a parol lease, denying the demise. 1 *Tidd's Pr.* 650.

NON DETINET. L. Lat. He does not detain. The name of the general issue in the action of detinue. 1 *Tidd's Pr.* 645.

The general issue in the action of replev-

vin, where the action is for the wrongful detention only. 2 *Burr. Pr.* 14.

Non differunt quæ concordant re, tametsi non in verbis iisdem. Those things do not differ, which agree in substance, though not in the same words. *Jenk. Cent.* 70, case 32.

Non efficit affectus nisi sequatur effectus. The intention amounts to nothing unless the effect follow. 1 *Rol. R.* 226.

NON erit alia lex Romæ, alia Athœnis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit. There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time. *Cic. Frag. de Repub.* lib. 3. 3 *Kent's Com.* 1. Quoted by Lord Mansfield, with some variation in the reading,—(*sed et* apud *omnes gentes et omni tempore, una* eademque *lex* obtinebit,) and applied to the universal adoption of the maritime law, as the general law of nations. Luke *v.* Lyde, 2 *Burr.* 883, 887. Story, J. 16 *Peters' R.* 1, 19.

NONES. [Lat. *nonæ*, from *nonus*, ninth.] In the Roman calendar. The fifth, and in March, May, July and October, the seventh day of the month. So called, because, counting inclusively, they were *nine* days from the ides. *Adam's Rom. Ant.* 355, 357.

Non est arctius vinculum inter homines quam jusjurandum. There is no closer [or firmer] bond between men than an oath. *Jenk. Cent.* 126, case 54.

Non est disputandum contra principia negantem. There is no arguing with one who denies principles. *Branch's Princ. Co. Litt.* 343 a.

NON EST FACTUM. L. Lat. (Is not [his] deed.) The name of the general issue in an action of debt on bond. So called from the emphatic words in the old Latin form: *Et dicit quod ipse de debito prædicto, virtute scripti obligatorii prædicti onerari non debet, quia dicit quod scriptum obligatorium prædictum* NON EST FACTUM *suum. Et de hoc ponit se super patriam.* (And says that he ought not to be charged with the aforesaid debt, by virtue of the aforesaid writing obligatory, because he says that the said writing obligatory *is not his deed.* And of this he puts himself upon the country.) *Towns. Pl.* 484.

NON EST INVENTUS. L. Lat. (Is not found.) In practice. The name of the return made by a sheriff to a writ of *capias* or *ca. sa.* where the party named in the writ is *not found* in his bailiwick or county. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 308. 2 *Id.* 1028, 1098. The return, as actually made, is usually expressed by the English words "*not found*," endorsed upon the writ, and signed by the sheriff. But it is called in the books a return of *non est inventus*, from the emphatic words of the return, as formerly made in Latin: *Infranominatus* C. D. NON EST INVENTUS *in balliva mea.* (The within named C. D. *is not found* in my bailiwick.) When there were several so returned, the proper words were *non sunt inventi*, (in the plural;) but "*non est*," although bad grammar where there were two defendants, was lately held in New-York to be a good return. 2 *Hill's R.* 598.

Non est novum ut priores leges ad posteriores trahantur. It is not a new doctrine that prior laws shall give place to later ones. *Dig.* 1. 3. 26. See *Id.* 1. 4. 4. *Broom's Max.* [24.] See **Leges posteriores, &c.**

Non est singulis concedendum quod per magistratum publice possit fieri, ne occasio sit majoris tumultus faciendi. That is not to be allowed to individuals, which can be publicly done by a magistrate, lest it be the occasion of making greater confusion. *Dig.* 50. 17. 176.

Non ex opinionibus singulorum, sed ex communi usu, nomina exaudiri debent. The names of things ought to be understood, not according to the opinions of individuals, but according to common usage. *Dig.* 33. 10. 7. 2.

Non facias malum, ut inde fiat bonum. You are not to do evil, that good may be or result therefrom. 11 *Co.* 74 a. 5 *Co.* 30 b, *Coulter's case.*

NON FEASANCE. A not doing; an omission to do something that ought to be done.* The not doing of that which it was a party's duty or contract to do. 1 *Chitt. Gen. Pr.* 9.

NON IMPEDIVIT. L. Lat. (He did not hinder or disturb.) In English practice. The general issue in *quare impedit.* 3 *Wooddes. Lect.* 9.

Non impedit clausula derogatoria, quo minus ab eadem potestate res dissolvantur a quibus [qua] constituuntur. A derogatory clause [that is, a clause disabling a person to do some future act,] does not prevent things or acts from being dissolved by the

same power by which they were originally made or done. *Bacon's Max.* 74, reg. 19. Thus, if a man make a will, and in the end of it add a clause, that if he shall revoke the present will, or declare any new will, except in a certain form, that such revocation or new declaration shall be utterly void; this clause, or any similar one, is of no force or efficacy to fortify the former will against the second, but the testator may revoke it and make a new.* *Id.* 75. The reason given by Lord Bacon why a derogatory clause (called also *clausula de non obstante de futuro,*) is idle and of no force is, "because it doth deprive men of that which of all other things is most incident to human condition, and that is alteration or repentance." *Id.* 74. *Broom's Max.* [24.]

NON INFREGIT CONVENTIONEM. L. Lat. He did not break the covenant. The name of a plea sometimes pleaded in the action of covenant, and intended as a general issue, but held to be a bad plea; there being, properly speaking, no general issue in that action. 1 *Tidd's Pr.* 648. 3 *Hill's* (N. Y.) *R.* 187.

Non in legendo sed in intelligendo leges consistunt. The laws consist not in being read, but in being understood. 8 *Co.* 167 a. The mere verbal form in which a law is expressed is unimportant, if it be understood. Lord Coke (*ub. sup.*) quotes this rule in support of his remark that the opinion of a certain judge (Hussy, C. J.) was good law, *if it were well understood.*

NON INTERFUI. Lat. I was not present. A reporter's note. *T. Jon.* 10.

NON-JOINDER. In practice. Omission to join or include one or more persons as parties to an action, whether as plaintiffs or defendants. 1 *Chitt. Pl.* 13, 66, 86.

NON-JUROR. One who has not sworn; one who has not taken, or has refused to take a prescribed oath, such as an oath of allegiance. See 3 *H. & McHenry's R.* 101, 103. 1 *Dallas' R.* 170.

Non jus, sed seisina facit stipitem. Not right, but seisin makes a stock. *Fleta,* lib. 6, c. 2, § 2. It is not a mere *right* to enter on lands, but actual *seisin,* which makes a person the root or *stock* from which all future inheritance by right of blood must be derived. 2 *Bl. Com.* 209, 312. This ancient maxim of the common law has recently been abrogated in England, so far as respects the descent of land taking place on deaths since Jan. 1, 1834, by stat. 3 & 4 Will. IV. c. 106. *Broom's Max.* 226—228, [397—399.] 1 *Steph. Com.* 365—368. It is also considered as abrogated in most of the United States. 4 *Kent's Com.* 388, 389.

Non licet quod dispendio licet. That which may be [done only] at a loss is not allowed [to be done.] *Co. Litt.* 127 b. The law does not permit or require the doing of an act which will result only in loss. The law forbids such recoveries whose ends are vain, chargeable and unprofitable. *Co. Litt. ub. sup.*

NON LIQUET. Lat. It is not clear. In the Roman law and practice, where a *judex* was at a loss how to decide a cause, he made oath that he was not clear (*se non liquere,*) and was thereupon discharged. *A. Gell. Noct. Att.* lib. 14, c. 2. So, in criminal trials, such of the *judices* as were undecided, deposited in the urn a ballot or tablet marked with the letters N. L. (*non liquet.*) *Adam's Rom. Ant.* 285. *Tayl. Civ. Law,* 192. This practice has never been allowed in English common law. See Lord Bacon's observations in his Reading on the Statute of Uses, *Works,* iv. 184. The expression, however, is in use. Lord Ellenborough, 11 *East,* 188.

NONNA. L. Lat. In old ecclesiastical law. A nun. *Spelman. Nonnus;* a monk. *Id.*

Non observata forma, infertur adnullatio actus. Where form is not observed, an annulling of the act is inferred, or follows. 12 *Co.* 7. Where the law prescribes a form for an act or proceeding, the non-observance of such form renders the proceeding itself a nullity. This is a rule of evidence in English and French law. *Best on Evid.* Introd. 58, § 59. *Bonnier, Tr. des Preuves,* s. 334.

NON OBSTANTE. Lat. Notwithstanding, (or, in two words, not withstanding.) Words anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.

A clause frequent in old English statutes and letters patent, (so termed from its initial words,) importing a license from the crown to do a thing, which otherwise a person would be restrained by act of parliament from doing. *Crabb's Hist. Eng. Law,* 570. *Plowd.* 501. Said to have been taken from the papal law. *Cowell.*

A power in the crown to dispense with

the laws in any particular case. This was abolished by the Bill of Rights at the revolution. 1 *Bl. Com.* 342.

NON OBSTANTE VEREDICTO. L. Lat. Notwithstanding the verdict. A judgment *non obstante veredicto*, is a judgment entered, by order of the court, for the plaintiff in an action at law, *notwithstanding a verdict* in favor of the defendant. It is always upon the merits, and never granted but in a very clear case, as where it is apparent to the court from the defendant's own plea that he can have no merits.* 2 *Tidd's Pr.* 922. Thus, where the plea *confesses* and attempts to *avoid* the declaration, by some matter which amounts to no sufficient avoidance of it in point of law, and the plaintiff, instead of demurring, has taken issue upon the truth of the plea in fact, and that issue has been found in favor of the defendant, yet the plaintiff may move that, without regard to the verdict, the judgment be given in *his* favor. For the plea having confessed the matter of fact in the declaration, and having opposed it by an allegation which, though true in fact, is bad in law, it appears upon the whole that the plaintiff is entitled to maintain his action. 3 *Steph. Com.* 629, 630.

NON OMITTAS. L. Lat. (You omit not.) In English practice. A clause inserted in a writ of *capias* and other process, in cases where a defendant resides within a liberty, empowering the sheriff to enter it. 1 *Tidd's Pr.* 154, 217. At present every writ under the stat. 2 Will. IV. c. 39, is framed as a *non omittas*. 3 *Chitt. Gen. Pr.* 190.

Formerly, when the defendant resided within a liberty, the bailiff of which had the execution and return of writs, the practice was, on a writ being issued to the sheriff, for the latter to make his mandate to the bailiff directing him to execute the writ. On the sheriff's returning in such case, that he had made his mandate to the bailiff, (*mandavi ballivo*,) but that the latter had not served the writ, a writ issued to the sheriff commanding him that he *omit not* by reason of the said liberty, (*non omittas propter libertatem*,) but that he enter himself and execute the writ. *Reg. Orig.* 83, 151 b. *Reg. Jud.* 5 b, 56 b. *Fleta*, lib. 1, c. 26, § 3; lib. 2, c. 67, § 13. Hence the name of the clause in the modern process.

Non omne damnum inducit injuriam. It is not every loss that produces an injury. *Bract.* fol. 45 b. See *Damnum absque injuria.*

Non omne quod licet honestum est. Not every thing that is lawful is proper or becoming. *Dig.* 50. 17. 144.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest. There cannot be given a reason for all the things which have been established by our ancestors. *Dig.* 1. 3. 20. *Branch's Princ.* 4 *Co.* 78.

NON-PLEVIN. L. Fr. and Eng. In old English practice. A neglect or default in a defendant to replevin land in due time, that had been taken into the king's hand, by reason of default. Hengham describes it as a default after a default. *Heng. Magna*, c. 8. See *Fet Assaver*, § 23.

Non possessori incumbit necessitas probandi eas [possessiones] ad se pertinere. The burden does not lie on a possessor, of proving that his possessions belong to him. *Cod.* 4. 19. 2. *Broom's Max.* [562.]

Non potest adduci exceptio ejus [dem] rei cujus petitur dissolutio. A plea of the same matter, the dissolution of which is sought, [by the action,] cannot be brought forward. *Bacon's Max.* 6, reg. 2. *Wingate's Max.* 647, max. 169. Where an action is brought to defeat, undo or annul any matter or proceeding, the defendant cannot plead such matter or proceeding in bar of the action. See 3 *P. Wms.* 317. A matter, the validity of which is at issue in legal proceedings, cannot be set up as a bar thereto. *Broom's Max.* [124.]

Non potest quis sine brevi agere. No one can sue without a writ. *Fleta*, lib. 2, c. 13, § 4. A fundamental rule of old practice.

Non potest videri desiisse habere, qui nunquam habuit. He cannot be considered as having ceased to have a thing, who never had it. *Dig.* 50. 17. 208.

Non præstat impedimentum quod de jure non sortitur effectum. A thing or act which has not its effect by law, [or no effect in law,] offers no impediment, [or amounts to no bar.] *Jenk. Cent.* 162, case 8. *Wingate's Max.* 727, max. 195.

NON PROS. L. Lat. In practice. An abbreviation of NON PROSEQUITUR, (he does not prosecute.) The name of an entry and judgment on the part of a defendant in an action at law, where the plaintiff fails to declare in due time, by which the action is terminated with costs;

the plaintiff in such case being said to be *non pros'd.* 3 *Bl. Com.* 296. 1 *Tidd's Pr.* 458. A similar judgment may be entered for not replying to the defendant's plea. *Id.* 676. This term is sometimes erroneously confounded with *nonsuit*, (q. v.)

Non quod dictum est, sed quod factum est inspicitur. Not what is said, but what is done is regarded. *Co. Litt.* 36 a. A maxim applied by Lord Coke to the delivery of deeds, and in modern law to the execution of deeds and wills. Tindal, C. J. 6 *Bing.* 310. 1 *Metcalf's R.* 353.

Non refert an quis assensum suum præbet verbis, an rebus ipsis et factis. It matters not whether one gives his assent by words, or by things themselves and by acts. 10 *Co.* 52 b, *Lampet's case.* An acceptance implies an assent. *Id. ibid.*

Non refert quid ex æquipollentibus fiat. It matters not what is done with [what disposition is made of] equipollent [or equivalent] expressions. 5 *Co.* 122 a, *Long's case.* Equivalent words may be treated as redundancies.* It matters not what words are omitted in an instrument, if there be tantamount words present. 5 *Co. ub. sup.*

Non refert quid notum sit judici, si notum non sit in forma judicii. It matters not what is known to a judge, if it be not known in judicial form. 3 *Bulstr.* 115. A leading maxim of modern law and practice. *Best on Evid.* Introd. 31, § 38.

Non refert verbis an factis fit revocatio. It matters not whether a revocation be made by words or by acts. *Branch's Pr. Cro. Car.* 49. But the case here quoted is against the rule.

NON RESIDENCE. Want of residence; cessation of residence; failure or neglect of residence. See *Residence.*

NON RESIDENT. One who does not reside, or is not a resident; one who resides out of a particular place or jurisdiction. See *Resident.*

NON SANÆ MENTIS. Lat. Of unsound mind. *Fleta*, lib. 6, c. 40, § 1.

NON SANE MEMORY. Unsound memory; unsound mind. A term essentially law French. See *Memory.*

NON SEQUITUR. Lat. Does not follow. See *Nonsuit.*

Non solent quæ abundant vitiare scripturas. Superfluities [things which abound] do not usually vitiate writings. *Dig.* 50. 17. 94. See *Abundare, Surplusage.*

Non solum quid licet, sed quid est conveniens est considerandum; quia nihil quod est inconveniens est licitum. Not only what is lawful, but what is proper or convenient is to be considered; because nothing that is inconvenient is lawful. *Co. Litt.* 66 a.

NONSUER. L. Fr. In old practice. To nonsuit. *Se retreist et el fuit nonsue;* withdrew himself, and she was nonsuited. *Yearb.* M. 3 Edw. III. 40. *Nonsuy;* nonsuited. P. 8 Edw. III. 9. *Nounsiwy.* II. 3 Edw. II. 71.

NON SUI JURIS. Lat. Not one's own master. *Fleta*, lib. 2, c. 61, § 16.

NONSUIT, *Nonsuyt, Nonsute.* L. Fr. In old English law. A not following; a neglect to follow. *Pur* nonsute *de hu et de crie leve;* for not following of the hue and cry raised. *Britt.* c. 21.

An omission to follow up or prosecute an action. *Par la* nonsuyt *del pleintife. Id.* c. 33. *Jugement de la* nonsuyt; judgment of nonsuit or for the nonsuit. *Id.* c. 27.

NONSUIT. L. Fr. and Eng. In practice. A failure to follow up a cause; a relinquishment of a cause on the part of a plaintiff at the trial, either voluntarily or by the order of the court; an order or award of the court granted at the trial, compelling the plaintiff to abandon the farther prosecution of the action.

A *voluntary* nonsuit is where the plaintiff, at the trial, discovers some error or defect in the proceedings which cannot be remedied, or finds that his evidence is not sufficient to maintain his case. In such case, he may submit to a nonsuit, which is done by absenting himself, or failing to answer when called to hear the verdict, upon which he is nonsuited. 3 *Bl. Com.* 376. 3 *Chitt. Gen. Pr.* 910. See *Calling the plaintiff.* A *compulsory* nonsuit is one which is ordered by the court on the motion of the defendant, or without any motion; and the most usual grounds of it are either the insufficiency of the cause of action itself, or the insufficiency of the evidence to support the case. It may be granted, also, upon grounds not affecting the merits, such as a mistake in the parties, or form of the action, or variance between the declaration and the evidence. 1 *Burr. Pr.* 234, 424. Compulsory nonsuits are not allowed in English practice. 2 *Tidd's Pr.* 869.

The effect of a nonsuit is to defeat the action, and give costs to the defendant,

but the plaintiff may always commence a new action for the same cause. 3 *Bl. Com.* 377.

NON SUM INFORMATUS. L. Lat. (I am not informed.) In practice. A species of judgment by default, so called from being founded on an averment by the defendant's attorney, that he has *no instruction* to say any thing in answer to the plaintiff, or in defence of his client. 3 *Bl. Com.* 397. 2 *Tidd's Pr.* 930. It is said to be used only in cases where judgment is entered in pursuance of a previous agreement between the parties. *Holthouse.*

NON TENUIT. L. Lat. (He did not hold.) The name of a plea in bar, in replevin, to an avowry for arrears of rent, that the plaintiff did not hold in manner and form as the avowry alleges. *Roscoe's Real Act.* 638.

NON TENURE. [L. Fr. *noun tenoure.*] In pleading. A plea by a tenant in a real action, where he is not in fact the tenant of the freehold, denying that he was tenant of the freehold of the land or rent demanded, &c. *Roscoe's Real Act.* 190. It is usually called a plea in abatement, but is not strictly so. *Id. ibid.*

NON TERM. [L. Lat. *non terminus.*] In old practice. The time of vacation between term and term. *Cowell.*

NON USER. [L. Lat. *non usus.*] Neglect to use a franchise; neglect to exercise an office. 2 *Bl. Com.* 153. Neglect or omission to use an easement or other right. 3 *Kent's Com.* 448. A right acquired by use may be lost by *non-user. Id. ibid.*

NON USUS. L. Lat. In old English law. Non-user. *Fleta*, lib. 4, c. 18, § 2.

NON VALENTIA AGERE. L. Lat. Inability to sue. 5 *Bell's Ap. Cas.* 172.

Non valet exceptio ejusdem rei cujus petitur dissolutio. A plea of the same matter the dissolution of which is sought, is not valid. Called a maxim of law and common sense. Henley, Lord C. 2 *Eden*, 134.

Non valet impedimentum quod de jure non sortitur effectum. An impediment or bar which does not derive its effect from law, is of no force. 4 *Co.* 31 a, *French's case.* In Branch's Principia and Wharton's Lexicon, the words *quod de jure non sortitur effectum* are erroneously rendered, "which does not destroy the force of law."

Non verbis, sed ipsis rebus, leges imponimus. We impose laws, not upon words, but upon things themselves. *Cod.* 6. 43. 2.

Non videntur qui errant consentire. They who mistake, are not supposed to consent. *Dig.* 50. 17. 116. 2. There can be no consent, when the parties are in an error respecting the object of their agreement. *Pothier, Obl.* part 1. ch. 1, sect. 1, art. 3, § 1. A contract entered into, under a mistake of facts or circumstances going to the essence of it, is not considered as made by consent, and is therefore no contract.* 2 *Kent's Com.* 477. "This is a clear principle of universal justice." *Id. ibid.* See *Broom's Max.* [197.] 14 *Georgia R.* 207. Another form is, **Non consentit qui errat,** (q. v.)

Non videtur consensum retinuisse, si quis ex præscripto minantis aliquid immutavit. Where a person [under duress] has made any change from the terms of the party threatening him, he is not [for all that] considered as having retained his consent [to such terms.] *Bacon's Max.* 89, reg. 22. *Broom's Max.* [208.] See *Consensus*, for a full illustration of this maxim.

Non videtur perfecte cujusque id esse, quod ex casu auferri potest. That does not seem to be completely one's own, which can be taken from him on occasion. *Dig.* 50. 17. 139. 1.

Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur. He is not considered to use force, who exercises his own right, and proceeds by ordinary action. *Dig.* 50. 17. 155. 1.

NOOK OF LAND. [L. Lat. *noka*, or *nocata terræ.*] In old records. A measure or description of land, of uncertain quantity. Blount observes that he had seen an old deed of Sir Walter de Pedwardyn, wherein twelve acres and a half were granted for a *noke of land*, but he thought the quantity was not certain.

NORFF. An abbreviation of *Norfolcia*, Norfolkshire. 1 *Inst. Cler.* 28.

NOSAUNCE, *Noysaunce.* L. Fr. [from *noier*, or *nuire*, to hurt.] A nuisance; an act done by one to the injury of another's freehold; an act by which a person is prevented from enjoying his tenement as conveniently or freely as he ought to do. The most familiar examples of nuisance in Britton, are the stopping or diverting a watercourse, the stopping a way by a wall, hedge or dyke, &c. *Britt.* c. 61.

Noscitur a sociis. It is known from its associates. 1 *Ventr.* 225. The meaning of a word is, or may be known from the ac-

companying words. 3 *Term R.* 87. 9 *East*, 267. 6 *Taunt.* 294. *Broom's Max.* 294, [450, 455.] This maxim appears to have been first applied to the language of the law by Lord Hale, (1 *Ventr.* 225,) and, it is observed, was no pedantic or inconsiderate expression when falling from him, but was intended to convey, in short terms, the grounds upon which he formed his judgment. See 3 *Term R.* 87. 1 *B. & C.* 644. 13 *East*, 531, arg.

NOSME. L. Fr. Name; a name. *Nosmes nomables;* names that should be named; necessary names. *Britt.* c. 48. Kelham translates this expression "surnames," but the word *surnosme*, (surname) is used by Britton immediately after.

NOSMEMENT. L. Fr. Namely. *Yearb.* M. 2 Edw. III. 19.

NOSOCOMUS. Græco-Lat. [Gr. νοσοκόμος, from νόσος, disease, and κομεω, to take care.] In the civil law. One who had the care of a hospital. *Cod.* 3. 1. 46. 3. *Nov.* 7, epil.

NOSTRUM. Lat. Ours; our own. **Id quod nostrum est, sine facto nostro, ad alium transferri non potest.** That which is ours cannot, without our act, be transferred to another. *Dig.* 50. 17. 11.

NOTA. Lat. In the civil law. A mark or brand put upon a person by the law. 1 *Mackeld. Civ. Law*, 134, 135.

NOTA. L. Lat. In old English conveyancing. A note or memorandum of a charter or deed, drawn up preparatory to the execution of the charter itself. *Si autem dicant testes quod præsentes fuerint confectioni* notæ *in quam utraque pars consentit, donator et donatorius, hoc sufficit ad probationem, licet præsentes non essent ubi charta scripta fuit et assignata*, [*signata?*] But if the witnesses say that they were present at the making of the *note*, to which each party agreed, donor and donee, this is sufficient for proof, though they were not present when the charter was written and sealed. *Bract.* fol. 398. *Fleta*, lib. 6, c. 34, § 2.

A promissory note. 11 *Mod.* 340.

NOTÆ. Lat. In civil and old European law. Short hand characters or marks of contraction, in which one person wrote what was said by another, or in which the emperors' secretaries took down what they dictated. *Spelman. Calv. Lex.* See *Notarius.*

NOTARE INFAMIA. Lat. In the civil law. To mark or brand with infamy, or disgrace. *Dig.* 3. 2. For a description of the persons who were so branded, (*de his qui notantur infamia,*) see *Id. ibid.*

NOTARIAL. Belonging to a notary; made or done by a notary.

NOTARIUS. Lat. [from *nota*, a character or mark.] In Roman law. A person (sometimes a slave) who wrote in short hand (*notis,*) what was dictated by another. *Dig.* 29. 1. 40, pr. *Id.* 40. 5. 41. 3. *Cod.* 7. 7. 1. 5. *Brissonius. Calv. Lex.*

An officer who attended on a magistrate, and took down, in short hand, (*notis excipiebat,*) what was said or done. *Adam's Rom. Ant.* 188.

In feudal law. An officer who drew up conveyances and other instruments. *Feud. Lib.* 2, tit. 52, § 1.

In old English law. A scribe or scrivener who made short draughts of writings and other instruments; a notary. *Cowell.*

NOTARY, (or NOTARY PUBLIC.) A public officer by or before whom various acts, chiefly in mercantile matters, are required to be done; such as the protest of negotiable paper, marine protests in cases of loss, and the acknowledgment of certain instruments; and who attests or certifies the same in writing, under his official seal. See *United States Digest*, Notary Public.

The word *notary* itself is evidently formed from the *notarius* (q. v.) of the Roman law; but the functions of the office have been chiefly derived from those of the Roman *tabellio*, (q. v.) For a valuable sketch of the history of the office, see *Anthon's Law Student*, 33—46. And see *Bell's Dict.*

NOTE, (or PROMISSORY NOTE, sometimes called a NOTE OF HAND.) In mercantile law. A written promise by one person to another, [or by a corporation,] for the payment of money absolutely, and at all events. 3 *Kent's Com.* 74. *Bayley on Bills*, 1. *Story on Notes*, § 1. See *Promissory note, Bank note.*

NOTE OF A FINE. In old conveyancing. One of the parts of a fine of lands, being an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land and the agreement. 2 *Bl. Com.* 351.

"NOTE or MEMORANDUM," in the statute of frauds, imports an informal writing made on the spot, in the moment and hurry and tumult of commercial business.

Kent, C. 14 *Johns. R.* 484, 492. Hence, if written with a lead pencil, it has been held sufficient. *Id. ibid.*

NOTE OF PROTEST. A memorandum of a protest made by a notary, preliminary to drawing up the protest in form, or *extending* it, as it is termed.

NOT GUILTY. [L. Lat. *non culpabilis;* L. Fr. *nient culpable.*] In pleading. The general issue in the action of trespass, by which the defendant "says that he is *not guilty* of the said supposed trespasses above laid to his charge, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against him," &c. 2 *Burr. Pr.* Appendix, 340.

The general issue or plea pleaded by a prisoner, to an indictment on which he has been arraigned. 4 *Bl. Com.* 338.

In practice. The form of the verdict in criminal cases, where the jury acquit the prisoner. 4 *Bl. Com.* 361.

NOTHUS. Græco-Lat. [Gr. νόθος.] In civil and old English law. A natural child. *Nov.* 89. A bastard or illegitimate child. See *Tayl. Civ. Law*, 271. *Calv. Lex.* Properly, the offspring of an adulterous connection; (notho *mœchus dedit ortum.*) *Co. Litt.* 244 a.

NOTICE. [from Lat. *notitia*, q. v.] In practice. A making known of something. Information of an *act done;* as of a suit commenced, bail put in, a rule entered, a partnership formed, a note protested, &c.

Information of an act *to be done*, or *required to be* done; as of a motion to be made, a trial to be had, a plea or answer to be put in, costs to be taxed, &c.

In practice, all notices are required to be in writing, dated, addressed to the party for whom they are intended, and signed by the party, or his attorney, by whom they are given. See *United States Digest*, Notice.

Knowledge. "A *bonâ fide* holder, without notice." Clifford, J. 20 *Howard's R.* 365.

NOTICE OF MOTION. In practice. A notice in writing, entitled in a cause, dated and signed by the attorney of the party in whose behalf it is given, and addressed to the opposite party or his attorney; stating that, on a certain day designated, a motion will be made to the court for the purpose or object stated.

NOTICE TO PLEAD. In practice. A notice in writing, requiring the defendant in an action to plead within a certain time specified. *Chitt. Arch. Pr.* 152. 3 *Chitt. Gen. Pr.* 498.

NOTICE TO PRODUCE. In practice. A notice in writing, given in an action at law, requiring the opposite party to produce a certain described paper or document at the trial. *Chitt. Arch. Pr.* 230. 3 *Chitt. Gen. Pr.* 834.

NOTICE OF PROTEST. A notice given by a notary to the drawer or indorser of a bill, or the indorser of a note, that the bill or note has been protested for non-acceptance or non-payment.* But the giving of this notice has been held to be no part of the official duty of a notary, unless rendered so by statute. 2 *Hill's* (N. Y.) *R.* 227. No particular form of words is necessary in a notice of protest; all that is necessary is to apprize the party of the dishonor of the bill or note. The essential requisites of the notice are, a true description of the note; an assertion that it has been duly presented at maturity, and dishonored; and that the holder looks to the person to whom notice is given, for indemnity. 1 *Wisconsin R.* 264. As to the description of the note or bill, see 17 *Howard's R.* 606, 608. And see 1 *Comstock's R.* 413. 2 *Selden's R.* 19.

NOTICE TO QUIT. A notice in writing, given by a landlord to his tenant from year to year, requiring the latter to quit and deliver up the possession of the premises on a day specified. 1 *Chitt. Gen. Pr.* 483, and note.

A notice given by a tenant from year to year to his landlord, of his intention to quit the premises on a day named. *Id. ibid.*

A notice given by a landlord to a tenant at will or by sufferance, requiring him to remove from the premises. 1 *N. Y. Rev. St.* [745,] 737, § 7.

NOTICE OF TRIAL. In practice. A notice in writing, given by the plaintiff in an action at law, or his attorney, to the defendant or his attorney, entitled in the cause, and properly dated, addressed and subscribed; stating that the cause will be brought to trial at the next term or sittings of the court.

NOTIO. Lat. [from *noscere*, to know.] In the civil law. The power of hearing and trying a matter of fact; the power or authority of a *judex;* the power of hearing causes and of pronouncing sentence, without any degree of jurisdiction. *Hal-*

lifax, Anal. b. 3, ch. 8, num. 3, 6. *Calv. Lex.*

In a more general sense, *notio* included both *cognitio*, (cognizance,) and *jurisdictio*, (jurisdiction.) *Dig.* 50. 16. 99, pr. *Calv. Lex.*

NOTITIA. Lat. [from *notus*, known, or *noscere*, to know.] In the civil law. Knowledge; information; intelligence.

In old practice. Notice. *Inde* notitiam *habuit;* had notice thereof. 1 *Ld. Raym.* 70, 71. Notitia *non debet claudicare;* notice ought not to be lame or imperfect. 6 *Co.* 29 b, *Green's case.*

NOTORIAL. The Scotch form of *notarial*, (q. v.) *Bell's Dict.*

NOTOUR. Sc. In Scotch law. Open; public; notorious; as *notour* adultery, *notour* bankruptcy. *Bell's Dict.* vocc. *Adultery, Bankrupt.*

NOUN. L. Fr. [Lat. *non.*] Not; no. *Est ceo vostre fait ou noun;* is this your deed or not. *Yearb.* T. 1 Edw. II. 8. *Noun sire;* no, sir. *Id.* T. 1 Edw. II. 13.

NOUN. L. Fr. [Lat. *nomen.*] Name; a name. *Fet Assaver*, § 33.

Nova constitutio futuris formam imponere debet, non præteritis. A new statute or enactment ought to prescribe form to future acts, not to those that are past. 2 *Inst.* 292. A legislative enactment ought to be prospective in its operation, and not retrospective. *Broom's Max.* 14, [28.] See **Omnis nova**, &c.

NOVA STATUTA. L. Lat. New or later statutes. A name given to the English statutes from the beginning of the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 143.

NOVÆ NARRATIONES. L. Lat. New counts or tales; in old English, new *talys.* 3 *Bl. Com.* 297. A collection of forms, published in the reign of Edward III. containing the pleadings in the actions then in practice. It consists principally of declarations, as the title indicates, but occasionally of pleas and subsequent pleadings. 3 *Reeves' Hist. Eng. Law*, 151, 152. *Crabb's Hist.* 330.

NOVALE. Lat. Land newly ploughed, or that had not been tilled before within the memory of man. *Cowell. Spelman.*

NOVALIS. Lat. [from *novus*, new.] In the civil law. Land that rested a year after the first ploughing. *Dig.* 50. 16. 30. 2.

NOVATIO. Lat. [from *novare*, to make new, from *novus*, new.] In the civil law. Literally, a making new. A change of a former debt or obligation into another of the same or a different kind, either by a change of the persons, called *delegatio*, (q. v.) or by a change in the obligation, the persons continuing the same. *Inst.* 3. 30. 3. *Dig.* 46. 2. *Cod.* 8. 42. *Hallifax, Anal.* b. 2, ch. 20, num. 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 30, § 1011, *et seq.* This term, translated or converted into *novation*, is extensively used in modern civil law, and in the jurisprudence of Holland, Spain, France, Scotland and the state of Louisiana. *Burge on Suretyship*, 166. Called in Fleta, *innovatio. Fleta*, lib. 2, c. 60, § 12.

Novatio non præsumitur. Novation is not presumed. *Halk. Max.* 109.

NOVATION. [from Lat. *novatio*, q. v.] In modern civil and general law. A change of one debt or obligation into another; a substitution of a new debt or obligation for an old one. *Story on Bills*, § 441. *Burge on Suretyship*, 166. 19 *Johns. R.* 129, 133. The substitution of a new bill of exchange in lieu of, and taking up the old bill, is a familiar example of *novation. Story on Bills*, § 441. Called in Scotch law, *innovation*, (q. v.)

NOVEL. L. Fr. New; recent. *De novel;* anew. *Kelham. Novel assignment;* a new assignment, (q. v.) *Novel disseisin;* recent disseisin. See *Assise of novel disseisin. Un* novel *trial;* a new trial. *T. Jon.* 163.

NOVELLÆ, (or NOVELLÆ CONSTITUTIONES.) New Constitutions; generally translated in English, *Novels.* The Latin name of those constitutions which were issued by Justinian after the publication of his Code; most of them being originally written in Greek, and published under the name of Νεαραὶ Διατάξεις. After his death, a collection of 168 Novels was made, 154 of which had been issued by Justinian, and the rest by his successors. These were afterwards included in the *Corpus Juris Civilis*, (q. v.) and now constitute one of its four principal divisions. 1 *Mackeld. Civ. Law*, 59, § 71. *Tayl. Civ. Law*, 22. 1 *Kent's Com.* 541. See *Authentics.*

NOVELS. The title given in English to the New Constitutions (*Novellæ Constitutiones*) of Justinian and his successors, now forming a part of the *Corpus Juris Civilis.* 1 *Kent's Com.* 541. 1 *Bl. Com.* 81. See *Novellæ.*

NOVERCA. Lat. In the civil law. A stepmother. *Inst.* 1. 10. 7. *Dig.* 38. 10. 4. 6.

NOVERINT UNIVERSI. L. Lat. Know all men. Introductory words of conveyances in England, from a very early period. *Fleta*, lib. 2, c. 64, § 3.

NOVERINT UNIVERSI PER PRÆSENTES. L. Lat. Know all men by these presents. Words with which deeds, obligations, letters of attorney and other instruments were formerly commenced. *Litt.* sect. 445. *West's Symboleog.* pars 1, lib. 2, sect. 102, 518, 522—525.

NOVI OPERIS NUNCIATIO. Lat. In the civil law. A protest against, or prohibition of a new work. Where a person began to build up or to pull down something, (which was technically called *novum opus*, a *new work*,) another person, who feared that his right would be impaired thereby, might extra-judicially hinder the completion of the work, by *protesting* before the workmen on the spot, or before some one present representing the owner, against the prosecution of the work, and *forbidding* the same. *Dig.* 39. 1. *Id.* 43. 24. *Cod.* 8. 11. See *Opus novum.*

NOVIGILD. [from Lat. *novem*, nine, and Sax. *gild* or *geld*, a payment.] In Saxon law. A pecuniary satisfaction for an injury, amounting to nine times the value of the thing for which it was paid. *Spelman*, voc. *Geldum.*

NOVISIMA RECOPILACION. Span. (Latest compilation.) The title of a collection of Spanish law compiled by order of Don Carlos IV. in 1805. 1 *White's Recop.* 355. 2 *Id.* 99. *Schmidt's Civ. Law*, Introd. 81—85.

NOVITER AD NOTITIAM PERVENTA. L. Lat. Newly come to the knowledge. A phrase in the practice of the ecclesiastical courts. 3 *Hagg. R.* 365.

NOVITAS. Lat. Novelty; newness. **Novitas non tam utilitate prodest quam novitate perturbat.** A novelty does not benefit so much by its utility, as it disturbs by its novelty. *Jenk. Cent.* 167, case 23.

NOVODAMUS. L. Lat. In old Scotch law. (We give anew.) The name given to a charter or clause in a charter, granting a renewal of a right. *Bell's Dict.*

Novum judicium non dat jus novum, sed declarat antiquum. A new judgment does not give or make new law, but declares the old. 10 *Co.* 42 a, *Mary Portington's case.*

NOVUM OPUS. Lat. In the civil law. A new work. See *Novi operis nunciatio, Opus novum.*

NOVUS. Lat. New. *Novis injuriis emersis, nova constituuntur remedia;* as new injuries arise, new remedies are ordained. *Fleta*, lib. 2, c. 2, § 1.

N'R. A contraction of noster. *N'ri*, of *nostri; N'rum*, of *nostrum.* 1 *Inst. Cler.* 11.

NOW. Present. "The *now* plaintiff." 9 *Mod.* 31.

"NOW," in a will, is to be referred to the date of the will, and not to the death of the testator. 1 *Jarman on Wills*, 277, 278, (290, Perkins' ed. 1849.) See 1 *P. Wms.* 597.

NOXA. Lat. [from *nocere*, to hurt.] In the civil law. A slave who had committed an offence, or done any damage or injury. Noxa *est ipsum corpus quod nocuit, id est servus; Noxa* is the body or person itself that has done the harm, that is, the slave. *Inst.* 4. 8. 1.

The obligation to make good an injury committed by a slave, and which followed the person of the slave, (**Noxa sequitur caput.**) *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 8, § 1231.

An offence, (*delictum.*) *Dig.* 50. 16. 238. 3. *Calv. Lex.* Held to be a more general word than *delictum. Id.*

The punishment of an offence. *Id.*

NOXALIS ACTIO. Lat. In the civil law. An action which lay against the master of a slave, for some offence (as theft or robbery,) committed, or damage or injury done by the slave, who was called *noxa*, (q. v.) *Inst.* 4. 8, pr. 5. *Dig.* 9. 4. *Cod.* 3. 41. Usually translated *noxal action. Cooper's Transl. ibid.*

NOXIA. Lat. In the civil law. An offence committed, or damage done by a slave, or an animal. *Dig.* 9. 1. 1. 1. *Inst.* 4. 8. 1.

NOXIOUS. [Lat. *nocivus*, q. v.] Hurtful; offensive; offensive to the smell. 1 *Burr.* 337. The word *noxious* includes the complex idea both of insalubrity and offensiveness. Denison, J. *Id. ibid.*

Nuda pactio obligationem non parit. A naked promise does not create an obligation. *Dig.* 2. 14. 7. 4. *Broom's Max.* [584.] *Nuda ratio et nuda pactio non ligant aliquem debitorem;* naked reason and naked promise do not bind any debtor. *Fleta*, lib. 2, c. 60, § 25.

NUDE PACT. A common translation

of the Lat. *nudum pactum*, (q. v.) 2 *Bl. Com.* 445. 2 *Kent's Com.* 464. A contract without a consideration. *Id. ibid.* A mere promise without mutuality. 12 *Howard's R.* 126.

NUDUM. Lat. Naked; bare; simple; pure; having nothing about it; unclothed with any circumstance. See *Nudum pactum.*

NUDUM PACTUM. Lat. In the civil law. A naked, bare or mere pact, or promise; one that stands within the bare limits of convention and pleasure, (*quod in nudis placiti et conventionis finibus subsistit.*) *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 777. One that has nothing about it, either special name or cause, (consideration,) or contract wherewith to cover it. *Calv. Lex.* citing *Bartolus* and others. A *pactum* or pact, it will be observed, was not a *contract* in the technical sense of the words. *Heinecc. El. J. C.* lib. 3, tit. 14, §§ 774, 775, 776. See *Pactum.*

Bracton uses the phrase *nudum pactum*, though he gives to *pactum* the broader sense of *contract*, making in fact little distinction between them. He distinguishes pacts or agreements into such as were naked, (*nuda,*) and such as were clothed, (*vestita;*) and enumerates in a Latin couplet the six kinds of *vestments*, (*vestimenta,*) or clothing, which were essential to give them legal efficacy. *Bract.* fol. 16 b, 99. *Fleta*, lib. 2, c. 56, § 4.

In modern law, *nudum pactum* is constantly used to denote a contract without consideration. 2 *Bl. Com.* 445. 2 *Kent's Com.* 464. This is founded on the broad terms of the civil law,—(*nudum pactum* [or rather *nuda pactio*] *est ubi nulla subest causa præter* [*propter*] *conventionem,*) without reference to the stricter and technical meaning of the words. *Dig.* 2. 14. 7. 4. *Plowd.* 309 a. *Broom's Max.* 336, [583.] See 1 *Spence's Chancery*, 186, note (f.)

Ex nudo pacto non oritur [nascitur] actio. Out of a naked pact or promise, no action arises. *Cod.* 2. 3. 10. *Id.* 5. 14. 1. *Bract.* fol. 99. *Fleta*, lib. 2, c. 56, § 3. A *nudum pactum*, in the civil law, afforded no ground for an *action*, but it might be the subject of an *exception* or plea; (**Nuda pactio obligationem non parit, sed parit exceptionem.**) *Dig.* 2. 14. 7. 4. *Heinecc. El. J. C.* lib. 3, tit. 14, § 777.

NUE. L. Fr. Nude; naked; bare. *Ascun* [*contracte*] *est* nue, *et sauns garnement, et ascun vestue;* one kind of contract is naked and without clothing, and another kind is clothed. *Britt.* c. 28.

NUEVA RECOPILACION. Span. (New Compilation.) The title of a code of Spanish law, promulgated in the year 1567. *Schmidt's Civ. Law*, Introd. 79—81.

NUICTANTER. L. Fr. By night. *Yearb.* M. 9 Edw. III. 17.

NUISANCE, *Nusance.* [from L. Fr. *noysaunce, nosaunce,* (q. v.;) L. Lat. *nocumentum.*] Annoyance; any thing that worketh hurt, inconvenience or damage. 3 *Bl. Com.* 215. *Hale's Anal.* sect. xlii.—Annoyance done to one's hereditament. *Finch's Law*, b. 3, c. 2.—Any thing that annoys, incommodes or offends; any thing that renders the enjoyment of life and property uncomfortable. See 9 *Co.* 58 a, *William Aldred's case.* Lord Mansfield, 1 *Burr.* 337. Cowen, J. 5 *Hill's* (N. Y.) *R.* 121, 123. See *United States Digest*, Nuisance. See *Common nuisance, Private nuisance.*

NUISANCE, *Assise of.* In old practice. A judicial writ directed to the sheriff of the county in which a nuisance existed, in which it was stated that the party injured complained of some particular fact done *ad nocumentum liberi tenementi sui,* (to the nuisance of his freehold,) and commanding the sheriff to summon an assise, (that is, a jury) to view the premises, and have them at the next commission of assises, that justice might be done, &c. 3 *Bl. Com.* 221.

A writ of nuisance modelled after this assise, has been in occasional use in American practice, but it has been deemed obsolete by the courts, and not encouraged. 17 *Wendell's R.* 441. 1 *Denio's R.* 436. The modern remedy for a nuisance, both in England and the United States, is an action on the case.

NUL. L. Fr. [from Lat. *nullus.*] No; none. See *infra.*

NUL DISSEISIN. L. Fr. (No disseisin.) In old practice. The general issue in a real action. 3 *Bl. Com.* 305. Lord Coke unites it with *nul tort*, as the general issue in assise. *Co. Litt.* 283 a. *Roscoe's Real Act.* 227.

NUL AGARD, (no award;) NUL FAIT AGARD, (no award made.) L. Fr. In practice. The name of a plea denying that an award has been made. *Billing on Awards*, 279, 281.

Nul prendra advantage de son tort demesne. No one shall take advantage of his own wrong. 2 *Inst.* 713. *Branch's*

Pr. A wrongful or fraudulent act shall not be allowed to conduce to the advantage of the party who committed it. *Broom's Max.* 322, [217.]

NUL TIEL RECORD. L. Fr. (No such record.) In practice. The general plea in an action of debt upon matter of record, (as upon a judgment,) denying its existence. 2 *Tidd's Pr.* 742.

The name of the replication to a plea of matter of record. *Id. ibid.*

The issue rising upon a plea or replication of *nul tiel record*. *Id. ibid.*

NUL TORT. L. Fr. (No wrong.) In old practice. A species of general issue in a real action or assise. 3 *Bl. Com.* 305. See *Nul disseisin.*

NUL WAST FAIT. L. Fr. (No waste done.) In old practice. The general issue in an action of waste. *Roscoe's Real Act.* 242. *Co. Litt.* 283 a.

NULL. [from Lat. *nullus*, none.] Naught; of no validity or effect. Usually coupled with the word void, as "null and void."

NULLA BONA. L. Lat. (No goods.) In practice. The technical name of the return made by a sheriff to a writ of *fieri facias*, where the party named in the writ has *no property* which can be levied on. 2 *Tidd's Pr.* 1018. 1 *Arch. Pr.* 279. Derived from the emphatic words of the old return.

Nulla curia quæ recordum non habet, potest imponere finem, neque aliquem mandare carceri. No court which has not a record can impose a fine, or commit any one to prison. 8 *Co.* 61 a, *Beecher's case.*

Nulla impossibilia, aut inhonesta sunt præsumenda; vera autem, et honesta et possibilia. No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible. *Co. Litt.* 78 b.

Nulla pactione effici potest ut dolus præstetur. By no agreement can it be effected that a fraud shall be practised. Fraud will not be upheld, though it may seem to be authorized by express agreement. 5 *M. & S.* 466. *Broom's Max.* 309, [545.]

Nulle terre sans seigneur. No land without a lord. A maxim of feudal law. *Guyot, Inst. Feod.* ch. 28.

NULLITY. Want of legal efficacy.

Nothing; no proceeding; an act or proceeding in a cause, which the opposite party may treat as though it had not taken place.

NULLIUS FILIUS. Lat. [L. Fr. *nully fitz.*] A son of nobody; a bastard. See *Filius nullius.*

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit. The authority of no man ought to prevail with us, so far as to prevent our following better [opinions,] if any one should present them. *Co. Litt.* 383 b.

NULLIUS IN BONIS. Lat. Among the property of no person; not a subject of private property. *Dig.* 1. 8. 1. See *In nullius bonis.*

NULLIUS JURIS. Lat. In old English law. Of no legal force. *Fleta*, lib. 2, c. 60, § 24.

NULLI VENDEMUS, NULLI NEGABIMUS, AUT DIFFEREMUS RECTUM, AUT JUSTITIAM. To no one will we sell, to no one will we deny or delay right or justice. *Magna Charta, Johan.* c. 40. This clause occurs in the same words in the charter of 1 Hen. III. c. 33, and in the charter A. D. 1217, c. 36. In the charter of 9 Hen. III. c. 29, the reading is *vel justitiam.* In the original articles of Magna Carta, (c. 30,) the demand was, NE JUS VENDATUR, VEL DIFFERATUR, VEL VETITUM SIT. See this clause variously quoted. *Dyer*, 104 b. 1 *P. Wms.* 226. 2 *Vern.* 498.

NULLUM ARBITRIUM. L. Lat. In old pleading. No award. 8 *Mod.* 212.

Nullum crimen majus est inobedientia. No crime is greater than disobedience. *Jenk. Cent.* 77, case 48. Applied to the refusal of an officer to return a writ. *Id.*

Nullum exemplum est idem omnibus. No example is the same for all purposes. *Co. Litt.* 212 a. No one precedent is adapted to all cases. A maxim in conveyancing.

Nullum iniquum est præsumendum in jure. Nothing unjust is to be presumed in law. 4 *Co.* 72 a. Cruel, oppressive or tortious conduct will not be presumed. *Best on Evid.* 336, § 298. Another form is **Nullum iniquum in jure præsumitur.** See *Freem.* 82.

Nullum simile est idem. No like thing is the same. 2 *Bl. Com.* 162. Similarity is not identity.* To hold an estate *as* a freehold, is not to have a freehold. 2 *Bl. Com. ub. sup.* A check nearly resembles a bill of exchange, but it is not the same thing. Story, J. 2 *Story's R.* 512. Partnership resembles both joint-tenancy and tenancy in common, yet it differs from both

in important particulars. *Story on Partn.* § 90.

Nullum simile quatuor pedibus currit. No simile runs upon four feet, (or *all fours*, as it is otherwise expressed.) No simile holds in every thing. *Co. Litt.* 3 a. *Eunomus*, Dial. 2, p. 155. Story, J. 2 *Story's R.* 143.

NULLUM TEMPUS ACT. The statute of 9 Geo. III. c. 16, so called. *Perk.* ch. 1, sect. 29, note.

Nullum tempus occurrit regi. No time bars (or runs against) the king. Otherwise expressed, **Nullum tempus nec locus occurrit regi.** 2 *Inst.* 273. *Jenk. Cent.* 83, case 62. Lapse of time does not bar the right of the crown. *Broom's Max.* 27, [46.] The law determines that in the king can be no negligence or *laches*, and therefore no delay will bar his right. 1 *Bl. Com.* 247. See 2 *Id.* 259, 277. This maxim seems to have been derived from the **Nullum tempus currit contra regem**, of Bracton. *Bract.* fol. 103, 56. See *Currere.* It has been largely qualified by statute in modern times, and indeed has always been subject to exceptions. *Broom's Max.* 28, [47.] *Currit tempus contra regem sicut contra quamlibet privatam personam;* time (in certain cases) runs against the king, as against any private person. *Bract.* fol. 14, 56. This maxim, under the form **Nullum tempus occurrit reipublicæ**, (q. v.) has been applied, in some of the United States, to rights of action on the part of the government. See 2 *Hilliard's Real Prop.* 173. 11 *Grattan's R.* 572. 5 *Texas R.* 410. 16 *Id.* 305. 5 *McLean's R.* 133. 19 *Missouri R.* 607.

Nullum tempus occurrit reipublicæ. No time runs [time does not run] against the commonwealth or state. 11 *Grattan's R.* 572.

NULLUS. Lat. No; no person. See *infra.*

Null; void; of no force.

Nullus commodum capere potest de injuria sua propria. No man [shall] can take advantage of his own wrong. *Co. Litt.* 148 b. *Broom's Max.* [209.]

Nullus idoneus testis in re sua intelligitur. No person is understood to be a competent witness in his own cause. *Dig.* 22. 5. 10. Story, J. 1 *Sumner's R.* 328, 344. See **Nemo in propria causa testis, &c.**

Nullus jus alienum forisfacere potest. No man can forfeit another's right. *Fleta*, lib. 1, c. 28, § 11.

Nullus videtur dolo facere, qui suo jure utitur. No man is considered a wrongdoer, who avails himself of his own right. *Dig.* 50. 17. 55. *Broom's Max.* [95.]

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSEISIETUR DE [ALIQUO] LIBERO TENEMENTO SUO, VEL LIBERTATIBUS VEL LIBERIS CONSUETUDINIBUS SUIS, AUT UTLAGETUR, AUT EXULETUR, AUT ALIQUO [ALIO] MODO DESTRUATUR, NISI PER LEGALE JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ. No freeman shall be taken or imprisoned, or disseised of [any] his freehold, or his liberties or free customs, or be outlawed, or exiled, or in any [other] manner destroyed, unless by the lawful judgment of his peers, or by the law of the land. *Magna Charta*, 9 Hen. III. c. 29. The most celebrated clause in Magna Charta, and the substance of which has been incorporated into the constitutions, or bills of rights, of most of the United States.

*** The above extract is taken from the Charter of 9 Henry III. The Charter of King John presents quite a different reading. It may be interesting to trace the clause through the different forms it took in the different charters, as they were granted by John and Henry III.

Before the Charter had been extorted from King John, or even its articles agreed upon, the king offered to refer all differences between him and his barons to the Holy See and eight other arbitrators. The letters patent by which the offer was made, contained the following clause: SCIATIS NOS CONCESSISSE BARONIBUS NOSTRIS QUI CONTRA NOS SUNT, QUOD NEC EOS, NEC HOMINES SUOS, CAPIEMUS NEC DISSEISIEMUS, NEC SUPER EOS PER VIM VEL PER ARMA IBIMUS, NISI PER LEGEM REGNI NOSTRI, VEL PER JUDICIUM PARIUM SUORUM IN CURIA NOSTRA, &c. (Know ye, that we have granted to our barons who are against us, that we will neither take nor disseise them, nor their men, nor will we go upon [proceed against] them by force or by arms, unless by [in accordance with] the law of our realm, or by the judgment of their peers in our court, &c.) *Pat.* 16 *Johan.* pars 1, m. 3, d. n. 2. *Blackst. Mag. Cart.* Introd. xxi. The words of this instrument appear to have been had in view in drawing the original Articles of King John's Charter, the twenty-ninth chapter of which stipulates as follows:

NE CORPUS LIBERI HOMINIS CAPIATUR,

NEC IMPRISONETUR, NEC DISSAISIETUR, NEC UTLAGETUR, NEC EXULETUR, NEC ALIQUO MODO DESTRUATUR; NEC REX EAT VEL MITTAT SUPER EUM VI, NISI PER JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ. (That the body of a freeman shall not be taken, nor imprisoned, nor disseised, nor outlawed, nor exiled, nor in any manner destroyed; nor shall the king go or send upon him by force, [i. e. shall not himself forcibly proceed against him, nor send others to proceed in his name,] unless by the judgment of his peers, or by the law of the land.) *Artic. Mag. Cart. Johan.* c. 29. In the Charter, as actually granted by the king, the words of the articles are as follows:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSAISIATUR, AUT UTLAGETUR, AUT ALIQUO MODO DESTRUATUR; NEC SUPER EUM IBIMUS, NEC SUPER EUM MITTEMUS, NISI PER LEGALE JUDICIUM PARIUM SUORUM, VEL PER LEGEM TERRÆ. (No freeman shall be taken, or imprisoned, or disseised, or outlawed, or in any manner destroyed; nor will we go upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land.) *Mag. Cart. Reg. Johan.* c. 39. In the Charter of 1 Henry III. no other change was made than the addition of two words, as in the following:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, VEL DISSEISIATUR, AUT UTLAGETUR, [AUT EXULET,] AUT ALIQUO ALIO MODO DESTRUATUR, &c. *Mag. Cart.* 1 Hen. III. c. 32. In the Charter of Hen. III. dated A. D. 1217, some additional words were introduced, more fully expressive of disseisin, as follows:

NULLUS LIBER HOMO CAPIATUR, VEL IMPRISONETUR, AUT DISSAISIETUR DE LIBERO TENEMENTO SUO, VEL LIBERTATIBUS VEL LIBERIS CONSUETUDINIBUS SUIS, AUT UTLAGETUR, AUT EXULETUR, AUT ALIQUO ALIO MODO DESTRUATUR, &c. (No freeman shall be taken, or imprisoned, or disseised of his freehold, or of his liberties or free customs, or outlawed, or exiled, or in any other manner destroyed, &c.) *Cart. Hen.* III. A. D. 1217, c. 35. This is in nearly the same words with the Charter of 9 Hen. III. first above quoted.

The expression NEC SUPER EUM IBIMUS, NEC SUPER EUM MITTEMUS, in King John's Charter, (omitted in that of 9 Hen. III.) has been made the subject of considerable criticism. See the argument of Mr. Selden before parliament, on the liberty of the subject. 3 *State Trials*, 18, 79. Its meaning, however, seems to be sufficiently explained by the other instruments above quoted. The expression VEL PER LEGEM TERRÆ, has also occasioned much discussion. See *Lex terræ*.

Nullus recedat e curia cancellaria sine remedio. No person should depart from the court of chancery without a remedy. 4 *Hen.* VII. 4. *Branch's Princ.*

NULLUY, *Nuly, Nullui.* L. Fr. None; no one. *En* nuly *biens;* in no one's goods, (*in nullius bonis.*) *Kelham.*

NUMERATA PECUNIA. Lat. In the civil law. Money told or counted; money paid by tale. *Inst.* 3. 24. 2. *Bract.* fol. 35.

NUMMATA TERRÆ. L. Lat. In old records. A quantity of land, thought to contain an acre. *Cowell.*

NUMMULARIUS. Lat. [from *nummus*, money.] In the Roman law. A money-lender, or money-changer; a banker. *Cod.* 11. 17. 1, pr. *Adam's Rom. Ant.* 546. See *Argentarius.*

NUMMUS. Lat. Money. Commonly derived from Gr. νόμος, law, as being originally established by law. *Co. Litt.* 207 b. But Calvin prefers to derive it from *numerus*, number. *Calv. Lex.*

NUNC PRO TUNC. L. Lat. In practice. Now for then. A term applied to such acts (as the entry of a judgment) as are allowed to be done after the time when they should have been done, and with the same effect as if they had been done at the proper time; the doing of the act *now*, (*nunc,*) that is, at the time when it is actually done, being allowed to pass as a substitute and equivalent *for* (*pro*) doing it *then* (*tunc,*) or before. 1 *Stra.* 639. 2 *Tidd's Pr.* 932. See 1 *Williams on Exec.* 762, 763.

NUNCIATIO, *Nuntiatio.* Lat. In the civil law. A solemn declaration, usually in prohibition of a thing; a protest. *Dig.* 39. 1. See *Novi operis nunciatio.*

NUNCUPARE. Lat. In the civil law. To name; to pronounce orally, or in words without writing. *Nuncupare hæredem;* to name one's heir *viva voce*, before witnesses. *Calv. Lex.*

NUNCUPATIVE WILL. A will or testament orally made or declared before witnesses, and afterwards reduced to writing; a will not made in writing; an un-

written will.* 2 *Bl. Com.* 500. A term derived from the civil law. See *Nuncupare.*

Nuncupative wills have been recently abolished in England, by statute 1 Vict. c. 26, § 9, with an exception in the case of soldiers in actual military service, and mariners and seamen at sea. *Id.* § 11. See 1 *Williams on Exec.* 96. This is in accordance with the present law in New-York. 2 *N. Y. Rev. Stat.* [60,] 4, § 22. As to the law in other states, see 1 *Jarman on Wills*, (Perkins' ed. 1849,) 130, 131, notes. *United States Digest*, Will. Nuncupative wills have never been regarded with favor by the courts, and when they are allowed, much greater strictness is required in the proof of them than in the proof of written wills. See 27 *Mississippi R.* 119.

NUNDINÆ. Lat. In civil and old English law. A fair; fairs. *Dig.* 50. 11. *Cod.* 4. 60. *In* nundinis *et mercatis;* in fairs and markets. *Bract.* fol. 56. *Fleta*, lib. 2, c. 63, § 7; c. 64, § 23.

NUNQUAM. Lat. Never. *Nunquam fuit ballivus ejus, vel mercator, vel denariorum suorum receptor, vel administrator;* never was his bailiff or merchant, or receiver of his moneys, or his administrator (manager.) *Fleta*, lib. 2, c. 70, § 9. See *infra.*

NUNQUAM INDEBITATUS. L. Lat. Never indebted. The name of the plea now substituted in England for *nil debet*, as the general issue in debt on simple contract. 3 *Steph. Com.* 577. 1 *Arch. Nisi Prius*, 202.

Nunquam crescit ex postfacto præteriti delicti æstimatio. The character of a past offence is never aggravated by a subsequent act or matter. *Dig.* 50. 17. 138. 1. A maxim adopted by Lord Bacon, with merely a change in the order of the words. *Bacon's Max.* 38, reg. 8. See *Æstimatio.*

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium. We are never to resort to what is extraordinary, but where [until] what is ordinary fails. 4 *Inst.* 84.

Nunquam præscribitur in falso. There is never a [no] prescription in case of falsehood, or forgery. A maxim in Scotch law. *Bell's Dict.*

Nunquam prospere succedunt res humanæ, ubi negliguntur divinæ. Human things [affairs] never prosper where divine things are neglected. *Wingate's Max.* 6, max. 2.

NUNTIUS, *Nuncius.* Lat. In old English practice. A messenger. One who was sent to make an excuse for a party summoned, or one who explained as for a friend (*quasi pro amico,*) the reason of a party's absence. *Bract.* fol. 345. This was not the same as an essoiner, (*essoniator.*) *Id. ibid.* 1 *Reeves' Hist.* 413.

An officer of a court; a summoner, apparitor or beadle. *Cowell.*

NUPER. Lat. Late; lately. *Nuper vicecomes;* late sheriff. *Nuper de facto, et non de jure, reges Angliæ;* lately kings of England in fact, and not of right. 1 *Bl. Com.* 204.

NUPER OBIIT. L. Lat. (Lately died.) In old English practice. An ancestral writ brought to establish an equal division of land, where, on the death of an ancestor who had several heirs, one of them entered and held the others out of possession. 3 *Bl. Com.* 186. *F. N. B.* 197. *Roscoe's Real Act.* 127, 128. The name was derived from that clause of the writ which referred to the ancestor *qui* nuper obiit, *ut dicitur*, (who lately died, as is said.) *Reg. Orig.* 226.

NUPTIÆ. Lat. [from *nubere*, to cover or veil.] In the civil law. Marriage; nuptials; the union of man and woman; companionship for all life, (*conjunctio maris et feminæ, et consortium omnis vitæ.*) *Dig.* 23. 2. 1. See *Cod.* 5. 4. Justinian uses *nuptiæ* and *matrimonium* as synonymous. *Inst.* 1. 9. 1. Properly, the nuptial ceremony. *Calv. Lex. Tayl. Civ. Law*, 269, 274. See **Consensus non**, &c.

NUPTIÆ SECUNDÆ. Lat. In the canon law. A second marriage; any marriage after the first. The canon law put a mark of disapprobation upon *nuptiæ secundæ*, for so they termed every marriage after the first; no benediction could be pronounced, nor could any priest be present at the celebration of them. *Corvin. Jus Canon.* 108, 109, 110. *Launc. Inst. Jur. Can.* lib. 2, tit. 16. 4 *Reeves' Hist.* 63.

NURUS. Lat. In the civil law. A son's wife, (*filii uxor,*) a daughter-in-law. *Dig.* 38. 10. 4. 6. See *Id.* 50. 16. 50.

NUSANCE. The old form of *nuisance. Hale's Anal.* sect. xlii.

NUTAUNTRE, *Nutander, Nuictander.* L. Fr. By night. *Ou* nutauntre *ou de jour;* by night or by day. *Britt.* c. 47. *Yearb.* P. 10 Edw. III. 37.

NUYT, *Nute.* L. Fr. Night. *Britt.* c. 80.

O.

O. C. An abbreviation, in the civil law, for *ope consilio*, (q. v.)

OATH. [O. Eng. *othe;* Sax. *ath;* Lat. *juramentum*, *jusjurandum*, *sacramentum;* L. Fr. *serement.*] A declaration or promise, corroborated or confirmed by an appeal to God. A declaration or promise by a person, before an authorized officer, that what he has said or is about to say is true, or that he will faithfully do a certain act, or perform a certain duty; corroborated by an appeal to the Deity to witness the sincerity of the declaration.

A declaration or promise corroborated by an appeal to God, and accompanied by some outward manual act or form,—usually that of touching and kissing the gospels. See *Corporal oath.*

*** An oath may refer to something already *done*, or to something *to be done.* Thus, the oath of a *witness*, testifying orally, is that the evidence which he is *about* to give shall be the truth: the oath of a party making an *affidavit* is that what he *has* said is true; the oath of a *juror* is that he *will* try the issue between the parties and give a true verdict according to the evidence; the oath of *office* is that the party swearing *will* faithfully discharge its duties.

An oath, considered with reference to its words, obviously consists of two parts: a *declaration* of what the parties *will* do, or a declaration in reference to what he *has* done, and an *appeal* to the Deity by way of attestation or confirmation of it: the latter being expressed by the concluding clause, "So help you God," or "So help me God." In this appeal, the essence and force of the oath consist. Hence an oath is said by Paley to be "the calling upon God to witness, that is, to take notice of what we say, and invoking his vengeance, or renouncing his favor, if what we say be false, or what we promise be not performed." *Paley's Mor. Phil.* b. 3, c. 16. So, in Rex *v.* White, an oath is defined to be "a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven, if he do not speak the truth." 1 *Leach Cr. L.* 430. And this was the idea of an oath from the earliest period, it being defined by Britton to be "a judicial affirmation in any matter whereof a man is charged *on peril of his soul* to say the truth," (*en* peril de sa alme *a dire verite.*) *Britt.* c. 97. The imprecation of vengeance, however, is rather implied than expressed, the true import of the words "So help me God" being, that the party puts his future and eternal welfare on the condition of what he says being the truth. "So," that is, in such event, "may God help or aid me," that is, be merciful to me hereafter. And this idea is more fully brought out in some of the older English forms: "So God me help *at the holy dome*," "So help me God *at his holy dome*," that is, the doom or judgment. See *Dome*, *So help me God.*

The *act* or ceremony by which the taking of an oath is accompanied and expressed, is now usually (as it has been from the earliest times) that of *laying* the *hand* upon and *kissing the gospels;* but in place of this, parties are often allowed to swear by *lifting* up the *right hand*, and in some cases, without any manual act whatever. 2 *N. Y. Rev. St.* [407, § 103,] 329, § 83. See *Kissing the gospels*, *Uplifted hand.* The importance of some *act* of this kind seems to be greater now than formerly, since, in modern practice, the party swearing (except in certain cases,) *says nothing;* the whole words of the oath being pronounced by the officer to whom it is administered, and all that the party himself does being merely in the way of *assent.* The entire form is far less impressive than that of the ancient practice, which placed the words of the oath in the party's own mouth, it being repeated in the first person throughout, and sometimes with peculiar solemnity. Thus the juror's oath on an assise was expressed as follows: "Hear this, ye justices, that I will speak the truth of this assise," &c. "and that for nothing will I omit to speak the truth. So help me God and these holy gospels." *Bract.* fol. 185. *Britt.* c. 52.

OB. Lat. For; on account of, (*propter.*) *Brissonius.*

About. *Festus.*

To, (in the sense of *ad.*) Used in this sense in the Twelve Tables. *Calv. Lex. Prateus.*

OB CAUSAM ALIQUAM A RE MARITIMO ORTAM. Lat. For some cause arising out of a maritime matter. 1 *Peters' Adm. Dec.* 92. Said to be Selden's translation of the French definition of admiralty jurisdiction, "*pour le fait de la mer.*" *Id. ibid.*

OB CONTINENTIAM DELICTI. Lat. On account of the contaminating character

of the offence. The Atalanta, 6 *Rob. Adm. R.* 440. 1 *Kent's Com.* 152.

OB CONTINGENTIAM. Lat. In case of contingency. Lord Brougham, 7 *Bell's App. Cas.* 163.

OB FAVOREM MERCATORUM. Lat. In favor of merchants. *Fleta*, lib. 2, c. 63, § 12.

OB TURPEM CAUSAM. Lat. For an immoral consideration. *Dig.* 12. 5.

OBÆRATUS. Lat. In the Roman law. A debtor who was obliged to serve his creditor till his debt was discharged. *Adam's Rom. Ant.* 49.

OBEDIENTIA. Lat. [from *obediens*, from *obedire*, to obey.] Obedience; submission. **Obedientia est legis essentia.** Obedience is the essence of law. 11 *Co.* 100 a, *Bagg's case.*

OBEDIENTIA. L. Lat. In old records. A kind of rent. *Cowell.*

In the canon law. An office, or the administration of an office. *Id.*

OBIIT SINE PROLE. Lat. (He) died without issue. *Yearb.* M. 1 Edw. II. 1.

OBIT. [from Lat. *obitus*, death.] In old English law. A funeral solemnity, or office for the dead. *Cowell.*

The anniversary of a person's death; the anniversary office. *Id. Cro. Jac.* 51.

OBITER. Lat. [from *obire*, to pass.] By the way; in passing. "This point was not the principal question in the case of Clere and Brooke, but the law concerning it is delivered *obiter* only, and in the course of argument, by Justice Manwoode." 2 *Bl. Com.* 238.

OBITER DICTUM. L. Lat. An opinion of a judge delivered or expressed *by the way*, and not upon the point in question before him. 10 *Mod.* 209. Spencer, C. J. 18 *Johns. R.* 419. See *Dictum.*

OBLATI. L. Lat. In old European law. Voluntary slaves of churches or monasteries. 1 *Robertson's Charles V.* Appendix, Note xx.

OBLATI ACTIO. Lat. In the civil law. An action given to a party against another who had *offered* to him a stolen thing, which was found in his possession. *Inst.* 3. 1. 4.

OBLATIO. Lat. In the civil law. An offering or tender of money by a debtor to his creditor, in payment of the debt. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 30, § 1007.

OBLIGACION. L. Fr. Obligation. *Obligacion est un lien de droit;* obligation is a bond of law. *Britt.* c. 28. See *Obligation.*

OBLIGATIO. Lat. In the civil and old English law. Obligation. Defined by Justinian to be "a bond of law, by which we are necessarily bound to pay something according to the laws of our country;" (*obligatio est juris vinculum quo necessitate astringimur alicujus rei solvendæ secundum nostræ civitatis jura.*) *Inst.* 3. 14, pr. See *Dig.* 5. 1. 20. *Id.* 44. 7. Bracton has adopted this definition with a modification which is an obvious improvement. *Obligatio est juris vinculum, quo necessitate astringimur ad aliquod dandum vel faciendum;* obligation is a bond of law, by which we are necessarily bound to give or to do something. *Bract.* fol. 99. *Fleta*, lib. 2, c. 56, § 1.

In old practice. A bond, or writing obligatory, (*scriptum obligatorium.*) 2 *Bl. Com.* 340.

OBLIGATION. [L. Fr. *obligacion*, from Lat. *obligatio;* from *obligare*, to bind.] Binding force or efficacy; binding force in law; a binding or state of being bound in law; the effect of an act in binding a person in law. Expressively called by Justinian, Bracton, Britton and Fleta, a *bond of law*, or legal chain or tie, (*vinculum juris; lien de droit;*) a chain or bond put upon a person by the law, compelling him to do some act. See *Obligatio, Obligacion.* A duty imposed by law, for the fulfilment of which one party is bound to another.* The obligation of a contract is the duty to perform it. *Story's Confl. Laws*, § 266. The legal obligation of a contract is the right to performance which the law confers on one party, and the corresponding duty of performance to which it binds the other. *Id. ibid.* And see *Poth. Obl.* pr.

An instrument in writing by which a party is *bound* in law; a bond, commonly called a writing obligatory. *Co. Lit.* 172 a. 2 *Bl. Com.* 340. Lord Coke observes (*ub. sup.*) that *obligation* is a word of large extent, but is commonly taken in the common law for a bond containing a penalty, with condition for payment of money, or to do or suffer some act or thing, &c.

OBLIGATION OF A CONTRACT. The binding force of a contract; the duty to perform a contract. *Story's Confl. Laws*, § 266.

OBLIGEE. The party to whom another is bound; the party to whom a bond is given. 2 *Bl. Com.* 340.

OBLIGOR. A party who binds himself, as by a bond; the party by whom a bond is given. 2 *Bl. Com.* 340.

OBLIQUUS. Lat. In the old law of descents. Oblique; cross; transverse; collateral. The opposite of *rectus*, right or upright. *Fleta*, lib. 5, c. 7, § 2.

In the law of evidence. Indirect; circumstantial. *Vinnius, Jurispr. Contr.* lib. 4, c. 25.

OBLITERATION. A blotting out of writing. See *Rasure.*

OBOLATA TERRÆ. L. Lat. In old English law. A measure of land, the quantity of which was uncertain. *Reg. Orig.* 1 b. *Cowell. Spelman.*

OBRA. Span. [from Lat. *opera?*] In Spanish law. Work. *Obras;* works or trades; those which men carry on in houses or covered places. *White's New Recop.* b. 1, tit. 5, c. 3, § 6.

OBREPTIO. Lat. [from *obrepere*, to creep upon.] The obtaining a thing by fraud or surprise. *Calv. Lex.* Called, in Scotch law, *obreption.*

OBROGARE. Lat. [from *ob*, priv. and *rogare*, to pass a law.] In the civil law. To pass a law contrary to a former law, or to some clause of it; to change a former law in some part of it. *Calv. Lex. Tayl. Civ. Law*, 155.

OBSES. Lat. In the law of war. A hostage. *Grotius de Jur. Bell.* lib. 3, c. 20, § 52. *Obsides;* hostages. *Id. ibid. Mag. Cart. Johan.* c. 49.

OBSESSUM. Lat. [from *obsidere*, to besiege or block up.] In the law of war. Besieged. *Oppidum obsessum;* a town besieged. *Grot. de Jur. Bell.* lib. 3, c. 1, § 5. 1 *Kent's Com.* 144.

OBSIGNARE. Lat. In the civil law. To seal up, as money that had been tendered and refused. *Heinecc. El. Jur. Civ.* lib. 3, tit. 30, § 1007.

OBSOLETE. [Lat. *obsoletus*, from *obsolere*, to grow out of use.] Grown out of use; disused; antiquated.

OBSTANTE. Lat. [from *obstare*, to stand in the way.] Withstanding; hindering. See *Non obstante.*

OBSTUPARE. L. Lat. In old practice. To stop up. *Obstupavit et obstruxit;* stopped and obstructed. 1 *Ld. Raym.* 452. 3 *Leon.* 13. 1 *Show.* 252.

OBTEMPERARE. Lat. To obey. Hence the Scotch *obtemper*, to obey or comply with a judgment of a court. *Brande.* **Obtemperandum est consuetudini rationabili tanquam legi.** A reasonable custom is to be obeyed as law. 4 *Co.* 38 b. *Tyrringham's case.*

OBTORTO COLLO. Lat. In the Roman law. Taking by the neck or collar; as a plaintiff was allowed to drag a reluctant defendant to court, (*in jus rapere.*) *Adam's Rom. Ant.* 242. *Gilb. For. Rom.* 20, 23.

OBTULIT SE. Lat. (Offered himself.) In old practice. The emphatic words of entry on the record where one party *offered himself* in court against the other, and the latter did not appear. 1 *Reeves' Hist.* 417. See *Optulit.*

OBVENTIO. Lat. [from *obvenire*, to fall or come to.] In the civil law. A kind of rent, or income. More commonly used in the plural, (*obventiones,*) to denote the profits accruing from a thing, as the earnings of a vessel. See *Exercitor navis.*

In old English law, the rents or revenues of spiritual livings are called *obventions. Stat.* 12 *Car.* II. c. 11.

OCASION, *Occasion.* Span. In Spanish law. Accident. *Las Partidas*, part 3, tit. 32, l. 21. *White's New Recop.* b. 2, tit. 9, c. 2.

OCCASIO. L. Lat. In old English law. Molestation; trouble; hindrance; vexation by suit. *Spelman. Cart. de Forest.* c. 12. *Barringt. Obs. Stat.* 38, 39, note [*k.*]

OCCASIONARE. L. Lat. In old practice. To trouble or molest; to vex or harass with litigation. *Spelman. Fleta*, lib. 2, c. 66, § 20. *Cart. Conf.* 49 Hen. III.

OCCASIONES. L. Lat. In old English law. Assarts. *Spelman.*

OCCISION. L. Fr. [from Lat. *occisio*, from *occidere*, to kill.] A killing or slaying. *Murdre est* occision *de home. Britt.* c. 6.

OCCULTATIO. Lat. In old English law. A hiding. *Occultatio thesauri inventi fraudulosa;* the fraudulent concealment of treasure trove. *Bract.* fol. 119 b. 3 *Inst.* 133.

OCCUPANCY. [Lat. *occupatio.*] The taking possession of those things which before belonged to nobody. 2 *Bl. Com.* 258. 1 *Steph. Com.* 415. See *Comb.* 290.—The taking possession by any one, of a thing of which there is no owner. *Brande.* See *Occupatio.*

The right acquired by such taking possession. *Id.* 2 *Kent's Com.* 317—325. See *Occupant.*

OCCUPANT. [from Lat. *occupans.*] In a general sense. One who takes possession of a thing, of which there is no owner. **Quod ante nullius est, id naturali ratione occupanti conceditur.** That which belongs to no one, is by natural reason given to the occupant. *Dig.* 41. 1. 3.

One who takes possession of a thing which has been abandoned. **Occupantis fiunt derelicta.** Things abandoned become the property of the [first] occupant. 1 *Peters' Adm. Dec.* 53.

In a special sense. One who takes possession of lands held *pur autre vie*, after the death of the tenant, and during the life of the *cestuy que vie.* See *General occupant, Special occupant.*

OCCUPARE. Lat. In the civil law. To seize or take possession of; to enter upon a vacant possession; to take possession before another. *Calv. Lex.*

OCCUPATIO. Lat. [from *occupare*, to occupy.] In the civil law. A taking possession of a thing which before belonged to nobody, (*quod ante nullius est;*) as of wild beasts and other wild animals, property and persons captured in war, gems and other things found upon the sea-shore, &c. *Inst.* 2. 1. 12, 17, 18. See *Fleta*, lib. 3, c. 2.

OCCUPATION. In old English law. The putting a man out of his freehold in time of war. *Co. Litt.* 249. *Cowell.*

Use, tenure or possession. *Id.*

Usurpation of a franchise. *Id.*

A trade or business. *Id.*

OCCUPAVIT. L. Lat. In old English law. A writ that lay for one who was ejected out of his land or tenement in time of war. *Cowell.*

OCCURRERE. Lat. To meet; to run against; to stop or bar. See **Nullum tempus occurrit regi.**

OCCYS. L. Fr. [from Lat. *occisus.*] Slain; killed. *Britt.* c. 5.

OCHIERN. Sc. [L. Lat. *ogetharius.*] In old Scotch law. A name of dignity and of a freeholder. *Skene de Verb. Sign.*

OCTABIS. L. Lat. [from *octo*, eight.] In old practice. The octave. *Fleta*, lib. 2, c. 35. See *Octave.*

OCTAVE. [L. Lat. *octabis, utas;* L. Fr. *utave.*] In old English practice. The eighth day after a feast; one of the return days of writs. The octave of St. Hilary was the eighth day inclusive after the feast of that saint. 3 *Bl. Com.* 278.

OCTOGILD. [from Lat. *octo*, eight, and Sax. *gild*, or *geld*, a payment.] In Saxon law. A pecuniary compensation for an injury, amounting to eight times the value of the thing. *Spelman*, voc. *Geldum.*

OCTO TALES. L. Lat. (Eight such.) In old practice. A writ which was issued to the sheriff to summon eight such men as were summoned upon the first panel, to make up a deficiency of jurors. 3 *Bl. Com.* 364.

OCTROI. Fr. In old French law. Originally, a duty, which, by the permission of the seigneur, any city was accustomed to collect on liquors and some other goods, brought within its precincts, for the consumption of the inhabitants. Afterwards appropriated to the use of the king. *Steph. Lect.* p. 361.

OCULATUS TESTIS. Lat. An eye-witness. 4 *Inst.* 279.

Odiosa non præsumuntur. Odious things are not presumed. *Burr. Sett. Cas.* 190.

ŒCONOMUS. Lat. In the civil law. A manager or administrator. *Calv. Lex.*

ŒCONOMICUS. L. Lat. In old English law. The executor of a last will and testament. *Cowell.*

OEPS, *Oes.* L. Fr. Use. *A nostre* oeps; to our use. *Britt.* c. 21. *Stat. Westm.* 1, c. 48. *A son* oeps *demesne. Dyer*, 5. See *Opus.*

Octave. *Al* oeps *de* St. Hilary. *Yearb.* H. 8 Hen. VI. 26.

"OF," held to be a word of more general description than "at." "My estate *of* ——," than "my estate *at* ——." Lord Ellenborough, 3 *M. & S.* 171, 172. See 3 *Taunt.* 147.

OF, though used in the sense of the genitive case, is constantly expressed in the old books by the Lat. *de* and *ex*, (qq. v.) See 2 *Salk.* 622.

OF A PLEA. See *De placito.*

OF COUNSEL. A common phrase in practice, applied to the counsel employed by a party in a cause, or whose name appears upon the papers. Derived probably from the Lat. *à consiliis*, (q. v.) and expressed by the L. Lat. *de consilio*, (L. Fr. *de counsel.*) *Dyer*, 34 b, 38. The modern phrase "of counsel *for*" a party was formerly expressed "of counsel *with.*" "The counsellor should give his counsel to him *with* whom he is of counsel." 5 *Co.* 20.

OF COURSE. [L. Lat. *de cursu.*] In the general prescribed order of practice: without special reference to the court. A

rule is said to be *of course*, when it may be entered by the attorney without application to the court.

OF NEW. A Scotch expression, closely translated from the Lat. *de novo*, (q. v.)

OFFA EXECRATA. L. Lat. In old English law. The morsel of execration; the corsned, (q. v.) 1 *Reeves' Hist.* 21.

OFFENCE. [from Lat. *offendere*, to offend; Lat. *delictum.*] An act committed against a law, or omitted where the law requires it, and punishable by it. *Jacob.* Now generally used as synonymous with *crime*, (q. v.) An act for which any criminal punishment may by law be inflicted. 2 *N. Y. Rev. Stat.* [702, § 32,] 587, § 33.

OFFICE. L. Fr. and Eng. [Lat. *officium.*] A position or station in which a person is employed to perform certain duties, or by virtue of which he becomes charged with the performance of certain duties, public or private.*—A place of trust. 5 *Mod.* 431, arg. Cowell defines office to be "a function by virtue whereof a man hath some employment in the affairs of another." Finch defines it, "a duty of attendance upon a charge." *Law*, b. 2, ch. 13. Webster defines it to be "a duty, charge or trust." But these seem to be rather the results or incidents (though principal and necessary ones) of office, than to constitute office itself. The idea of an *office* clearly embraces the ideas of tenure, duration, fees or emoluments, rights and powers, as well as that of *duty.* The intrinsic meaning of the word is well expressed by the old English word "place," and the figurative terms "incumbent," "swearing in," "entering upon," "vacating," which are constantly applied to offices, have the same radical idea.

A public station or employment; an employment conferred by appointment of government.*—An employment on behalf of the government, in any station or public trust, not merely transient, occasional or incidental. Platt, J. 20 *Johns. R.* 493. A charge or trust conferred by public authority. 7 *Porter's* (Ala.) *R.* 371. See 26 *Alabama R.* 159, arg. A station or employment conferred by election of the people.

A right to exercise a public or private employment, and to take the fees and emoluments thereto belonging. 2 *Bl. Com.* 36. 1 *Crabb's Real Prop.* 431, § 530. A species of incorporeal hereditament. In the United States, no public office can properly be termed a hereditament, and private ministerial offices of this class are rare or unknown. 3 *Kent's Com.* 454. See 1 *Selden's R.* 285.

An abbreviated name for *inquest of office*, (q. v.) *Finch's Law*, b. 4, ch. 24. *Trove est per office;* it is found by office. *Dyer*, 44, (Fr. ed.)

OFFICE COPY. In practice. A copy of a paper, obtained from the officer with whom the original has been filed or entered. See *Copy.*

OFFICE FOUND. In English law. Inquest of office found; the finding of certain facts by a jury on an inquest or inquisition of office. 3 *Bl. Com.* 258, 259. This phrase has been adopted in American law. 2 *Kent's Com.* 61.

OFFICER. [L. Lat. *officiarius.*] One who holds an office; a person lawfully invested with an office. See *Office.*

Officia judicialia non concedantur antequam vacent. Judicial offices should not be granted before they are vacant. 11 *Co.* 4.

OFFICIAL. [Lat. *officialis.*] In the civil law. The minister or apparitor of a magistrate or judge. *Cowell.*

In the canon law. A person to whom a bishop commits the charge of his spiritual jurisdiction. *Id.*

In common and statute law. The person whom the archdeacon substitutes in the execution of his jurisdiction. *Id.*

OFFICIARIUS. L. Lat. An officer. *Clerke's Prax. Cur. Adm.* tit. 3.

OFFICINA. Lat. A shop; a workshop. *Officina justitiæ;* the shop or mint of justice. 3 *Bl. Com.* 273. *Id.* 48. A name anciently given to the court of chancery, or rather to the ordinary legal branch of that court, as being the place where the king's writs, (the instruments of justice,) were framed. *Id. ibid.* Called also *officina brevium;* the shop of writs. 3 *Wooddes. Lect.* 214.

OFFICIUM. Lat. Office. **Officium nemini debet esse damnosum.** Office ought not to be an occasion of loss to any one. A maxim in Scotch law. *Bell's Dict.* By this rule, a mandatory is entitled to demand from the mandant all reasonable expenses debursed by him *bonâ fide*, and the damage sustained by him in the execution of the mandate, even though the management should have been a losing concern.

OIER, *Oir, Oyer.* L. Fr. To hear. *Kelham.* See *Oir, Oyer.*

OIL. L. Fr. The eye. *LL. Gul. Conq.* l. 21.

OIL, *Oile, Oyl, Oyel.* L. Fr. Yes; yea. Schard. *Est Jon icy en prop' p'son?* Parn. *Sir, oil. Yearb.* M. 9 Edw. III. 13. Wilby. *Est W. en vie?* Sad. *Sir, oile.* P. 4 Edw. III. 12. *Certes, oile.* M. 6 Edw. III. 45. See *Oyl, Oyel.*

OIL, OIL. L. Fr. Yea, yea; ay, ay. The assent of the commons in 28 Edw. III. *Kelham.*

O'I'O. A contraction of *omnino.* 1 *Inst. Cler.* 11.

OIR. L. Fr. To hear. *A* oir *son jugement;* to hear his judgment. *Fet Assaver,* § 38. *Jeo ai* oi *dire;* I have heard said. *Yearb.* P. 1 Edw. II. 4.

OIR. Span. [from Lat. *audire,* to hear.] In Spanish law. To hear; to take cognizance. *White's New Recop.* b. 3, tit. 1, c. 7.

OKER. Sc. In Scotch law. Usury; the taking of interest for money, contrary to law. *Bell's Dict.*

OLD NATURA BREVIUM. The title of a treatise written in the reign of Edward III. containing the writs which were then most in use, annexing to each a short comment concerning their nature and the application of them, with their various properties and effects. 3 *Reeves' Hist. Eng. Law,* 152. So called to distinguish it from Sir Anthony Fitzherbert's treatise on the same subject. *Id. Crabb's Hist.* 329. It is generally referred to by the abbreviation O. N. B. and, in the older books, by the Lat. abbreviation *Vet. Na. Br.* or *Vet. Na'br.*

OLD STATUTES. See *Vetera statuta.*

OLD TENURES. A treatise on tenures, written in the reign of Edward III. giving an account of the various tenures by which land was holden, the nature of estates and some other incidents to landed property. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work on the same subject. 3 *Reeves' Hist. Eng. Law,* 151. *Crabb's Hist.* 328.

OLERON, LAWS OF. A collection of maritime law promulgated in or about the time of Richard I. in the island of Oleron, on the coast of France; claimed by the French lawyers to have been a French production compiled under the direction of Queen Eleanor, Duchess of Guienne; and by Selden, and other English writers, to have been an English work, published by her son Richard I. in his character of King of England. These laws are generally ranked next after the *Consolato del Mare* in point of time and celebrity, and have been considered as the foundation of the maritime legislation and jurisprudence of the western nations of Europe. 3 *Kent's Com.* 12. They have been admitted as authority on admiralty questions, in the courts of justice in the United States. *Id.* 13. See 1 *Duer on Ins.* 38, 39, for remarks on the true character of this collection.

OLOGRAPH. A French mode of writing *holograph,* without the aspirate. *Civil Code of Louis.* art. 1567, 1581.

OM, *Omme.* L. Fr. Man; a man or person. Corrupted forms of *home,* (q. v.) *Kelham.*

OME BUENO. Span. In Spanish law. A good man; a substantial person. *Las Partidas,* part. 5, tit. 13, l. 38.

OMISSIO. Lat. [from *omittere,* q. v.] Omission; a leaving out. **Omissio eorum quæ tacite insunt nihil operatur.** The omission of those things which are tacitly implied is of no consequence. 2 *Bulstr.* 131.

OMISSIS OMNIBUS ALIIS NEGOTIIS. Lat. Laying aside all other businesses. 9 *East,* 347.

OMITTERE. Lat. In the civil law. To pass over, or pass by; to leave out; to omit. *Calv. Lex.*

To neglect; to refuse. *Id.*

OMNE. Lat. Every thing; every; all. A word which is said to exclude all exception. **Qui omne dicit nihil excipit.** He who says "every thing" excepts nothing. Hence its employment in law maxims, (see *infra,*) has been sometimes thought to give them an undue generality.

Omne actum ab intentione agentis est judicandum. Every act is to be judged by the intention of the doer. *Branch's Pr.*

Omne crimen ebrietas et incendit et detegit. Drunkenness both inflames (or aggravates) and reveals every crime. *Co. Litt.* 247 a, 4 *Bl. Com.* 26. *Broom's Max.* [14.]

Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo. All right either consent has created, or necessity established, or custom confirmed, [has either been created by consent, or established by necessity, or confirmed by custom.] *Dig.* 1. 3. 40.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Every worthier thing draws to it the less worthy, though the less worthy be the more ancient. *Co. Litt.* 355 b. See *Finch's Law,* b. 1, c. 3, n. 24.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur.

Every great example has somewhat of injustice, which is compensated by its public utility. *Branch's Pr.* citing *Hob.* 279.

Omne majus continet in se minus. Every greater contains in itself the less. 5 *Co.* 115 a, *Wade's case.* *Wingate's Max.* 206, max. 59. The greater always contains the less. *Finch's Law*, b. 1, c. 3, n. 22. *Broom's Max.* 75, [129.] Hence, if a man tender more than he ought to pay, it is good, and the other party ought to accept so much of the sum tendered as is due to him. *Id. ibid.* But see the qualification, *ibid.* A man having a power may do less than such power enables him to do. *Id.* 76. *Story on Agency*, § 172. This maxim is supposed to be merely a different version of that of the civil law, **In eo quod plus est, semper inest et minus**, (q. v.) *Dig.* 50. 17. 110. 1 *Wooddes. Lect.* Introd. Lect. 5, lxxi. note. Other forms of it are **Omne majus trahit ad se [quod est] minus.** Every greater thing draws to it the less. *Co. Litt.* 43 b. 2 *Co.* 68 b, *Tookers' case.* **Omne majus minus in se complectitur.** Every greater embraces in itself the less. *Jenk. Cent.* 208, case 40.

Omne quod inædificatur solo cedit. Every thing which is built upon [the soil] belongs to the soil. *Dig.* 41. 1. 7. 10. *Inst.* 2. 1. 29. *Fleta*, lib. 3, c. 2, § 12.

Omne sacramentum debet esse de certa scientia. Every oath ought to be of certain knowledge. 4 *Inst.* 279.

Omne testamentum morte consummatur, [consummatum est.] Every will is consummated or made complete by death. 3 *Co.* 29 b. 4 *Id.* 61 b, *Forse & Hembling's case.* *Shep. Touch.* 401. A testament is of no force till after the death of the testator. 2 *Bl. Com.* 500. *Broom's Max.* [378.]

Omnes licentiam habere his quæ pro se indulta sunt, renunciare. [It is a rule of the ancient law that] all persons shall have liberty to renounce those privileges which have been conferred for their benefit. *Cod.* 1. 3. 51. *Id.* 2. 3. 29.

Omnes prudentes illa admittere solent quæ probentur iis qui in arte sua bene versati sunt. All prudent men are in the habit of admitting those things which are proved by those who are well versed or skilled in their own art. 7 *Co.* 19 a, *Calvin's case.* This is only another form of the maxim, **Cuilibet in arte sua perito credendum est**, (q. v.) though less positively expressed. In the translations given in Branch and Wharton, its point is lost by the use of the word *approved* instead of *proved.*

Omnia delicta in aperto leviora sunt. All crimes that are committed openly are lighter; [or have a less odious appearance than those committed secretly.] 8 *Co.* 127 a, *City of London's case.*

Omnia præsumuntur contra spoliatorem. All things are presumed against a despoiler or wrong-doer. A leading maxim in the law of evidence. *Best on Evid.* 340, § 303. If a man, by his own tortious act, withhold the evidence by which the nature of his case would be made manifest, every presumption to his disadvantage will be adopted. *Broom's Max.* 425, [725.] "When a man destroys a thing that is designed to be evidence against himself, a small matter will supply it." Holt, C. J. 1 *Ld. Raym.* 731. 1 *Greenl. Evid.* § 37.

Omnia præsumuntur legitime facta donec probetur in contrarium. All things are presumed to be lawfully done, until proof be made to the contrary. *Co. Litt.* 232 b. *Best on Evid.* 337, § 300. *Broom's Max.* [730.]

Omnia præsumuntur rite esse acta. All things are presumed to be done in due form. **Omnia præsumuntur solemniter esse acta.** All things are presumed to be done with due solemnity. *Co. Litt.* 6 b. Every thing is presumed to be rightly and duly performed, until the contrary is shown. Acts done, which presuppose the existence of other acts to make them legally operative, are presumptive proofs of the latter. 2 *Ohio St. R.* 246, 247. 4 *Id.* 148. 6 *Id.* 293. Where acts are of an official nature, or require the concurrence of official persons, a presumption arises in favor of their due execution. *Broom's Max.* 427, [729.] The presumption of law is, that public officers, charged with a public duty, perform that duty rightfully, until the contrary appears. Shaw, C. J. 11 *Metcalf's R.* 347. The acts of a court of justice are to be presumed to be rightfully done. 3 *Story's R.* 534. It is an established maxim of law, in relation to the acts of public officers, and especially of judicial tribunals acting within their jurisdiction, that all things shall be presumed to be done rightly, until the contrary is proven. 26 *Mississippi R.* 362. This maxim is now constantly used by the courts, to uphold the maxim **Ut res magis valeat quam pereat.** Pearson, J. 3 *Jones' Law R.* 119. See *Best on Evid.* 337—339. See *Rite.*

Omnia quæ jure contrahuntur, contrario

jure pereunt. All contracts which are made under a law, are destroyed under a contrary law. *Dig.* 50. 17. 100.

Omnia quæ sunt uxoris sunt ipsius viri. All things which are the wife's are the husband's. *Bract.* fol. 32. *Co. Litt.* 112 a. *Finch's Law*, b. 1, c. 3, n. 58. See 2 *Kent's Com.* 130—143.

OMNIBUS AD QUOS PRÆSENTES LITERÆ PERVENERINT, SALUTEM. L. Lat. To all to whom the present letters shall come, Greeting. A form of address with which charters both public and private, (deeds,) and other instruments were anciently commenced. Otherwise modified, as *Omnibus probis hominibus*, (To all good men;) *Omnibus in Christo fidelibus*, (To all the faithful in Christ;) *Omnibus Christi fidelibus*, (To all the faithful of Christ,) &c. See *West's Symboleog.* pars 1, lib. 2, sect. 241, *et passim.*

OMNIBUS PRÆSENTES LITERAS VISURIS VEL AUDITURIS, SALUTEM. L. Lat. To all who shall see or hear the present letters, Greeting. See *supra.*

OMNI EXCEPTIONE MAJORES. Lat. Superior to all exception; beyond all exception. 3 *Bl. Com.* 363.

Omnis actio est loquela. Every action is a plaint or complaint. *Co. Litt.* 292 a.

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Every conclusion of a good and true judgment follows from good and true premises, and the verdicts of jurors. *Co. Litt.* 226 b.

Omnis consensus tollit errorem. Every consent removes error. Consent always removes the effect of error. 2 *Inst.* 123.

Omnis definitio in lege periculosa. All definition in law is hazardous. 2 *Wooddes. Lect.* 196. This seems to be abridged from the civil law. **Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit.** All definition in the civil law is hazardous, for there is little that cannot be subverted. *Dig.* 50. 17. 202. See *Definition.*

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation disturbs more by its novelty than it benefits by its utility. 2 *Bulstr.* 338. Every innovation occasions more harm and derangement of order by its very novelty, than benefit by its actual utility. *Broom's Max.* 61, [109.] 1 *Salk.* 20.

Omnis interpretatio, si fieri possit, in instrumentis ita fienda est, ut omnes contrarietates amoveantur. All interpretation in [of] instruments should be so made, if possible, that all contrarieties [contradictions] may be removed. *Jenk. Cent.* 96, case 86.

Omnis nova constitutio futuris formam imponere debet, non præteritis. Every new statute ought to prescribe a form to future, not to past acts. *Bract.* fol. 228. This maxim has been adopted by Lord Coke with the addition of the word *temporibus*, after *futuris.* 2 *Inst.* 95. The word *constitutio* is translated in Branch's Principia, *institution.* It is employed by Bracton several times in the chapter where the above maxim is found, in the sense of the *establishment* of a servitude (*constitutio servitutis;*) but in referring to the statute of Merton he calls that also *constitutio*, (*constitutio de Merton,*) which authorizes the translation of "statute." The term is obviously derived from the civil law.

Omnis privatio præsupponit habitum. Every privation presupposes former enjoyment. *Co. Litt.* 339 a. A "rule of philosophie" quoted by Lord Coke, and applied to the discontinuance of an estate.

Omnis ratihabitio retrotrahitur et mandato [seu licentiæ] priori æquiparatur. Every ratification is drawn backward, [has a retrospective operation,] and is equivalent to a previous command [or permission.] *Co. Litt.* 207 a, 258 a. *Wingate's Max.* 485, max. 124. A subsequent ratification is equivalent to a prior authority. *Story on Agency*, § 445. Subsequent assent given to what has been already done has a retrospective effect, and is equivalent to a previous command. *Broom's Max.* 880, [676.] Ratification has retroactive efficacy, and relates back to the inception of the transaction. Hemphill, C. J. 16 *Texas R.* 465. A leading maxim of the common law, and of maritime and commercial jurisprudence, and applied constantly in the law of principal and agent. *Broom's Max. ub. sup. Story on Agency*, §§ 239, 445. *Shep. Touch.* 57. *Smith's Merc. Law*, 60. 2 *Kent's Com.* 616. 2 *Steph. Com.* 119. Applied also equally to contracts and torts. *Broom's Max.* 345, 383. This maxim seems to be derived from that of the civil law, **Ratihabitio mandato comparatur.** *Dig.* 46. 3. 12. 4. *Id.* 20. 1. 16. 1. *Id.* 13. 7. 20, pr. See *Cod.* 4. 28. 7, pr.

ON ACCOUNT OF WHOM IT MAY CONCERN. A formal clause in English marine policies of insurance, intended to embrace all persons who have an insurable interest in the property, and a lawful right

to be insured. It is retained in some American policies, (as in the Philadelphia forms,) but in others the phrase "for whom it may concern" has been substituted. 2 *Duer on Ins.* 28, 29, note.

ON OR ABOUT. A phrase used in conveyancing, in reciting the date of an instrument referred to. To avoid the injurious consequences of error in the recital of dates, &c. the safe and correct practice in conveyancing (a practice inadmissible in pleading) is to recite deeds as bearing date "on or about," &c. thus allowing the deed to be produceable in evidence in support of the title, though the date be mistaken. *Shep. Touch.* (by Preston,) 77. *Id.* 397.

ONCE IN JEOPARDY. Once put in peril of legal penalties. For a view of the different interpretations which have been given of this expression, see *Wharton's Am. Crim. Law*, §§ 573—591.

Once quit and cleared, ever quit and cleared. (Sc. anis quit and clenged, ay quit and clenged.) *Skene de Verb. Sign.* voc. *Iter.* ad fin.

Once a mortgage, always a mortgage. The right of redemption is held in equity to be an inseparable incident to a mortgage, and all restrictions or qualifications of this right are deemed utterly void. 1 *Hilliard's Real Prop.* 378.

ONE THIRD NEW FOR OLD. See *New for old.*

ONERARE. Lat. [from *onus*, a burden.] To burden or charge; to lade or load. *Calv. Lex.*

ONERARI NON. L. Lat. (Ought not to be charged.) In pleading. A form of commencement of a plea, substituted in some cases for the *actio. non*, (q. v.) *Steph. Pl.* Appendix, Note (69.)

ONERATIO. L. Lat. [from *onerare*, q. v.] In maritime law. A lading; a cargo. *Loccen. de Jur. Mar.* lib. 2, c. 8, sec. 10.

ONEROUS CAUSE. In Scotch law. A good and legal consideration.* 1 *Forbes' Inst.* part 3, p. 102.

ONEROUS DEED. In Scotch law. A deed given for a valuable consideration. *Bell's Dict.*

O. NI. An abbreviation of *oneratur nisi habeat sufficientem exonerationem*, (he is charged unless he has a sufficient discharge.) An entry formerly made in the English exchequer, as soon as the sheriff entered into and made up his account for issues, amercements, &c. 4 *Inst.* 116.

ONOMASTIC. [from Gr. ὄνομα, a name.] A term sometimes applied to the signature of an instrument, where the body of it is in the handwriting of another person. *Best on Evid.* 257, § 210.

ONUS. Lat. A burden, or load; a weight. *Onus probandi;* the burden of proof.

The lading, burthen or cargo of a vessel. *Calv. Lex.*

A charge; an incumbrance. *Cum onere*, (q. v.;) with the incumbrance.

ONUS PROBANDI. Lat. The burden of proving, or proof. **Actori incumbit onus probandi.** The burden of proof rests on the plaintiff. 4 *Co.* 71 b, *Hynde's case. Best on Evid.* 291, 293, 295.

OOR, *Aour.* L. Fr. Gold. *Kelham.*

OPE CONSILIO, (or OPE ET CONSILIO.) Lat. In the civil law. By aid and counsel. A term applied to accessories in the commission of crimes, of similar import to the "aiding and abetting" of the common law. *Inst.* 4. 1. 11, 12. *Dig.* 50. 16. 53. 2. It seems to have been interpreted disjunctively, (by aid *or* counsel.) *Id. ibid.*

OPEN. Not concealed; outward; manifest; apparent.

Not closed, settled or fixed. See *infra.*

OPEN ACCOUNT. Every account between two persons having dealings with one another, is deemed an *open account* until, by their tacit or express agreement, it is settled between them. *Pulling on Merc. Accounts*, 30.

OPEN DOORS. In Scotch practice. Letters of *open doors* are letters (process) authorizing the officer to whom they are directed to break *open* the *doors* of places in which the goods of a debtor are deposited. *Bell's Dict.*

OPEN LAW. In old English law. The trial by the duel or ordeal. See *Lex manifesta.*

OPEN POLICY. A policy of insurance in which the amount of interest is not fixed by the policy, but is left to be ascertained by the insured, in case a loss should happen. 3 *Kent's Com.* 272. A policy that contains no declaration of the amount of the interest of the assured, and which consequently casts upon him the burden of proof when he claims an indemnity. 1 *Duer on Ins.* 97.

OPEN THEFT. In Saxon law. The same with the Lat. *furtum manifestum*, (q. v.)

To OPEN. In practice. To commence or begin; to enter upon. At the trial of a cause, the counsel who first addresses the jury is said to *open* the case; and his address is called the *opening*. In English practice, this is technically called "*opening* the pleadings." The counsel for the party who has the affirmative of the issue is always entitled to begin or open.

To OPEN. In practice. To undo a proceeding, or recall an act, for the purpose of restoring a party to the position he was in before such proceeding or act was done; to relieve a party who has merits, against a proceeding by which he has been formally and regularly barred. To *open a default*, is to allow a party a new opportunity of doing the act, for not doing which the default was entered. To *open biddings*, in equity, is to allow a re-sale of property which has once been sold under a decree. The expression is a figurative one, like that of "*letting in*," which imports nearly the same idea.

The expressions "to open" and "to shut" have been applied to a remainder. Ryder, C. J. *Say.* 239.

OPENING BIDDINGS. In equity practice. The allowance by a court, on sufficient cause shown, of a re-sale of property once sold under a decree. See *To open.*

OPERARIUS. L. Lat. [from *opus*, work.] In old English law. A workman or laborer. *Fleta*, lib. 2, c. 73, § 4.

OPERIS NOVI NUNTIATIO. Lat. In the civil law. A protest or warning against [of] a new work. *Dig.* 39. 1. See *Opus novum.*

OPINIO. Lat. Opinion. *Opinio communis* or *vulgaris;* common opinion; general or prevalent opinion, as distinguished from the peculiar opinion of some individual, or a new opinion not generally received. It was a rule of the civil law that common opinion was to be regarded in judging and giving legal advice, (*opinio communis judicando et consulendo complecti debet,*) though there was much controversy among the civilians as to its application. *Calv. Lex.* To this source may be traced the old English rules on the subject of common opinion. See *Communis opinio.*

Opinio quæ favet testamento est tenenda. The opinion which favors a will is to be followed. 1 *W. Bl.* 13, arg.

OPORTET. Lat. It behooves; it is needful or necessary. *Oportebit* (the future form) had, in the civil law, the sense of *oportet. Dig.* 50. 16. 8. And as to the meaning of *oportere*, see *Dig.* 50. 16. 37. **Oportet quod certa res deducatur in donationem.** It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance. *Bract.* fol. 15 b. There should be certainty as to the thing intended to be conveyed, because, as the same writer observes, the gift of an uncertain thing is null, (*quia incertæ rei nulla est donatio.*) *Id. ibid.*

Oportet quod certa res deducatur in judicium. It is necessary that a certain (definite) thing be brought to judgment or into court; that is, made the subject of an action, or of the action of the court in the particular case. There must be certainty as to the thing which is presented to the court by the pleadings. 5 *Co.* 35 a, *Playter's case. Id.* 38 a, *Tey's case. Jenk. Cent.* 84, case 64. This is merely a modification of Bracton's *certa debet esse—res quæ deducitur in judicium. Bract.* fol. 240.

Oportet quod certa sit res quæ venditur. It is necessary that there should be a certain thing which is sold. To make a valid sale, there must be certainty as to the thing which is sold. *Bract.* fol. 61 b.

OPP'. A contraction of *obtulit* or *optulit*, in the old books. *A.* opp' *se versus B. quarto die;* A. offered himself against B. on the fourth day. *Fleta*, lib. 2, c. 65, § 11. *Id.* c. 67, § 2.

OPPIDUM. Lat. A town. *Dig.* 50. 16. 239. 7.

OPPIGNERARE. Lat. In the civil law. To pledge. *Calv. Lex.*

OPPOSER. [L. Lat. *oppositor.*] In old English law. An officer in the court of exchequer. See *Foreign apposer.* Sometimes treated as a corrupted form of *apposer*, (q. v.) but there are good reasons for considering it as the genuine word.

Opposita juxta se posita magis elucescunt. Opposite things when placed near each other (in juxtaposition) appear in a clearer light. *Bacon's Works*, iv. 256, 258, 353.

Optima est legum interpres consuetudo. Custom is the best interpreter of laws. *Dig.* 1. 3. 37. Adopted in the common law, with a slight verbal variation. **Optimus interpres legum consuetudo.** 2 *Inst.* 18. *Bacon's arg.* Jurisdiction of Marches, *Works*, iv. 260. 1 *Wooddes. Lect.* Introd. Lect. 2, xxxi. That exposition of a law is to be preferred which is approved by constant

and continual use and experience. *Broom's Max.* 421, [719.]

Optima est lex quæ minimum relinquit arbitrio judicis, optimus judex qui minimum sibi. That law is the best which leaves least to the discretion of the judge; that judge is the best who leaves least to his own. *Bacon's Aphorisms*, 46. 2 *Dwarris on Statutes*, 782. That system of law is best which confides as little as possible to the discretion of the judge,—that judge the best who relies as little as possible on his own opinion. *Broom's Max.* 37, [60.] 1 *Kent's Com.* 478.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum. The best interpreter of a statute is (all its parts being considered,) the statute itself. 8 *Co.* 117 b, *Bonham's case. Wingate's Max.* 239, in max. 68.

Optimus interpres rerum usus. Use or usage is the best interpreter of things. 2 *Inst.* 282. *Broom's Max.* 415, [712.]

OPTION. [from Lat. *optio*, choice.] In English ecclesiastical law. A customary prerogative of an archbishop, when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such suffragan bishop; in lieu of which it is now usual for the bishop to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the bishop's disposal within that see, as the archbishop himself shall *choose*, which is therefore called his *option*. 1 *Bl. Com.* 381. 3 *Steph. Com.* 63, 64. *Cowell.*

OPTIONAL WRIT. In old English practice. That species of original writ, otherwise called a *præcipe*, which was framed in the alternative, commanding the defendant to do the thing required, *or* show the reason wherefore he had not done it. 3 *Bl. Com.* 274.

OPTULIT. An old form of *obtulit*, used in Bracton. *Bract.* fol. 354, 354 b.

OPUS. L. Lat. In old English law. Benefit; advantage. See *Ad opus.* This word seems to have been framed from the L. Fr. *oeps*, (q. v.)

OPUS. Lat. and L. Lat. In civil and old English law. Work; labor. See *infra.*

A thing made or done by labor. See *infra.*

OPUS LOCATUM. Lat. In the civil law. A work let out. *Opus*, according to Labeo, signified the same with the Gr. ἀποτέλεσμα, a complete work, a thing made or done by labor, and not ἔργον, labor itself. *Dig.* 50. 16. 5. 1.

OPUS MANIFICUM. L. Lat. In old English law. Labor done by the hands; manual labor; such as making a hedge, digging a ditch. *Fleta*, lib. 2, c. 48, § 3. In the parallel passage in Bracton, the expression is *opus manifestum vel manufactum*, and *manifestum* is repeated. *Bract.* fol. 159 b, lib. 3, tract. 2, c. 37, ¶ 13.

OPUS NOVUM. Lat. In the civil law. A new work. By this term was meant something newly built upon land, or taken from a work already erected. He was said *opus novum facere* (to make a new work,) who, either by building or by taking any thing away, changed the former appearance of a work. *Dig.* 39. 1. 1. 11.

"OR," in written instruments, is frequently construed to mean "and," where such construction is necessary to effectuate the intention of the parties. Thus, in a deed. 5 *Co.* 112 a, *Mallory's case.* So, in a bond. *Cro. Jac.* 322. See 3 *Term R.* 470. So, in a will. 5 *Bos. & Pull.* 38. 9 *East*, 366. 16 *Ib.* 67. 6 *Johns. R.* 54—58. 1 *Metcalf's R.* 88. 1 *Jarman on Wills*, 443—454, (416, Perkins' ed. 1849, note.) 4 *Zabriskie's R.* 686. 2 *Hilliard's Real Prop.* 535.

It has been said that there is perhaps no word in the language of more equivocal effect than *or*. Hence, in England, it has been excluded from indictments, though it has been admitted in American practice. *Wharton's Am. Crim. Law*, §§ 294—296.

ORA. Lat. In old English and Scotch law. A Saxon coin of the value of 16*d.* mentioned in Domesday, the *Regiam Majestatem*, and other records. *Spelman.*

An ounce of the value of 20*d.* *Id.* And see *Skene de Verb. Signif.*

ORAL PLEADING. Pleading by word of mouth, in the actual presence of the court. This was the ancient mode of pleading in England, and continued to the reign of Edw. III. *Steph. Pl.* 23—26.

ORATIO. Lat. In the Roman law. An oration or address made by the emperor before the senate, expressing his opinion or pleasure; upon which the decree of the senate (*senatus consultum*,) was formed. *Taylor's Civ. Law*, 227, 228.

ORATIO SIGNIFICATIVA. Lat. In old English law. The meaning of an instrument, as distinguished from the more

letters (*literæ*) in which it was written. *Fleta*, lib. 2, c. 56, § 20.

ORATOR. L. Lat. and Eng. [from *orare*, to pray or petition.] In equity pleading. A petitioner; one who prays for relief. The plaintiff or complainant in a bill in chancery is so styled in the bill, and sometimes in the reports. *Hughes' Equity Draftsman*, 1—455. 28 *Vermont R.* 87, 382.

ORATOUR. L. Fr. A complainant; a petitioner. *Kelham.*

ORATRIX. L. Lat. and Eng. [from *orare*, to pray.] In equity pleading. A female petitioner. A female complainant in equity is so styled in the bill. *Hughes' Equity Draftsman*, 2, 3, 4.

ORDEAL. [Sax. *ordale*, from *or*, great, and *dæl*, judgment; L. Lat. *ordalium.*] In Saxon and old English law. An ancient mode of trial, otherwise called *judicium Dei*, the judgment of God, it being regarded as the means of obtaining a miraculous interposition of Heaven in favor of innocence, by protecting a party accused from the destructive or natural effects of *fire* and *water* to which he was subjected. See *Fire ordeal*, *Water ordeal.* Spelman has given from the Textus Roffensis, a minute and curious account of the religious services which accompanied the ordeal, including the administration of the sacrament, the prayers, readings, benedictions, the solemn adjuration of the water or fire, &c.

ORDENAMIENTO. Span. In Spanish law. An order emanating from the sovereign, and differing from a *cedula* only in form, and in the mode of its promulgation. *Schmidt's Civ. Law*, Introd. 93, note.

ORDENAMIENTO DE ALCALA. Span. A collection of Spanish law, promulgated by the Cortes in the year 1348. *Schmidt's Civ. Law*, Introd. 75.

ORDER. [Lat. *ordo.*] In practice. A direction in writing, granted by a court or judge, requiring or authorizing some act to be done. In actions at law, the term is usually applied to the acts of a judge at chambers, those of the court being designated as *rules.* See *Rule.*

ORDER. In mercantile law. The usual word employed in bills of exchange, promissory notes, and checks, when it is intended to make them negotiable. The ordinary expression for this purpose is, "Pay to A. or *order*," or, "Pay to the *order* of A." which are deemed to import the same thing. *Story on Bills*, § 56. See *Negotiable words.*

ORDERS. See *Holy orders.*

ORDEUM. L. Lat. In old English law. Barley. An English form of *hordeum.* *Fleta*, lib. 2, c. 73, § 19.

ORDINANCE. [L. Fr. *ordynaunce*; Lat. *ordinatio*, q. v.] In old English law. A statute or act of parliament. *Cowell. Hale's Hist. Com. Law*, (Runnington's ed. 1820,) 13. See *Ordinatio.* The L. Fr. *ordynaunce* had the more general sense of enactment, or requirement. *Solonc la* ordynaunce *de nos estatutz*; according to the ordinance of our statutes. *Britt.* c. 18.

Strictly, a bill or law which might stand with the old law, and did not alter any statute in force at the time, and which became complete by the royal assent on the *parliament roll*, without any entry on the *statute roll.* A bill or law which might at any time be amended by the parliament, without any statute. *Hale's Hist. Com. Law, ub. sup.* An *ordinance* was otherwise distinguished from a *statute*, by the circumstance that the latter required the threefold assent of king, lords and commons; while an ordinance might be ordained by one or two of these constituent bodies. See 4 *Inst.* 25. See *Statute.*

In American law. An act or regulation of congress; such as the Ordinance of 13th July, 1787, for the government of the northwestern territory.

A law or regulation of a municipal corporation.

ORDINARE. L. Lat. In old English law. To ordain; to establish; to make (a law.) *Ordinavit*; he (the king) ordained. This word is used in *Fleta*, in reciting the statute of Acton Burnel. *Fleta*, lib. 2, c. 64, § 2. *Ordinatum*; ordained. Used in the statute of Marlbridge. *Id.* lib. 2, c. 47, § 13.

To appoint. Ordino *et constituo talem et talem executores meos;* I ordain and constitute such and such a one my executors. *Yearb.* M. 3 Hen. VI. 6.

In practice. To order. See *Ordinatum.*

ORDINARIUS. Lat. [from *ordo*, order.] In the civil law. Ordinary; regular; according to usual course and rule. *Ordinaria judicia* (ordinary judgments, trials or actions) were those in which the usual and regular order of pleading and litigating was observed, that is, first *in jure*, be-

fore the prætor, and then *in judicio*, before the *judex*.

Ordinary; of course; inherently. Applied, both in the civil and common law, to a judge who had a jurisdiction in his own right, and not by the gift or deputation of another. *Calv. Lex.* · *Co. Litt.* 96 a. See *Bract.* fol. 401.

ORDINARY. [Lat. *ordinarius*, q. v.] In the civil law. A judge who had authority to take cognizance of causes in his own right, and not by deputation. See *Ordinarius*.

In English law. An ecclesiastical judge who has the regular ordinary jurisdiction, independent of another. 1 *Burn's Eccl. Law*, 22. *Co. Litt.* 344 a.

A bishop, as having ordinary jurisdiction in his own diocese. 1 *Bl. Com.* 383. *Brande.* The ordinary formerly had the administration of an intestate's chattels. *Finch's Law*, b. 2, c. 15, p. 173.

In old English law. A deputy of the bishop, appointed to give malefactors their neck-verses, (q. v.) and judge whether they read or not; also to perform divine services for them and assist in preparing them for death. *Wharton's Lex.* The clergyman who performs the latter offices for condemned criminals is still called the ordinary. *Brande.*

In Scotch law. A single judge of the court of session, who decides with or without a jury, as the case may be. *Brande.*

In American law. A judicial officer having the powers of a judge of probate, or surrogate. *N. J. Rev. St.* tit. 7, c. 4.

ORDINARY CARE. That care which men of ordinary prudence and judgment exercise over property of their own. 28 *Vermont R.* 458. *Id.* 464.—That degree of care which may reasonably be expected from a person in the party's situation; reasonable care. 23 *Connecticut R.* 443.—In all cases, what constitutes *ordinary care* must be determined with reference to the nature of the act done and the circumstances attending it. Whiton, C. J. 2 *Wisconsin R.* 216, 223.—*Ordinary care* is altogether a relative term; the want of it means nothing more than the failure to use those precautions which a just regard to the persons and property of others demand should be used under the circumstances of the particular case. Goldthwaite, J. 26 *Alabama R.* 203.

In Briggs *v.* Taylor, (28 *Vermont R.* 180,) Redfield, C. J. objected to the use of the term "ordinary" in connection with the words "care" and "diligence;" contending that it conveyed no definite idea, was liable to misconstruction, and calculated in some instances to mislead a jury. The subject was considered at much length, and numerous authorities cited. But in the later case of Brown *v.* Hitchcock, in the same court, (28 *Vermont R.* 452, 458,) the term "ordinary care" was made use of without objection.

"ORDINARY SKILL" in an art means that degree of skill which men engaged in that particular art usually employ; not that which belongs to a few men only, of extraordinary endowments and capacities. 20 *Penn. St. R.* 130.

ORDINATIO. Lat. [from *ordinare*, to regulate, to ordain.] An ordinance. *Fleta*, lib. 2, c. 64, § 1. The title of several ancient English statutes. *Ordinatio pro statu Hiberniæ*, (Ordinance for the regulation or settlement of Ireland,) passed 17 Edw. I. containing eight chapters of regulations in matters of a judicial nature. 2 *Reeves' Hist. Eng. Law*, 99. *Crabb's Hist.* 173. *Barringt. Obs. Stat.* 160. *Ordinatio Forestæ*, (Ordinance of the Forest,) passed 33 Edw. I. containing regulations about the purlieus of forests. 2 *Reeves' Hist. Eng. Law*, 104. Another statute under the same title, passed 34 Edw. I. *Id.* 106, 107.

ORDINATUM EST. L. Lat. In old practice. It is ordered. The initial words of rules of court when entered in Latin. 9 *East*, 25, note. 2 *M. & S.* 144, note.

Ordine placitandi servato, servatur et jus. When the order of pleading is observed, the law also is observed. *Co. Litt.* 303 a. *Broom's Max.* [143.]

ORDINE. L. Fr. A rule or order; a regulation. *Kelham.*

ORDINER, *Ordyner.* L. Fr. To ordain; to establish; to enact or decree. *Britt.* fol. 1.

ORDINIS BENEFICIUM. Lat. In the civil law. The benefit or privilege of order; the privilege which a surety for a debtor had, of requiring that his principal should be discussed, or thoroughly prosecuted, before the creditor could resort to him. *Nov.* 4, c. 1. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 21, § 883.

ORDO. Lat. In old practice. Order; regular succession. *Ordo petendi;* the order of demanding or counting. *Bract.* fol. 400. *Ordo excipiendi;* the order of pleading. *Id. ibid. Fleta*, lib. 2, c. 54.

Ordo agendi; the order of suing. *Fleta*, lib. 5, c. 6, § 8. *Ordo brevium;* the order of writs. *Id.* § 31.

An order of a court, (*ordo curiæ.*) 1 *Rep. in Ch.* 55.

ORDO ATTACHIAMENTORUM. L. Lat. In old practice. The order of attachments. *Fleta*, lib. 2, c. 51, § 12. See *Solemnitas attachiamentorum.*

ORDO JUDICIORUM. Lat. In the canon law. The order of judgments; the rule by which the due course of hearing each cause was prescribed. 4 *Reeves' Hist. Eng. Law*, 17.

ORE. A Saxon coin of uncertain value. *LL. Gul. Conq.* l. 3, note. See *Ora.*

ORE. L. Fr. Now. *Le roy que* ore *est;* the king that now is. *Artic. sup. Chart.* pr. *D' ore;* at present. *Kelham. Ore est à veyer;* now it is to be seen. *Keilw.* 2 b.

ORE TENUS. Lat. By word of mouth; orally; *viva voce.* Pleading was anciently carried on *ore tenus*, at the bar of the court.* 3 *Bl. Com.* 293. "There is no longer any such thing as pleading *ore tenus*, in courts of record." 5 *Hill's* (N.Y.) *R.* 315.

ORFGILD. Sax. [from *orf*, a beast, and *gild*, a payment.] In Saxon law. The price or value of a beast. A payment for a beast. *Spelman*, voc. *Geldum.* The payment or forfeiture of a beast. *Id.* in voc. A penalty for taking away cattle. *Lambard Arch.* 125.

ORFEURE, *Orpheour.* L. Fr. [from Lat. *aurifaber.*] A goldsmith. *Art. sup. Chart.* c. 20.

ORIGINAL BILL. In old practice. The ancient mode of commencing actions in the English Court of King's Bench. See *Bill.*

ORIGINAL BILL. In equity pleading. A bill which relates to some matter not before litigated in the court by the same persons standing in the same interests. *Mitford's Chanc. Pl.* 33.

ORIGINAL CONVEYANCES. Those conveyances at common law, otherwise termed *primary*, by which a benefit or estate is created or first arises; comprising feoffments, gifts, grants, leases, exchanges and partitions. 2 *Bl. Com.* 309.

ORIGINAL PROCESS. In old practice. That process which is till the defendant do appear. *Finch's Law*, b. 4, ch. 26.

ORIGINAL WRIT, or ORIGINAL. [L. Lat. *breve originale.*] In English practice. A writ issuing out of chancery, and so called because it anciently gave *origin* and commencement to an action at common law. It was principally used in the court of Common Bench, and in form was a mandatory letter from the king in parchment, sealed with his great seal, and directed to the sheriff of the county wherein the injury complained of was committed or supposed to be, requiring him to command the wrongdoer or party accused, either to do justice to the complainant, or else to appear in court and answer the accusation against him. 3 *Bl. Com.* 273. This writ constituted the foundation of the suit, and of the jurisdiction of the court, being the king's warrant for the judges to proceed to the determination of the cause. *Id. ibid.* See *Breve.*

In modern practice, the use of original writs is confined to real actions exclusively. 3 *Steph. Com.* 565, 658.

In American practice, they have been employed to some extent, but are now in general superseded by other forms of process.

Origo rei inspici debet. The origin of a thing ought to be regarded. *Co. Litt.* 248 b. See *Initium, Principium.*

ORPHANOTROPHIUS. Græco-Lat. [from ὀρφανὸς, an orphan, and τρέφω, to nourish.] In the civil law. One who had the charge of a house for orphans. *Cod.* 1. 3. *Nov.* 7, epil.

ORRAY. L. Fr. [from *oyer*, to hear.] Shall hear. *Orrount*, (plur.) *Britt.* c. 41.

ORRETZ. L. Fr. Golden; of gold. *Yearb.* T. 1 Edw. II. 17.

ORREUM. An old form of *horreum*, a granary. See *Horreum.*

OSTEL. L. Fr. A household; an inn; lodging; entertainment. *Kelham.*

An old form of *hostel*, (q. v.)

OSTENDIT VOBIS. L. Lat. In old pleading. Shows to you. Formal words with which a demandant began his count. *Fleta*, lib. 5, c. 38, § 2.

OSTENSIBLE PARTNER. A partner whose name is made known and appears to the world as a partner, and who is in reality such. *Story on Partn.* § 80.

OSTENSURUS. L. Lat. To show. A formal word in old writs. *Reg. Orig.* 36. *Fet Assaver*, § 21.

OSTER. L. Fr. To take away; to take out or off. *Oste del file;* taken off the file. *Yearb.* H. 20 Hen. VI. 1.

OSTENTUM. Lat. In the civil law. A monstrous or prodigious birth. *Dig.* 50. 16. 38.

OSTIUM. Lat. An entrance; a gate or door. See *infra.*

The mouth of a river. 3 *Bell's App. Cas.* 331.

OSTIUM ECCLESIÆ. L. Lat. In old English law. The door or porch of the church, where dower was anciently conferred. See *Ad ostium ecclesiæ.*

OSTIA REGNI. Lat. Gates of the kingdom. The ports of the kingdom of England are so called by Sir Matthew Hale. *De Jur. Mar.* pars 2 (de port. mar.) c. 3.

OTER LA TOUAILLE. O. Fr. In the laws of Oleron. To deny a seaman his mess. Art. 13. Literally, to deny the table cloth or victuals for three meals. See 1 *Peters' Adm. Dec.* Appendix, xxvii. 2 *Id.* Appendix, lxxxv.

OTHE, *Oth.* O. Eng. Oath; an oath. *Bract.* fol. 185. See *Othesworthe.*

OTHESWORTHE. O. Eng. Oathsworth; oathworthy; worthy or entitled to make oath. *Bract.* fol. 185, 292 b. Bracton quotes as an English phrase of his time, he ne es othes worthe that es enes guilty of othe broken. *Id.* fol. 185.

OU. L. Fr. Or. *Britt. passim.*

Where; whether. *L. Fr. Dict.*

Whereas; whereto. *Kelham.*

With; within; in. *Id.*

OULTRE LE MERE. L. Fr. Beyond the sea. *Yearb.* P. 1 Edw. III. 27.

OUNCE. [Lat. *uncia*, Sp. *onca.*] The twelfth part of a pound.

The twelfth part of any thing. See *Uncia.*

"OUR," construed. "Pay to our order." 4 *M. & S.* 13. See 8 *M. & W.* 616. 9 *Id.* 346.

OUST. [from L. Fr. *ouster*, q. v.] In old English law. To take away. "6 *Ric.* 2, cap. 6, *ousteth* battail in an appeal of rape." *Finch's Law*, b. 4, ch. 37. "Ousting battail." 12 *Mod.* 21.

In modern law. To deprive. *Ousting* a corporation of its franchises. 12 *Mod.* 18, 19. *Ousted* of a plea in abatement. Lord Ellenborough, 3 *East*, 62.

To put out; to turn out or eject. 3 *Bl. Com.* 201, 202.

OUSTER, *Oster.* L. Fr. To put out. *Oustes de court;* put out of court. *Britt.* c. 21.

To take away. *Boundes oustes. Britt.* c. 50.

To deprive. *Il serra* ouste *de son ley. Yearb.* II. 20 Hen. VI. 4.

To deny a thing asked. M. 5. Edw. III. 14.

OUSTER. In practice. A putting out; dispossession; amotion of possession. 3 *Bl. Com.* 167—173. *Id.* 197, 199, 202, 204. The putting out of a freeholder. *Finch's Law*, b. 3, ch. 5. A species of injury to things real, by which the wrongdoer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession. 2 *Crabb's Real Prop.* 1063, § 2454 a.

OUSTER, *Oustre, Outre.* L. Fr. Over; beyond; farther. Oustre *un jour;* over a day. *Britt.* c. 29. *Respondeat* ouster, (q. v.;) answer further or over. *Dites ouster;* say over. *Yearb.* M. 5 Edw. III. 49. *Et dit ouster;* and says further. *Dyer*, 70 b, (Fr. ed.)

OUSTER LE MAIN. L. Fr. To remove the hand. Generally written as one word, OUSTERLEMAIN. In old English law. The delivery of lands out of a guardian's hands, when the male heir arrived at the age of twenty-one, or the female at that of sixteen. *Co. Litt.* 77. 2 *Bl. Com.* 68. Otherwise called *livery. Id. ibid.*

The fine payable for such livery. *Id.* 68, 69.

The delivery of lands out of the king's hands, on a judgment upon a *monstrans de droit. Cowell.* More commonly called *amoveas manus*, (q. v.)

OUSTER LE MER. L. Fr. Beyond the sea. *Litt.* sect. 677. An older form of this phrase was *outre meer*, (q. v.)

OUT OF COURT. In practice. Not in a position to prosecute; deprived of the power of prosecuting an action. A plaintiff in an action at law is said to be *out of court*, when he neglects to declare within a certain time (one year, in English practice,) after service of process. 3 *Chitt. Gen. Pr.* 445. A defendant who enters judgment of *non pros* against a plaintiff is said to put him *out of court.*

OUT OF THE REALM. [L. Fr. *hors de royalme;* L. Lat. *extra regnum.*] Out of the power of the king of England, as of his crown of England. *Litt.* sect. 439. *Co. Litt.* 260 a. For if a man be upon the sea of England, he is within the kingdom or realm of England, and within the ligeance

of the king of England, as of his crown of England. *Id. ibid.*

OUT OF THE STATE. Held to mean "*beyond sea*," (q. v.)

OUT OF TIME. A mercantile phrase applied to a ship or vessel that has been so long at sea, as to justify the belief of her total loss. 2 *Duer on Ins.* 469, note.

In another sense, a vessel is said to be *out of time*, when, computed from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. *Id.* 469. The phrase is identical with "missing ship." *Id. ibid.*

OUTFANGTHEFE, *Utfangthefe, Utfangenthefe.* Sax. [from *ut*, out, *fang*, taken, and *thef*, thief.] In Saxon and old English law. A thief from *without*, or from abroad, (*latro extraneus,*) *taken* within a lord's fee, or liberty. *Bract.* fol. 154 b.

The privilege of trying such a thief. *Id.* See *Utfangthefe.*

OUTHOUSE. A small house or building belonging to a messuage or dwelling-house, and usually standing separate from or without it, and at a small distance from it; such as a barn, a stable, a dairy-house, and the like.* This word has been made the subject of considerable construction in the law of burglary. See 1 *Crabb's Real Prop.* 75, § 89. 1 *Russell on Crimes*, 798—799. *Whart. Am. Crim. Law*, §§ 1561—1564.

OUTLAND. [Sax. *utland*, from *ut*, out, and land.] In Saxon law. Land lying without or beyond the demesne lands of a manor, and occupied by the lord's *tenants;* tenemental land; the tenancy. *Spelman*, voc. *Inland.*

OUTLAW. [from Sax. *utlagh, utlaughe;* L. Lat. *utlagatus, exlex.*] In English law. One who is put *out* of the *law*, (*extra legem positus,*) that is, deprived of its benefit. *Cowell.* Anciently called *frendlesman* (friendless man, or outcast) and *wulfesheofod*, (wolf's head, *caput lupinum,*) being liable to be killed like a wild beast. See *Caput lupinum.* In modern law, the word has a much less intense meaning; importing, however, the forfeiture of property and loss of civil rights. See *Outlawry.*

To OUTLAW. [L. Lat. *utlagare, exlegare.*] In practice. To put out of the law, or out of the protection of the law. See *Utlagare.*

OUTLAWRY, *Outlary.* [L. Lat. *utlagaria;* L. Fr. *utlagarie.*] In practice. The being put out of the law; the state of being put out of the law.

The process of putting a person out of the protection of the law, both in regard to his property, and to some extent as to his person. A proceeding adopted against a defendant who has absconded and cannot be found; its ultimate object in civil cases being to obtain effectual access to his property, which becomes forfeited and may be seized and sold. 3 *Steph. Com.* 568. In England, it is effected by issuing writs of exigent and proclamation, under which the defendant is *exacted*, or called and proclaimed at five successive county courts, when if he fail to appear he is adjudged an *outlaw*, and further process is then issued to seize his property. *Id.* 569. In criminal law, outlawry is in the nature of a punishment, and its effect in all cases is to disable the party outlawed from enforcing any of his legal rights in a court of justice. 4 *Steph. Com.* 387, 388. *Cole on Crim. Inform.* 78, 98. Outlawry may be reversed by plea or writ of error according to the case; and recently an outlawry was reversed in the Queen's Bench, after the lapse of one hundred and sixteen years. 7 *Ad. & Ell.* N. S. 216.

Outlawry has been adopted as a proceeding in American practice, though the cases in which it is resorted to, are of comparatively rare occurrence.

OUTPARTERS. A name given in old English statutes to certain depredators from Redesdale, on the northern border of England, who made incursions into Scotland, and brought back to their accomplices at home (called Intakers) any booty they had taken.* *Spelman*, voc. *Intakers.* *Stat.* 9 *Hen.* V. c. 8.

OUTRAGE. L. Fr. [from *outre*, over?] In old English law. Excess; more than is one's due or right. *Et volons que ceux que serrount amercyes pur destresse faite par eux* oustre *le value de lour demaunde —soient en la mercy pour le* outrage; and we will that those who shall be amerced for distress made by them beyond the value of their demand—shall be in mercy for the excess. *Britt.* c. 27. *Si aseun comuner vodra faire* outrage, *and prendre plus que il ne devera;* if any commoner will do excess, and take more than he ought. *Id.* c. 51.

OUTRAGIOUS, *Outraious.* L. Fr. [from *outrage*, q. v.] In old English law. Excessive. *Outragious prise;* an exces-

sive taking; a taking more fees than was due. *Britt.* c. 21. *Est il amerciable pour sa* outraiouse *demaunde;* he is amerciable for his excessive demand. *Id.* c. 53. *Id.* c. 58. *Stat. Westm.* 1, c. 31.

Beyond measure; unusually large. "*Per reason d'un graund,* outrageous, *and sudden flood.*" *Dyer,* 33, Fr. ed. Used also as an English word. "By very great, outrageous and excessive nombre of people." *Stat.* 8 *Hen.* VI. c. 7.

OUTRE. L. Fr. [from Lat. *ultra.*] Beyond. *Outre meer;* beyond sea. One of the essoins in old practice. *Britt.* c. 123.

OUTROPER. O. Eng. A person to whom the business of selling by auction was confined by statute. 2 *H. Bl.* 557.

OUTSETTER. Sc. Publisher. 3 *State Trials,* 603.

OUTSUCKEN MULTURES. In Scotch law. Out-town multures; multures, duties or tolls paid by persons voluntarily grinding corn at any mill to which they are not *thirled,* or bound by tenure. 1 *Forbes' Inst.* part 2, p. 140. *Bell's Dict.* voc. *Multures.*

OVE. L. Fr. With. *Kelham.* L. Fr. *Dict.* This word, like the English "with," is used in the old books in the sense of "for." "Yaxley qui fuit *ove* le plaintiff." *Keilw.* 43. *Judgment fuit done* ove *le plaintiff;* judgment was given with the plaintiff. *Dyer,* 57 b. *De consilio* ove *le deft. Id.* 38.

OVEL, *Owel.* L. Fr. Equal. *Ovelment;* equally. *Litt.* sect. 210.

OVELTY. In old English law. Equality. *Ovelty* of services. *Finch's Law,* b. 2, c. 6. See *Owelty.*

OVER is used in the old books in the designation of places. *Overdale* and *Netherdale. Keilw.* 167.

OVERHAUL. To inquire into; to review; to disturb. "The merits of a judgment can never be *overhauled* by an original suit." Eyre, C. J. 2 *H. Bl.* 414.

OVERHERNISSA. L. Lat. [Sax. *oferherniss,* from *ofer,* over, and *hyran,* to hear.] In Saxon law. Contempt; contumacy; despite. *Spelman.* Contempt of court, or neglect of duty. The forfeiture for such offence. *LL. Gul. Conq.* l. 41, note. Sometimes written *overseuness,* and *oversamessa. Id.*

OVERLIVE. To survive; to live longer than another. *Finch's Law,* b. 1, c. 3, num. 58. 1 *Leon.* 1.

OVER-LORD. In Scotch law. A feudal superior. *Skene de Verb. Sign.* voc. *Recognition.*

OVERSMAN. In Scotch law. An umpire. 1 *Kames' Equity,* 290. *Bell's Dict.*

OVERT, *Overte, Ouverte.* L. Fr. and Eng. Open. Pound-overt; an open or uncovered pound. 3 *Bl. Com.* 12. Market *overt;* open market. 2 *Id.* 449. *Lettres ouvertes;* open letters; letters patent, (q. v.)

OVERT ACT. [L. Lat. *apertum factum.*] In criminal law. An open, manifest act from which criminality may be implied. *Brande.* An open act, which must be manifestly proved. 3 *Inst.* 12.

OVERVERT. In old English law. High wood. See *Vert.*

OVES. Lat. [pl. of *ovis.*] Sheep. In the civil law. Under a bequest of sheep, (*ovibus*) lambs and rams were not included. *Dig.* 32. 65. 7. *Id.* 32. 81. 4. But under the name of a flock of sheep (*ovium grege*) both were included. *Id.* 32. 81. 5.

OVESQUE. L. Fr. With. *Litt.* sect. 240. *Britt.* c. 38.

For. *Il voile av' argue* ovesque *le lease;* he would have argued for the lease. *Dyer,* 126 b.

OVILE. Lat. In old English law. A sheep-fold. *Fleta,* lib. 2, c. 76, § 4.

OWEL, *Owele.* L. Fr. [from Lat. *æqualis.*] Equal. *En* owele *mayn;* in equal hand. *Britt.* c. 39. *Owelment;* equally. *Id.* c. 119.

OWELTY. In old English law. Equality. "*Owelty* of partition." *Co. Litt.* 9 b. A half-French word, sometimes written *ovelty* and *ovealty. Cowell.*

OWLING. In English law. The offence of transporting wool or sheep out of the kingdom; so called from its being usually carried on in the night. 4 *Bl. Com.* 154. Now no offence. *Stat.* 5 Geo. IV. c. 47. 4 *Steph. Com.* 291, note.

"OWNER," in the Ohio mechanics' lien law, held not to be limited in its meaning to an owner of the fee, but to include, also, an owner of a leasehold estate. 4 *Ohio St. R.* 101.

OXGANG. [Scotch, *oxengate;* from *ox,* and Sax. *gang,* a going; L. Lat. *bovata.*] In old English law. As much land as an ox could till. *Co. Litt.* 5 a. A measure of land of uncertain quantity. In Scotland, it consists of thirteen acres. *Spelman. Cowell.* See *Bovata.*

OXON'. An abbreviation of *Oxonia,* Oxfordshire. 1 *Inst. Cler.* 28.

OYEL, *Oyell, Oyl.* L. Fr. In old records. Yes. *Yearb.* P. 1 Edw. III. 12, 18. T. 3 Edw. III. 14. *Oyell syr;* yes, sir. *Kielw.* 147. *Oyl, certes.* P. 10 Edw. III. 61.

OYER, *Oier, Oir.* L. Fr. [from Lat. *audire*, to hear.] To hear. *Oyes*, (q. v.;) hear you. *Oyez*, (q. v.;) hear ye. *Oyant;* hearing. *Litt.* sect. 240. *T. Jon.* 163. *Oy, oys;* heard. *Britt.* c. 24. *Oy crier;* heard to cry. *Id.* c. 51.

To audit. *Auditors* d'oyer *l'accompt. Yearb.* T. 9 Hen. VI. 32.

OYER. L. Fr. and Eng. [L. Lat. *auditus.*] In old practice. Hearing; the hearing a deed read, which a party sued on a bond, &c. might pray or demand, and it was then *read* to him by the other party; the entry on the record being, *et ei legitur in hæc verba*, (and it is read to him in these words.) *Steph. Pl.* 67, 68. 3 *Bl. Com.* 299. 3 *Salk.* 119.

In modern practice. A *copy* of a bond or specialty sued upon, given to the opposite party, in lieu of the old practice of *reading it.*

OYER ET TERMINER. L. Fr. To hear and determine. *A* oyer et terminer *toutes quereles;* to hear and determine all complaints. *Britt.* fol. 1. *De oyr et determiner. Art. sup. Cart.*

OYER AND TERMINER. A half French phrase applied in England to the assizes, which are so called from the commission of *oyer and terminer* directed to the judges, empowering them to "inquire, *hear and determine*" all treasons, felonies and misdemeanors. 4 *Bl. Com.* 269, 270. 4 *Steph. Com.* 333. This commission is now issued regularly, but was formerly used only on particular occasions, as upon sudden outrage or insurrection in any place. *Stat. Westm.* 2, c. 29. *F. N. B.* fol. 110 B. *Cowell.*

In some of the United States, the higher criminal courts are called courts of *oyer and terminer.*

OYES. L. Fr. [from *oyer*, q. v.] Hear; hear you, (in the singular.) *Ceo* oyes *vous home;* hear this, you man. *Britt.* c. 22.

OYEZ. L. Fr. [from *oyer*, q. v.] Hear ye. The introductory word of proclamations made by the criers of courts, retained from the old French form, but most unmeaningly pronounced, (as though it were English,) *O yes.* 4 *Bl. Com.* 340, note. "Clerk of Cr. 'Crier, make an *O yes.*' Cr. O yes! You good men that are impannelled," &c. 7 *How. St. Trials*, 2, 3, 161.

In American courts, the English "Hear ye," is commonly employed.

P.

PACARE. L. Lat. In old records. To pay. 1 *Mon. Angl.* 384. *Pacatio;* payment. *Matt. Paris.* A. D. 1248. *Cowell.*

PACT. [Lat. *pactum.*] An agreement. This word is rarely used alone in English, except as the translation of the Lat. *pactum*, (q. v.) A pact is, in strictness, not a contract.

PACTIO. Lat. [from *pangere*, to strike.] In the civil law. A bargaining or agreeing, of which *pactum*, (the agreement itself,) was the result. *Calv. Lex.* It is used, however, as the synonyme of *pactum.*

PACTO. Span. [from Lat. *pactum*, q. v.] In Spanish law. A promise. *White's New Recop.* b. 1, tit. 6, c. 1, § 1.

PACTUM. Lat. [from *pangere*, to strike.] In the civil law. A pact. An agreement or convention without specific name, and without consideration, which, however, might, in its nature, produce a civil obligation, (*conventio destitutâ nomine et causâ, quæ obligationem civilem suâ naturâ producere possit.*) *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 775. A pact was distinguished from a *contract*, (*contractus,*) which had a specific name or present consideration, and carried with it a civil obligation, both being species of *conventio*, (convention,) which was the general term. *Id.* §§ 773—776. *Do ut des* (I give that you may give) was a contract. *Dabo ut des* (I will give that you may give) was a pact. *Calv. Lex.* An action lay upon a contract, but not on a pact. *Id.*

Pacta conventa, quæ neque contra leges, neque dolo malo inita sunt, omni modo observanda sunt. Compacts which are not against law, nor entered into with a fraudulent design, are in all respects to be observed. *Cod.* 2. 3. 39.

Pacta privata non derogant juri communi. Private agreements cannot derogate from common right (or law.) 7 *Co.* 23 b, *Butt's case.* Parties cannot charge a thing with rent which is not chargeable by the law. *Id. ibid.* Otherwise expressed, **Pactis privatorum juri publico non derogatur.** 4 *Cl. & Fin.* 241. *Broom's Max.* [544.]

Pacta quæ contra leges constitutionesque, vel contra bonos mores fiunt, nullam vim habere, indubitati juris est. That contracts which are made against law or against good morals, have no force, is a principle of undoubted law. *Cod.* 2. 3. 6.

Pacta quæ turpem causam continent non sunt observanda. Agreements founded upon an immoral consideration are not to be observed. *Dig.* 2. 14. 27. 4.

PAGA. Span. In Spanish law. Payment. *Las Partidas*, part 5, tit. 14, l. 1. *Pagamento;* satisfaction.

PAIARE. L. Lat. In old statutes. To pay. *Paiavit;* (he) paid. *St. Westm.* 2, c. 41.

PAIN, *Peyne.* [Lat. *pœna.*] A penalty. "To incur a *pain;*" "to pay a *pain.*" 1 *Leon.* 203. "Under pain," "pains and penalties," are expressions still used.

PAINE (or PEINE) FORT ET DURE. L. Fr. [L. Lat. *pœna fortis et dura.*] In old English law. Literally, strong and hard or severe punishment. A dreadful punishment inflicted upon those who, being arraigned of felony, stood obstinately mute and refused to plead, or put themselves upon the country. 4 *Bl. Com.* 324, 325. It is called in Britton, penance, (*penaunce*, q. v.) and in the statute of Westminster 1, (c. 12,) *prison fort et dure*, which Blackstone (*ub. sup.*) considers as the proper and original expression. See *Barringt. Obs. Stat.* 82—87.

This punishment, which was vulgarly called *pressing to death*, is thus minutely described by Staundford, as quoted in Cowell: "He shall be sent back to the prison whence he came, and laid in some low dark house, where he shall lie naked on the earth, without any litter, rushes or other clothing. And he shall lie upon his back, with his head covered and his feet, and one arm shall be drawn to one quarter of the house with a cord, and the other arm to another quarter, and in the same manner let it be done with his legs; and let there be laid upon his body iron and stone, as much as he may bear, or more; and the next day following he shall have three morsels of barley bread without drink, and the second day he shall have drink three times, as much at each time as he can drink, of the water next unto the prison, except it be running water, without any bread: And this shall be his diet till he die." *Staundf. Pl. Cor.* lib. 2, c. 60. See a case in which it was ordered, *Keilw.* 70.

PAIS, *Pays.* L. Fr. [L. Lat. *patria.*] In old English law. Country; the country; a jury, as coming from the country or neighborhood. 3 *Bl. Com.* 359. Trial *per pais;* trial by the country, that is, by jury. *Id.* 349. See *Pays. De faire vener* pais *à certein jour;* to cause a jury to come at a certain day. *Yearb.* M. 5 Edw. III. 131. See M. 8 Edw. III. 36.

The word is still constantly used in the books, in the phrase *in pais*, (q. v.)

Issue (to the country.) *Et sur ceo* pais *se joint;* and upon this issue was joined. *Yearb.* M. 8 Edw. III. 5.

PAIX. L. Fr. In old practice. Peace; the peace or concord in a fine of lands. See *Peace.*

PALACE COURT. In English law. A court of legal jurisdiction, held in the borough of Southwark. See *Marshalsea.*

PALAM. Lat. In the civil law. Openly; in the presence of many, (*coram pluribus.*) *Dig.* 50. 16. 33.

PALATIUM. Lat. A palace. The emperor's house in Rome was so called from the *Mons Palatinus* on which it was built. *Adam's Rom. Ant.* 613.

PALATIUM. L. Lat. In old English law. A paling; a fence. *Fleta*, lib. 4, c. 18, § 1.

PALEA. Lat. Chaff. A canon said to be so called by Gratian. 2 *How. St. Trials*, 1167, 1172. But Sir Henry Spelman argued it might be a Latinized form of the Gr. παλαια, old or ancient. *Id.* 1172, 1173.

PALEFRETUM. L. Lat. In old English law. A palfrey. *Fleta*, lib. 2, c. 73, § 19.

PALINGMAN. In old English law. A merchant denizen; one born within the English *pale. Blount.*

PALICEA, *Pallicia.* L. Lat. In old records. A paling or paled fence. *Cowell. Blount.*

PALLACIUM. L. Lat. In old English law. Palace; a palace. *Mem. in Scacc.* H. 22 Edw. I.

PALMATA. L. Lat. In old records. A handful. *Blount.*

PANDECTS. [Lat. *Pandectæ;* Gr. Πανδεκται, from πᾶν, all, and δέχομαι, to receive.] A compilation of Roman law in fifty books, published A. D. 533, consisting of selections from the writings of the old jurists, made by Tribonian and sixteen associates, under the direction of Justinian, and constituting one of the four principal

divisions of the *Corpus Juris Civilis*. It is otherwise called the Digests, (Lat. *Digesta*, q. v.) and was intended to form a general repertory for the *jus civile*, as the Code furnished for the *constitutiones*. 1 *Mackeld. Civ. Law.* 51—54, §§ 62—64. 1 *Kent's Com.* 539—541. See *Dig.* proœm. *De Conf. Dig.* § 1. *Cod.* 1. 17. 1. 12.

The Pandects are now usually cited by English and American jurists, by numbers, thus: *Dig.* 23. 3. 5. 6, meaning, book 23, title 3, law or fragment 5, section 6; otherwise, D. 23. 3. fr. 5. § 6; or fr. 5. § 6. D. 23. 3. The former mode of citing was by titles and initial words, thus: D. de jure dotium, L. profectitia, § si pater; or vice versa, L. profectitia, § si pater, D. de jure dotium. From this afterwards originated the following: L. profectitia 5, § si pater 6, D. de jure dotium; and lastly, L. 5. § 6. D. de jure dotium, which is the form now commonly used by the continental jurists of Europe. 1 *Mackeld. Civ. Law*, 54, 55, § 65. And see *Taylor's Civ. Law*, 24, 25.

PANDOXARE. L. Lat. In old records. To brew. *Cowell.*

Pandoxatrix; an ale-wife; a woman that both brewed and sold ale and beer. *Id.*

PANEL, *Panell*, *Pannel.* [L. Lat. *panella*, *panellum.*] In practice. A list of the names of jurors returned by the sheriff for the trial of a cause, which, in England, is written on an oblong piece of parchment annexed to the jury process. 3 *Bl. Com.* 353.

According to Lord Coke, *panel* is an English word, and signifies a little part; for a *pane* is a part, and a *panel* is a little part. *Co. Litt.* 158 b. And see *Fortescue de L. L. Angliæ*, c. 25, note. But Spelman considers it to mean a sheet or page, (*schedula vel pagina,*) or properly a little page, (*pagella*) and refers to two old Anglo-Latin Dictionaries which give this meaning.

PANEL, *Pannel.* In Scotch law. A prisoner who is arraigned for trial at the bar of a criminal court. 2 *Forbes' Inst.* 336.

PANIS. Lat. In old English law. Bread; loaf; a loaf. *Fleta*, lib. 2, c. 9.

PANNAGE, *Pawnage.* [L. Lat. *pannagium.*] In old English law. Food that swine fed on in the woods, as mast of beech, acorns, &c. which some called *pawns.* *Cowell.* *Barringt. Stat.* 36, note [*c.*]

A duty for feeding in woods. *Fleta*, lib. 2, c. 41, § 31.

PANNUS. L. Lat. In old English law. Cloth. *Una latitudo* pannorum *tinctorum;* one width of dyed cloths. *Magna Charta*, 9 Hen. III. c. 25. *Fleta*, lib. 2, c. 12, § 10.

PAPER BOOKS. In English practice. Copies of the proceedings on an issue in law or demurrer, of cases, and of the proceedings on error, prepared for the use of the judges, and delivered to them previous to bringing the cause to argument. 3 *Bl. Com.* 317. *Arch. New Pr.* 353. 5 *Man. & Gr.* 98.

The term is used in Pennsylvania practice. *Reg. Gen.* Dec. 17, 1846. 4 *Penn. St.* (Barr's) *R.* 263.

PAPER. In English practice. The list of causes or cases intended for argument, called "the paper of causes." 1 *Tidd's Pr.* 504.

PAPER DAYS. In English practice. Days for going through the paper of causes entered for argument. 1 *Tidd's Pr.* 504.

ΠΑΠΠΟΣ, *πάππος.* Gr. In the civil law. Grandfather. *Nov.* 18, c. 3.

PAR. Lat. Equal; like. **Par in parem imperium non habet.** An equal has no command over his equal. *Jenk. Cent.* 174, case 48. One justice of peace cannot commit another justice of peace for breach of the peace. *Id. ibid.*

PAR OF EXCHANGE. In mercantile law. The precise equality or equivalency of any given sum or quantity of money in the coin of one country, and the like sum or quantity of money in the coin of any other foreign country into which it is to be exchanged, supposing the money of each country to be of the precise weight and purity fixed by the mint standard of the respective countries. *Story on Bills*, § 30, and note.

PAR. L. Lat. In old English law. A pair. *Par calcarium deauratorum;* a pair of gilt spurs. *Reg. Orig.* 2.

PAR. L. Fr. By. Par *poy et* par *poy;* by little and little. *Britt.* c. 51.

PAR DELICTUM. Lat. Equal guilt. "This is not a case of *par delictum;* it is oppression on one side and submission on the other; it never can be predicated as *par delictum* when one holds the rod and the other bows to it." Lord Ellenborough, 6 *M. & S.* 165. See **Cum par delictum, &c. In pari delicto, &c.**

PARAGE. L. Fr. [L. Lat. *paragium,*

from *par*, equal.] In old English law. Equality of condition, blood or dignity. See *Disparage.*

Equality of lands in the partition of an inheritance. *Spelman.* Tenure by *parage* was where several persons, descended from the same ancestor, held equal portions of an inheritance. *Blackst. L. Tr.* 30.

In feudal law. Equality of condition between persons holding unequal portions of a fee, as between younger sons holding the smaller part and the elder son holding the largest. *Calv. Lex.* And see *Guyot, Inst. Feod.* ch. 18.

PARAMOUNT. [from Fr. *par*, by, and *amount*, above, or *amounter*, to ascend.] In English law. Above; over; over all. *Paramount especifie;* above specified. *Kelham.*

A term applied to the supreme lord of a fee, between whom and the tenant, or tenant *paravail*, there was an intermediate or *mesne* lord. *F. N. B.* 135 M. 3 *Bl. Com.* 234. *Litt.* sect. 144. *Cowell.*

Upwards. The correlative of *paravail*, downwards. The meaning of both terms is well illustrated in the following passage: "An inheritance in land descends downwards in the direct line, *paravail* (that is, below) the purchaser, and if there is none in that line, then in the collateral or transversal line paravail, and if there is none such paravail, then it shall go to the heirs in the collateral or transversal line ascending *paramount*, (that is, upwards.") *Plowd.* 449.

PARAPHERNA. Græco-Lat. [Gr. παραφέρνη, from παρά, besides, and φερνη, dowry.] In the Roman law. Goods which a woman brought to her husband *besides* her *dos*, or portion. *Dig.* 23. 3. 9. 3. See *Calv. Lex.*

In Fleta, this word is written *paraferna*, and called a species of dower. *Fleta*, lib. 5, c. 23, § 6.

PARAPHERNALIA. Græco-Lat. [from Gr. παρά, besides, and φερνη, dowry.] See *Parapherna. Calv. Lex.*

In English law. Those goods which a woman is allowed to have, after the death of her husband, *besides* her *dower*, consisting of her apparel and ornaments, suitable to her rank and degree. 2 *Bl. Com.* 436. See 1 *Williams on Exec.* 643—649.

PARATITLA. Græco-Lat. [Gr. παράτιτλα.] In the civil law. Notes or abstracts prefixed to titles of law, giving a summary of their contents. *Cod.* 1. 17. 1. 12.

PARAVAIL, *Peravaile.* [L. Fr. *paraval*, from *par*, and *avaler*, to descend, to be under.] In English law. Below; at the bottom. Paraval *les pountz;* below the bridges. *Kelham.* Tenant *paravail* was the *lowest* tenant of land, holding of a mesne lord who himself held of a lord paramount. *Cowell.* 2 *Bl. Com.* 60.

Downwards. *Plowd.* 449.

The etymology of the word is clearly shown in the use of the Fr. *paraval*, and by the correlative *paramount*, (q. v.) but Lord Coke prefers deriving it from *avayl* or *avail*, in the sense of profit. 2 *Bl. Com.* 60.

PARAVEREDUS, *Parafredus.* L. Lat. In old European law. A post-horse, employed in the public service. *L. Boior.* tit. 1, c. 14, § 4. *Marculph.* lib. 1, form. 11. The *paravaredi* were horses furnished for the king's use by the freemen under the monarchy of the Franks. *Esprit des Lois*, liv. 30, c. 13.

PARCEL. [L. Lat. *particula.*] In conveyancing. A word used as synonymous with *piece:* "All that certain lot, *piece* or *parcel* of land." It seems obviously formed from *parcella*, (q. v.) which signified a small piece.

PARCELLA. L. Lat. [qu. *parsella*, dimin. of *pars*, a part?] In old records. A small piece. *Cowell. Blount.*

In old pleadings. A parcel or bundle. 2 *Stra.* 809.

PARCENER. L. Fr. and Eng. [L. Lat. *particeps, parcennarius.*] A co-heir of lands; otherwise termed *coparcener*, (q. v.) One who holds an estate with others in coparcenary, (q. v.) 2 *Bl. Com.* 187.

Parceners are so called, according to Littleton, because they may be constrained to make partition. *Litt.* sect. 241. Cowell makes the word to be *quasi parcellers.* It is used by Britton (c. 71,) in its present form.

PARCHEMIN, *Parchemyn, Pargemin.* L. Fr. [from Lat. *pergamena.*] Parchment; a parchment; a manuscript on parchment. *Kelham.*

PARCUS. L. Lat. [from O. Fr. *parc*, an enclosed place.] In old English law. A pound; a place for confining cattle found doing damage. *Spelman.* The use of the word, in this sense, is shown by Spelman to have been introduced into England by the Saxons, from the continent of Europe; it distinctly occurring in the laws of the Ripuarians, as in the following passage: *Si quis peculium alienum, in messe adprehensum, ad* parcum *minare non permiserit*, 15

sol. culpabilis judicetur; if any one shall not permit a strange beast found in one's harvest (or grain field) to be driven to the *pound*, he shall be condemned to forfeit fifteen *solidi*. *L. Ripuar.* tit. 82, § 2.

A park; an enclosed place for the preservation of deer. *Spelman.* *Fleta*, lib. 1, c. 24, § 11. See *Park.*

PARDONARE. L. Lat. In old English law. To pardon. *Fleta*, lib. 1, c. 28, §§ 1, 2. *Pardonavit;* (he) pardoned. *Id. ibid.*

PARDONATIO. L. Lat. [from *pardonare*, q. v.] In old English law. Pardon; a pardon. *Fleta*, lib. 1, c. 28, § 1.

PARENS. Lat. and L. Lat. [Fr. *parent.*] A parent; a father or mother. This was the original and proper sense of the word.

In the civil law. Any relative in the direct ascending line, whether male or female; a progenitor. *Appellatione* parentis *non tantum pater, sed etiam avus et proavus, et deinceps omnes superiores continentur; sed et mater et avia et proavia;* under the name of parent are included not only a father, but also a grandfather and greatgrandfather; and also a mother, grandmother and greatgrandmother. *Dig.* 50. 17. 51. *Id.* 2. 4. 4. 2, 3.

In feudal and old English law. A relative by blood; a cousin, (*cognatus, consanguineus.*) *Feud. Lib.* 1, c. 24. *Spelman.* Parens *est nomen generale ad omne genus cognationis;* parent is a general name for every kind of relationship. *Co. Litt.* 80 b. *Litt.* sect. 108. *Mag. Cart. Joh.* c. 50. In the statute of Marlbridge (c. 17,) it is translated *a friend.*

PARENS PATRIÆ. Lat. Parent of the country. In England, the king, as *parens patriæ*, has the general superintendence of all charities. 3 *Bl. Com.* 427.

In the United States, the state, as a sovereign, is the *parens patriæ.* 9 *Howard's R.* 55. 17 *Id.* 384, 393. See 4 *Kent's Com.* 508, note. 2 *Story's Eq. Jur.* § 1189.

PARENT. L. Fr. A kinsman or relative. *Britt.* c. 31. *LL. Gul. Conq.* l. 45.

PARES. L. Lat. In old English law. Equals; peers; equals in rank or dignity. *Magna Charta*, 9 Hen. III. c. 14. *Id. Johan.* c. 21. The freeholders of a neighborhood. 2 *Bl. Com.* 315. See *Coram paribus.*

PARES CURIÆ, (or CURTIS.) L. Lat. In feudal and old English law. Peers of the court. A lord's tenants who sat in his court to try their fellow tenants. 2 *Bl. Com.* 54. *Feud. Lib.* 1, titt. 2, 3, 4. *Lib.* 2, titt. 2, 16—19, *et passim.* See *Peers.*

The barons who sat in the king's courts for the trial of their peers. 2 *Bl. Com.* 54. *Spelman.*

PARES REGNI. L. Lat. Peers of the realm. *Spelman.* See *Peers.*

PARFOURNY, *Parfurni.* L. Fr. Perfected; completed. A term applied to a judgment. *Britt.* cc. 2, 106, 110.

PARIARE. L. Lat. [from *par*, equal.] In old Scotch law. To make equal. *Pariare rationes;* to square accounts. *Skene de Verb. Sign.* voc. *Scaccarium.*

Paribus sententiis reus absolvitur. Where the opinions are equal, [where the court is equally divided] the defendant is acquitted. 4 *Inst.* 64. Called by Lord Coke, "an old rule."

PARI PASSU. Lat. By an equal progress; equably; rateably; without preference. *Coote on Mortgages*, 56.

PARICLA, *Paricula.* L. Lat. [from *par*, alike.] In old European law. A charter or deed (*charta paricula*) which was like another in all respects; a duplicate. *Marculph.* lib. 1, form. 38. These *pariculæ* are supposed by Spelman to have been the origin of the English *indentures.*

PARIENTES. Span. [from Lat. *parens*, q. v.] In Spanish law. Relations. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

PARIES. Lat. In the civil law. A wall. *Paries est, sive murus, sive maceria est. Dig.* 50. 16. 157.

PARIES COMMUNIS. Lat. In the civil law. A common wall; a party wall. *Dig.* 29. 2. 39.

PARISH. [L. Lat. *parochia;* L. Fr. *parocke, paroisse*, from Gr. παροικία, a neighborhood.] In English law. A circuit of ground, committed to the charge of one parson or vicar, or other minister having cure of souls therein. 1 *Bl. Com.* 111.—The precinct of a parish church, and the particular charge of a secular priest. *Cowell.*—An ecclesiastical division of a town or district, subject to the ministry of one pastor. *Brande.*

In American law, parishes are recognized. As to their nature, and how distinguished from churches, see Baker *v.* Fales, 16 *Mass. R.* 488. Parker, C. J. *Id.* 492, 499, *et seq.* In some of the states, they constitute civil divisions corresponding to counties.

PARIUM JUDICIUM. L. Lat. In

old English law. Judgment of the peers; trial by jury. *Magna Charta*, c. 30.

Spelman has traced this phrase to the laws of the Lombards, and the following passage extracted by him has a striking similarity to the celebrated provision of Magna Charta: *Præcipimus et firmiter statuimus, ut nullus miles, &c. sine certa et convicta culpa, suum beneficium perdat, nisi secundum consuetudinem antecessorum nostrorum et* judicium parium *suorum;* we command and firmly ordain that no military tenant, &c. without an offence distinctly charged and proved, shall lose his benefice (or fee) unless according to the custom of our ancestors, and the judgment of his peers. *LL. Longob.* lib. 3, tit. 8, l. 4.

PARK. [Lat. *parcus*, from O. Fr. *parc*, an enclosure.] In English law. A tract of enclosed ground privileged for keeping wild beasts of the chase, particularly deer; (*damarum vivarium.*) *Spelman.*—An enclosed chase, extending only over a man's own grounds. 2 *Bl. Com.* 38. See *Chase.*

PARK-BOTE. In old English law. The being quit of enclosing a park or any part thereof. 4 *Inst.* 308.

PARLE HILL, or PARLINGE HILL. In old records. A hill where courts were anciently held. Spelman speaks of the term as still retained in Ireland. *Spelman*, voc. *Parlamentum.* See *Moot hill.*

PARLER. L. Fr. To speak. *Parlance;* speech. *L. Fr. Dict. Parlour;* a speaker. *Kelham.*

PARLIAMENT. [L. Lat. *parliamentum, parlamentum, parlementum;* from Fr. *parler*, to speak.] The supreme legislative assembly of Great Britain and Ireland, consisting of the King or Queen, and the three estates of the realm, viz. the lords spiritual, the lords temporal, and the commons. 1 *Bl. Com.* 153. See *Parliamentum.*

The term *parliament* is first met with in 42 Hen. III. but was not used in its modern sense until the reign of Edward I. *Report of Lords' Comm.* 1823, quoted 1 *Spence's Chancery*, 328, note. See 1 *Chitt. Bl. Com.* 147, and note. *Barringt. Obs. Stat.* 77.

PARLIAMENTUM. L. Lat. In old English law. Parliament. The supreme council or legislative assembly of the realm of England; the highest court of the realm. *Co. Litt.* 109 b. 4 *Inst.* 2. *Fortescue de L. L. Angliæ*, c. 18. *Fleta*, lib. 2, c. 64, § 1. *Id.* lib. 2, c. 2, § 1.

PARLIAMENTUM INDOCTUM. L. Lat. Unlearned or lack-learning parliament. A name given to a parliament held at Coventry in the sixth year of Henry IV. under an ordinance requiring that no lawyer should be chosen knight, citizen or burgess; "by reason whereof," says Sir Edward Coke, "this parliament was fruitless, and never a good law made thereat." 4 *Inst.* 48. 1 *Bl. Com.* 177.

PARMI, *Parmy, Parme.* L. Fr. By. Parmy *sa bouche;* by his mouth. *Britt.* c. 22. Sometimes written as two words, *per my*, (q. v.)

Through; throughout. Parmi *le realm;* throughout the realm. *Artic. sup. Chart.* c. 1. Parmi *nostre roiaume. Conf. Cartar.* 25 Edw. I.

PARNER. L. Fr. To take. *De ceux queux* parnent *outragious tolnet';* of those who take excessive or exorbitant toll. *Stat. Westm.* 1, c. 31.

PARNOUR. L. Fr. [from *parner*, q. v.] A taker. *Artic. sup. Chart.* c. 2.

PAROCH. O. Sc. [from Lat. *parochia*, q. v.] In Scotch law. Parish; a parish. 1 *Bell's Ap. Cas.* 595.

PAROCHE, *Parocke.* L. Fr. [from Lat. *parochia*, q. v.] A parish. *Car en une ville purrount estre plusurs* parockes, *et en une* paroche *plusurs maners;* for in one vill (or town) there may be several parishes, and in one parish several manors. *Britt.* c. 50.

PAROCHIA. L. Lat. [from Gr. παροικια, a neighborhood.] In old English law. A parish. *Fleta*, lib. 4, c. 15, § 9. *Id.* lib. 6, c. 51, § 4. Parochia *est locus in quo degit populus alicujus ecclesiæ;* a parish is the place in which the people of [attending] any church reside. 5 *Co.* 67 a, *Jeffrey's case.* Formerly applied to a diocese or episcopal district. *Cowell*, voc. *Parochianus.* The word occurs in this sense, in a charter granted by Ceolwulf, king of the Mercians, A. D. 872. *Spelman.*

PAROL, *Parole, Parolle.* L. Fr. A word. *Paroles, parolx;* words. *Britt.* c. 120. *Litt.* sect. 1.

A plaint, plea or pleading. *Britt.* c. 27, 120. The pleadings in a cause. 3 *Bl. Com.* 293. A suit. *Stat. Westm.* 1, c. 25.

PAROL. Oral; that which is given, or done by word of mouth, as *parol* evidence, (q. v.)

Not expressed by deed or specialty, as a *parol* contract, (q. v.)

PAROL CONTRACT. Literally, a ver-

bal contract; but the term is not confined to this meaning. A written contract not under seal; a simple contract. 7 *Term R.* 350, note. *Chitty on Contracts*, 4, (Perkins' ed. 1848.)

Any contract not of record, nor under seal, whether it be written or verbal. *Story on Contracts*, § 10.

PAROL EVIDENCE. Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence, given by witnesses in court. 3 *Bl. Com.* 369.

PAROL DEMURRER. In practice. A staying of the pleadings; a suspension of the proceedings in an action, during the non-age of an infant. 3 *Bl. Com.* 300. Abolished by statute 11 Geo. IV. and 1 Will. IV. c. 47, § 10. See *Demur.*

PAROL PROMISE. A simple contract; a verbal promise. 2 *Steph. Com.* 109. See *Parol contract.*

PAROLS DE LEY. L. Fr. Words of law; technical words. *Yearb.* P. 8 Edw. III. 24.

Parols font plea. Words make the plea. 5 *Mod.* 458. Sir H. Spelman, arg. 2 *How. St. Trials*, 1178. *Est un maxime en nostre ley*, parols font ple. Yelverton, arg. *Yearb.* M. 19 Hen. VI. 48.

PARRICIDIUM, *Paricidium.* Lat. [from *parens*, parent, and *cædere*, to kill.] In the civil law. Parricide; the murder of a parent. *Dig.* 48. 9. 9.

PARS. Lat. A part. *Nemo aliquam* partem *recte intelligere possit, antequam totum iterum atque iterum perlegerit;* no one can rightly understand any part, until he has read the whole through again and again. 3 *Co.* 59 b. Said of the construction of a statute.

Parte quacunque integrante sublata, tollitur totum. Any integral part being taken away, the whole is taken away. 3 *Co.* 41 a, *Ratcliff's case.* A maxim quoted from Aristotle, (lib. *Topicorum,*) with the qualification that *pars integrans* be understood to mean a necessary part, and applied to the incapacity of the half blood to inherit, "because he wants one of the bloods which should make him heritable." *Id. ibid.*

PARS ENITIA. L. Lat. [L. Fr. *l'eigne part.*] In old English law. The eldest's part or share; the privilege or portion of the eldest daughter in the partition of lands by lot. See *Æsnetia.*

PARS RATIONABILIS. L. Lat. In old English law. Reasonable part or portion; that share of a man's goods which the law gave to his wife and children. 2 *Bl. Com.* 492. *Salvis uxori ipsius et pueris suis,* rationabilibus partibus *suis;* saving to his wife and children their reasonable parts. *Mag. Cart.* 9 *Hen.* III. c. 18. *Id. Joh.* c. 26.

PARS. Lat. A party (to a suit.) Pars *actrix;* a party plaintiff. *Reg. Orig.* 9 a. *Fleta*, lib. 2, c. 63, § 11. *Clerke's Prax. Cur. Adm.* tit. 4. Singularly translated in Dyer, (179 a,) *part actress. Pars agens.* 3 *St. Trials*, 863.

Pars rea; a party defendant. *Stat. Marlbr.* c. 13.

PARS GRAVATA. L. Lat. In old practice. A party aggrieved; the party aggrieved. *Hardr.* 50. 3 *Leon.* 237.

PARSON. [L. Lat. *persona, parsona;* L. Fr. *persone.*] A parish priest; one that has full possession of all the rights of a parochial church. Sometimes called the rector (governor) of the church, "but the appellation of *parson*," observes Sir William Blackstone, "however it may be depreciated by familiar, clownish and indiscriminate use, is the most legal, most beneficial, and most honorable title that a parish priest can enjoy, because such a one, Sir Edward Coke observes, and he only, is said *vicem seu personam ecclesiæ gerere*," [to represent and bear the person of the church.] 1 *Bl. Com.* 384.

A parson is said to be so called, (*persona,*) because by his *person* the church, which is an invisible body, is represented; and he is in himself a body corporate, in order to protect and defend the rights of the church which he *personates*, by a perpetual succession. *Co. Litt.* 300. 1 *Bl. Com. ub. sup.* Dr. Wooddesson observes of this derivation, that it seems too refined for common adoption and ordinary use, adding that "Le Paroissien," suggested by Dr. Pegge, in his Anecdotes of the English language, seems at least as probable a source, if authorities could be vouched to support it. 1 *Wooddes. Lect.* 186, note.

PARSON IMPARSONEE. L. Fr. [L. Lat. *persona impersonata.*] In English law. A clerk or parson in full possession of a benefice. *Cowell.*

PARSONA. L. Lat. In old English law. Parson; a parson. *Fleta*, lib. 2, c. 65, § 12.

PART AND PERTINENT. In Scotch conveyancing. Formal words correspond-

ing with the English *appurtenances*. *Bell's Dict.*

PARTES FINIS NIHIL HABUERUNT. L. Lat. In old pleading. The parties to the fine had nothing, that is, had no estate which could be conveyed by it. 2 *Bl. Com.* 357. A plea to a fine which had been levied by a stranger. *Id. ibid.* 1 *P. Wms.* 520.

PARTIAL LOSS. In the law of insurance. A degree of damage not amounting to a total loss.* More commonly called *particular average*, (q. v.) *Stevens & Benecke on Average*, 341.

The total loss of a part. *Id.* 342.

PARTIBLE. [L. Lat. *partibilis.*] In old English law. Divisible; divisible among several; divisible among all the sons. *Hale's Hist. Com. Law*, c. 7. Lands in Normandy were of two kinds, viz. partible and non-partible. *Id.* c. 11.

PARTICEPS. Lat. [plur. *participes;* from *pars*, a part, and *capere*, to take.] Literally, a part-taker; a partaker or sharer; one jointly interested with another; an associate or accomplice. See *Particeps criminis.*

In old English law. A part-owner; a parcener. *Sunt plures* participes *quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nulla parte sit defectus;* several parceners are, as it were, one body, in this, that they have one right, and it is necessary that the body be entire, and that there be a defect in no part. *Fleta*, lib. 6, c. 48, § 2. *Co. Litt.* 164 a. *Dicuntur* participes *quasi* partis capaces, *sive* partem capientes, *quia res inter eas est communis, ratione plurium personarum;* they are called *participes* [parceners] as it were *partis capaces*, [capable of taking part,] or *partem capientes*, [taking a part,] because the thing is common between them, in consideration of their being several persons. *Co. Litt.* 164 b. *Bract.* fol. 66 b, 76 b. *Fleta, ub. sup.*

PARTICEPS CRIMINIS. Lat. A sharer, partner, participator or accomplice in [of] crime. Applied to parties both to contracts and offences. 2 *Kent's Com.* 467. 1 *Story's Eq. Jur.* § 302. 1 *Russell on Crimes*, 26. One who is *in pari delicto* with another. Called also *particeps in crimine. Fleta*, lib. 1, c. 38, § 13.

PARTICULA. L. Lat. In old English law. Parcel. *Perkins*, ch. 10, s. 674, 676, 679.

PARTICULAR AVERAGE. In the law of insurance. Every kind of expense or damage short of a total loss, which regards a particular concern, and which is to be borne by the proprietors of that concern alone. *Stevens & Benecke on Average*, (by Phillips,) 341.—A loss borne wholly by the party upon whose property it takes place; so called in distinction from a *general* average, for which different parties contribute. 2 *Phillips on Ins.* 191.

Lord Tenterden has objected to this term as "a very incorrect expression, used to denote every kind of partial loss or damage happening either to ship or cargo from any cause whatever." *Abbott on Ship.* 473. But Mr. Benecke claims that it should be retained, not only as being universally adopted and understood, but also because it is more expressive than the term *partial loss*, which may also convey the idea of the total loss of a part, in which sense it is sometimes used. *Stevens & Benecke on Average*, 342.

PARTICULAR ESTATE. An estate precedent to an estate in remainder. As an estate for years to A. remainder to B. for life; or, an estate to A. for life, remainder to B. in tail. This precedent estate is called the *particular* estate, as being only a small part or *particula* of the inheritance, the residue or remainder of which is granted over to another. 2 *Bl. Com.* 165. 1 *Steph. Com.* 290. 4 *Kent's Com.* 233.

PARTICULAR LIEN. A specific lien on the particular goods in a tradesman's hands, for the value of work done upon them. *Cross on Lien*, 24.—A right to retain a certain chattel from the owner, until a certain claim upon it [growing out of some labor bestowed upon such chattel, or act done in relation to it,] be satisfied. 2 *Steph. Com.* 132.

PARTICULAR TENANT. The tenant of a particular estate. 2 *Bl. Com.* 274. See *Particular estate.*

PARTICULARS. In practice. A written statement, (usually termed a *bill of particulars*,) of the items of a plaintiff's demand, or defendant's set-off, in an action at law. See *Bill of particulars.*

PARTIDA. Span. Part; a part. See *Las Partidas.*

PARTIES. [L. Lat. *partes*, parts.] The persons concerned in any affair, business, contract or proceeding, constituting, in most cases, two sides or *parts* of the trans-

action or proceeding. As in contracts, vendor and vendee, bailor and bailee; in bonds, obligor and obligee; in conveyances, grantor and grantee, mortgagor and mortgagee, lessor and lessee; which in the instrument are specifically arranged in *parts*, being usually designated as "of the first" and "second part," respectively.

In actions, the parties are, by the very nature of the proceedings, arrayed on opposite sides, (*partes*) it being also an invariable rule that there must be *two* parties, and cannot, in form, be more. In the Roman civil law, the parties were designated as *actor* and *reus*. In the common law, they are called plaintiff and defendant; in real actions, demandant and tenant; in equity, complainant or plaintiff and defendant; in Scotch law, pursuer and defender; in admiralty practice, libellant and respondent; in appeals, appellant and respondent, sometimes plaintiff in error and defendant in error; in criminal proceedings, prosecutor and prisoner.

PARTIE. L. Fr. Party; a party. *La partie adversarie;* the adverse party. *Britt.* c. 51.

PARTITIO. Lat. [from *partire*, to divide or sever.] In the civil law. Partition; division. This word did not always signify *dimidium*, a dividing into halves. *Dig.* 50. 16. 164. 1.

PARTITION. [Lat. *partitio*, from *partire*, to divide or sever.] A dividing or severing into parts; the dividing of an estate in which several are jointly interested; the division of an estate in lands held by several, in joint-tenancy, tenancy in common or coparcenary, into separate parts, shares or allotments, according to the respective interests of the parties.

At common law, the established mode of partition was by *writ*, but this in modern times has fallen into disuse, and in England has recently been abolished. 1 *Steph. Com.* 317. In equity, partition may be effected by *bill* filed for that purpose, which is the form of proceeding now generally adopted. *Id. ibid.* 1 *Story's Eq. Jur.* § 646.

In the United States, various modes of making partition have been established by statute. 4 *Kent's Com.* 364, 365, notes.

PARTITION. In conveyancing. A species of primary or original conveyance between two or more joint-tenants, coparceners or tenants in common, by which they divide the lands so held among them in severalty, each taking a distinct part. 2 *Bl. Com.* 323, 324.

PARTNER. [Lat. *socius.*] A member of a partnership; an associate in business under the contract of partnership. See *Partnership.* Partners were called, in old law, *coparceners* and *parting fellows. West's Symbol.* part 1, lib. 2, sect. 510.

PARTNERSHIP, or COPARTNERSHIP. [Lat. *societas, societas negotiatoria;* Fr. *societie;* Span. *sociedad.*] A contract of two or more competent persons, to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions. 3 *Kent's Com.* 23.—A voluntary contract between two or more competent persons, to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits thereof between them. *Story on Partn.* § 2. See other definitions by Puffendorf, Pothier and Domat, cited *ibid. United States Digest*, Partnership. Called, in old law, *society* or *joint-occupying. West's Symbol.* part 1, lib. 2, sect. 509.

The connection founded on such contract, or relation growing out of it, which is also sometimes implied by law, even against the intention of the parties.

PART OWNER. An owner of a part; one who has an interest in a chattel in common with another, or with others.* The term is chiefly applied to the owners of moveable or personal property, and particularly of ships and vessels. *Story on Partn.* 412—417.

PARTUS. Lat. Birth; offspring. Partus *ex legitimo thoro non certius noscit matrem quam genitorem suum;* the offspring of a lawful bed knows not his mother more certainly than his father. *Fortescue de L. L. Angliæ*, c. 42.

Partus sequitur ventrem. The offspring follows the mother; the brood of an animal belongs to the owner of the dam; the offspring of a slave belongs to the owner of the mother, or follows the condition of the mother. A maxim of the civil law, which has been adopted in the law of England in regard to animals, though never allowed in the case of human beings. 2 *Bl. Com.* 390, 94. *Fortescue de L. L. Angliæ*, c. 42. In the United States, the rule of the civil law has been adopted wherever slavery exists. 1 *Hempstead's R.* 483.

PARTY. [L. Fr. *partie;* L. Lat. *pars.*] A person concerned, or having or taking part in any affair, matter, transaction or proceeding, considered individually.

A side or part, composed of one or more individuals. See 5 *Co.* 103 a, *Hungate's case.*

PARTY WALL. [Lat. *paries communis.*] A common wall; a wall common to two adjoining estates; a wall erected on the line between two adjoining estates belonging to different persons, for the use of both estates. See *United States Digest*, Party wall.

PARUM. Lat. Little; but little. **Parum differunt quæ re concordant.** Things differ but little which agree in substance. 2 *Bulstr.* 53.

Parum est latam esse sententiam, nisi mandetur executioni. It is little [or to little purpose] that judgment be given unless it be committed to execution. *Co. Litt.* 289.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum. It profits little to know what ought to be done, if you do not know how it is to be done. 2 *Inst.* 503.

PARUM CAVISSE VIDETUR. Lat. In Roman law. He seems to have taken too little care; he seems to have been incautious, or not sufficiently upon his guard. A form of expression used by the judge or magistrate in pronouncing sentence of death upon a criminal. *Festus*, 325. *Taylor's Civ. Law*, 81. 4 *Bl. Com.* 362, note.

PARVA SERJANTIA. L. Lat. In old English law. Petty serjeanty, (q. v.) *Fleta*, lib. 1, c. 11. Called also *parva serjanteria. Mag. Cart.* 9 Hen. III. c. 27.

PARVUM CAPE. L. Lat. (Little *cape.*) In old English practice. A writ which lay on a tenant's default after appearance in a real action. More commonly called *petit cape*, (q. v.) *Roscoe's Real Act.* 282. *Fleta*, lib. 6. c. 14, § 24.

PASCHA. L. Lat. [L. Fr. *Pasche.*] In old English law and practice. Easter. *De termino Paschæ;* of the term of Easter. *Bract.* fol. 246 b. *A die* Paschæ *in quindecim dies;* from the day of Easter in fifteen days; after fifteen days of Easter. *Reg. Jud.* 36. 3 *Bl. Com.* Appendix, No. iii. sec. 3.

PASCUA SILVA. Lat. In the civil law. A feeding wood; a wood devoted to the feeding of cattle, (*quæ pastui pecudum destinata est.*) *Dig.* 50. 16. 30. 5.

PASCUAGIUM. L. Lat. [from *pascere*, to feed.] In old records. The feeding or pasturing of animals. *Cowell.*

PASS. See *Passport.*

To PASS. In practice. To proceed; to be entered. A verdict or judgment is said "to *pass* for" a party, where it is delivered in his favor. This term is directly taken from the old French *passer*, (q. v.)

To PASS. In conveyancing. To go from one person to another; to be transferred. "The names of things by which they *pass* in assurances." *Hale's Anal.* sect. xxiv. "By what names things pass." *Id.* sect. xxxv.

To convey or transfer. "To *pass* an estate." "Effectual words to *pass* the interest." *Id.* sect. xxxv. "The passing of estates." *Id. ibid.*

PASSAGIUM. L. Lat. [L. Fr. *passage*, from *passer*, to pass.] In old English law. Passage; a passing over sea; a voyage. *Reg. Orig.* 193 b. A term frequently used in the law of essoins, in the days of the Crusades. *Bract.* fol. 339. *Fleta*, lib. 6, c. 8.

A sum paid for being transported over sea, or over a river. *Stat. Westm.* 2, c. 25. *Cowell.*

PASSER. L. Fr. In old practice. To pass; to proceed in order of law. *Et solonc le verdit*, passera *jugement. Et sur tielx verdits* passes *par comune assent.* And according to the verdict, judgment shall pass. And upon such verdicts passed by common assent, &c. *Britt.* c. 51. *Et si l'assise eyt* passe *pur le pleyntyfe;* and if the assise have passed for the plaintiff. *Id.* c. 75. *L'enquest fuist à la barre, prest à passer;* the jury was at the bar, ready to pass. *Yearb.* M. 3 Edw. II. 56. *Et ore le jury fuit al barre, prist à passer. Dyer*, 116 b. (Fr. ed.)

PASSPORT. [from Fr. *passe-port*, from *passer*, to pass, and *port*, a harbor.] In international law. Literally, a permission to leave a harbor. A document or paper (otherwise called a *pass* or *sea-pass*,) carried by a merchant vessel in time of war, intended to evidence the nationality of the vessel, and protect her from belligerents. Sometimes called a *sea-letter*, (q. v.) *Jacobsen's Sea Laws*, 65—69, (Am. ed. 1818.) This instrument was originally granted by the chief officer of the *port* from which the vessel sailed, whence probably the name. *Id.* 66. See 6 *Wheaton's R.* 1.

In American law. A special instrument

intended for the protection of American vessels against the Barbary powers, usually called a *Mediterranean pass*. *Jacobsen's Sea Laws*, 69, (Am. ed.)

A permission granted in time of war, for the removal of persons or effects from a hostile country; a safe conduct, (q. v.;) a privilege or dispensation from the legal effects of war during a certain time, and to a specified extent.* 1 *Kent's Com.* 161.

In modern European law. A warrant of protection and authority to travel, granted to persons moving from place to place, by the competent officer. *Brande.*

PASTITIUM. L. Lat. In old English law. Pasture-ground. *Domesday. Cowell.*

PASTO. Span. [from Lat. *pastus*, q. v.] In Spanish law. Feeding; pasture; a right of pasture. *White's New Recop.* b. 2, tit. 1, ch. 6, § 4.

PASTURA. L. Lat. [from Lat. *pastus*, a feeding, from *pascere*, to feed.] In old English law. Pasture; a feeding; a right to feed animals. *Bract.* fol. 222 b. The word was not confined to the feeding of cattle upon grass, &c. in the modern sense, but included the feeding upon acorns, mast, &c. the browsing of leaves and twigs, &c. *Id. ibid. Fleta*, lib. 4, c. 19, § 5. See *Communia pasturæ.*

A pasture, including the ground itself. *Co. Litt.* 4 b. *Reg. Orig.* 1 b, 2.

PASTUS. Lat. [from *pascere*, to feed.] In old English law. A feeding. *Pastus canum;* feeding of dogs. *Fleta*, lib. 2, c. 82, § 5.

PATEAT UNIVERSIS PER PRÆSENTES. L. Lat. Know all men by the presents. Words with which letters of attorney and other instruments anciently commenced. *Reg. Orig.* 305 b, 306. *West's Symboleog.* part 1, lib. 2, sect. 535, 546.

PATENT. [from Lat. *patens*, from *patere*, to be open.] Open; obvious; apparent. See *Patent ambiguity*, *Letters patent.*

PATENT. A grant by *letters patent* (of which the word is an abbreviation) of some privilege, property or authority, made by the government or sovereign of a country to one or more individuals.* *Phillips on Patents*, 1. In England, the ordinary judges of the courts at Westminster are appointed by patent, the chief justice, by writ. *Hale's Anal.* sect. vi.

A grant by the state, of the exclusive privilege of making, using and vending, and authorizing others to make, use and vend an invention. *Phillips on Patents*, 2.

A grant of lands, by letters patent.

PATENT AMBIGUITY. [L. Lat. *ambiguitas patens.*] An open ambiguity; one which appears on the face of an instrument. See *Ambiguity.*

PATENT RIGHT. A right granted or conferred by a patent.* 2 *Kent's Com.* 365, *et seq.* See *Patent.*

PATENT ROLLS. In English law. Rolls containing the records of letters patent granted by the crown since the year 1516. The earlier of these records are deposited in the Tower, the others are in the Rolls' Chapel. *Hubback's Evid. of Succession*, 616, 617, where a particular description is given.

PATENT WRIT. In old practice. An open writ; one not closed or sealed up. See *Close writs.*

PATER. Lat. A father; the father. In the civil law, this word sometimes included *avus*, (grandfather.) *Dig.* 50. 16. 201.

Pater est quem nuptiæ demonstrant. He is the father whom the nuptials point out, or whom marriage indicates. *Dig.* 2. 4. 5. This rule holds with the civilians, whether the nuptials happen before or after the birth of the child. 1 *Bl. Com.* 446, 454. Its meaning in the latter case is, "He is the father who *marries* the mother of the child *already* born;" in the former,—"He is the father who *is* the husband of the mother *when* the child is born." In the former case only, the rule has been adopted in the common law. 1 *Bl. Com. ub. sup. Si uxor tua ex alio filium procreaverit, præsumendum est quod tuus est filius, eo quod* nuptiæ probant filium, *donec contrarium inde probetur;* if your wife has a child by another man, it is to be presumed that the child is yours, because the nuptials prove the child, until the contrary thereof is proved. *Fleta*, lib. 1, c. 6. "The marriage of the parties is the criterion adopted by the law, in cases of ante-nuptial generation, for ascertaining the actual parentage of the child. If a man marries a woman who is with child, the law raises a presumption that it is his own." Lawrence, J. 8 *East*, 193.

PATER-FAMILIAS. Lat. In the Roman law. A father or master of a family; the head of a family, (*qui in domo dominium habet,*) whether actually a father or not, (*quamvis filium non habeat.*) *Dig.*

50. 16. 195. 2. A man who was his own master, (*suæ potestatis.*) *Dig.* 1. 6. 4. In England, the king has been called the *pater-familias* of the kingdom. 3 *Bl. Com.* 220. The word has also been used to signify a householder. 8 *Mod.* 40.

PATERNICUM. L. Lat. [from *pater*, father.] In old European law. Property which descended to a person on the father's side. *Centur. Chart. Alaman.* chart. 45, 50. *Spelman.*

PATERNITY. [L. Lat. *paternitas*, from *pater*, father.] The fact of being a father; the relationship of a father; "fathership," according to Webster.

The Lat. *paternitas* is used in the canon law, to denote a kind of spiritual relationship contracted by baptism. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 10, § 161, note.

PATIBULUM. L. Lat. In old English law. A gallows or gibbet. *Fleta*, lib. 2, c. 3, § 9.

PATIENS. Lat. [from *pati*, to suffer.] One who suffers or permits; one to whom an act is done; the passive party in a transaction. Closely, but not very significantly rendered *patient*. The correlative of *agens*, an agent or active party. See *Agent, Agent and patient.*

PATIENTIA. Lat. [from *patiens*, q. v.] In old English law. Sufferance; permission. *Acquiritur possessio et liberum tenementum ex tempore, et sine titulo et traditione, per longam et pacificam seisinam habitam per* patientiam *et negligentiam veri domini;* possession and a freehold are acquired by time, and without title and livery, by long and peaceable seisin had by the sufferance and negligence of the true owner. *Bract.* fol. 52. *Fleta*, lib. 4, c. 18, § 2. **Longa patientia trahitur ad consensum.** Long sufferance is drawn to [evidence of] consent. *Id.* c. 26, § 4.

ΠΑΤΡΑΔΕΛΦΟΣ, *Πατραδελφὸς.* Gr. [from *πατὴρ*, father, and *ἀδελφὸς*, brother.] In the civil law. A paternal uncle, (*patruus;*) a father's brother. *Inst.* 3. 6. 1.

ΠΑΤΡΑΔΕΛΦΗ, *Πατραδελφὴ.* Gr. [from *πατὴρ*, father, and *ἀδελφὴ*, sister.] In the civil law. A paternal aunt, (*amita;*) a father's sister. *Inst.* 3. 6. 1.

PATRIA. Lat. A country; one's country. See **Nemo potest exuere patriam.**

In old English law. A district or neighborhood, within a county. *In habitu seculari, de* patria *ad* patriam *in balliva tua vagatur,* &c.; in secular dress, strolls about from neighborhood to neighborhood in your bailiwick. *Reg. Orig.* 71 b. See *Bract.* fol. 124, 316 b.

The country; a neighborhood, such as a hundred. *Fleta*, lib. 1, c. 24, § 3. *Clamor patriæ;* the cry of the country; the hue and cry. *Id.* § 1.

A jury, or country. *Ponit se super* patriam; he puts himself upon the country. *Bract.* fol. 84. Patria *laboribus et expensis non debet fatigari;* a jury ought not to be harassed by labors and expenses. *Jenk. Cent.* 6, case 9.

PATRIA POTESTAS. Lat. In the Roman law. The paternal power; the power of a father, which anciently included that of life and death. *Dig.* 28. 2. 11. 1 *Bl. Com.* 452. Justinian observes of this power, that "it is peculiar to the citizens of Rome, for there are no other people who have such power over their children as we have." *Inst.* 1. 9. 2.

PATRIMONIUM. Lat. In the civil law. A paternal or hereditary estate. *Calv. Lex.* But this was not the technical sense, though adopted in the derived English word *patrimony.*

Property; fortune. *Patrimonii munus;* an office of fortune; one which chiefly involved the expenditure of money, (*in quo sumtus maxime postulatur;*) as distinguished from personal care or industry. *Dig.* 50. 4. 1. *Id.* 50. 4. 18. 18.

Property in general; private, exclusive or individual property. [*Res*] *vel in nostro* patrimonio *vel extra* patrimonium *nostrum habentur;* things are held either as our own private property or not; [that is, as public or common.] *Inst.* 2. 1, pr. See *Fleta*, lib. 3, c. 1, §§ 1, 2, 3.

PATRIMUS. Lat. [from *pater*, father.] In the civil law. One who had a father living. *Calv. Lex. Spelman.*

PATRINUS. L. Lat. [from *pater*, father.] In old ecclesiastical law. A godfather. *Spelman.*

PATROCINIUM. Lat. In the Roman law. Patronage; protection; defence. The business or duty of a patron or advocate. See *Patronus.*

PATRON. [from Lat. *patronus; advocatus*, qq. v.] In English ecclesiastical law. He who has the gift of a benefice, [or the right of presentation to a benefice.] *Cowell.* "He who has the right of advowson is called the *patron* of the church." 2 *Bl. Com.* 21.

PATRON. Fr. In French marine law.

The master or captain of a vessel. *Ord. Mar.* liv. 2, tit. 1.

PATRONAGE. [Lat. *patronatus.*] In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the same with advowson, (q. v.) 2 *Bl. Com.* 21.

PATRONATUS. Lat. [from *patronus*, q. v.] In the Roman law. The condition, relation, right or duty of a patron. See *Patronus.*

In ecclesiastical law. Patronage, (q. v.)

PATRONUS. Lat. [from *pater*, father, from the closeness of the relation.] In the Roman law. A person who stood in the relation of protector to another who was called his *cliens*, (client, qq. v.;) a defender or advocate; a patron. One who advised his client in matters of law, and advocated his causes in court. See *Gilbert's For. Rom.* 25.

PATROON. Anglo-Dutch. [from Lat. *patronus*, a patron, or feudal superior.] In New-York law. The proprietor of a tract of land, with feudal or manorial privileges; the lord of a manor. See *O'Callaghan's New-Netherlands*, i. 112.

PATRUELIS. Lat. [from *patruus*, a paternal uncle.] In the Roman law. A cousin by the father's side. *Fratres patrueles;* male cousins who were the children of brothers. *Inst.* 3. 2. 1. *Id.* 3. 6. 4. *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15. *Sorores patrueles;* female cousins who were the children of brothers. *Id. ibid.*

PATRUUS. Lat. [from *pater*, father; Gr. πατραδελφός.] In the Roman law. A paternal uncle; a father's brother, (*patris frater.*) *Inst.* 3. 6. 1. 2 *Bl. Com.* 230.

PATRUUS MAGNUS. Lat. In the Roman law. A great uncle; a grandfather's brother, (*avi frater.*) *Dig.* 38. 10. 1. 6. *Id.* 38. 10. 10. 15.

PATRUUS MAJOR. Lat. In the Roman law. A greater uncle; a great grandfather's brother, (*proavi frater;*) a father's or mother's great uncle, (*patris vel matris patruus magnus.*) *Dig.* 38. 10. 10. 16. Called *propatruus. Id.* 38. 10. 1. 7.

PATRUUS MAXIMUS. Lat. In the Roman law. A greatest uncle; a great great grandfather's brother, (*abavi frater,*) a father's or mother's *patruus major. Dig.* 38. 10. 10. 17. Called *abpatruus. Id.* 38. 10. 3.

PAUMER. L. Fr. To touch; to lay the hand on. Paumer *le livere;* to touch the book. *Britt.* c. 87. *Adonques jurye le premer en cest manere,* paumaunt *evangelies;* then shall the first [juror] swear in this manner, laying hand on the gospels. *Id.* c. 52.

PAUNAGE. See *Pannage.*

PAUPER. Lat. A poor person. One who has not the means of defraying the expenses of a suit. See *In forma pauperis.*

PAUPERIES. Lat. [from *pauper*, poor.] In the Roman law. Literally, poverty. But this was not the technical sense.

Damage done by an irrational animal. *Hallifax, Anal.* b. 3, c. 2, num. 12. Damage done without any wrong on the part of the doer, (*damnum sine injuria facientis datum.*) *Inst.* 4. 9, pr. An animal, not having reason, could not be said to commit a wrong. *Id. ibid. Dig.* 9. 1. 1. 3. There is no corresponding English word by which *pauperies*, in this sense, can be translated.

PAUSARE. L. Lat. In old European law. To lay down. *L. Alam.* tit. 45. *Spelman.*

PAWN. [Lat. *pignus.*] A bailment of goods to a creditor, as security for some debt or engagement; a pledge. *Story on Bailm.* § 7. See *Cross on Lien*, 63—71.

To PAWN. [Lat. *pignerare.*] To deliver to another in pledge, or as security for a debt or sum borrowed.

PAWNOR. The person pawning goods, or delivering goods to another in pledge. Sometimes termed the *pledger.* 3 *Kent's Com.* 578—585. *Story on Bailm.* § 287.

PAWNEE. The person receiving a pawn, or to whom a pawn is made; the person to whom goods are delivered by another in pledge. Sometimes termed the *pledgee.* 2 *Kent's Com.* 578—585. *Story on Bailm.* § 287.

PAX. Lat. In old English law. Peace; the peace. A state of order and quiet, in the preservation of which the whole community was concerned; otherwise called the king's peace, (*pax regis.*) he being the principal conservator of the peace of the kingdom. 1 *Bl. Com.* 268, 349, 350. *Quod* pax *nostra teneatur;* that our peace be maintained. *Mag. Cart.* 9 Hen. III. c. 35. The term occurs also in feudal law. *Feud. Lib.* 2, titt. 27, 53.

Freedom from molestation by another. *Fleta*, lib. 2, c. 51, §§ 2, 3.

The privilege of a member of a legislative assembly. See 1 *Bl. Com.* 165.

PAX ECCLESIÆ. L. Lat. In old English law. The peace of the church. See *Peace of God and the church.*

A particular privilege attached to a church; sanctuary, (q. v.) *Crabb's Hist.* 41. *Cowell.*

PAX REGIS. Lat. In old English law. The king's peace. See *Pax, Contra pacem.*

A place privileged by the king's protection; a space (afterwards called the *verge* of the court,) extending from the palace gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms and nine barley corns. *Hickes' Diss.* ep. 114, citing the *Textus Roffensis.* 3 *Bl. Com.* 76, note. According to the laws of Edward the Confessor, cited by Spelman, it consisted of *four* miles, three furlongs, and *nine* acres in breadth, and nine feet, &c. *LL. Edw. Conf.* c. 12.

To PAY. To discharge an obligation by a performance according to its terms or requirements. Forbes, J. 1 *Cushing's R.* 76. Held not necessarily to imply an acquittal or discharge of an obligation in money. *Id.* 75. Payment may be made in goods. *Id. ibid.*

PAYEE. In mercantile law. The person in whose favor a bill of exchange, promissory note or check is made or drawn; the person to whom, or to whose order, a bill, note or check is made payable. 3 *Kent's Com.* 75. *Chitty on Bills*, 2. *Story on Bills*, § 54, *et seq.*

"PAYING," in a will, when it makes a fee. See 2 *Mod.* 25. "Paying," in a lease, when it amounts to a covenant. *Id.* 34.

PAYN. L. Fr. [from Lat. *panis*, bread.] In old English law. Bread; distinguished in Britton, (reciting the statute of 51 Hen. III.) as *payn de coket*, (cocket bread,) *payn de gastel*, (wastel bread,) *payn de simenel*, (simnel bread,) *payn de treyt*, (bread of treet,) *payn de toutz blees*, (bread of all grains,) and other kinds. *Britt.* c. 30.

PAYS, *Pais.* L. Fr. In old English law. The country; a jury. *Si le defendaunt se eyt mys de bien et de mal en le pays, et le pays die que il soit coupable;* if the defendant have put himself for good and for evil upon the country, and the country say that he is guilty. *Britt.* c. 25.

The country or neighborhood. *Soit le usage du* pays *et del leu tenu pur ley;* the usage of the country and of the place shall be held for law. *Id.* c. 103.

P'D. A contraction of *prædictus*, (aforesaid) in old pleading. 1 *Inst. Cl.* 11.

PEACE. [L. Fr. *peas, pees;* Lat. *pax.*] Quiet, orderly behaviour; the quiet orderly behaviour of the citizens or subjects of a community towards one another, and towards the government, which is said to be *broken* by acts of a certain kind. See *Breach of peace.* Defined in the old books, "a quiet and harmless behaviour toward the king and his people." *Lamb. Eirenarch.* lib. 1, c. 2. *Cowell.*

PEACE OF GOD AND THE CHURCH. [L. Lat. *pax Dei et ecclesiæ.*] In old English law. That rest and cessation which the king's subjects had from trouble and suit of law, between the terms and on Sundays and holidays. *Cowell. Spelman.*

PEACE. [L. Fr. *peas, pees, peez, paix.*] In old English practice. The name sometimes given (from the French) to the concord, in a fine of lands. "Cry (or rehearse) the *peace.*" *Stat. Mod. Lev. Fines.* "The *peace* is such." *Id. Tret un peace;* drew a concord. *Yearb.* P. 1 Edw. III. 4. See *Paix.*

PEAS, *Pees.* L. Fr. Peace. *Nostre* peas *enfriente;* our peace broken. *Britt.* c. 23.

PECCATUM. Lat. [from *peccare*, to sin, or transgress.] A fault; a sin. **Peccatum peccato addit, qui culpæ quam facit patrocinium defensionis adjungit.** He adds sin to sin who joins to the fault which he has committed, the protection of a defence, [who after he has committed an offence undertakes to excuse or justify it.] 5 *Co.* 49.

PECHE. Lat. [from Lat. *peccatum*, q. v.] A fault or offence. *Britt.* c. 34.

PECIA. L. Lat. In old pleadings and records. A piece. *Pecia terræ;* a piece of land. *Paroch. Ant.* 240. *Spelman. Sex* pecias *plumbi;* six pieces of lead. *Reg. Orig.* 126. *Pecia fustiani;* a piece of fustian. *Fleta*, lib. 2, c. 12, § 8. *Pecia monetæ;* a piece of money. *Dyer*, 82, (Fr. ed.) Called an uncertain word. 1 *Ld. Raym.* 191. But held good. 2 *Stra.* 809.

PECORA. Lat. [pl. of *pecus.*] In the Roman law. Cattle; beasts. The term included all quadrupeds that fed in flocks. *Dig.* 32. 65. 4.

PECULATUS. Lat. In the civil law. The offence of stealing or embezzling the public money, (*furtum pecuniæ publicæ vel fiscalis.*) *Calv. Lex. Inst.* 4. 18. 9. *Dig.* 48. 13. 4 *Bl. Com.* 122. Hence the common English word *peculation;* but embezzlement is the proper legal term. 4 *Bl. Com. ub. sup.*

PECULIAR. In English ecclesiastical law. An exempt jurisdiction;* a parish which is exempt from the jurisdiction of the ordinary of the diocese, and is subject to the metropolitan only. 3 *Bl. Com.* 65. See *Court of peculiars.*

PECULIUM. Lat. [dimin. of *pecunia.*] In the Roman law. Literally, a little money or property, (*pusilla pecunia ;*) a private or separate property; a little property or stock of one's own.* A limited amount of money or property, which a son or servant was allowed to have, separate from the accounts or stocks of his father or master; (*pusilla pecunia quam filiusfamilias vel servus a rationibus paternis vel dominicis separatam habet.*) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 9, § 473. Defined by Tubero, according to Celsus, as quoted by Ulpian in the Digests, *quod servus, domini permissu, separatum à rationibus dominicis habet, deducto inde si quid domino debetur ;* that which a slave, by permission of his master, has separate from his master's accounts, deducting therefrom whatever he owes his master. *Dig.* 15. 1. 5. 4.

PECULIUM CASTRENSE. Lat. In the Roman law. The kind of *peculium* which a son acquired in war, or from his connection with the camp, (*castrum.*) *Hein. El. J. C.* lib. 2, tit. 9, § 474. *Dig.* 49. 17. *Tayl. Civ. Law*, 396.

PECUNIA. Lat. [from *pecu* or *pecus*, cattle.] Originally and radically, property in cattle, or cattle themselves. So called, because the wealth of the ancients consisted in cattle. *Co. Litt.* 207 b. This sense of the word was departed from at an early period in Roman law, but very distinctly occurs in old English law. *Pastura ibidem ad* pecuniam *villæ ;* pasture in the same place for the cattle of the town. A common expression in Domesday. *Spelman.* Sometimes qualified as *viva pecunia. LL. Edw. Conf.* c. 10.

In the civil law. Property in general, real or personal; any thing that is actually the subject of private property. *Dig.* 50. 16. 222. 178. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 312. It was a less extensive term than *res*, though the sense of *res* might be expressed by it. *Dig.* 50. 16. 5, pr. According to Taylor, *res* are such things as *may be* possessed; *pecunia*, such as *are*. *Tayl. Civ. Law*, 469.

In a narrower sense, personal property; fungible things. *Calv. Lex.* In old English law, goods and chattels. *Spelman.*

In the strictest sense, money. This has become the prevalent, and almost the exclusive meaning of the word.

PECUNIA NUMERATA. Lat. In civil and old English law. Counted money; money paid by count or tale. *Inst.* 2. 24, pr. *Bract.* fol. 94. The Span. *dinero contado* had the same sense.

PECUNIA NON NUMERATA. Lat. In the civil law. Money not paid. The subject of an exception or plea in certain cases. *Inst.* 4. 13. 2. See *Exceptio pecuniæ non numeratæ.*

PECUNIA TRAJECTITIA. Lat. In the civil law. Literally, money carried across the sea, (*quæ* trans *mare* vehitur.) *Dig.* 22. 2. 1. Money lent to sea, or advanced on the hazard of the lender, to carry (as was supposed) over the sea. *Molloy, de Jur. Mar.* 357. Another name for *fœnus nauticum*, (q. v.) or maritime interest. See 2 *Sumner's R.* 157, 181, Story, J.

PECUNIARY CAUSES. In English ecclesiastical practice. Causes arising from the withholding of ecclesiastical dues, or the doing or neglecting some act relating to the church, whereby some damage accrues to the plaintiff. 3 *Bl. Com.* 88.

PECUNIARY LEGACY. A legacy of a sum of money; a gift of a sum of money by will. Otherwise called a general legacy. 2 *Bl. Com.* 512. But it has been said that the use of the word "pecuniary" synonymously with "general," as descriptive of a legacy, is not strictly accurate; for every *general* legacy is not *pecuniary*, (i. e. relating to money,) and one species of specific legacy is of a pecuniary nature. 1 *Roper on Legacies*, 150, (ch. 3, sect. 1,) note.

PECUS. Lat. [pl. *pecudes.*] In the Roman law. Cattle; a beast. Under a bequest of *pecudes*, were included oxen and other beasts of burden. *Dig.* 32. 81. 2.

PEDAGIUM. L. Lat. [from *pes*, foot.] In feudal law. Money given for the passing by foot or horse through any country. *Spelman. Cowell.* 8 *Co.* 47 a.

PEDANEUS. Lat. [from *pes*, foot.] In the Roman law. On, or at the foot; occupying a low position. A term applied to the *judices* appointed by the prætor to determine causes; either from their not occupying a tribunal or elevated seat, or because they were occupied with small or less important causes. See *Judex pedaneus.*

PEDE PULVEROSUS. Lat. In old English and Scotch law. Dusty-foot, (Sc. pedder.) A term applied to itinerant merchants, chapmen or pedlars who attended fairs. Skene defines it "ane merchand or cremar, quha hes ne certaine dwelling-place quhair the dust may be dicht fra his feet or schone." *De Verb. Signif.* See *Piedpoudre.*

PEDELLUS. L. Lat. In old Scotch law. A serjeant or beadle, (Sc. serjand or beddle.) Derived *à pedo, hoc est, baculo*, a wand, staff or halbert. *Skene de Verb. Sign.*

PEDEM PONERE. L. Lat. In civil and old English law. To put or place the foot. A figurative expression used to denote the taking possession of lands; which was done by standing upon or walking over them, or symbolically by merely placing the foot upon the ground; (Fr. *mettre del pee en nosme de seisine. Britt.* cc. 35, 36, 42, 43.) *Calv. Lex.* See *Pedis positio, Possessio.* Otherwise expressed *pedem apponere. Fleta*, lib. 3, c. 15, § 6.

PEDETENTIM. Lat. [from *pes*, foot.] Foot by foot. Lord Ellenborough, 2 *M. & S.* 546.

PEDIS ABSCISSIO. Lat. In old criminal law. The cutting off a foot; a punishment anciently inflicted instead of death. See *Fleta*, lib. 1, c. 38, § 8.

PEDIS POSITIO. Lat. In civil and old English law. A putting or placing of the foot. *Fleta*, lib. 3, c. 15, § 5. *Id.* lib. 4, c. 30. A term used to denote the possession of lands by actual corporal entry upon them, and sometimes as the analysis of the word *possessio* (q. v.) itself. Called also *pedis possessio.* Thompson, C. J. 15 *Johns. R.* 117. Gibson, C. J. 5 *Penn. St.* (Barr's) *R.* 303.

PEE. L. Fr. [from Lat. *pes.*] Foot; the foot. *Le mettre del* pee *en le mees en nosme de seisine;* the putting of the foot in the house, in name of seisin. *Britt.* c. 43. See *Pedem ponere.*

Foot; the foot. A part of a fine. *Per le* pee *est la fine. Yearb.* M. 3 Edw. III. 3.

PEER. [L. Fr. *peir, pair, pere;* from Lat. *par*, equal.] An equal; one of the same rank.

In feudal and old European law. The vassal of a lord, in his capacity of judge in the lord's court. *Esprit des Loix*, liv. 28, c. 27. See *Peers.*

PEERS. [L. Fr. *pairs;* Lat. *pares.*] In feudal law. The vassals of a lord who sat in his court as judges of their co-vassals, and were called *peers*, as being each other's equals, or of the same condition. *Esprit des Loix*, liv. 28, c. 27. *Id.* liv. 30, c. 18. Hence the expressions "trial by peers" and "judgment of peers," as used in English and American law to denote *trial by jury. Magna Charta*, c. 29. 4 *Bl. Com.* 349. 2 *Kent's Com.* 13, and note.

In English law. The nobility of the kingdom, who, though different in rank, are all peers (equals) in respect of their nobility. 1 *Bl. Com.* 403. The Magna Charta of King John (c. 21,) provided that earls and barons should not be amerced unless by their peers, (*nisi per* pares *suos.*) See *Mag. Cart.* 9 Hen. III. c. 14. In cases of treason, felony and misprision of the same, a nobleman is always tried by his *peers*, the word having, in this application, both its ancient and modern meaning.* 1 *Bl. Com.* 401. The word *peers* is exclusively used to denote the *lords temporal. Id. ibid.* 4 *Id.* 264.

PEES. L. Fr. Peace. *Encontre nostre* pees; against our peace. *Britt.* fol. 2. *De nostre* pees. *Id.* c. 16.

The concord in a fine of lands. *Kelham.* See *Peace.*

PEINE. L. Fr. [from Lat. *pœna.*] Punishment. *Kelham.*

PEISIBLE. L. Fr. Peaceable. *Si ilz eyent eu* peisible *seisine;* if they have had peaceable seisin. *Britt.* c. 42. *Id.* c. 47.

Peisiblement; peaceably. *Que il avera* peisiblement *tenu;* which he shall have peaceably held. *Id.* c. 42.

PEISON. L. Fr. [L. Lat. *pessona.*] Mast. A general name for acorns, nuts and other similar produce of trees. *Britt.* c. 55.

PELLETUM. L. Lat. A bullet. 5 *Co.* 120 a, 122 a, *Long's case.* Called a *pellet. Id. ibid.*

PELLEX. Lat. In the Roman law. A concubine. *Dig.* 50. 16. 144.

PENAL. [from Lat. *pœnalis*, from *pœna*, punishment or penalty.] Enacting punishment. *Webster.* Imposing a punishment or penalty. See *Penal statute.*

Connected with a penalty, either as the object or consequence of an action.

PENAL ACTION. [Lat. *actio pœnalis.*] In practice. An action upon a penal statute; an action for the recovery of a penalty given by statute. 3 *Steph. Com.* 535, 536.

PENAL BILL. An instrument formerly in use, by which a party bound himself to pay a certain sum or sums of money, or to do certain acts; or, in default thereof, to pay a certain specified sum by way of penalty. These instruments have been superseded by bonds with conditions.

PENAL STATUTE. A statute which punishes; a statute which forbids an act, and punishes the doing or commission of it. A statute enacting or imposing a penalty or punishment on the commission of a certain offence.* 1 *Steph. Com.* 68.

PENALTY. [Lat. *pœna.*] A punishment; a punishment imposed by statute as a consequence of the commission of a certain specified offence.

A pecuniary punishment; a sum of money imposed by statute to be paid as a punishment for the commission of a certain act.

A sum of money agreed upon, and fixed by the parties to a contract, to be paid in case of its non-performance by either: being intended to secure the performance of the contract.

A sum of money mentioned in the obligatory part of a bond, to be paid by the obligor, absolutely in its terms, but in fact (taken with reference to the condition annexed) only in case of non-performance of the condition.

The legal operation of a penalty, properly so called, is not to create a forfeiture of the entire sum named, but only to cover the actual damages occasioned by the breach of contract; and therefore, on payment of such damages, or in case of a bond, of the principal and interest actually due, the party who has incurred the penalty will be relieved or discharged from it. But in the case of what is termed *liquidated damages*, the whole of the precise sum named may be exacted of the party who is in default, and the court will not interfere to relieve him. See 2 *Steph. Com.* 159—162. 2 *Story's Eq. Jur.* §§ 1313—1326. See *Liquidated damages.*

PENCIL WRITING is a valid mode of writing, so long as legible. A note written in pencil was held valid while legible. 14 *Texas R.* 329. And it has been held that a will written with a pencil, could not on this account be annulled. 1 *Phillim. R.* 1. 2 *Id.* 173.

PENDANT, *Pendent.* O. Eng. and L. Fr. [from Lat. *pendens.*] Pending; during. "*Pendant* the writ." 1 *Leon.* 44.

PENDENS. Lat. [from *pendere*, to hang.] Hanging; pending. See *Lis pendens.*

PENDENTE. Lat. Pending; or, in the literal old English, hanging, (q. v.)

PENDENTE LITE. Lat. Pending the suit; during the actual progress of a suit; during litigation. *Lite pendente. Fleta*, lib. 2, c. 54, § 23.

Pendente lite nihil innovetur, [innovandum.] Pending the suit nothing should be changed. *Co. Litt.* 344 b. During the pendency of a suit, no change should be made in the property which is the subject of it, as by a conveyance by one of the parties, which may affect the rights of his opponent. *Cross on Lien*, 140. The effect of this maxim, however, is not to annul the conveyance, but only to render it subservient to the rights of the parties in the litigation. 1 *Story's Eq. Jur.* § 406. See 20 *Howard's R.* 106.

PENDERE. Lat. In the civil law. To hang; to be in suspense. *Calv. Lex.*

To be attached, as fruit to a tree. *Id.* See *Fructus pendentes.*

To depend upon, or grow out of. *Id.*

To pay, as a penalty. *Id.*

PENDICLE. Sc. In Scotch law. A piece of ground. 7 *Wils. & Shaw's R.* 245. "All and haill that small piece or pendicle of arable land." 1 *Bell's App. Cas.* 499.

PENDING, (or DEPENDING.) A term applied to a writ, sometimes from the day of the *teste*, and sometimes from the day of the return. 5 *Co.* 47 a, 47 b, *Gilbert Littleton's case.*

PENDRE. L. Fr. [from Lat. *pendere.*] To hang, (execute.) *Pendu;* hung, or hanged. *Jugement de estre treyne et pendu;* judgment to be drawn and hanged. *Britt.* c. 23. The L. Lat. *pendutus*, derived from *pendu*, occurs in the laws of the Ripuarians, tit. 79. *Spelman.*

PENES. Lat. In the possession; in one's possession or power; under one's control. A distinction was made in the civil law, between this term and *apud*, (with,

or in;) which had a less forcible and comprehensive meaning. *Dig.* 50. 16. 63.

PENSA. L. Lat. [from Lat. *pendere*, to weigh.] In old English law. A weight. *Ad pensam;* by weight. The ancient way of paying into the exchequer as much money for a pound sterling as *weighed* twelve ounces troy. *Lowndes' Essay upon Coin*, 4. *Cowell.* This was distinguished from payment *de numero*, by count.

In old records. A wey (weigh) of salt or cheese, containing two hundred and fifty-six pounds. *Cowell.*

PENSATA. L. Lat. Weighed. See *Libra pensa.*

PENSIO. Lat. [from *pendere*, to pay.] In the civil law. A payment, properly, for the use of a thing. *Calv. Lex.*

A rent; a payment for the use and occupation of another's house, (Gr. ἐνόικιον.) *Id.*

PENSION. L. Fr. [from Lat. *pensio*, q. v.] In old English law. A payment of rent, (L. Lat. *redditus.*) *Pension de chambre;* rent from the chamber or coffer, (*redditus de camera;*) an annuity. *Britt.* c. 68. See *Annuity.*

PENSION. In Scotch law. An annual rent. *Skene de Verb. Signif.*

PENSION. Span. [from *pensio*, q. v.] In Spanish law. Rent; a rent. *White's New Recop.* b. 2, c. 2, § 3.

PENSION. In English practice. An annual payment made by each member of the Inns of Court. *Cowell. Holthouse.*

An assembly of the members of the society of Gray's Inn; to consult of their affairs. *Id.*

PENNY, *Peny.* [from Sax. *penig;* Lat. *denarius*, q. v.] The ancient current silver money of England. 2 *Inst.* 575. See *Denarius.*

Money in general; tribute money. See *Aver penny.*

PEONIA. Span. In Spanish American law. A lot of land of fifty feet front, and one hundred feet deep. 2 *White's Recop.* [38,] 49. Originally the portion granted to foot soldiers, of spoils taken or lands conquered in war. 12 *Peters' R.* 442—444, notes.

PER. Lat. By. Per *curiam*, (q. v.)

By; through, in consequence of. Per *infortunium*, (q. v.)

By; according to. Per *stirpes*, (q. v.)

For; during. Per *quadraginta dies;* for forty days. *Bract.* fol. 96.

PER ÆS ET LIBRAM. Lat. In the Roman law. By brazen coin and balance. A term applied to the ceremony of emancipating a son, which was conducted in the form of a sale, the purchaser striking with a *brazen coin* a *balance* held by a person called *libripens*, (balance holder.) *Adam's Rom. Ant.* 52. Wills were anciently made with this formality. *Inst.* 2. 10. 1.

PER ALLUVIONEM. Lat. In the civil law. By alluvion. Per alluvionem *id videtur adjici, quod ita paulatim adjicitur, ut intelligere non possimus quantum quoquo momento temporis adjiciatur;* that is considered to be added by alluvion, which is added so gradually that we cannot perceive how much is added at any moment of time. *Dig.* 41. 1. 7. 1. Increase *per alluvionem* or *projectionem* is when the sea, by casting up sand and earth, doth by degrees increase the land, and shut itself out further than the ancient bounds went. *Hale de Jur. Mar.* pars 1, c. 4. See *Fleta*, lib. 3, c. 2, § 6. *Broom's Max.* [123.]

PER ANNULUM ET BACULUM. L. Lat. In old English law. By ring and staff, or crozier. The symbolical mode of conferring an ecclesiastical investiture. 1 *Bl. Com.* 378, 379. See *Annulus et baculus.*

PER ANNUM. Lat. By the year; for the space of a year. *Fleta*, lib. 2, c. 71, §§ 3—12. A common expression still in use.

PER AVERSIONEM. Lat. In the civil law. By turning away. A term applied to that kind of sale where the goods are taken in bulk, and not by weight or measure, and for a single price; or where a piece of land is sold as containing in gross, by estimation, a certain number of acres. *Pothier, Contr. of Sale*, num. 256, 309. 1 *Story's Eq. Jur.* § 144 a. So called because the buyer acts without particular examination or discrimination, *turning* his face, as it were, *away. Calv. Lex.* voc. *Aversione.* It seems to be nearly of the same import with the common English phrases "in gross," "by the lot" or "lump."

PER BOUCHE. L. Fr. By the mouth; orally. 3 *How. St. Trials*, 1024.

PER CAPITA. Lat. By heads; according to the number of persons; as individuals; share and share alike. A term of the civil law, extensively used in the modern English and American law of distribution and descent of estates. Where several persons are equally near of kin to a deceased intestate, or stand in equal degree,

they take equally *per capita*, that is, according to their own persons, and in their own rights, without reference to the stocks from which they have sprung. 2 *Bl. Com.* 218. 2 *Kent's Com.* 425—428, and notes. 4 *Id.* 391, 392. 2 *Williams on Exec.* 1285. 2 *Hilliard's Real Prop.* 194. See *Capita. Caput, In capita.*

PER CONSEQUENS. Lat. By consequence; consequently. *Yearb.* M. 9 Edw. III. 8.

PER CONSIDERATIONEM CURIÆ. L. Lat. In old practice. By the consideration (judgment) of the court. *Yearb.* M. 1 Edw. II. 2.

PER CORPUS. Lat. In old English law. By the body. By the *duellum* or battel, as distinguished from *per patriam*, by the country. *Bract.* fol. 133 b. *Fleta*, lib. 1, c. 31, § 2.

By the body. By taking the body, as on an attachment. *Fleta*, lib. 2, c. 60, § 33.

PER CUR. A common abbreviation of *per curiam*, (q. v.)

PER CURIAM. L. Lat. In practice. By the court. A phrase still used in the reports, and in some writs.

PER DEFALTAM. L. Lat. In old practice. By default. *Reg. Jud.* 47.

PER EXTENSUM. L. Lat. In old practice. At length. *Clerke's Prax. Cur. Adm.* tit. 6.

PER FORMAM DONI. L. Lat. In English law. By the form of the gift; by the designation of the giver, and not by the operation of law. 2 *Bl. Com.* 113, 191. See *Formedon.*

PER FRAUDEM. Lat. In English law. By fraud; fraudulently. Lord Ellenborough, 12 *East*, 409. *Per fraudem et covinam;* by fraud and covin. 2 *Mod.* 36.

PER INCURIAM. L. Lat. Through inadvertence. 35 *Eng. Law & Eq. R.* 302.

PER INDUSTRIAM HOMINIS. Lat. In old English law. By human industry. A term applied to the reclaiming or taming of wild animals by art, industry and education. 2 *Bl. Com.* 391.

PER INFORTUNIUM. L. Lat. In criminal law. By misadventure. *Fleta*, lib. 1, c. 23, § 5. 4 *Bl. Com.* 182. Homicide of a certain kind is so called. See *Homicide per infortunium.*

PER LEGALE JUDICIUM PARIUM SUORUM. L. Lat. In old English law. By the lawful judgment of his peers. *Mag. Cart.* 9 Hen. III. c. 29.

PER LEGEM ANGLIÆ. L. Lat. By the law of England; by the curtesy. *Fleta*, lib. 2, c. 54, § 18.

PER LEGEM TERRÆ. L. Lat. By the law of the land. *Mag. Cart.* 9 Hen. III. c. 29. By due process of law. 3 *How. St. Trials*, 152—154. See *Lex terræ.*

PER METAS ET BUNDAS. L. Lat. In old English law. By metes and bounds. See *Bunda.*

PER MISADVENTURE. Lat. and Eng. In old English law. By mischance. 4 *Bl. Com.* 182. The same with *per infortunium*, (q. v.)

PER MY. L. Fr. An old form of *parmy*, or *parmi*, (q. v.) *Yearb.* T. 1 Edw. II. 5.

PER MY ET PER TOUT. L. Fr. By the half or moiety, and by all; having each the entire possession as well of every parcel as of the whole. 2 *Bl. Com.* 182. A term used as descriptive of the mode of possession by joint-tenants. *Id. ibid.* 1 *Hilliard's Real Prop.* 565.

PER NOMEN. Lat. By the name. *Freem.* 77.

PER NORMAM LEGIS COMMUNIS. Lat. By the rule of the common law. *Per normam statuti;* by the rule of the statute. *Bacon's Arg.* Low's case of Tenures, *Works*, iv. 242.

PER OMNES. Lat. By all (the judges.) A phrase in the old reports. 6 *Mod.* 289.

PER PAIS. L. Fr. By the country; by jury. 3 *Bl. Com.* 348, 349. See *Pais.*

PER PARES. L. Lat. In old English law. By the peers. *Per pares suos;* by their peers. *Mag. Cart.* 9 Hen. III. c. 14.

PER PATRIAM. L. Lat. In old English law. By the country; by a jury. *Fleta*, lib. 1, c. 31, § 3.

PER PLEGIUM. L. Lat. In old English law. By pledge or surety; on bail. *Bract.* fol. 153.

PER PROC'. An abbreviation of *per procurationem*, by appointment or power.

PER QUOD. L. Lat. In pleading. By which; whereby. Words introducing a consequence of law from matters of fact before stated. Treby, C. J. 1 *Ld. Raym.* 412. The initial and emphatic words of that clause in the old Latin forms of declarations, in which the plaintiff stated the *special damage* he had sustained, as the *consequence* of the act or acts previously mentioned. 3 *Bl. Com.* 124. Shaw, C.

J. 2 *Metcalf's R.* 469. Now used as the name of the clause, which is literally translated in the modern precedents. The words *per quod* occur in a similar connection in the form of the old Latin writs of trespass. *Reg. Orig.* 95.

PER QUOD CONSORTIUM AMISIT. L. Lat. In old pleading. Whereby he lost the company or society (of his wife.) A phrase used in the old declarations in actions of trespass by a husband, for beating or ill using his wife, descriptive of the special damage he had sustained. 3 *Bl. Com.* 140. *Cro. Jac.* 501, 538. *Hale's Anal.* sect. xl.

PER QUOD SERVITIUM AMISIT. L. Lat. In old pleading. Whereby he lost the service (of his servant.) A phrase used in the old declarations in actions of trespass by a master, for beating or ill using his servant, descriptive of the special damage he had himself sustained. 3 *Bl. Com.* 142. 9 *Co.* 113 a. *Hale's Anal.* sect. xl.

PER SALTUM. Lat. By a leap or bound; by a sudden movement; passing over certain proceedings. "The parties have proceeded *per saltum.*" Lord Ellenborough, 8 *East*, 511.

PER SE. By itself; of itself. Fraud *per se.* 3 *Pickering's R.* 257.

PER SERVITIUM. L. Lat. By the service. *Per servitia debita;* by the services due. *Per servitia antehac consueta;* by the services hitherto accustomed. *Bacon's Arg.* Low's case of Tenures; *Works*, iv. 236, 238.

PER STIRPES. Lat. By stocks or roots; as representatives of stocks; in right of stocks. A term of the civil law, extensively used in the modern English and American law, to denote that mode of the distribution and descent of intestate's estates, where the parties entitled take the shares which their *stocks*, (such as a father) if living, would have taken. 2 *Bl. Com.* 217, 218. 2 *Kent's Com.* 425. 4 *Id.* 390—392. See *Stirps, Stirpes, Per capita.*

PER TOTAM CURIAM. L. Lat. By the whole court. A common phrase in the old reports.

PER TOUT LE COURT. L. Fr. By all the court. *Yearb.* P. 3 Hen. VI. 20.

PER UNIVERSITATEM. Lat. In the civil law. By the whole or entirety; as a whole; in general. A term applied to the acquisition of entire estates, as distinguished from single or separate articles of property, (*singulæ res.*) *Inst.* 2. 9. 7.

PER VADIUM. L. Lat. In old practice. By gage. Words in the old writs of attachment or *pone.* 3 *Bl. Com.* 280.

PER VERBA DE FUTURO. L. Lat. By words of the future (tense.) A phrase applied to contracts of marriage. 1 *Bl. Com.* 439. 2 *Kent's Com.* 87.

PER VERBA DE PRÆSENTI. L. Lat. By words of the present (tense;) as, "I marry you;" "you and I are man and wife." Lord Holt, C. J. *Salk.* 437. A phrase applied to contracts of marriage. 1 *Bl. Com.* 439.

PER VISUM ECCLESIÆ. L. Lat. In old English law. By view of the church; under the supervision of the church. The disposition of intestate's goods *per visum ecclesiæ*, was one of the articles confirmed to the prelates by King John's Magna Charta. 3 *Bl. Com.* 96.

PER VIVAM VOCEM. L. Lat. In old English law. By the living voice; the same with *vivâ voce. Bract.* fol. 95.

PER, (by,) CUI, (to whom,) and POST, (after.) L. Lat. In old practice. Words used as descriptive of the different forms of writs of entries, according to the degrees in which they were brought. 3 *Bl. Com.* 181. See *Entry, Writ of.*

PERA. L. Lat. In old Scotch law. A satchel; a poke, budget or bag for provisions. 1 *Pitc. Cr. Trials*, part 2, p. 17.

PERAMBULATIO. L. Lat. In old English law. Perambulation; a perambulation. *Fleta*, lib. 4, c. 15, § 1.

PERAMBULATION. [Lat. *perambulatio*, from *perambulare*, from *per*, through, and *ambulare*, to walk.] A walking through, about or over; a going round a place to settle its boundaries, or for other purposes. See *De perambulatione facienda.* Sir William Blackstone has given at length the form of a perambulation of a forest, from the Rolls of 29 Edw. I. *Bl. Mag. Cart.* Introd. cviii. note. The perambulation was made before justices assigned for the purpose, in presence of the foresters and verderors, by the oath of twenty-four men, who traced the boundaries of the forest minutely by metes and bounds; and their perambulation was afterwards enrolled of record.

PERAMONT. L. Fr. Above. *Kelham.* See *Paramount.*

PERAVAILE. L. Fr. Below. *Peravale de son molin;* below his mill. *Yearb.*

M. 7 Edw. III. 37. "The defendant challenged *touts peravaile.*" *Dyer*, 25.

PERCENNARIUS. L. Lat. In old English law. A parcener; one of several commoners. *Fleta*, lib. 4, c. 24, § 11.

PERCEPTURA. L. Lat. In old records. A wear; a place in a river made up with banks, dams, &c. for the better convenience of preserving and taking fish. *Paroch. Ant.* 120. *Cowell.*

PERCH. [L. Lat. *pertica.*] A measure of land containing five yards and a half, or sixteen feet and a half in length; otherwise called a rod or pole. *Cowell.* 1 *N. Y. Rev. Stat.* [607,] 617, § 6. Originally of no fixed length. *Spelman*, voc. *Pertica.*

PERCLOSE, *Perclos.* L. Fr. In old practice. The latter part or conclusion, (of a writ, plea or indictment.) *Yearb.* M. 7 Hen. VI. 18. 1 *Leon.* 109. 3 *Id.* 230.

PERCUTERE. Lat. In old English law. To strike. *Fleta*, lib. 2, c. 1, § 4. Percutere *duellum;* to strike the duel; to engage or join in the combat. *Bract.* fol. 139.

Percussit; (he) struck. *Fleta, ub. sup.* An essential word in old indictments. 5 *Co.* 122 a, *Long's case.* 11 *Mod.* 229.

PERDONARE, *Pardonare.* L. Lat. In old English law. To pardon. *Bract.* fol. 127. See *Pardonare.*

Perdonavimus; we have pardoned. An emphatic word in the old charters of pardon. *Reg. Orig.* 310. *Dyer*, 34.

Perdonatio. A pardoning; a pardon. *Carta perdonationis;* a charter of pardon. See *Reg. Orig.* 308—312 b.

PERDRE. L. Fr. To lose. *Pert;* loses. *Fet Assaver*, § 45. *Perdu;* lost. *Id.* § 46.

PERDUELLIO. Lat. [from *perduellis*, an open enemy.] In the civil law. Treason; the crime of open hostility against the state or prince; whatever was attempted directly against the being or safety of the republic, or of the prince, or his ministers. *Calv. Lex. Inst.* 3. 1. 5. *Hallifax, Anal.* b. 3, c. 12, num. 20. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 18, § 1341.

PEREGRINATIO. Lat. In old English law. Pilgrimage. *Fleta*, lib. 6, c. 8, § 1.

PEREMPTORIUS. Lat. [from *perimere*, to destroy; to take away or defeat entirely.] In the civil law. That which destroys or defeats, not for a time, but forever. Exceptions were so called because they operated as a perpetual bar to the action, and entirely destroyed the foundation of it; (*perpetuæ et* peremptoriæ *sunt, quæ semper agentibus obstant, et semper rem de qua agitur* perimunt.) *Inst.* 4. 13. 9. The term *exceptio peremptoria*, was taken from the civil law by Bracton, and hence the English *peremptory*, as applied to a defendant's plea. *Bract.* fol. 240, 399 b. *Fleta*, lib. 6, c. 36, § 3.

PEREMPTORY. [from Lat. *peremptorius*, q. v.] Literally and radically, that which destroys, (*quod perimit,*) or wholly and at once defeats; as a *peremptory plea*, (q. v.)

That which disposes of a matter at once, and without delay; that which admits of no delay or argument; absolute; imperative; decisive; final. As a *peremptory* mandamus or rule, (qq. v.)

That which requires no cause to be shown; arbitrary; capricious; as a *peremptory* challenge, (q. v.)

PEREMPTORY CHALLENGE. In criminal practice. A species of challenge which a prisoner is allowed to have against a certain number of jurors, without showing any cause. See *Challenge peremptory.*

PEREMPTORY EXCEPTION. A pleading having the legal effect of a general demurrer. 1 *Texas R.* 364.

PEREMPTORY MANDAMUS. In practice. A writ of *mandamus* which absolutely requires an act to be done, without any alternative of showing cause against it. Usually granted on the return of an alternative mandamus, where such return is found insufficient in law or false in fact. 3 *Steph. Com.* 683, 694. 2 *Burr. Pr.* 180.

PEREMPTORY PLEA. In practice. A plea founded upon matter which tends to impeach the plaintiff's right of action itself, or goes to destroy the ground of action entirely; a plea in bar of the action.* *Steph. Pl.* 46. *Id.* Appendix, Note (19.) 3 *Steph. Com.* 576.

PEREMPTORY RULE. In practice. An absolute rule; a rule without any condition or alternative of showing cause. See *Absolute rule.*

PERENTER, *Perentre.* L. Fr. Between. *Litt.* sect. 58.

PERFECT. In practice. To complete in form of law. To perfect bail is to justify after exception, so as to render them absolute. 1 *Burr. Pr.* 110. To perfect judgment is to enter it on record, and to file and docket the record. *Id.* 263.

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum. That is perfect to which nothing is wanting, according to the measure of its perfection or nature. *Hob.* 151.

PERGAMENUM. L. Lat. In old practice. Parchment. *In* pergameno *scribi fecit.* 1 *And.* 54.

PERICULOSUS. Lat. [from *periculum*, danger.] Dangerous; perilous. **Periculosum est res novas et inusitatas inducere.** It is perilous or hazardous to introduce new and untried things. *Co. Litt.* 379 a. New inventions (though of a learned judge in his own profession,) are full of inconvenience. *Id. ibid.*

Periculosum existimo quod bonorum virorum non comprobatur exemplo. I think that dangerous which is not warranted or approved by the example of good men. 9 *Co.* 97 b, *Sir George Reynel's case.*

PERICULUM. Lat. In the civil law. Peril; danger; hazard; risk. *Dig.* 18. 6. *Cod.* 4. 48. *Fleta*, lib. 2, c. 58, § 8.

Periculum rei venditæ, nondum traditæ, est emptoris. The risk of an article sold, but not yet delivered, is the buyer's. When the contract of sale has been rendered binding by giving earnest, or by part payment, or part delivery, or by a compliance with the requisitions of the statute of frauds, the property, and with it the risk, attaches to the purchaser. 2 *Kent's Com.* 498, 499. This maxim is taken from the civil law, though it is differently applied, and is thus expressed in the Institutes: *Periculum rei venditæ statim ad emptorem pertinet, tametsi adhuc ea res emptori tradita non sit;* the risk of a thing sold immediately attaches to the buyer, although the article itself be not yet delivered to him. *Inst.* 3. 24. 3. In the Digests, the rule was thus expressed: *Perfecta emtione*, periculum *ad emtorem respiciet. Dig.* 18. 6. 8. In the Code, *post perfectam venditionem, omne commodum et incommodum quod rei venditæ contingit, ad emtorem pertinet. Cod.* 4. 48.

PERILS OF THE SEA, (or SEAS.) In maritime and insurance law. Natural accidents peculiar to the sea, which do not happen by the intervention of man, nor are to be prevented by human prudence. 3 *Kent's Com.* 216. Piracy, however, is a peril of the seas. *Id. ibid.* 1 *Phillips on Ins.* 648. Under *perils of the sea* are comprehended those of the winds, waves, lightning, rocks, shoals, running foul of other vessels, and in general all causes of loss and damage to the property insured, arising from the elements and inevitable accidents, other than those of capture and detention. *Id.* 635. See *Story on Bailm.* §§ 512—522. Under "perils of the seas, rivers," &c. in a policy, the ordinary risks of *canal* navigation are covered, although *canals* are not mentioned. 6 *Ohio St. R.* 553.

PERINDE VALERE. L. Lat. (To be equally valid.) In English ecclesiastical law. The name of a writ of dispensation granted to a clerk that being defective in his capacity to a benefice or other ecclesiastical function, was, *de facto*, admitted to it. So called from the emphatic words of the Latin form, the faculty being declared to be *equally effectual* to the party dispensed with, as if he had been actually capable of the thing for which he was dispensed with, at the time of his admission. *Stat.* 25 *Hen.* VIII. c. 21. *Cowell.*

PERIOD. A space of time; any portion of complete time.

"The word *period* has its etymological meaning, but it also has a distinctive signification, according to the subject with which it may be used in connection. It may mean any portion of complete time, from a thousand years or less to the period of a day; and when used to designate an act to be done or to be begun, though its completion may take an uncertain time, as for instance the act of exportation, it must mean the day on which the exportation commences, or it would be an unmeaning and useless word in its connection in the statute." Wayne, J. 20 *Howard's R.* 579.

PERJURIUM. Lat. [from *perjurare*, to forswear; from *per* and *jurare*, to swear.] In civil and old English law. Perjury; the breach of an oath; the making a false oath. *Cum contigerit quod juratores falsum fecerint sacramentum et ita commiserint* perjurium; when it shall happen that the jurors make a false oath, and so commit perjury. *Bract.* fol. 288 b. Fleta defines it to be a lie, confirmed by an oath; (*mendacium cum juramento firmatum.*) *Fleta*, lib. 5, c. 22, § 3; lib. 2, c. 1, § 20.

PERJURY. [from Lat. *perjurium*, q. v.] In criminal law. False swearing; the making a false oath; the breach of an oath. Anciently called *oath-breach*, or oath-

broken. See *Othesworth.*—The judicial affirmation of a falsehood on oath. *Bell's Dict.* 2 *Swinton's R.* 300.—A crime committed when a *lawful* oath is administered, in some *judicial* proceeding, to a person who swears *wilfully*, absolutely and *falsely*, in a matter *material* to the issue or point in question. 3 *Inst.* 164. 4 *Bl. Com.* 137. 4 *Steph. Com.* 267. See 2 *Russell on Crimes*, 596, (Am. ed.) and the criticism in the note. *Wharton's Am. Crim. Law*, §§ 2198—2232. This common law definition has been modified in England by statute. 4 *Steph. Com.* 267. 2 *Russell on Crimes*, 604, *et seq.*

In the United States, the definition of perjury is generally fixed by the local laws of each state. See *Wharton's Am. Crim. Law*, §§ 2169—2197. *Lewis' U. S. Crim. Law*, 547—557. 2 *Russell on Crimes*, (Am. ed. 1850,) 596, 597, note.

PERMISSIVE WASTE. That kind of waste which is a matter of omission only; as by suffering a house to fall for want of necessary reparations. 2 *Bl. Com.* 281. 3 *Steph. Com.* 503. 4 *Kent's Com.* 76, *et seq.* 1 *Hilliard's Real Prop.* 266.

PERMUTATIO. Lat. [from *permutare*, to exchange.] In the civil law. Exchange; barter. *Dig.* 19. 4. *Cod.* 4. 64.

PERNANCY. [from L. Fr. *parner*, to take.] Taking; a taking or receiving, as of the profits of an estate. Actual *pernancy* of the profits of an estate is the taking, perception or receipt of the rents and other advantages arising therefrom. 2 *Bl. Com.* 163.

PERNOCTARE. Lat. [from *per*, through, and *nox*, night.] In the civil law. To pass the night; to pass the whole night. *Dig.* 50. 16. 166.

PERNOR. [from L. Fr. *parnour*, or *pernour*, q. v.] A taker. *Pernor* of profits is the taker or receiver of the profits of an estate. *Cowell.*

PERNOUR. L. Fr. A taker. *Le* pernour *on le detenour;* the taker or the detainer. *Britt.* c. 27.

Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit ab initio non valet. It is a perpetual law that no human and positive law can be perpetual, and a clause [in a law] which precludes the power of abrogation is void *ab initio. Bacon's Max.* 77, in reg. 19.

PERPETUAL CURACY. In English ecclesiastical law. A place of divine worship, having parochial rights (particularly those of baptism and sepulture,) of which the incumbent is not removable at pleasure by the rector or vicar of any supposed mother church. 1 *Wooddes. Lect.* 198.

PERPETUATING TESTIMONY. In practice. The taking of testimony in order to preserve it for future use, as where it is in danger of being lost before the matter to which it relates can be made the subject of judicial investigation. This is usually done by bill filed in equity for that purpose, and sometimes by proceedings at law. 3 *Bl. Com.* 450. 2 *Story's Eq. Jur.* § 1505, *et seq. Story's Eq. Pl.* § 600, *et seq.*

PERPETUITY. The quality of indefinite duration without change. A quality by which an estate becomes inalienable either perpetually, or for a very long period. A modification of an estate by which it is made inalienable perpetually or indefinitely. See 4 *Kent's Com.* 264.

The estate itself, so modified or perpetuated.

In more technical language,—a future limitation, restraining the owner of an estate from aliening the fee-simple of the property, discharged of such future use or estate, before the event is determined, or the period is arrived, when such future use or estate is to arise. If that event or period be within the bounds prescribed by law, it is not a perpetuity. *Sanders on Uses and Trusts*, 196.—A future limitation, whether executory or by way of remainder, and of either real or personal property, which is not to vest until after the expiration of, or will not necessarily vest within, the period fixed and prescribed by law for the creation of future estates and interests; and which is not destructible by the persons for the time being entitled to the property subject to the future limitation, except with the concurrence of the individual interested under that limitation. *Lewis on Perpetuity*, 164.

PERQUIRERE. L. Lat. [from *per*, through, and *quærere*, to obtain.] In feudal law. To gain or acquire; to acquire by one's own act; to purchase. *Breve perquirere;* to purchase a writ. *Cowell.*

Perquisitio. Purchase. 2 *Bl. Com.* 241. Acquisition by one's own act or agreement, and not by descent. *Id. ibid.* See *Purchase.*

Perquisitor. A purchaser; one who first acquired an estate to his family; one who acquired an estate by sale, by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220.

Perquisitum. Purchase. *Bract.* fol. 65. *Co. Litt.* 3 b, 18 b. An estate acquired by purchase, that is, by one's own act, and not by descent; (*prædium quod quis non à patre vel majoribus possidet, sed quo suâ industriâ vel pecuniis comparato gaudet.*) *Spelman.*

PERSECUTIO. Lat. [from *persequi*, q. v.] In the civil law. A following after; a pursuing at law; a suit or prosecution.

Properly, that kind of judicial proceeding before the prætor which was called *extraordinary*. *Calv. Lex.*

In a general sense, any judicial proceeding, including not only actions (*actiones*) properly so called, but other proceedings also. *Id.*

PERSEQUI. Lat. In the civil law. To follow after; to pursue or claim in form of law. An action is called a *jus persequendi*. See *Actio*.

PERSEWAR. O. Sc. In old Scotch law. Pursuer; plaintiff or prosecutor. See *Pursuer*.

PERSON. [from Lat. *persona*, q. v.] A human being, considered as the subject of rights, as distinguished from a *thing*, (*res*,) whether animate or inanimate. See *Persona*.

PERSONA. Lat. In civil and old English law. A person. Persona *est homo, cum statu quodam consideratus;* a person is a human being, considered with reference to a certain *status*, condition or quality. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, § 75. Homo *vocabulum est naturæ;* persona, *juris civilis;* man is a term of nature; person, a term of law. *Calv. Lex. Omnis* persona *est* homo, *sed non vicissim;* every person is a man, (human being,) but not vice versa. *Id. Persona* is a character or capacity, *homo cum statu*, a man under particular circumstances, conditions and relations. *Tayl. Civ. Law*, 247.

Persona conjuncta æquiparatur interesse proprio. A personal connection [literally, a united person, union with a person,] is equivalent to one's own interest; nearness of blood is as good a consideration as one's own interest. *Bacon's Max.* 72, reg. 18. "The law hath that respect of nature and conjunction of blood, as in divers cases it compareth and matcheth nearness of blood with consideration of profit and interest, yea, and in some cases alloweth of it more strongly." *Id. ibid.* 13 *Mees. & W.* 253, 254, arg. The interest of a personal connection is sometimes regarded in law as that of the individual himself. *Broom's Max.* [407.]

PERSONA. Lat. In civil and old English law. Character; capacity. See *Persona standi in judicio.*

PERSONA. L. Lat. In old English law. A parson. *Glanv.* lib. 4, c. 1. *Spelman.* 1 *Bl. Com.* 384. *Fleta*, lib. 2, c. 60, § 29.

PERSONA STANDI IN JUDICIO. L. Lat. Capacity of standing in court or in judgment; capacity to be a party to an action; capacity or ability to sue. See *Personable.* A phrase frequently used in Bracton, and derived probably from that source. *Habent enim servi* personam standi in judicio *contra omnes de injuriis sibi factis;* for slaves have a capacity of prosecuting against all persons for injuries done to themselves. *Bract.* fol. 155 b. A slave might in certain cases bring an assise against his own lord; much more shall he have a right of suit against one who had no right in him; (*multo fortius* personam *habebit* standi in judicio *versus eum qui nihil juris habet in eo.*) *Id.* fol. 196. The phrase is of common occurrence in the modern books. 1 *Rob. Adm. R.* 198, 201. Spencer, J. 15 *Johns. R.* 83. 1 *Kent's Com.* 68.

PERSONABLE. [L. Lat. *personabilis*, from *persona*, capacity.] In old English law. Able to maintain a plea in court; having capacity to sue. *Cowell.* Derived probably from the phrase *persona standi in judicio*, (q. v.)

Of capacity to take a thing granted or given. *Plowd.* 27 a, arg. But in the case here cited, it is used as two words, *person able.* "There is a maxim that when a remainder is appointed to one, he to whom it is appointed ought at that time to be *a person able*, and to have capacity to take the remainder, or else it shall be void." *Id.*

PERSONAL. [Lat. *personalis*, from *persona*, q. v.] Of the person; belonging to, or following the person; as a *personal* chattel, (q. v.)

Relating to, or affecting the person; against the person; as a *personal* action, (q. v.)

PERSONAL ACTION. [Lat. *actio personalis.*] In practice. An action against the person, (*actio in personam;*) an action founded on personal obligation. An action by which a person claims a debt, or *personal* duty, or damages in lieu thereof, or by which a person claims a satisfaction in damages for some injury done to his *person* or property.* 3 *Bl. Com.* 117.

PERSONAL ASSETS. Personal property in the hands of an executor or administrator, chargeable with the debts or legacies of the testator or intestate, and applicable to that purpose.* 2 *Williams on Exec.* 1408. See *Assets.*

PERSONAL CHATTELS. Things moveable which may be annexed to, or attendant on the person of the owner, and carried about with him from one part of the world to another. 2 *Bl. Com.* 387.

PERSONAL CONTRACT. A contract respecting personal property, as a lease of a stock of cattle, or other goods, for years, rendering rent; as distinguished from a lease for years, which is a real contract. 3 *Co.* 22 a, *Walker's case.*

PERSONAL ESTATE. Personal property, (q. v.) "Personal estates," in a will, may pass real property. 11 *East*, 246.

PERSONAL LIBERTY. The right or power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law. 1 *Bl. Com.* 134.

PERSONAL PROPERTY. That kind of property which usually consists of things temporary and moveable, but includes all subjects of property not of a freehold nature, nor descendible to the heirs at law. 2 *Kent's Com.* 340. See definitions of this term in 1 *N. Y. Rev. St.* [388,] 379, § 3. 2 *Id.* [702, § 33,] 587, § 34.

"PERSONAL REPRESENTATIVES" has sometimes been construed to mean, "administrators or executors," and sometimes to mean the "next of kin." 2 *Story's Eq. Jur.* § 1065 b, and note. See 2 *Williams on Exec.* 966. The term "legal representatives" is, in its ordinary sense, synonymous with "executors or administrators." *Id. ibid.*

PERSONAL RIGHTS. See *Rights of persons.*

PERSONAL SECURITY. A person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. 1 *Bl. Com.* 129.

PERSONAL STATUTES. In English law. Statutes which respect personal transitory contracts, as common loans or insurances. So defined by Lord Mansfield, who distinguishes between local and personal statutes. 2 *W. Bl.* 234, 246.

In foreign and modern civil law. Those statutes (laws) which have principally for their object the *person*, and treat only of property incidentally. *Story's Confl. of Laws*, § 13.—A personal statute, in this sense of the term, is a law, ordinance, regulation or custom, the disposition of which affects the person, and clothes him with a capacity or incapacity, which he does not change with every change of abode; but which, upon principles of justice and policy, he is assumed to carry with him wherever he goes. 2 *Kent's Com.* 456. Chancellor Kent considers this application of the word *statute* a perversion, and protests against its introduction into American jurisprudence. *Id.* note.

PERSONAL THINGS, in the old books, include personal rights and duties. **Personal things cannot be done by another.** *Finch's Law*, b. 1, ch. 3, num. 14. Suit of court could not be done by another. *Id. ibid.* A man cannot excuse himself of a contempt by attorney, but in proper person. *Id. ibid.*

Personal things cannot be granted over, as matters of pleasure, ease, trust and authority. *Id. ibid.* num. 15. A license to hunt in my park, to go to church over my ground, to come into my house, to eat and drink with me, cannot be granted over. *Id. ibid.* A. licenseth B. to do an act; B. cannot grant this license to another. *Id. ibid.*

Personal things die with the person. *Id. ibid.* num. 16. When a corporal hurt or damage is done to a man, as to beat him, &c. if he or the party beaten die, the action is gone. *Id. ibid.*

PERSONALIS ACTIO. Lat. In the civil law. A personal action; an action against the person, (*in personam.*) *Dig.* 50. 16. 178. 2.

PERSONALIS ACTIO. Lat. In old English law. A personal action. A term of the civil law, employed by Bracton, and the literal translation of which has been adopted in the common law, as the title of one of the leading divisions of civil actions. *Bract.* fol. 159 b, 284 b.

PERSONALITER. Lat. In old Eng-

lish law. Personally; in person. *Si debitor* personaliter *inveniatur;* if the debtor be personally found. *Fleta*, lib. 2, c. 60, § 33. See *Id.* lib. 3, c. 15, § 5. *Personaliter compareat;* shall personally appear. 3 *How. St. Trials*, 111.

PERSONALITY. In foreign and modern civil law. That quality of a law which concerns the condition, state and capacity of *persons.** By the personality of laws, foreign jurists generally mean all laws which concern the condition, state and capacity of persons. *Story's Confl. of Laws*, § 16.

PERSONALTY. Personal property; including every thing moveable, whether animate or inanimate, when the law considers them to be the subject of property, and sometimes things *quasi* moveable, as tenant's fixtures; and whether tangible or not, such as choses in action, or things which cannot be beneficially obtained without suit; and also some descriptions of interests connected with and issuing out of realty, such as leases for years. 1 *Chitt. Gen. Pr.* 4. Personalty is principally distinguished from realty by its actual or supposed *mobility*, and the want of that *durability* which accompanies all real property, and all permanent rights issuing out of it. *Id.* 84.

An abstract of *personal.* In old practice, an action was said to be in the *personalty* where it was brought against the right person, or the person against whom in law it lay. *O. N. B.* 92. *Cowell.*

PERSONATION. [Lat. *personatio*, from *persona*, a person.] The acting as a person, or for a person; the representation of a person; an acting in the character of another. See *False personation.*

PERSONE. L. Fr. A parson. *En mesme la manere est de* persone *de un esglise;* in the same manner is it with the parson of a church. *Britt.* c. 48.

PERSONERO. Span. In Spanish law. An attorney. So called, because he represents the *person* of another, either in or out of court. *Las Partidas*, part 3, tit. 5, l. 1.

PERSONNE. Fr. A person. This term is declared by the civil code of Louisiana to be applicable to men and women, or to either. Art. 3522, num. 25.

Perspicua vera non sunt probanda. Plain truths are not to be proved. *Co. Litt.* 16 b. Quoted by Lord Coke as the reason why Littleton never cited authority, except where the case was rare or doubtful.

PERTE. L. Fr. Part. *Jugement de* perte *pur* perte; judgment of part for part, (member for member.) *Britt.* c. 25.

PERTICA. L. Lat. In old records. A perch; a measure of land. *Spelman.*

PERTICATA, *Particata.* L. Lat. [from *pertica.*] In old Scotch law. A perch. *Skene de Verb. Signif.*

PERTINENS. Lat. [from *pertinere*, to belong.] In old English law. Pertaining; belonging; appurtenant; appendant. 4 *Co.* 38 a, *Tyrringham's case.*

Used in the laws of Canute, in the sense of a relative, (*cognatus.*) *Spelman.*

PERTINENTIÆ. L. Lat. [from *pertinere*, to belong.] In old English law. Appurtenances, or, as anciently written, *appertinances;* in Scotch law, *pertinents;* things belonging, or incident to another (principal) thing. *Reg. Orig.* 1. *Fleta*, lib. 3, c. 14, § 11. Appurtenances had sometimes their own appurtenances, called *pertinentiæ pertinentiarum.* Thus, to the right of feeding and pasture, themselves appurtenant to a tenement, were appurtenant the right of way, and free ingress and egress; (*habent hujusmodi* pertinentiæ *suas* pertinentias, *sicut ad jus pascendi et ad pasturam pertinet via et liber ingressus et egressus.*) *Bract.* fol. 232. See *Fleta*, lib. 4, c. 18, § 3.

PERTINENTS. In Scotch law. Appurtenances. "Parts and pertinents," "parts, pendicles and pertinents," are formal words in old deeds and charters. 1 *Forbes' Inst.* part 2, p. 112, 118. *Bell's Dict. Cum omnibus partibus, pendiculis, aliisque pertinentiis;* with all the parts, pendicles and other pertinents. 36 *Eng. Law & Eq. R.* 20.

PERTURBATION. In ecclesiastical law. Disturbance; the disturbance of pews or seats in a church. 1 *Phillim. R.* 323.

PERTURBIA. L. Lat. In old Scotch law. Disturbance; Scotticè, *distroublance.* 1 *Pitc. Crim. Trials*, part 2, p. 72. Called also *perturbacio.*

PERVISE, *Parvise.* [L. Lat. *pervisus*, *parvisia.*] A church porch; the outer court of a palace; the palace yard at Westminster. A place where clients and their counsel used to meet for the purpose of consultation. *Fortescue de L. L. Angliæ* c. 51. *Spelman.* Dugdale, speaking of the "Pervyse of Pawles," observes that "formerly each lawyer and serjeant, at his pillar in St. Paul's Church, heard his cli-

ent's cause, and took notes thereof upon his knee. *Dugd. Orig. Jur.* 195 b.

According to Selden, *pervise* signified an afternoon's exercise or moot for the instruction of young students. *Note to Fortescue, ub. sup.*

PESCHER. L. Fr. [from Lat. *piscare.*] To fish. *Droit de* pescher; right to fish. *Britt.* c. 63.

PESCHERIE, *Peskerye.* L. Fr. [from *pescher*, q. v.] In old English law. Fishery; a fishery. *Britt.* c. 63. *Kelham.*

PESQUISIDOR. Span. In Spanish law. Coroner. *White's New Recop.* b. 1, tit. 1, § 3.

PESSON. L. Fr. In old English law. Mast. *Britt.* c. 21, 24, 72. See *Pessona.*

PESSONA. L. Lat. In old English law. Mast, including acorns, nuts and other similar produce of trees. *Bract.* fol. 222 b.

PESSONS. L. Fr. Fish. *Yearb.* M. 4 Edw. III. 38.

PESTER. L. Fr. To feed. *Yearb.* M. 4 Edw. III. 63.

PESTOUR, *Pesture.* L. Fr. [L. Lat. *pistor.*] A baker. *Kelham. Britt.* c. 30.

PETENS. Lat. [from *petere*, to demand.] In old English law. A demandant; the *actor* in a real action. *Bract.* fol. 106 b, 102. *Fleta*, lib. 6, c. 6, § 1.

PETERE. Lat. In the civil law. To ask or request; to pray. A word applied to the creation of trusts by will. See *Peto.*

To demand. A word particularly applied to proceedings to recover a *thing*, (*res.*) Hence its use in the old English real actions. See *Petens, Petitio.*

PETIT. Lat. [from *petere*, to ask or demand.] In old practice. Prays; demands. *A.* petit *versus B. tantam terram;* A. demands against B. so much land. *Bract.* fol. 281 b. *Petit auditum;* prays oyer. 2 *Ld. Raym.* 1540.

PETIT JUDICIUM. Lat. In old practice. Prays judgment. 6 *Mod.* 236. 10 *Id.* 210, 211.

PETIT, *Petyt, Petite.* L. Fr. Small; little; petty. *Petitement;* easily. *Kelham.*

PETITE ASSISE. L. Fr. The small assise; a recognizance of twelve jurors as to the right of a plaintiff upon the possession, (*reconisaunce de xii jorours del droit le pleyntyfe sur la possession.*) *Britt.* c. 42. Distinguished from the *grand* assise, (q. v.)

PETIT CAPE. Fr. and Lat. In old practice. Little *cape;* a writ of *cape* which issued against a vouchee, when he had appeared and afterwards made default. *Roscoe's Real Act.* 268. But see *Fet Assaver*, § 38—41.

PETIT (or PETTY) JURY. Small jury; the ordinary jury of twelve men, as distinguished from the *grand* jury, consisting of a larger number. Called in old practice, *la petite duzein*, the little dozen, or twelve. *Yearb.* T. 4 Edw. III. 21.

PETIT (or PETTY) LARCENY. [L. Fr. *petit larcyn.*] Larceny to the value of twelve pence, or under. See *Grand larceny.* Called in Fleta, *minimum latrocinium. Fleta*, lib. 1, c. 38, § 10.

PETIT (or PETTY) SERJEANTY. [L. Lat. *parva serjeantia, parva serjantia, parva serjanteria.*] In English law. A species of tenure in socage, consisting in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow or the like. *Litt.* sect. 159. 2 *Bl. Com.* 82. Distinguished from *grand* serjeanty, (q. v.) The tenure by which the lands and property granted to the Duke of Marlborough and the Duke of Wellington, for their great military services, are holden at this day, is of this kind; each rendering a small flag or ensign annually, which is deposited in Windsor castle. 1 *Chitt. Gen. Pr.* 229, note. See *Parva serjantia.*

PETIT TREASON. [L. Lat. *parva proditio.*] In English law. The offence of killing a master, or husband. 4 *Bl. Com.* 203. Now abolished by statute 9 Geo. IV. c. 31, s. 2. 4 *Steph. Com.* 124, 184, note.

PETITIO. Lat. [from *petere*, to ask or demand.] In the civil law. The plaintiff's or *actor's* statement of his cause of action, in an action *in rem. Dig.* 44. 7. 28. *Calv. Lex.*

In old English law. Petition or demand; the count in a real action; the form of words in which a title to land was stated by the demandant, and which commenced with the word *peto*, (q. v.) 1 *Reeves' Hist.* 176. Obviously borrowed from the civil law. See *infra.*

PETITION. In practice. An application to a court in writing; in contradistinction to a motion, which may be *viva voce.* Shaw, C. J. 4 *Metcalf's R.* 376. A motion stated in writing.

In equity practice. An application in writing for an order of the court, stating the circumstances upon which it is founded; a proceeding resorted to whenever the nature of the application to the court requires a fuller statement than can be conveniently made in a notice of motion. 1 *Barbour's Chanc. Pr.* 578. See 3 *Daniell's Chanc. Pr.* 1801, (Perkins' ed.)

PETITION DE DROIT. L. Fr. In English practice. A petition of right; a form of proceeding to obtain restitution from the crown of either real or personal property, being of use where the crown is in possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the crown, grounded on facts disclosed in the petition itself. 3 *Bl. Com.* 256. See a late case of this kind, 8 *Ad. & Ell.* (N. S.) 208.

PETITION OF RIGHT. A parliamentary declaration of the liberties of the people, assented to by King Charles I. in the beginning of his reign. 1 *Bl. Com.* 128. See it at large, 3 *How. St. Trials*, 221, *et seq.*

PETITOR. Lat. [from *petere*, to demand.] In Roman law. A plaintiff or *actor*, particularly in an action *in rem*; a demandant. *Calv. Lex.* Actor *est qui agit in personam*, petitor, *qui agit in rem*; an actor is one who prosecutes against a person, a demandant one who prosecutes against a thing. *Cujac. Observ.* lib. 7, c. 26.

PETITORY. [Lat. *petitorius*, from *petere*, to demand.] Having the quality of a demand or petition; resting in demand; claiming title merely, without possession. See *Petitory suit.*

PETITORY SUIT or ACTION. In admiralty law. A suit in which the mere title to property is litigated and sought to be enforced, as distinguished from a *possessory* suit, (q. v.) 5 *Mason's R.* 465. 1 *Kent's Com.* 371.

In Scotch law. An action wherein the pursuer (plaintiff) claims something as due or belonging to him by the defender, (defendant.) 1 *Forbes' Inst.* part 4, p. 163. *Bell's Dict.*

PETO. Lat. In the Roman law. I request. A common word by which a *fideicommissum*, or trust, was created in a will. *Inst.* 2. 24. 3.

In old English law. I demand. The word with which a demandant's count commenced, it being in the first person. *Glanv.* lib. 2, c. 3. Peto *versus talem tantum terræ cum pertinentiis, in tali villa, ut dotem meam;* I demand against such a one, so much land, with the appurtenances, in such a town, as my dower. *Bract.* fol. 313 b. *Fleta*, lib. 5, c. 32, § 3. *Id.* lib. 6, c. 52.

PETRA. Lat. In old English law. Stone. *Fleta*, lib. 1, c. 20, § 114.

A stone. A weight of twelve pounds and a half. *Fleta*, lib. 2, c. 12, § 1.

PETTY. Small; inferior. A word framed from the Fr. *petit*, and sometimes used indiscriminately with it. See *Petit.*

PETTY AVERAGE. In maritime law. A term used to denote such charges and disbursements as, according to occurrences and the custom of every place, the master necessarily furnishes for the benefit of the ship and cargo, either at the place of loading or unloading, or on the voyage; such as the hire of a pilot for conducting a vessel from one place to another, (formerly called *lodemanage*,) towage, light money, beaconage, anchorage, bridge toll, quarantine and such like. *Park on Ins.* 100. The particulars belonging to this head depend, however, entirely upon usage. *Abbott on Ship.* 404.

PETTY BAG. [L. Lat. *parva baga.*] In English practice. A name given to one of the offices belonging to the common law court in chancery, from the *little sack* or bag anciently used for keeping the writs relating to such matters wherein the crown was immediately or mediately concerned. 3 *Bl. Com.* 49.

PETTY CONSTABLE. In English law. The ordinary kind of constable in towns and parishes, as distinguished from the high constable of the hundred. See *Constable.* The distinction is expressed in American law by the same words.

PETTY LARCENY. See *Petit larceny.*

PEYNE. O. Eng. and L. Fr. Pain; penalty. 3 *Leon.* 8.

PEYS. L. Fr. In old English law. Weight; weights. *Britt.* c. 30. *Peyser, peiser;* to weigh. *Id. ibid.*

PHAROS. Lat. In maritime law. A light-house. *Loccen. de Jur. Mar.* lib. 2, c. 1, sec. 7.

PHYSICAL FACT. In the law of evidence. A fact, the existence of which may be perceived by the senses; such as the sound of a pistol-shot; a man running; impressions of human feet on the ground. *Burr. Circ. Evid.* 130. See a particular

enumeration of these. *Id.* 253. Defined by Mr. Bentham, "a fact considered to have its seat in some inanimate being, or, if in an animate being, by virtue, not of the qualities by which it is constituted animate, but of those which it has in common with the class of inanimate beings." 1 *Benth. Jud. Evid.* 45.

PICCAGE. [L. Lat. *piccagium*, from Fr. *piquer*, to perforate, or pick.] In old English law. Money paid at fairs for leave to break the ground, to set up booths or stalls. *Cowell. Spelman.*

PICKERY. Sc. [O. Sc. *pykerie.*] In Scotch law. Petty theft. *Bell's Dict.* 2 *Pitc. Crim. Trials*, 43.

PIE, *Pee*, *Pe.* L. Fr. [from Lat, *pes*, a foot.] A foot. *Piez*, *pez*; feet. *Kelham.*

PIED POUDRE. L. Fr. [L. Lat. *pede pulverosus.*] In old English law. Dusty-foot. A term applied to itinerant merchants, chapmen or pedlars, who attended fairs. *Cowell. Skene de Verb. Signif.* voc. *Pedepulverosus.* Usually written as one word, *piepoudre.* 4 *Taunt.* 533.

PIER, *Piere.* L. Fr. [from Lat. *pater.*] In old English law. Father; a father. *Britt.* c. 109.

PIGHTEL. [L. Lat. *pictellum.*] In old conveyancing. A small parcel of land enclosed with a hedge; a little close. *Cowell.* Derived by Cowell from Ital. *piccolo*, little, but by Spelman from L. Lat. *pictatium*, a scrap.

PIGNERARE. Lat. [from *pignus*, a pledge.] In the civil law. To pledge; to deposit on pledge, (*pignori ponere.*) *Calv. Lex.*

PIGNORATIO. Lat. [from *pignorare*, q. v.] In modern civil law. The taking of cattle doing damage, by way of pledge, till satisfaction is made. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 10, § 1242. Corresponding with the *distress* and *impounding* of the common law.

PIGNORATITIA ACTIO. Lat. In the civil law. An action of pledge, or founded on a pledge, which was either *directa*, for the debtor, after payment of the debt, or *contraria*, for the creditor. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 13, §§ 824—826. *Dig.* 13. 7. Written *pignoraticia*, *ibid.*

PIGNUS. Lat. In the civil law. A pledge or pawn; a delivery of a thing to a creditor, as security for a debt.

A thing delivered to a creditor as security for a debt. This is the sense in which the word is employed in the Institutes. Pignoris *appellatione eam proprie rem contineri dicimus, quæ simul etiam traditur creditori, maxime si mobilis sit;* under the title of *pignus* (pledge,) we declare, is properly included *the thing itself*, which at the same time is delivered to the creditor, especially if it be movable. *Inst.* 4. 6. 7. It was thus distinguished from a *hypotheca*, which was valid without delivery. *Id. ibid.* And see *Dig.* 13. 7. 9. 2. Story, J. 1 *Sumner's R.* 73, 81. But a *pignus* might also be good without delivery. *Dig.* 13. 7. 1.

In an exact sense, *pignus* was properly applied to moveables, and *hypotheca* to immoveables. 2 *Story's Eq. Jur.* § 1006. But the word was sometimes taken in a more general sense. *Id. ibid. Story on Bailm.* § 290 a. See *Dig.* lib. 20, *per tot.* Gaius, in the Digests, derives *pignus* from *pugnus*, the fist or hand, because things which are given in pledge are delivered into the hand. *Dig.* 50. 16. 238. 2.

PILLORY. [L. Fr. *pillorie;* L. Lat. *pillorium*, *pilloria; collistrigium.*] In criminal law. An engine of wood made to punish offenders, intended, as Spelman observes, more for the infliction of disgrace than pain, (*ad ludibrium magis quam pœnam;*) the head and face of the offender being exposed to public view, through an opening which fitted the neck in such a manner that it could not be drawn back, the hands also being secured through similar openings; very significantly described by its old Saxon name *healsfang*, (neck-grasp,) of which the Lat. *collistrigium* is an imitation. For a particular description of the manner in which this punishment was inflicted, see the case of Rex *v.* Beardmore, 2 *Burr.* 792.

Cowell inclines to derive *pillory* from the Gr. πύλη, a gate, and ὁράω, to see. Spelman prefers the Fr. *pilleur*, a cheat, as denoting the class of offenders on whom the punishment was at first principally inflicted. Both, however, leave it uncertain.

PILOT. In maritime law. A steersman; a person particularly acquainted with the navigation of certain waters, and employed to steer vessels through them.* —A person taken on board a vessel at a particular place, for the purpose of conducting her through a river, road or channel, or from or into a port. *Abbott on Ship.* 195. Story, J. 10 *Peters' R.* 108, 123.—A person qualified and appointed

by proper authority, to conduct vessels in and out of particular harbors, or along certain coasts, at a certain fixed rate, depending on the draught of water. *Brande.* It is the duty of the master engaged in a foreign trade, to put his ship under the charge of a pilot, both on his outward and homeward voyage, when he is within the usual limits of the pilot's employment. 3 *Kent's Com.* 175, 176, and note. The pilot, while on board, has the exclusive control of the ship. He is considered as master *pro hac vice. Id. ibid.*

PILOTAGE. The navigation of a vessel by a pilot; the duty of a pilot. Story, J. 10 *Peters' R.* 121, 123.

The charge or compensation allowed for piloting a vessel. *Abbott on Ship.* 198, 199.

PIN MONEY. Money allowed to, or settled upon a wife, for the purpose of supplying her with dress and the means of defraying her other personal expenses. See *Sugden's Law of Property*, 162, 170, and note.

PINCERNA. Lat. In old English law. Butler; the king's butler, whose office it was to select out of the cargo of every vessel laden with wine, one cask at the prow and another at the stern, for the king's use. *Fleta*, lib. 2, c. 22.

PIPE ROLL. A great roll kept in the English Exchequer, said to be so called from its resemblance in shape to a *pipe. Spelman.* But, according to Lord Bacon, it was so called "because the whole receipt is finally conveyed into it by the means of divers small *pipes* or quills, as it were water into a great head or cistern." *Bacon's Works*, iv. 133. Called by Madox "the most stately record of the exchequer, and the great medium of charge and discharge of rents, farms and debts due to the crown." *Hist. Exch.* vol. ii. p. 114. There are other rolls under this name. See *Hubback's Evid. of Succession*, 624—626.

PIPOWDER, *Piepoudre.* [Fr. *pied poudre*, q. v.] In English law. The name of a court held for fairs and markets. See *Court of piedpoudre. Pipowder* courts were formerly appointed to be held at fairs in the town and borough of Westchester, New-York. *Bolton's Hist. of Westchester*, i. 194.

PIRACY. In public criminal law. Robbery or forcible depredation on the high seas, without lawful authority, and done *animo furandi*, in the spirit and intention of universal hostility. 1 *Kent's Com.* 183. It is the same offence at sea with robbery on land. *Id. ibid.* See *Whart. Am. Crim. Law*, §§ 2816—2855.

PIRATE. Eng. and Fr. [Lat. *pirata*, from Gr. πειρειν, to cross or roam over.] A sea robber;* one who maintains himself by pillage and robbing at sea. *Cowell.*—A robber on the high seas. *Webster.*—A rover, according to the seeming radical sense of the word. "A pirate is a rover and a robber upon the sea." 3 *Inst.* 113. Pirata *est hostis humani generis;* a pirate is an enemy of the human race. *Id. ibid.* And see *Santerna*, part 4, n. 50. *Stracha de Nautis*, part 3, n. 30.—One who, without a commission from any sovereign, of his own authority, roams over the sea, for the sake of plunder. *Casaregis*, disc. 64, n. 4. And see *Emerig. Tr. des Ass.* ch. 12, sect. 28.

In old Saxon law, this word occurs in the sense of a sea-soldier or marine. *Spelman. Cowell.*

PIRUS. Lat. In old English law. A pear tree. *Fleta*, lib. 2, c. 82, § 2.

PISCARIA. L. Lat. [from *piscis*, fish.] In old English law. Fishery; a fishery. *Reg. Orig.* 156. Sometimes translated *piscary*, (q. v.)

PISCARY. [L. Lat. *piscaria;* L. Fr. *pescherie.*] Fishery. 2 *Bl. Com.* 34, 35.

PISCINA. Lat. [from *piscis*, fish.] In old English law. A fish-pond. *Fleta*, lib. 4, c. 27, § 8.

PISCIS. Lat. Fish. Called *nomen collectivum*, as being used to denote both the singular and plural. 5 *Co.* 35 a, *Playter's case.*

ΠΙΣΤΙΚΟΣ, Πιστικὸς. Gr. [from πίστις, faith.] In maritime law. The master of a ship; he to whom the government of a ship was entrusted. *Laws of Oleron*, art. 1, obs. 1 *Peters' Adm. Dec.* Appendix, vi. *Calv. Lex.*

PISTOR. Lat. In old English law. A baker; the baker. *Fleta*, lib. 2, c. 83. See his duties described, *ibid.*

PIT AND GALLOWS. [L. Lat. *fossa et furca.*] In old Scotch law. The right to punish thieves by drowning and hanging. 2 *Pitc. Crim. Trials*, 43.

PIX. Lat. A mode of testing coin. The ascertaining whether coin is of the proper standard is, in England, called *pixing* it; and there are occasions on which resort is had for this purpose to an ancient

mode of inquisition called the *trial of the pix*, before a jury of members of the Goldsmith's Company. 2 *Steph. Com.* 540, note.

PIXIS. L. Lat. In old pleading. A box. *Cro. Jac.* 664. "Trover was brought *de una pixide*, Anglicè, a box full of bands," &c. *Id. ibid.* A box for deeds and muniments. *Latch*, 195.

PLACE. An old word for *pleas*. Thus the court of *Common Pleas* is sometimes called the court of *Common Place*. *Stat.* 4 *Hen.* VII. c. 24. "Common banke" is translated "Common Place." *Litt.* sect. 94. The expression "Clerk of the Place" occurs frequently in the Year Books. P. 2 Hen. VI. 3. M. 3 Hen. VI. 24. H. 3 Hen. VI. 2. H. 4 Hen. VI. 6. T. 7 Hen. VI. 2. H. 8 Hen. VI. 21. See *Common Place*.

PLACE WHERE. A phrase used in the older reports, being a literal translation of *locus in quo*, (q. v.) "Who was seized of the *place where* in fee." 6 *Mod.* 158. "The plaintiff's cattle escaped into the *place where*." *Id.* 198. See 1 *Leon.* 60, *et passim*.

PLACEA. L. Lat. In old records. A place. *Coram uno justitiario* placeæ *ubi placitum motum;* before one justice of the place where the plea was moved, (suit commenced.) *Reg. Orig.* 186. *Reg. Jud.* 84 b. This word had not always the sense of *locus*, but rather that of a plot or piece of ground. *Provideatur ei in loco competenti, quædam* placea *quæ ei sufficere possit ad mesuagium;* there shall be provided for her, in a suitable place, a certain piece (of ground) which may suffice her for a messuage. *Fleta*, lib. 5, c. 24, § 13. See *Platea*.

PLACETA. L. Lat. In old records. A place, as applied to a house. *Placeta messuagii. Cowell.*

A piece or parcel, as applied to lands. *Placeta pasturæ. Id.* So the Fr. *place de terre;* a piece of land. *Kelham.*

PLACITA. Lat. [plur. of *placitum*, from *placere*, to please.] In the civil law. The decrees or constitutions of the emperor; being the expressions of his will and pleasure, (*quod principi* placuit.) *Calv. Lex. Brissonius.*

PLACITA. L. Lat. [plur. of *placitum*, q. v.] In old English law. Pleas; pleadings; judicial proceedings; suits; debates and trials at law. *Lites et* placita; suits and pleas. *Bract.* fol. 1 b. *Placita coronæ;* pleas of the crown, or criminal suits. *Id.* fol. 116 b. *Co. Litt.* 284 b. *Placita communia;* common pleas. *Id. ibid.*

Penalties; fines; mulcts or emendations in the exchequer. *Lib. Nig. Scacc.* lib. 2, tit. 13.

In practice. The caption or title of a judgment record; so called from its initial word when in Latin, *Placita;* (Pleas, i. e. pleadings;) containing the style and term of the court; and which in modern records usually runs thus: "Pleas before the [justices of the court in which the action is, giving their proper title,] at the [place where the court is held,] of [a certain term or day in term designated,] in the year [specified.] Witness — Justice, — clerk." There were formerly two of these *placita* in the English *nisi prius* records.

PLACITA. L. Lat. [O. Fr. *plaids*.] In old European law. Public courts or assemblies, in which the sovereign presided. See *Placitum*.

PLACITA COMMUNIA. L. Lat. In old English law. Common pleas or suits; civil actions between subject and subject. *Co. Litt.* 284 b. See *Communia placita, Placitum commune*.

PLACITA CORONÆ. L. Lat. In old English law. Pleas of the crown. *Bract.* fol. 116 b. Criminal pleas, proceedings or prosecutions, (*placita criminalia.*) *Co. Litt.* 284 b. A title given to some of the ancient works on criminal law.

PLACITA JURIS. L. Lat. Pleas, or determinations, (that is, arbitrary rules) of law. A term used by Lord Bacon, to denote such rules of law as do not belong to the class of maxims or conclusions of reason, and which he describes as "particular and positive learnings of laws," "grounds and positive learnings received with the law and set down." *Bacon's Max.* pref. *Id.* 55, reg. 12.

Receditur a placitis juris, potius quam injuriæ et delicta maneant impunita. Positive rules of law will be dispensed with, rather than crimes and wrongs should remain unpunished. *Bacon's Max.* 55, reg. 12. Lord Bacon gives the following, among other illustrations of this maxim: "It is a positive ground [of law, or *placitum juris*] that the accessory in felony cannot be proceeded against until the principal be tried; yet if a man, upon subtilty and malice, set a madman by some

device to kill him, [another?] and he doth so, now forasmuch as the madman is excused, because he can have no will or malice, the law accounteth the incitor as principal, though he be absent, rather than the crime shall go unpunished." *Id.* 57.

PLACITABILE. L. Lat. In old English law. Pleadable. *Spelman.*

PLACITAMENTUM. L. Lat. In old records. The pleading of a cause. *Spelman.*

PLACITARE. L. Lat. [from *placitum*, q. v.] In old English law. To plead; to state to a court in form of law. *Placitantur placita;* pleas are pleaded. *Bract.* fol. 106. *Placitavit;* (he) pleaded. *Yearb.* M. 1 Edw. II.

To litigate; to make the subject of a plea or action; to implead or prosecute. *Breve Gul. Conq. apud Hale's Hist. Com. Law*, 120.

PLACITATOR. L. Lat. [from *placitare*, q. v.] In old records. A pleader. *Cowell. Spelman.*

PLACITUM. Lat. [from *placere*, to please.] In the civil law. An agreement of parties, (*conventio;*) that which is their *pleasure* to arrange between them. *Calv. Lex.*

An imperial ordinance or constitution; literally, the prince's pleasure. *Quod* principi placuit *legis habet vigorem;* what has pleased the prince has the force of law. *Inst.* 1. 2. 6.

A judicial decision; the judgment, decree or sentence of a court. *Calv. Lex. Brissonius.*

PLACITUM. L. Lat. [O. Fr. *plait, plaid.*] In feudal and old European law. An assembly of the king and great men of the realm. *Houard, Anc. Loix des Franc.* sect. 10. *Steph. Pl.* Appendix, Note (1.)

The general or national assembly of the Franks. *Hincmar. Op.* vol. ii. c. 29, 211. 1 *Rob. Charles* V. Appendix, note xxxviii.

An assembly or court of freeholders or vassals. *Crabb's Hist.* 58. Supposed to be derived from the Germ. plats, a field, or open place, being sometimes held in the open country.

An ordinary court of justice. *Calv. Lex.*

PLACITUM. L. Lat. In old English law. A court. *Comitatuum placita;* county courts. *Crabb's Hist.* 58.

A cause or suit in court. *Lites et placita;* suits and pleas. *Bract.* fol. 1 b. *Actionum sive placitorum;* of actions or pleas. *Id.* fol. 101 b. *Placitum de recto;* an action or writ of right. *Id.* fol. 328. *Quod* placitum *inchoatum fuit primum in curia P.;* which suit was first commenced in the court of P. *Reg. Orig.* 18 b. Placitum *principale et incidens;* a principal and a collateral suit. *Bract.* fol. 392. *Tenere* placitum; to hold plea; to take cognizance of a cause. *Reg. Orig.* 34. *Trahere in* placitum; to draw into plea; to bring into court; to involve in a suit. *Id. ibid. Placitum de debito;* a plea of debt. *Fleta*, lib. 2, c. 60, § 27. *In* placito *debiti;* in a plea of debt. 1 *Stra.* 407. *Placitum pendens;* a plea pending. *Fleta*, lib. 2, c. 61, § 12. *In* placito *detentionis;* in a plea of detinue. *Keilw.* 119.

A day in court. Placitum *nominatum;* a day appointed for the defendant to plead or answer. *Crabb's Hist.* 59. Placitum *fractum;* a day broken, or lost to the defendant. *Id. ibid.*

A mulct or fine imposed in court. *Id. ibid.*

A proceeding in court, particularly a pleading. *Placita;* (q. v.) pleas or pleadings. This use of the word has been retained in records down to the present time.

A plea; an allegation of fact opposed by a defendant to the plaintiff's declaration. See *Plea.*

PLACITUM COMMUNE. L. Lat. In old English law. A common plea or action. *Cum* placitum *debiti sit quoddam* placitum commune, *et in charta libertatis contineatur quod* communia placita *non sequantur cur' Reg' sed in certo loco teneantur;* since a plea of debt is a kind of *common plea*, and in the Charter of Liberty, (Magna Charta,) it is contained that *common pleas* shall not follow the king's court, but shall be held in a certain place. *Fleta*, lib. 2, c. 61, § 18.

PLAGA. Lat. [L. Fr. *playe.*] In old English law. A wound. *Fecit ei insultum et quandam* plagam *ei fecit in tali loco;* made an assault upon him, and gave him a certain wound in such a place. *Bract.* fol. 144. Properly, a wound made by a cutting instrument, (an incised wound.) *Fleta*, lib. 1, c. 41, § 3. *Plaga* and *vulnus*, (wound,) were synonymous, though *plaga* was the more usual word in indictments. 5 *Co.* 121 b, *Long's case.*

PLAGARE. L. Lat. In old European law. To wound. *L. Salic.* tit. 16, § 2. *Spelman.*

PLAGIARIUS. Lat. In the civil law. A man-stealer; a kidnapper. *Dig.* 48. 15. 1. 4 *Bl. Com.* 219.

PLAGIUM. Lat. In the civil law. Man-stealing; kidnapping. The offence of enticing away and stealing men, children and slaves. *Calv. Lex.* The persuading a slave to escape from his master, or the concealing or harboring him without the knowledge of his master. *Dig.* 48. 15. 6. A term used in Scotch law. 2 *Brown's R.* 288.

PLAID. O. Fr. In old European law. An assembly of the kings and great men of the realm. *Houard, Anc. Loix des Franc.* sect. 10. *Steph. Pl.* Appendix, Note (1.)

A court of justice. *Id. ibid.*

PLAIDEUR. O. Fr. A pleader; an advocate. See *Pleideoir.*

PLAIE. L. Fr. A wound. *LL. Gul. Conq.* l. 12.

PLAINT. [L. Fr. *pleynte.*] In English practice. A private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action. A proceeding in inferior courts, by which an action is commenced without original writ. 3 *Bl. Com.* 373. This mode of proceeding is commonly adopted in cases of replevin. 3 *Steph. Com.* 666.

PLAINTIFF. [L. Fr. *pleyntyfe, pleintife,* from *pleyndre,* to complain; L. Lat. *querens.*] In practice. The complaining party in an action at law; the party bringing an action, and so named on the record. It is the old French word, with merely the spelling modernized. See *Pleyntyfe.*

In the case of the Bank of Salina *v.* Henry, it was said by the Supreme Court of New-York that, in the legal as well as in the ordinary use of the term, no one can strictly and properly be denominated a *plaintiff* in an action, unless he is named as such on the *record.* Bronson, J. 1 *Hill's R.* 555, 557. But the decision in this case was reversed by the Court of Errors, who held that the word *plaintiff* extended to a party in interest as plaintiff, although not the plaintiff on the record. 5 *Hill's R.* 523—547. This was in construction of an act of the legislature, entitled "An act to prevent usury," passed May 15th, 1837.

PLAIZ. L. Fr. Pleas, (*placita.*) *LL. Gul. Conq.* l. 2.

PLANTA. Lat. In the civil and old English law. A plant. See *Plantatio.*

PLANTATIO. Lat. [from *plantare,* to plant.] In the civil law. Planting; one of the modes of acquiring property by accession, (*accessio,* q. v.) *Si Titius alienam* plantam *in solo suo posuerit, ipsius erit; et ex diverso, si Titius suam* plantam *in Mœvii solo posuerit, Mœvii* planta *erit; si modo utroque casu radices egerit;* if Titius have set another man's plant in his own ground, it will be his own; and on the other hand, if Titius have set his own plant in Mævius' ground, the plant will be Mævius', provided that in either case it have taken root. *Inst.* 2. 1. 31. This passage is taken word for word (except the error of *Menii* for *Mœvii,*) by Bracton, who gives no authority, but adds, *unde versus,*

Quicquid plantatur, seritur vel inædificatur,
Omne solo cedit, radices si tamen egit.

(whence the verse, "whatever is planted, sown or built, all goes with the soil, provided it have taken root.") *Bract.* fol. 10. In Fleta, the reading of the passage is somewhat varied, but there is the same error of *Menius* for *Mœvius. Fleta,* lib. 3, c. 2, § 13.

PLANUS, *Planum.* Lat. In the Roman law. Plain; level; not elevated. *De plano;* from or on a level, as opposed to *pro tribunali,* from a tribunal or judgment seat. The prætor or magistrate was figuratively said to hear causes (*cognoscere*) *de plano,* when he did so without the ceremony of occupying the tribunal, as while walking abroad, &c. *Calv. Lex.*

PLATEA. L. Lat. In old English law. A clear or open space of ground; a plat or plot of ground. *Provideatur ei in loco competenti, quædam* platea *quæ ei sufficere possit ad messuagium;* there shall be provided for her in a suitable place, a certain plat or space which may be sufficient for a messuage for her. *Bract.* fol. 97 b. In the corresponding passage in Fleta, the word is written *placea,* (q. v.)

A wide place; a court yard. 1 *Ld. Raym.* 607, arg. A barn-yard. *Fleta,* lib. 2, c. 73, § 9.

PLAY. L. Fr. In old English law. A plea, or action. *Si le* play *soit ailleurs que en nostre court;* if the plea be elsewhere than in our court. *Britt.* c. 26. *Sicome* play *de dette et de covenaunt;* as a plea of debt and of covenant. *Id. ibid. Pendaunt le* play. *Id.* c. 27. *Comencement del* play. *Id.* c. 46. *Obligacion est —mere de* play; obligation is the mother of an action. *Id.* c. 28.

PLAYE. L. Fr. [from Lat. *plaga.*] In

old English law. A wound. *Et puis vist le coroner, et les jurors ove luy, voer le cors, et les* playes *et les coupes;* and then shall the coroner go, and the jurors with him, to view the body, and the wounds, and the strokes [or marks of blows.] *Britt.* c. 1.

PLE. L. Fr. In old English law. A plea or suit. *Les* ples *le roy;* the pleas of the crown. *Mirr.* c. 4. 9 *Co.* pref. v.

A plea, (pleading.) *Ceo n'est ple;* this is no plea. *Yearb.* T. 18 Hen. VI. 2. *Le* ple *est double.* H. 8 Hen. VI. 13.

PLEA. [L. Fr. *plee, ple, play;* L. Lat. *placitum;* Sax. *pleo, pleoh,* from *pleah,* loss, peril, according to Spelman.] In old English law and practice. A suit or action. This sense of the word has been preserved in modern declarations, in which the plaintiff complains of the defendant "of a *plea* (L. Lat. *de placito,* that is in action) of debt," or whatever the form of action may be. See *De placito.* It is preserved, also, in the phrase "to hold *plea,*" which still occurs in the books.

An allegation made by a party in a cause; a pleading.* *Steph. Pl.* Appendix, Note (1.) That which either party alleges for himself in court. *Cowell.* See *Plead.*

In a stricter sense. An allegation of *fact* in a cause, as distinguished from a demurrer. *Steph. Plead.* Appendix, Note (26.) See *Plead.*

In modern practice. An answer or allegation of fact which a defendant, in an action at law, opposes to the plaintiff's declaration. *Steph. Pl.* Appendix, Note (26.) The word has obtained this sense by a process of gradual restriction of meaning, which may also be observed in the successive definitions of *placitum,* the corresponding Latin word.

In equity practice. A special answer, showing or relying upon one or more things, as a cause why the suit should be either dismissed, or delayed, or barred. *Mitford's Chanc. Pl.* 219. *Story's Eq. Plead.* § 649.

PLEA IN ABATEMENT. In practice. A plea which goes to *abate* the plaintiff's action, that is, to suspend or put it off for the present. 3 *Bl. Com.* 301. Called, also, a *dilatory plea,* (q. v.)

PLEA IN BAR. In practice. A plea which goes to *bar* the plaintiff's action, that is, to defeat it absolutely and entirely. 1 *Burr. Pr.* 162. 3 *Bl. Com.* 303. Anciently termed a *bar,* (q. v.)

PLEAD. [L. Fr. *pleder;* L. Lat. *placitare,* qq. v.] Originally and radically,—to litigate; to carry on a *plea,* (suit.) This sense appears in the L. Lat. *placitare,* and L. Fr. *pleder,* (qq. v.) and is preserved in the word *implead,* which is still used.

In a stricter sense,—to conduct that part of an action which consisted in the *allegations* of the respective parties.* To make allegation in a cause. *Steph. Pl.* Appendix, Notes (1,) (18.) See *Pleading.* This, when the pleadings were oral, seems to have corresponded very closely with the modern popular sense of the word, (to argue at the bar, or address a jury.)

In a still stricter sense,—to make an allegation of *fact* in a cause. *Steph. Pl.* Appendix, Note (26.) It is a general rule of pleading, that a party, at each successive stage of the process, must demur or *plead* to the allegation of his adversary. *Id.* 138.

In the strictest sense,—to make that allegation of fact, on the part of a defendant, *which follows* and is opposed to *the plaintiff's declaration.** *Steph. Pl.* Appendix, Note (26.) In practice, the plaintiff is said to declare, the defendant to *plead,* the plaintiff to reply, &c.

PLEADER. [L. Fr. *pleador, pledor;* O. Fr. *pleideoir;* L. Lat. *placitans advocatus.*] A person professionally employed to manage another's cause for him, particularly to plead orally, or argue for him in court. The use of professional *pleaders* or advocates may be traced, among some of the continential nations, to a period extremely remote. *Steph. Pl.* Appendix, Note (8.) In the Assizes of Jerusalem, the term pleader (*pledeoir*) is used as nearly synonymous with counsel, (*conseill.*)

PLEADING. In common law practice. The process of making allegation in a cause, consisting of a series of written statements proceeding from the parties in alternate order, and so adapted to each other as to develop of themselves the essential point in controversy, or subject for the decision of the court, which is termed the *issue.*

That stage of the proceedings in an action, which commences when the defendant has *appeared,* and terminates with the production of an *issue* between the parties.

That peculiar system or science of statement established in the common law of England, consisting of a variety of rules, (with accompanying forms,) by which the allegations of the respective parties are so regulated as to produce a single, certain and material issue between the parties, and

to produce it with the least delay and confusion. *Steph. Pl.* 1. *Id.* 123—137, *et per tot.*

In equity. The formal method of placing the statements of the respective parties to a suit before the court; a less technical procedure than pleading at law, the substance of the statements being regarded rather than their precise verbal form.

PLEADINGS. [L. Lat. *placita.*] The individual allegations of the respective parties to an action at common law, proceeding from them alternately, in the order and under the distinctive names following: the plaintiff's *declaration*, the defendant's *plea*, the plaintiff's *replication*, the defendant's *rejoinder*, the plaintiff's *sur-rejoinder*, the defendant's *rebutter*, the plaintiff's *surrebutter;* after which they have no distinctive names.

In equity. The formal written allegations or statements of the respective parties in a suit, to maintain or defeat it; consisting of the plaintiff's bill, the defendant's answer, and the plaintiff's replication. *Story's Eq. Pl.* § 4, and note.

PLEAS OF THE CROWN. [L. Lat. *placita coronæ.*] In English law. Criminal prosecutions. So called, because conducted at the suit of the crown.* 3 *Bl. Com.* 40.

Criminal law. The title of several standard works on criminal law, as Hale's Pleas of the Crown, Hawkins' Pleas of the Crown, and others.

PLEBEYOS. Span. [from Lat. *plebeius*, from *plebs*, q. v.] In Spanish law. Commons; those who exercise any trade, (*arte*,) or who cultivate the soil. *White's New Recop.* b. 1, tit. 5, c. 3, § 6, and note.

PLEBISCITUM. Lat. In the Roman law. A law enacted by the *plebs* or commonalty, (that is, the citizens, with the exception of the patricians and senators,) at the request, or on the proposition of a plebeian magistrate, such as a tribune; (*quod* plebs, plebeio *magistratu interrogante*, (*veluti tribuno,*) *constituebat.*) *Inst.* 1. 2. 4. *Tayl. Civ. Law*, 197.

PLEBS. Lat. In the Roman law. The commonalty, or citizens, exclusive of the patricians and senators. Plebis *appellatione, sine patriciis et senatoribus, cæteri cives significantur. Inst.* 1. 2. 4. *Dig.* 50. 16. 238, pr.

PLEDABLE. L. Fr. That may be brought or conducted, as an action, or *plea*, as it was formerly called. *Britt.* c. 32. See *Pleder.*

PLEDER. L. Fr. In old English law. To plead; to conduct an action. *La forme et la manere de* pleder *parsonels plees* pledables *par attachments de cors;* the form and the manner of pleading personal pleas pleadable by attachments of the body. That is, the manner of conducting personal actions which may be brought by attachment. *Britt.* c. 32.

To plead; to put in a plea. *Pleder en abatement. Yearb.* M. 9 Edw. III. 57. *Pleda en barre.* M. 10 Edw. III. 41.

PLEDGE. [L. Fr. *plegge, plege;* L. Lat. *plegius.*] In old English law and practice. A surety; a person who undertook or became responsible for another. A term always applied to persons. See *Plegius.*

PLEDGE. [Lat. *pignus.*] In the law of bailment. A bailment of goods to a creditor, as security for some debt or engagement. *Story on Bailm.* § 7.—A bailment or delivery of goods by a debtor to his creditor, to be kept till the debt be discharged. 2 *Kent's Com.* 577. Distinguished from a *mortgage* of goods, by its passing only a *special* property to the pledgee, and by its requiring actual *possession* by him to create or to support his title. *Story on Bailm.* § 287.

PLEDGER. The party delivering goods in pledge; the party pledging. *Story on Bailm.* § 287.

PLEDGEE. The party to whom goods are pledged, or delivered in pledge. *Story on Bailm.* § 287.

PLEE. L. Fr. In old English law. An action or suit; a *plea*, in the ancient sense of the word. *Parsonels* plees *pledables par attachments;* personal actions which may be prosecuted by attachments. *Britt.* c. 32. *En* plees *realx, et auxi en* plees *personals;* in real actions, and also in personal actions. *Litt.* sect. 464.

A plea, in the modern sense. Plee *en barre;* a plea in bar. *Litt.* sect. 492.

PLEGGAGE. L. Fr. Suretyship. *Kelham.* See *Plegiagium.*

PLEGGE. L. Fr. A pledge. *Plegges de suer;* pledges to prosecute. *Britt.* c. 1. *Gage et plegge. Id.* c. 27.

PLEGIABILIS. L. Lat. In old English law. That may be pledged; the subject of pledge or security. *Fleta*, lib. 1, c. 20, § 98.

PLEGIAGIUM. L. Lat. In old English law. Suretyship. *Fleta*, lib. 2, c. 72, § 15.

PLEGIUS, *Pleggius.* L. Lat. In old

English practice. A pledge; a surety. *Mag. Cart.* 9 Hen. III. c. 8. *Pone per vadium et salvos* plegios; put by gage and safe pledges. *Bract.* fol. 149 b. See *Id.* 336. *Per* plegios *dimittere;* to release on pledges or bail. *Fleta*, lib. 2, c. 52, § 40, *et seq. Plegii de prosequendo;* pledges to prosecute. *Id.* lib. 2, c. 62, § 2.

PLEGIARE. L. Lat. In old practice. To pledge; to undertake; to become responsible for. *Si nihil aliud* plegiaverint *nisi tantum habendi eum;* if they have undertaken nothing more than merely to have him. *Bract.* fol. 149 b. *Quod* plegiatum *non habuerint, sicut eum* plegiaverunt; that they had not the party pledged, as they pledged him. *Fleta*, lib. 2, c. 65, § 15.

PLEIDEOIR. O. Fr. In old European law. A pleader; an advocate. *Il doit demander au seignor, à conseil, le meillour* pleideoir *de la court;* he ought to ask of the lord, for his counsel, the best pleader in the court. *Assizes de Jerus.* c. ix.

PLEINE AGE. L. Fr. In old English law. Full age. *Litt.* sect. 103.

PLEINEMENT, *Pleinment.* L. Fr. Fully. *Art. sup. Chart.* c. 1. Pleinement *administre;* fully administered. *Hob.* 178 a.

PLENA ÆTAS. In old English law. Full age. See *Full age. Plenæ ætatis;* of full age.

PLENA PROBATIO. Lat. In the civil law. Full proof; proof by two witnesses or a public instrument. *Hallifax, Anal.* b. 3, c. 9, num. 25.

PLENARIE. L. Lat. Fully. *Fleta*, lib. 2, c. 64, § 19.

PLENARTY. [from Lat. *plenus*, full.] In English law. Fulness; a state of being full. A term applied to a benefice when full, or possessed by an incumbent. The opposite state to a *vacation*, or vacancy. *Cowell.*

PLENARY. [from *plenus*, full.] Full; complete; without abridgment.

PLENE ADMINISTRAVIT. L. Lat. (He has fully administered.) In practice. A plea by an executor or administrator, that he has fully administered all the assets that have come to his hands. 1 *Tidd's Pr.* 644. 2 *Arch. Pr.* 147. *Plene administraverunt;* they have fully administered. 10 *East*, 313.

PLENE ADMINISTRAVIT PRÆTER. Lat. (He has fully administered, except.) In practice. A plea by an executor or administrator, that he has fully administered all the assets that have come to his hands, except assets to a certain amount, which are not sufficient to satisfy the plaintiff. 1 *Tidd's Pr.* 644. 2 *Arch. Pr.* 147.

PLENIPOTENTIARY. [from Lat. *plenus*, full, and *potentia*, power.] One who has full power to do a thing; a person fully commissioned to act for another. A term applied, in international law, to ministers and envoys of the second rank of public ministers. *Wheaton's Intern. Law*, part 3, ch. 1, § 6.

PLENUM DOMINIUM. Lat. In the civil law. Full ownership; the property in a thing united with the usufruct. *Calv. Lex.*

PLENUM RECTUM. L. Lat. In old English practice. Full right. Formal words in old writs, particularly writs of right. *Præcipimus vobis quod sine dilatione* plenum rectum *teneatis;* we command you that, without delay, you do full right. *Reg. Orig.* 1. *Bract.* fol. 328.

PLET, *Pleit.* L. Fr. A plea. *Kelham.* An older form of *plee*, and probably derived from the Lat. *placitum.*

PLEVIA. L. Lat. In old English law. Pledge; security. *Dimisit per pleviam;* released on surety. 3 *St. Trials*, 121.

PLEVINA. L. Lat. In old English practice. The engagement, undertaking or liability of a pledge or surety. *Plegii quieti erunt de* plevina, *nisi gratis velint eos sub eadem* plevina *retinere;* the pledges shall be quit of their engagement, unless they voluntarily choose to keep them under the same engagement. *Bract.* fol. 149 b. *Dimissionibus per plevinam. Fleta*, lib. 1, c. 20, § 97.

PLEVINE. L. Fr. In old English practice. Security by pledge; the engagement of a pledge. *Si il cele* plevine *refusa;* if he refuse this security. *Britt.* c. 27. Applied to the replevin of land. *Fet Assaver*, §§ 24, 25.

PLEVYS. L. Fr. Pledged; under pledge. *Britt.* c. 12.

PLEYN. L. Fr. [from Lat. *plenus*, full.] In old English law. Full. *En* pleyn *court;* in full court. *Britt.* c. 120.

PLEYNDRE. L. Fr. To complain. *Kelham.*

PLEYNTE. L. Fr. In old English law. A plaint or complaint. *A celuy vers que la* pleynte *est faite;* to him against whom the plaint is made. *Britt.* c. 58.

PLEYNTYFE. L. Fr. [from *pleyndre*,

to complain.] In old English law. Plaintiff; a plaintiff; a complaining party. *Nul jugement ne se poit faire de meyns que de iii persones, cestasaver, de un juge, de un pleyntyfe, et de un defendaunt;* no judgment (or judicial action in a suit) can take place with less than three persons, that is to say, a judge, a plaintiff and a defendant. *Britt.* c. 22.

This is the form of the word as it occurs throughout Britton. In the Year Books it is commonly written *pleintife.* In Littleton and the older reports in French, it is written *plaintife*, which has been converted into the modern word *plaintiff*, by the mere change of a letter. *Litt.* sect. 195. *Dyer*, 55, *et passim. Plaintife* is used throughout the older editions of Coke's commentary on Littleton, as an English word. Britton applies the word to the complaining party in an appeal and in a real action. *Britt.* c. 22, 75.

PLEYTO. Span. [from L. Lat. *placitum?*] In Spanish law. The pleadings in a cause. *White's New Recop.* b. 3, tit. 7.

PLIGHT. In old English law. An estate, with the habit and quality of the land; extending to a rent charge and to a possibility of dower. *Co. Litt.* 221 b. *Cowell.*

PL'IT'M. A contraction of *placitum. Pl'ito*, of *placito.* 1 *Inst. Cl.* 11.

PLOMB, *Plumb.* L. Fr. [from Lat. *plumbum.*] In old English law. A leaden vessel or pipe. *Yearb.* T. 9 Edw. III. 25.

PLOUGH-BOTE. [L. Lat. *estoverium arandi.*] An allowance of wood made to a tenant, for repairing his ploughs and other instruments of husbandry. 2 *Bl. Com.* 35. See *Bote, Estovers.*

PLOUGH-LAND. [L. Lat. *carucata terræ*, q. v.] In old English law. A quantity of land allotted for the work of one plough; (*portio terræ quæ ad unius aratri operam designatur.*) *Spelman*, voc. *Carua.*

PLUMBATURA. Lat. [from *plumbum*, lead.] In the civil law. Soldering. *Dig.* 6. 1. 23. 5.

PLUMBUM. Lat. In the civil law. Lead. *Dig.* 50. 16. 242. 2.

PLURAL. [Lat. *pluralis*, from *plus, pluris*, more.] Containing more than one; consisting of two or more; designating two or more. *Webster.*

Pluralis numerus est duobus contentus. The plural number is contained in two. 1 *Rol. R.* 476. It is a rule of construction, that where a statute speaks of a thing as a right, in the plural number, the singular is included. *Co. Litt.* 369 a. Kent, C. 20 *Johns. R.* 693, 727.

PLURALITER. L. Lat. In the plural. 10 *East*, 158, arg.

PLURIES. Lat. In practice. Oftentimes; many times; frequently. The emphatic word of a clause inserted in the Latin forms of writs which issued in the third instance, after a first and second (or *alias*) writ of the same kind had been already issued without effect. *Præcipimus tibi*, (*sicut* PLURIES *præceperimus*) quod, &c.: We command you, (as we have *often times* commanded you,) that, &c. This clause has been literally translated, with the rest of the form, in modern writs, and the word *pluries* retained as the name both of the clause and the writ itself; the writ being in such case termed a *pluries* writ. 1 *Tidd's Pr.* 147. Bracton and Fleta use the word *sæpius*, which is identical in meaning: *Præcipimus tibi sicut* SÆPIUS *præceperimus*, &c. *Bract.* fol. 441 b. *Fleta*, lib. 2, c. 67, § 4. In the Register, the *pluries* clauses in writs are brought in by way of recital, thus: *Rex vic. salutem. Cum* PLURIES *tibi præceperimus quod*, &c.; The king to the sheriff, greeting: Whereas we have many times commanded you, that, &c. *Reg. Orig.* 77 b, *et passim.*

PLURIS PETITIO. Lat. In Scotch practice. A *demand of more* than is due. *Bell's Dict.*

PLURISVE. Lat. In the civil law. Or more. This expression was held to import not an indefinite, but a small amount. *Dig.* 50. 16. 192.

Plus peccat author quam actor. The originator or instigator of a crime is a worse offender than the actual perpetrator of it. 5 *Co.* 99 a, *Flower's case.* Applied to the crime of subornation of perjury. *Id. ibid.*

Plus valet unus oculatus testis quam auriti decem. One eye-witness is of more weight than ten ear-witnesses, (or those who speak from hearsay.) 4 *Inst.* 279.

This maxim (or *regula juris*, as Lord Coke terms it,) is merely a line from Plautus, slightly varied:

> Pluris est oculatus testis unus, quam auriti decem:
> Qui audiunt audita dicunt: qui vident, plane sciunt.
> *Truculentus, Act* ii. *Scen.* vi.

(One eye-witness is worth more than ten ear-witnesses; they who hear, say what they hear; they who see, know clearly.)

PLUSORS. L. Fr. Many; several. *Kelham.*

PO. LO. SUO. An old abbreviation of the words *ponit loco suo*, used in warrants of attorney. *Towns. Pl.* 431. 1 *Instr. Cler.* 12.

POACHING. In English criminal law. The unlawful entry upon land, for the purpose of taking or destroying game; the taking or destruction of game upon another's land, usually committed at night. *Steph. Crim. Law*, 119, *et seq.* 2 *Steph. Com.* 82. 4 *Id.* 307. The term seems to be rather a popular than a legal one.

POBLADOR. Span. In Spanish law. A colonizer; he who peoples; the founder of a colony. 11 *Howard's R.* 624, arg.

POCKET RECORD. A statute so called. *Brownl.* (part 2,) 81.

POCKET SHERIFF. In English law. A sheriff appointed by the sole authority of the crown, without the usual form of nomination by the judges in the exchequer. 1 *Bl. Com.* 342. 3 *Steph. Com.* 23.

POER, *Poeir*, *Poair*. L. Fr. Power; authority. *Tauntost finist le* poer *l'attorne;* so soon ends the power of the attorney. *Britt.* c. 46.

POET, *Poit*, *Puit*, *Pout*. L. Fr. May; can. *Ne poet;* may not; cannot. *Le seignior ne* poet *distreiner;* the lord may not (cannot distrain.) *Litt.* sect. 151. *Home* poit *tener;* a man may hold. *Id.* sect. 152. *Il* poyt *tener;* he may hold. *Id. ibid.*

PŒNA. Lat. In the civil law. Punishment; a penalty. *Inst.* 4. 6. 18, 19. *Dig.* 48. 19. 16. *Id.* 50. 16. 131. In old English law, it seems to have had the sense of damages. *Actio in rem persequitur rem ipsam, et* pœnam *propter injustam detentionem;* an action for a thing claims the thing itself, and damages for its wrongful detention. *Bract.* fol. 102 b.

Pœna ex delicto defuncti hæres teneri non debet. The heir ought not to be bound by a penalty arising out of the wrongful act of the deceased. 2 *Inst.* 198.

Pœna suos tenere debet actores [auctores] et non alios. Punishment ought to bind its own authors [those who have caused it,] and not others. *Bract.* fol. 380 b. *Fleta*, lib. 1, c. 38, § 12. *Id.* lib. 4, c. 17, § 17. **Pœna suos teneat auctores.** *Id.* lib. 1, c. 13, § 21.

Quod a quoquo, pœnæ nomine, exactum est, id eidem restituere nemo cogitur. That which is exacted from any one in the name of a penalty, no one is compelled to restore to him. *Dig.* 50. 17. 46.

PŒNA CORPORALIS. Lat. In old English law. Corporal punishment. *Fleta*, lib. 2, c. 1, § 2. *Pœna pecuniaria;* pecuniary punishment. *Id. ibid.*

PŒNA PILLORALIS. L. Lat. In old English law. Punishment of the pillory. *Fleta*, lib. 1, c. 38, § 11.

PŒNALIS. Lat. [from *pœna*, q. v.] In the civil law. Penal; imposing a penalty; claiming or enforcing a penalty. *Actiones pœnales;* actions for penalties; penal actions. *Inst.* 4. 6. 12.

In pœnalibus causis, benignius interpretandum est. In penal causes, a more liberal interpretation should be made. *Dig.* 50. 17. 155. [197.] 2.

PŒNITENTIA. Lat. [from *pœnitere*, to repent.] In the civil law. Repentance; a change of mind or purpose; the rescinding of a contract. See *Locus pœnitentiæ.*

POI, *Poy*, *Pou*, *Po*. L. Fr. A little. *Kelham.*

POIND. See *Poynd.*

POINDING, *Poynding*. In Scotch law. A taking of goods, &c., in execution, or by way of distress.* The distraining of one's moveable goods by authority of law, for his debts. 1 *Forbes' Inst.* part 3, p. 32.—A species of diligence, (i. e. process,) whereby the property of the debtor's moveables is transferred to the creditor. *Brande. Real* poinding takes effect upon the debtor's moveables on the lands to which the debt attaches; *personal* poinding, upon his moveables generally. *Id.*

POINE, *Poigne*. L. Fr. Hand; fist. *Kelham. LL. Gul. Conq.* l. 13.

POINT, *Poynt*, *Pointe*. L. Fr. An article; a point. Applied, in old law, to writs and statutes. Points *de nous brefs;* the points of our writs. *Britt.* fol. 3. *Pur ceo que les* points *de la graund chartre des franchis—ne ont pas este tenus*, &c.; forasmuch as the articles of the Great Charter of liberties have not been observed. *Artic. sup. Chart.* pr. See *Article.*

POIS, *Peys*. L. Fr. Weight. *Kelham.* See *Peys.*

POLCIER, *Pochier*. L. Fr. The thumb. *LL. Gul. Conq.* l. 13.

POLICE. Fr. Policy; a policy. *Police d'assurance;* a policy of insurance;

the contract of insurance. *Ord. Mar.* liv. 3, tit. 6, art. 2.

POLICE DE CHARGEMENT. Fr. In French law. A bill of lading. *Ord. Mar.* liv. 3, tit. 2.

POLICY. [from Ital. *polizza*, a note or memorandum in writing.] The written form in which a contract of insurance is expressed; a written instrument expressive of a contract of insurance, and by the execution of which the insurance is effected; a contract of insurance formally expressed in writing.* A mercantile instrument in writing, by which one party, in consideration of a premium, engages to indemnify another against a contingent loss, by making him a payment in compensation, whenever the event shall happen by which the loss is to accrue. 2 *Steph. Com.* 172. See 3 *Kent's Com.* 257. 14 *Howard's R.* 362.

POLETARIUS. L. Lat. In old English law. A poulterer. *Fleta*, lib. 2, c. 14, § 3.

POLETRIA. L. Lat. In old English law. Poultry. *Fleta*, lib. 2, c. 87.

POLL. [Lat. *caput.*] A head; an individual person. More commonly used in the plural. See *Polls.*

POLL. [L. Fr. *polle.*] Cut or shaved smooth or even; cut in a straight line, without indentation. A term anciently applied to a deed, and still used, though with little of its former significance. 2 *Bl. Com.* 296. See *Deed poll.*

To POLL. In practice. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict. 1 *Burr. Pr.* 238.

POLLS. [Lat. *capita*, q. v.] Heads; individuals; persons singly considered. A challenge to the *polls*, (*in capita*,) is a challenge to the individual jurors composing the panel, or an exception to one or more particular jurors. 3 *Bl. Com.* 358, 361.

POLLARDS. A foreign coin of base metal, prohibited by statute 27 Edw. I. c. 3, from being brought into the realm, on pain of forfeiture of life and goods. 4 *Bl. Com.* 98. It was computed at two pollards for a sterling or penny. *Dyer*, 82 b.

A species of trees. *Ambl.* 134.

POLLICITATIO. Lat. [from *pollicitare*, to promise.] In the civil law. A promise, without mutuality. *Dig.* 50. 12. 3. *Grotius de Jur. Bel.* lib. 2, c. 11, § 3.

POLL-MONEY. [Lat. *capitatio.*] A tax ordained by act of parliament 18 Car. 2, c. 1, by which every subject in the kingdom was assessed by the head or poll, according to his degree. *Cowell.* A similar personal tribute was more anciently termed *poll-silver. Id.*

POLL-TAX. A tax levied by the head or poll; a capitation tax. *Webster.* A tax laid, in some of the United States, upon all male inhabitants of the state between certain ages. *Rev. Stat. of Mass.* (ed. 1836,) c. 7, § 1.

POLYGAMIA. Græco-Lat. [from Gr. πολὺς, many, and γάμος, marriage.] In old English law. Polygamy, (q. v.) Polygamia *est plurium simul virorum uxorumve connubium;* polygamy is the marriage of several husbands or wives at the same time. 3 *Inst.* 88.

POLYGAMY. [from Gr. πολὺς, many, and γάμος, marriage.] In criminal law. Literally, the marrying of many. The offence of having several wives or husbands at the same time; or more than one wife or husband at the same time. 3 *Inst.* 88. See *Polygamia.*

Polygamy is enumerated among offences by Lord Coke, but in modern law the term has been dropped, and *bigamy*, a term of the canon law, expressive of a different and merely spiritual offence, has been substituted in its place. See *Bigamy.*

ΠΟΛΥΣΗΜΑ, Πολύσημα. Gr. [from πολὺς, many, and σῆμα, a sign.] Of many significations. *Grot. de Jur. Bell.* lib. 2, c. 16, § 4.

POMARIUM. L. Lat. [from *pomum*, an apple.] In old English law. An apple-tree. *Fleta*, lib. 2, c. 82, § 2.

In old pleading. An orchard. *Cro. El.* 854.

POND is defined by Callis, "a standing ditch cast by labour of man's hand, in his private grounds, for his private use, to serve his house and household with necessary waters; but a *pool* is a low plat of ground by nature, and is not cast by man's hand." *Callis on Sewers*, [82,] 103.

Ponderantur testes, non numerantur. Witnesses are weighed, not counted; that is, they are estimated by the weight or importance of their testimony, and not by their number. 1 *Stark. Evid.* 554. Mr. Best suggests that *testimonia* or *probationes* would be better than *testes*, as the rule is clearly not confined to verbal evidence. *Best on Evid.* 426, § 389.

PONDUS. Lat. In old English law. Poundage; literally, weight. A duty anciently paid to the king, according to

the weight and measure of merchants' goods. *Pat.* 1 Hen. III. m. 10. *Cowell.*

PONDUS REGIS. Lat. In old English law. The king's weight; the standard weight appointed by the king. *Cowell.* 1 *Bl. Com.* 276.

PONE. Lat. (Put.) In English practice. The name of a writ by which the proceedings in an action in the county court may be removed into one of the superior courts. 3 *Bl. Com.* 34, 36, 195. So called from the initial word of the mandate of the writ: Pone, *ad petitionem petentis, coram justitiariis nostris, &c. loquelam quæ est in comitatu tuo, &c.*; Put, at the request of [the demandant,] before our justices, &c. the plaint which is in your county court, &c. *Reg. Orig.* 6. 3 *Bl. Com.* Appendix, No. i. sect. 3.

PONE. Lat. (Put.) In English practice. The name given to the writ of attachment which formerly issued, on the non-appearance of a defendant at the return of the original writ, to compel his appearance. 3 *Bl. Com.* 280. So called from the initial word of the mandate of the writ; Pone *per vadium et salvos plegios G. de E. quod sit coram, &c.*; Put by gage and safe pledges, G. of E. that he be before, &c. *Reg. Jud.* 1. 3 *Bl. Com.* Appendix, No. iii. sect. 2. See *Fleta*, lib. 2, c. 65, § 12. This writ is still retained in the action of replevin. 3 *Steph. Com.* 666.

PONERE. L. Lat. In old English law. To put. A word of constant occurrence, and very various signification.

To put upon; to lay; to impose or assess, as an amercement or tax. *Nulla prædictarum misericordiarum* ponatur *nisi per sacramentum proborum et legalium hominum, &c.*; none of the aforesaid amercements shall be assessed, unless by the oath of good and lawful men, &c. *Magna Charta*, c. 14. *Nullum tallagium vel auxilium* ponatur *seu levetur*; no tallage or aid shall be imposed or levied. *Stat. de Tallagio non Concedendo*, c. 1.

To put to; to compel. *Ponere ad legem*; to put to his law; to compel to wage his law. *Fleta*, lib. 2, c. 47, § 5. *Id.* c. 63, § 10. *Mag. Cart.* cited *ibid.*

To put in, or introduce one's person; to enter. *Se* ponere *in seysinam*; to put one's self into seisin or possession. *Bract.* fol. 161. *Quod possim me* ponere in *terram illam, et me tenere in terra illa*; that I may have the power to put myself into that land, and hold myself in that land. *Id.* fol. 19 b. *Se* ponere *in rem locatam*; to put himself into the thing let. *Fleta*, lib. 2, c. 59, § 3.

To put upon; to rest upon or submit to, as a defendant did upon a jury. Ponit *se super patriam*; he puts himself upon the country. *Bract.* fol. 137 b. Ponit *se super linguas vestras*; puts himself upon your tongues; rests his fate upon your words. *Id.* fol. 143 b. *Et inde* ponat *se super juratam*; and thereof he should put himself upon the jury. *Id.* fol. 192 b. Said of the plaintiff. *Id. ibid.* Ponit *se inde in Deo et magna assisa*; put himself thereof on God and on the grand assise. *Fleta*, lib. 5, c. 39, § 1.

To put under; to place under liability; as to put under pledge, or "by" pledge, in the ancient phrase. Pone *per vadium et salvos plegios*; put by gage and safe pledges. See *Pone.* Ponere *per ballium*; to put by bail. *Rot. Cl.* 1 Edw. I. m. 7.

To put or place, in the sense of removal, as from one court to another. Pone *coram justitiariis, &c. loquelam, &c.*; put before the justices, &c. the plaint, &c.; that is, remove it. See *Pone.*

To put upon; to place among; to record one's name with others as a juror. *De non* ponendis *in assisis*; for not putting on assises. The titles of several old writs. *Reg. Orig.* 179. *F. N. B.* 165.

To put in; to put in the place; to substitute. Ponit *loco suo*; puts in his place.

To put; to set or let. *Ad firmam* ponere; to put or let to farm.

To put or set to; to affix, as a seal to an exception. See *Apponere.*

To put, fix or assign; to give or assign a day. *Tunc* ponant *ei diem à die visus sui*; then shall they assign him a day from the day of viewing him. *Bract.* fol. 352 b. *Fleta*, lib. 6, c. 10, § 17.

To put off, or postpone. Ponere *in respectum*; to put in respite. *Mem. in Scacc.* H. 22 Edw. I. *Jurata* ponitur *in respectum*; the jury is put in respite. *Towns. Pl.* 429. Ponatur *judicium usque ad bancum*; the judgment shall be put off to the bench. *Fleta*, lib. 4, c. 9, § 4.

PONTAGE. [L. Lat. *pontagium*, from *pons*, a bridge.] In old English law. A tax or contribution towards the maintenance or repair of bridges. *Stat. Westm.* 2, c. 25. *Fleta*, lib. 4, c. 1, § 16.

A toll for passing a bridge. *Cowell. Spelman.*

POOL. [Lat. *stagnum.*] A standing water, without any current or issue. *Callis on Sewers*, [82,] 102. See *Pond.*

POPULAR ACTION. An action for a statutory penalty or forfeiture, given to any such person or persons as will sue for it; an action given to the *people* in general. 3 *Bl. Com.* 160. See *Actio popularis.*

POPULISCITUM. L. Lat. In Roman law. An enactment, law or ordinance made by the *populus*, or whole Roman people; an ordinance made by the *comitia centuriata*. *Adam's Rom. Ant.* 193. The proper technical term, however, was *lex. Inst.* 1. 2. 4. *Taylor's Civ. Law*, 177, 178.

POPULUS. Lat. In the Roman law. The people; the whole body of the citizens, including, with the *plebs* or commonalty, the patricians and senators; (*appellatione* populi *universi cives significantur, connumeratis etiam patriciis et senatoribus.*) *Inst.* 1. 2. 4.

POR. L. Fr. For. An old form of *pour*. *Por ce;* for this; therefore. *Kelham. Por quei;* wherefore. *Id.*

PORT. [from Lat. *portus*, q. v.] A place for the importation, (bringing in,) and exportation, (carrying out,) of goods and merchandise. This seems to be the radical sense of the word. See *Portus.* 2 *Inst.* 148.

A place for the lading and unlading of the cargoes of vessels, and the collection of duties or customs upon imports aud exports. A place, either on the sea-coast, or on a river, where ships stop for the purpose of loading and unloading, from whence they depart, and where they finish their voyages. *Curia Philippica*, p. 456, n. 35, cited in 7 *Martin's* (La.) *R.* 81, N. S. These are the ordinary senses of the word in modern law. See cases of particular construction, 1 *Phillips on Ins.* 461, *et seq.*

A shelter or safe station for vessels; a haven; a harbour. See *Harbour.*

*** *Port* and *harbour* are frequently used in law as synonymous terms, a quality derived from the Lat. *portus*, which undoubtedly expressed the ideas of both. In strictness, however, a clear distinction exists between them; *harbour* properly denoting the geographical or natural position of a place; *port*, its civil or artificial character. A *harbour* is provided by *nature* for the accommodation or shelter of *vessels;* a *port* is established by *law* for the reception of *cargoes*. *Harbour* physically includes *port*, as the more general term; and ports in fact are almost invariably located *in* harbours. See 9 *Metcalf's R.* 377, 378. Hubbard, J. Every port may, therefore, be called a harbour, but *every harbour is clearly not a port.* A port, according to Lord Hale, is a haven and somewhat more. It is "*quid aggregatum*, consisting of somewhat that is natural, viz. an access of the sea, whereby ships may conveniently come; safe situation against winds, where they may safely lie, and a good shore where they may well unlade; somewhat that is *artificial*, as keys and wharves, and cranes and warehouses, and houses of common receipt; and something that is *civil*, viz. privileges and franchises, viz. *jus applicandi*, [the right of mooring,] *jus mercati*, [the right of market,] and divers other additaments given to it by civil authority." *Hale, De Portubus Maris*, pars 2, c. 2. See 15 *East*, 295.

PORT. Fr. In French maritime law. Burthen (of a vessel.) *Ord. Mar.* liv. 1, tit. 10, art. 3.

Size and capacity. *Id.* liv. 1, tit. 14, art. 2.

PORTARE. L. Lat. In old English practice. To bear; to bring. *Portare assisam;* to bring an assise. *Bract.* fol. 177. The term "bring" is used in modern practice, in the same figurative sense. "To *bring* an action" is an every day phrase.

PORTARI. Lat. In the civil law. To be carried. Distinguished from *ferri*. *Dig.* 50. 16. 235.

PORTATICA. L. Lat. In old English law. Port-duties. *Hale de Jur. Mar.* pars 2, (de port. mar.) c. 6.

PORTENTA IN LEGE. Lat. Monstrosities in law; unheard of positions. *Bacon's Arg.* Low's case of Tenures, *Works*, iv. 239.

PORTEOUS, *Portuous, Portuis.* O. Sc. [from *portando*, carrying.] In old Scotch practice. A roll or catalogue containing the names of indicted persons, delivered by the justice-clerk to the coroner, to be attached and arrested by him. Otherwise called the *Porteous Roll. Bell's Dict. Skene de Verb. Signif.* A roll under this name is still regularly made up for each circuit. 1 *Pitc. Cr. Trials*, part 2, p. 34, note.

Porteous, portuass, porthouse or *portase*, generally denoted a breviary or mass-book, from its being *portable. Id. ibid.*

PORTER. L. Fr. [from Lat. *portare*,

q. v.] To bear. *Porter record;* to bear record. *Britt.* fol. 2 b. *En cqurte que* porte *record;* in a court which bears record; in a court of record. *Id.* c. 47. *Porter foy;* to bear faith. An expression in the old oath of fealty. *Britt.* c. 29. *Reg. Orig.* 303. *Porter date;* to bear date. 1 *And.* 3. *Portant date. Dyer,* 93 b.

To bring. *Port action;* brought action, 1 *And.* 3. *En dett* port. *Id.* 4. *Une feme* porta *briefe de dower;* a woman brought a writ of dower. *Yearb.* T. 1 Edw. III. 1.

Porter and *portare* were usually applied to writs, and *arrainer* and *arrainare* to assises.

PORTGREVE, *Portreeve.* [L. Lat. *portgrefius, portgrevius;* from Sax. *portgerefa,* from *port,* and *gerefa,* a reeve, bailiff or presiding officer.] In old English law. The chief officer of a port. *Spelman.*

The chief officer of a town or city, especially a sea-port town. The chief magistrate of London (now mayor) was called *portgreve* in the time of William the Conqueror. *Spelman. Cowell.* See *Mayor.*

PORTIONER. In Scotch law. The proprietor of a small feu or portion of land. *Bell's Dict.*

PORTORIUM. L. Lat. [from *porta,* a gate.] In old European law. A tax or toll levied at the gates of cities, for the reparation of roads. *Spelman.*

A tax levied at ports; a port duty; *Loccen. de Jur. Mar.* lib. 1, c. 8, sect. 6.

PORTMOTE. Sax. [from *port,* and *gemote,* a meeting.] In old English law. A court held in ports or haven towns, and sometimes in inland towns also. *Cowell. Blount.*

PORTUFORIUM. L. Lat. In Scotch practice. Porteous; the porteous or porteous roll, (q. v.) 1 *Pitc. Crim. Trials,* part 2, p. 34, note.

PORTUS. Lat. [from *portare,* to carry.] In the civil law. An enclosed place where merchandises are brought in, or imported, and whence they are carried out, or exported; (*conclusus locus quo importantur merces, et inde exportantur.*) *Dig.* 50. 16. 59.

An enclosed and protected station [for vessels?] (*statio conclusa atque munita.*) *Id. ibid. Loccen. de Jur. Mar.* lib. 1, c. 8, sect. 1.

*** The very brief terms in which these definitions are expressed, hardly serve to convey an adequate idea of the meaning of the word. *Portus* is said to have originally denoted a ware-house, built with particular reference to safety against fire and robbery, (*domus mercium reponendarum causâ ita exstructa, ut ab incendiis furtisque tutior securiorque esset,*) and standing at a distance from other buildings, (*sejuncta ac munita a cæteris contiguis ædificiis;*) called *insula,* from the latter circumstance, and called *portus,* from *portare,* to carry, with reference to the carrying in, (*importando,*) and carrying out (*exportando,*) of the goods from it. *Calv. Lex.* Hence the term was afterwards used metaphorically, to denote a safe station for vessels and their cargoes. *Id. ibid. Portus,* however, clearly occurs in the sense of a natural harbour or haven, in early Roman writers.

Est in secessu longo locus: insula *portum*
Efficit objectu laterum: quibus omnis ab alto
Frangitur, inque sinus scindit sese unda reductos.
Virg. Æneid. i. 159.

Far in a deep recess, an island's sides
A *harbor* form against the advancing tides:
Here every sea-wave breaks, and in smooth bays
divides.

POSER. L. Fr. To put; to set at; to put a question. *Kelham. Et jeo pose;* and I put. *Yearb.* H. 8 Hen. VI. 7.

POSITIVE LAW. Law specifically ordained and adopted for the government of society, as distinguished from natural law.* The sum of those principles which are acknowledged in a state as principles of law, and consequently have authority as such. 1 *Mackeld. Civ. Law,* 2, § 3.

POSITIVI JURIS. L. Lat. Of positive law. "That was a rule *positivi juris;* I do not mean to say an unjust one." Lord Ellenborough, 12 *East,* 639.

POSITO. L. Lat. Put; suppose. Coke, arg. 2 *Leon.* 176. *Keilw.* 68.

Posito uno oppositorum, negatur alterum. One of two opposite positions being affirmed, the other is denied. 3 *Rol. R.* 422.

POSSE. Lat. To be able; to be possible.

Possibility. A thing is said to be *in posse,* when it may possibly be; *in esse,* when it actually is. *Cowell. Wharton's Lex.*

Ability; power. *Pro* posse *suo;* to the extent of his power. *Bract.* fol. 19 b.

A force; a number of persons summoned to assist a sheriff in the execution of process. See *Posse comitatus.*

POSSE COMITATUS. L. Lat. The power or force of the county. The entire

population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases; as to aid him in keeping the peace, in pursuing and arresting felons, &c. 1 *Bl. Com.* 343. The most common instances of the use of this power in England, have been in cases where a possession has been kept upon a forcible entry, or any force or rescue used contrary to the command of the king's writ, or in opposition to the execution of justice. *Cowell. Stat. Westm.* 2, c. 39. *Assumpto secum* posse comitatus *sui in propria persona fac' executionem præcepti regis;* having taken with him the power of his county, shall in proper person make execution of the king's precept. *Fleta*, lib. 2, c. 68, § 2.

This power is impliedly given by the Constitution of the United States. *Federalist*, No. 29.

The term *posse balliviæ*, (power of the bailiwick) occurs in the old books. *Fleta*, lib. 2, c. 47, § 1.

POSSESSIO. Lat. [from *possidere*, to possess.] In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. This condition of fact is called *detention*, and it forms the substance of possession in all its varieties. 1 *Mackeld. Civ. Law*, 234, § 229.

This definition is not approved by the learned editor of Mackeldey, who, in an elaborate note on the passage, gives his reasons for dissenting from it. It appears, however, to be more simply and intelligibly expressed than most of the civil law definitions of the word, which, in attempting to give the abstract essence of possession, are often involved in metaphysical subtleties, tending rather to obscure than to illustrate.

*** The old civilians, (Paulus in the Digests, quoting Labeo,) derived *possessio* from *pedibus*, (the feet,) making it to be a sort of position, or putting down, (*quasi positio*,) and assigning as the reason, *quia naturaliter tenetur ab eo qui ei insistit*, (because possession of a thing is naturally held by him who *stands upon it.*) *Dig.* 41. 2. 1, pr. Hence the word was commonly analyzed *pedum positio*, a placing of the feet. The etymology was adopted, with the word itself, by Bracton, and from its peculiar adaptation to the old English idea of the *seisin of land*, took deep root in the terminology of that branch of the law. 3 *Co.* 42 a, *Ratcliff's case.* Through this channel it has found its way even into American law, and the phrase *pedis positio* (or *pedis possessio*) is frequently used in our reports to denote an actual corporeal possession, or a mere naked possession without right. The derivation, however, is no doubt radically incorrect, the true component elements of *possessio*, (or rather the verb *possidere*, from which it has been formed,) being *ponere sedem*, to place or *fix the seat* or abode, though even this is more significant in its application to real than to personal property. According to some, this was, in fact, the etymology given by the Roman jurists themselves, already named, *pedibus* being considered as a corrupt reading of *sedibus*. See 1 *Mackeld. Civ. Law*, 237, § 229, note. The Lyons ed. of the *Corpus Juris*, A. D. 1627, has *sedibus*, and the same reading is adopted in the Kriegel editions now in use. But this supposition weakens the force of *insistit*, (*stands* upon,) in the explanation given in the Digests, besides being inconsistent with the uniform current of *pedis positio*, and *pedum positio*, through the old English books.

POSSESSIO. Lat. In old English law. Possession; seisin. The detention of a corporeal thing by means of a physical act and mental intent, aided by some support of right; (*corporalis rei detentio*, i. *corporis et animi, cum juris adminiculo concurrente.*) *Bract.* fol. 38 b. See *Fleta*, lib. 3, c. 15, § 1.

*** Bracton treats *possessio* and *seisina* as synonymous, and considers possession under a multitude of subdivisions; as civil, (*civilis*) which was retained only by intention (*animo;*) natural, (*naturalis,*) which was held only by the physical act, (*corpore;*) rightful, (*justa,*) and wrongful, (*injusta;*) true, (*vera,*) and imaginary or fictitious, (*imaginaria;*) naked, (*nuda,*) where a person had no right in the thing nor any spark of right, but only a bare placing of the feet, (*tantum* nudam *pedum positionem;*) that is, a mere foothold or standing; clothed, (*vestita,*) as with right, title or prescription; with many others. There was also one kind which consisted of some degree of possession but no right, (*aliquid possessionis sed nihil juris*) as the possession of a guardian or creditor; another kind which consisted of a good deal of possession and a little right, (*multum possessionis et parum juris,*) as the possession of an ancestor who died seised, another having the mere right;

another kind which consisted of a great deal of possession and some right, (*plurimum possessionis et aliquid juris,*) as where one held land for a term by the grant of a person who demised it to him, but did not die seised; and a fourth kind, consisting of much possession and much right, (*multum possessionis et multum juris,*) as where one had the mere right in a thing, and the property of the fee, and the freehold with seisin, but of which he did not die seised. *Bract.* fol. 39.

POSSESSIO BONORUM. Lat. In the civil law. The possession of goods. More commonly termed *bonorum possessio*, (q. v.)

POSSESSIO FRATRIS. Lat. In the law of descent. Possession of a brother; an elliptical expression, signifying, in its full meaning, the kind of possession by a brother which would make his sister of the whole blood his heir, in preference to a brother of the half blood. See the maxim *infra.* Hence it is used in the books to denote the doctrine of the exclusion of the half blood from the succession to estates; a doctrine which, in England, has recently been abolished by statute 3 & 4 Will. IV. c. 106. 1 *Steph. Com.* 385—391. See *Broom's Max.* 233—235, [404.] And see, as to American law, 4 *Kent's Com.* 386—389.

Possessio fratris de feodo simplici facit sororem esse hæredem. The brother's possession of an estate in fee simple, makes the sister to be heir. *Litt.* sect. 8. *Co. Litt.* 15 b. 3 *Co.* 41 b, *Ratcliff's case.* The possession of a brother makes his sister of the whole blood his heir, in preference to a brother of the half blood. See *Broom's Max.* 233, [404.] This was a rule in the English law of descent down to a late period, and is best illustrated by the example given by Blackstone. If a man had two sons, A. and B. by different venters or wives, these two brethren were not brethren of the whole blood, and, therefore, according to a leading canon of descent, should never inherit to each other, but the estate should rather escheat to the lord. Nay, even if the father died, and his lands descended to his eldest son A. who entered thereon, and died seised without issue; still B. should not be heir to this estate, because he was only of the half blood to A. the person last seised, but *it should descend to a sister*, (if any,) of the whole blood to A. 2 *Bl. Com.* 227. See *Possessio fratris.*

POSSESSION. [from Lat. *possessio*, from *possidere*, to possess; from *ponere*, to put, and *sedes*, seat.] The state of having a corporeal thing in one's hands or power, or under one's control; or, in the words of the civil law definition,—that condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. See *Possessio.*

Possession expresses the closest relation of fact that can exist between a corporeal thing and the person who possesses it, implying either (according to its strict etymology,) an actual physical contact, as by *sitting* (or, as some would have it, *standing*) upon a thing; or the power to bring into such contact at pleasure. Thus, the possessor of land is, strictly, one who has actually taken up his residence (*qui posuit sedem*) upon it; the possessor of a chattel, one who either has it upon, or near his person, or within his reach.

Possession is generally considered in the common law under two leading aspects, viz.: as *united* with *right*, and as held without reference to, or in *opposition* to *right*; a simple division, which clears the subject of much of the subtlety and intricacy which mark the civilians' mode of treating it. See *Possessio.*

The elements of the word *possession* (*ponere sedem*) would seem to indicate that the term was originally applied chiefly to landed property; and the derivation, *ponere pedem*, expresses this idea yet more strongly. See *Possessio.* In the common law, however, *possession* has always been confined in its application to goods or chattels, *seisin* being the term invariably used to denote the possession of a freehold estate. See *Seisin.*

Possession is used in some of the books, in the sense of property. "A possession is an hereditament or chattel." *Finch's Law*, b. 2, ch. 3.

POSSESSION MONEY. In English practice. An allowance made to the person whom a sheriff puts in possession of goods taken under a writ of *fieri facias.* *Holthouse.*

POSSESSOR. Lat. and Eng. One who possesses; one who has possession. See *Possessio, Possession.*

POSSESSORIUS. L. Lat. [from *possessor*, q. v.] In old English law. Possessory. *In jure possessorio.* *Fleta*, lib. 6, c. 1, § 9.

POSSESSORY. Relating to possession; founded on possession; contemplating or claiming possession. See *infra.*

POSSESSORY ACTION. In practice. An action claiming possession, or the right of possession; an action brought to recover possession. The old writs of entry and assise were actions merely *possessory*, serving only to regain the possession of lands, but deciding nothing with respect to the right of property. 3 *Bl. Com.* 180.

In admiralty practice, a *possessory* suit is one which is brought to recover the possession of a vessel, had under a claim of title. 5 *Mason's R.* 465. 1 *Kent's Com.* 371.

An action founded on possession. Trespass for injuries to personal property is called a *possessory* action, because it lies only for a plaintiff who, at the moment of the injury complained of, was in actual or constructive immediate and exclusive possession. 1 *Chitt. Pl.* 168, 169.

POSSESSORY JUDGMENT. In Scotch practice. A judgment which entitles a person who has uninterruptedly been in possession for seven years, to continue his possession until the question of right be decided in due course of law. *Bell's Dict.*

POSSIBILITAS. Lat. In old English law. Possibility; a possibility. *Possibilitas post dissolutionem executionis nunquam reviviscatur;* a possibility will never be revived after the dissolution of its execution. 1 *Rol. R.* 321. After a possibility has become executed, it will not be revived by a dissolution of the estate, as by a divorce after intermarriage. *Post executionem statûs, lex non patitur possibilitatem;* after the execution of an estate, the law does not suffer a possibility. 3 *Bulstr.* 108.

POSSIBILITY. An uncertain event; a contingency which may or may not happen. An estate founded on such contingency. Of this there are various kinds.

A *bare* possibility is one that is not coupled with an interest; as that a son may inherit to his father who is living. This is not considered as an estate in law. 1 *Steph. Com.* 216. 4 *Kent's Com.* 262. 13 *Wendell's R.* 178. 1 *Hilliard's Real Prop.* 76.

A possibility *coupled with an interest*, is where the person, who is to take an estate upon the happening of a contingency, is ascertained and fixed. *Id. ibid.* 4 *Kent's Com.* 261, 262.

A *near* or common possibility is such as death, or death without issue, or coverture. 4 *Kent's Com.* 206.

A *remote* possibility is such as a remainder to the heirs of a person not in being.* *Id. ibid.*

POSSIDERE. Lat. [from *ponere*, to place, and *sedes*, seat.] To possess. A distinction was made in the civil law, and adopted by Bracton, between *possidere*, (to possess,) and *esse in possessione*, (to be in possession.) *Aliud est* possidere, *longe aliud* in possessione *esse.* *Dig.* 41. 2. 10. 1. *Longe aliud est* possidere *quam esse in possessione.* *Bract.* fol. 167 b. Thus, a guardian, holding in demesne though not in fee, was said to be *in possession*, though he did not *possess.* The same language was applied to a bailiff, (*procurator,*) a domestic, (*servus proprius,*) a fermor or lessee, (*firmarius,*) and a tenant at will from day to day, and from year to year. *Id. ibid.* See *Fleta*, lib. 4, c. 3, § 1.

POSSUMUS. Lat. [from *possum, posse*, to be able.] We can; we can or may do. **Id possumus quod de jure possumus.** We can do that which we can do by law. *Lane*, 116. When we speak of what we *can do*, we mean what we can do *lawfully.* Mere physical ability to do an act is not regarded in law.

POST. L. Lat. In old practice. The name given to a species of writ of entry. See *Entry in the post.*

POST. Lat. After; afterwards. See *infra.*

POST-ACT. An after-act; an act done afterwards. See *Post-factum.*

POST CONQUESTUM. L. Lat. After the Conquest. *Bract.* fol. 7. Words first used in the titles of the kings of England by Edw. III. A. D. 1328, in order to distinguish the Edwards after the Conquest from those before it. *Cowell. Blount.*

POST DIEM. Lat. In pleading. After the day. See *Solvit post diem.*

In old practice. The return of a writ after the day assigned. *Cowell.* A fee paid in such a case. *Id.*

POST-DISSEISIN. [L. Lat. *post disseisina.*] In old English practice. A disseisin committed, after a recovery of seisin of the same land, and by the same person against whom the recovery was had. See *De post disseisina.*

POST-FACTUM, or POSTFACTUM. Lat. An after-act; an act done afterwards; a post-act.

Post, in this compound word, is an ad-

verb, having the full sense of *afterwards;* the word itself being the correlative of *antefactum*, a fore-act, or previous act. *Utrum ne in* post-facta—*an etiam in* ante-facta. *A. Gell. Noct. Att.* lib. xvii. c. 7. In the derived phrase *ex postfacto*, however, *post* has generally been treated by those who have attempted to translate it, not only as a distinct word, but as a preposition governing *facto*, in violation of one of the simplest rules of grammar. See *Ex postfacto.*

POST FINE. In old conveyancing. A fine or sum of money, (otherwise called the *king's silver*,) formerly due on granting the *licentia concordandi*, or leave to agree, in levying a fine of lands. It amounted to three-twentieths of the supposed annual value of the land, or ten shillings for every five marks of land. 2 *Bl. Com.* 350.

POST LITEM MOTAM. L. Lat. After suit moved, or commenced. Depositions in relation to the subject of a suit, made after litigation has commenced, are sometimes so termed. 1 *Stark. Evid.* 319.

After dispute moved; after controversy stirred or begun; after dispute has arisen. In questions of pedigree, it is a rule that declarations made *post litem motam* are not admissible in evidence; that is, declarations made *after a dispute has arisen*, out of which a suit has grown, will be excluded. *Hubback's Evid. of Succession*, 660. Berkley Peerage case, 4 *Camp.* 401. The line of distinction in such cases is the *origin of the controversy*, and not the commencement of the suit. Mansfield, C. J. *Id.* 417.

POSTMAN. In English practice. The senior barrister attending constantly at the bar of the Court of Exchequer, who had the privilege of moving there before the king's Attorney and Solicitor-General and all his majesty's counsel. *Bunb.* pref. note.

Bunbury, the reporter, had been many years *postman* at the Exchequer bar. *Id.* pref.

POST MORTEM. Lat. After death. A name given to inquisitions anciently taken after the death of tenants *in capite*. *Hubback's Evid. of Succession*, 584. Now commonly applied to examinations of a dead body by a coroner.

POST-NATUS, (or POSTNATUS.) Lat. After-born. A second son was so called in old English law, as distinguished from the eldest. *Est consuetudo in quibusdam partibus, quod* postnatus *præfertur* primogenito *et è contrario;* it is a custom in some parts, that an after-born son is preferred to the first-born, and *è contra. Bract.* fol. 76. See *Id.* fol. 33. *Fleta*, lib. 3, c. 9, § 9.

Born after a particular period or event. *Postnati* (after-born persons) is used in the books, as the correlative of *antenati*, to denote the subjects of Scotland born after the union of the crowns, and Americans and British subjects born in the United States after the declaration of independence. 7 *Co.* 1, *Calvin's case.* 2 *Kent's Com.* 56—59. *Lord Bacon's Argument*, Case of the Postnati of Scotland, *Works*, iv. 319, 334, 344.

POST NOTE. In mercantile law. A note payable at a future day, as distinguished from a note payable on demand. A note made and issued by a bank or banking association, payable at a future day, and designed as a part of its circulating medium. 22 *Penn. St. R.* 479. In New-York, notes of this kind are declared illegal. 3 *Denio's R.* 70. 3 *Barbour's R.* 226. See 3 *Comstock's R.* 21.

POST OBIT BOND. [Lat. *post obitum*, after death.] A bond given by an expectant, to become due on the death of a person from whom he will have property. *Wharton's Lex.*—A bond or agreement given by a borrower of money, by which he undertakes to pay a larger sum, exceeding the legal rate of interest, on or *after the death* of a person from whom he has expectations, in case of surviving him. Chesterfield *v.* Janssen, 2 *Vesey*, 125. 1 *White's Equity Cases*, 344. 1 *Story's Eq. Jur.* § 342. These contracts are discouraged by the courts, who hold a strict hand over them.

POST PROLEM SUSCITATAM. L. Lat. After issue born, (raised.) *Co. Litt.* 19 b.

POST TERMINUM. L. Lat. (After term, or post-term.) The return of a writ, not only after the day assigned for its return, but after the term also, for which a fee was due. *Cowell.* The fee itself. *Id.*

POSTEA. Lat. (Afterwards.) In practice. The name given to the entry, on record, of the proceedings on the trial of a cause, including the verdict of the jury; so called from the word (*postea*) with which it commenced when the proceedings were in Latin; and which has been literally translated in the modern forms: "*Afterwards*, that is to say," &c. *Steph. Pl.* 87. 3 *Bl. Com.* 386. In form,

it is the return made by the judge who tried the cause, to the court in banc, of what took place at the trial. In English practice, it is first entered on the back of the *nisi prius* record, and is the ground upon which judgment is afterwards entered.

POSTERIORITY. [L. Lat. *posterioritas.*] In old English law. A coming after, or being behind; the correlative of *priority.* A man holding of two lords, was said to hold of the more ancient lord by *priority*, and of the later lord by *posteriority. Staundf. Prær. Reg.* 10, 11. *Cowell.*

POSTERITY. [Fr. *postérité;* Lat. *posteritas*, from *posterus*, from *post*, after.] Descendants; those who come after. Declared, by the civil code of Louisiana, to comprehend all the descendants in the direct line. Art. 3522, num. 26.

POSTHUMOUS CHILD. [Lat. *posthumus*, from *post*, after, and *humus*, earth, or *humatus*, buried.] A child born after the death of its father. 2 *Bl. Com.* 169. Posthumous children of an intestate inherit in all cases, in like manner as if they were born in the lifetime of the intestate, and had survived him. 4 *Kent's Com.* 412.

POSTLIMINIUM. Lat. [from *post*, after, and *limen*, a threshold.] In the civil law. The return or restoration of a person to a former estate or right; sometimes Englished *postliminy.* A fiction applied in the case of a person who had been taken a prisoner by an enemy, and afterwards returned from captivity, by which he was supposed never to have been abroad, and was on this ground restored to his former rights. *Postliminium fingit eum qui captus est in civitate semper fuisse;* postliminy supposes that he who was taken prisoner had always been in the state. *Inst.* 1. 12. 5. See *Dig.* 49. 15.

Postliminium included *things* as well as *persons.* Paulus, in the Digests, defines it to be *jus amissæ rei recipiendæ ab extraneo, et in statum pristinum restituendæ, inter nos ac liberos populos regesque moribus, legibus constitutum. Nam quod bello amisimus, aut etiam citra bellum, hoc si rursus recipiamus dicimur* postliminio *recipere;* (the right of receiving a lost thing from a foreigner, and of restoring it to its former state, established between us and free nations and kings, by customs and by laws. For whatever we have lost in war, or even not in war, if we receive it again, we are said to receive it *postliminio.*) *Dig.* 49. 15. 19, pr.

Postliminium is thus analyzed and explained in the Institutes. It is called *postliminium* from *limen*, (threshold,) and *post*, (after.) Wherefore we properly say of one who was taken by an enemy, and afterwards came into our borders or limits, that he has returned *postliminio.* For as the threshold of a house makes, as it were, the limit or boundary of it, so the ancients chose to call the boundary or border of the empire its threshold. Hence *limen* (a threshold) came to be used in the sense of a limit, (*finis,*) and boundary, (*terminus.*) And hence the word *postliminium* was framed, and used to signify that a person had returned to the same threshold which he had lost; (*ab eo* postliminium *dictum est, quia ad idem* limen revertebatur *quod amiserat.*) So that now a prisoner who is recovered from an enemy and returns home, is supposed to have returned in postliminy, [that is, in the way explained.] *Inst.* 1. 12. 5.

POSTLIMINIUM. Lat. In the law of nations. A right which arises from a return *in limen*, that is, to the borders of one's country. *Grotius De Jur. Bell.* lib. 3, c. 9, § 2. A term derived from the Roman law, and extensively used in public law. See its etymology explained by *Grotius De Jur. Bell.* lib. 3, c. 9, § 1. See his whole chapter, *De Postliminio.* The term is used in maritime law. See *Loccenius de Jur. Mar.* lib. 2, c. 4.

POSTNUPTIAL SETTLEMENT. A settlement made *after marriage* upon a wife or children; otherwise called a *voluntary* settlement. 2 *Kent's Com.* 173.

POSTULARE. Lat. In the Roman law. To ask or demand; to ask of a judicial tribunal, (*pro tribunali petere.*) *Dig.* 39. 2. 4. 8. See *Postulatio.*

To accuse or denounce. *Dig.* 3. 1. *Calv. Lex.*

POSTULATIO ACTIONIS. Lat. In the Roman law. The demand of an action; the request made to the prætor by an *actor* or plaintiff, for an action, or formula of suit; corresponding with the application for a writ in old English practice. *Adam's Rom. Ant.* 243. Or, as otherwise explained, the *actor's* asking of leave to institute his action, on appearance of the parties before the prætor. *Hallifax, Anal.* b. 3, c. 9, num. 12.

POTENTIA. Lat. [from *potens*, able,

from *posse*, to be able.] In old English law. A possibility. *Potentia propinqua;* a near or common possibility. 2 *Bl. Com.* 169. *Potentia remotissima;* a most remote or improbable possibility. *Id.* 170.

Power. **Potentia debet sequi justitiam, non antecedere.** Power ought to follow justice, not go before it. 3 *Bulstr.* 199, Coke, C. J.

Potentia inutilis frustra est. Useless power is to no purpose. *Branch's Pr.*

Potest quis renunciare pro se, et suis, juri quod pro se introductum est. One may relinquish for himself and his [heirs,] a right which was introduced for his own benefit. *Bract.* fol. 20.

POTESTAS. Lat. Power; a power. The word *potestas*, in Roman law, had several significations; in the person of magistrates, it was called *imperium;* in the person of children, *patria potestas;* in the person of a slave, *dominium. Dig.* 50. 16. 215.

Potestas stricte interpretatur. A power is strictly interpreted. *Jenk. Cent.* 17, case 29, in marg.

Potestas suprema seipsam dissolvere potest, ligare non potest. Supreme power can dissolve, [unloose] but cannot bind itself. *Branch's Pr. Bacon.*

Potior est conditio defendentis. The condition of a defendant is the better one. Where both parties are equally in fault, the defendant has the better case, or will be favored in preference to the plaintiff. Lord Mansfield, *Cowp.* 343. See **In pari delicto**, &c.

Potior est conditio possidentis. The condition of the party in possession is the better. Where the right or the fault between two parties is equal, the party in possession is favored or preferred. See **In æquali jure**, &c., **In pari causa**, &c., **In pari delicto**, &c.

POULTRY COUNTER, (or COMPTER.) The name of a prison formerly existing in London. 2 *Mod.* 306. 6 *Id.* 247. See *Counter.*

POUND. [from Sax. *pund;* Lat. *libra.*] A standard weight, consisting either of twelve ounces, called *troy* weight, or of sixteen ounces, called *avoirdupois* weight. See *Troy weight, Avoir du pois, Libra.*

In New-York, the unit or standard of weight, from which all other weights shall be derived and ascertained, is declared to be the *pound*, of such magnitude that the weight of a cubic foot of distilled water, at its maximum density, weighed in a vacuum with brass weights, shall be equal to sixty-two and a half such pounds. 1 *N. Y. Rev. St.* [607,] 617, § 8.

POUND. [L. Lat. *parcus.*] An enclosure; an enclosed place in which cattle or goods distrained are shut up.* 3 *Bl. Com.* 12. A pound-*overt* is one that is open overhead; a pound-*covert* is one that is close, or covered over, such as a stable or other building.* *Id.* 13. But, according to Lord Coke, a pound is called *open*, because the owner may give his cattle meat and drink, without trespass to any other. *Co. Litt.* 47 b.

POUND BREACH. [L. Lat. *parci fractio.*] The act or offence of breaking a pound, for the purpose of taking out the cattle or goods impounded. 3 *Bl. Com.* 12, 146.

POUNDAGE. In practice. An allowance made to a sheriff upon the amount levied under an execution; estimated in England, and formerly in the United States, at so much on the *pound.*

In old English law. A subsidy to the value of twelve pence in the *pound*, granted to the king, of all manner of merchandise of every merchant, as well denizen as alien, either exported or imported. *Cowell.*

POUNT. L. Fr. [from Lat. *pons.*] In old English law. A bridge. *Pountz;* bridges. *Britt.* c. 51.

Pountage; pontage. A tax levied for the repair of bridges. *Britt.* c. 30.

POUR, *Pur.* L. Fr. For. *Suffit à eux* pur *seisine* pour *la proprete;* it suffices them for seisin for the property. *Britt.* c. 37. Pour *cheu ke* (pour *ceo que;*) because. *Kelham.*

POUR AUTRE VIE. L. Fr. For another's life. *Pur terme d'autre vie;* for the term of another's life. *Litt.* sect. 56.

POURE, *Pouer, Power, Povre.* L. Fr. [from Lat. *pauper.*] Poor. *Poure ou ryche;* poor or rich. *Britt.* c. 68. *Kelham.*

POURE, *Pouwer, Poer, Poeir, Poair.* L. Fr. Power; force; strength; authority. *Kelham.*

POUR COMPTE DE QUI IL APPARTIENT. Fr. For account of whom it may concern. *Emerig. Tr. des Ass.* ch. 11, sect. 4, § 3. A phrase in insurance law.

POUR SEISIR TERRES, &c. L. Fr. (For seizing the lands, &c.) In old practice. A writ by which the king seized the

land which the wife of a tenant *in capite*, deceased, had for her dower, if she married without his leave. *Cowell.*

POURCHASE. L. Fr. A purchase. *Cowell.* See *Purchase.*

POURPARTY. L. Fr. [L. Lat. *propars, propartis, propartia.*] In old English law. Division; a divided share. Literally, *for*, or as *divided*, (*pour parti ;*) a close translation of the Lat. phrase *pro diviso.** To make *pourparty*, is to divide and sever the lands that fall to parceners, which, before partition, they held jointly and *pro indiviso. Cowell.*

POURPRESTURE, (or PURPRESTURE. [from L. Fr. *pourpris*, an enclosure.] The wrongful enclosing of another's property, or the encroaching or taking to one's self that which ought to be in common. *Holthouse.* A species of nuisance by erecting a house, or making an enclosure upon any part of a highway, or common street, or public water, or such like public things. *Co. Litt.* 277. 4 *Bl. Com.* 167. See *Angell on Tide-waters*, ch. 7, p. 198.

Glanville defines *pourprestura* to be "properly, when any occupation is wrongfully made upon the king, (*quando aliquid super dominum regem injuste occupatur ;*) as in the king's demesnes, or in public roads, by obstructing them, (*vel in viis publicis obstructis ;*) or in public waters, by turning them out of their proper channel, (*vel in aquis publicis transversis a recto cursu ;*) or when any one in a city occupies the king's highway by erecting some building upon it, (*vel quando aliquis, in civitate, super regiam plateam, aliquid ædificando occupaverit ;*) and generally, whenever any thing is done to the nuisance of the king's tenement, or of the king's way or city. *Glanv.* lib. 9, c. 11.

Crompton defines *pourpresture* to be "properly, when a man taketh unto himself or incroacheth any thing that he ought not, whether it be in any jurisdiction, land or franchise; and generally when any thing is done to the nuisance of the king's tenants." *Crompt. Jurisd.* fol. 152.

POURVEYANCE. L. Fr. and Eng. [from Fr. *pourvoire*, to provide.] In old English law. The providing corn, (grain,) fuel, victual and other necessaries for the king's house. *Cowell.* See *Purveyance.*

POURVEYOR. [from Fr. *pourvoire*, to provide.] In old English law. An officer of the king or queen, or other great personage, that provided corn (grain) and other victual for their house. *Cowell.* See *Purveyor.*

POUSTIE, *Poistee.* Sc. In Scotch law. Power. 1 *Pitc. Crim. Trials*, part 1, p. 162. See *Liege poustie.* A word formed from the Lat. *potestas.*

POVERS. L. Fr. In old English law. Poor persons. *En primes, voit le roy que common droiture soit fait à touts, auxybien as* povers *come as riches, sans regard de nulluy ;* in the first place the king wills that common justice be done to all, as well to the poor as to the rich, without regard to any (without respect of persons.) *Stat. Westm.* 1, c. 1.

POWER. [Lat. *potestas*, q. v.] An authority which one gives to another, either to act for him generally, or to do some specific act in his behalf; as to execute a deed, to make a contract, &c. See *Power of attorney.* An authority which enables one person to do an act for another. 2 *Crabb's Real Prop.* 678.

An authority, as distinguished from an estate. 1 *Steph. Com.* 505.

In a technical sense. An authority enabling a person to dispose, through the medium of the statute of uses, of an interest, vested either in himself, or in another person. *Sugden on Powers*, 82. 6 *Co.* 17 b.—An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, &c. granted or conveyed at the time of the creation of such power. *Watkins on Conv.* 157.—A proviso, in a conveyance under the statute of uses, giving to the grantor or grantee, or a stranger, authority to revoke or alter by a subsequent act the estate first granted. 1 *Steph. Com.* 505.—A right to limit a use. 4 *Kent's Com.* 316.—An authority to revoke a use first limited, or to declare a new one. 1 *Steph. Com. ub. sup.*

Powers are either mere *powers of revocation*, enabling the grantor simply to recall what he has bestowed, or *powers of revocation and new appointment*, authorizing the grantor, or some other person, to alter or make a new disposition of the estate conveyed. *Id. ibid.* All powers are, in fact, powers of revocation and appointment. Every power of appointment is strictly a power of revocation; for it always postpones, abridges or defeats, in a greater or less degree, the previous uses and estates, and appoints new ones in their stead. 4 *Kent's Com.* 315, 316. See 2 *Hilliard's Real Prop.* 557, *et seq.*

POWER OF ATTORNEY. An instrument in writing, under seal, by which the party executing it appoints another to be his *attorney*, and *empowers* such attorney to act for him, either generally in all matters or business, or specially, to do some specified act or acts in his name and behalf. Formerly, and still occasionally, called a *letter of attorney*, (q. v.)

POY, *Poi.* L. Fr. Little; a little. *Tout à poy;* all but little; very nearly the same; almost the whole of. *Kelham.* *Par* poy *et par* poy; by little and little. *Britt.* c. 51. *Un* poy *d'enk;* a little ink. *Kelham.*

POYN, *Poin*, *Poine*, *Poigne.* L. Fr. [from Lat. *pugnus*, fist.] In old English law. Hand. *Le rybaud perde son* poyn *dount il trespassa;* the ruffian shall lose his hand, wherewith he has trespassed. *Britt.* c. 25.

POYND, *Poind.* Sc. In Scotch law. A distress; goods taken for a debt. *Skene de Verb. Sign.* voc. *Namare.*

To take goods as a distress; to distrain. *Id. ibid.*

POYNINGS' LAWS. A set of statutes enacted in the tenth year of Henry VII. (so called from Sir Edward Poynings being then lord deputy,) regulating the method of passing statutes in Ireland. 1 *Bl. Com.* 102. By another of these laws it was enacted that all acts of parliament, before made in England, should be of force within the realm of Ireland. *Id.* 103. 4 *Inst.* 351, 353.

P'P'M. A contraction of *perpetuum.* 1 *Inst. Cler.* 11.

PRACTICA. L. Lat. Practice; the practice of a court. *Clerke's Prax. Cur. Adm.* tit. 42.

PRACTICE. [L. Lat. *practica*, *praxis*, *cursus curiæ.*] The course of procedure in courts. The form and manner of conducting or carrying on, in the way either of prosecution or defence, of suits, actions and other judicial proceedings, at law or in equity, civil or criminal, through their various stages, according to the principles and regulations prescribed by law, or by the rules and decisions of the several courts.

In a general sense, *practice* includes *pleading*, though it is usually distinguished from it.

PRACTICE COURT. A court attached to the Court of Queen's Bench, and presided over by one of the judges of that court, in which points of practice and pleadings are discussed and decided. *Holthouse.* It originated from the *Bail Court*, formerly held by one of the judges, and is still most commonly called by that name. *Id.*

PRACTICKS. In Scotch law. The decisions of the Court of Session, as evidence of the *practice* or custom of the country. *Bell's Dict.*

PRÆBENDA. L. Lat. In old English law. A prebend. *Bract.* fol. 442 b. *Fleta*, lib. 2, c. 54, § 10; c. 69, § 3.

An allowance of fodder for horses and cattle. *Fleta*, lib. 2, c. 76, § 8.

PRÆCEPTORES. L. Lat. Masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs. *Crabb's Hist. Eng. Law*, 184, 547. 2 *Reeves' Hist.* 251. *Fleta*, lib. 2, c. 13, § 12.

PRÆCEPTUM. L. Lat. [from *præcipere*, to command.] In old criminal law. Command. The act of an accessory who *commands* another to commit a crime. *Fleta*, lib. 1, c. 31, § 8.

PRÆCIPE. Lat. (Command.) In practice. An original writ, drawn up in the alternative, *commanding* the defendant to do the thing required, *or* show the reason why he had not done it. 3 *Bl. Com.* 274. So called from its initial word in the old Latin forms: *Rex vicecomiti salutem:* PRÆCIPE *A. quod juste et sine dilatione reddat B. &c.* The king to the sheriff, greeting. *Command* A. that justly and without delay he render to B. &c. *Reg. Orig.* 4. *Fleta*, lib. 2, c. 62, § 6, *et seq.*

A paper containing the particulars of a writ, filed in the office out of which it is to be issued, and intended as the clerk's instructions for making it out.

PRÆCIPE IN CAPITE. L. Lat. In old practice. A *præcipe* or writ of right, which lay for a tenant *in capite.* *Reg. Orig.* 4 b. Called a writ of right close. *Fleta*, lib. 6, c. 10, § 2.

PRÆCIPE QUOD REDDAT. L. Lat. (Command—that he render.) In practice. Formal words in a *præcipe*, or original writ. See *Præcipe.*

PRÆCIPE QUOD TENEAT CONVENTIONEM. L. Lat. (Command—that he keep the covenant.) In conveyancing. A writ of covenant upon which fines were usually levied at common law. 2 *Bl. Com.* 350. 3 *Id.* 156.

PRÆCIPERE. Lat. To command.

The usual word of command in the mandates of the old writs. *Mandare* (to command,) is used only in some special cases. See *Mandamus.*

PRÆCIPIMUS. Lat. We command. An emphatic or initial word in most of the old Latin writs. *Rex vic.* (or A.) *salutem:* Præcipimus *vobis* (or *tibi*,) &c. *Reg. Orig.* 1, *et passim.*

PRÆCISE. L. Lat. Specifically. *Fleta*, lib. 2, c. 60, § 22.

PRÆCO. Lat. In the Roman law. A herald or crier. *Adam's Rom. Ant.* 189, 190.

In modern practice. The crier of a court. *Bacon's Works*, iv. 316.

PRÆCONIZARE. L. Lat. [from *præco*, a crier.] In old practice. To call in court; to make proclamation (by a crier.) *Clerke's Prax. Cur. Adm.* tit. 8.

PRÆD'. An abbreviation of *prædictus.* 6 *Mod.* 176.

PRÆDEDUCERE. L. Lat. [from *præ*, before, and *deducere*, to deduct.] In old practice. To deduct first, or in the first instance. *Fleta*, lib. 2, c. 57, § 10.

PRÆDIA. Lat. [pl. of *prædium*, q. v.] In the civil law. Lands; estates.

Prædia rustica; rural or country estates; estates or lands principally destined for the production of fruits. 1 *Mackeld. Civ. Law*, 338, § 309.

Prædia urbana; city estates, especially dwelling-houses, whether situated in town or country, stables, walls, building sites, storehouses, granaries and the like. *Dig.* 50. 16. 198. *Id.* 8. 4. 1, pr. 1 *Mack. Civ. Law, ub. sup.* See *Prædium urbanum.*

PRÆDIA VOLANTIA. L. Lat. Volatile estates. A phrase mentioned by Blackstone, as applied, in the duchy of Brabant, to certain things moveable. 2 *Bl. Com.* 428.

PRÆDIAL, (or PREDIAL) SERVITUDE. [Lat. *servitus prædiorum.*] A right which is granted for the advantage of one piece of land over another, and which may be exercised by every possessor of the land entitled against every possessor of the servient land. It always presupposes two pieces of land (*prædia*,) belonging to different proprietors; one burdened with the servitude, called *prædium serviens*, and one for the advantage of which the servitude is conferred, called *prædium dominans.* 1 *Mackeld. Civ. Law*, 335, § 306. *Inst.* 2. 3. *Dig.* 8. 1—6. *Bract.* fol. 220 b, 221. *Schultes on Aquatic Rights*, 26.

PRÆDICT'. An abbreviation of *prædictus*, (q. v.) 10 *Mod.* 305.

PRÆDICTUS, PRÆDICTA, PRÆDICTUM. L. Lat. In old pleading. Aforesaid; the aforesaid. *Fleta*, lib. 2, c. 64, § 21. A word of constant occurrence in old entries, and varied by different forms of abbreviation; as *præd'*, *prædict'*, *p'dc'us*, &c. *Towns. Pl.* 15. *Hob.* 117. 10 *Co.* 65. 1 *Ld. Raym.* 192.

Of the three words, *idem*, *prædictus* and *præfatus*, (all corresponding with the English *said*, and *aforesaid*,) *idem* was most usually applied to plaintiffs or demandants; *prædictus* to defendants or tenants, places, towns or lands; and *præfatus* to persons named, not being *actors* or parties. *Towns. Pl. ub. sup.* See 11 *East*, 508, arg. 12 *Id.* 559. *Prædictus* refers to the last antecedent. *Comb.* 461.

PRÆDIUM. Lat. In the civil law. Land; a piece of land; an estate. Called a *nomen generale*, including *ager* and *possessio. Dig.* 50. 16. 115.

Prædium rusticum; a rural or country estate; an estate or piece of land principally destined or devoted to agriculture; an empty or vacant space of ground without buildings. 1 *Mackeld. Civ. Law*, 338, § 309, and Kaufmann's note.

Prædium urbanum; an urban or city estate; any other than a *prædium rusticum;* any building, whether in town or country, and whether used for a dwelling, or for business or farming purposes. *Id. ibid.* and note. *Urbanum prædium non locus facit, sed materia. Dig.* 50. 16. 198.

Prædium dominans; a dominant or ruling estate. See *Prædial servitude.*

Prædium serviens; a serving estate. See *Id.*

PRÆDIUM. Lat. In old English law. Estate; property. Applied to the estate or title of the king, as lord paramount of all the lands in the kingdom. *Co. Litt.* 1 b. See *Dominicum directum.*

PRÆDO. Lat. In the Roman law. A robber. See *Dig.* 50. 17. 126.

PRÆFATUS. L. Lat. In old pleading. Aforesaid. A word of very common use in old entries; sometimes abbreviated *præfat'*, and *p'fat'*. 6 *Mod.* 176. See *Prædictus.*

PRÆFECTURÆ. Lat. In Roman law. Conquered towns, governed by an officer called a *prefect*, who was chosen in some instances by the people, in others, by the prætors. *Butler's Hor. Jur.* 29.

PRÆFECTUS. Lat. In the Roman

law. A chief officer; a governor or commander. The title of various officers and magistrates. *Dig.* 1. 11. *Id.* 1. 12. *Id.* 1. 15. *Cod.* 1. 28. *Calv. Lex.*

In old English law. The chief officer of a hundred, and other divisions. *Spelman*, voc. *Præpositus.*

PRÆJUDICIALIS. Lat. [from *præ*, before, and *judicare*, to judge.] In the civil law. That which is to be pre-determined, or decided before something else. See *Actio præjudicialis.*

PRÆJUDICIUM. L. Lat. In old English law. Prejudice; detriment; disparagement. *Bract.* fol. 19. *Sine* præjudicio *melioris sententiæ;* without prejudice to the better opinion. *Id.* fol. 48. A common phrase used by Bracton, when expressing his own opinion on any point.

PRÆJURAMENTUM. L. Lat. In old English law. A preparatory oath. See *Antejuramentum.*

PRÆMISSA. L. Lat. [from *præmittere*, to send before.] In old conveyancing. Things sent before; things mentioned, stated or recited before, *præmisses* or *premisses.* In modern phraseology, *premises.* *Fleta*, lib. 3, c. 10, § 1. See 1 *Leon.* 117. See *Premises.*

PRÆMIUM. Lat. Reward; compensation. *Præmium assecurationis;* compensation for insurance; premium of insurance. *Loccen. de Jur. Mar.* lib. 2, c. 5, sect. 6. Now used in the law of insurance, as a common English word.

PRÆMIUM PUDICITIÆ. Lat. The price of chastity; or compensation for loss of chastity. A term applied to bonds and other engagements given for the benefit of a seduced female. Sometimes called *premium pudoris.* 2 *Wils.* 339, 340.

PRÆMUNIRE. L. Lat. In English law. To forewarn, or summon. *Præmuniantur omnes de comitatu;* all persons of the county shall be forewarned. *Fleta*, lib. 1, c. 19, § 1. Used indifferently with *præmonere. Partibus præmonitis;* the parties being summoned. *Id. ibid.*

The name of an offence against the king and his government, though not subject to capital punishment. So called from the words of the writ which issued preparatory to the prosecution: *Præmunire facias* A. B. *quod sit coram nobis*, &c.; cause A. B. to be forewarned, that he appear before us to answer the contempt with which he stands charged. 4 *Bl. Com.* 103. *Co. Litt.* 129 b.

The statutes establishing this offence, the first of which was made in the thirty-first year of the reign of Edward I., were framed to encounter the papal usurpations in England; the original meaning of the offence called *præmunire* being the introduction of a foreign power into the kingdom, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone. *Id.* 110, 115. The penalties of *præmunire* were afterwards applied to other heinous offences. *Id.* 116, 117. 4 *Steph. Com.* 215—217.

PRÆNOMEN. Lat. Fore-name, or first name. The first of the three names by which the Romans were commonly distinguished. It marked the individual, and was commonly written with one letter; as A. for Aulus; C. for Caius, &c. *Adam's Rom. Ant.* 35. See *Fleta*, lib. 4, c. 10, § 9. *Butler's Hor. Jur.* 28.

PRÆNOTARIUS. L. Lat. In old English law. Prothonotary. A clerk of the Court of Common Bench. *Fleta*, lib. 2, c. 36. *Id.* lib. 4, c. 9, § 2.

Præpropera consilia raro sunt prospera. Hasty counsels are rarely prosperous. 4 *Inst.* 57.

PRÆPOSITUS. Lat. [from *præponere*, to put first, or set over.] In old English law. One who was set over others; a chief or presiding officer. The sheriff was the *præpositus* of the county. *LL. Edw. Sen.* c. 11. 3 *Bl. Com.* 36.

Præpositus ecclesiæ; a church-reeve, or warden. *Spelman.* In Scotch law, the head of a collegiate church. *Bell's Dict.*

Præpositus hundredi; a hundredary. *Spelman.*

Præpositus villæ; a town-reeve, (Sax. *tungerif.*) *Id.* See *Fleta*, lib. 2, c. 39, § 2.

Præpositus manerii; the overseer of a manor. An officer under the *ballivus*, (bailiff.) *Fleta*, lib. 2, c. 76. Called, in law French, *provost*, (q. v.) *LL. Gul. Conq.* l. 6, and note.

PRÆROGATIVA REGIS. L. Lat. In old English law. The king's prerogative. *Crabb's Hist.* 204. See *De Prærogativa Regis, Prerogative.*

PRÆSCRIPTIO. Lat. [from *præscribere*, to write before, (to draw a line before?) to fix a limit.] In the civil law. That mode of acquisition whereby one becomes proprietor of a thing on the ground that he has for a long time possessed it as his own; prescription. *Dig.* 41. 3. 1 *Mackeld.*

Civ. Law, 290, § 276. It was anciently distinguished from *usucapio*, (q. v.) but was blended with it by Justinian. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 6, § 438.

PRÆSCRIPTIO. Lat. In old English law. Prescription. Præscriptio *est titulus ex usu et tempore substantiam capiens, ab auctoritate legis;* prescription is a title deriving its substance from use and [length of] time, under the authority of law. *Co. Litt.* 113 a.

PRÆSENS. Lat. [plur. *præsentes.*] Present. Præsens *in curia;* present in court. 2 *Salk.* 544. *Præsentes litteræ;* the present letters. See *Presents. Sciant* præsentes *et futuri;* Know those who are present, and those who are to be. *Bract.* fol. 34 b.

PRÆSENTIA. Lat. [from *præsens*, present.] Presence. **Præsentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis.** The presence of the body, [or corporeal thing itself,] removes [or cures] error of the name; and the truth of the name removes [or cures] error of demonstration or description. *Bacon's Max.* 96, reg. 25. This maxim is based upon three degrees of certainty, mentioned by Lord Bacon; presence, (*præsentia,*) name, (*nomen,*) and demonstration or reference, (*demonstratio;*) "whereof the presence the law holdeth of greatest dignity, the name in the second degree, and the demonstration or reference in the lowest." *Id. ibid.* The maxim itself is composed of two parts or branches, which may be separately considered.

Præsentia corporis tollit errorem nominis. The presence of a body, person, or thing, removes [the effect of] error of [in the] name [of it.] If the object of a contract be present, an error in the name does not vitiate it. 2 *Kent's Com.* 557. Thus, "if I give a horse to *J. D.* being present, and say unto him, '*J. S.* take this,' this is a good gift, notwithstanding I call him by a wrong name." *Bac. Max. ub. sup.* For the presence of the grantee gives a higher degree of certainty to the identity of the person, than the mention of his name. 2 *Kent's Com. ub. sup.* "So if I say unto J. S. here, I give you my ring with the *ruby*, and deliver it with my hand, and the ring bear a *diamond*, and no ruby, this is a good gift, notwithstanding I name it amiss." *Bac. Max. ub. sup.*

Veritas nominis tollit errorem demonstrationis. The truth of the name or denomination of a thing removes [takes away or obviates the effect of] error in the demonstration [addition or description] of it. If the subject of a contract be once properly and certainly named, a falsity of addition or demonstration, that is, of additional description, will not prejudice it. Thus, "if I grant my close, called Dale, in the parish of Hurst, in the county of Southampton, and the parish likewise extendeth into the county of Berkshire, and the whole close of Dale lieth in the county of Berkshire, yet, because the parcel is especially named, the falsity of the addition hurteth not." *Bacon's Max.* 100. See 2 *Kent's Com.* 557. 1 *Edw. Ch. R.* 189. See **Falsa demonstratio non nocet.** A maxim frequently applied in the construction of wills. 8 *Taunt.* 313.

PRÆSES. Lat. In the Roman law. A president, or governor. *Dig.* 1. 18. 1. Called a *nomen generale*, including pro-consuls, legates, and all who governed provinces. *Id. ibid.*

PRÆSIDIUM. Lat. In the civil law. A guard; a fortress; a defence, aid or shelter. See *Infra præsidia.*

In records of the middle ages,—all household stuff or effects, including particularly gold and silver. *Spelman.* Every kind of property, real as well as personal, (*omnis vis bonorum, tam immobilium quam mobilium.*) *Id.*

PRÆSTARE. Lat. In old English law. To pay, give or render; to make or execute; to perform. See *Præstatio. Præstitit sacramentum;* made oath, or took an oath. *T. Raym.* 34. 2 *Ld. Raym.* 1376. *Mem. in Scacc.* P. 16 Edw. I.

To make good. Præstare *tenetur quodcunque damnum obveniens in mari;* [the insurer] is bound to make good any loss happening on the sea. 3 *Kent's Com.* 291.

In old European law. To lease, or let to farm. *Chart. Alaman.* 75. *Spelman.*

PRÆSTARIA, *Præstarium.* L. Lat. In old European law. A lease or farm, (*elocatio, dimissio.*) *Spelman.*

The instrument of letting or leasing, (*charta elocationis vel dimissionis.*) *Id.*

The land itself, let or leased; a farm land; (*prædium ipsum, elocatum vel dimissum.*) *Id.*

Præstat cautela quam medela. Prevention is better than cure. *Co. Litt.* 304 b. "As it is in physick, for the health of a

man's body, so it is in remedies, for the safety of a man's cause." *Id. ibid.*

PRÆSTATIO. L. Lat. [from *præstare*, q. v.] In old English law. A payment or giving; such as a relief (*relevium*) and a heriot, (*heriettum.*) *Fleta*, lib. 3, c. 17, § 1. *Id.* c. 18. Sometimes Englished *prestation*, (q. v.)

PRÆSUMERE. Lat. [from *præ*, before, and *sumere*, to take.] In civil and old English law. To take before; to presume; to anticipate. See *Præsumptio*, *Presumption.*

PRÆSUMITUR. Lat. It is presumed; the presumption is. *Præsumatur;* it should be presumed; the presumption should be.

Præsumatur pro justitia sententiæ. The presumption should be in favor of the justice of a sentence. *Mascard. de Prob.* concl. 1237, n. 2. *Best on Evid.* Introd. 42.

Præsumitur pro legitimatione. The presumption is in favor of legitimacy. 1 *Bl. Com.* 457. 5 *Co.* 98 b, *Bury's case.*

PRÆSUMPTIO. Lat. [from *præsumere*, (q. v.) Gr. προληψις.] In civil and old English law. Presumption; a presumption. See the definitions in *Burr. Circ. Ev.* 10, note (*a.*)

Præsumptio probabilis; probable presumption. *Co. Litt.* 6 b. *Præsumptio levis;* light or slight presumption. *Id. ibid.* Called *levior*, (slighter.) *Hub. Præl. Jur. Civ.* lib. 22, tit. 3, n. 15. *Præsumptio violenta;* violent or strong presumption. *Co. Litt. ub. sup.*

Præsumptio violenta plena probatio. Strong presumption is full proof. *Co. Litt.* 6 b.

Præsumptio violenta valet in lege. Strong presumption is of weight in law. *Jenk. Cent.* 56, case 3.

PRÆSUMPTIO FORTIOR. Lat. A strong (literally, stronger) presumption (of fact.) One which determines the tribunal in its belief of an alleged fact, without, however, excluding the belief of the possibility of its being otherwise; the effect of which is to shift the burden of proof to the opposite party, and if this proof be not made, the presumption is held for truth. *Hub. Præl. J. C.* lib. 22, tit. 3, n. 16. *Burr. Circ. Ev.* 66.

PRÆSUMPTIO HOMINIS. Lat. The presumption of the man or individual; that is, natural presumption unfettered by strict rule. *Heinec. ad Pand.* pars 4, s. 124.

PRÆSUMPTIO JURIS. Lat. A presumption of law; the ordinary kind of presumption, in which the law assumes the existence of something, until it is disproved by evidence; a conditional, inconclusive or rebuttable presumption. *Best on Evid.* 40, § 43. *Best on Presump.* 20, § 17. 1 *Greenl. Evid.* § 33.

PRÆSUMPTIO JURIS ET DE JURE. Lat. A presumption of law, and from law, that is, a presumption inferred by law from premises of law. Defined by Alciatus, "*dispositio legis aliquid præsumentis, et super præsumpto, tanquam sibi comperto, statuentis;*" a disposition of law which presumes something, and upon such presumption, as though ascertained to itself, determines. *Alc. Tract de Præs.* pars 2, n. 3. "It is called *præsumptio juris*," says Menochius, "because it is a presumption made by law, and *de jure*, because the law holds for truth the presumption thus made, and establishes a fixed right upon it." *Menochius de Præs.* lib. 1, quæst. 3, n. 17. *Best on Presumptions*, 20, § 17. Called, by the common lawyers, an irrebuttable presumption; an inference which the law makes so peremptorily, that it will not allow it to be overturned by any contrary proof, however strong. Thus, where a cause has once been regularly adjudicated upon by a competent tribunal, from which there either lies no appeal, or the time for appealing has elapsed, the whole matter assumes the form of *res judicata*, and evidence will not be admitted, in subsequent proceedings between the same parties, to show that decision erroneous. *Id. ibid.* So, an infant under the age of seven years, is not only presumed incapable of committing felony, but the presumption cannot be rebutted by the clearest evidence of a mischievous discretion. 1 *Hale's P. C.* 27. 4 *Bl. Com.* 23. See 1 *Greenl. Evid.* § 15. *Burr. Circ. Ev.* 46.

PRÆSUMPTIO. L. Lat. In old English law. A taking before another; a species of intrusion. *Spelman.*

PRÆTEXTUS. Lat. [from *prætexere*, to cover.] In old English law. A pretext; a pretence or color. *Prætextu cujus;* by pretence, or under pretext whereof. 1 *Ld. Raym.* 412.

Prætextu liciti non debet admitti illicitum. Under pretext of legality, what is illegal ought not to be admitted. *Wingate's Max.* 728, max. 196.

PRÆTOR. Lat. [from *præire*, to go

before.] In the civil law. The chief judicial magistrate among the Romans, who exercised an extensive equity jurisdiction. *Hallifax, Anal.* lib. 3, c. 8, num. 2. *Dig.* 1. 14. *Cod.* 1. 39. *Adam's Rom. Ant.* 128. 1 *Mackeld. Civ. Law*, 20, § 30. 1 *Story's Eq. Jur.* §§ 5, 50.

The governor of a province. See *Nov.* 24, pr. *Nov.* 25, pr. *Nov.* 29, c. 2. *Tayl. Civ. Law*, 210.

PRÆTOR FIDEI-COMMISSARIUS. Lat. In the civil law. A special prætor created to pronounce judgment in cases of trusts or *fidei-commissa*. *Inst.* 2. 23. 1. 2 *Story's Eq. Jur.* § 966. Called, by Lord Bacon, a "particular chancellor for uses." *Bacon on the Stat. of Uses, Law Tracts*, 315. 4 *Kent's Com.* 290.

PRÆVARICATOR. Lat. In the civil law. One who betrays his trust, or is unfaithful to his trust. An advocate who aids the opposite party by betraying his client's cause. *Dig.* 47. 15. 1. Used in Spanish law. *Las Partidas*, part. 3, tit. 6, l. 15.

PRÆVENTO TERMINO. L. Lat. In old Scotch practice. A form of action known in the forms of the Court of Session, by which a delay to discuss a suspension or advocation was got the better of. *Bell's Dict.*

PRAGMATIC SANCTION. In the civil law. A species of imperial rescript. See *Pragmatica sanctio.*

PRAGMATICA. Span. In Spanish colonial law. An order emanating from the sovereign, and differing from a *cedula* only in form, and in the mode of promulgation. *Schmidt's Civ. Law*, Introd. 93, note.

PRAGMATICA SANCTIO. Lat. In the civil law. A rescript of the emperor, in answer to the petition of a corporation or public body, (*corpus aut schola, vel officium, vel curia, vel civitas, vel provincia, vel quædam universitas hominum ob causam publicam.*) *Cod.* 1. 23. 7.

PRATUM. Lat. In the civil law. A meadow. *Dig.* 50. 16. 31. Said to be derived from *paratum*, (prepared,) *quod* paratum *sit ad fructum capiendum. Id. ib.*

In old English law. A meadow. *Co. Litt.* 4 b.

PRAXIS. Lat. Practice. *Clerke's Prax. Cur. Adm.* **Praxis judicum est interpres legum.** The practice of the judges is the interpreter of the laws. *Branch's Pr.*

PRAY IN AID. In old English practice. To call upon for assistance. In real actions, the tenant might *pray in aid*, or call for assistance of another, to help him to plead, because of the feebleness or imbecility of his own estate. 3 *Bl. Com.* 300. See *Aid-prayer.*

PREAMBLE. [from Lat. *præ*, before, and *ambulare*, to walk, or go.] The introduction or commencement of a statute, setting forth, by way of recital, the intention of the legislature in framing it, the circumstances which occasioned its passage, &c. In English statutes, it commences with the word "*Whereas.*" In the old French statutes, it commonly began with "*Pur ceo que*," (forasmuch as,) and in the Latin, with "*Quia*," "*Cum*," or words of similar import. See *Sedgwick on Stat. & Const. Law*, 54—57.

PRE-AUDIENCE. The right of being heard before another. A privilege belonging to the English bar, the members of which are entitled to be heard in their order, according to rank, beginning with the Queen's attorney-general, and ending with barristers at large. 3 *Bl. Com.* 28, note. 3 *Steph. Com.* 387, note.

PREBEND. [Lat. *præbenda*, from *præbere*, to supply.] In English ecclesiastical law. A stipend or revenue;* that portion which every member or canon of a cathedral church receives, in the right of his place, for his maintenance. *Cowell.* It is neither a dignity nor a benefice. 5 *Taunt.* 2.

PREBENDARY. [Lat. *præbendarius*, from *præbenda*, q. v.] In English ecclesiastical law. One that has a *prebend*, (q. v.) *Cowell.* The stipendiary of a cathedral or collegiate church. *Webster.*

PRECARIÆ, or PRECES. L. Lat. In old English law. Days' works, which the tenants of some manors were bound, by reason of their tenure, to do for the lord in harvest. Vulgarly called *bind-days*, which Spelman supposes to be a corruption of *biden-days*, which in Saxon answered to *dies precariæ*, (literally, *pray-days*, or *prayed-days*,) the Sax. *biden* signifying to pray. *Spelman. Cowell.*

PRECARIUM. Lat. [from *precari*, to pray.] Precarious; held as it were by mere entreaty; depending on the will and pleasure of another. *Precarium nomen*; a precarious title. *Cowell.* See *Jus precarium.*

In the civil law. A gratuitous loan

upon request, in which the lender grants the use of the subject in express words, revocable at pleasure. *Dig.* 43. 26. *Bell's Dict.*

PRECATORY WORDS. Words of entreaty, request, desire, wish or recommendation, employed in wills, as distinguished from direct and imperative terms. 1 *Williams on Exec.* 88, 89, and note. Sometimes held to create a trust. 1 *Jarman on Wills*, [334,] 332.

PRECE PARTIUM. L. Lat. On the prayer of the parties. See *Dies datus.*

PRECEDENT. [from Lat. *præcedens*, from *præcedere*, to go before.] That which goes before, or takes place before. See *Condition precedent.*

PRECEDENTS. Authorities to be followed in courts of justice. A term particularly applied to judicial decisions upon points of law arising in any given case. 1 *Kent's Com.* 475, 476. These are recognized in equity as well as at law. 1 *Story's Eq. Jur.* § 18. The old books are full of expressions in support of precedents. See *Jenk. Cent.* viii. See *Stare decisis.*

Written forms of proceedings which have been approved by the courts, or by long professional usage, and are to be (usually strictly) followed.* *Steph. Pl.* 392. Lord Bacon observes that there are *political* as well as legal precedents. *Works*, iv. 354.

President (q. v.) occurs as a form of this word, in the old books.

PRECEPT. [from Lat. *præceptum*, from *præcipere*, to command.] In practice. A command in writing; a species of writ or process.

In English law. A process issued by a justice of the peace, or other like officer, for the bringing of a person or records before him. *Cowell.*

A direction sent by the sheriff, under seal, to the proper returning officers of cities and boroughs, commanding them to elect their members to parliament. 1 *Bl. Com.* 177.

In American practice. A process issued under seal, by the district attorney of a county, to the sheriff, commanding him to summon a jury, &c. 2 *N. Y. Rev. St.* [206,] 133, §§ 37, 38.

A process in the nature of an attachment against a person. 1 *Burr. Pr.* 339.

PRECEPT. In Scotch law. An order, mandate or warrant to do some act. The precept of seisin was the order of a superior to his bailie, to give infeftment of certain lands to his vassal. *Bell's Dict.*

PRECEPT. In old French law. A kind of letters issued by the king in subversion of the laws, being orders to the judges to do or tolerate things contrary to law. *Esprit des Loix*, liv. 31, c. 2.

PRECEPT. [L. Lat. *præceptum*, q. v.] In old English criminal law. Instigation or commandment to commit a crime. *Bract.* fol. 138 b. *Cowell.*

PRECES. Lat. In the Roman law. Prayers. One of the names of an application to the emperor. *Tayl. Civ. Law*, 230.

PRECIUM. Lat. In old English law. Price. *Fleta*, lib. 2, c. 60, § 21. See *Pretium.*

PRECLUDI NON, (or *Precludi non debet*, ought not to be barred.) In pleading. The commencement of a replication to a plea in bar, being in the following words:—"says that, by reason of any thing in the said plea alleged, he *ought not to be barred* from having and maintaining his aforesaid action against him the said defendant, because he says," &c. *Steph. Pl.* 398. So called, from the emphatic words in the old Latin forms, of which the modern form is a translation.

PRECOGNOSCE. Sc. [from Lat. *præcognoscere.*] In Scotch practice. To examine beforehand. *Arkley's R.* 232.

PRECOGNITION. In Scotch practice. Preliminary examination. The investigation of a criminal case, preliminary to committing the accused for trial. 2 *Alison's Crim. Pract.* 134.

PRE-CONTRACT. A contract made before another contract, but having relation especially to marriages. *Cowell.* 1 *Bl. Com.* 434.

PREDECESSOR. Lat. and Eng. [from *præcedere*, to go before.] One who goes or has gone before; the correlative of *successor.* Applied to a body politic or corporate, in the same sense as *ancestor* is applied to a natural person. *Termes de la Ley*, voc. *Ancestor.* See *Ancestor, Antecessor.*

In Scotch law. An ancestor. 1 *Kames' Equity*, 371.

PREDIAL (or PRÆDIAL.) [Lat. *prædialis*, from *prædium*, land.] That which arises or comes from the ground.

PREDIAL (or PRÆDIAL) TITHES. [L. Lat. *decimæ prædiales.*] In English ecclesiastical law. Tithes arising from the

profits of lands, as of corn, (grain,) grass, hops and wood. 2 *Bl. Com.* 24.

PRE-EMPTION. [Lat. *præ-emptio*, from *præ*, before, and *emptio*, a buying.] In English law. The first buying of a thing. A privilege formerly enjoyed by the crown, of buying up provisions and other necessaries, by the intervention of the king's purveyors, for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner. 1 *Bl. Com.* 287.

In American law. A privilege enjoyed by government in relation to Indian lands. Congress have the exclusive right of *pre-emption* to all Indian lands lying within the territories of the United States. 8 *Wheaton's R.* 543. 1 *Kent's Com.* 257.

PREE, *Pre*, *Preæ*. L. Fr. [from Lat. *pratum*, q. v.] A meadow. *Arrer les prees;* to plough the meadows. *Britt.* c. 5. *Dyer*, 33. Finch uses *pree* as an English word. *Law*, b. 1, ch. 3, num. 27.

PREGNOTARIUS. L. Lat. In old practice. A prothonotary. 1 *Leon.* 92.

PREIGNOTHORY. O. Eng. [L. Lat. *pregnotarius.*] In practice. Prothonotary. 3 *Leon.* 48, 128.

PREJUDICE. [from Lat. *præjudicium*, from *præ*, before, and *judicare*, to judge.] Literally, a judging beforehand; a judging before examination.

Detriment; damage; loss.

PREMISES, (properly PREMISSES, from Lat. *præmissa*, q. v.) Literally, things put before, or stated before; matter previously stated or set forth.

In conveyancing. One of the formal and orderly parts of a deed or conveyance, consisting of all that *precedes* the *habendum;* including the date, the parties' names and descriptions, the recitals, (if any,) the consideration and the receipt thereof, the grant, the description of the things granted, and the exceptions, (if any.) See 2 *Bl. Com.* 298. 1 *Steph. Com.* 449. *Shep. Touch.* 75. *Burton's Real Prop.* 167, 168. *Cruise's Dig.* tit. xxxii. ch. 21. 2 *Hilliard's Real Prop.* 333. The office of this part of the deed is said to be, "rightly to name the grantor and grantee, and to comprehend the certainty of the thing granted." *Shep. Touch. ub. sup. Co. Litt.* 6 a.

In modern conveyancing, the word *premises* is also used to denote merely the thing demised or granted by the deed. This departure from the proper meaning of the word is noticed by Sheppard. *Shep. Touch.* 75. It seems to have occurred at a very early period. See *Fleta*, lib. 3, c. 10, § 1. In the expression, "messuage or dwelling-house, and *premises*," the word "premises" may include another messuage. 3 *M. & S.* 169.

The subject matter insured in a policy. 4 *Campb.* 89.

PREMIUM. [from Lat. *præmium*, reward.] The sum paid or agreed to be paid by an assured to the insurers, as the consideration for the insurance; being a certain rate per cent. on the amount insured. 1 *Phillips on Ins.* 205. 3 *Kent's Com.* 253.

The price of a risk. See *Prime.*

PRENDA. Span. In Spanish law. Pledge. *White's New Recop.* b. 2, tit. 7.

PRENDER. L. Fr. [from *prendre*, from Lat. *prehendere*, to take.] Taking; the power or right of taking a thing before it is offered. A thing was said to lie *in prender*, where it was something to be taken by the party to be entitled to it, such as estovers in woods; and to lie *in render*, where it was something to be paid or rendered to the party by another, such as rent. See the difference between these explained in *Brownl. & Goldsb.* 35.

PRENDER DE BARON. L. Fr. In old English law. A taking of husband; marriage. An exception or plea which might be used to disable a woman from pursuing an appeal of murder against the killer of her former husband. *Staundf. Pl. Cor.* lib. 3, c. 59.

PREPENSE. L. Fr. Before-thought. Called *purpensed* in *LL. Gul. Conq.* l. 1. See *Malice aforethought.*

PREROGATIVE. [from Lat. *prærogativa*, from *præ*, before, and *rogare*, to ask.] Literally, the privilege of being *asked first;* or, according to Blackstone, something that is required or demanded before, or in preference to all others.

In English law. That special pre-eminence which the king [or queen] has over and above all other persons, in right of his [or her] regal dignity. A term used to denote those rights and capacities which the sovereign enjoys alone, in contradistinction to others. 1 *Bl. Com.* 239.

This term is usually derived from the Lat. *prærogativa* or *prærogativus*, which was used among the Romans to denote a precedence among the centuries or tribes

in voting, or the privilege of voting first; the century or tribe which had such privilege being so called from *præ*, before, and *rogare*, to ask or give a vote. *Adam's Rom. Ant.* 97. *Crabb's Hist. Eng. Law*, 204. According to Lord Coke, *prerogative* denotes, in its proper sense, the privilege of the royal assent to acts passed by the houses of parliament, which must be *asked* and obtained *before* such acts can become laws. *Co. Litt.* 90 b.

PREROGATIVE COURT. In English law. A court established for the trial of all testamentary causes, where the deceased had left *bona notabilia* within two different dioceses; in which case, the probate of wills belonged to the archbishop of the province, by way of special prerogative. And all causes relating to the wills, administrations or legacies of such persons were originally cognizable herein, before a judge appointed by the archbishop, called the judge of the Prerogative Court; from whom an appeal lay to the privy council. 3 *Bl. Com.* 66. 3 *Steph. Com.* 432.

The name of a court in the state of New-Jersey. *Rev. Stat.* tit. 7, c. 4.

PREROGATIVE WRIT. In practice. A writ issued upon some extraordinary occasion, and for which it is necessary to apply by motion to the court; a writ not issuing as of mere course, without showing some probable cause why it should be granted. 3 *Bl. Com.* 132. The writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus* and *certiorari* belong to this class. 3 *Steph. Com.* 681, *et seq.*

Prerogative writs have also been distinguished from writs ministerially directed, viz. those issued to the sheriff; the prerogative writs being generally directed to no sheriff or minister of the court, but to the public or private parties whose acts are the subject of complaint. 2 *Burr.* 855. 3 *Steph. Com.* 681, note.

PRES. L. Fr. Near. *Cy pres;* so near; as near. See *Cy pres.*

PRESBYTER. Lat. [from Gr. πρεσβύτερος, elder, from πρεσβύς, old.] In civil and ecclesiastical law. An elder; a presbyter; a priest. *Cod.* 1. 3. 6, 20. *Nov.* 6.

PRESCRIBE. To claim, or allege a title to a thing, on the ground of long or immemorial usage.* A person is said to *prescribe* that he and his ancestors have used, time out of mind, to have common of pasture in such a close, which is called prescription *in* a man and his ancestors. 3 *Bl. Com.* 264. Or he is said to *prescribe* that he, and all those *whose estate* (L. Fr. *que estate*,) he has, have used for such length of time to have common, &c.; which is technically called prescribing in a *que estate*. *Id.* 264, 265.

PRESCRIPTION. [from Lat. *præscriptio*, q. v.] A mode of acquiring title to property by long and continued usage.* A title acquired by use and time to incorporeal hereditaments, such as a right of way, or of common.* 2 *Bl. Com.* 264. It is a usage annexed to the *person* of the owner of an estate, as distinguished from *custom*, which is properly a local usage. *Id.* 263, 264. As to the American law of prescription, see 2 *Hilliard's Real Prop.* 153—162. *United States Digest*, Prescription.

PRESCRIPTION, TIME OF. A length or period of time sufficient to establish the right of prescription, or title by prescription. This, in England, was formerly identical with *time immemorial*, or *time out of memory*, a period referring to the beginning of the reign of Richard I. But now, by the statute of 2 & 3 Will. IV. c. 71, the time of prescription in certain cases has been shortened. 2 *Steph. Com.* 35—39.

PRESENCE. [Lat. *præsentia.*] The fact of being in a particular place, considered with relation to some act done in the same place. This is either *actual*, as where the person is within the same enclosure and in actual sight, or *constructive*, as where the person is so near as to be held to be present in contemplation of law.

In criminal law, mere presence at the commission of a crime is not sufficient to constitute a person a principal or even an accessory, unless he aids, assists or abets others. 1 *Hale's P. C.* 439. See 1 *Wisconsin R.* 159, 166.

As to what is a sufficient presence of witnesses at the execution of a will, see 4 *Kent's Com.* 515, 516, and cases cited *ibid.* 10 *Grattan's R.* 106. 1 *Leigh's R.* 6.

To PRESENT. [L. Lat. *præsentare.*] In English ecclesiastical law. To offer a clerk to the bishop of the diocese, to be instituted. 1 *Bl. Com.* 389.

In criminal law. To find or represent judicially, as a grand jury *present* certain offenees. See *Presentment.* Held to be an essential word. 2 *Show.* 454.

PRESENTATION. In ecclesiastical law. The act of a patron or proprietor of

a living, in offering a clerk to the ordinary for institution.

PRESENTMENT. L. Fr. and Eng. In criminal law. The notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them; as the presentment of a nuisance, a libel and the like, upon which the officer of the court must afterwards frame an indictment, before the party presented can be put to answer for it. 4 *Bl. Com.* 301.

In a more general sense, a presentment includes inquisitions of office, and indictments by a grand jury. *Id. ibid.* Thus in indictments, the jury are said to *present* upon their oath. See *Indictment.*

PRESENTS. Present letters or instrument. A word of constant occurrence in deeds, bonds, and various other instruments, framed immediately from the Lat. *præsentes*, which was used with *literæ*, as formal words of description in old conveyancing. *Omnibus ad quos* præsentes literæ *pervenerint, salutem:* To all to whom the present letters shall come, Greeting. The word *literæ* was sometimes suppressed, thus: *Pateat universis per* præsentes; Be it known to all men by the presents. *West's Symbol.* pars 1, lib. 2, sect. 535. *Noverint universi per præsentes;* Know all men by the presents. *Id.* sect. 482. This led to the use of *præsentes* as a substantive, and ultimately to the English word *presents* in its plural form: "Be it known unto all men by these presents." *West's Symbol.* sect. 483. "Know all men by *these presents.*"

Another mode of expression formerly in use was, "To all Christian people to whom this *present writing* shall come," &c. *Id.* sect. 465.

PRESIDENT. [Lat. *præses.*] In English law. A title formerly given to the king's lieutenant in a province; as the President of Wales. *Cowell.*

PRESIDENT. An old though corrupted form of *precedent*, (q. v.) used both as a French and English word. *Le* president *est rare. Dyer*, 136. See *Freem.* 265. Presidents without a judicial examination do not make a law. *Hardr.* 98, arg. See 3 *Leon.* 28. *Vaugh.* 154.

PRESS. In old practice. A piece or skin of parchment, several of which used to be sewed together in making up a roll or record of proceedings. See 1 *Bl. Com.* 183. *Towns. Pl.* 486.

PREST, (and afterwards PRIST.) L. Fr. [from Lat. *paratus.*] In old pleading and practice. Ready. *Prest averrer;* ready to prove. *Yearb.* P. 11 Hen. VI. 8. M. 12 Hen. VI. 13. *Prest de prover. Britt.* c. 22. A formal word at the conclusion of pleas and replications, expressive of a tender and acceptance of issue. *Prest*, &c. was a more common form. See *Yearb.* 8 Edw. III. 20. T. 8 Edw. III. 11. See *Prist, Culprit.*

Prest à passer; ready to pass, that is, to give a verdict. M. 3 Edw. II. 56. See *Passer.*

PREST. In old English law. A duty in money to be paid by the sheriff upon his account in the exchequer, or for money left or remaining in his hands. *Cowell.*

PRESTATION. [Lat. *præstatio*, from *præstare*, q. v.] In old English law. A payment or performance; the rendering of a service. A toll, custom or duty. See *Præstatio.*

PRESUMPTION. [L. Fr. *presumpcion*, from Lat. *præsumptio*, from *præsumere*, (q. v.) to take before.] In the law of evidence. Literally, a taking beforehand. The *taking* of a fact to be so, *before* it certainly appears. *Locke on Hum. Underst.* b. 4, c. 14, s. 4.—The *taking* of a fact or proposition to be true, *before* it is positively shown or certainly known to be so. *Burr. Cir. Evid.* 9. A process of reasoning by which a fact not known is deduced or inferred from one or more facts known. *Id. ibid.* Called, by some of the civilians, *argumentum.* A process of probable reasoning from one or more facts to others, exercised by common sense, and founded on the usual course of things; (*argumentum verisimile, communi sensu perceptum ex eo quod plerumque fit aut fieri intelligitur.*) *Matthæus de Crim.* in lib. 48, *Dig.* tit. 15, c. 6. Best, J. 4 *B. & Ald.* 95, 124. Lord Tenterden, *Id.* 161. Otherwise termed *natural* presumption. See *Præsumptio.*

The result of a process of reasoning from one fact to another, or from one or more facts to others; an inference. A conclusion, judgment or belief, as to the truth of some proposed matter of fact, arrived at and formed by a process of inference from other facts. *Burr. Circ. Evid.* 9, 10, and notes.—An inference as to the existence of a fact not actually known, arising from its necessary or usual connection with others which are known. 1

Stark. Evid. 23, 24. See 3 *Id.* 1234.—A probable inference which our common sense draws from circumstances usually occurring in such cases. 1 *Phill. Evid.* 436.—A probable consequence drawn from facts, as to the truth of a fact alleged, but of which there is no direct proof. *Wills' Circ. Evid.* 17.—An inference affirmative or disaffirmative of the existence of a disputed fact, drawn by a judicial tribunal, by a process of probable reasoning, from some one or more matters of fact, either admitted in the cause, or otherwise satisfactorily established. *Best on Presumptions*, 12, § 11. See 1 *Greenl. Evid.* §§ 14—48. See *Præsumptio.*

An assumption or proposition; such as the presumption of sanity. *Burr. Circ. Evid.* 38, 39. A principle or rule; as a presumption of law. *Id. ibid. Vinnius, Jurispr. Contr.* lib. 4, tit. 36.

PRESUMPTION OF FACT. [Lat. *præsumptio hominis; præsumptio facti.*] In the law of evidence. The process of inferring one fact from another, or one or more facts not known, from one or more other facts known, by the exercise of the natural faculties of judgment and common sense, without reference to any technical rules. The process of deducing or inferring certain facts proposed and disputed, by reasoning from certain other facts shown; both species of facts being made the subjects of actual inquiry, with the view of ascertaining the truth of their existence in particular cases. *Burr. Circ. Ev.* 51—59. The species of presumption exercised and applied by juries on the trial of issues of fact. *Id.* 53, 54. Otherwise called *præsumptio hominis*, (q. v.)

The result of such a process of reasoning from facts to facts. A presumption or inference derived wholly and directly from the circumstances of the particular case to which it is applied, by means of the common experience of mankind, without the aid or control of any rules of law whatever.* 1 *Greenl. Evid.* §§ 44, 48.

PRESUMPTION OF LAW. [Lat. *præsumptio juris.*] In the law of evidence. An inference or intendment made by law, or the court, from facts appearing or proved in a particular case.* *Best on Pres.* § 15. 1 *Greenl. Evid.* §§ 15, 33. *Burr. Circ. Evid.* 42, 45.—An assumption or proposition of law, founded on facts proved.* Otherwise termed *legal presumption.* In legal presumption, there is no special inference or process of reasoning from fact to fact, as there is in natural presumption. What is called legal presumption is properly *assumption;* a legal presumption is a *proposition* of law, or the application to a certain fact proved, of a rule previously established. 6 *Lond. Law Mag.* 354. *Burr. Circ. Ev.* 43, 50.

PRESUMPTIVE EVIDENCE. In the law of evidence. Evidence presenting facts from which a *presumption* may be drawn as to the existence of other facts. See *Presumption.* That species of indirect evidence which, when presented to the mind, in connection with any fact sought to be established, suggests or induces, with more or less force, a presumption or belief as to the truth of such fact. *Burr. Circ. Evid.* 79. A species of circumstantial evidence. *Id.* 7, 76. In all cases of probable reasoning, the proof is said to be *presumptive*, and the inference to which it gives rise, a *presumption. Best on Presumptions*, 4, § 3. When the conclusion of the existence of a principal fact does not follow necessarily from the facts proved, but is deduced from them by probable inference, the evidence is said to be *presumptive*, and the inference drawn, a *presumption. Id.* 12, § 11. See 1 *Greenl. Evid.* § 13.

Evidence of facts, admitting of explanation or contradiction, as distinguished from *conclusive* evidence. *Burr. Circ. Ev.* 89.

PRESUMPTIVE HEIR. A person who, if his ancestor should die immediately, would, in the present circumstances of things, be his heir. See *Heir presumptive.*

PRETENSED, *Pretenced.* [L. Lat. *prætensum.*] In old English law. Pretended; claimed. Where a party out of possession of lands or tenements, claimed or sued for the possession, he was said to have a *pretensed* right and title, (*jus prætensum.*) *Cowell. Dyer*, 74 b.

PRETIUM, *Precium.* Lat. Price; value.

In the civil law. The price of a thing sold, which properly consisted in counted money; (*pretium in numerata pecunia consistere debet.*) *Inst.* 3. 24. 2. *Pretium constitui oportet, nam nulla emptio sine* pretio *esse potest;* the price ought to be fixed, for there can be no purchase without a price. *Id. Dig.* 18. 1. 2. 2 *Kent's Com.* 477.

Pretium succedit in locum rei. The price

succeeds in place of the thing [sold.] *Calv. Lex.* citing *Gœddœus.* A maxim quoted in the early English books. 2 *Bulstr.* 312.

PRETIUM AFFECTIONIS. Lat. The price of affection. A price or value set upon a thing or estate by the owner, exceeding the just value, and growing out of the *affection* he has for it.* *Pothier, Contr. of Sale*, num. 244.

PRETORIUM, *Prætorium.* Lat. In Scotch law. A court-house, or hall of justice. 3 *How. St. Trials*, 425.

PREUE. L. Fr. Weal; good; welfare. *Art. sup. Chart.* pr.

P'RIA. A contraction of *patria.* 1 *Inst. Cler.* 11.

PRIER. L. Fr. To pray. *Prioins;* we pray. *Yearb.* II. 1 Edw. II. 3.

PRIMA FACIE. Lat. On the first face; at the first view. See *Facies.* A phrase derived from the civil law, in which it occurs in precisely its modern sense. *Interdum evenit ut exceptio, quæ* primâ facie *justa videtur, tamen inique noceat;* it sometimes happens that an exception, which *at first view* seems just, yet operates as a bar unjustly. *Inst.* 4. 14, pr. See the phrase repeated, *Id.* 4. 14. 1, 2. Bracton uses it in the same sense. *Et quod* primâ facie *valere debent, videtur;* and it seems that, *primâ facie*, they ought to be valid. *Bract.* fol. 29. *Licet videatur*, primâ facie, *quod*, &c.; though it seems, *primâ facie*, that, &c. *Id.* fol. 175. *Fleta*, lib. 2, c. 44, § 7. *Id.* c. 60, § 21.

PRIMA FACIE EVIDENCE. That kind of evidence which, not being inconsistent with the falsity of an hypothesis, nevertheless raises such a degree of probability in its favor that it must prevail, if it be accredited by the jury, unless it be rebutted, or the contrary proved. 1 *Stark. Evid.* 544, [453.]—Evidence which, if uncontradicted or unexplained, is sufficient to determine the matter at issue. 6 *Lond. Law Mag.* 373.

PRIMA TONSURA. Lat. In old English law. The first mowing; the first crop of grass. *Cro. Car.* 362. *Roscoe's Real Act.* 486. Called "fore-crop." 7 *East*, 200. A grant of a right to have the first crop of grass. 1 *Chitt. Gen. Pr.* 181.

PRIMÆ IMPRESSIONIS. L. Lat. Of the first impression; without precedent. *Freem.* 87, arg. A term applied to a new case, or one which has not occurred before; or to a question which is raised for the first time. *Com.* 224, arg. Eyre, J. 5 *Mod.* 23. 1 *Vern.* 94. Platt, J. 19 *Johns. R.* 310. "The question here, as there, is *primæ impressionis;* the case here, as there, is the first of its kind." Story, J. 3 *Mason's R.* 116, 125. The expression is applied to actions, returns, motions and other proceedings. *Freem.* 431. Holt, C. J. 5 *Mod.* 21. Mansfield, C. J. 4 *Taunt.* 3. 1 *Id.* 492, arg. The Gunpowder Plot was called by Lord Coke, in his argument as attorney-general in the case, an offence *primæ impressionis.* 2 *How. State Trials*, 167.

PRIMÆ (or PRIMARIÆ) PRECES. Lat. In the civil law. An imperial prerogative, by which the emperor exercised the right of naming to the first prebend that became vacant after his accession, in every church of the empire. *Goldast. Constit. Imper.* tom. 3, p. 406. 1 *Bl. Com.* 381.

PRIMAGE. In mercantile law. A small allowance or compensation paid by the shipper or consignor of goods, to the master of the vessel, over and above the freight, for his care and trouble as to the goods. 3 *Kent's Com.* 232, note. It is a customary payment, and is expressed in bills of lading as "*primage* and average *accustomed.*"

PRIMATE. [from Lat. *primus*, first.] In English law. A chief ecclesiastic; a prelate of supreme dignity and authority; the title of an archbishop. The Archbishop of Canterbury is styled "Primate of all England, and Metropolitan;" (*Metropolitanus et Primus totius Angliæ.*) The Archbishop of York is styled "Primate of England, and Metropolitan;" (*Primus et Metropolitanus Angliæ.*) 1 *Chitt. Bl. Com.* 380, note.

PRIMARY CONVEYANCES. Those common law conveyances, (otherwise termed *original,*) by means of which an estate is created or first arises. 2 *Bl. Com.* 309. They include feoffments, gifts, grants, leases, exchanges and partitions. *Id.* 310.

PRIME. Fr. [from Lat. *premium*, reward, or *primo*, first.] In French law. The price of the risk assumed by an insurer; premium of insurance. *Emerig. Tr. des Ass.* ch. 3, sect. 1, §§ 1, 2.

PRIMER. L. Fr. First. See *infra. Primerement;* in the first place. *Kelham.*

PRIMER FINE. In old English prac-

tice. A fine or payment which was due to the king on suing out the writ of *præcipe*, at the commencement of the proceedings to levy a fine of lands. 2 *Bl. Com.* 350.

PRIMER SEISIN. [L. Lat. *prima seisina.*] In old English law. A right which the king had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age,) one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion expectant on an estate for life. 2 *Bl. Com.* 66. It was a feudal burthen, only incident to the king's tenants *in capite*. *Id. ibid.*

PRIMITIÆ. Lat. In English law. First fruits; the first year's whole profits of a spiritual preferment. 1 *Bl. Com.* 284. *Crabb's Hist.* 252.

PRIMOGENITURE. [from Lat. *primogenitura*, from *primogenitus*, first born, q. v.] In English law. The privilege of the first-born or eldest son. The right of the eldest son to inherit his ancestor's estate, in exclusion of younger sons. 2 *Bl. Com.* 214. 1 *Steph. Com.* 369. See 4 *Kent's Com.* 375, note.

PRIMOGENITUS. Lat. [from *primo*, first, and *genitus*, born or begotten.] In old English law. A first born or eldest son. *Bract.* fol. 33.

PRIMUM DECRETUM. Lat. In the canon law. The first decree; a preliminary decree granted on the non-appearance of a defendant, by which the plaintiff was put in possession of his goods, or of the thing itself which was demanded. *Gilb. For. Rom.* 32, 33. The term is also used in admiralty law. The Exeter, 1 *Rob. Adm. R.* 175.

PRIMUS. Lat. First. A fictitious name used, with *Secundus*, *Tertius*, *Quartus*, &c. by Roman jurists, in their illustrations; like the modern A. B. C. &c. *Dig.* 37. 11. 2. 5.

PRINCEPS. Lat. In the civil law. The prince; the emperor. *Quod* principi *placuit, legis habet vigorem;* the emperor's pleasure has the force of law. *Inst.* 1. 2. 6.

Princeps legibus solutus est. The emperor is released from the laws; is not bound by the laws. *Dig.* 1. 3. 31. See an explanation of this rule. *Hallifax, Anal.* pref. vi. vii. note.

PRINCEPS. Lat. In old English law. The king. *Fleta*, lib. 1, c. 38, § 26. **Princeps et respublica ex justa causa possunt rem meam auferre.** The king and the state [the government,] may take my property for just cause. 12 *Co.* 13. Translated in Branch's Principia to mean the very reverse.

PRINCIPAL. L. Fr. [from Lat. *principalis*, from *princeps*, chief.] Head; chief; principal. *Les* principals *fesours;* the principal or chief actors. *Britt.* c. 5. *Le principal. Id.* c. 23. *Le* principal *dettour;* the principal debtor. *Id.* c. 28.

PRINCIPAL. [Lat. *principalis*, q. v.] In criminal law. A chief actor or perpetrator, as distinguished from an *accessory*. A principal in the first degree is he that is the actor or absolute perpetrator of the crime; and, in the second degree, he who is present, aiding and abetting the fact to be done. 4 *Bl. Com.* 34. See *Wharton's Am. Crim. Law*, §§ 112, 116.

In the law of contracts. A chief debtor; one who is liable in the first instance, as distinguished from a *surety* who is liable for him, in case of his default; or one whose obligation is prior to that of another which is founded on it. In this and the foregoing sense, the word is directly taken from the French, in which both forms of expression, *le* principal *fesour*, and *le* principal *dettour*, are used in their modern sense. See *infra*.

A chief or head; one who orders or instructs another; one who appoints, directs or employs another to act for him, as distinguished from an *agent*, or person appointed by him. Otherwise termed a constituent or employer. The word, in this sense, has the meaning of *dominus* in the civil law. *Story on Agency*, § 3. See *United States Digest*, Principal and Agent.

PRINCIPAL. [L. Lat. *principalium.*] In old English law. An heir-loom. *Cowell.*

PRINCIPAL CHALLENGE. In practice. A challenge of a juror for a cause which carries with it, *primâ facie*, evident marks of suspicion either of malice or favor; as that a juror is of kin to either party within the ninth degree; that he has an interest in the cause, &c. 3 *Bl. Com.* 363.

PRINCIPAL FACT. In the law of evidence. A fact sought and proposed to be proved by evidence of other facts (termed evidentiary facts) from which it is to be deduced by inference. Otherwise termed *factum probandum.* 3 *Benth. Jud. Evid.*

3. *Burr. Circ. Evid.* 3, 119. A fact which is the principal and ultimate object of an inquiry, and respecting the existence of which a definite belief is required to be formed. *Id.* 3.

PRINCIPALIS. Lat. [from *princeps*, first or chief.] In civil and old English law. Principal; a principal debtor. *Principalis debitor. Fleta*, lib. 2, c. 63, § 5. Called *capitalis debitor*, (chief debtor.) *Id.* § 6. **Principalis debet semper excuti antequam perveniatur ad fidei-jussores.** The principal ought always to be discussed, before resort is had to the sureties. 2 *Inst.* 19. See *Discussion.* A rule of the civil law, the meaning of which is not apprehended in Branch's Principia.

A principal or chief criminal, as distinguished from an accessory. Otherwise called *persona principalis. Fleta*, lib. 1, c. 27, § 19.

Principal; chief. *Placitum principale;* a chief or principal plea or suit. Otherwise called *loquela principalis. Fleta*, lib. 6, c. 23, §§ 12, 13.

PRINCIPIA. Lat. [plur. of *principium*, q. v.] Principles; maxims; axioms; fundamental rules; elements; beginnings. **Principia probant, non probantur.** Principles prove; they are not proved. 3 *Co.* 50 a, *Ratcliff's case.* Fundamental principles require no proof; or, in Lord Coke's words, "they ought to be approved, because they cannot be proved." *Id. ibid.*

Principiis obsta. Withstand beginnings; oppose a thing in its early stages, if you would do so with success. This is put down by Branch among legal maxims, but is most absurdly translated, "Oppose principles," and the error is literally copied in Wharton's Lexicon.

Principiorum non est ratio. There is no reasoning of principles; no argument is required to prove fundamental rules. 2 *Bulstr.* 239.

PRINCIPIUM. Lat. [from *princeps*, first.] In civil and old English law. A beginning. *In* principio *donationis;* at the commencement of the gift. *Bract.* fol. 17 b. **Cujusque rei potissima pars principium est.** The chiefest or most essential part of any thing is the beginning or origin. *Dig.* 1. 2. 1. Adopted by Lord Coke. 10 *Co.* 49 a, *Lampet's case. Co. Litt.* 248 b.

A principle; a maxim. Analyzed by Lord Coke in his peculiar manner, to be quasi *primum caput*, (the first head) from which many cases have their original or beginning. *Co. Litt.* 303 a.

Prior tempore potior jure. [He who is] before in time, is preferred in right. The first occupant of *bona vacantia* has the best right. *Broom's Max.* 330. A creditor who first issues execution to a sheriff, is entitled to have his writ first executed. *Id.* 334.

PRINCIPLE. A fundamental truth; an original cause; a motive. McLean, J. 14 *Howard's R.* 175. In patent law, a principle is not patentable. *Id. ibid.* Eyre, C. J. 2 *H. Bl.* 495. But see *Id. ibid.* 1 *Mason's R.* 470. 1 *Gallison's R.* 478. Nelson, J. (dissenting,) 14 *Howard's R.* 183, *et seq.* According to Mr. Justice Story, the *principle* of a machine means the *modus operandi*, or that which applies, modifies or combines mechanical powers to produce a certain result; and, so far, a principle, if new in its application to a useful purpose, may be patentable. See 1 *Mason's R.* 470.

PRIS. A contraction of *patris.* 1 *Inst. Cler.* 11.

PRIS, *Prise.* L. Fr. Taken. *Si soit* pris *et encoupe;* he shall be taken and charged. *Britt.* c. 11.

Imprisoned. *Rot. Parl.* 4 Hen. IV.

PRISA. L. Lat. [from Fr. *prise*, q. v.] In old English and Scotch law. A taking; a seizure of goods. *Spelman. De* prisis *factis per vicecomites;* of takings made by sheriffs. *Fleta*, lib. 1, c. 20, § 32. See *Id.* lib. 2, c. 50, § 21. *Skene de Verb. Signif.* See *Prise.*

PRISAGE. L. Fr. and Eng. [from Fr. *prise*, a taking, q. v.] In old English law. A right on the part of the crown of *taking* two tuns of wine from every ship (English or foreign) importing into England twenty tuns or more, one before and one behind the mast; which, by charter of Edward I. was exchanged into a duty of 2*s.* for every tun imported by merchant strangers, and called *butlerage*, because paid to the king's butler. 1 *Bl. Com.* 314, 315. *Hale's Anal.* sect. viii. See *Hale de Jur. Mar.* pars 3, c. 2. *Id.* pars 2, c. 6. And see *Calthrop's R.* 1, 2, 20, 23, 24.

PRISARE. L. Lat. In old European law. To take. *Decret. Chlot.* § 7. *Spelman.*

PRISE. L. Fr. [from *prendre*, to take.] A taking. *De* prises *del avers;* of the takings of beasts. *Britt.* c. 27. *La torcenouse* prise *et la torcenouse detenue;* the

tortious taking and the tortious detention. *Id. ibid.*

PRISE. Fr. In French law. Prize; captured property. *Ord. Mar.* liv. 3, tit. 9. See *Prize.*

Capture, by a naval force. *Emerig. Tr. des Ass.* ch. 12, sect. 18, § 1.

PRISE. [L. Fr. *prise;* L. Lat. *prisa*, qq. v.] In old English law. Things *taken* of the king's subjects by purveyors; provisions taken for the king's use. *Cowell. Artic. sup. Chart.* c. 2. 2 *Reeves' Hist. Eng. Law*, 233. *Fleta*, lib. 2, c. 50, § 21.

PRISEL. L. Fr. A taking. *Le* prisel *del verdict. Dyer*, 55 b, (Fr. ed.)

PRISEL EN AUTER LIEU. L. Fr. A taking in another place. A plea in abatement in the action of replevin. 2 *Ld. Raym.* 1016, 1017.

PRISO. L. Lat. [L. Fr. *prison*, from *prise*, taken.] In old English law. A prisoner; a captive in war. *Spelman.*

A prisoner, or imprisoned malefactor. Prisones *vero, sic imprisonati;* but prisoners so imprisoned. *Bract.* fol. 123. See *Fleta, lib.* 1, c. 26, § 5.

PRISON. L. Fr. [from *prise*, a taking.] In old English law. A prison; a place where persons taken for crimes are confined. *Si ascun home moerge en* prison, *si volons nous que le coroner voet veyer le cors;* if any man die in prison, we will that the coroner go to view the body. *Britt.* c. 11.

Imprisonment. *Punys par* prison *et par fyn;* punished by imprisonment and by fine. *Id.* c. 20. Prison *forte et dure;* strong and hard imprisonment. *Stat. Westm.* 1, c. 12.

Confinement of the person, as by duress. *Par feffements faits à force en* prison; by feoffments made by compulsion in confinement. *Britt.* c. 114.

A prisoner. (Lat. *priso.*) More commonly written, in this sense, *prisoun*, or *prison'*. *Britt.* c. 11.

PRISON. [from L. Fr. *prison*, from *prise*, a taking; L. Lat. *prisona;* Lat. *carcer*, qq. v.] A place of confinement of persons, either for safe keeping, or by way of punishment. A public building devoted to such purposes.

A place for the detention of debtors; more correctly expressed by the word *gaol*, (q. v.)

In criminal law. A place for the detention of persons charged with offences, and committed for trial. 2 *N. Y. Rev. St.* [754,] 632, § 1.

A place for the confinement of persons sentenced to imprisonment, upon conviction for any offence. *Id. ibid.* A place of punishment for crime.

*** This word is purely French, occurring in precisely its present form in Britton, whose eleventh chapter is entitled "*De Prisons.*" Bracton makes use of both the L. Lat. *prisona* and the pure Lat. *carcer*, to express it. See *Prisona. Prison* and *gaol* are frequently used as synonymous in modern law, though in strictness *prison* properly signifies a place of punishment for crime; *gaol*, a place of safe keeping and detention. It is said, however, that *prison* originally signified merely a place of safe keeping, and not of punishment, and to show this, reference is made to the observation of Lord Coke,—*carcer ad homines* custodiendos non ad puniendos *dari debet*, (a prison ought to be assigned for the custody of men, not for their punishment.) *Co. Litt.* 260. Lord Coke, however, merely quoted from Bracton, with a slight alteration; the passage in the latter author running thus: *carcer ad continendos et non puniendos haberi debeat. Bract.* fol. 105. A reference to the context in Bracton will show that the meaning of these words has been altogether misapprehended. In the first place, the chapter in which they are found is devoted to the subject of *punishments*, being entitled, "*De generibus pœnarum quibus homines afficiuntur propter eorum iniquitates;*" (of the kinds of punishments with which men are visited on account of their iniquities.) *Bract.* lib. 2, tract. 1, c. 6. Under this head of *punishments*, Bracton proceeds to enumerate, with others, *corporis coertionem, scilicet imprisonamentum, vel ad tempus, vel imperpetuum*, (coercion or restraint of the body, to wit, imprisonment, either for a time, or perpetually, i. e. for life.) He then remarks that a person should be punished in no other way than according to his sentence, (*non alio modo puniatur quis quam secundum quod se habeat condempnatio.*) He states, however, that the keepers of prisons were in the habit of ordering those who were sentenced to imprisonment to be kept in chains; (*solent præsides* in carcere continendos *damnare ut* in vinculis *contineantur,*) but remarks that severities of this kind were condemned by law, because a prison ought to be kept (i. e. by those

having charge of it) as a place of custody and not of punishment; (*sed hujusmodi interdicta sunt à lege, quia* carcer ad continendos et non puniendos haberi debeat.) *Bract.* fol. 104 b, 105. The whole drift of the chapter is to show that punishments should not be extended beyond their proper limits, and particularly, that where *imprisonment was inflicted* as a *punishment*, it should be attended with no *unnecessary severities*. This explanation clearly leads to the conclusion that a *prison* was, in Bracton's time, *a place of punishment*, as is directly shown, indeed, by other expressions of the same author; (sc. *pœna carceris;* the punishment of the prison,) and by the very common expression of Britton, *punys par* prison *et par fyn*. Fleta speaks of the cruelties inflicted upon prisoners in *aggravation* of their punishment, such as hanging up by the feet, loading with iron, &c. in terms of condemnation. *Fleta*, lib. 1, c. 26, §§ 4, 5. And see the whole chapter.

PRISONA. L. Lat. [from L. Fr. *prison*, q. v.] In old English law. Prison; a prison; a place of confinement. *Captus et in* prisona *detentus;* taken and detained in prison. *Bract.* fol. 17, 123. *Jaceat in* prisona *nostra per unum annum et unum diem;* he shall lie in our prison for a year and a day. *Cart. de For.* c. 10. See *Fleta*, lib. 1, c. 26, *De prisonis.*

A place of punishment for crime. *Pœna imprisonamenti. Bract.* fol. 104 b. See *Prison.* Bracton uses the three words *prisona*, *carcer* and *gaola*, to denote a place of confinement or imprisonment. Of these, *carcer* (*prison*) seems to signify any place or building devoted to the express purpose of confining persons, either on accusations of crime or after sentence of imprisonment. *Bract.* fol. 105, 123. *Gaola* (gaol) has the narrower sense of a building devoted to the confinement of persons charged with crimes. *Id.* fol. 109, 110. *Prisona* (prison,) on the other hand, has a much broader meaning than *carcer*, importing not only a *common* place of confinement, but *any* place of confinement, such as a private house, where a person is restrained of his liberty, or a *state* of duress without reference to the place of it. *Id.* fol. 16 b, 122 b, 123 b.

Imprisonment. *Puniatur per* prisonam *unius anni;* he shall be punished by imprisonment for one year. *Fleta*, lib. 1, c. 24, § 2.

PRISONER. [L. Fr. *prisoner, prisoun;* L. Lat. *priso.*] A person restrained of his liberty upon any action, civil or criminal, or upon commandment. *Cowell.*

A person who has not his liberty freely to go at all times, to all places, whither he will, without bail or mainprise; whether he be detained in the open field, or in the street, or in his own house, as well as in the common gaol.* *Termes de la Ley*, voc. *Imprisonment.*

A person confined in a prison, either upon a criminal charge, or on a conviction and sentence. See *Prison.*

A person on trial for crime. "The *prisoner* at the bar." The jurors are told to "look upon the *prisoner*." The court, after passing sentence, gives orders to "remove the *prisoner*."

PRIST. L. Fr. Ready. A formal word used in the days of oral pleading, to express a tender of or joinder in issue. *Sa comen*, prist, &c. *Son several*, prist, &c. Her common, ready, &c. His several, ready, &c. *Yearb.* H. 6 Edw. III. 10. *Ne unques seisi*, prist, &c. *Seisi*, prist, &c. Never seised, ready, &c. Seised, ready, &c. P. 6 Edw. III. 68. *Car nostre baron morust seisi, Prist*, &c. Ald. *Vostre baron ne morust point seisi, Prist*, &c. Ash. *Quod sic. Prist*, &c. For our husband died seised; Ready, &c. Ald. Your husband did not die seised; Ready, &c. Ash. It was so; Ready, &c. P. 8 Edw. III. 4.

PRIVATE ACT. An act which only operates upon particular persons and private concerns. 1 *Bl. Com.* 86. See *Private statute.*

PRIVATE CORPORATION. A corporation founded by a private individual, or the stock of which is owned by private persons, such as a hospital or college, a bank, an insurance, turnpike or rail-road company.* 2 *Kent's Com.* 275.

PRIVATE NUISANCE. Any thing done to the hurt or annoyance of the lands, tenements or hereditaments of another. *Finch's Law*, 188. 3 *Bl. Com.* 216. 2 *Crabb's Real Prop.* 1067, § 2461.

PRIVATE RIGHTS. Those rights which appertain to a particular individual or individuals, and relate either to the person, or to personal or real property. 1 *Chitt. Gen. Pr.* 3.

PRIVATE PROPERTY, (as protected from being taken for public uses,) is such property as belongs absolutely to an indi-

vidual, and of which he has the exclusive right of disposition; property of a specific, fixed and tangible nature, capable of being had in possession and transmitted to another, such as houses, lands and chattels. 29 *Mississippi R.* 21, 32.

PRIVATE STATUTE (or ACT.) A statute which operates only upon particular persons, and private concerns. 1 *Bl. Com.* 86.—An act which relates to certain individuals, or to particular classes of men. *Dwarris on Statutes*, 629.—A statute which concerns only a particular species; a particular thing, or a particular person. 4 *Co.* 76 a. 1 *Term R.* 125. A statute which relates to a particular place or town. 4 *Co.* 76 b. *Skin.* 350. And see *Hale's Hist. Com. Law*, (Runnington's ed.) 3. Generally speaking, statutes are public, and a private statute may rather be considered as an exception to a general rule. It operates upon a particular thing or private persons. 1 *Kent's Com.* 459.

PRIVATE WAY. A right which a person has of passing over the land of another. See *Way.*

PRIVATE WRONGS, (otherwise termed CIVIL INJURIES.) The violation of public or private rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation. 3 *Steph. Com.* 356.

PRIVATEER. In international law. A private armed vessel, duly commissioned by government to cruise during war against the commerce of the enemy. 1 *Kent's Com.* 95—100.

PRIVATUM. Lat. Private; privy. *Privatum jus;* private law. *Inst.* 1. 1. 4. *Privatum concilium;* privy council. *Hale's Anal.* sect. iii.

Privatum commodum publico cedit. Private good yields to public. *Jenk. Cent.* 223, case 80. The interest of an individual should give place to the public good. *Id. ibid.*

Privatum incommodum publico bono pensatur. Private inconvenience is made up for by public benefit. *Jenk. Cent.* 85, case 65. *Broom's Max.* 3, [5.]

Privatis pactionibus non dubium est non lædi jus cæterorum. There is no doubt that the rights of others [third parties] cannot be prejudiced by private agreements. *Dig.* 2. 15. 3, pr. *Broom's Max.* [545.]

PRIVATUS. Lat. A private person or individual.

Privatorum conventio juri publico non derogat. An agreement of private individuals does [can] not derogate from public or common right, [or cannot impair or affect a common right.] *Dig.* 50. 17. 45. 1. *Broom's Max.* [543.] Quoted by Lord Coke, in the words, **Conventio privatorum non potest publico juri derogare.** *Co. Litt.* 166 a. And **Pacta privata non derogant juri communi.** 7 *Co.* 23 b, *Butt's case.*

PRIVEMENT. L. Fr. Privately; privily; secretly; not visibly. *Aperment ou privement;* openly or privily. *Mem. in Scacc.* 18 Edw. I. *Privement enceint;* secretly pregnant; not known or observed to be so. See *Grossement. Finch's Law*, lib. 2, c. 3, p. 117.

PRIVIES. Persons connected together by some relation other than that of actual contract between them; persons whose interest in an estate is derived from the contract or conveyance of others. *Privies* are properly always distinguished from *parties*, from whom they derive their title, though sometimes made to include them. *See Privy, Privity.*

PRIVIGNUS. Lat. In the civil law. A son of a husband or wife by a former marriage; a step-son. *Dig.* 38. 10. 4. 6. *Calv. Lex. Cooper's Justin. Inst.* Notes, *429.

Privigna. A step-daughter. *Dig. ub. sup. Brissonius.*

PRIVILEGE. [from Lat. *privilegium*, q. v.] An exemption or immunity from some general duty or burden; a right peculiar to some individual or body. According to its etymology,—a law, or provision or exception of law in favor of an individual, (*quasi priva*, or *privata lex.*) A peculiar right or favor granted by law, contrary to the common rule. See 14 *Texas R.* 115. See *Privilegium.*

PRIVILEGE FROM ARREST. In practice. A privilege from arrest on civil process, enjoyed either *permanently*, as by ambassadors, public ministers, and their servants, married women, &c.; or *temporarily*, as by members of Congress and of State legislatures, during their attendance at the session of their respective houses, and in going to and returning from the same; attorneys, solicitors and counsellors, during their actual and necessary attendance on their respective courts; parties to a suit and witnesses, while going to, attending and returning from court, and other persons

designated by law. See 1 *Burr. Pr.* 89—92.

PRIVILEGED COMMUNICATION. In the law of evidence. A communication made to a counsel, solicitor or attorney, in professional confidence, and which he is not permitted to divulge; otherwise called a *confidential* communication. 1 *Stark. Evid.* 185. 2 *Id.* 320.

In the law of libel. A communication, statement or publication made by a person affecting the character of another, but which is *privileged* or protected by the occasion or circumstances under which it is made, and will not support an action without proof of express malice.* 3 *Howard's R.* 266.

PRIVILEGED COPYHOLDS. In English law. Those copyhold estates which are said to be held according to the custom of the manor, and not *at the will of the lord*, as common copyholds are. They include customary freeholds and ancient demesnes. 1 *Crabb's Real Prop.* 709, § 919. See *Privileged villenage.*

PRIVILEGED DEBTS. Debts to which a preference in payment is given out of the estate of a deceased person, or out of the assets of an insolvent.

PRIVILEGED DEED. In Scotch conveyancing. A deed or instrument in the execution of which, certain solemnities or formalities are dispensed with; such as the attestation of witnesses, &c. *Bell's Dict.*

PRIVILEGED VILLENAGE. In old English law. A species of villenage mentioned by Bracton, in which the tenants held by certain and determinate services; otherwise called *villein-socage. Bract.* fol. 209. Now called privileged copyhold, including the tenure in ancient demesne. 2 *Bl. Com.* 99, 100. See *Privileged copyholds.*

PRIVILEGIUM. Lat. [from *privus*, particular, and *lex*, law.] In the Roman law. A private law; properly, a special law of the kind called *constitutio*, ordained by the emperor. A special constitution, either conferring a reward on an individual for some act of merit, or inflicting an extraordinary punishment; but which was not to serve as a precedent. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, §§ 59, 60. *Inst.* 1. 2. 6. Called, also, *jus singulare*, (a particular law,) *beneficium*, (a benefit or favor,) *constitutio personalis*, (a personal law.) *Calv. Lex.* But the civilians usually made a distinction between these terms. *Heinecc. Elem. Jur. Civ. ub. sup.* And see *Tayl. Civ. Law*, 234, 235.

An *ex post facto* law. See 1 *Bl. Com.* 46, note (*e.*)

In modern civil law, *privilegium* (privilege) is said to denote, in its general sense, every peculiar right or favor granted by the law, contrary to the common rule. 1 *Mackeld. Civ. Law*, 182, § 189.

PRIVILEGIUM. Lat. In old English law. A privilege. **Privilegium est beneficium personale, et extinguitur cum persona.** A privilege is a personal benefit or favor, and is extinguished with the person. 3 *Bulstr.* 8.

Privilegium non valet contra rempublicam. Privilege is of no force against the commonwealth. Even necessity does not excuse, where the act to be done is against the commonwealth. *Bacon's Max.* 32, in reg. 5. *Broom's Max.* [14.]

PRIVILEGIUM CLERICALE. L. Lat. In old English law. The clerical privilege; benefit of clergy. *Clericus* privilegium *allegans* clericale; a clerk alleging his clerical privilege. *Fleta*, lib. 1, c. 28, § 12. And see *Id.* lib. 2, c. 69, § 1. See *Benefit of clergy. Privilegium* was used indifferently with *beneficium*, in the civil law.

PRIVITY. [L. Fr. *privitie.*] Connection; interest; mutuality of interest; such as subsists between the immediate parties to a contract, as between lessor and lessee; otherwise called personal privity, or privity of contract. 3 *Co.* 23 a, *Walker's case. Litt.* sect. 460, 461. But this does not seem to be privity in its proper sense, for privies are they who are not parties. See *Privy.*

A derivative kind of interest, founded upon, or growing out of the contract of another, as that which subsists between an heir and his ancestor, between an executor and testator, and between a lessor or lessee and his assignee.* 3 *Co.* 23 a, *Walker's case.*

Privity is divided into various kinds, in the books; but with little uniformity of arrangement, or clearness of expression. See *Co. Litt.* 271. 8 *Co.* 42 b. *Whittingham's case. Plowd.* 363.

PRIVY. A person who has an interest in an estate created by another; a person having an interest derived from a contract or conveyance to which he is not himself a party. Thus, an heir is privy to the conveyance of his ancestor, an executor to the contract of his testator, and an as-

signee of a lessor or lessee to the contract of the original parties. Privies are clearly distinguished from parties, in the proper sense of the terms.* "He is a privy who is not a party." *Plowd.* 363.

PRIVY COUNCIL. In English law. The principal council of the sovereign, composed of the cabinet ministers, and other persons chosen by the king or queen as privy councillors. Called, by way of eminence, *the council.* 1 *Bl. Com.* 229. 2 *Steph. Com.* 479, 480. The judicial committee of the privy council acts as a court of ultimate appeal in various cases. *Id.* 482. 3 *Id.* 425, 432.

PRIVY SEAL. In English law. A seal used in making out grants or letters patent, preparatory to their passing under the great seal. 2 *Bl. Com.* 347.

PRIVY SIGNET. In English law. The signet or seal which is first used in making out grants and letters patent, and which is always in the custody of the principal secretary of state. 2 *Bl. Com.* 347.

PRIVY VERDICT. In practice. A verdict given privily to the judge out of court, but which was of no force unless afterwards affirmed by a public verdict given openly in court. 3 *Bl. Com.* 377. Now disused.

PRIZE. [from L. Fr. *prise*, taken.] In international law. A captured vessel; a vessel and cargo captured by a public or private armed vessel of a belligerent, exercising the right of war.* 1 *Kent's Com.* 100, 101, *et seq.*

Captured property regularly condemned by the sentence of a competent prize court. *Id.* 102.

PRIZE COURTS. Courts to which prizes taken in time of war are brought for adjudication and condemnation, and the sentence of which is necessary to invest a capture with the character of prize. 1 *Kent's Com.* 101—103.

In England, the prize courts constitute branches of the admiralty courts, distinct from the ordinary instance courts. *Id.* 353, 354. In the United States, the district courts act as the prize courts of the country. *Id.* 356—360.

PRO. Lat. For; in consideration of. Pro *consilio impendendo*, (q. v.)

For; on account of. Pro *falso clamore*, (q. v.)

For; in behalf of. Pro *querente;* for the plaintiff.

For; to the extent of. Pro *posse suo*, (q. v.)

For; in lieu of. Pro *omni servitio*, (q. v.)

For; in payment of. Pro *misis*, (q. v.)

For; according to. Pro *re nata*, (q. v.)

For; as. Pro *confesso*, (q. v.)

For; during. Pro *et durante*, (q. v.)

PRO. L. Lat. For. A word formerly used in deeds, expressive of a condition in certain cases. *Co. Litt.* 204 a. Pratt, C. J. 1 *Stra.* 571. 8 *Mod.* 42.

PRO CONFESSO. L. Lat. For confessed; as confessed. A term applied to a bill in equity, and the decree founded upon it, where no answer is made to it by the defendant. 1 *Barbour's Ch. Pr.* 96.

PRO CONSILIO IMPENDENDO. L. Lat. For counsel or advice to be given. *Dyer*, 1 b, 2 a. *Cro. Jac.* 482. Formerly a very common consideration for the grant of an annuity.

PRO CONSILIO IMPENSO. L. Lat. For counsel given. *Dyer*, 65 a. *Pro consilio suo, et auxilio, et labore in negotiis suis agendis* impens' *et* impendend'; for his counsel, and aid and labor bestowed and to be bestowed in doing his business. *Yearb.* T. 10 Edw. III. 23.

PRO CONVICTO. L. Lat. As convicted. *Fleta*, lib. 2, c. 61, § 6.

PRO CORPORE REGNI. L. Lat. In behalf of the body of the realm. *Hale's Hist. Com. Law*, 32, (Runnington's ed.)

PRO DEFECTU EXITUS. L. Lat. For, or in case of default of issue. 2 *Salk.* 620. *Pro defectu hæredum;* in case of failure of heirs. *Fleta*, lib. 3, c. 12, § 1.

PRO DEFECTU JUSTITIÆ. L. Lat. For defect or want of justice. *Fleta*, lib. 2, c. 62, § 2.

PRO DEFENDENTE. L. Lat. For the defendant. *Vaugh.* 65. Commonly abbreviated, *pro def'*. *Hardr.* passim. "Morton, *pro querent.* Blackstone, *pro def.*" 1 *W. Bl.* 532.

PRO DERELICTO. Lat. As derelict or abandoned. A species of usucapion in the civil law. The title of *Dig.* 41. 7. *Quod* pro derelicto *habitum est;* what is held as derelict. *Id.* 41. 7. 4.

PRO DIGNITATE REGALI. L. Lat. In consideration of the royal dignity. 1 *Bl. Com.* 223.

PRO DIVISO. Lat. As divided; in severalty. *Si teneant* pro diviso, *et quilibet sciat partem suam;* if they hold in several, and each one knows his share.

Bract. fol. 276, 385. *Fleta*, lib. 5, c. 6, § 36. A term of the civil law.

PRO DOMINO. Lat. As master or owner; in the character of master. *Calv. Lex.*

PRO DONATO. As a gift; as in case of gift; by title of gift. A species of usucapion in the civil law. The title of *Dig.* 41. 6. See *Id.* 5. 3. 13. 1.

PRO DOTE. Lat. As a dowry; by title of dowry. A species of usucapion. The title of *Dig.* 41. 9. See *Id.* 5. 3. 13. 1.

PRO EMTORE. Lat. As a purchaser; by the title of a purchaser. A species of usucapion. The title of *Dig.* 41. 4. See *Id.* 5. 3. 13. 1.

PRO EO QUOD CUM. L. Lat. For that whereas, (for this, that whereas.) Formal words used in the old Latin declarations. 1 *Inst. Cler.* 207.

PRO ET DURANTE. L. Lat. For and during. 2 *Salk.* 620.

PRO FALSO CLAMORE. L. Lat. For his false claim, or clamour. 3 *Bl. Com.* 296.

PRO FORMA. Lat. As a matter of form. 3 *East*, 232. 2 *Kent's Com.* 245.

PRO HAC VICE. L. Lat. For this turn. 3 *Bl. Com.* 243.

PRO HEREDE. Lat. As heir. *Dig.* 41. 5.

PRO HOMAGIO. L. Lat. For homage; in consideration of homage. *Fleta*, lib. 3, c. 14, § 5.

PRO ILLA VICE. L. Lat. For that turn. 3 *Wils.* 233, arg.

PRO INDEFENSO. L. Lat. As undefended; as making no defence. A phrase in old practice. *Fleta*, lib. 1, c. 41, § 7. *Id.* lib. 6, c. 39, § 2.

PRO INDIVISO. Lat. As undivided; in common. *Si teneant simul et* pro indiviso; if they hold together and in common. *Bract.* fol. 276. *Id.* fol. 9. *Litt.* sect. 292, 310. A term of the civil law. *Pro indiviso vel pro diviso. Fleta*, lib. 5, c. 6, § 36.

PRO INTERESSE SUO. L. Lat. According to his interest; to the extent of his interest. *Shep. Touch.* (by Preston,) 35.

PRO LÆSIONE FIDEI. L. Lat. For breach of faith. 3 *Bl. Com.* 52.

PRO LEGATO. Lat. As a legacy; by the title of a legacy. A species of usucapion. The title of *Dig.* 41. 8.

PRO LUCRARI. L. Lat. For to gain. *Fleta*, lib. 6, c. 7, § 12.

PRO MAJORI CAUTELA. Lat. For greater security. 2 *Show.* 420.

PRO MISIS ET CUSTAGIIS. L. Lat. For (his) costs and charges. *T. Raym.* 20. *Cro. Car.* 413.

PRO NON SCRIPTO. Lat. As not written; as though it had not been written; as never written. *Ambl.* 139. *Pro non scriptis;* as void. 7 *Wils. & Shaw's R.* 523.

PRO OMNI SERVITIO. L. Lat. In lieu of all service. *Reg. Orig.* 1.

PRO OPERE ET LABORE. L. Lat. For work and labor. *Com.* 18.

PRO PARTE. L. Lat. In part. *Nec* pro parte *liber, nec* pro parte *servus;* not partly free, and partly a slave. *Bract.* fol. 25.

PRO PERDERE. L. Lat. For to lose. *Fleta*, lib. 6, c. 7, § 12.

PRO POSSE SUO. L. Lat. To the extent of his power or ability. *Bract.* fol. 109. *Pro posse nostro;* to the extent of our power. *Cart. Conf.* 49 Hen. III.

PRO POSSESSORE. Lat. As a possessor; by title of a possessor. *Dig.* 41. 5. See *Id.* 5. 3. 13.

PRO PULCHRE PLACITANDO. L. Lat. For beau-pleader; for ill or vicious pleading, (*pro stultiloquio.*) *Fleta*, lib. 2, c. 66, § 18.

PRO QUERENTE. L. Lat. For the plaintiff. Commonly abbreviated *pro quer'.*

PRO RATA, or PRO RATA PARTE. Lat. In proportion; in due proportion. *Inst.* 2. 22. 5.

PRO RATA ITINERIS. Lat. For the proportion of the voyage. 5 *East*, 316. 10 *Id.* 378.

PRO RATA PORTIONE, or PRO RATA PORTIONIS. Lat. In proportion. *Reg. Orig.* 268.

PRO RE NATA. Lat. For the immediate occasion. 1 *Bl. Com.* 174. 3 *Id.* 73, 433.

PRO SALUTE ANIMÆ. L. Lat. For the welfare of the soul; for the spiritual welfare, or benefit. *Hale's Anal.* sect. xxxix. 2 *Bl. Com.* 97.

PRO SOCIO. Lat. For a partner; the name of an action in behalf of a partner. A title of the civil law. *Dig.* 17. 2. *Cod.* 4. 37.

PRO SOLIDO. Lat. For the whole; as one, without division. *Dig.* 50. 17. 141. 1.

PRO SUO. Lat. For, or as one's own. *Dig.* 41. 10.

PRO TANTO. L. Lat. For so much; to that extent. 1 *Story's Eq. Jur.* § 563. 1 *Vern.* 183. 2 *East*, 488. 3 *P. Wms.* 247. 1 *Campb.* 56.

PRO TOTO. Lat. For the whole. *Pro toto et in solido. Clerke's Prax. Cur. Adm.* tit. 11.

PROAMITA. Lat. In the civil law. A great-grandfather's sister. *Inst.* 3. 6. 3. *Bract.* fol. 68 b.

PROAVIA. Lat. In the civil law. A great-grandmother. *Inst.* 3. 6. 3. *Dig.* 38. 10. 1. 5.

PROAVUNCULUS. Lat. In the civil law. A great-grandfather's brother. *Inst.* 3. 6. 5. *Dig.* 38. 10. 1. 7. *Bract.* fol. 68 b.

PROAVUS. Lat. In the civil law. A great-grandfather. *Inst.* 3. 6. 3. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67, 68.

PROBABILITY. In the law of evidence. Likeness to truth; verisimilitude. *Butler's Analogy*, Introd. The likelihood of a proposition or fact being true or false, from its conformity or repugnancy to our general knowledge, observation and experience. *Locke on Hum. Underst.* b. 4, c. 15, ss. 3, 4. See *Wills' Circ. Ev.* 5. *Burr. Circ. Ev.* 80, 81.

PROBABLE CAUSE. In practice. Reasonable cause for the prosecution of a person. In an action for malicious prosecution, the question of probable or reasonable cause for the prosecution, however numerous or complicated the facts upon which it depends, is one of law and not of fact. 2 *Selden's R.* 384.

PROBABLE EVIDENCE. Presumptive evidence is so called, from its foundation in probability. *Butler's Analogy*, Introd.

PROBABLE REASONING. [Lat. *argumentum verisimile.*] In the law of evidence. Reasoning founded on the probability of the fact or proposition sought to be proved or shown; reasoning in which the mind exercises a discretion in deducing a conclusion from premises. *Burr. Circ. Evid.* 22, 23.

PROBARE. Lat. To prove. **Necessitas probandi incumbit illi qui agit.** The necessity of proving lies upon him who sues. *Inst.* 2. 20. 4. The burden of proof rests upon the complainant. Probare *est fidem facere judici;* to prove is to convince or satisfy the judge. *Theory of Pres. Proof*, 20.

PROBATE. [Lat. *probatio*, from *probare*, to prove.] Official proof, particularly the proof of a will, made by the executor before the ordinary, surrogate or probate judge; which, in England, is done either in *common form*, that is, upon the executor's own oath, or *per testes*, (by the witnesses) in more solemn form of law, as in case where the validity of the will is disputed. 2 *Bl. Com.* 508. The latter form is the one in use in the United States.

The copy of a will (which has been proved, *supra*,) made out under the seal of the ordinary, surrogate or probate judge, and delivered to the executor with a certificate of its having been proved. 2 *Bl. Com.* 508.

In a larger sense, all the proceedings on proving a will, including the proof itself, the copy of the will and certificate. 2 *Bl. Com. ub. sup.* In the canon law, probate consisted of *probatio*, the proof of the will by the executor, and *approbatio*, the approbation given by the ecclesiastical judge to the proof. 4 *Reeves' Hist.* 77.

PROBATIO. Lat. [from *probare*, to prove.] In the civil law. Proof. **Ei incumbit probatio qui dicit, non qui negat,** (q. v.) *Dig.* 22. 3. 2. *Probatio viva;* living proof; proof by witnesses *vivâ voce. Bract.* fol. 400. *Co. Litt.* 6 b.

Probatio mortua; dead proof; proof by deeds, writings and instruments. *Id. ibid.*

Probationes debent esse evidentes, (id est) **perspicuæ et faciles intelligi.** Proofs ought to be evident, that is, clear and easy to be understood. *Co. Litt.* 283 a.

Direct evidence, as distinguished from indirect or circumstantial. *J. Voet ad Pand.* lib. 22, tit. 3, n. 15. *Burr. Circ. Evid.* 2, note.

PROBATIO PLENA. Lat. In the civil law. Full proof; proof by two witnesses, or a public instrument. *Hallifax, Anal.* b. 3, ch. 9, num. 25. 3 *Bl. Com.* 370.

PROBATIO SEMI-PLENA. Lat. In the civil law. Half-full proof; half proof. Proof by one witness, or a private instrument. *Hallifax, Anal.* b. 3, c. 9, n. 25. 3 *Bl. Com.* 370.

PROBATION. In Scotch law. Proof, or, more properly, evidence. *Bell's Dict.*

Probatis extremis, præsumuntur media. The extremes being proved, the intermediate proceedings are presumed. 1 *Greenl. Evid.* § 20. Where authority is given by law to executors, administrators, guardians

or other officers, to make sales of lands, upon being duly licensed by the courts, and they are required to advertise the sales in a particular manner, and to observe other formalities in their proceedings, the lapse of sufficient time, (which in most cases is fixed at thirty years,) raises a conclusive presumption that all the legal formalities of the sale were observed. *Id. ibid.* Here, the license to sell and the deed given are the two extremes which must be proved; the intermediate proceedings are presumed.

PROBATIVE. In the law of evidence. Having the effect of proof.

PROBATIVE FACT. In the law of evidence. A fact (an evidentiary fact) which actually has the effect of proving a fact sought. 1 *Benth. Jud. Evid.* 18.

PROBATOR. Lat. [from *probare*, to prove.] In old English law. A prover or approver. A person who, when indicted for treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed, or accused others, his accomplices in the same crime, in order to obtain his pardon. *Bract.* fol. 152. *Fleta*, lib. 1, c. 38, §§ 17, 18. *Cowell.* 4 *Bl. Com.* 330.

PROBUS HOMO. L. Lat. In old English law. A good man. *Probi homines;* good men. *Per sacramentum* proborum hominum *de visneto;* by the oath of good men of the visne or neighborhood. *Mag. Cart. Johan.* c. 20. This follows the original Articles, c. 9. The Magna Charta, 1 Hen. III. (c. 15,) reads, *Per sacramentum* proborum et legalium hominum *de visneto.* And so reads the Charter of 9 Hen. III. c. 14.

PROBUS ET LEGALIS HOMO. L. Lat. A good and lawful man. A phrase particularly applied to a juror or witness who was free from all exception. 3 *Bl. Com.* 102. *Magna Charta*, 9 Hen. III. c. 14. *Fleta*, lib. 6, c. 25, § 4.

PROCEDENDO, (or *De* procedendo *ad judicium;* of proceeding to judgment.) In practice. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari*, or otherwise, is sent down again to the same court, *to be proceeded in* there, where it appears to the superior court that it was removed on insufficient grounds. *Cowell.* 1 *Tidd's Pr.* 408, 410. 3 *Steph. Com.* 681.

In English practice. A writ issuing out of chancery, in cases where the judges of subordinate courts delay giving judgment, commanding them to proceed to judgment.* 3 *Bl. Com.* 109. 3 *Steph. Com.* 681.

A writ by which the commission of a justice of the peace is revived, after having been suspended. 1 *Bl. Com.* 853.

PROCEED. In practice. To go; to be founded on. Cases are said to "*proceed* upon a principle." 3 *East*, 377. See *Go.*

To go on; to go on in a certain course, or in order to attain a certain end; to go on or act in form of law. See *Proceedings.*

PROCEEDING. In practice. A going on in form of law; an act done in form of law, as before a court or judicial officer; a judicial act, directed against persons or property, and contemplating some ultimate remedial object.

PROCEEDINGS. In practice. The steps or measures taken in the course of an action, including *all* that are taken. The proceedings of a suit embrace *all* matters that occur in its progress judicially. Gardiner, J. 2 *Selden's R.* 319, 320.

In a narrower sense,—the proceedings in a cause or matter, as entered on record; the record history of the case. *Id. ibid.*

PROCEEDS. Money obtained from the sale of property; money, goods or other articles of value, arising, proceeding or obtained from the sale of property; goods purchased with money obtained from the sale of other goods.

In commercial and insurance law, a return cargo is the *proceeds* of the outward cargo, or the sale of the outward cargo. But the term *proceeds* is sometimes properly applied to a return cargo when there has been no actual sale, as where it has been purchased on the credit of the cargo exported. 12 *Mass. R.* 71. And it has been said that the term *proceeds* would apply to the *same* goods sent back without sale, on the return voyage. 1 *Phillips on Ins.* 179, 180.

PROCERES. Lat. Nobles; lords. The House of Lords in England is called in Latin *Domus Procerum.* See *Dom. Proc.*

PROCES. L. Fr. [from *proceder*, to proceed.] Proceeding; mode of proceeding. *De* proces *en assises. Britt.* c. 46.

PROCÈS-VERBAL. Fr. In French law. An authentic minute of an official act, or statement of facts. *Buchanan. Webster.*

An inventory. *Ord. Mar.* liv. 3, tit. 9, art. 22.

PROCESS. [L. Fr. *proces;* L. Lat. *processus*, from *procedere*, to proceed.] In practice. In a general sense,—the entire proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end.* It is equivalent to proceeding; progressive action; the progressive course of a business from its commencement to its termination. Marshall, C. J. 10 *Wheaton's R.* 1. In the old books, "the *process*" in an action is said to be "continued" from one term to another.

In a stricter sense,—a generic term for writs of the class called judicial, of which there are again subordinate divisions, as *mesne process*, *jury process*, *final process*, &c.

In old practice. The means used to compel a defendant to appear in court in compliance with the original writ; consisting of a verbal monition or warning, and the successive writs of attachment, (or *pone*,) *distringas*, and *capias ad respondendum*. 3 *Bl. Com.* 279—282. Otherwise called *original* process. *Id.* 279.

PROCESS. In patent law. A means or method employed to produce a certain result or effect, either by chemical action, by the operation or application of some element or power of nature, or of one substance to another, irrespective of any machine or mechanical device. In this sense, a *process* is patentable. Grier, J. 15 *Howard's R.* 267, 268.

The function or effect of a machine. In this sense, a *process* is not patentable. *Id.* 268.

A process, *eo nomine*, is not made the subject of a patent in our act of Congress. It is included under the general term "useful art." *Id.* 267.

PROCESS ROLL. In practice. A roll used for the entry of process to save the statute of limitations. 1 *Tidd's Pr.* 161, 162.

PROCESSIONING. In American law. A proceeding authorized by statute for ascertaining, marking and establishing the boundary lines of lands. In North Carolina, this is done by an officer called a *processioner*, appointed by the county courts to procession the lands of such persons as desire it. *Revised Code*, (ed. 1855,) ch. 88, p. 479. In Tennessee, it is done by the county surveyor. *Code of Tennessee*, (ed. 1858,) §§ 2020, 2024. In both states, a jury is summoned, if required.

This proceeding seems to be derived from the old English practice of *perambulation*, (q. v.)

PROCESSUS. L. Lat. [from *procedere*, to proceed.] In old practice. Process; proceeding; the course of judicial proceeding; the course of proceeding in an action. *Fleta*, lib. 2, c. 47, § 4. See *Stet processus.*

Processus legis est gravis vexatio; executio legis coronat opus. The process of law is a grievous vexation; the execution of the law crowns the work. *Co. Litt.* 289 b. The proceedings in an action while in progress are burdensome and vexatious; the execution, being the end and object of the action, crowns the labor, or rewards it with success.

PROCHEIN, *Procheyn*, *Prochaine*, *Procain*. L. Fr. [from Lat. *proximus.*] Next; nearest. *Procheyn heire;* next heir. *Britt.* c. 42. *Le* prochein *du saunke;* the next of blood. *Id.* c. 1. *Plus* procheyn *heire;* nearer heir. *Id.* c. 118, 119. *Car toutes sount owelment plus* procheynes; for all are equally next or nearer [of blood.] *Id.* c. 119.

PROCHEIN AMI, (or AMY.) L. Fr. [L. Lat. *proximus amicus.*] In practice. Next friend; the person by whom an infant may prosecute. See *Next friend.* First introduced by the statute of Westminster 2. Lord King, C. 2 *Stra.* 709.

PROCHEINETE. L. Fr. [from *prochein*, q. v.] Nearness; proximity. *Britt.* c. 118.

PROCINCTUS. Lat. [from *procingi*, (properly, *præcingi*,) to be girt about.] In the Roman law. A girding or preparing for battle. *Testamentum in* procinctu, or *testamentum* procinctum; a will made by a soldier, while girding himself, or preparing to engage in battle. *A. Gell. Noct. Att.* lib. xv. c. 27, n. 4. *Adam's Rom. Ant.* 62. *Calv. Lex.* This mode of making a will had become obsolete in the time of Justinian. *Inst.* 2. 10. 1.

PROCLAMARE. Lat. In the civil law. To cry out, or proclaim; to give warning. *Inst.* 4. 3. 5.

To assert a claim. *Calv. Lex.*

In old European law. To appeal (to a higher court.) *Flodoard.* lib. 3, c. 23. *Capitular.* lib. 6, c. 299. *Spelman.*

PROCLAMATIO. Lat. [from *proclamare*, q. v.] A crying out; a proclaiming or proclamation.

In old European law. A claim or complaint; an appeal. *Spelman.*

PROCLAMATION. [from Lat. *proclamatio*, q. v.] A crying out; a notice by public outcry, such as is given on the opening and adjournment of courts, by officers termed criers. See *Crier*, *Oyez*.

A public notice in writing, given by the sovereign or chief executive officer of a country, state or city, of some act done by the government, or to be done or required to be done by the people; either in execution of the law or otherwise. 1 *Bl. Com.* 270.

In old conveyancing. The public notice of a fine of lands, given by openly reading it in court sixteen (and afterwards four) times, and which was afterwards endorsed on the back of the record. 2 *Bl. Com.* 352.

In English practice. A writ issued at the same time with the writ of *exigent*, in the process of outlawry. 3 *Bl. Com.* 284.

In equity practice. Proclamation made by a sheriff upon a writ of attachment, summoning a defendant who has failed to appear, personally to appear and answer the plaintiff's bill. 3 *Bl. Com.* 444. Abolished by *Orders*, 26th August, 1841.

PRO-CONSUL. Lat. In the Roman law. Originally, a consul whose command was prolonged (*imperium prorogatum*,) after his office had expired. *Adam's Rom. Ant.* 176. An officer with consular authority, but without the title of *consul*.

The governor of a province. *Calv. Lex.*

PROCREARE. Lat. To beget. *Procreatus;* begotten. *Procreati et procreandi;* begotten and to be begotten. 1 *Inst.* 20. *Comb.* 154. *Procreatis et procreandis.* 1 *P. Wms.* 427.

PROCTOR. [from Lat. *procurator*, (q. v.) of which it is a contraction.] One who manages the business of another, on the mandate or commission of his principal; an attorney. See *Procurator*.

In practice. An officer in the admiralty and ecclesiastical courts, corresponding with *attorney*, at common law, and *solicitor*, in equity. 2 *Chitt. Gen. Pr.* 34. 3 *Bl. Com.* 25. *Hallifax, Anal.* b. 3, c. 3, n. 3. *Id.* c. 9, n. 5.

PROCURARE. Lat. [from *pro*, for, and *curare*, to take care of.] To take care of another's affairs for him, or in his behalf; to see to the affairs of another; to govern; to manage; to take care of, or superintend. *Dig.* 17. 1. 34.

PROCURATIO. Lat. [from *procurare*, to manage.] Management of another's affairs by his direction, and in his behalf; procuration; administration; agency. See *Procuration*.

A taking care of another. *Spelman.*

PROCURATION. Fr. and Eng. [from Lat. *procuratio*, q. v.] In foreign law. Agency created by a formal written instrument, especially by one under seal. *Story on Agency*, § 3.

PROCURATION FEE, (or MONEY.) In English law. Brokerage or commission allowed to scriveners and solicitors, for obtaining loans of money. 4 *Bl. Com.* 157.

PROCURATOR. Lat. [Fr. *procureur;* from *procurare*, to care for, to manage, see to, or take care of for another.] In the civil law. One who manages the affairs or business of another, under the instructions of his principal; (*qui aliena negotia mandato domini administrat;*) an agent; an attorney; a proxy; a proctor. *Dig.* 3. 3. 1. See *Procurator litis*, *Procurator negotiorum*.

In old English law. An agent or attorney; a bailiff or servant. Livery of seisin of lands was frequently made *per procuratorem*. *Bract.* fol. 40, 42 b, 43. *Fleta*, lib. 3, c. 15, § 5.

A proxy of a lord in parliament. *Whishaw.* 1 *Chitt. Bl. Com.* 168, note.

In ecclesiastical law. One who collected the fruits of a benefice for another. *Stat.* 3 *Ric.* II. st. 1, c. 3. *Cowell.*

An advocate of a religious house, (*procurator monasterii*,) who was to solicit the interest and plead the causes of the society. *Id.*

A proxy or representative of a parish church, (*procurator ecclesiæ parochialis.*) *Id.*

PROCURATOR FISCAL. In Scotch law. A public prosecutor. 1 *Swinton's R.* 508. *Brown's R. passim.*

PROCURATOR LITIS. In the Roman and civil law. The manager of another's suit or cause; a legal agent or attorney.* Properly, one who managed another's cause in his absence; *cognitor* being the title of him who defended the cause of a person present. *Calv. Lex. Adam's Rom. Ant.* 280. In a strict sense, it signified one who acted for a plaintiff, (*actor;*) *defensor* being used to denote him who acted for a defendant. *Dig.* 3. 3. 1, gloss. marg. *Calv. Lex. Prateus.* But according to the Institutes, the title belonged to him who

managed for either party. *Cuicunque permiseris rem tuam agere, aut defendere, is tuus* procurator *intelligitur;* whoever you permit to manage or defend your cause, he is understood to be your proctor. *Inst.* 4. 10. 1.

PROCURATOR NEGOTIORUM. Lat. In the civil law. The manager of another's business or affairs; an agent; an attorney in fact. *Calv. Lex.*

PROCURATOR PROVINCLÆ. Lat. In the Roman law. A provincial officer who managed the affairs of the revenue, and had a judicial power in matters that concerned the revenue. *Adam's Rom. Ant.* 178.

PROCURATORIUM. L. Lat. [from *procurator*, q. v.] In old English law. The procuratory or instrument by which any person or community constituted or delegated their *proctor* or proctors to represent them in any judicial court or cause. *Cowell.* A proxy. *Clerke's Prax. Cur. Adm.* tit. 7.

PROCURATORY OF RESIGNATION. In Scotch law. A form of proceeding by which a vassal authorizes the feu to be returned to his superior. *Bell's Dict.* It is analogous to the surrender of copyholds in England. *Wharton's Lex.*

PROCURATOUR. L. Fr. [from Lat. *procurator*, q. v.] A proctor; an agent or attorney for another. *Britt.* c. 4. *Par* procuratours *ou par baillyfs. Id.* c. 42.

PROCURATRIX. Lat. In old English law. A female agent or attorney in fact; as a mother in behalf of her children. *Fleta*, lib. 3, c. 4, § 4.

PROCUREUR. Fr. In French law. An advocate, proctor or attorney. *Brande.*

PRODES HOMES. L. Fr. In old English law. Discreet men. A title given to the barons, or other military tenants, who were called to the king's council. *Cowell. Artic. sup. Cart.*

PRODIGUS. Lat. In the civil law. A spendthrift or prodigal; one who spent without measure and without end, (*qui neque modum neque finem expensarum habet;*) one who squandered or recklessly dissipated his property. *Inst.* 2. 12. 3.

PRODUCTIO SECTÆ. L. Lat. In old English law. Production of suit; the production, by a plaintiff, of his *secta* or suit, that is, a number of persons prepared to confirm what he had stated in his count, (or *intentio.*) This was done at the time of counting, or immediately after, and was expressed by the phrase at the end of the count or declaration: "*Et inde producit sectam,*" (*and thereupon, or thereof, he produces suit;*) translated in the modern forms: "And therefore he brings suit." *Et inde statim* producat sectam *sufficientem, duos ad minus, vel tres, vel plures, si possit;* and thereupon he should immediately produce a sufficient suit, two at least, or three or more, if he can. *Bract.* fol. 410. See *Id.* 159, 314 b. *Steph. Pl.* 429, and note.

PRODUCTION OF SUIT. [L. Lat. *productio sectæ.*] In pleading. The formula, "And therefore he brings his suit, &c.," with which declarations always conclude. *Steph. Pl.* 428, 429. See *Productio sectæ.*

PROFER. [L. Lat. *proferus, profrus*, from L. Fr. *proferer*, to produce.] In old English law. An offer or proffer; an offer or endeavor to proceed in an action, by any man concerned to do so. *Cowell.* A judicial offer to do some act. See *Proferus.*

A return made by a sheriff of his accounts into the exchequer; a payment made on such return. *Cowell.* See *Proferus.*

PROFERT, (he produces;) PROFERT IN CURIA, or CURIAM, (he produces in court.) In old practice. The production in court, by a party, of an instrument alleged by him in pleading; or rather, the entry made on the record, that the party so produced the instrument.*

In modern practice. An allegation formally made in a pleading, where a party alleges a deed, that he *shows it in court*, it being in fact retained in his own custody. *Steph. Pl.* 67. Where either party alleges any deed, he is, in general, obliged to make *profert* of such deed, that is, to produce it in court simultaneously with the pleading in which it is alleged. *Id.* 66. On *profert* being made, the deed is, by intendment of law, immediately in the possession of the court. 3 *Salk.* 119. 6 *Man. & Gr.* 277, note. Oyer (q. v.) and *profert* seem to have been abolished in England by the common law procedure act. See 25 *Eng. Law & Eq. R.* 304.

PROFERUS, *Profrus.* L. Lat. [from L. Fr. *proferer* or *profrer*, to offer.] In old English practice. An offer or proffer; an offer made in court; a judicial offer to do some act. Called, in old English, *profer*, (q. v.) *Si autem* proferum *quod coram*

coronatoribus et vic' fecerint, advocaverint coram justic'; but if they shall maintain before the justices the offer [to accuse their accomplices] which they made before the coroners and sheriffs. *Fleta*, lib. 1, c. 38, § 16. Mr. Barrington observes that "the word *profrus* is a very uncommon one, but signifies the same with the plaintiff's suit, [*secta;*] this is the sense of the French word *profre* in Britton, which answers to the *producit se*, [offers himself."] *Barr. Obs. Stat.* 226. It probably corresponded with the *obtulit* or *optulit* (qq. v.) of Bracton and Fleta. But it also had a more general sense, as just explained.

An accounting in the exchequer; a return made by officers of their accounts into the exchequer. *Quod omnes vic', firmarii, ballivi libertatum, et alii qui ad* profrum *scaccarii venire debent;* that all sheriffs, farmers, bailiffs of liberties and others who ought to come to the profer of the exchequer. *Fleta*, lib. 2, c. 32, § 2.

PROFICUUM. L. Lat. In old English law. Profit. *Proficuum terræ;* profit of land. *Reg. Orig.* 95. *Cum* proficuo *exituum;* with the profit of the issues. *Fleta*, lib. 2, c. 70, § 1. *Proficua;* profits. *Bract.* fol. 49. *Hale's Anal.* sect. xxiv. 3 *Man. Gr. & Scott*, 92.

PROFITS. The produce of lands; as in the phrase "rents, issues and profits." Under this word, it has been held that land itself will pass. *Co. Litt.* 4 b. *Com. Dig.* Grant, E. 5. *Cro. Eliz.* 190. 17 *Johns. R.* 548.

The avails of business; as of a partnership. See *Story on Partn.* §§ 18—29.

A division sometimes made of incorporeal hereditaments, as distinguished from *easements*, which tend rather to the convenience than the profit of the claimant. 2 *Steph. Com.* 2.

PROGENER. Lat. In the civil law. A grandson-in-law. *Dig.* 38. 10. 4. 6.

PROHÆREDES. L. Lat. In old European law. Persons acting for heirs, or in place of heirs. *Marculf.* lib. 2, c. 17. *Spelman.*

Remote heirs. *Chart. Alam.* n. 50. *Spelman.*

PROHIBITION. In practice. A writ to forbid a court from proceeding in a cause depending before it, on the suggestion that the cognizance of such cause does not belong to it.* *Cowell.* In England it issues, properly, only out of the court of King's (or Queen's) Bench, but may also be had in some cases, out of the Court of Chancery, Common Pleas or Exchequer, and may be directed either to inferior courts of common law, or to the courts christian, university courts, or court of admiralty, where they concern themselves with any matter not within their jurisdiction. 3 *Bl. Com.* 112. 3 *Steph. Com.* 685.

In American practice, a similar writ has been adopted. 2 *Burr. Pr.* 182. 12 *Grattan's R.* 17.

Prohibetur ne quis faciat in suo quod nocere possit alieno. It is forbidden for any one to do or make on his own land, what may injure another's. 9 *Co.* 59 a, *Aldred's case.*

PROINDE. L. Lat. Therefor. . 2 *Mod.* 33.

PROJECTIO. Lat. [from *projicere*, to cast up.] In old English law. A throwing up of earth by the sea. Used by Sir Matthew Hale as a synonyme of *alluvio*, (q. v.)

PROJICERE. L. Lat. In old practice. To cast (an essoin.) *Fleta*, lib. 6, c. 10, § 12.

PROLES. Lat. Issue; offspring; progeny. *Cowell.*

In a stricter sense, issue of a lawful marriage. *Id. Fortescue de L. L. Angliæ*, c. 39, note.

PROLETARIUS. Lat. In the Roman law. Of a mean condition. The *proletarii* included those among the common people (*plebs*) whose fortunes were below a certain valuation. *A. Gell. Noct. Att.* lib. xvi. c. 10. *Calv. Lex.*

PROLYTÆ. Græco-Lat. In Roman law. A name given to students of law in the fifth year of their course; as being in advance of the Lytæ, or students of the fourth year. *Brissonius. Calv. Lex.* See *Lytæ.*

PROMATERTERA. Lat. In the civil law. A great-grandmother's sister. *Inst.* 3. 6. 3.

PROMISE. [Lat. *promissio*, from *promittere*, to promise.] An undertaking or engagement by one person to another, either in words or in writing, to do or not to do some particular thing. Properly, an undertaking by parol, or not under seal; a promise by deed being technically called a *covenant.** 2 *Steph. Com.* 108. A promise is distinguished from an agreement or contract, by its not importing or implying *mutuality;* it being, in other words, an unilateral engagement only. See *Contract*

Of this quality a common promissory note furnishes a familiar illustration.* The word *promise* is used to denote the engagement of a person, without regard to the consideration for it, or corresponding duty of the other party. *Chitty on Contracts*, 2.

PROMISSIO. Lat. In old English law. A promise. *Promissio rei incertæ nullius juris esse reputatur;* a promise of an uncertain thing is held to be of no validity. *Fleta*, lib. 2, c. 60, § 24.

PROMISSOR. Lat. [from *promittere*, to promise.] In the civil law. A promiser; properly the party who undertook to do a thing in answer to the interrogation of the other party, who was called the *stipulator*. The *stipulator* asked, "*Promittis?*" or, more commonly, "*Spondes?*" (Do you promise or engage?) The *promissor* replied, "*Promitto*," (I promise,) or "*Spondeo*," (I undertake.) *Inst.* 3. 16. 1. *Id.* 3. 17, pr. See *Fleta*, lib. 2, c. 60, §§ 24, 25.

PROMISSORY NOTE. In mercantile law. A written promise by one person to another, for the payment of money at a specified time, absolutely and at all events. 3 *Kent's Com.* 74.—A written engagement by one person to pay another person therein named, absolutely and unconditionally, a certain sum of money, at a time specified therein. *Story on Prom. Notes*, § 1.—A promise or engagement, in writing, to pay a specified sum at a time therein limited, or on demand, or at sight, to a person therein named, or to his order, or bearer. *Byles on Bills*, 1, 4. Otherwise called a *note of hand*. A promissory note must be for the payment of a sum named, absolutely, and be payable to a particular person. 35 *Maine R.* 364. 23 *Mississippi R.* 233. 13 *Georgia R.* 55. See *United States Digest*, Promissory note.

PROMITTERE. Lat. In the civil law. To promise. "*Promittis? Promitto;*" (Do you promise? I do promise,) was one of the forms of words by which an obligation might be contracted. *Inst.* 3. 16. 1. But the more common word of engagement was "*Spondeo*," (I undertake.) *Id. ibid. Id.* 3. 17, pr.

PROMOTER. In old English law. A common informer. 3 *Inst.* 191. *Cowell.*

PROMULGARE. Lat. [quasi *provulgare*, to publish.] In the Roman law. To make public; to make publicly known; to promulge or promulgate.

Promulgare legem originally signified to make the *proposal* of a law publicly known, in order that every one might be able to take it into consideration, *before* it was voted upon in the *comitia*. 1 *Mackeld. Civ. Law*, 3, § 5. In the time of Justinian, it had acquired its present meaning,—to publish or make known a law, *after* its enactment. *Proœm. Inst.* § 1.

PROMULGATE. [from *promulgare*, q. v.] To make public; to make a law known, after its enactment or passage.* 1 *Kent's Com.* 458. *Promulge* is used by Cowell.

PROMYS. L. Fr. Promised. *A qui certeyne terre soit* promys, *et dount escriptz sount faitz;* to whom certain land is promised, [engaged to be conveyed,] and of which the writings are made. *Britt.* c. 36.

PRONEPOS. Lat. In the civil law. A great-grandson. *Inst.* 3. 6. 1. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67.

PRONEPTIS. Lat. In the civil law. A great-granddaughter. *Inst.* 3. 6. 1. *Dig.* 38. 10. 1. 5. *Bract.* fol. 67.

PRONUNCIATIO. Lat. [from *pronunciare*, to pronounce.] In old English law. Delivery of judgment on a verdict. *Bract.* fol. 289.

PRONUNCIATION. L. Fr. A sentence or decree. *Kelham.*

PRONURUS. Lat. In the civil law. The wife of a grandson or great grandson. *Dig.* 38. 10. 4. 6. *Brissonius.*

PROOF. [Lat. *probatio*, q. v.] The establishment of one or more facts by evidence. The satisfactory establishment of the truth or falsity of some alleged matter of fact, by evidence adduced for the purpose.* Things established by competent and satisfactory evidence are said to be proved. 1 *Greenl. Evid.* § 1.

That which convinces the mind of a truth. *Domat's Civ. Law*, part 1, b. 3, tit. 6.—That which demonstrates, makes clear or ascertains the truth of a fact or point in issue.* 3 *Bl. Com.* 367.—Any thing which serves, either immediately or mediately, to convince the mind of the truth or falsehood of a fact or proposition. *Best on Evid.* 7, § 10.

The result or effect of evidence. 1 *Greenl. Evid.* § 1. *Wills' Circ. Evid.* 2. *Burr. Circ. Evid.* 1, 196. Evidence which produces a satisfactory impression upon the mind, or creates a persuasion or assurance of the truth of the fact sought to be established. *Id. ibid.*

The result of direct evidence. The word is used in this sense by some of the continental civilians. *Poth. Oblig.* part 4, c. 3, sect. 2. *J. Voet ad Pand.* lib. 22, tit. 3, n. 15.

Evidence in general. *Proof* and *evidence* are constantly used in practice, as synonymous, and are sometimes so treated in the books. See *Evidence.* Properly speaking, however, evidence is only the *medium* of proof; proof is the *effect* of evidence. *Wills' Circ. Evid.* 2. 1 *Greenl. Evid.* § 1. See *Evidence, Prove.*

PROPARS. L. Lat. [L. Fr. *pourparti.*] In old English law. Division of lands among parceners; partition. *Breve de proparte;* a writ of partition. *Bract.* fol. 276, 278 b. *Fleta,* lib. 5, c. 6, § 36.

An allotted share, or *pourpart. Cowell,* voc. *Pourparty.*

PROPATRUUS. Lat. In the civil law. A great-grandfather's brother. *Inst.* 3. 6. 3. *Bract.* fol. 68 b.

PROPER. [Lat. *proprius,* q. v.] Peculiar; particular; one's own. In proper person, (*in propria persona;*) in one's own person.

PROPERTY. [Lat. *proprietas,* from *proprius,* peculiar, private, one's own.] That which is proper or peculiar to one; that which belongs to one; that which is one's own; that to which one has an unrestricted and exclusive right, including all that is one's own, whether corporeal or incorporeal. Property, in this sense, denotes the *things* themselves which are the subjects of right, as in the expressions "real property," "personal property."

The right by virtue of which a thing belongs to one, or is one's own; ownership; dominion; the unrestricted and exclusive right to a thing; the right to dispose of the substance of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. 1 *Mackeld. Civ. Law,* 269, § 259. The exclusive right of using and disposing of a subject as one's own. *Bell's Dict. Tayl. Civ. Law,* 476. This is the strict legal sense of the word, as in the expressions "property in land," "property in chattels." *Things* are regarded in law not as property, but as the *objects* of property. 2 *Bl. Com.* 15. Property has been judicially defined, the right or interest which one has in lands or chattels. Tilghman, C. J. 6 *Binney's R.* 94. Spencer, C. J. 17 *Johns. R.* 283. See 1 *Comstock's R.* 20, 24. 3 *Kernan's R.* 396. The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe. 2 *Bl. Com.* 2. The right of property consists in the free use, enjoyment and disposal of all a person's acquisitions, without any control or diminution, save only by the laws of the land. 1 *Id.* 138.

Property is the highest right a man can have to any thing; being used for that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy. Spencer, Ch. J. 17 *Johns. R.* 281, 283. As applied to lands, the term includes every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract, those which are executory, as well as those which are executed. Marshall, C. J. 4 *Peters' R.* 512.

In old English law, the term *property* was used in a limited sense, as denoting the ownership of *chattels,* in contradistinction to *estate,* which denoted an interest in *lands.* "The ownership of a chattel personal," says Finch, "is termed a *property.*" *Law,* b. 2, c. 17. "The right of things personal," says Lord Hale, "is called *propriety.*" *Anal.* sect. xxvi. *Propriety,* closely following the Lat. *proprietas,* seems to have been the original form of the word.

"PROPERTY" is a word of extensive import in wills, and will carry real as well as personal estate, unless associated with words which explain or control it. 1 *Jarman on Wills,* 658, 663, (566, 570, Perkins' ed.) So, the expression "all my property," will carry an estate of inheritance, if there be nothing in the other parts of the will to limit or control the operation of the words. 4 *Kent's Com.* 535.

"*Property,*" in a policy of insurance, has been held to include current bank bills owned by the assured, on board the vessel. 5 *Metcalf's R.* 1.

PROPINQUITY. [from L. Lat. *propinquus,* q. v.] In Scotch law. The relationship which exists among the members of a family or their descendants. *Bell's Dict.*

PROPINQUUS. Lat. In old English law. Near; near of kin. *Propinquior excludit* propinquum, propinquus *remotum, remotus remotiorem;* the nearer [heir] excludes the near; the near [excludes] the remote; the remote [excludes] the remoter.

Bract. fol. 64. *Fleta*, lib. 6, c. 1, § 11. Quoted by Lord Coke. *Co. Litt.* 10 b.

PROPIOR SOBRINO, PROPIOR SOBRINA. Lat. In the civil law. The son or daughter of a great uncle or great aunt, paternal or maternal. *Inst.* 3. 6. 5.

PROPIOS (or PROPRIOS.) Span. In Spanish American law. Certain portions of ground laid off and reserved, on the foundation of a town, as the unalienable property of the town, for the purpose of erecting public buildings, markets, &c. or to be used in any other way, under the direction of the municipality, for the advancement of the revenues or the prosperity of the place. 12 *Peters' R.* 442, note.

PROPONE. [from Lat. *proponere*, q. v.] In Scotch law. To state. To *propone* a defence, is to state or move it. 1 *Kames' Equity*, pref.

PROPONENT. [Lat. *proponens*, from *proponere*, q. v.] In ecclesiastical practice. The title of a party making or propounding an allegation. "And the party *proponent* doth allege and propound as before." 4 *Chitt. Gen. Pr.* 170, 171, *et seq.*

PROPONERE. Lat. In old English practice. To offer, present or exhibit; to set forth; to propound; Scotticè, to propone. After the parties had appeared in court, and the writ had been read and heard, the first step in the proceedings was for the demandant to propound, offer or state his count, (*debet petens* proponere *intentionem suam*,) &c. *Bract.* fol. 255 b. See *Id.* 266 b, 313 b. *Debet sic actionem proponere;* he ought to propound his action thus. *Fleta*, lib. 2, c. 60, § 21.

PROPORCITAS, *Proportatio.* L. Lat. In old records. The purport, tenor or substance of a thing; a report or relation of a matter. Called *proport.* *Spelman.*

In old Scotch law. A verdict; called the *proport* or *report* of the jury or assise. *Quon. Attach.* c. 68. *Skene*, in loc. *Spelman.*

PROPORTIONALITER. L. Lat. In old English law. Proportionally; in proportion. *Fleta*, lib. 5, c. 9, § 14.

PROPORTUM. L. Lat. In old records. Purport; intention, or meaning. *Cowell. Blount. Carta. Rogeri de Quincy*, 31 Hen. III.

PROPOSITUM. Lat. [from *proponere*, to purpose, or aim at.] Purpose; design; object. **Voluntas et propositum distinguunt maleficium.** Will and design distinguish crime, [are essential to constitute crime.] *Bract.* fol. 136 b.

PROPOSITUS. L. Lat. [from *proponere*, to propose.] In the law of descents. The person proposed, (*persona proposita;*) the person from whom succession is to be traced or degrees of consanguinity reckoned. 2 *Bl. Com.* 224. *Id.* 254, in table.

PROPOUND. [from Lat. *proponere*, q. v.] In ecclesiastical practice. To present or offer; to set forth or state. See *Proponent.* To *propound* a will, is to present it to the proper court for probate. 4 *Chitt. Gen. Pr.* 167, 169.

PROPRE. L. Fr. [from Lat. *proprius*, q. v.] Proper; own. *Sa* propre *persone;* his proper person. *Britt.* c. 121.

PROPRIEDAD. Span. [from Lat. *proprietas.*] In Spanish law. Property. *White's New Recop.* b. 1, tit. 7, c. 5, § 2.

PROPRIETAS. Lat. [from *proprius*, q. v.] In the civil and old English law. Property; that which is one's own; ownership. See *Property.*

Proprietas plena; full property, including not only the title, but the usufruct, or exclusive right to the use. *Calv. Lex.*

Proprietas nuda; naked or mere property or ownership; the mere title, separate from the usufruct. *Id.*

Proprietas totius navis carinæ causam sequitur. The property of the whole ship follows the condition of the keel. *Dig.* 6. 1. 61. If a man builds a vessel from the very keel with the materials of another, the vessel belongs to the owner of the materials. 2 *Kent's Com.* 362.

PROPRIETAS. Lat. In feudal law. Allodial property, as distinguished from *beneficium.* 1 *Rob. Ch.* V. App. note viii.

PROPRIETAS. L. Lat. Propriety; proper meaning or application. **Proprietas verborum est salus proprietatum.** The propriety of words [observance of the proper import of words,] is the safety [salvation, safeguard] of properties. *Jenk. Cent.* 16, case 28.

Proprietates verborum servandæ sunt. The proprieties of words [proper meanings of words,] are to be preserved or adhered to. *Jenk. Cent.* 136, case 78.

PROPRIETY. In old English law. Property. "Propriety in action; propriety in possession; mixed propriety." *Hale's Anal.* sect. xxvi.

PROPRIO VIGORE. L. Lat. By its or their own force, or intrinsic meaning.

2 *Powell on Devises*, 167. 3 *East*, 516. 1 *Id.* 33. *Cas. temp. Hardwicke*, 113.

PROPRIUS, *Proprium.* Lat. Peculiar; private; proper; exclusive; one's own. *Proprius servus;* one's own slave. *Inst.* 2. 14, pr. *Proprius judex;* a proper judge; one that properly had jurisdiction. Sometimes called *suus judex;* one's own judge. *Bract.* fol. 401. *De* proprio *vivat;* should live on his own means. *Fleta*, lib. 2, c. 71, § 3.

PROPTER. Lat. On account of; for.

Propter affectum; on account of bias or favorable inclination. *Co. Litt.* 156 b.

Propter defectum; on account of defect, deficiency, or incompetency. *Id. ibid.*

Propter delictum; on account of crime. *Id. ibid.*

Propter honoris respectum; on account of respect of honor or rank. *Id. ibid.* 3 *Bl. Com.* 362, 363.

Propter defectum sanguinis; on account of failure or deficiency of blood; as by dying without heirs. 2 *Bl. Com.* 245.

Propter delictum tenentis; on account of the crime of the tenant, as if his blood were attainted. *Id. ibid.*

Propter majorem securitatem; for greater security. *Yearb.* M. 8 Hen. VI. 16.

Propter sævitiam aut adulterium; on account of cruelty or adultery. 2 *Kent's Com.* 125.

PROPUGNACULUM. Lat. A bulwark; a defence. *Propugnaculum hæreditatis;* the fortress or defence of an inheritance. *Bacon's Arg.* Case of Impeachment of Waste; *Works*, iv. 217.

PROROGATION. In English law. The continuance of parliament from one session to another. 1 *Bl. Com.* 186, 187.

PROSECUTE. [Lat. *prosequi*, q. v.] To follow up; to carry on an action or other judicial proceeding.

To proceed against a person judicially; to proceed against a person criminally. See *Prosecution.*

PROSECUTIO. Lat. In old English law. A following up; pursuit. *Fleta*, lib. 3, c. 2, § 2.

PROSECUTION. [Lat. *prosecutio*, from *prosequi*, to follow up.] In practice. The following up, or carrying on of a judicial proceeding.

In a stricter sense,—the carrying on of a judicial proceeding in behalf of a *complaining* party; as distinguished from *defence.* See *Prosequi.*

In the strictest sense,—the carrying on of a *criminal* proceeding in behalf of the state or government, as by indictment or information. 4 *Bl. Com.* 301. The state or government, as carrying on such a proceeding.

PROSECUTOR. In criminal law. One who prosecutes another for a crime in the name of the government.

PROSECUTRIX. In criminal law. A female prosecutor.

PROSEQUI. Lat. In old English law. To follow after; to pursue or prosecute. An action is called by Bracton *jus prosequendi*, a right of prosecuting; and this, he observes, is to distinguish it from an exception, (*exceptio*, or plea,) by which we do not follow after another, but are rather followed by another, (*qua non* persequimur *alium, sed magis ab alio* prosequuti [*sumus.*]) *Bract.* fol. 98 b. The word in the civil law definition (which Bracton obviously borrowed) is *persequendi.* See *Actio.* What induced this change does not appear, but the substituted word has always maintained its footing in English law, and the common terms *prosecute* and *prosecution*, (qq. v.) are clearly framed from it.

PROSOCER. Lat. In the civil law. A father-in-law's father. *Calv. Lex.*

PROSOCRUS. Lat. In the civil law. A wife's grandmother. *Dig.* 38. 10. 4. 6.

ΠΡΟΣΩΠΟΝ, *Πρόσωπον.* Gr. In the civil law. Person; a person. *Dig.* 26. 3. 1.

PROSPECTUS. Lat. [from *prospicere*, to view; to look before.] In the civil law. Prospect; the view of external objects. *Dig.* 8. 2. 3, 15. It was distinguished from *lumen. Id. ibid.* 16.

PROSTERNERE. Lat. In old English law. To throw down; to break or pull down; to abate. *Prostratus*, thrown down. *Fleta*, lib. 4, c. 1, § 19.

ΠΡΩΤΑ, *Πρῶτα.* Gr. The name given to the first part of the Digests or Pandects, comprising the first four books. *Dig. Proœm.* (*De Conf. Dig.*) § 2. *Cod.* 1. 17. 2, § 2.

PROTECTIO. Lat. [from *protegere*, to cover or shelter.] Protection; defence; shelter from wrong; support of right.

Protectio trahit subjectionem, et subjectio protectionem. Protection draws with it subjection, and subjection protection. 7 *Co.* 5 a, *Calvin's case.* The protection of an individual by government is on condition of his submission to the laws; and such submission, on the other hand, entitles

the individual to the protection of the government. *Broom's Max.* 35.

PROTECTION. In English law. A writ by which the king might, by a special prerogative, privilege a defendant from all personal and many real suits for one year at a time, and no longer, in respect of his being engaged in his service out of the realm. 3 *Bl. Com.* 289. See *Reg. Orig.* 22 b. *F. N. B.* 28 B. Now disused.

PROTECTION. In maritime law. A certificate given by a public notary to a seaman, certifying that the bearer named therein is a citizen of the United States.

PROTECTOR OF SETTLEMENT. In English law. An appellation given, under the late statute of 3 & 4 Will. IV. c. 74, to the person who, in family settlements, is the owner of the first estate of freehold prior to an estate tail, and whose consent is necessary to enable the tenant in tail to bar an ulterior estate, that is, an estate taking effect on the determination of the estate tail.* 1 *Steph. Com.* 237, 533.

PROTEST. A solemn declaration against an act about to be done, or already done, expressive of disapprobation or dissent; or made with the view of preserving some right which, but for such declaration, might be taken to be relinquished, or of exonerating the party protesting from some liability which might otherwise attach to him. See 1 *Bl. Com.* 168.

In mercantile law. A formal statement in writing by a public notary, under seal, that a certain bill of exchange or promissory note (describing it,) was, on a certain day, presented for payment or acceptance, and that such payment or acceptance was refused, whereupon the notary *protests* against the parties for the loss or damage which may arise therefrom. See *Story on Bills*, § 276, and note. 3 *Kent's Com.* 93. 9 *Metcalf's R.* 174. 1 *Comstock's R.* 186. 1 *Wisconsin R.* 264. *United States Digest*, Promissory note.—A solemn declaration written by the notary, under a fair copy of the bill, stating that the payment or acceptance has been demanded and refused, the reason, if any, assigned, and that the bill is therefore protested. Grier, J. 17 *Howard's R.* 607. The court in this case decided that a mistake in copying or deciphering the abbreviations and flourishes with which the Christian name of the acceptor's agent is enveloped, does not vitiate the protest. Although, in a technical sense, the term *protest* means only the formal declaration drawn up and signed by the notary, yet, as used by commercial men, it includes all the steps necessary to charge an endorser. 2 *Ohio R.* (N. S.) 345.

A declaration made by the master of a vessel before a notary, consul or other authorized officer, at the first port reached after some damage sustained by stress of weather, stating the particulars, and showing that the damage was not occasioned by his misconduct or neglect; or, in other words, giving a circumstantial account of the accidents which have occurred, and *protesting* against them. This is called *noting* the protest, which is afterwards *extended*, that is, set forth in writing in full detail, sworn to by the master and officers, and attested by the notary. *Jacobsen's Sea Laws*, 373. 3 *Kent's Com.* 213, note.

PROTESTANDO. L. Lat. Protesting. The emphatic word formerly used in pleading by way of protestation. 3 *Bl. Com.* 311. See *Protestation.*

PROTESTATION. In pleading. An oblique allegation or denial of some fact, *protesting*, (*protestando*,) that such a matter does or does not exist, and at the same time avoiding a direct affirmative or denial. 3 *Bl. Com.* 311. Where the pleader passed over, without traverse, any traversable fact alleged, and at the same time wished to preserve the power of denying it *in another action*, he made, collaterally or incidentally to his main pleading, a declaration importing that this fact was untrue, which was called a *protestation*, and it had the effect of enabling the party to dispute in another action the fact so passed over. *Steph. Pl.* 235, (Am. ed. 1824.) This formula was abolished in English practice by Rule Hil. T. 4 Will. IV.

"PROTESTED FOR NON-PAYMENT." These words, in mercantile law, have come to have a technical meaning. In them is included not only the idea that the bill is past due, but that payment of it has been demanded; and not being paid, it is therefore dishonored. They mean that the process necessary to dishonor the bill, to wit, demand, refusal of payment and the drawing up of a formal protest, has been gone through with. All this is included in and meant by the term "protested." 2 *Douglas'* (Mich.) *R.* 425, cited in 1 *Wisconsin R.* 264, 278.

PROTHONOTARY, *Protonotary, Pro-*

notary, *Preignothory*. [L. Lat. *protonotarius*, from Gr. πρῶτος, first, and Lat. *notarius*, a notary, *prænotarius*.] A chief clerk in the English courts of King's Bench and Common Pleas; (literally, a chief notary.) *Cowell*. *Spelman*, voc. *Protonotarius*. 1 *Tidd's Pr.* 43, 45, 47. This office was abolished on the establishment of the modern office of *masters*, (q. v.) *Stat.* 7 *Will.* IV. and 1 *Vict.* c. 30.

The chief clerks of some American courts are called prothonotaries.

PROTOCOL. [from L. Lat. *protocollum*, q. v.] The first draught, or rough minutes of an instrument or transaction; the original copy of a despatch, treaty or other document. *Brande*. 8 *Texas R.* 210. See *Protocollum*. *Protocols* are sometimes called "*matrixes* of title." 7 *Texas R.* 359.

In old Scotch practice. A book, marked by the clerk-register, and delivered to a notary on his admission, in which he was directed to insert all the instruments he had occasion to execute; to be preserved as a record. *Bell's Dict.*

PROTOCOLLUM. Græco-Lat. [Gr. πρωτοκολλον.] In the civil law. A brief note or memorandum of a transaction made by a notary, for the purpose of being afterwards extended or written out in full, (*quod breviter et succincte notatur à tabellione, ut extendi deinde atque absolvi possit.*) *Calv. Lex.* A hasty note of a transaction, as it were *prima collectio rerum*, the first getting together of matters. *Id.* Derived, according to some, from Gr. πρῶτος, first, and κολλα, glue or wax, referring to the wax spread over the tablets used for writing; or, according to others, from κῶλον, a member, being the first member or part of the writing. *Id.*

Protocollum, (Gr. πρωτοκολλον,) among the Romans seems to have originally signified a formal caption or heading of instruments drawn by *tabelliones*, (notaries;) or, more particularly, a writing at the head of the paper used by these officers, containing the name of the *comes sacrarum largitionum*, (chief officer of the imperial treasury,) and the time when the instrument was made. *Nov.* 44. It seems to have served the purpose of an official stamp. In the forty-fourth Novel, the *tabelliones* are forbidden to write their instruments upon any other paper than such as contained this *protocollum* at the head.

PROTOCOLO. Span. In Spanish law. The original draft or writing of an instrument which remains in the possession of the *escribano*, or notary. *White's New Recop.* lib. 3, tit. 7, c. 5, § 2. *Id.* § 3, note.

PROUT. As. *Prout* he declared. 12 *Mod.* 25. *Prout moris est;* as is the custom (or practice of the court.) 3 *How. St. Trials*, 112, 113. Called "a word of reference." *Id.* 6. *Prout lex postulat;* as the law requires. *Vaugh.* 260.

PROUT PATET PER RECORDUM. L. Lat. As appears by the record; as appears of record. Words of reference to a record, used in old pleadings and entries. *T. Raym.* 50. 1 *Ld. Raym.* 93. *Comb.* 299. 11 *East*, 565. Otherwise expressed, *prout constat per recordum.* 2 *Salk.* 428.

PROVABLE. L. Fr. Provable; justifiable; manifest. *Kelham. Provablement;* plainly. *Id.*

PROVE. [from L. Fr. *prover;* from Lat. *probare*, to prove.] To establish by evidence; to make out a case or claim by evidence. "Proof generally shall be intended by a *jury;* and *making it appear* and *proving* are the same thing." *Freem.* 53. See *Proof.*

PROVER. [L. Lat. *probator.*] In old English law. A person who, on being indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed or accused others his accomplices in the same crime, in order to obtain his pardon. 4 *Bl. Com.* 329, 330.

PROVER. L. Lat. [from Lat. *probare.*] In old English law. To prove; to establish or make good. *Prist à* prover *par son cors;* ready to prove by his body. *Britt.* c. 22. *Prest de* prover *en toutz les maneres que la court vodra agarder;* ready to prove in all manners that the court shall award. *Id. ibid. Et si la chartre et le done soient dedits, soient* proves, *et si elz soient* proves, &c.; and if the charter and the gift be denied, they shall be proved, and if they be proved, &c. *Id.* c. 93.

PROVIDED ALWAYS. [L. Lat. *proviso semper.*] Words by which a proviso in deeds is most properly introduced. *Cro. Car.* 128. See *Proviso.* The word "provided" will constitute a condition. 21 *Alabama R.* 89.

PROVINCIA. L. Lat. In old English law. A county. *Spelman. Fleta*, lib. 2, c. 72, § 1. *Id.* lib. 4, c. 5, § 4.

PROVINCIAL CONSTITUTIONS. In English law. The decrees of provincial synods held under the divers archbishops of Canterbury, from Stephen Langton, in

the reign of Hen. III. to Henry Chichele, in the reign of Henry V. and adopted also by the province of York in the reign of Henry VI. 1 *Bl. Com.* 83. These constituted a part of the canon law of England. *Id. ibid.*

PROVINCIAL COURTS. In English law. The several archi-episcopal courts in the two ecclesiastical provinces of England.

PROVINCIALIS. Lat. In the civil law. One who has his domicil in a province, (*provincia.*) *Dig.* 50. 16. 190.

PROVING OF THE TENOR. In Scotch practice. An action for proving the tenor of a lost deed. *Bell's Dict.*

PROVISIONE VIRI. Lat. By provision of the husband. 12 *East*, 209, arg.

PROVISO. Lat. In old conveyancing. Provided. A word by which a condition might be created. *Litt.* sect. 329. *Shep. Touch.* 121, 122.

Proviso est providere præsentia et futura, non præterita. [The office of] a proviso is to provide for the present and future, not the past. 2 *Co.* 72.

PROVISO. In conveyancing. A condition inserted in a deed, on the observance whereof the validity of the deed depends. *Cowell.* So called from its initial words in the old Latin forms: PROVISO *semper quod*, &c.; "Provided always, that," &c. See *Proviso*, supra.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent. Story, J. 15 *Peters' R.* 445.

PROVISO, *Trial by.* In English practice. A term applied to a trial where it is brought on by a defendant, which may be done in cases where the plaintiff, after issue, neglects to proceed to trial according to the course and practice of the court. In trials of this kind, the defendant gives notice of trial, makes up the *nisi prius* record, and issues jury process. The term *proviso* is derived from a proviso contained in the *venire* or *distringas* to the sheriff, that if two writs shall come to his hands, he shall execute one of them only. 3 *Bl. Com.* 357. 2 *Tidd's Pr.* 760, 761.

PROVISOR. L. Lat. In old English law. A provider, or purveyor. *Spelman.* One who made interest for some ecclesiastical appointment in advance, or before there was a vacancy. See the Statute of Provisors, 25 Edw. III. st. 6. Mr. Barrington observes that the word might not be improperly rendered a *provident looker-out. Obs. Stat.* 276, note [*g.*]

PROVISUM EST. Lat. It is provided. Initial words of provisions in old statutes. *Stat. Marlb.* c. 1.

PROVOST. L. Fr. [L. Lat. *præpositus.*] The overseer of a manor. *LL. Gul. Conq.* l. 6.

PROVOURS. L. Fr. Provers. *Stat. Westm.* 1, c. 15. See *Prover.*

PROWE, *Prou, Preue, Preu, Pru.* L. Fr. Profit; benefit; advantage. *Kelham.* See *Pru.*

PROX' SEQUEN'. An abbreviation of *proximo sequente*, (next following.) *Com.* 232.

PROXENENTA. Græco-Lat. [from Gr. προξενητὴς, an interpreter, or negotiator of bargains.] In the civil law. A broker; one who negotiated or arranged the terms of a contract between two parties, as between buyer and seller; one who negotiated a marriage; a match-maker. *Dig.* 50. 14. 2. *Calv. Lex. Budæus Comm. Ling. Græc.* cited *ibid.*

PROXIES. In English law. Yearly payments made by parish priests to their bishop or archdeacon, on account of visitation. *Cowell.*

PROXIMUS. Lat. Next. **Proximus est cui nemo antecedit; supremus est quem nemo sequitur.** He is next whom no one precedes; he is last whom no one follows. *Dig.* 50. 16. 92. See *Id.* 50. 16. 155.

PROXY. [Lat. *procurator*, q. v.] One who represents another; one who acts for, and in place of another.

One who is appointed or deputed by another to vote for him. Members of the House of Lords in England have the privilege of voting by proxy. 1 *Bl. Com.* 168.

In American law, it has been held that the members of a corporation are not entitled to vote by proxy at elections of officers, unless authorized by the act of incorporation. 2 *Green's* (N. J.) *R.* 233. See 1 *Paige's R.* 598. 2 *Kent's Com.* 295, note.

PROXY. In English law. The written appointment of a proctor in suits in the ecclesiastical courts. 4 *Chitt. Gen. Pr.* 141, 162, 164.

PRU. L. Fr. In old English law. Profit; benefit; advantage. *Pur le* pru *de soen roiaume;* for the benefit of his kingdom. *Artic. sup. Cart.*

PRUDES HOMES. L. Fr. In old

English law. Discreet men. A term applied to jurors. *Britt.* c. 58. *Prud omes;* great men. *Kelham. Prudum;* an honest man. *Id.* The two last forms are obvious corruptions.

PRUNARIUS. L. Lat. In old English law. A plum tree. *Fleta*, lib. 2, c. 82, § 2.

PRUSCHAINE. L. Fr. Next. A corruption of *prochein. Pruschanement passee;* last past. *Kelham.*

PSYCHOLOGICAL FACT. In the law of evidence. A fact which can only be perceived mentally; such as the motive by which a person is actuated. *Burr. Circ. Evid.* 130, 131.

PTOCHOTROPHUS. Græco-Lat. [Gr. πτωχοτρόφος, from πτωχος, poor, and τρεφω, to maintain.] In the civil law. One who had charge of maintaining the poor. *Cod.* 1. 3. 46. 3, et in tit. *Nov.* 7, c. 1.

PUBERTY. [Lat. *pubertas.*] The age of fourteen in males and twelve in females, when they are held fit for, and capable of contracting marriage. Otherwise called the age of consent to marriage. 1 *Bl. Com.* 436. 2 *Kent's Com.* 78. These periods are derived from the civil law. *Inst.* 1. 22, pr. See *Taylor's Civ. Law*, 259.

PUBLIC ACT or STATUTE. An universal rule or law that regards the whole community, and of which the courts of law are bound to take notice judicially and *ex officio*, without its being particularly pleaded. 1 *Bl. Com.* 86. See 1 *Kent's Com.* 459.

PUBLIC CORPORATION. A corporation created by government for political purposes, as a county, a city, a town or village. 2 *Kent's Com.* 275. See *Municipal corporation.* A bank created by the government for its own uses, and where the stock is exclusively owned by the government, is a public corporation. 2 *Kent's Com. ub. sup.*

PUBLIC HOUSE. A house intended for public purposes. A term frequently used in statutes against gaming. See 9 *Texas R.* 430. A distinction is sometimes made between a "public house" and a "public place." 26 *Alabama R.* 69. A lawyer's office, though a "public house," within the statute against gaming, is not a "public place." *Id.* 135. 25 *Id.* 60. A physician's office is not a "public place." *Id.* 78.

PUBLIC PLACE. See *Public house.* And see 22 *Alabama R.* 15.

PUBLIC RIVER. A river where there is a common navigation exercised; otherwise called a navigable river. 1 *Crabb's Real Prop.* 111, § 106. See *Navigable river.*

PUBLIC WRONGS. Violations of public rights and duties which affect the whole community, considered as a community; crimes and misdemeanours. 3 *Bl. Com.* 2. 4 *Id.* 1.

PUBLICANUS. Lat. In the Roman law. A farmer of the customs; a publican, (*qui publico fruitur.*) *Dig.* 39. 4. 1. *Id.* 50. 16. 16. *Calv. Lex.*

PUBLICATION. In equity practice. The making public the depositions taken in a suit, which have previously been kept private in the office of the examiner.

Publication is said *to pass* when the depositions are so made public, or openly shown, and copies of them given out, in order to the hearing of the cause. 3 *Bl. Com.* 450.

PUBLICATION. In the law of wills. The formal declaration made by a testator at the time of signing his will, that it is his last will and testament. 4 *Kent's Com.* 515, and note. This has been dispensed with in England, by statute 1 Vict. c. 26.

PUBLICATION. In the law of libel. A making public; a making known to the public. The communication of a libel to any one person is a publication. 4 *Bl. Com.* 150. And see 2 *W. Bl.* 1037, 1038.

PUBLICI JURIS. Lat. Public property; matter of public or common right. 2 *Kent's Com.* 379. See *Juris publici.*

PUBLICUM JUS. Lat. In the civil law. Public law; that law which regards the state of the commonwealth, (*quod ad statum rei Romanæ spectat.*) *Inst.* 1. 1. 4.

PUBLICUS. Lat. In the civil and old English law. Public. *Flumina omnia et portus* publica *sunt;* all rivers and harbors are public. *Inst.* 2. 1. 2. *Dig.* 1. 8. 4. 1. *Bract.* fol. 8. *Riparum quoque usus* publicus *est;* the use of banks of rivers is also public. *Inst.* 2. 1. 4. *Dig.* 1. 8. 5, pr. *Bract.* fol. 8. Bracton makes a distinction between *public* and *common. Id. ibid.* See *Common.*

PUDZELD. In old English law. Supposed to be a corruption of the Sax. *wudgeld*, (woodgeld); a freedom from *payment* of money for taking of *wood* in any forest. *Co. Litt.* 233 a.

PUE. L. Fr. A little. *Al* pue *et* pue; by little and little. *Kelham.*

PUEBLO. Span. [from Lat. *populus*, people.] In Spanish law. People; all the inhabitants of any country or place, without distinction. *Las Partidas*, part 1, tit. 2, l. 5.

A town; township or municipality. *White's New Recop.* b. 2, tit. 1, c. 6, § 4. *Schmidt's Civ. Law*, 44, 185.

PUER. Lat. In the civil law. A child; one of the age from seven to fourteen. In this sense, the term included a girl, (*puella.*) *Dig.* 50. 16. 163. 1. *Id.* 204.

A boy, as distinguished from a girl. *Id. ibid.*

A servant. *Id. ibid.*

PUERI. Lat. [pl. of *puer*, q. v.] Children. Pueri *sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum;* children are of the blood of their parents, but the father and mother are not of the blood of the children. 3 *Co.* 40 a.

PUERITIA. Lat. [from *puer*, a child.] In the civil law. Childhood; the age from seven to fourteen. *Tayl. Civ. Law*, 259. 4 *Bl. Com.* 22.

PUET, *Puit.* L. Fr. May; might. *Il* puet *estre;* it may be, or might be. *Kelham.*

PUIS, *Puys, Pues, Pus, Puz.* L. Fr. After; since; afterwards. *Kelham.*

PUIS DARREIN CONTINUANCE. L. Fr. Since the last continuance. The name of a plea which a defendant is allowed to put in, after having already pleaded, where some *new* matter of defence arises after issue joined; such as payment, a release by the plaintiff, the discharge of the defendant under an insolvent or bankrupt law, and the like. 3 *Bl. Com.* 316. 2 *Tidd's Pr.* 847. 1 *Burr. Pr.* 232. So called with reference to the ancient practice of *continuing* a cause by formal entries on the record, the matter of defence being stated to have arisen *since the last continuance* of the cause. *Steph. Pl.* 64. The entry of continuances having been abolished in English practice, the plea is now commonly denominated a *plea to the further maintenance of the action. Id.* 65. A plea *puis darrein continuance* is a waiver of all previous pleas. 1 *Burr. Pr.* 424. 26 *Vermont R.* 305.

PUISNE, *Puisnee, Pune.* L. Fr. In English law. Younger. *Taunt avera* pusne *fitz que l'eyne;* the younger son shall have as much as the elder. *Britt.* c. 119. *Le* pusne *frere. Id. ibid.*

The title by which the justices and barons of the several common law courts at Westminster are distinguished from the *chief* justice and *chief* baron.

Later in time. "A *puisne* incumbrance." 3 *Rep. in Ch.* 62. "A *puisne* incumbrancer." 2 *P. Wms.* 495. "A *puisne* judgment creditor." *Id. ibid.*

PULSARE. Lat. In the civil law. To beat, without giving pain. See *Pulsatio.*

To accuse or charge; to proceed against at law. *Calv. Lex.*

PULSATIO. Lat. In the civil law. Beating without pain. Blackstone translates it *pulsation.* "The Cornelian law *de injuriis* prohibited *pulsation* as well as *verberation*, distinguishing *verberation*, which was accompanied with pain, from *pulsation*, which was attended with none." 3 *Bl. Com.* 120. *Dig.* 47. 10. 5. 1.

PULVIS TORMENTARIA. L. Lat. In old law. Gunpowder. *Loccen. de Jur. Mar.* lib. 3, c. 5, § 6. *Id.* lib. 3, c. 10.

PUNCTUM. Lat. A point; an indivisible point of time. See *Punctum temporis.*

A quarter of an hour, according to the old computation. Ten moments (*momenta*) made a point, (*punctum,*) and four points an hour. See *Momentum.*

PUNCTUM TEMPORIS. Lat. A point of time, an indivisible period of time; the shortest space of time; an instant. *Calv. Lex.*

A point or period from which a computation of time is made. 2 *Alison's Cr. Pract.* 188.

PUNCTURED WOUND. In medical jurisprudence. A wound made with an object having a sharp cutting point; a stab. See *Tayl. Med. Jur.* 185.

PUNDBRECH. Sax. [from *pund*, pound, and *brech*, breach or breaking.] In old English law. Pound-breach; the offence of breaking a pound, (*parci fractura.*) *LL. Hen.* I. c. 40. The illegal taking of cattle out of a pound by any means whatsoever. *Cowell.*

PUNDFULDA, *Pundfalda.* L. Lat. In old records. A pound-fold or pinfold; a pound. *Cowell.*

PUNIR. L. Fr. [from Lat. *punire.*] To punish. *Puni, puny;* punished. *Et que tort avera soit* puny; and he who shall have [done] wrong shall be punished. *Britt.* c. 68. Punys *par prison et par feyn;* punished by imprisonment and by fine. *Id.* c. 4.

PUNITIVE DAMAGES. In practice. Damages given by way of punishment;

exemplary or vindictive damages. 13 *Howard's R.* 371. In common parlance, "smart-money."

PUPILLARITY. [from Lat. *pupillus*, q. v.] In Scotch law. That period of minority from the birth to the age of fourteen in males, and twelve in females. *Bell's Dict.*

PUPILLUS. Lat. In the civil law. A male ward or infant under the age of puberty; a person under the authority of a *tutor*, (q. v.) *Pupilla;* a female ward. *Inst.* 1. 20. 7. *Dig.* 26. 1. 3. See *Id.* 50. 16. 239. Sometimes translated *pupil*, as in Scotch law. 2 *Swinton's R.* 532.

Pupillus pati posse non intelligitur. A pupil or infant is not supposed to be able to suffer, that is, to do an act to his own prejudice. *Dig.* 50. 17. 110. 2. 2 *Kent's Com.* 245.

PUPILLARIS SUBSTITUTIO. Lat. In the civil law. Pupillar substitution; the substitution of an heir to a pupil or infant under puberty. The substitution by a father, of an heir to his children under his power, disposing of his own estate and theirs, in case the child refused to accept the inheritance, or died before the age of puberty. *Hallifax, Anal.* b. 2, c. 6, num. 63. It was expressed in the following form: *Titius filius hæres mihi esto; et si filius mihi hæres non erit, sive hæres erit, et prius moriatur quam in suam tutelam venerit, tunc Seius hæres esto;* let Titius, my son, be my heir, and if my son will not be my heir, or if he become heir and dies before arriving at puberty, let Seius be my heir. *Inst.* 2. 16, pr. *Dig.* 28. 6.

PUR AUTRE VIE. L. Fr. For another's life. 2 *Bl. Com.* 120, 183.

PUR CEO QUE. L. Fr. [L. Lat. *pro eo quod.*] Literally, for this that; forasmuch as; inasmuch as; considering that; because. *Et* pur ceo que *damage purra avener à nous;* and forasmuch as damage may happen to us. *Britt.* c. 68. A common phrase in the old books, where a recital is made, or reason assigned. Sometimes written *pur coe ke. Conf. Cartar.* 25 Edw. I.

PUR TANT QUE. L. Fr. Forasmuch as; because; to the intent that. *L. Fr. Dict. Kelham.*

PURALLE, *Puraille, Poral, Purlieu.* L. Fr. Perambulation. *Kelham.* The borders of a forest or chase. *L. Fr. Dict.*

PURCHASE, *Purchas, Pourchas.* L. Fr. Acquisition. "*De Purchas*" is the title of the thirty-third chapter of Britton, in which he treats of the acquisition of title to property by occupancy; as by the taking of wild beasts, fish, bees, &c.; by accession and other modes. *Al* purchas *de choses corporeles ne suffist nul don sauns le bail de la seisine;* for the acquisition of corporeal things, no gift is sufficient, without delivery of seisin. *Britt.* c. 33.

Purchase; acquisition of lands by conveyance. *Id.* c. 35, 36.

An estate itself, so acquired by purchase. *Ascune foitz returne* purchas *al donour;* sometimes a purchase shall return to the donor. *Id.* c. 37.

PURCHASE. [L. Fr. *purchas;* L. Lat. *perquisitio.*] In the law of real property. Acquisition of lands or tenements by any other means than by descent or inheritance.* The possession of lands and tenements which a man hath by his own act or agreement, and not by descent from any of his ancestors or kindred. *Litt.* sect. 12. 2 *Bl. Com.* 241. *Id.* 201. 2 *Wooddes. Lect.* 150.—Acquisition by a party's own act, as distinguished from acquisition by act of law.* Purchase properly includes every lawful mode of coming to an estate by the act of a party, as opposed to the act of law. 1 *Steph. Com.* 355. This is the definition and division adopted by Mr. Stephen, who observes that it is impossible to reduce all titles to the alternative of *descent* or *purchase*, (the division of Blackstone) and that as to *escheat*, more particularly, (which is usually classed under the head of *purchase*,) it seems clear that it is neither the one nor the other. 1 *Steph. Com.* 354, note (*c.*) The latter view, which has been adopted from Mr. Hargrave, seems to be fully sustained by the words of Littleton himself,—"which a man hath by *his own act or agreement.*" *Litt.* sect. 12. See 2 *Chitt. Bl. Com.* 201, notes. And it is expressly approved by Chancellor Kent. 4 *Kent's Com.* 373.

The radical meaning of the word *purchase* is well illustrated by the use of the L. Fr. *purchas*, (from which it is immediately taken) in the old books. Thus, Britton speaks of *purchasing* (acquiring) a thing by occupancy. *Purchase* may be made, he observes, by the shutting up of fish, and other wild animals, as of bees; (*purra len* purchaser *par enclostrure de pessons, et de autre sauvagine, sicome des ees.*) *Britt.* c. 33. See *Purchas.*

PURCHASE. In the law of contracts. Acquisition by a person's own act; the acquisition of property for a consideration,

consisting generally of money. See *Purchase money.*

PURCHASE MONEY. In the law of contracts. The consideration or price paid, or agreed to be paid, in money, by the purchaser of property, especially of real estate.

PURCHASER. [L. Fr. *purchasour;* L. Lat. *perquisitor.*] A person who acquires an estate in lands by his own act or agreement; a person who takes, or comes to an estate, in any other manner than by inheritance. See *Purchase.*

One who acquires property by sale, or for a consideration; a buyer, (Lat. *emptor.*)

PURE. [Lat. *purus;* L. Fr. *pure, puyr.*] Clear; simple; unmixed or unqualified. A *pure* feoffment was distinguished from a conditional one. *Britt.* c. 39.

PURE VILLENAGE. [L. Lat. *purum villenagium.*] In old English law. That kind of villenage where the service performed was uncertain and indeterminate, the tenant not knowing at evening what service he would have to do in the morning, (*ubi sciri non poterit vesperè quale servitium fieri debet manè;*) or, in other words, where he was bound to do whatever was commanded him. *Bract.* fol. 26.

PURGARE. Lat. In the civil law. To clean, cleanse or scour, as a ditch, trench or sewer. *Dig.* 43. 21. 1. *Fleta*, lib. 4, c. 18, § 1.

PURGATIO. Lat. [from *purgare*, q. v.] In old English law. A cleansing or scouring. *Fleta*, lib. 4, c. 18, § 1.

PURGATION. [Lat. *purgatio*, from *purgare*, to purge, clear or cleanse.] In old English law. The clearing a person's self of a crime of which he was generally suspected, and accused before a judge. *Cowell.*

Canonical purgation was made by the party's taking his own oath that he was innocent of the charge, which was supported by the oath of twelve compurgators, who swore they believed he spoke the truth. 4 *Bl. Com.* 368. To this succeeded the mode of purgation by the single oath of the party himself, called the oath *ex officio*, of which the modern defendant's oath in chancery is a modification. 3 *Id.* 447.

Common or vulgar *purgation*, (*vulgaris purgatio,*) was another name for the trial by *ordeal*, (q. v.) 4 *Id.* 342.

PURGE. To cleanse; to clear; to clear or relieve from some imputation. A contempt is said to be purged, when the party relieves himself from the charge.

PURGED OF PARTIAL COUNSEL. In Scotch practice. Cleared of having been partially advised. A term applied to the preliminary examination of a witness, in which he is sworn and examined whether he has received any bribe or promise of reward, or has been told what to say, or whether he bears malice or ill-will to any of the parties. *Bell's Dict.*

PURGISER. L. Fr. To violate; to defile. *LL. Gul. Conq.* l. 14.

PURLIEU. L. Fr. [another, or a corrupted form of *pourallee*, a part perambulated.] In old forest law. Land adjoining to a forest, which was originally within the forest, but was afterward disafforested by *perambulation*, (*pouraille,*) whence its name. *Manwood*, 317, 318. 1 *Crabb's Real Prop.* 484, § 625. 2 *Stra.* 1119.

PURPARLER. L. Fr. To speak of, or speak about; to confer, or consult. *Ne compassay ne* purparlay; neither compassed nor consulted about. *Britt.* c. 22.

PURPARS, *Perpars.* L. Lat. In old records. The share of an estate after partition; purparty, (q. v.) *Paroch. Ant.* 502. *Cowell.* See *Propars.*

PURPARTY, *Purpartie.* [L. Fr. *pour parti;* L. Lat. *pro diviso;* as divided.] A share or portion; a share after division.* That part or share of an estate which being first held in common by coparceners, is by partition allotted to any of them. *Cowell. Et solonc cele estente soit faite a chescun parcener la livere de sa* purparty; and according to such extent shall livery be made to each parcener of her several portion. *Britt.* c. 71. *La* purparty *que est allot al puisne;* the part which is allotted to the youngest. *Litt.* sect. 258.

The word is Englished *purpart*, in some of the modern books. 6 *Penn. St.* (Barr's) *R.* 234.

PURPENSED. L. Fr. Premeditated. *LL. Gul. Conq.* l. 1.

PURPORT. [L. Lat. *proportum*, from Fr. *pour*, for, and *porter*, to carry.] Meaning; import; substantial meaning; substance. The *purport* of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from *tenor*, which means an exact copy. MS. Buller, J. 2 *East's P. C.* 983. *Wharton's Am. Crim. Law*, § 342.

PURPRESTURA. L. Lat. In old English law. Purpresture, (q. v.) *Et qui de cetero vastum vel* purpresturam *sine licentia nostra, in illis* [*boscis*] *fecerint vel essartum, de vastis* purpresturis *et essartis*

respondeant; and those who, without our permission, shall make waste or purpresture in those [woods] or assart, shall answer for those wastes, purprestures and assarts. *Cart. de For.* 6 Hen. III. c. 4. See *Fleta*, lib. 2, c. 41, §§ 2, 3. *Id.* c. 52, § 25. *Id.* lib. 4, c. 6, § 3.

PURPRESTURE. [L. Lat. *purpræstura, purprestura, porprestura;* from L. Fr. *pourprendre*, to take away entirely.] Properly, a clandestine encroachment and appropriation of a neighbor's land; (*terræ alienæ clandestina subtractio, ejusdemque vicinæ ascriptio.*) *Spelman.* A species of nuisance by enclosing or building upon land that should be common or public. *Co. Litt.* 277 b. See *Pourpresture.*

PURPRISUM. L. Lat. [from L. Fr. *pourpris*, an enclosure.] In old records. A close or enclosure. *Cowell.*

The whole compass of a manor. *Id.*

PURQ'. L. Fr. Wherefore. A word used in old practice, at the end of pleas, arguments and judgments. Very common in the Year Books. *Purq', pur defaut de r'ns, no'. d'dons judgt, et prions nos dam';* wherefore, for want of an answer, we demand judgment and pray our damages. The clause is sometimes abbreviated, *purq', &c.*

PURSUE. [from Lat. *persequi.*] To follow a matter judicially, as a complaining party. In Scotch law, to prosecute criminally. 3 *How. St. Trials*, 425.

PURSUER. [O. Sc. *persewar.*] In Scotch law. Plaintiff; a plaintiff; a prosecutor. 1 *Kames' Equity*, 225. A literal translation of the Gr. διωκων, (q. v.)

PURUS. Lat. In old English law. Pure; clear; simple; free of any qualification or condition. *Donationum quædam libera et* pura, *et quædam sub conditione vel sub modo;* of gifts, one kind is free and pure, and another under a condition or qualification. *Bract.* fol. 11 b.

Absolute. *Purus idiota;* a clear or absolute idiot. 1 *Bl. Com.* 303.

PURVELE. L. Fr. The eye-ball. *LL. Gul. Conq.* l. 21.

PURVEYANCE, *Purveiance.* L. Fr. [from *purveier* or *purvoire*, to provide.] A provision; the provision of a statute; a statute. *En le* purveiance de Merton; in the statute of Merton. *Stat. Westm.* 1, c. 22.

PURVEYANCE. L. Fr. and Eng. [from *pourvoire*, to provide.] In old English law. A providing of necessaries for the king's house. *Cowell.* A buying at the king's price. *Hale's Anal.* sect. viii. See *Pourveyance.*

PURVEYOR. In old English law. An officer who provided or bought articles for the king's use, and at the king's price. Called, in the statute 36 Edw. III. c. 2, a hateful name, (*heignous nome*) and changed to that of *achator*, (q. v.) *Barringt. Obs. Stat.* 289.

PURVIEW, *Purvieu.* L. Fr. [from *purveier*, to provide.] Provided. A word very commonly used in the old French statutes, to introduce a chapter or distinct provision. Purview *est que;* it is provided that. *Stat. Westm.* 1, c. 1. Purview *est ensement;* it is provided likewise. *Id.* c. 2. See *Id.* c. 20. 1 *And.* 67. Used in modern law as an English word, to denote the enacting clause of a statute, or the entire body of a statute. See *infra.*

PURVIEW. [See *supra.*] The providing part of a statute; that which follows the preamble, and contains the direct and express provision of the law. Lord Coke speaks of the statute of 3 Hen. VIII. c. 12, as "standing upon a preamble and a purview." 12 *Co.* 20.—The body of an act or statute; that part of it which consists of direct and express provisions, as distinguished from provisoes and saving clauses.* "A saving clause in a statute is to be rejected, when it is directly repugnant to the *purview* or body of the act." 1 *Kent's Com.* 462. See *Purveyance.*

To PUT IN. [Lat. *ponere.*] In practice. To place in due form before a court; to place among the records of a court. A phrase very commonly applied to the acts of parties in judicial proceedings, particularly to those of defendants. "To *put in* bail," "to *put in* a plea or answer," &c. are expressions in daily use.

To PUT IN URE. In old statutes. To put in practice or effect; to carry into effect. See *Ure.* Sometimes written to "put in *use.*"

To PUT OUT. To open. To put out lights; to open or cut windows. 11 *East*, 372.

To PUT UPON. [L. Lat. *ponere super.*] In practice. To rest upon; to submit to; as a defendant "*puts* himself *upon* the country." See *Country.*

PUTAGIUM. L. Lat. In old English law. Fornication on the part of a woman. *Glanv.* lib. 7, c. 12. *Bract.* fol. 88. *Spelman. Fleta*, lib. 1, c. 15, § 4.

PUTATIO. Lat. In the civil law. A pruning or lopping of trees. *Inst.* 4. 3. 5.

PUTATIVE. [L. Lat. *putativus*, from *putare*, to suppose.] Reputed; supposed; commonly esteemed. *Pater pueri* putativus; the reputed father of the child. *J. Brompt.* p. 909. *Cowell.*

Applied, in Scotch law, to creditors and proprietors. 2 *Kames' Equity*, 105, 107, 109.

PUTEUS. Lat. In old English law. A well. *Fleta*, lib. 4, c. 27, § 8.

PUYR. L. Fr. Pure. *Chartre de* puyr *feffement. Britt.* c. 51.

PUYS. L. Fr. [from Lat. *puteus*, q. v.] A well. *Britt.* c. 1.

PYKERIE. Sc. In old Scotch law. Petty theft. 2 *Pitc. Crim. Trials*, 43.

Q.

Q. A letter used in the Roman law, in various abbreviations. Q. D. E. R. F. P. D. E. R. I. C. for *Quid de ea re fieri placeret, de ea re ita censuerunt*, (what it might be their pleasure to have done on that subject, on that subject they have so determined.) An abbreviation used in writing out decrees of the senate. *Tayl. Civ. Law*, 576. *Calv. Lex.*

QAR. L. Fr. For. *Fet Assaver*, § 45.

Q'D. A contraction of *quod*, in old pleading. 1 *Instr. Cler.* 12.

QUA. L. Lat. As. "The debt, *quà* debt, was instantly due." Lord Ellenborough, 8 *East*, 433. "Interest, *quà* interest." Lord Kenyon, 1 *Id.* 195. "The judge, *quà* judge, cannot know." *Vaugh.* 147.

QUACUNQUE VIA DATA. Lat. Whichever way given; in whichever view of the case. Lord Mansfield, 2 *Burr.* 980. Story, J. 2 *Gallison's R.* 26. 1 *Id.* 637. 11 *Metcalf's R.* 276. *Shep. Touch.* 367.

QUADRAGESIMA. Lat. The fortieth. The first Sunday in Lent is so called because it is about the fortieth day before Easter. *Cowell.*

QUADRAGESMS. The third volume of the year books of the reign of Edward III. So called, because beginning with the *fortieth* year of the reign. *Crabb's Hist. Eng. Law*, 327. *Hale's Hist. Com. Law*, c. 8.

QUADRANS. Lat. In old English law. A farthing; a fourth part or quarter of a penny.

Before the reign of Edward I. the smallest coin was a sterling or (silver) penny marked with a *cross* or traverse strokes, by the guidance of which a penny, upon occasion, might be cut in halves for a half penny, or into quarters for farthings or fourth parts, till, to avoid the fraud of unequally cutting, King Edward I. A. D. 1279, coined half pence and farthings in round distinct pieces. *Cowell. Spelman*, voc. *Denarius*, citing *Stow*, p. 306, where some curious old verses are given.

QUADRANTALIS. L. Lat. [from *quadrans*, q. v.] In old English law. Of the value or price of a quarter or farthing. *Panis quadrantalis;* the farthing loaf. *Fleta*, lib. 2, c. 9. Britton, in the parallel passage, has the word *ferlinges*, (q. v.) *Britt.* c. 30. But the word is not taken notice of either by Spelman or Cowell.

QUADRANTATA TERRÆ. L. Lat. The fourth part of an acre, according to Cowell. But Spelman makes it to be the fourth part of a yard-land. *Spelman*, voc. *Fardella.*

QUADRARIUM. L. Lat. In old records. A quarry, or stone-pit. *Paroch. Ant.* 208. *Cowell.*

QUADRIENNIUM. Lat. [from *quatuor*, four, and *annus*, year.] The four years' course of studying the civil law, before arriving at the code or imperial constitutions. *Inst.* proœm. *Tayl. Civ. Law*, 39.

QUADRIENNIUM UTILE. Lat. In Scotch law. The term of four years allowed to a minor, after his majority, in which he may by suit or action endeavor to annul any deed to his prejudice, granted during his minority. *Bell's Dict. Whishaw.*

QUADRIPARTITE. Divided into four; of four parts. A term applied, in conveyancing, to an indenture executed in four parts.

QUADRUPLICATIO. Lat. In the civil law. A pleading on the part of a defendant, following the *triplicatio*, (q. v.) and corresponding to the *rebutter* at common law. The third pleading on the part of the defendant. *Inst.* 4. 14. 3. 3 *Bl. Com.* 310. Called, in Scotch law, *quadruply.* 3 *How. St. Trials*, 78.

Bracton adopts the term, though he gives the pleading itself a different place in the series, making it the third pleading on the part of the plaintiff, corresponding with the *surrejoinder* of common law pleading. *Bract.* fol. 400 b. This is occasioned by his omission of the *duplicatio*, which, in the civil law series, as given in the Institutes, followed immediately after the *replicatio*, though, in the Digests, the

duplicatio is omitted. *Dig.* 44. 2. 2. 3. The same omission occurs in Fleta. Lib. 6, c. 36, § 10.

Quæ ab hostibus capiuntur, statim capientium fiunt. Things which are taken from enemies immediately become the property of the captors. 2 *Burr.* 693. See *Inst.* 2. 1. 17. *Grotius de Jur. Bell.* lib. 3, c. 6, § 12. In the Institutes, here cited, the reading is, **Quæ ex hostibus capimus, jure gentium statim nostra fiunt.** What we take from enemies, by the law of nations immediately becomes ours. In the Digests, the reading is, **Quæ ex hostibus capiuntur, jure gentium statim capientium fiunt.** Things which are taken from enemies, by the law of nations immediately become the property of the captors. *Dig.* 41. 1. 5. 7. *Statim*, however, is held to mean "when the battle is over;" when all immediate pursuit has ceased, and all hope of recovery is gone. Lord Mansfield, 2 *Burr. ub. sup.* See *Statim.*

Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest. An institution which was at the beginning of no use or force, cannot acquire force from after matter. *Dig.* 50. 17. 210. See **Quod ab initio, &c.**

Quæ accessionum locum obtinent, extinguuntur cum principales res peremptæ fuerint. Things which hold the place of accessories are extinguished when the principal things are destroyed. 2 *Poth. Oblig.* 202. *Broom's Max.* 373.

Quæ ad unum finem loquuta sunt non debent ad alium detorqueri. Words which are spoken to one end, [or with reference to one object,] ought not to be perverted to another. 4 *Co.* 14 a. The sense of words charged as slanderous is to be collected from the cause and occasion of speaking them. *Id. ibid.*

Quæ cohærent personæ a persona separari nequeunt. Things which cohere to, or are closely connected with the person, cannot be separated from the person. *Jenk. Cent.* 28, case 53. Applied to the joinder of husband and wife as parties to actions. *Id. ibid.*

Quæ communi lege derogant stricte interpretantur. [Statutes] which derogate from the common law are strictly interpreted. *Jenk. Cent.* 221, case 72.

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam. Things which are introduced contrary to the reason of law ought not to be drawn into a precedent. 12 *Co.* 75. Precedents which are utterly against law and reason are void. *Id. ibid.*

Quæcunque intra rationem legis inveniuntur, intra legem ipsam esse judicantur. Things which are found within the reason of a law are supposed to be within the law itself. 2 *Inst.* 689.

Quæ dubitationis causa tollendæ inseruntur, communem legem non lædunt. [Clauses] which are inserted [in an instrument] for the purpose of removing doubt, do not affect the common law. *Co. Litt.* 205 a. *Litt.* sect. 331. In the Digests, the maxim reads, **Quæ dubitationis tollendæ causa contractibus inseruntur, jus commune non lædunt.** *Dig.* 50. 17. 81.

QUÆ EST EADEM. L. Lat. [L. Fr. *que est le mesme*, which is the same.] In old pleading. Formal words used in pleas in actions of trespass, the defendant alleging that the plaintiff gave him leave to enter on the land, and that he entered accordingly, *quæ est eadem transgressio*, (*which is the same* trespass) of which the plaintiff complains. *Holthouse.*

Quæ incontinenti fiunt inesse videntur. Things which are done incontinently [or simultaneously with an act,] are supposed to be inherent [in it; to be a constituent part of it.] *Co. Litt.* 236 b. The very elliptical form of this maxim renders a close translation difficult. It seems to be condensed from Bracton's *pacta quæ incontinenti donationi apponantur,—inesse videntur. Bract.* fol. 16 b.

Quæ in partes dividi nequeunt, solida a singulis præstantur. Things [or services] which cannot be divided into parts, are rendered entire severally, [that is, by each several feoffee.] 6 *Co.* 1 a, *Bruerton's case. Co. Litt.* 149 b. A maxim applied to the apportionment of rents and services.

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt. Things which are done between others (or third parties) ought not to injure a person, but may benefit him. *Branch's Pr.* See **Res inter alios, &c.**

Quæ in testamento ita sunt scripta ut intelligi non possint, perinde sunt ac si scripta non essent. Things which are so written in a will that they cannot be understood, are the same as if they had not been written at all. *Dig.* 50. 17. 73. 3.

Quæ legi communi derogant non sunt trahenda in exemplum. Things which dero-

gate from the common law are not to be drawn into precedent. *Branch's Pr.*

Quælibet concessio fortissime contra donatorem interpretanda est. Every grant is to be interpreted most strongly against the grantor. *Co. Litt.* 183 a. Every man's grant shall be taken by construction of law most forcible against himself. *Id.*

Quælibet jurisdictio cancellos suos habet. Every jurisdiction has its limits. *Jenk. Cent.* 139, case 85.

QUÆ NIHIL FRUSTRA. L. Lat. Which (does or requires) nothing in vain; which requires nothing to be done, that is to no purpose. 2 *Kent's Com.* 53.

Quæ non valeant [prosunt] singula, juncta juvant. Things which may have no force singly, united have an effect. *Branch's Pr.* 3 *Bulstr.* 132. 1 *Ventr.* 278. Words in an instrument which are ineffective when taken singly, operate when taken conjointly. *Broom's Max.* 294, [450.]

QUÆ PLURA. L. Lat. (What more.) In old English practice. A writ which lay where an inquisition had been made by an escheator in any county, of such lands or tenements as any man died seised of, and all that was in his possession was imagined not to be found by the office; the writ commanding the escheator to inquire *what more* (*quæ plura*) lands and tenements the party held on the day when he died, &c. *F. N. B.* 255 A. *Reg. Orig.* 293. *Cowell.*

Quæ propter necessitatem recepta sunt, non debent in argumentum trahi. Things which are admitted on the ground of necessity ought not to be drawn into question. *Dig.* 50. 17. 162.

Quæ præter consuetudinem et morem majorum fiunt, neque placent neque recta videntur. Things which are done contrary to the custom of our ancestors, neither please nor appear right. 4 *Co.* 78.

QUÆRAS de dubiis, legem bene discere si vis:
Quærere dat sapere quæ sunt legitima vere.

Inquire about doubtful points, if you would learn the law well; to inquire into, is the way to know what is really lawful, [what the law really is.] *Litt.* sect. 443.

QUÆRE. Lat. Inquire; see; examine; look into. A word constantly used in the books to denote a doubtful point, or to direct further inquiry into a point or matter stated. *Perkins*, ch. 4, s. 296. *Id.* ch. 5, s. 350. *Quære de hoc;* inquire of this, or about this. *Id.* ch. 9, s. 585. *Quære inde. Dyer*, 24. *Tamen quære;* however, inquire. *Perk.* ch. 1, ss. 44, 45, 105, 106. *Ideo quære*; therefore inquire. *Id.* ch. 1, s. 39; ch. 4, s. 261. *Ideo quære certitudinem inde*, &c.; therefore inquire into the certainty thereof. *Id.* ch. 4, s. 269. *Quære, quid inde venit; quære* what became of it. 6 *Mod.* 253. The word is used also in the statement of questions. *Sed* quære *si tenens elongaverit;* but *quære* if the tenant should have eloigned. *Fleta*, lib. 2, c. 45, § 3.

A question or doubt. "It was a *quære.*" 12 *Mod.* 18.

QUÆRENS. L. Lat. In old practice. A plaintiff; the plaintiff. See *Querens.*

QUÆRENS NIHIL CAPIAT PER BILLAM. L. Lat. The plaintiff shall take nothing by his bill. A form of judgment for the defendant. *Latch*, 133.

QUÆRENS NON INVENIT PLEGIUM. L. Lat. The plaintiff did not find a pledge. A return formerly made by a sheriff to a writ requiring him to take security of the plaintiff to prosecute his claim. *Cowell.*

Quæ rerum natura prohibentur nulla lege confirmata sunt. Things which are forbidden by the nature of things are [can be] confirmed by no law. *Dig.* 50. 17. 188. 1. *Branch's Pr.* Positive laws are framed after the laws of nature and reason. *Finch, L.* 74.

QUÆRITUR ut crescunt tot magna volumina legis?
In promptu causa est,—crescit in orbe dolus.

The question is asked, why the volumes of the law multiply so fast? The reason is at hand,—fraud increases in the world. 3 *Co.* 82 a, *Twyne's case.* "To one who marvelled what should be the reason that acts and statutes are continually made at every parliament, without intermission and without end, a wise man made a good and short answer, both which are well composed in verse." (See the verse just given.) *Id. ibid.*

Quæ sunt minoris culpæ sunt majoris infamiæ. [Offences] which are of a lower grade of guilt are of a higher degree of infamy. *Co. Litt.* 6 b. Lord Coke here alludes to the infamous punishments of pillory, branding and cropping, which were formerly inflicted on minor offences.

QUÆSTIO. Lat. [from *quærere*, to inquire.] In the civil law. The question; the torture; inquiry or inquisition by inflicting the torture; bodily torment inflicted in order to extort the truth, (*ad eruen-*

dam veritatem.) *Dig.* 47. 10. 15. 41. *Id.* 48. 18.

QUÆSTOR. Lat. [from *quærere*, to seek or collect.] A Roman magistrate whose office it was to collect the public revenue, (*qui publicas pecunias conquirebat.*) *Varro de L. L.* iv. 14. *Dig.* 1. 13. *Cod.* 1. 30.

QUÆSTOR SACRI PALATII. Lat. Quæstor of the sacred palace. An officer of the imperial court at Constantinople, with powers and duties resembling those of a chancellor, (*cancellarius.*) *Calv. Lex.*

QUÆSTUS. Lat. In old English law. Acquisition; purchase. See *Questus.*

QUALE JUS. Lat. (What kind of right.) In old English law. A judicial writ which lay where a man of religion, (as an abbot, &c.) had judgment to recover land, before execution was issued; commanding the sheriff to inquire *what right* the plaintiff had to recover, and what damages he had sustained. *Reg. Jud.* 8, 16, 17. The object of the writ was to ascertain whether the recovery had, or had not been collusive, in order to evade the statute of mortmain.

QUALIFIED FEE. In English law. A fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a *base fee.* 2 *Bl. Com.* 109. 1 *Steph. Com.* 225. An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. 4 *Kent's Com.* 9. See *Base fee.*

QUALIFIED PROPERTY. A temporary or special interest in a thing, liable to be totally divested on the happening of some particular event. 2 *Kent's Com.* 347. It is a species of interest growing out of possession, and arising either from the nature of the thing or chattel possessed, as in the case of animals *feræ naturæ;* or from a transfer of possession from the general owner, as in case of bailment, pledge or distress. 2 *Bl. Com.* 391—396. 2 *Steph. Com.* 73. 2 *Kent's Com.* 347—350.

QUALITER. Lat. In what manner. A word used in old writs. *Fleta*, lib. 2, c. 64, § 19.

QUAMDIU. Lat. As long as; so long as. A word of limitation in old conveyances. *Co. Litt.* 235 a. 10 *Co.* 41 b. *Shep. Touch.* 125.

QUAMDIU SE BENE GESSERIT. L. Lat. As long as he shall conduct himself well; during good behaviour. A term used to express the tenure of office, especially of judicial offices. 1 *Bl. Com.* 267. By the statute 13 Will. III. c. 2, it was enacted that the commissions of the judges in the superior courts should be made, not as formerly, *durante bene placito*, (during pleasure,) but *quamdiu bene se gesserint*, as long as they shall conduct themselves well. *Id. ibid.* The clause is often used in old letters patent. *Cowell.*

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum. Although a thing may not be bad in itself, yet, if it is of bad example, it is not to be done. 2 *Inst.* 564.

Quamvis lex generaliter loquitur, restringenda tamen est, ut, cessante ratione, ipsa cessat. Although a law speaks generally, yet it is to be restrained, so that when its reason ceases, it should cease also. 4 *Inst.* 330.

QUANDO ACCIDERINT. L. Lat. (When they shall happen, or come to hand.) In practice. The technical name of a judgment entered against an executor or administrator, where it is directed to be satisfied out of assets which may *afterwards come* to the hands of the defendant. 2 *Arch. Pr.* 147. 2 *Burr. Pr.* 97.

Quando abest provisio partis, adest provisio legis. When the provision of the party is wanting, the provision of the law is at hand. 6 *Vin. Abr.* 49.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. When any thing is commanded, every thing by which it can be accomplished is also commanded. 5 *Co.* 115 b, *Foliamb's case.* When the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command. *Broom's Max.* 201, [366.] Thus, constables, whose duty it is to see the peace kept, may, when necessary, command the assistance of others. *Id. ibid.* So a sheriff may summon the *posse comitatus* for a similar purpose. 5 *Co. ub. sup.*

Quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. When any thing is prohibited, every thing by which it is reached is prohibited also. 3 *Inst.* 48. That which cannot be done directly, shall not be done indirectly. *Broom's Max.* 202, [367.]

Quando aliquid prohibetur fieri ex directo,

prohibetur et per obliquum. When any thing is prohibited from being done directly, it is prohibited indirectly also. *Co. Litt.* 223 b. *Wingate's Max.* 618, max. 159.

Quando aliquis aliquid concedit, concedere videtur et id sine quo res uti non potest. When a person grants any thing, he is supposed to grant that also without which the thing cannot be used. 3 *Kent's Com.* 421. When the use of a thing is granted, every thing is granted by which the grantee may have and enjoy such use. *Id. ibid.*

Quando charta continet generalem clausulam, postaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia. When a deed contains a general clause, and afterwards descends to special words which are agreeable to the general clause, the deed is to be interpreted according to the special words. 8 *Co.* 154 b, *Altham's case.*

Quando de una et eadem re duo onerabiles existunt, unus, pro insufficientia alterius, de integro onerabitur. When there are two persons liable for one and the same thing, one of them, in case of default of the other, shall be charged with the whole. 2 *Inst.* 277.

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitiatur, et secundum alteram [aliam] utilis sit, tunc facienda est relatio ad illam ut valeat dispositio. When a disposition [in a will] may be referred to two things, so that according to one reference it is destroyed, and according to the other it is effectual, such a reference must be made that the disposition shall have effect. 6 *Co.* 76 b, *Sir George Curson's case.*

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem. When different acts are required to the formation of any estate, the law chiefly regards the original act. 10 *Co.* 49 a, *Lampet's case.* When to the perfection of an estate or interest, divers acts or things are requisite, the law has more regard to the original act, for that is the fundamental part on which all the others are founded. *Id. ibid.*

Quando [cum] duo jura concurrunt in una persona, æquum est ac si essent in diversis. When two rights meet in one person, it is the same thing as if they were in different persons. 4 *Co.* 118 a, arg. *Shep. Touch.* 34. That is, they still remain separate rights, and do not merge together into one.

Quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest. When the law grants any thing to any one, it is considered to grant that also without which the thing itself cannot exist. 5 *Co.* 47 a, *Franklin's case.* When the law grants a thing to any one, it is considered to grant him also whatever is essential to constitute it, or is necessarily incident to it. The last clause of this maxim is sometimes varied thus: **et id per quod devenitur ad illud**; the means of attaining it. 1 *Kent's Com.* 464. The law is well settled that whenever a power is given by a statute, every thing necessary to the making it effectual is given by implication. Douglas, C. J. 2 *Florida R.* 597.

Quando lex aliquid alicui concedit, omnia incidentia tacite conceduntur. When the law grants any thing to any one, all the incidents [of such thing] are tacitly granted; [are granted by implication.] 2 *Inst.* 326. *Hob.* 234. The grant of a thing carries all things included, without which the thing granted cannot be had. *Id.*

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda. When a law is special, but its reason [or object] general, the law is to be understood generally. 2 *Inst.* 83.

Quando licet id quod majus, videtur et licere id quod minus. When the greater is allowed, the less seems to be [is considered as] allowed also. Where a man may devise the land itself, it seems he may devise the trees or grass growing upon the land. *Shep. Touch.* 429.

Quando plus fit quam fieri debet, videtur etiam illud [ipsum] fieri quod faciendum est. When more is done than ought to be done, that which is to be done is still considered to be done. 8 *Co.* 85 a, *Sir Richard Pexhall's case.* Where more is done [under a power] than ought to be done, that portion for which there was authority shall stand, and the act shall be void *quoad* the excess only. *Broom's Max.* 76, [131.]

Quando res non valet ut ago, valeat quantum valere potest. When a thing is of no effect as I do it, it shall have effect as far as [or in whatever way] it can. Lord Mansfield, C. J. *Cowp.* 600. Deeds are to be so construed as to operate according to the intention of the parties, if by law they may; and if they cannot in one form, they

shall operate in that which by law will effectuate the intention. *Broom's Max.* 238, 239, [415.] 2 *Smith's Lead. Cas.* 294.

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum. When the words of a statute are special, but the reason or object of it general, the statute is to be construed generally. 10 *Co.* 101 b, *Beawfage's case.*

QUANTITY, as applied to an estate, denotes the duration and extent of the interest which the tenant has in the tenement; as whether for years, for life or in fee. 2 *Bl. Com.* 103.

QUANTUM MERUIT. Lat. (As much as he deserved.) In pleading. The common count in an action of *assumpsit* for work and labor, founded on an implied *assumpsit* or promise on the part of the defendant to pay the plaintiff *as much as he* reasonably *deserved* to have for his labor. 3 *Bl. Com.* 161. 1 *Tidd's Pr.* 2. So termed from the emphatic words in the old Latin forms. Under the late pleading rules of the English courts, this count, and the *quantum valebant* (*infra*) are considered as virtually abolished. 1 *Chitt. Pl.* 288.

QUANTUM VALEBANT. Lat. (As much as they were worth.) In pleading. The common count in an action of *assumpsit* for goods sold and delivered, founded on an implied *assumpsit* or promise, on the part of the defendant, to pay the plaintiff *as much as* the goods *were* reasonably *worth.* 3 *Bl. Com.* 161. 1 *Tidd's Pr.* 2. So termed from the emphatic words in the old Latin forms, though *valerent* (should be worth) was the word actually used in laying the promise; (*super se assumpsit, et eidem T. adtunc et ibidem fideliter promisit, quod ipse idem W. tantas denariorum summas* quantas (quantum) *bona mercimonia et merchandizæ illa, tempore venditionis et deliberationis eorundem, rationabiliter* VALERENT, *eidem T. cum inde postea requisitus esset, bene et fideliter solvere et contentare vellet.*) *Towns. Pl.* 416. *Valebant* was used in the averment that followed, that the goods *were worth* a certain price. *Id. ibid.*

QUARANTINE, properly QUARENTINE or QUARENTENE. [L. Lat. *quarentena;* L. Fr. *quarentine.*] The period of forty days. 2 *Bl. Com.* 135.

The privilege of a widow to continue in the chief house of her husband for *forty days* after his death. *Id. ibid.* See *Quarentine.*

A period of time originally consisting of *forty days*, but now of variable length, during which a vessel from certain coasts or ports, said or supposed to be infected with certain diseases, is not allowed to communicate with the shore, except under particular restrictions. *Brande.* The word is derived by this author from the Ital. *quaranto*, forty.

QUARE. Lat. Wherefore; why. A formal word in various old writs, especially writs of trespass. *Reg. Orig.* 93—112. See *Fleta*, lib. 2, c. 65, §§ 11, 12.

QUARE CLAUSUM FREGIT. L. Lat. (Wherefore he broke the close.) In pleading. The technical name of the action of trespass for an illegal entry upon land or premises. So called from the emphatic words of the original writ by which it was formerly commenced; the defendant being summoned *to show wherefore he broke the* plaintiff's *close*, (*ostensurus* quare clausum *querentis* fregit.) *Reg. Orig.* 93 b, 96, 99. 3 *Bl. Com.* 209, 281.

QUARE EJECIT INFRA TERMINUM. L. Lat. (Wherefore he ejected within the term.) In old practice. A writ which lay for a lessee where he was ejected before the expiration of his term, in cases where the wrong-doer or ejector was not himself in possession of the lands, but his feoffee, or another claiming under him. 3 *Bl. Com.* 199, 206. *Reg. Orig.* 227. *F. N. B.* 197 S.

QUARE IMPEDIT. L. Lat. (Wherefore, or why he hinders.) In English practice. A writ or action which lies for the patron of an advowson, where he has been disturbed in his right of patronage; so called from the emphatic words of the old form, by which the disturber was summoned to answer *why he hinders* the plaintiff. 3 *Bl. Com.* 246, 248. 3 *Steph. Com.* 661. *Reg. Orig.* 30 b. *F. N. B.* 32 E. *Fleta*, lib. 5, c. 16. It is one of the few real actions still retained in use.

QUARE INCUMBRAVIT. L. Lat. (Wherefore, or why he incumbered.) In old English practice. A writ or action which lay against a bishop, after judgment in an action of *quare impedit*, where he had *incumbered* the church with a clerk pending the action. 3 *Bl. Com.* 248. *Reg. Orig.* 32 b. *F. N. B.* 48 D. 3 *Steph. Com.* 661, note (*q.*)

QUARE NON ADMISIT. L. Lat. (Wherefore, or why he did not admit.) In English practice. A writ which lies to

recover damages against a bishop for refusing to present the clerk of the prevailing party in an action of *quare impedit*, after being directed to do so by the writ of *ad admittendum clericum*. 3 *Bl. Com.* 250. 3 *Steph. Com.* 665, note (*l.*) *Reg. Orig.* 32. *F. N. B.* 47 C.

QUARE OBSTRUXIT. L. Lat. (Wherefore he obstructed.) In old English practice. A writ which lay for one who, having a liberty to pass through his neighbour's ground, could not enjoy his right because the owner had straitened or obstructed it, (*quare obstruxit vel coarctavit.*) *Cowell. Fleta*, lib. 4, c. 27, § 2.

QUAREL, *Querel.* L. Fr. [from Lat. *querela*, q. v.] In old English law. A complaint, or suit. *Stat. Westm.* 1, c. 28. 2 *Inst.* 213.

QUARENTENA. L. Lat. [L. Fr. *quarentyne;* from *quarante*, forty.] In Saxon and old English law. A furlong; a quantity of land containing *forty* perches. *Chart. Withlaf. Reg. Mercior.* apud *Ingulf. LL. Hen.* I. c. 17. *Spelman. Co. Litt.* 5 b.

QUARENTENA, (or QUARENTENA MULIERUM.) L. Lat. In old English and Scotch law. Quarentine; widow's quarentine. *Item necessaria habet uxor, usque ad* quarentenam, *nisi ei fuerit sua dos citius assignata;* also the wife has her necessaries during her quarentine, unless her dower have been sooner assigned her. *Bract.* fol. 60 b. *Fleta*, lib. 2, c. 57, § 10. *Infra* quarentenam,—*infra* quadraginta *dies;* within the quarentine,—within the forty days. *Bract.* fol. 96. *Dotes et* quarentenam. *Stat. Rob.* III. *Reg. Scot.* c. 30, [c. *de viduis*, 22.] *Skene de Verb. Sign.*

QUARENTINE, *Quarantine.* L. Fr. and Eng. [from Fr. *quarante*, forty; L. Lat. *quarentena, quarentina.*] A space of forty days allowed a widow after the death of her husband, to remain in his chief messuage or mansion-house, during which time her dower shall be assigned her. This privilege was first given by *Magna Charta*, and the provision is still the law in England, and probably in all the United States. *Mag. Chart.* c. 7. *Britt.* c. 103. *Co. Litt.* 34 b. 2 *Bl. Com.* 135. 1 *Steph. Com.* 253. 4 *Kent's Com.* 61.

The word *quarentine* itself is not in Magna Carta. "*Maneat* [*vidua*] *in capitali mesuagio ipsius mariti sui per* quadraginta dies *post obitum mariti sui, infra quos assignetur ei dos sua.*" *Mag. Cart.* 9 Hen. III. c. 7. In King John's charter, it reads: "*Maneat in domo mariti sui per* quadraginta dies *post mortem ipsius, infra quos assignetur ei dos sua.*" C. 7. In the original articles of the charter, it reads: "*Maneat in domo sua per* xl dies *post mortem ipsius, et infra terminum illum assignetur ei dos.*" C. 4.

This word is written by Blackstone *quarantine*, which is the form adopted in most of the modern books. 2 *Bl. Com. ub. sup.* 4 *Kent's Com. ub. sup.* Lord Coke, however, writes it *quarentine*, which, doubtless, was its original form, as is shown by the use of the word in the law French of Britton, and the invariable occurrence of *quarentena*, in the Latin of Bracton, Fleta and the Register. See *Quarentena. Mansionnes—ou eles purrount demorer lour* quarentines; houses where they may stay their quarentines. *Britt.* c. 103.

QUARESME. L. Fr. [from Lat. *quadragesima.*] In old English law. Lent. *Stat. Westm.* 1, c. 51. *Yearb.* M. 7 Edw. III. 14.

QUARREL. [L. Fr. *quarel;* Lat. *querela.*] In old English law. A complaint or plaint; an action; a cause of action; a controversy or debate. By the release of all *quarrels*, not only actions depending in suit, but causes of action and suit also were released. 8 *Co.* 153 a, *Altham's case. Termes de la Ley.*

QUARTA, *Quartalis, Quartalium.* L. Lat. [from *quartus*, fourth.] In old European law. A fourth part; a quarter. *Spelman.*

In old English law. A quart; the fourth part of a gallon. *Jalones, potellos et quartas;* gallons, pottles and quarts. *Fleta*, lib. 2, c. 12, § 14. Anciently, a peck; the fourth part of a bushel. *Spelman. Bussellos, dimidios et* quartas; bushels, halves and quarts, (quarters.) *Fleta*, lib. 2, c. 12, § 13.

QUARTER. L. Fr. In old English law. The fourth part of a day. *Ascun purra etre seisi en le jornaunt, de ascun tenement en son demeyne come de fee, et avaunt midy, en mesme le* quarter, *le purra il doner;* one may be seised in the morning of any tenement in his demesne, as of fee, and before noon, in the same quarter, he may give it. *Britt.* c. 80. The division of a day into four quarters is also mentioned by Bracton. *Bract.* fol. 264.

QUARTER OF A YEAR consists but

of ninety-one days, the additional six hours not being regarded. *Co. Litt.* 135 b.

QUARTER SALES. In New-York law. One quarter of purchase money. A name given to covenants in a lease in fee, that in case the lessee should sell the lands, he or the purchaser should pay to the lessor, his heirs, &c., one fourth of the purchase money it should be offered for. See 2 *Selden's R.* 467. A species of fine for alienation.

QUARTER SEAL. In Scotch law. A seal kept by the director of the chancery; in shape and impression the fourth part of the great seal, and called in statutes the testimonial of the great seal. *Bell's Dict.*

QUARTER SESSIONS, (or GENERAL QUARTER SESSIONS OF THE PEACE.) In English law. A criminal court held before two or more justices of the peace, (one of whom must be of the quorum,) in every county, once in every quarter of a year. 4 *Bl. Com.* 271. 4 *Steph. Com.* 335.

QUARTERING. In English criminal law. The dividing a criminal's body into quarters, after execution. A part of the punishment of high treason. 4 *Bl. Com.* 93.

QUARTERIUM. L. Lat. In old English law. A quarter. A measure of grain, consisting of eight bushels, struck. *Spelman. Cowell.* The London quarter (*quarterium Londini*) was fixed by Magna Charta, (9 Hen. III. c. 25,) as the standard measure of the kingdom. See *Fleta*, lib. 2, c. 9; c. 12, § 1.

The quarter of a year, (*quarterium anni.*) *Fleta*, lib. 2, c. 64, §§ 9, 10, 21.

QUARTO DIE POST. L. Lat. (On the fourth day after.) In practice. The name given to the fourth day inclusive after the return of a writ, upon which, if a defendant appeared, it was sufficient. 3 *Bl. Com.* 278. See *Fleta*, lib. 2, c. 65, § 11. Hence called the *appearance* day, and anciently, *dies amoris*, (day of indulgence.) 1 *Tidd's Pr.* 107. *Crabb's Hist.* 218. It was the first day in full term, on which the courts sat for the dispatch of business. 3 *Bl. Com. ub. sup.* 1 *Tidd's Pr. ub. sup.* A similar period of four days was allowed in the civil and canon law, and formerly in equity practice. *Gilbert's For. Rom.* c. 3.

QUASH. [L. Lat. *quassare, cassare;* L. Fr. *quasser.*] In practice. To overthrow; to abate; to annul; to make void, (*cassum facere.*) *Spelman.* 3 *Bl. Com.* 303. To set aside a writ or other proceeding for some formal defect, not reaching to the merits of the case. The terms "quash" and "dismiss" were distinguished in 24 *Mississippi R.* 462.

QUASI. Lat. As if; as it were; as though. A term derived from the civil law, and applied to acts, persons, proceedings, estates, &c. where they partake so far of the nature of other acts, &c. as to be assigned to the same general head, though not strictly and properly belonging to it. See *Tayl. Civ. Law*, 67. It is, in other words, used to denote *resemblance with a difference*, and may be rendered in English by the expressions "species of," "improper," and sometimes, "implied," "presumed," &c. See *infra.* Pothier calls it an adverb of impropriety, (*adverbium improprietatis.*) *Poth. Oblig.* part 2, ch. 3, art. 8, sect. 2.

QUASI CONTRACT. [Lat. *quasi contractus.*] In the civil law. An implied contract; an improper contract; a contract in which the obligation was founded on the consent of the parties, not actually expressed, but *implied* or presumed by law. *Hallifax, Anal.* b. 2, c. 19, num. 1. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 28, § 966. It was an intermediate head under which those obligations were ranked, which, while they could not properly be considered as arising out of *contract*, could not, on the other hand, be said to originate in *wrong* or malfeasance. *Inst.* 3. 28, pr. See *Civil Code of Louis.* art. 2272.

QUASI DELICT, (or OFFENCE.) [Lat. *quasi delictum.*] In the civil law. An improper offence; an unlawful act, done through negligence, without ill design. *Hallifax, Anal.* b. 2, c. 26, num. 1. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 5, § 1112. It was the head under which those acts were ranked which could not be said to arise either out of pure malfeasance, or contract. *Inst.* 4. 5, pr. See *Civ. Code of Louis.* art. 2294.

QUASI DEPOSIT. In the law of bailment. A kind of implied or involuntary deposit, which takes place where a party comes lawfully to the possession of another person's property, by finding it. *Story on Bailm.* § 85.

QUASSER. L. Fr. To quash. *Quasse;* quashed. *Yearb.* T. 10 Edw. III. 12. M. 8 Hen. VI. 30.

QUATER COUSIN. "The very name of *cater*, or (as it is more properly wrote) *quater* cousins, is grown into a proverb, to

express, by way of irony, the last and most trivial degree of intimacy and regard." *Blackst. Law Tr.* 6.

QUATUOR PEDIBUS CURRIT. L. Lat. Runs upon four feet; runs upon all fours. A term used to denote an exact correspondence. See *All fours.* Nullum simile quatuor pedibus currit. No simile holds in every thing. *Co. Litt.* 3 a. "It does not follow that they (a trust and an equity of redemption) run *quatuor pedibus.*" 1 *W. Bl.* 145.

QUAY. Fr. In French marine law. A space on the side of a harbour for the lading and unlading of merchandize. *Ord. Mar.* liv. 1, tit. 1, art. 4.

QUE. L. Fr. That. *Volons* que *si;* we will that if. *Britt.* c. 67. *Issi* que; so that. *Id. ibid.*

Who. *Cely* que *homage doit faire;* he who ought to do homage. *Id.* c. 60. *Ceux* que *ount pris;* those who have taken. *Id.* c. 20.

Which. *Les services* que *à vous appendent;* the services which belong to you. *Id.* c. 68.

Whose. See *Que estate.*

Than. *Par baillyfs autres* que *par les nos;* by other bailiffs than ours. *Id.* c. 27.

QUE DONERA? L. Fr. To whom will he give? To whom is the gift to be made? An expression substituted by Lord Coke, in place of *Que dirra?* in the statute *Modus Levandi Fines.* The language of the statute is,—*le justice dirra,* "Que dirra, *Sir Robert?*" *et nosmera un des parties;* the justice shall say, "*What saith Sir R.?*" and shall name one of the parties. Lord Coke reads "*Que donera?*" and translates "who is the conusee, that he may give it?" and the serjeant names him. 2 *Inst.* 510.

QUE EST LE MESME. L. Fr. Which is the same. A phrase anciently used in a defendant's plea, in an action of trespass, denoting a positive justification of the very act complained of by the plaintiff. *Cowell.* The same with the more modern Latin phrase, *Quæ est eadem,* (q. v.)

QUE ESTATE. L. Fr. [L. Lat. *cujus statum,* or *quem statum.*] Whose estate. A term formerly used in pleading, in deriving a title from another, particularly in claiming a prescription; the party averring that he and those *whose estate* he has, (*que estate il ad,*) have been used to enjoy the right claimed, &c. See *Prescribe.* It is a term of general description, used to avoid the necessity of showing in what manner particularly, the estate passed. *Termes de la Ley. Steph. Pl.* 324. See *Id.* 305.

QUEEN ANNE'S BOUNTY. A fund created by a charter of Queen Anne, (confirmed by statute 2 Ann. c. 11,) for the augmentation of poor livings, consisting of all the revenue of first fruits and tenths, which was vested in trustees forever. 1 *Bl. Com.* 286.

QUEEN CONSORT. In English law. The wife of a reigning king. 1 *Bl. Com.* 218.

QUEEN DOWAGER. In English law. The widow of a king. 1 *Bl. Com.* 223.

QUEEN GOLD. [L. Lat. *aurum reginæ.*] In English law. A revenue reserved to the queens of England, from a very early period, out of the demesne lands of the crown, which was expressly appropriated to their use, distinct from the king. 1 *Bl. Com.* 220, 222. It has not been exacted since the death of Henry VIII. except on one occasion, in the reign of Charles I. *Id.* 221.

QUEEN REGNANT. In English law. A queen who holds the crown in her own right; as the first Queen Mary, Queen Elizabeth, Queen Anne, and the present Queen Victoria. 1 *Bl. Com.* 218. 2 *Steph. Com.* 465.

QUEEN'S BENCH. The English court of King's Bench is so called during the reign of a queen, as at present. 3 *Steph. Com.* 403.

QUEEN'S (or KING'S) COUNSEL. In English law. Barristers called within the bar, and selected to be the queen's (or king's) counsel, learned in the law; answering, in some measure, to the advocates of the revenue, (*advocati fisci,*) among the Romans. They cannot be employed in any cause against the crown, without special license. 3 *Bl. Com.* 27. 3 *Steph. Com.* 386.

QUEEN'S (or KING'S) EVIDENCE. In English law. An accomplice in a felony, who is admitted as evidence for the crown against his accomplices;* one to whom a hope is held out that if he will fairly disclose the whole truth, as a witness at the trial, and bring the other offenders to justice, he shall himself escape punishment. 4 *Steph. Com.* 398, 399.

QUEEN'S PRISON. In English law.

A prison appropriated to the debtors and criminals confined under process, or by authority of the superior courts at Westminster, the Marshalsea Court and Palace Court, and the High Court of Admiralty, and also to persons imprisoned under the bankrupt law. It was established by statute 5 & 6 Vict. c. 22, consolidating into one, the Queen's Bench, the Fleet, and the Marshalsea Prisons. 3 *Steph. Com.* 254.

QUENS, *Quenz.* L. Fr. In old English law. Earl. *LL. Gul. Conq.* l. 2.

QUER'. An abbreviation of *querens*, (plaintiff.) 1 *Inst. Cler.* 12.

QUERELA. Lat. [from *queri*, to complain.] In the civil law. A complaint. A name given to the three actions of *querela testamenti inofficiosi*, *querela inofficiosæ donationis*, and *querela inofficiosæ dotis*. *Calv. Lex. Oldendorpius. Prateus.* Called by the milder name of *complaint*, because the relatives between whom it lay, were not supposed to accuse and litigate in the ordinary way. *Voss. Inst. Orat.* lib. 1, c. 6, § 2. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 18, § 580.

QUERELA INOFFICIOSI TESTAMENTI. Lat. In the civil law. A complaint of an inofficious or undutiful will. A species of action allowed to a child that had been unjustly disinherited or passed over in its parent's will, to rescind the will, which was *complained of*, not as being illegally made, but as not being consistent with parental *duty*, (*non ex officio pietatis.*) *Inst.* 2. 18, pr. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 18. 2 *Kent's Com.* 327. It was grounded on the delicate fiction that the testator was not of sound mind when he made the will, (*hoc colore, quasi non sanæ mentis fuerint, cum testamentum ordinarent.*) *Inst. ub. sup.*

QUERELA. L. Lat. [L. Fr. *querele;* from *queri*, to complain.] In old English law. A complaint or plaint in an action; a plaintiff's count or declaration. *Proponat querens* querelam *suam et intentionem;* the plaintiff shall propound or exhibit his complaint and count. *Bract.* fol. 57.

An action preferred in any court of justice. *Cowell.* A cause of action; a controversy, or debate. 8 *Co.* 153, *Altham's case.* Hence the old English *querel, quarel* and *quarrel*, (q. v.) in the sense of *action*, or cause of action. *Id. ibid.* 2 *Inst.* 213.

QUERELE, *Querrel.* L. Fr. In old English law. A complaint; an action. *A oyer et terminer toutes* quereles *del people;* to hear and determine all the complaints of the people. *Britt.* fol. 1. *Yearb.* P. 18 Hen. VI. 5.

QUERENS. Lat. [from *queri*, to complain.] In old English practice. A plaintiff; the plaintiff or complaining party. *Bract.* fol. 98 b, 214, 240, *et passim.* 8 *Co.* 153 b. The complaining party in a personal action; as *petens*, (demandant,) was, in a real action. *Actor, sive sit petens sive* querens. *Bract.* fol. 106 b. But *querens* was used in assises. *Fleta*, lib. 4, c. 7.

QUERKE. L. Fr. [from Lat. *quercus.*] In old English law. An oak. *Querkes;* oaks. *Yearb.* M. 11 Hen. VI. 3. *Dyer*, 35 b, (Fr. ed.)

QUESTA. L. Lat. In old records. A quest; an inquest, inquisition or inquiry, upon the oaths of an empanelled jury. *Cowell.*

QUESTION. [Lat. *quæstio.*] A name given to the rack used to extort confession from criminals. 4 *Bl. Com.* 325. See *Quæstio.*

QUESTUS, *Quæstus.* Lat. [from *quærere*, to seek, to get or acquire.] In old English law. Land which was gained not by hereditary succession, but by one's own labor and industry, (*quæ suo sibi quisque comparat labore et industriâ;*) purchase land, (*terra perquisita.*) *Spelman. Aut habet hæreditatem tantum, aut* questum *tantum, aut hæreditatem et* questum; either has inheritance only, or purchase only, or both inheritance and purchase. *Glanv.* lib. 7, c 1. Spelman quotes from the Book of Ramsey, (written in the reign of King Stephen,) a passage which carries this sense of the word as far back as the Saxon King Ethelred.

*** From *questus*, (or *quærere*, its root,) was framed, at an early period in European law, the compounds *conquestus, conquestum*, denoting, properly, that which was *gotten together*, as by the labor of several, (quasi ἀπὸ τοῖς συνέργοις.) *Spelman.* Hence the French *conquest*, which Lindenbrog, (commenting on the *Capitular. Carol.* lib. 4, c. 74,) defines "acquisitions of goods made during marriage," (*acquisitions de biens faictes durant le mariage;*) which is precisely the signification of the word in Scotch law. See *Conquest.*

That *conquest* was originally used in English law in the sense of *acquisition* or *purchase*, and was improperly and abu-

sively (*ceu per adulterium*) employed to express the ideas of *victory* and martial *subjugation*, (now inseparable from it) is clearly shown by Spelman, who traces it to the peculiar circumstances under which the great Norman *Conquest* of England was accomplished. William the First was called "the *Conqueror*," (Lat. *conquestor*,) because he succeeded to the throne of England not by hereditary right, but on the bequest of Edward the Confessor; that is, (according to the old French idiom,) by *quest* and *conquest*, commonly called *purchase*. But as the enforcement of his right, thus acquired, was accomplished by means of the signal *victory* obtained over Harold and the Saxons, the ideas of victory and subjugation became so strongly attached to his peculiar title of *Conquestor*, as gradually to obscure, and finally to supplant its original and proper meaning.

QUESTUS EST NOBIS. L. Lat. Hath complained to us. Initial words of various old writs in the Register. *Reg. Orig.* 92, 93.

QUI, *Qi*, *Qy*. L. Fr. Who; whom. *De ceux* qui *par engyn ount;* of those who by fraud have. *Britt.* c. 4. *Cely de* qui *sount tenus;* him of whom they are holden. *Id.* c. 78. *Ne poit saver par* qui *ne par quex;* cannot know by whom (sing.) nor by whom (plur.) *Id.* c. 6.

Qui doit inheriter al pere doit inheriter al fitz. He who should have been heir to the father shall be heir to the son. 2 *Bl. Com.* 223. *Broom's Max.* [389.]

QUI. Lat. Who; he who. The initial word of numerous maxims. See *infra*.

Qui adimit medium, dirimit finem. He who takes away the mean, destroys the end. *Co. Litt.* 161 a. He that deprives a man of the mean by which he ought to to come to a thing, deprives him of the thing itself. *Id. ibid. Litt.* sect. 237. See **Qui destruit, &c.**

Qui aliquid statuerit, parte inaudita altera, æquum licet dixerit, haud æquum fecerit. He who determines any matter without hearing both sides, though he may have decided right, has not done justice. 6 *Co.* 52 a, *Boswell's case.* A quotation from Seneca. *Traged.* fo. 55, *Medea*, 195. 4 *Bl. Com.* 283.

Qui alterius jure utitur, eodem jure uti debet. He who uses the right of another, ought to use the same right, [that is, ought to use it subject to the rights and liabilities pertaining to it.] *Broom's Max.* [356.]

Qui bene interrogat, bene docet. He who questions well, teaches well. 3 *Bulstr.* 227. Information or express averment may be effectually conveyed in the way of interrogation. *Id. ibid.*

Qui bene distinguit, bene docet. He who distinguishes well, teaches well. 2 *Inst.* 470. In both these maxims, *docet* is translated in Branch's Principia, "learns."

Qui concedit aliquid, concedit omne id sine quo concessio est irrita. He who grants any thing, grants every thing without which the grant is fruitless. *Jenk. Cent.* 32, case 63.

Qui contemnit præceptum, contemnit præcipientem. He who contemns [contemptuously treats] a command, contemns the party who gives it. 12 *Co.* 97, *Countess of Shrewsbury's case.*

Qui cum alio contrahit, vel est, vel esse debet non ignarus conditionis ejus. He who contracts with another either is, or ought to be, not ignorant of his condition. *Dig.* 50. 17. 19. *Story's Confl. Laws*, § 76.

Qui destruit medium, destruit finem. He who destroys the mean, destroys the end. 10 *Co.* 51 b, *Lampet's case. Co. Litt.* 161 a. *Shep. Touch.* 342.

Qui ex damnato coitu nascuntur inter liberos non computantur. They who are born of a condemned [or illicit] connection, are not counted among children. *Bract.* fol. 5. *Co. Litt.* 8 a. 2 *Bl. Com.* 247. Bastards are held to be *nullius filii*, the children of nobody. *Id. ibid. Broom's Max.* 221, [390.]

Qui facit per alium, facit per se. He who acts through another, acts of himself. 1 *Bl. Com.* 429, 474. Otherwise expressed, **Qui per alium facit, per seipsum facere videtur.** He who acts by another is considered as acting of himself. *Co. Litt.* 258 a. He who does an act through the medium of another party, is in law considered as doing it himself. *Broom's Max.* 373, [643.] An agent is merely the medium through which the principal himself acts. The fundamental principle of the law of agency, and a maxim of almost universal application. *Story on Agency*, §§ 440, 442. 7 *Man. & Gr.* 32, 33. See 1 *Selden's R.* 48, 53.

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi. He who has jurisdiction to loosen, has jurisdiction to bind. 12 *Co.* 60. Applied to writs of prohibition and consultation, as resting on a similar foundation. *Id. ibid.*

Qui hæret in litera, hæret in cortice. He who sticks, [stops] in the letter, stops in the rind, [or outer covering.] *Co. Litt.* 54 b. 5 *Co.* 4 b, *Lord Mountjoy's case.* 11 *Co.* 34 b, *Powlter's case.* 2 *Eden*, 55. Grose, J. 12 *East*, 372. He who stops in the mere letter of an instrument, (goes no farther than the mere words of it,) stops in its outer covering, and does not reach its essential meaning. Words are the mere *cortex*, rind, or bark of an instrument or statute, and are not to be paused upon or dwelt upon, to the neglect of the heart, pith or inner substance.* He who considers merely the letter of an instrument, goes but skin-deep into its meaning. *Broom's Max.* [534.] Where the *intention* is clear, too minute a stress should not be laid on the strict and precise signification of *words.* 2 *Bl. Com.* 379. *Broom's Max. ub. sup.* See *Cortex, Bark.*

This is one of the most familiar maxims of the law, but its literal meaning is scarcely expressed by the common translation, "He who *sticks* to the letter, *sticks* to the bark," which besides being rude, is grammatically inaccurate, and does not express the full force of *hæret*, which does not imply adhesion *to* a thing, but rest or pause upon or *in* it; hesitancy; a going no farther. The English word "stick" had precisely this meaning, and is often used in the old books to denote *hesitancy* on the part of a judge. See *Hærere.*

Lord Bacon, citing this maxim, pushes the figure still farther. "This is not worthy the name of *cortex;* it is but *muscus corticis*, the moss of the bark." Argument in Case of the Postnati of Scotland; *Works*, iv. 333.

Qui in jus dominiumve alterius succedit, jure ejus uti debet. He who succeeds to the right or property of another, ought to use his right [ought to exercise it as the assignor himself would have exercised it.] *Dig.* 50. 17. 177, pr. The assignee of property takes it subject to all the liabilities, and clothed with all the rights which attached to it in the hands of the assignor. *Broom's Max.* [356.]

Qui jure suo utitur, nemini facit injuriam. He who uses his own right, harms no one. *Branch's Pr.* Another form of the civil law maxim **Non videtur vim facere, &c.** (q. v.)

Qui jussu judicis aliquod fecerit, non videtur dolo malo fecisse, quia parere necesse est. He who does any thing by command of a judge, [or one lawfully exercising judicial authority,] is not supposed to have acted from a wrong or improper motive, because it was his bounden duty to obey. 10 *Co.* 76 a, b. *Broom's Max.* 48, [69.]

Qui non habet, ille non dat. He who has not, gives not. He who has nothing to give, gives nothing. A person cannot convey a right that is not in him. If a man grant that which is not his, the grant is void. *Shep. Touch.* (by Preston,) 243. *Watkins on Conv.* (by Preston,) 191. See **Nemo dare potest, &c.**

Qui non habet in crumena, luat in corpore. He who has not [the means of satisfaction] in his purse, must pay in his body. If a man cannot pay his fine, he must go to prison. 4 *Bl. Com.* 380. Otherwise expressed, **Qui non habet in ære, luat in corpore.** 2 *Inst.* 173. **Si in ære non habeat, in pelle luat.** 1 *Kent's Com.* 423.

Qui non obstat quod obstare potest, facere videtur. He who does not prevent [a thing] which he can prevent, is considered to do [as doing] it. 2 *Inst.* 146.

Qui non improbat, approbat. He who does not condemn, approves. 3 *Inst.* 27.

Qui non prohibet quod prohibere potest, assentire videtur. He who does not forbid [an act] which he can forbid, is supposed to assent [to it.] 2 *Inst.* 305. Otherwise expressed, **Qui non prohibet cum prohibere possit, jubet.** He who does not forbid [a thing being done] when he can forbid it, commands [it.] 1 *Bl. Com.* 430. Negligence is a kind of implied consent. *Id. ibid.* See *Grotius de Jur. Bell.* lib. 2, c. 21, § 2, n. 2.

Qui obstruit aditum, destruit commodum. He who obstructs a way, passage or entrance, destroys a benefit or convenience. *Co. Litt.* 161 a. He who prevents another from entering upon land, destroys the benefit which he has from it. *Id. ibid.*

Qui "omne" dicit, nihil excludit [excipit.] He who says "all" excludes or excepts nothing. 11 *Co.* 59 b, *Foster's case. Shep. Touch.* (by Preston,) 90.

Qui peccat ebrius, luat sobrius. He who sins when drunk, shall be punished when sober. *Cary's R.* 133. *Broom's Max.* [14.]

Qui potest et debet vetare, jubet. He who can and ought to forbid a thing [if he do not forbid it,] directs it. 2 *Kent's Com.* 483, note.

Qui primum peccat, ille facit rixam. He who first sins makes the strife. He who

does the first wrongful act is chargeable as the cause of the quarrel. *Branch's Max.*

Qui prior est tempore, potior est jure. He who is before in time is the better in right. Priority in time gives preference in law. *Co. Litt.* 14 a. 4 *Co.* 90 a, *Drury's case.* 3 *East*, 93. A maxim of very extensive application, both at law and in equity. *Broom's Max.* 329—335, [260.] 1 *Story's Eq. Jur.* § 64 d. *Story on Bailm.* § 312. 24 *Mississippi R.* 208.

Qui rationem in omnibus quærunt, rationem subvertunt. They who seek a reason in [for] every thing, subvert reason. 2 *Co.* 75 a, *Lord Cromwell's case.* A sentence quoted from Theophrastus, *in Met.* There are some things for which no reason can be given, and for which no reason should be sought or required. *Broom's Max.* 66, [117.]

Qui semel actionem renunciaverit, amplius repetere non potest. He who has once relinquished his action, cannot bring it again. 8 *Co.* 59 a, *Beecher's case.* A rule descriptive of the effect of a *retraxit* and *nolle prosequi.*

Qui semel est malus, semper præsumitur esse malus in eodem genere. He who is once criminal, is presumed to be always criminal in the same kind, or way. *Cro. Car.* 317. *Best on Evid.* 345. He who has once committed an offence, is supposed always to have an inclination to repeat it.

Qui sentit commodum, sentire debet et onus. He who experiences the benefit, ought also to feel [or bear] the burden. He who enjoys the benefit or advantage of a thing, ought also to be subject to the burden or disadvantage connected with it. 2 *Inst.* 489. A maxim expressed in a hexameter line, and one of the most extensive application in the law. He who enjoys the benefit arising from a title to land, must bear the burden of the incumbrances attached to it, and of the covenants that run with the land. *Broom's Max.* 313, [552.] *Bacon's Use of the Law*, 31. *Shep. Touch.* 178. All who are to receive benefit from the construction of a thing, must be contributory to its construction. 5 *Co.* 100 a, *Rooke's case.* So, in partnership, the agreement to share in the profits of the concern carries with it a corresponding liability for the debts or losses. *Broom's Max.* 315, [554.] So, a principal will not be allowed to avail himself of the benefits of a transaction by his agent, without at the same time subjecting himself to its burthens. *Story on Agency*, § 389. And, in equity, the rule has an extensive application. 1 *Story's Eq. Jur.* § 469.

Qui sentit onus, sentire debet et commodum. He who bears the burden of a thing, ought also to experience the advantage arising from it. 1 *Co.* 99 a, *Shelley's case.* As a principal is bound by the acts of his authorized agent, so he may take advantage of them. *Broom's Max.* 317, [559.] This is the converse of the preceding maxim.

QUI statuit aliquid, parte inaudita altera,
Æquum licet statuerit, haud æquus fuit.

He who determines any thing, without hearing both parties, though he may have determined justly, has not himself been just. A quotation from Seneca, which has been adopted as a maxim of the common law. 4 *Bl. Com.* 283. See **Qui aliquid statuerit, &c.**

Qui tacet, consentire videtur. He who is silent, is supposed to consent; the silence of a party implies his consent. *Jenk. Cent.* 32, case 64. *Id.* 68, case 30. *Id.* 226, case 87. The principle of the doctrine of implied waiver, of the validity of proceedings by default, &c. and of the doctrine of equitable estoppel in equity. Thus, if a person having the legal title to property, stands by and acquiesces in the sale of it by another person claiming or having color of title, he will be estopped afterwards in asserting his title against the purchaser. 2 *Kent's Com.* 483, note. So, where the owner of land stands by and suffers another who supposes he has an absolute title to the estate, to expend money in improvements and erections on the land, without giving any notice of his own claim, he will not be permitted to avail himself of such improvements, without paying a full compensation therefor. 1 *Story's Eq. Jur.* §§ 388, 389. See 1 *Story's R.* 493. As to the application of the rule in the law of evidence, see 1 *Greenl. Evid.* § 199.

This maxim is immediately derived from the canon law, and is otherwise expressed with still more brevity, **Qui tacet consentit;** he who is silent, consents. *Bonifacius de Reg. Juris in Sexto*, reg. 43. 1 *Mackeld. Civ. Law*, 162, Kaufmann's note. The civilians have generally supposed it to be of too sweeping a nature, and have accordingly qualified it by the maxim laid down in the Digests, **Qui tacet non utique fatetur, sed tamen verum est eum non negare.** He who is silent does not thereby confess, but yet it is true that he does not deny. *Dig.*

50. 17. 142. But, according to Dr. Kaufmann, these two rules apply to matters that are wholly distinct; *consensus* belonging to the doctrine of contracts alone, while *confessio* relates merely to proceedings.

QUI TAM. L. Lat. (Who as well.) The name given to an action brought by an informer, where part of the penalty or forfeiture sued for, is given to the king, the state, the poor, or to some public use, and the other part to the informer or prosecutor. So termed from the emphatic words of the clause in which the plaintiff was described in the old forms: QUI TAM *pro domino rege, &c. quam pro seipso in hac parte sequitur; who* sues *as well* for the king, &c. as for himself, in this behalf. 3 *Bl. Com.* 160.

Qui tardius solvit, minus solvit. He who pays more tardily [than he ought,] pays less [than he ought.] *Jenk. Cent.* 58. A maxim of the civil law, in which *minus* had the technical sense of *negation*, which is entirely lost sight of in the common English translations. See *Minus*. Minus solvit admits of (if it does not here require) the translation, "pays not at all;" the maxim importing that a failure to pay at the time stipulated amounts to a breach of the promise to pay, though payment be actually made afterwards.

Qui timent, cavent et vitant. They who fear, take care and avoid. *Branch's Pr.*

Qui vult decipi, decipiatur. Let him who chooses to be deceived, be deceived. Where a man procures a fraud to be committed on himself, he must bear the consequences of it, and cannot take advantage of his own wrong to the prejudice of another. *Shep. Touch.* (by Preston,) 56.

QUIA. Lat. Because. A word particularly appropriated to express the *cause* (*causa*) or consideration of a grant, in old conveyances. *Co. Litt.* 204 a.

Scito quod *ut* modus est, *si* conditio, *quia* causa. *Bract.* fol. 18 b.

QUIA DATUM EST NOBIS INTELLIGI. L. Lat. Because it is given to us to understand. Formal words in old writs. *Rot. Parl.* 4 Hen. IV.

QUIA DOMINUS REMISIT CURIAM. L. Lat. In old practice. Because the lord hath remised or remitted his court. A clause inserted at the conclusion of a writ of right, where it was brought, in the first instance, in the king's court; the lord in whose court-baron it regularly ought to be first brought, having waived or *remitted* his right. 3 *Bl. Com.* 195. *Id.* Appendix, No. i. sect. 4.

QUIA EMPTORES. Lat. (Because the purchasers.) The title of the statute of Westminster 3, 18 Edw. I. c. 1, which provided that from thenceforth it should be lawful for every freeman or freeholder to sell his lands or tenements or part thereof at his pleasure, so that, however, the feoffee should hold such lands or tenements of the chief lord of the same fee, by the same services and customs by which his feoffor before held them. Cap. 1. So called from its initial words: QUIA EMPTORES *terrarum et tenementorum de feodis magnatum*, &c. 2 *Bl. Com.* 91. See *Barringt. Obs. Stat.* 167. See the New-York case of De Peyster *v.* Michael, 2 *Selden's R.* 467.

QUIA ERRONICE EMANAVIT. L. Lat. Because it issued erroneously, or through mistake. A term in old English practice. *Yelv.* 83.

QUIA IMPROVIDE EMANAVIT. L. Lat. Because it issued improvidently, or unadvisedly. *Ambl.* 61. 3 *East*, 128.

QUIA TIMET. Lat. (Because he fears or apprehends.) In equity practice. The technical name of a bill filed by a party who seeks the aid of a court of equity, *because he fears* some future probable injury to his rights or interests. 2 *Story's Eq. Jur.* § 826. Bills *quia timet* are so called in analogy to certain writs of the common law, whose objects were of a similar nature; and they are, in themselves, in the nature of writs of prevention to accomplish the ends of precautionary justice. *Id.* §§ 825, 826.

QUICK. Living; alive. "*Quick* chattel must be put in pound-overt, that the owner may give them sustenance; dead need not." *Finch's Law*, b. 2, ch. 6. See *Quyke*.

Quicquid acquiritur servo, acquiritur domino. Whatever is acquired by the servant is acquired for the master. *Pulling on Merc. Accounts*, 38, note. Whatever rights are acquired by an agent, are acquired for his principal. *Story on Agency*, § 403.

Quicquid est contra normam recti, est injuria. Whatever is against the rule of right, is a wrong. 3 *Bulstr.* 313.

Quicquid in excessu actum est, lege prohibetur. Whatever is done in excess is prohibited by law. 2 *Inst.* 107.

Quicquid judicis auctoritati subjicitur,

novitatf non subjicitur. Whatever is subjected to the authority of a judge is not subjected to novelty. Whatever is left to the discretion of a judge, as in cases without precedent, is not for that reason left to the caprice of novelty or innovation. 4 *Inst.* 66.

Quicquid plantatur solo, solo cedit. Whatever is planted in the soil, belongs to the soil, [or becomes a part of it.] A maxim derived from the civil law, and embodying the general common law rule, that whatever is planted in the soil passes with it. See this rule and its exceptions considered, in *Broom's Maxims*, 177—189, [298—310.]

By an extension of the meaning of the word *plantatur*, this maxim has also been applied in the law of fixtures. *Wentworth Offic. Exec.* 145. *Broom's Max.* 189, [310,] *et seq.* 2 *Smith's Lead. Cas.* 114. 2 *Steph. Com.* 261. But in the civil law, *plantatio* is confined to its proper signification; *ædificatio* or *inædificatio* being the words used to express artificial additions or accessions to the soil. *Inst.* 2. 1. 29, 30, 31.

Quicquid solvitur, solvitur secundum modum solventis,—quicquid recipitur, recipitur secundum modum recipientis. Whatever is paid, is paid according to the manner of [directed or intended by] the payer,—whatever is received, is received according to that of the receiver. *Halk. Max.* 149. *Broom's Max.* [638.]

QUID. Lat. What. A word used in old writers, as preliminary to definition. Thus Sheppard, in his Touchstone, arranges his subjects under the two general heads of *Quid*, (what,) and *Quotuplex*, (of how many kinds.) *Shep. Touch.* 37, 50.

QUID JURIS CLAMAT. L. Lat. (What right he claims.) In old English practice. A writ which lay for the grantee of a reversion or remainder, where the particular tenant would not attorn, for the purpose of compelling him. *Termes de la Ley. Cowell.*

QUID PRO QUO. Lat. What for what; something for something. An equivalent, or consideration; that which is given in exchange for another thing; that which is done in consideration of another thing. Answering to the Gr. συνάλλαγμα, a reciprocal performance of both parties to a contract. *Cowell.* 2 *P. Wms.* 219.

QUIET ENJOYMENT, *Covenant for.* In conveyancing. An ordinary covenant in deeds, whereby the grantor agrees that the grantee shall hold the land, undisturbed by himself or others. 2 *Hilliard's Real Prop.* 374. 4 *Kent's Com.* 471.

QUIETA CLAMANTIA. L. Lat. In old English law. Quit-claim. *Charta de* quieta clamantia; a charter or deed of quit-claim. *Bract.* fol. 33 b. *Fleta*, lib. 3, c. 14, § 1. Called also *quietè clamantia*, (q. v.) And in some old records, *quieta clamatio. Par. Ant.* 220. *Fleta*, lib. 5, c. 39, § 6.

QUIETANCIA, *Quietantia.* L. Lat. In old English law. A quittance, acquittance, or testimonial of receipt. *Cowell.*

QUIETARE. L. Lat. To quit, acquit, discharge or save harmless. A formal word in old deeds of donation and other conveyances. *Cowell.*

QUIETE. Lat. Quietly; in quiet; peaceably. A formal word in ancient deeds. *Habendam et tenendam,—liberè et* quietè, *honorificè, benè et in pace;* to have and to hold—freely and quietly, honorably, well and in peace. *Bract.* fol. 35. Bracton, in his exposition of the form from which these words are extracted, observes that by the word *quietè*, (quietly,) the donor means that the donee shall have quiet and peace, so that he may enjoy the thing given peaceably, and not be disquieted. See *Fleta*, lib. 3, c. 14, § 5. It seems to be the germ of the modern covenant for *quiet enjoyment.*

QUIETE CLAMANTIA. L. Lat. In old English law. Quit-claim. *Bract.* fol. 33 b.

QUIETE CLAMARE. L. Lat. In old conveyancing. To quit-claim; to renounce all pretension of right and title. *Cowell. Quietum clamare* is used by Fleta, Littleton and Coke.

QUIETUM CLAMARE. L. Lat. In old conveyancing. To quit-claim. *Noverint universi per præsentes me, A. de B. remisisse, relaxasse, et omnino de me et heredibus meis* quietum clamasse *C. de D. totum jus*, &c.; Know all men by the presents, that I, A. of B. have remised, released, and altogether from me and my heirs, have quit-claimed to C. of D. all the right, &c. *Litt.* sect. 445. See *Fleta*, lib. 5, c. 37, § 5.

QUIETUS, *Quittus.* L. Lat. In old English law. Quit; clear; free; acquitted; discharged. *Nisi capitalis debitor monstraverit se inde esse* quietum *versus eosdem plegios;* unless the principal debtor show that he is discharged thereof against the same pledges. *Mag. Cart.* 9 *Hen.* III.

c. 8. *Quod* quieti *sint imperpetuum de omnibus purpresturis*, &c.; that they be forever quit of all purprestures, &c. *Cart. de For.* 9 *Hen.* III. c. 4. *Recedet inde reus* quietus *imperpetuum;* the defendant shall go quit thereof forever. *Fleta*, lib. 2, c. 63, § 12.

QUIETUS. L. Lat. In exchequer practice. A word used by the clerk of the pipe, and auditors in the exchequer, in their acquittances or discharges given to accountants; usually concluding with an *abinde recessit quietus*, (hath gone quit thereof;) which was called a *quietus est. Cowell.*

An acquittance or discharge. "C. W. passed his accounts to Lady day, 1724, and had his *quietus* for each year, to that time." *Bunb.* 316, case 400. See *Hardr.* 189.

This word is used in American law, and applied to the discharge of an executor or administrator. See 4 *Mason's R.* 133. 3 *Florida R.* 233.

QUIETUS. L. Lat. In old practice. The dismissal or removal of a judge from the bench. "After this time, Sir Francis Pemberton received his *quietus*, and afterwards practiced again in all the courts in Westminster Hall, but without the bar, as a serjeant." 2 *Show.* 94. "This vacation, Sir Robert Sawyer had his *quietus*." 3 *Mod.* 143. See *Id.* 239.

QUIETUS REDDITUS. L. Lat. In old English law. Quit rent. *Spelman.* See *Quit rent.*

Quilibet potest renunciare juri pro se introducto. Every one may renounce or relinquish a right introduced for his own benefit. 2 *Inst.* 183. *Wingate's Max.* 483, max. 123. 4 *Bl. Com.* 317. Every man can renounce a benefit which the law would have introduced for his own convenience. *Broom's Max.* 310. Any one may, at his pleasure, renounce the benefit of a stipulation, or other right, introduced entirely in his own favor. *Id.* [546.] A general maxim, applied to the relinquishment of claims, defences and other rights upon which a party may insist if he chooses. *Id.* 309—313, [547—552.] *Best on Evid.* Introd. 103. Every man may waive rights the benefit whereof exclusively belongs to himself. *Story on Agency*, § 463. So a person may renounce a constitutional provision made for his own benefit. 6 *Hill's* (N. Y.) *R.* 47. Cowen, J. *Id.* 48. See 4 *Ohio St. R.* 376.

This maxim is obviously derived from those of the civil law. **Unicuique licet contemnere hæc quæ pro se introducta sunt.** *Dig.* 4. 4. 41. **Omnes licentiam habent his quæ pro se introducta sunt, renunciare.** *Cod.* 2. 3. 29. Bracton repeats it in nearly the modern form: **Potest quis renunciare pro se et suis juri quod pro se introductum est.** *Bract.* fol. 20.

QUILLE. Fr. In French marine law. Keel; the keel of a vessel. *Ord. Mar.* liv. 3, tit. 6, art. 8.

QUINDENA. L. Lat. In old English law. The *quinzim*, *quinsieme*, or fifteenth day after a feast. *Stat. Westm.* 2, pr. See *Fleta*, lib. 2, c. 35.

A fortnight; double the period of a *septimana*, (seven-night or week.) *Fleta*, lib. 1, c. 24, § 5. "That which we call this day fortnight, excluding the day, the French and the law phrase calls this day fifteen days, or *quindena*, including the day." *Bacon's Arg.* Jurisdiction of Marches, *Works*, iv. 265.

QUINQUE PORTUS. Lat. In old English law. The Cinque Ports. *Spelman. Fleta*, lib. 2, c. 54, § 8.

QUINSIEME, *Quinzime.* L. Fr. and Eng. In old English law. A fifteenth; a tax so called. *Cowell.* See *Fifteenth.*

QUINTO EXACTUS. Lat. In old practice. Called or exacted the fifth time. A return made by the sheriff, after a defendant had been proclaimed, required or exacted, in five county courts successively, and failed to appear; upon which he was outlawed by the coroners of the county. 3 *Bl. Com.* 283.

QUIRE OF DOVER. In English law. A record in the Exchequer, showing the tenures for guarding and repairing Dover Castle, and determining the services of the Cinque Ports. 3 *How. St. Trials*, 868.

QUIT. [L. Lat. *quietus*, q. v.] Free; clear; discharged; released; acquitted or absolved.

QUIT-CLAIM. [L. Lat. *quieta clamantia, quieta clamatio;* L. Fr. *quiet-claime; quiteclamaunce.*] In conveyancing. The release or relinquishment of a claim. A deed by which some right, title, interest or claim which one person has, or is supposed to have, in or to an estate held by another, is released or relinquished.

A conveyance corresponding with a release, at common law, in which the grantor covenants only against those who claim under himself, and not against adverse and

paramount titles. Of this class are all deeds given by public officers, such as administrators, sheriffs, &c. who covenant only for the regularity of their own proceedings. 2 *Hilliard's Real Prop.* 302.

To QUIT-CLAIM. [L. Lat. *quietè clamare, quietum clamare.*] In conveyancing. To release or relinquish a claim; to execute a deed of quit-claim. See *Quit-claim.*

QUIT RENT. [L. Lat. *quietus redditus.*] A yearly rent, by the payment of which the tenant goes *quit* and free of all other services. 2 *Bl. Com.* 42. *Spelman*, voc. *Quietus redditus.* 1 *Chitt. Gen. Pr.* 228.

In some of the United States, a fee farm rent is so termed. 1 *Hilliard's Real Prop.* 239, [231.] See *Id.* note (*a.*)

QUITE CLAMAUNCE. L. Fr. Quit-claim. *Britt.* c. 85.

QUITTUS. L. Lat. In old Scotch law. Quit; free. *Quittos et immunes;* quit and clear. 1 *Pitc. Cr. Trials*, part 2, p. 72.

QUO ANIMO. Lat. With what intention or motive. "It was for them to consider *quo animo* the windows and shutters were broken." Lord Kenyon, 1 *East*, 615. Used frequently as a substantive, in lieu of the single word *animus*, design or motive. "The *quo animo* is, in each case, the real subject of inquiry." 1 *Kent's Com.* 77. 2 *Id.* 382. See *Animo, Animus.*

QUO JURE. L. Lat. (By what right.) In old English practice. A writ which lay for one that had land in which another claimed common, to compel the latter to show *by what title* he claimed it. *Cowell. F. N. B.* 128 F. *Reg. Orig.* 156 b. *Britt.* c. 59.

QUO MINUS. L. Lat. (By which—less.) In English practice. A process peculiar to the Court of Exchequer; being the writ by which all actions in that court were, until recently, required to be commenced. So termed from the emphatic words of the old Latin form, in which the plaintiff suggested that he was the king's farmer or debtor, and alleged that the defendant had done him the injury complained of, *by which* he was *less* able (*quo minus sufficiens existit*) to pay the king his debt or rent. 3 *Bl. Com.* 45, 286. *Id.* Appendix, No. iii. sect 4. This was abolished by the statute 2 Will. IV. c. 39.

QUO WARRANTO. L. Lat. (By what warrant.) In old English practice. A writ, in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise or liberty, to inquire *by what authority* he supported his claim, in order to determine the right. 3 *Bl. Com.* 262. It lay also in case of non-user, or long neglect of a franchise, or mis-user, or abuse of it; being a writ commanding the defendant to show *by what warrant* he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. 3 *Bl. Com.* 262. It has long been superseded in practice by the proceeding by information in the nature of a *quo warranto*, which is the usual proceeding also in American practice. *Id.* 263. 1 *Id.* 485. 3 *Steph. Com.* 689—693. *Cole on Informations*, 110—168. 2 *Kent's Com.* 313, and note. *United States Digest*, Quo warranto.

QUOAD. Lat. As to; as far as concerns. Lord Ellenborough, 12 *East*, 409. 2 *Mod.* 66.

QUOAD HOC. Lat. As to this; so far as this is concerned. *Bract.* fol. 31.

QUOAD SACRA. Lat. As to sacred things; for religious purposes. Lord Campbell, 6 *Bell's Appeal Cases*, 336.

Quod ab initio non valet, [in] tractu temporis non convalescet. That which is not valid at the beginning, shall not gain force by lapse of time. *Co. Litt.* 35 a. *Noy's Max.* 16. 2 *Co.* 55 b, *Buckler's case.* 4 *Co.* 2 b, *Vernon's case. Finch's Law*, b. 1, ch. 3. That which was originally void, does not by lapse of time become valid. *Broom's Max.* 77, [132.] A maxim of very general importance in practice, in pleading, and in the application of legal principles to the occurrences of life. *Id. ibid.* Derived from the civil law, in which it is expressed, **Quod ab initio vitiosum est, non potest tractu temporis convalescere.** *Dig.* 50. 17. 29. **Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest.** *Dig.* 50. 17. 210. Wherever any contract or conveyance is void, either by a positive law, or upon principles of public policy, it is deemed incapable of confirmation. 1 *Story's Eq. Jur.* § 306. See 3 *Penn. St.* (Barr's) *R.* 151, Sergeant, J.

Quod ædificatur in area legata, cedit legato. Whatever is built on ground given by will, goes to the legatee. *Broom's Max.* [315.]

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum

efficitur. What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust. 3 *Co.* 78 a, *Fermor's case.* "The common law doth so abhor fraud and covin, that all acts, as well judicial as others, and which of themselves are just and lawful, yet being mixed with fraud and deceit, are, in judgment of law, wrongful and unlawful." *Id. ibid.* See 1 *Story's Eq. Jur.* § 239.

Quod alias non fuit licitum, necessitas licitum facit. What otherwise was not lawful, necessity makes lawful. *Fleta*, lib. 5, c. 23, § 14.

Quod approbo non reprobo. What I approve, I do not reject; I cannot approve and reject (Scotticè, approbate and reprobate) at the same time; I cannot take the benefit of an instrument, and at the same time repudiate it. *Broom's Max.* [558.] See *Approbate and reprobate.*

Quod constat clare non debet verificari. What appears clearly ought not to be verified, [averred, i. e. proved.] *Hardr.* 81, arg. 10 *Mod.* 150.

Quod constat curiæ, opere testium non indiget. That which appears to the court, needs not the aid of witnesses. 2 *Inst.* 662.

Quod contra legem fit, pro infecto habetur. That which is done against law, is regarded as not done at all. 4 *Co.* 31 a, *French's case.*

Quod contra rationem juris receptum est, non est producendum ad consequentias, [consequentia.] That which has been received or admitted against the reason of the law, is not to be drawn into precedents. *Dig.* 1. 3. 14. *Id.* 50. 17. 141. Adopted in the common law. 12 *Co.* 75. See *Bacon, de Augm. Scient.* lib. 8, app. 2.

QUOD COMPUTET. L. Lat. (That he account.) In practice. The first or interlocutory judgment in the action of account, requiring the defendant to account before auditors. 3 *Bl. Com.* 163. 1 *Story's Eq. Jur.* § 447. *Pulling on Merc. Acc.* 124.

QUOD CUM. L. Lat. (That whereas.) In pleading. The emphatic words used in the commencement of the old Latin declarations, where the charge was made (as it was in most actions,) by way of recital, and literally translated in the modern forms, "*that whereas.*" *Pro eo videlicet* quod cum; "for this, to wit, that whereas," or in the later English forms, "for that whereas." It was an improper form in the action of trespass, in which the matter complained of was required to be positively averred without recital; and the rule is still the same in regard to the English "*Whereas.*" *Steph. Pl.* 388. 16 *Mees. & W.* 36.

Quod cum, however, was sometimes held to amount to an affirmative allegation. *Plowd.* 128.

QUOD CONCESSUM FUIT. L. Lat. Which was granted. A phrase in the old reports. 11 *Mod.* 68. See *Quod fuit concessum.*

QUOD CURIA CONCESSIT. L. Lat. Which the court granted. A phrase in the old reports. *Yearb.* M. 4 Hen. VI. 19. *Id.* M. 9 Hen. VI. 40. 6 *Mod.* 28.

Quod demonstrandi causa additur rei satis demonstratæ, frustra fit. That which is added, for the purpose of demonstration, to a thing already sufficiently demonstrated, is done to no purpose. 10 *Co.* 113 a, *Arthur Legat's case.*

Quod dubitas, ne feceris. What you doubt of, do not do. In a case of moment, especially in cases of life, it is safest to hold that in practice which hath least doubt and danger. 1 *Hale's P. C.* 300. *Bacon's Works*, iv. 487.

QUOD EI DEFORCEAT. L. Lat. (That he deforces him.) In old practice. A writ which lay for tenants in tail, or tenants in dower, or by the curtesy or for term of life, where they had lost their lands by default in a *præcipe quod reddat* brought against them. *F. N. B.* 155 B. *Reg. Orig.* 171.

Quod est ex necessitate nunquam introducitur, nisi quando necessarium. That which is of necessity is never introduced, unless when necessary. 2 *Rol. R.* 502. *Branch's Pr.*

Quod est inconveniens aut contra rationem, non permissum est in lege. That which is inconvenient, or against reason, is not permitted in law. *Co. Litt.* 178 a.

Quod est necessarium est licitum. What is necessary is lawful. *Jenk. Cent.* 76, case 45.

Quod fieri debet facile præsumitur. What ought to be done is easily presumed. *Halkerst. Max.* 153.

Quod fieri non debet, factum valet. That which ought not to be done, when done, is valid. *Broom's Max.* 81. See **Fieri non, &c.**

QUOD FUIT CONCESSUM. L. Lat. Which was granted. A phrase of frequent

occurrence in the old reports, denoting that an argument or point made by a counsel or judge, was acquiesced in, approved or allowed by the court. *Yearb.* M. 1 Hen. VI. *passim.* *Plowd.* 32. *Quod fuit concessum per totam curiam.* 1 *Co.* 153 b. See *Concessum.*

Quod inconsulto fecimus, consultius revocemus. What we have done without due consideration, upon better consideration we should revoke or undo. *Jenk. Cent.* 116, case 30. Applied to a sheriff's return. *Id. ibid.*

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori. That which is valid in the less, shall be valid in the greater; and that which is not valid in the greater, shall neither be valid in the less. *Co. Litt.* 260 a.

Quod in uno similium valet, valebit in altero. That which is effectual in one of two like things, shall be effectual in the other. *Co. Litt.* 191 a.

Quod ipsis qui contraxerunt obstat, et successoribus eorum obstabit. That which bars those who have made a contract, will bar their successors also. *Dig.* 50. 17. 143.

QUOD JUSSU. Lat. (Which [was done] by order.) In the civil law. The name of an action given to one who had contracted with a son or slave, *by order* of the father or master, to compel such father or master to stand to the agreement. *Hallifax, Anal.* b. 3, ch. 2, num. 3. *Inst.* 4. 7. 1. *Dig.* 15. 4.

Quod jussu alterius solvitur pro eo est quasi ipsi solutum esset. That which is paid by the order of another, is the same as though it were paid to himself. *Dig.* 50. 17. 180.

Quod meum est sine me auferri non potest. That which is mine cannot be taken away without me, [without my assent.] *Jenk. Cent.* 251, case 41.

Quod naturalis ratio inter omnes homines constituit, vocatur jus gentium. That which natural reason has established among all men, is called the law of nations. 1 *Bl. Com.* 43. *Dig.* 1. 1. 9. *Inst.* 1. 2. 1. See *Jus gentium.*

Quod necessarie [sub] intelligitur non deest. That which is necessarily understood is not wanting. 1 *Bulstr.* 71. If a man release to another "all actions," and do not say further "which he hath against him," this is as good a release as if these words were inserted. *Shep. Touch.* 334.

Quod [quicquid] necessitas cogit, defendit. What necessity compels, it justifies. 1 *Hale's P. C.* 54.

Quod non apparet, non est. That which does not appear, is not. 2 *Inst.* 479. *Jenk. Cent.* 207, case 36. That which does not appear, must be taken in law as if it were not. *Vaugh.* 169. *Broom's Max.* 71, [122.]

Quod non capit Christus, capit fiscus. What Christ [the church] does not take, the treasury takes. Goods of a *felo de se* go to the king. A maxim in old English law. *Yearb.* P. 19 Hen. VI. 1.

QUOD NON FUIT NEGATUM. L. Lat. Which was not denied. A phrase in the old reports. *Latch*, 213. Otherwise expressed *Quod nemo negavit;* which no one denied. *Yearb.* H. 20 Hen. VI. 20.

Quod non habet principium, non habet finem. That which has not a beginning has not an end. *Co. Litt.* 345 a. 2 *Bl. Com.* 278. Applied to collation to benefices by lapse. *Id. ibid. Broom's Max.* [135.]

QUOD NOTA. Lat. Which note; which mark. A reporter's note in the old books, directing attention to a point or rule. *Dyer*, 23.

Quod nullius est, id ratione naturali occupanti conceditur. That which is the property of no one is, by natural reason, given to the [first] occupant. *Dig.* 41. 1. 3. *Inst.* 2. 1. 12. Adopted in the common law. 2 *Bl. Com.* 258. He who can first declare his intention of appropriating to his own use that which before belonged to nobody, and in pursuance of such intention, actually takes it into possession, shall thereby gain the absolute property in it. *Id. ibid.* See *Id.* 411. *Broom's Max.* 329, 330, [260.] 2 *Kent's Com.* 319.

Quod omnes tangit, ab omnibus [per omnes] debet supportari. That which touches or concerns all, ought to be supported by all. 3 *How. St. Trials*, 878, 1087.

Quod per me non possum, nec per alium. What I cannot do by myself, I cannot by another. 4 *Co.* 24 b. 11 *Co.* 87 a.

QUOD PARTES REPLACITENT. L. Lat. (That the parties do replead.) The form of the judgment on award of a repleader. 2 *Salk.* 579.

QUOD PERMITTAT. (That he permit.) In old English law. A writ which lay for the heir of him that was disseised of his common of pasture, against the heir of the disseisor. *Cowell. Termes de la Ley*

Reg. Orig. 155 b, 156. It was also a remedy for the enforcement of other privileges. *Id.* 155.

QUOD PERMITTAT PROSTERNERE. L. Lat. (That he permit—to abate.) In old practice. A writ, in the nature of a writ of right, which lay to abate a nuisance. 3 *Bl. Com.* 221.

Quod populus postremum jussit, id jus ratum esto. What the people have last enacted, let that be the established law. A law of the Twelve Tables, the principle of which is still recognized. 1 *Bl. Com.* 89.

Quod principi placuit, legis habet vigorem. That which has pleased the prince, has the force of law. The emperor's pleasure has the force of law. *Dig.* 1. 4. 1. *Inst.* 1. 2. 6. A celebrated maxim of imperial law. See *Bract.* fol. 107. *Fleta*, lib. 1, c. 17, § 7. *Seld. Diss. ad Flet.* c. 3, §§ 2, 3, 4, 5.

Quod quis ex culpa sua damnum sentit, non intelligitur damnum sentire. The damage which one experiences from his own fault is not considered as his damage. *Dig.* 50. 17. 203.

Quod quis sciens indebitum dedit hac mente, ut postea repeteret, repetere non potest. That which one has given, knowing it not to be due, with the intention of re-demanding it, he cannot recover back. *Dig.* 12. 6. 50.

QUOD RECUPERET. L. Lat. That he do recover. The ordinary form of judgments for the plaintiff in actions at law. 1 *Arch. Pr.* 225. 1 *Burr. Pr.* 246. Expressed at length, in the old records,—*Ideo consideratum est* QUOD *prædictus* A. RECUPERET *versus præfatum* C. &c. 1 *Instr. Cler.* 14. Literally translated in the modern forms, "Therefore it is considered *that* the aforesaid [plaintiff] *do recover* against the aforesaid [defendant,"] &c.

Quod remedio destituitur, ipsa re valet, si culpa absit. That which is without a remedy, is valid by the [mere force of the] thing [or act] itself, if there be no fault. *Bacon's Max.* 40, reg. 9. Or, as the maxim may be analyzed, the mere act of a party (*ipsa res,*) if no fault attach to it, (*si culpa absit,*) will sometimes avail (*valet*) to give him a right for which the law has provided no express remedy, (*quod remedio destituitur.*) The principle of remitter and other extra-judicial remedies allowed by law. 3 *Bl. Com.* 20. *Broom's Max.* 101—104, [160.]

Quod semel aut bis existit, prætereunt legislatores. What happens once or twice, legislators pass over, [i. e. they do not provide for extraordinary cases.] A translation of a saying of Theophrastus quoted by Paulus in the Digests. *Τὸ γὰρ ἅπαξ ἢ δὶς παραβαίνουσιν οἱ νομοθέται.* *Dig.* 1. 3. 6. See *Ad ea quæ frequentius*, &c.

Quod semel meum est, amplius meum esse non potest. That which is once mine cannot be more mine. *Co. Litt.* 49 b. A party in possession needs not to have delivery of possession made to him. 2 *Bl. Com.* 314. *Shep. Touch.* 212. Dr. Wooddesson supposes this maxim to be taken from the Institutes. *Quod proprium est ipsius, amplius ejus fieri non potest. Inst.* 2. 20. 10. 1 *Wooddes. Lect.* Introd. Lect. 5, p. lxxi. note.

QUOD SI CONTINGAT. L. Lat. That if it happen. Words by which a condition might formerly be created in a deed. *Litt.* sect. 330.

Quod sub certa forma concessum vel reservatum est, non trahitur ad valorem vel compensationem. That which is granted or reserved under a certain form, is not [permitted to be] drawn into valuation or compensation. *Bacon's Max.* 26, reg. 4. That which is granted or reserved in a certain specified form, must be taken as it is granted, and will not be permitted to be made the subject of any adjustment or compensation on the part of the grantee. Quoted by Cowen, J. 2 *Hill's* (N. Y.) *R.* 423.

This maxim is best illustrated by Lord Bacon's own words and examples. "The law permitteth every man to part with his own interest, and to qualify his own grant as it pleaseth himself, and therefore doth not admit any allowance or recompense, if the thing be not taken as it is granted. So, in all profits *à prender*, if I grant common for ten beasts, or ten loads of wood out of my copse, or ten loads of hay out of my meadows, to be taken for three years, he [that is, the grantee,] shall not have common for *thirty beasts*, or *thirty loads* of wood or hay the *third* year, if he forbear for the space of two years; here the *time* is certain and precise. So, if the *place* be limited, as if I grant estovers to be spent in such a house, or stone towards the reparation of such a castle, although the grantee do burn of his fuel, and repair of his own charge, yet *he can demand no allowance for that he took it not.*" *Bacon's Max.* 26, 27. See *Broom's Max*, 305, [350.]

Quod subintelligitur non deest. What is understood is not wanting. 2 *Ld. Raym.* 832.

Quod tacite intelligitur deesse non videtur. What is tacitly understood is not considered to be wanting. 4 *Co.* 22 a.

Quod voluit non dixit. What he intended he did not say, or express. He may have intended so, but he did not say it. An answer sometimes made in overruling an argument that the law-maker or testator *meant* so and so. 1 *Kent's Com.* 468, note. 4 *M. & S.* 522, arg. If a will be uncertain or unintelligible on its face, it is as if no will had been made. Kent, C. 1 *Johns. Ch. R.* 235.

QUOD VI AUT CLAM. See *Vi aut Clam.*

Quomodo quid constituitur, eodem modo dissolvitur. In whatever way a thing is constituted, in the same way is it dissolved; (a record by a record, writing by writing, parliament by parliament, parol by parol.) *Jenk. Cent.* 74, case 40.

QUONIAM ATTACHIAMENTA. L. Lat. (Since the attachments.) One of the oldest books in the Scotch law; so called from the two first words of the volume. *Bell's Dict.* Still sometimes cited in argument, in the Scotch courts. 7 *Wilson & Shaw's R.* 9.

QUORUM. Lat. Of whom; whereof. This genitive plural of the common pronoun *qui*, has in modern law become a substantive, being used in the titles of justices of the peace, and through this channel has finally been adopted as an ordinary word, to denote a certain number of persons whose presence is requisite at meetings of public or private bodies, for the transaction of business. The process by which this appropriation of the word has been effected may be traced as follows:

In the commissions by which justices of the peace were originally appointed, (and the form of which in England is still retained with little change,) they were all appointed jointly and severally, to keep the peace, and any two or more of them to inquire of, and determine felonies and other misdemeanors; in which number *some particular justices*, or one of them, were directed to be always included, and *no business to be done without their presence*, the words of the commission running thus: QUORUM *aliquem vestrum*, A. B. C. D. &c. UNUM *esse volumus*; (*of whom* we will one or some of you, A. B. C. D. &c. to be *one*.) Whence the persons so named were usually called "justices of the *quorum*." The practice of appointing only a select number of justices, eminent for their skill and discretion, to be of the *quorum*, has in modern times been in a great degree discontinued, almost all of them being advanced to that dignity, and named in the *quorum* clause. 1 *Bl. Com.* 351. So that the title, though still retained, has lost much of its ancient significancy.

The association, in this way, of the word *quorum*, with a particular number of justices, without whose presence no business could be done, led by a natural and easy transition to the adoption of the same word to express a required number of any description of associated persons, for the transaction of their proper business, which is its prevalent modern meaning.

QUOT. In old Scotch law. A twentieth part of the moveable estate of a person dying, which was due to the bishop of the diocese within which the person resided. *Bell's Dict.*

Quoties dubia interpretatio libertatis est, secundum libertatem respondendum erit. As often as [whenever] the interpretation of liberty is doubtful, the answer should be on the side of liberty. *Dig.* 50. 17. 20.

Quoties idem sermo duas sententias exprimit, ea potissimum excipiatur, quæ rei gerendæ aptior est. Whenever the same language expresses two meanings, that should be adopted which is the better fitted for carrying out the subject matter. *Dig.* 50. 17. 67.

Quoties in stipulationibus ambigua oratio est, commodissimum est id accipi quo res de qua agitur in tuto sit. Whenever the language of stipulations is ambiguous, it is most fitting that that [sense] should be taken by which the subject matter may be protected. *Dig.* 45. 1. 80.

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba [expressa] fienda est. As long as there is no ambiguity in the words [of an instrument,] there should be no interpretation made against the [express] words. *Wingate's Max.* 24, max. 16. *Co. Litt.* 147 a. In the absence of ambiguity, no exposition shall be made which is opposed to the express words of the instrument. *Broom's Max.* [477.] A leading maxim in the construction of deeds and statutes. 2 *Bl. Com.* 379. 1 *Kent's Com.* 468, note. 2 *Id.* 555. See 1 *Duer on Ins.* 159, note. It is not, however, allowed to prevail so as to defeat the mani-

fest intent and object of the parties to an instrument, where it is clearly discernible on the face of the instrument, and the ignorance or blunder or mistake of the parties has prevented them from expressing it in the appropriate language. 1 *Story's Eq. Jur.* § 168.

QUOTUPLEX. Lat. Of how many kinds; of how many fold. A term of frequent occurrence in Sheppard's Touchstone. *Id.* 37, 50, 117, 160, *et passim.*

QUOUSQUE. Lat. As long as. An apt word of limitation in old conveyances. 10 *Co.* 41 b, *Mary Portington's case.* See 1 *Eden*, 114.

Until. "Whether it were for an absolute seizure, or merely *quousque*, until such an act done." Le Blanc, J. 2 *East*, 260.

QUOVIS MODO. Lat. In whatever manner. Lord Ellenborough, 10 *East*, 476.

QUUM. Lat. When. **Quum de lucro duorum quæratur, melior est causa possidentis.** When the question is as to the gain of two persons, the title of the party in possession is the better one. *Dig.* 50. 17. 126. 2. For other maxims, see under **Cum** and **Quando.**

QUYKE. In old records. Quick; living; a quick or live beast. *Cowell.*

QUYR. L. Fr. [Lat. *corium.*] In old English law. Leather; a hide or skin. *Yearb.* II. 6 Edw. II. 192.

QY. L. Fr. Who, which. *Kelham.*

R.

RACES, *Rases.* L. Fr. Pulled down. *Kelham.*

RACHAT. Fr. Ransom; relief. *Ord. Mar.* liv. 3, tit. 3, art. 19. *Emerig. Tr. des Ass.* ch. 12, sect. 21. *Guyot, Inst. Feod.* ch. 5.

RACHATER. L. Fr. To redeem; to re-purchase, (or buy back.) *Kelham.*

RACHETUM. L. Lat. [from O. Fr. *rachapter, rachater, racheter*, to redeem; from *achater*, or *acheter*, to buy.] In old Scotch law. A pecuniary satisfaction or composition for an offence, answering to the Saxon *weregild. Stat.* 1 *Rob. Reg. Scot.* c. 3. *Spelman.*

Theft-bote, or thief-bote. *Id. Skene de Verb. Signif. Stat.* 2 *Rob. Br.* c. 7, cited *ibid.*

RACHIMBURGII, *Rachinburgii.* L. Lat. [from Germ. ratha, or racht, Sax. *race*, a cause, matter or argument.] In old European law. Rachenburgers or Rakenburghs; judges among the Salians, Ripuarians and some other nations of Germany who sat with the count (*comes*) in his court called *mallum*, and were generally associated with him in all matters. *L. Salic.* titt. 52, 59. *L. Ripuar.* tit. 32, § 3. *Capitul. Carol.* lib. 5, c. 14. *Spelman.* The word was found by Spelman in an old MS. copy of the Laws of Canute. Montesquieu writes it *rathimburges. Esprit des Loix*, liv. 30, c. 18.

RACK RENT. A rent of the full value of the tenement, or near it. 2 *Bl. Com.* 43. 1 *Chitt. Gen. Pr.* 228.

RADECHENISTRES. A word used in Domesday Book, which Spelman interprets to mean *freemen. Domesd.* fol. 18, Titt. *Glowc. Berchelay. Spelman.*

RADOUB. Fr. In French law. Repair. The repairing or repair of a vessel. *Ord. Mar.* liv. 2, tit. 9, art. 3.

RAENCON, *Raancon, Ranceoun.* L. Fr. A ransom, or fine. *Ou par* ranceoun *ou par amercement. Art. sup. Cart.*

RAGEMAN, *Ragman.* A statute, so called, of justices assigned by Edw. I. and his council, to go a circuit through all England, and to hear and determine all complaints of injuries done within five years next before Michaelmas, in the fourth year of his reign. *Spelman.*

Ragman, Rageman or *Raggeman*, (L. Lat. *Raggemannus,*) occurs in old records in the sense of a blank charter, or recognizance. *Barringt. Obs. Stat.* 215, note [*u.*]

RAGMAN'S (or RAGIMUND'S) ROLL. In Scotch law. A roll or record said to have been made by direction of one Ragimund, a legate from Rome, who, calling before him all the beneficed clergymen in the kingdom, caused them, on oath, to give in the true value of their benefices, according to which they were afterwards taxed by the court of Rome.* *Whishaw.* After being taken away by the English, it was restored, with other deeds and instruments, by Edward III. *Baker's Chron.* fol. 127. *Cowell.*

RAIL FENCES are real property, and pass under the word *land.* 1 *Comstock's R.* 564.

RAIN. L. Fr. A ring. *Par* rain *et par baston;* by ring and staff. *Kelham.*

RAINE. L. Fr. Queen. *Kelham.*

RAISE. To create, or constitute. To *raise a use*, is to create it. 1 *Steph. Com.* 332, 333. 2 *Crabb's Real Prop.* 462, *et seq.* Raisable; that may be raised. Lord Hardwicke, C. 6 *Mod.* 489.

RAN. Sax. In Saxon and old English law. Open theft, or robbery, (*aperta ra-*

pina.) *Leg. Saxon. Canuti R.* c. 58. *Spelman. Lamb, Archaion.* fol. 125.

RANGER. In forest law. A sworn officer of the forest, whose office chiefly consists in three points: to walk daily through his charge, to see, hear and inquire as well of trespasses as trespassers in his bailiwick; to drive the beasts of the forest, both of venery and chace, out of the deafforested into the forested lands; and to present all trespasses of the forest at the next courts holden for the forest. *Cowell. Manwood*, cited *ibid.*

RANK. In English law. Excessive; too large in amount; as a *rank modus.* 2 *Bl. Com.* 30.

RANKING. In Scotch law. The arrangement of the claims of creditors in a certain order, showing their legal priorities; a statement showing the order in which the claims of creditors are to be paid out of a fund.* *Bell's Dict.* Answering to the English *marshalling.*

RANSOM. [L. Fr. *raunsom, raunsome, rancon, raencon;* L. Lat. *redemptio.*] Redemption from the power of another. A sum paid to redeem a person from captivity, imprisonment or punishment; or to redeem property from seizure.

In old English law. A species of fine. According to Lord Coke, "it is all one with a fine, for by the payment of the fine, the party *redeems* himself from imprisonment that attends the fine, and then there is an *end* [*finis*] of the business." *Co. Litt.* 127 a. See 4 *Bl. Com.* 380. Britton uses both terms in close connection. *Sur peyne de* raunsome *et de fyn;* on pain of ransom and of fine. *Britt.* c. 11.

A severe or heavy kind of fine, beyond the ordinary amount. The old rule was that where a statute spoke both of a *fine* and *ransom*, the ransom should be treble to the fine at least. *Cowell. Dyer*, 232. 4 *Bl. Com.* 380. Spelman calls it *mulcta gravissima*, the severest kind of fine.

RANSOM. In international law. The redemption of captured property from the hands of an enemy, particularly of property captured at sea. 1 *Kent's Com.* 104.

A sum paid or agreed to be paid for the redemption of captured property. *Id.* 105. Otherwise called a *ransom debt. Id.* 107.

The contract by which a ransom is agreed to be paid. The instrument containing such contract. Otherwise called a *ransom contract*, and a *ransom bill. Id.* 104—107.

RANSOM BILL. In international law. A contract by which a sum of money is agreed to be paid for the ransom of property captured at sea, and containing also other stipulations as to the return of the vessel, &c. 1 *Kent's Com.* 105, 106. A ransom bill, when not locally prohibited, is a war contract, protected by good faith and the law of nations. *Id.* 104.

Ransoms are little known in the commercial law of England, being prohibited by statute except in some peculiar cases. They are, however, recognized among other maritime nations, and have never been prohibited in the United States. *Id.* 104, 105. See 2 *Gallison's R.* 325.

RAP. L. Fr. Rape. *Rap de femme. Britt.* c. 1.

RAPE. [L. Lat. *rapa.*] In English law. An intermediate division between a shire and a hundred; or a division of a county, containing several hundreds. 1 *Bl. Com.* 116. *Cowell.* It seems to be peculiar to the county of Sussex. *Id. ibid.*

RAPE. [L. Fr. *rap de femme;* L. Lat. *raptus mulierum.*] In criminal law. The violation, or carnal knowledge of a woman forcibly, and against her will. 4 *Bl. Com.* 210. *Cowell. Spelman*, voc. *Raptus.* 1 *Russell on Crimes*, 675. *Wharton's Am. Crim. Law*, § 1124, 1156.

RAPE OF THE FOREST. [L. Lat. *raptus forestæ.*] In old English law. Trespass committed in a forest by violence. *Cowell. Spelman. LL. Hen.* I. c. 11.

RAPE-REEVE. In English law. The chief officer of a rape, (q. v.) 1 *Bl. Com.* 116.

RAPERE. Lat. In old English law. To ravish. See *Rapuit.*

RAPINA. Lat. [from *rapere*, to drag, or carry away forcibly.] In the civil law. The violent taking from the person of another, of money or goods for the sake of gain; robbery from the person. *Hallifax, Anal.* b. 2, c. 23, num. 1, 2. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 2, § 1071.

In old English law. Open and violent larceny from the person; robbery. *Stat.* 14 *Car.* II. c. 22. *Cowell.* 4 *Bl. Com.* 242.

RAPTOR. L. Lat. [from *rapere*, to ravish.] In old English law. A ravisher. *Fleta*, lib. 2, c. 52, § 12.

RAPUIT. Lat. [from *rapere*, to ravish.] In old English law. Ravished. A technical word in old indictments. 2 *East*, 30. *Wharton's Am. Crim. Law*, § 401.

RASE. [L. Lat. *raseria*, from Lat. *rasus*, shaved or scraped.] In old English law. Strike; struck measure; that in which the commodity measured was made even with the top of the measure, by *scraping* or *striking* off all that was above it.* An old ordinance for bakers, brewers, &c. provided that toll should be taken "by the *rase*, and not by the *heap* or cantel." Cowell quotes the provision, but strangely overlooks the meaning it so clearly expresses, and makes *rase* (*raseria*) to be "a measure of corn, now disused."

To RASE. [from Lat. *radere*, to scrape.] To rub or scrape; to rub out. An indenture was said to be *rased*. *Perkins*, ch. 2, ss. 122, 123, *et seq.* A word was said to be *rased*. *Id.* s. 128. See 3 *P. Wms.* 433, arg.

RASURA. L. Lat. [from Lat. *radere*, to scrape.] In old English law. A rasure. *Fleta*, lib. 4, c. 10, §§ 3, 4.

RASURE. [L. Fr. *rassure*, *rasoure*, from Lat. *rasura*, from *radere*, to scrape.] A scraping off; the removal of one or more words from an instrument, by scraping the writing off or out. One of the modes by which a deed or other instrument may be avoided, or rendered of no effect. 2 *Bl. Com.* 308. *Shep. Touch.* 55, 68, 71. *Fleta*, lib. 6, c. 29, § 4. *Rasure* is properly distinguished from *obliteration*, which is effected by marking out the writing with pen and ink, or blotting it out by other means; but the terms are sometimes used as synonymous. See 18 *Johns. R.* 499.

RASUS, *Rasum*. L. Lat. [from *radere*, q. v.] In old English law. Rased; erased. *Fleta*, lib. 2, c. 54, § 12.

Struck; scraped off. *Mensura rasa;* struck measure. *Fleta*, lib. 2, c. 82, § 1.

RASUS. L. Lat. In old English law. A rase; a measure of onions, containing twenty flones, and each flonis twenty-five heads. *Fleta*, lib. 2, c. 12, § 12.

RATA. L. Lat. In old English law. A rate; a proportion. 4 *Mod.* 79. *Juxta ratam præd';* according to the rate aforesaid. *Dyer*, 82, (Fr. ed.)

RATAM REM HABERE. Lat. In the civil law. To hold a thing ratified; to ratify or confirm it, (*comprobare, agnoscere.*) *Dig.* 46. 8. 12. 1, et per tot.

RATE. An assessment. *Callis on Sewers*, Appendix, 352.

RATE OF EXCHANGE. In commercial law. The actual price at which a bill, drawn in one country upon another country, can be bought or obtained in the former country, at any given time. *Story on Bills*, § 31.

RATER. An assessor. *Laws of the Col. of New Plymouth*, A. D. 1643, 1689.

RATIFICARE. Lat. [from *ratus*, valid, and *facere*, to make.] In old conveyancing. To ratify. *Ratificasse;* have ratified. A formal word in deeds of confirmation. *Litt.* sect. 515. Lord Coke observes that "it is equipollent to *confirmare*." *Co. Litt.* 295 b.

RATIFICATION. [from Lat. *ratificare*, q. v.] The confirmation of a previous act done either by the party himself or by another; confirmation of a voidable act. See *Story on Agency*, §§ 250, 251. 2 *Kent's Com.* 237.

RATIHABITIO. Lat. [from *ratus*, approved, and *habere*, to hold.] In civil and old English law. A holding as approved; approval or ratification. *Dig.* 46. 8. **Ratihabitio mandato æquiparatur.** Ratification is equivalent to express command. *Dig.* 46. 3. 12. 4. See *Id.* 50. 17. 152. 2. See **Omnis ratihabitio**, &c. *Story on Agency*, § 239. *Per* ratihabitionem *quæ retrotrahitur ad disseysinam;* by the ratification which relates back to the disseisin. *Bract.* 174 b.

RATIO. Lat. Reason; a reason; the reason. See *Ratio legis.*

An account. *Reddere rationem;* to give an account. *Cowell.*

A cause. See *Ratione.*

RATIO LEGIS. Lat. The reason or occasion of a law; the occasion of making a law. *Blackst. Law Tr.* 3. Grotius distinguishes between *ratio* and *mens*, the meaning or intent of a law. *De Jur. Bell.* lib. 2, c. 16, § 8. **Ratio legis est anima legis; mutata legis ratione, mutatur et lex.** The reason of a law is the soul of the law; when the reason of a law is changed, the law also is changed. 7 *Co.* 7 a, *Milborn's case.* **Ratio legis est anima legis.** The reason of a law is the soul of a law. *Jenk. Cent.* 45, case 86.

RATIONABILIS. Lat. [from *ratio*, q. v.] In old English law. Reasonable. *Quam longum esse debet* [rationabile *tempus*] *non definitur in lege, sed pendet ex discretione justitiariorum;* how long ["a reasonable time"] ought to be, is not defined in law, but rests in the discretion of the justices. *Co. Litt.* 56 b. See *De rationabili, De rationabilibus.*

RATIONE. Lat. By reason; on account.

Ratione impotentiæ; on account of inability. A ground of qualified property in some animals *feræ naturæ*, as in the young ones, while they are unable to fly or run. 2 *Bl. Com.* 394. *Hale's Anal.* sect. xxvi.

Ratione loci; by reason of place. A ground of ownership in rabbits and hares. *Hale's Anal.* sect. xxvi.

Ratione privilegii; by reason of privilege. A ground of ownership in birds or beasts of warren. *Id. ibid.*

Ratione soli; on account of the soil; with reference to the soil. Said to be the ground of ownership in bees. 2 *Bl. Com.* 393.

Ratione tenuræ; by reason of tenure; as a consequence of tenure. 3 *Bl. Com.* 230. 1 *M. & S.* 435.

A phrase in old pleading. Not the same as "by reason of being owner and proprietor." Le Blanc, J. 1 *M. & S.* 441. *Ratione tenuræ* implies *ex vi termini*, something originally annexed to the holding. *Id. ibid.*

RAUNSOM, *Raunsome.* L. Fr. In old English law. Ransom; a fine; a severe kind of fine. *Sur peyne de* raunsome; on pain of ransom. *Britt.* c. 11. *Per* raunsome *simple ou graund, solonc le fait;* by an ordinary or a great ransom, according to the fact. *Id. ibid. Puny par prison et greve* raunsom. *Id.* c. 48.

RAVISHED. In criminal practice. A material word in indictments for rape. *Whart. Am. Crim. Law*, § 401.

RAVISHMENT. [Lat. *raptus.*] In old English law. A forcible taking away, as of a ward. *Co. Litt.* 79 b. See 3 *Reeves' Hist. Eng. Law*, 179. It was applied to both sexes. *Co. Litt. ub. sup.* 3 *Bl. Com.* 141. A woman might be ravished without carnal knowledge. Jones, J. *Latch*, 218.

RAZE. To erase. In the great case of proceedings in parliament relative to the liberty of the subject, (3 *Car.* I. A. D. 1628) Mr. Selden, who had taken an active part in the debate, was charged with "*razing* a record." 3 *How. St. Trials*, 156.

RAZON. Span. [Lat. *ratio.*] In Spanish law. Cause, (*causa.*) *Las Partidas*, part. 4, tit. 4, l. 2.

RE. FA. LO. An abbreviation of re*cordari facias* lo*quelam*, (q. v.)

RE, verbis, scripto, consensu, traditione,
Junctura, vestes sumere pacta solent.

From the thing [itself,] from words, from writing, from consent, from delivery, from union, agreements usually take their vestments. A couplet formerly in use, framed to express (in aid of the memory) the six different *modes* in which obligation might be contracted, which were fancifully termed its *vestments* or garments, that is, the forms in which it was *clothed.* It is twice quoted by Bracton, who explains the six forms in detail. *Bract.* fol. 16 b. *Id.* fol. 99—101. It is thus expressed in the prose of Britton: *Obligation doit estre vestue de v. maneres de garnementz; de chose, de parole, de escript, de unite de volounte, de bail, de joynture. Britt.* c. 28. It seems to be a mere extension of the fourfold division of the Institutes: *Aut* re, *aut* verbis, *aut* literis, *aut* consensu. *Inst.* 3. 14. 2. And see *Dig.* 44. 7. 52.

RE, *Rei, Rey.* L. Fr. King; a king. *Kelham.*

REAL. [L. Fr. *reale;* Lat. *realis*, from *res*, a thing.] In the civil law. Relating or belonging to, or founded upon a *thing*, (*res*,) as distinguished from personal, which related to a *person*, (*persona.*) *Calv. Lex.* This is the proper sense of the word.

In the common law. Relating or belonging to, arising from or founded upon lands, tenements or hereditaments. See *Real action, Real estate, Things real.* This sense of the word is derived from the feudal law, in which land was considered of paramount importance to all other *things*, as subjects of property, claiming as it were, the epithet of *res*, κατ' ἐξοχήν. The barbarous Latin word *realis* occurs (though rarely) in the civil law, in the sense first above given, but is used by Bracton and subsequent writers in the common law sense of the term. See *Realis.*

REAL. L. Fr. [from *re*, king.] In old English law. Royal; regal; belonging to the king. *Yearb.* P. 6 Edw. III. 48.

REAL ACTION. [L. Fr. *accion reale;* L. Lat. *actio realis, placitum reale.*] An action for the recovery of real property; an action relating to real property; an action whereby the plaintiff, or demandant, claims the specific recovery of any lands, tenements or hereditaments.* 3 *Steph. Com.* 459. 3 *Bl. Com.* 117, 118.

This term seems to be an accommodation of the *actio in rem* of the civil law, *res* being used in the feudal sense of *land.* The *res* for which the civil law action lay, might be a personal chattel, as well as land. *Inst.* 4. 6. 1, 14. *Story's Confl. of Laws*, § 530.

The threefold division of actions into real, personal and mixed, is obviously taken from the civil law. *Inst.* 4. 6. 1, 20.

REAL ASSETS. Lands or real estate in the hands of an heir, chargeable with the payment of the debts of the ancestor. 2 *Bl. Com.* 244, 302. 2 *Williams on Exec.* 1436. See *Assets by descent.*

REAL CHYMIN. L. Fr. In old English law. The royal way; the king's highway, (*regia via.*) *Yearb.* P. 6 Edw. III. 48.

REAL CONTRACT. In the civil law. A contract in which the obligation arose *from the thing* (*ex re*) itself, which was the subject of it. *Inst.* 3. 14. 2. *Id.* 3. 15. Real contracts were those in which, besides the consent of the parties, the delivery of some *thing* was required to perfect the obligation. *Hallifax, Anal.* b. 2, c. 15, num. 1.

In the common law. A contract respecting real property, as a lease of land for years. 3 *Co.* 22 a, *Walker's case.*

REAL ESTATE. Landed property, including all estates and interests in lands which are held for life or some longer period of duration.* An estate in fee or for life in land, not comprehending terms for years or any interest short of a freehold. 3 *Kent's Com.* 401.

In New-York, the term "*real estate*" has been declared by statute to be equivalent in meaning to "*land*," (1 *R. S.* [387,] 379, § 2,) and to "lands, tenements and hereditaments," (*Id.* [750,] 741, § 10;) and has been otherwise "construed to include every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seised or possessed thereof, or in any manner entitled thereto, and except leases for years, and estates for the life of another person." *Id.* [744, 755,] 745, § 27.

REAL ESTATE BROKER. One who engages in the purchase and sale of real estate as a business and occupation, and so holds himself out to the public in that character and capacity. 26 *Penn. St. R.* 138.

REAL EVIDENCE. [Lat. *evidentia rei vel facti.*] All evidence of which any object belonging to the class of *things* is the source; *persons* also included, in respect of such properties as belong to them in common with things. 3 *Benth. Jud. Ev.* 26. This term has been recently introduced from the civil law. *Best on Evid.* 221, § 178.

REAL INJURY. In the civil law. An injury arising from an unlawful *act*, as distinguished from a verbal injury which was done by *words*. *Hallifax, Anal.* b. 2, c. 25, num. 3, 4.

REAL PROPERTY consists of lands, tenements and hereditaments. 1 *Hilliard's Real Prop.* 49.

REAL RIGHT. In Scotch law. A right of property in a subject; a *jus in re. Bell's Dict.*

REAL (or PRÆDIAL) SERVITUDE. In the civil law. A right which one estate or piece of land (*prædium*) owes to another estate. See *Prædial servitude.*

REAL STATUTES. In the civil law. Statutes which have principally for their object, property, and which do not speak of persons, except in relation to property. *Story's Confl. of Laws*, § 13. See *Statute.*

REAL THINGS, (or THINGS REAL.) In the common law. Such things as are permanent, fixed and immoveable, which cannot be carried out of their place, as lands and tenements. 2 *Bl. Com.* 15. Things substantial and immoveable, and the rights and profits annexed to, or issuing out of them. 1 *Steph. Com.* 156.

This expression is, in strictness, clearly pleonastic, the sense of *thing* (*res*) being already implied in the word *real*, as will at once appear by giving it a Latin form, *res reales.* See *Real.*

REAL WRONG. In old English law. An injury to the freehold; "that which meddleth with the freehold otherwise than it ought; and is a discontinuance or ouster." *Finch's Law*, b. 3, ch. 4.

REALE. L. Fr. Real. *Accions personelles ou* reales. *Britt.* fol. 1 b.

REALE, *Real.* L. Fr. Royal. *Kelham.*

REALIS. L. Lat. In old English law. Real; relating to land. *Quædam* [*actiones*] *sunt* reales, *et quædam sunt personales;* some actions are real, and some are personal. *Bract.* fol. 159 b. *Secundum quod placitum fuerit* reale *vel personale;* according as the plea is real or personal. *Id.* fol. 1 b. *Fleta*, lib. 1, c. 1, § 1. *Id.* lib. 2, c. 13, § 4.

REALITY. In foreign law. That quality of laws which concerns property or things, (*quæ ad rem spectant.*) *Story's Confl. Laws*, § 16. See *Personality.*

REALTY. The quality of being *real*,

or relating to lands and tenements.* Things real. 1 *Steph. Com.* 156.

REASONABLE. Agreeable to reason; just; proper. See *Reasonable time.*

Ordinary or usual. *Reasonable* care is ordinary care, (q. v.) *Reasonable* common imports what is usual. Lord Ellenborough, 6 *M. & S.* 49. See *Id.* 69.

REASONABLE PART. In old English law. That share of a man's goods which the law gave to his wife and children after his decease. 2 *Bl. Com.* 492.

REASONABLE TIME cannot be made the subject of abstract definition. What is a reasonable time must be determined by the circumstances of the particular case. See 22 *Alabama R.* 414.

RE-ASSURANCE. A contract made by the first insurer of property with another insurer, by which he has the entire sum he has insured, *re-assured* to him, for the purpose of obtaining indemnity against his own act.* 3 *Kent's Com.* 278, 279. Otherwise called *re-insurance.* 1 *Phill. on Ins.* 146.

Re-assurance is prohibited in England, except in special cases, by statute 19 Geo. II. c. 37, § 4.

RE-ATTACHMENT. [L. Lat. *re-attachiamentum.*] In old English practice. A second or repeated attachment. *Cowell. Reg. Jud.* 35.

REAUME, *Reaugme, Reame.* L. Fr. Realm. *Kelham.*

REAVER. L. Fr. To have again, or have back; to re-have. *Britt.* c. 93.

RE-BAIL. In old English law. To redeliver. 3 *Leon.* 150. See *Bail.*

REBEAUX, *Rebealx, Rebeux.* L. Fr. Rebels; disobedient persons. *Kelham.*

REBELLIO. Lat. In old English law. Rebellion. *Stat. Marlbr.* c. 7.

REBELLION, *Commission of.* In equity practice. A process of contempt issued on the non-appearance of a defendant. See *Commission of rebellion.*

REBELLIS. Lat. In old English law. A rebel. *Stat. Marlbr.* c. 7.

REBOTABLE. L. Fr. [from *reboter*, q. v.] That may be rebutted, put or thrust back, or barred; barrable, rebuttable. *Le madle est receyvable, et la femme* rebotable; the male is receivable, (may be admitted,) and the female *rebuttable,* (may be rejected.) *Britt.* c. 119.

REBOTER, *Rebouter.* L. Fr. To put or thrust back; to repel; to bar; to rebut; to reject. Reboter *l'assise;* to bar the assise. *Britt.* c. 77. *Si jeo puisse* reboter *l'un, jeo reboteray l'autre;* if I may rebut the one, I shall rebut the other. *Yearb.* T. 9 Edw. III. 12.

REBUT. [from L. Fr. *reboter*, q. v.] In pleading and evidence. To repel; to meet or counteract the effect of opposing allegations or evidence. See *Rebutter.*

REBUTTABLE PRESUMPTION. In the law of evidence. A presumption which may be rebutted by evidence. Otherwise called a *disputable* presumption. A species of legal presumption which holds good until disproved. *Best on Pres.* § 25. 1 *Greenl. Ev.* § 33.

REBUTTER. [from L. Fr. *reboter;* to thrust back, repel or bar.] In pleading. A defendant's answer of fact to a plaintiff's surrejoinder; the third pleading in the series on the part of the defendant. *Steph. Pl.* 59. 3 *Bl. Com.* 310. *Co. Litt.* 303 b.

Rebutter, in the old books, had also the general sense of *bar* or *estoppel. Bro. Abr.* Barre, num. 23, 25. *Cowell. Co. Litt.* 365 a. *Shep. Touch.* 182. And it is still occasionally used in this sense. Story, J. 1 *Sumner's R.* 263.

REBUTTING EVIDENCE. Evidence adduced on the part of a plaintiff or prosecutor to repel or counteract evidence on the part of a defendant or prisoner.

RECAL. In practice. To reverse a judgment on writ of error for error in fact. 1 *Arch. Pr.* 281. 16 *Wendell's R.* 48.

RECAPTION. [from Lat. *recaptio*, from *re*, again, and *captio*, a taking.] A retaking, or taking back. A species of remedy by the mere act of the party injured, (otherwise termed *reprisal,*) which happens when any one has deprived another of his property in goods or chattels personal, or wrongfully detains one's wife, child or servant. In this case, the owner of the goods, and the husband, parent or master may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace. 3 *Inst.* 134. 3 *Bl. Com.* 4. 3 *Steph. Com.* 358.

In English practice. A writ to recover damages against a person who, pending a replevin for a former distress, distrains again for the same rent or service.* 3 *Bl. Com.* 150.

RECEDERE. Lat. [from *re*, back, and *cedere*, to go.] In old practice. To go back; to recede; to draw back. *Possunt contrahentes* recedere *de contractu;* the

contracting parties may draw back from the contract. *Fleta*, lib. 2, c. 58, § 3.

To retire or be dismissed from court. *Quietus recedet;* shall go quit. *Fleta*, lib. 1, c. 21, § 7. *Recedunt sine die;* go without day. *Id.* lib. 2, c. 39, § 1. *Recedet inde reus quietus imperpetuum;* the defendant shall go quit thereof forever. *Id.* c. 63, § 12.

Receditur a placitis juris, potius quam injuriæ et delicta maneant impunita. Positive rules of law (as distinguished from maxims or conclusions of reason,) will be receded from, [given up or dispensed with] rather than crimes and wrongs should remain unpunished. *Bacon's Max.* 55, reg. 12. See *Placita juris.*

RECEIPT. [L. Fr. *resceit.*] An acknowledgment in writing of having *received* a sum of money, goods or other valuable consideration; an acquittance. As to its effect, see 1 *Greenl. Evid.* § 212. An acknowledgment of the receipt of the consideration money constitutes a formal clause in all deeds of conveyance.

In old practice. Admission of a party to defend a suit, as of a wife on default of the husband in certain cases. *Litt.* sect. 668. *Co. Litt.* 352 b. Called, also, *defensio juris. Id. ibid.*

RECEIPTMENT. [L. Fr. *resceitment*, q. v.] In old English law. The receiving or harboring a felon knowingly, after the commission of a felony. *Stat. Westm.* 1, c. 14. 2 *Inst.* 182. Answering to the Scotch *resetting* or *resset*, (q. v.)

RECEIPTOR. In practice. A person to whom goods levied on by a sheriff are delivered, on his undertaking (called a receipt,) to deliver the same to the sheriff, on demand, or to pay the amount of the execution, with costs. 5 *Hill's R.* 588, 590. See *Story on Bailm.* § 124.

RECEIVER. L. Fr. To receive; to admit. *Si la feme pria destre* receive *et soit* receive; if the wife pray to be received and is received. *Litt.* sect. 668.

RECEIVER. [L. Lat. *receptor.*] In criminal law. One who receives stolen goods from thieves, and conceals them. *Cowell.* This was always the prevalent sense of the word in the common as well as the civil law. *Id.*

RECEIVER. In equity practice. An officer appointed by a court of chancery or equity, to take possession of the property of a defendant, or of property which is the subject of litigation, and to hold the same and apply the profits, or dispose of the property itself under the direction of the court; with the view of more effectually securing the rights of the complainant or other parties who may be entitled.*—An indifferent person between the parties, appointed by the court to receive the rents, issues or profits of land or other thing in question in the court, pending the suit, where it does not seem reasonable that either party should do it. *Wyatt's Prac. Reg.* 355. The appointment of a receiver is applied for by bill, petition or motion, and is a common preliminary proceeding to the winding up of the affairs of a partnership or incorporated company, as well as an ordinary adjunct to a judgment creditor's bill. See *Edwards on Receivers*, 1—18.

A receiver is an officer of the court which appoints him, but cannot sue in a foreign jurisdiction for the property of the debtor. 17 *Howard's R.* 322. See the distinction between a receiver in chancery under a creditor's bill, and an assignee in bankruptcy explained. *Id. ibid.*

RECEIVER (of MONEYS.) In old law. (L. Fr. *recevor* or *rescevor de deniers;* L. Lat. *receptor denariorum.*) A term used in connection with *bailiff*, (q. v.)

RECENS INSECUTIO. L. Lat. In old English law. Fresh suit; fresh pursuit. Pursuit of a thief immediately after the discovery of the robbery. 1 *Bl. Com.* 297. *Recens secta;* fresh suit. *Fleta*, lib. 1, c. 24, § 3.

RECEPTAMENTUM. L. Lat. [L. Fr. *recettement.*] In old English law. Receiptment; the receiving (Scotch, *resetting,*) or harboring a felon after the commission of the crime. *Bract.* fol. 152 b. *Fleta*, lib. 1, c. 31, § 8.

RECEPTARE. L. Lat. In old English law. To receive; to harbor (a felon.) *Jurare debent quod utlagatos, murdritores, robbatores et burglatores non* receptabunt, *nec eis consentient;* ought to swear that they will not harbor outlaws, murderers, robbers and burglars, nor will consent [or be privy] to them. *Bract.* fol. 115 b.

RECEPTATOR. Lat. [from *receptare*, q. v.] In civil and old English law. A receiver or harborer of a robber or other felon. *Dig.* 47. 16. *Bract.* fol. 115 b. *Fleta*, lib. 1, c. 38, § 16. *Id.* lib. 2, c. 52, § 9. *Feud. Lib.* 2, tit. 53, § 8.

RECEPTOR. Lat. [from *recipere*, to receive.] In old English law. Receiver; a receiver. *Fleta*, lib. 2, c. 33.

Receptor denariorum; receiver of moneys. *Id.* lib. 2, c. 70, §§ 7, 9.

Receptrix. A female receiver. *Yearb.* M. 19 Hen. VI. 10.

RECESSUS. Lat. [from *recedere*, to go back.] In old English law. A going from; a going off or out of land. *Cum libero accessu et* recessu; with free access and recess, [ingress and egress.] *Bract.* fol. 231 b.

RECESSUS MARIS. Lat. In old English law. A going back; reliction or retreat of the sea. *Hale de Jur. Mar.* pars 1, c. 6.

RECETOUR, *Recettour.* L. Fr. In old English law. A receiver or harborer of a felon; an accessary after the fact. *Britt.* c. 24. One who received and concealed a returned outlaw. *Id.* c. 12.

RECETTEMENT. L. Fr. In old English law. Receiptment; the receiving and harboring a felon. *Del consentment ou del* recettement *de ceux felons à escient;* of consenting to, or harboring such felons knowingly. *Britt.* c. 1.

RECHASER. L. Fr. To drive back. *Yearb.* M. 11 Hen. VI. 4.

RECHATE. L. Fr. Ransom. *Faire* rechat' *du char et du saunk;* to make ransom of flesh and of blood. *Yearb.* M. 7 Edw. II. 214.

RECHATER. L. Fr. To ransom; to buy back. *Kelham.*

RECIDIVE. Fr. In French law. The state of a person who commits a second offence, after condemnation or punishment for a previous one; a relapse. *Bouvier.*

RECITAL. [L. Lat. *recitatio.*] In conveyancing. The formal preliminary statement in a deed or other instrument, of such deeds, agreements or matters of fact as are necessary to explain the reasons upon which the transaction is founded. 2 *Bl. Com.* 298. The recital is contained in the premises (q. v.) of a deed, and usually commences with the formal word "*whereas*," which, when there are several recitals in succession, is repeated accordingly; "and whereas." As to its effect, see 1 *Leon.* 122. And see *Burr. Sett. Cas.* 23.

In pleading. The statement of matter as introductory to some positive allegation, beginning, in declarations, with the words "For that *whereas*," or in the old Latin forms with *pro eo quod cum*, (q. v.) See *Steph. Pl.* 388, 389.

RECLAIMING BILL. In Scotch practice. A bill or written pleading, stating the grounds on which a judgment of the Lord Ordinary, or of the whole court, is expected to be altered. *Bell's Dict.*

RECLAMER. L. Fr. To reclaim; to make a claim; to challenge. *Kelham.*

RECOGNITIO. L. Lat. [from *recognoscere*, q. v.] In old English law. An assise. *Magna Charta*, 9 Hen. III. c. 12. *Bract.* fol. 164 b. *Fleta*, lib. 4, c. 1, § 7.

A jury, as distinguished from an assise proper. 1 *Reeves' Hist. Eng. Law*, 367.

The verdict of an assise. *Cowell.* Strictly the act of the jury in hearing and inquiring into the truth of the case, in order to the making up of their verdict.

A recognizance. See *Recognizance.*

An acknowledgment. *Cowell.*

RECOGNITOR. L. Lat. [from *recognoscere*, q. v.] In old English law. A person impanelled on an assise, as *jurator* was one impanelled on a jury. Recognitores *in assisis, juratores in juratis.* *Bract.* fol. 351 b. *Id.* fol. 111 b.

RECOGNITURA. L. Lat. In old practice. To recognize. See *Recognoscere.*

RECOGNIZANCE, *Recognisance.* [from L. Fr. *reconisaunce;* L. Lat. *recognitio*, qq. v.] In practice. An acknowledgment upon record; an acknowledgment of a debt upon record.* An obligation of record, entered into before some court of record, or magistrate duly authorized, with condition to do some particular act; as to appear at the assizes, or criminal court, to keep the peace, to pay a debt, or the like. It resembles a bond, but differs from it in being an acknowledgment of a former debt upon record. 2 *Bl. Com.* 341.

The undertaking of special bail in a civil action at law, of which the bail piece is a memorandum.* 3 *Bl. Com.* 291.

In old practice. An assise; the inquisition or verdict of an assise. *Cowell.* See *Reconisaunce, Recognitio.*

To RECOGNIZE. [L. Lat. *recognoscere*, q. v.] In practice. To examine, or try; to inquire so as to know. "The assise came to *recognize* if," &c., were the first words of the record of an assise of novel disseisin. 9 *Co.* 1 a, *Dowman's case.*

This old word is still retained in the entry of the award of jury process on the record, the sheriff being directed to summon a jury "to recognize, &c.," that is, to recognize or try the truth of the issue between the parties. 3 *Bl. Com.* 352. See *Recognoscere.*

RECOGNOSCERE. Lat. [from *re*, again, and *cognoscere*, to know; L. Fr. *reconustre.*] In old practice. To acknowledge. *Idem B. venit in eadem curia, et* recognovit *totam prædictam terram, cum pertinentiis, esse jus ipsius A.;* the said B. came into the said court, and acknowledged the whole of the said land, with the appurtenances, to be the right of the said A. *Bract.* fol. 73 b.

To recognize; that is, to try or examine, as a jury; to inquire so as to know the truth. *Parati sacramento* recognoscere *si* B. *pater* C. *de N. fuit seysitus;* prepared on oath to recognize if B. the father of C. of N. was seised. *Id.* fol. 294. *Ad* recognoscendum *super sacramentum suum si prædictus C. prædictum D. robbavit;* to recognize upon their oath, if the said C. robbed the said D. *Id.* fol. 111 b, 112. See *Fortescue, de L. L. Angliæ*, c. 25, note. *Assisa venit recognitura*, (the assise came to recognize,) were the first words of the record of an assise of novel disseisin. *Litt.* sect. 234.

The word *recognoscere* is said to have originally had, in this application, its literal sense,—to know again, to call to remembrance, to declare upon recollection; juries having been originally composed of witnesses, or persons cognizant, of their own knowledge, of the fact in question. *Steph. Pl.* Appendix, Note (40.)

RECONISAUNCE. L. Fr. A recognizance (to keep the peace.) *Britt.* c. 16.

The inquisition of an assise or jury. *Petite assise est* reconisaunce *de xii jorours, del droit le pleyntyfe sur la possession. Id.* c. 42.

RECONQUIS. L. Fr. Recovered; reobtained. *Britt.* c. 59.

RECONUSTRE. L. Fr. To recognize. *A* reconustre *sur lour serment;* to recognize upon their oath. *Britt.* c. 45.

RECONVENIRE. Lat. In the canon and civil law. To make a cross demand upon the actor, or plaintiff. 4 *Reeves' Hist.* 14, and note (r.)

RECONVENTIO. Lat. [from *reconvenire*, q. v.] In the civil and canon law. A cross demand by the *reus* (defendant) upon the *actor* (plaintiff;) a proceeding in the nature of a cross bill in equity. *Halifax, Anal.* b. 3, c. 1, n. 40. *Calv. Lex. Fleta*, lib. 4, c. 22, § 9. *Gilb. For. Rom.* 45, 46. *Story's Eq. Pl.* § 402. Considered to be the origin of a cross bill. *Id. ibid.*

RECONVENTION. A cross demand. A term used in practice in the states of Louisiana and Texas, derived from the *reconventio* (q. v.) of the civil law. Reconvention is not identical with set-off, but more extensive. See 6 *Texas R.* 414. 5 *Id.* 501, 504.

RECOPILACION DE INDIAS. Span. A collection of Spanish colonial law, promulgated A. D. 1680. See *Schmidt's Civ. Law*, Introd. 94.

RECORD. L. Fr. and Eng. [L. Lat. *recordum*, from Fr. *recorder*, Lat. *recordari*, to call to mind, to recite or testify on recollection.] In practice. An instrument containing an account of the proceedings of a court of justice, particularly in an action at law, and intended as an authentic memorial of such proceedings. A history of the proceedings in an action at law, consisting of entries of the various acts of the parties and of the court, arranged in the order of their occurrence, expressed in the formal language prescribed by precedent, connected together by the peculiar entries called *continuances*, and terminating with the judgment of the court upon the whole matter.

In England, the peculiar *material* upon which the record has always been written, forms an essential part of the definition of the word. Hence Lord Coke has defined a record to be "a memorial or remembrance in *rolls of parchment*, of the proceedings and acts of a court of justice." *Co. Litt.* 260 a. And Mr. Serjeant Stephen observes that "a record signifies a *roll of parchment*, upon which the proceedings or transactions of a court are entered or drawn up by its officers, and which is then deposited in its treasury, *in perpetuam rei memoriam.*" 3 *Steph. Com.* 583. In the United States, paper has universally supplied the place of parchment as the material of the record, and the *roll form* has, on that account, fallen into disuse; but, in other respects, the forms of the English records have, with some modifications, been generally adopted. In a late case, a record was defined "a memorial of a proceeding or act of a court of record, entered in a roll for the preservation of it." 1 *Hempstead's R.* 214.

*** The use of *records*, in the technical sense just considered, is altogether peculiar to the common law, and they have always been regarded by that law with very peculiar consideration. Constituting

the only strict and proper proof of the proceedings of the court in which they are preserved, they are also regarded as proof of so transcendant and absolute a nature, as to admit of no contradiction, or, in Lord Coke's language, they "import in themselves such incontrollable credit and verity, as they admit no averment, plea or proof to the contrary." *Co. Litt.* 260 a. 3 *Steph. Com.* 583. See 25 *Alabama R.* 116. And the peculiar privilege of some courts to have these memorials has, of itself, created the great leading distinction, equally recognized in English and American law, between *courts of record* and *courts not of record.* 3 *Bl. Com.* 24.

The practice of *recording* (thus peculiar to the common law,) has been very satisfactorily shown by Mr. Serjeant Stephen to be essentially of Norman origin. *Steph. Pl.* Appendix, Note (11.) The term *record*, is itself, as he observes, in its immediate derivation, French; or rather, it is a French word adopted in English without change, as will appear from the use of it in Britton. *Et en tiel cas volons que lour roules porten* record; and in such case we will that their rolls shall bear or carry record, that is, shall have the force of record. *Britt.* c. 1. *Enroulment de court que porte* record; enrollment of a court which bears record, that is, of a court of record. *Id.* c. 28. *Record* is from *recorder;* and the latter word anciently signified, in the Norman law, *to recite or testify on recollection*, as occasion might require, what had previously passed in court, which was the duty of the judges and other principal persons who presided at the *placitum*,—thence called *recordeurs. Steph. Pl.* Appendix, Note (11.) In fact, all over France, at this early period, the only mode of proving what took place in the courts, seems to have been by the testimony of *witnesses*, by whom, as Montesquieu observes, they proved what had been already done, said, or judicially decreed, (*on prouvoit par temoins ce qui s'étoit déja passé, dit, ou ordonné en justice.*) This was what they called *the proceeding by record*, (*par ce que s'appelloit la procedure par record.*) *Esprit des Loix*, liv. 28, c. 34. The same thing conclusively appears from the Assises de Jerusalem, referred to by Mr. Stephen.

The proper original of the English record is considered by the last named author to have been an occasional memorandum (distinctly mentioned in the Assises de Jerusalem,) drawn up by the Francic pleader to confirm the recollection of his judges, and which, by a gradual progress, (not now to be traced,) took the shape of an official contemporaneous minute of the proceedings; and, no longer merely subordinate to a record or judicial report, became itself invested with that name and character. "Whether this change," observes Mr. Stephen, "had fully taken place at the date of Glanville's treatise, (in the reign of Henry II.) that work does not enable us accurately to decide.—However, we find at least very shortly *after* this period, the practice of *recording*, in the present sense of the term, was in full operation." The series of records, now extant, begins with the reign of Richard I. and the earliest of them are to be found in the collection called Placitorum Abbreviatio. *Steph. Pl.* Appendix, Note (11.) Bracton frequently refers to the *irrotulationes* (enrollments,) as important parts of the proceedings in an action, and occasionally gives forms of them. *Bract.* fol. 16, 292, 299 b. The same author, in citing the judicial decisions of that period, distinctly mentions the *rotuli* or rolls on which they were recorded, sometimes distinguishing in what part of the roll the case was to be found.

It may not be out of place to advert here, briefly, to the principal features of this very important judicial instrument. The ancient record was, as its form clearly indicates, a *contemporaneous minute* of the proceedings in an action, drawn up by an officer of the court, containing an entry of every act done in court, either by the parties or by the court itself, which, (as every thing done in an action was then done in open court,) embraced all the proceedings in the suit,—the appearances and pleadings of the parties, prayer and allowance of imparlance, prayer and allowance of oyer, award of jury process, proceedings at the trial, verdict of the jury and judgment of the court, with the various intermediate and incidental proceedings. Its *contemporaneous* character appears every where on its face, the proceedings being uniformly entered in language of the *present* tense, and as of *present* occurrence. The plaintiff "*complains*" and "*brings* suit;" the defendant "*comes* and *defends*," and "*prays* judgment;" the "jury *come*" and "*say* upon their oath;" and the judgment o the court is, that "it *is* considered," &c

Another distinctive feature of the old record was its *continuances*, or the entries of the adjournments of the court from one day or term to another, by which the parties were temporarily dismissed and appointed to appear again, and by which its various parts were at the same time most effectually connected together. It was this peculiar principle of construction, by which the record was made to *follow the action* step by step, and to reflect *every proceeding* in it *just as it occurred*, which gave it from an early period the stamp of the very highest authority as a judicial memorial. Kept constantly under the eye of the court, and by its own officer, it necessarily became the evidence in itself, of what it contained, admitting, indeed, of no extrinsic proof whatever. The great and obvious importance of the record in this particular, led to a corresponding degree of care in framing it. By the consummate skill of the Anglo-Norman pleaders, its language was gradually elaborated to the highest degree of precision and uniformity, its various parts studiously adapted to each other and logically fitted together, until, by the force of constant repetition, and under the sanction of the courts for a succession of centuries, the whole instrument settled at last into a fixed form of expression, which admitted of (as it required) no variation. In this way, the record came to be, at an early period, and before the discontinuance of oral pleadings, next after the original writ, the most important document in an action, prescribing indeed the form of all the other proceedings, which constituted its component parts. This is very forcibly shown in the fact that, when written pleadings were introduced, they were framed precisely as they had before appeared on the record, and were virtually mere extracts from it. *Steph. Pl.* 35, (Am. ed. 1824.) Hence arose what has always been a leading principle of practice, that every proceeding in an action intended or required to appear on the record, must be framed in the language of the record, and with reference to its place on that instrument, or, in other words, must be framed with the same exactness as the record itself. See *Anthon's Law Student*, 266, 267, 273.

Two circumstances, in addition to what has been mentioned, contributed to stamp the record with that character of *immutability* which has accompanied it down to modern times, and almost to the present day. One was the circumstance of its being kept in *Latin*, a language admitting of no variation, and the other, the character of *inviolability*, which preserved it from the slightest degree of alteration after it had been once made up.

The substitution of English for Latin as the language of the record, and of ordinary writing for the "ancient and immutable court hand," which took place in the reign of George II. were innovations upon the ancient system apparently demanded by the times, but viewed by highly competent judges of the period with much apprehension as to their effect upon the durability of the record, as a memorial of the proceedings in an action. See *Court hand.* How far these apprehensions have been realized in the particular way anticipated, is for English practitioners to determine; but that they have been realized in the general result of impairing the character of the record by reducing it to the level of *an ordinary instrument*, privileged in no peculiar manner from change, seems apparent in the material alterations which have at length been effected, in England, in the structure of this once inviolable and immutable memorial of judgment. These changes consist principally in omitting all or most of those entries by which the several parts of the record were formerly connected together, (including the entire system of *continuances*,) by omitting the formal commencements and conclusions of pleadings, which were in fact portions of the record itself, connecting with the pleadings, and by the general modification of the language of the pleadings themselves. In this way the unity of the record has been effectually broken up, and the symmetry of its parts and the uniformity of its language, once thought to constitute its peculiar value, have been obviously impaired.

In some of the United States, similar modifications of the form of the record have been adopted, going in some instances indeed to much greater lengths; and, on the whole, the modern tendency undoubtedly is to place this instrument, in point of dignity and importance, far below the position it once occupied. Latterly, however, the courts have evinced a determination to maintain the record in its proper formal character. See 11 *Howard's R.* 272, 288. 2 *Wallace, Jr.* 569. 1 *Hempstead's R.* 214. 3 *Wisconsin R.* 362.

RECORD, *Debt of.* A debt which ap-

pears to be due by the evidence of a court of record; such as a judgment, a recognizance, &c. 2 *Bl. Com.* 465.

RECORD, *Trial by.* In practice. A mode of trial in use where a matter of record is pleaded in any action, as a judgment, and the opposite party pleads *nul tiel record*, that there is no such matter of record existing. The issue arising hereon is tried merely by the record itself, that is, by the inspection of the court, without witnesses or jury; and accordingly upon such issue, the record alleged is ordered to be brought into court, that it may be seen and inspected.* 3 *Bl. Com.* 331. 3 *Steph. Com.* 583, 584. A record must be tried by itself, and importing verity, if a party desires to controvert it, the record alone must be relied upon for that purpose, by the introduction of a more perfect record. 28 *Mississippi R.* 398.

RECORDARE. L. Lat. In American practice. A writ to bring up judgments of justices of the peace. 3 *Jones'* (N. C.) *Law R.* 491.

RECORDARI. L. Lat. In old English law. To record. *Sed quid si curia* recordetur *quod querens servitium petitum recognovit, in curia ipsa;* but what, if the court should *record* that the plaintiff acknowledged the service demanded in the court itself. *Bract.* fol. 157 b. *Recordata;* recorded. *Fleta*, lib. 2, c. 13, § 9.

RECORDARI FACIAS LOQUELAM. L. Lat. (You cause the plaint to be recorded.) In English practice. A writ by which a suit or plaint in replevin may be removed from a county court to one of the courts of Westminster Hall. 3 *Bl. Com.* 149. 3 *Steph. Pl.* 522, 666. So termed from the emphatic words of the old writ, by which the sheriff was commanded to *cause the plaint to be recorded*, and to have the record before the superior court. *Reg. Orig.* 5 b.

RECORDATOR. L. Lat. In English law. Recorder. 12 *East*, 559.

RECORDATUR. L. Lat. (It is recorded.) In old English practice. An entry made upon a record, in order to prevent any alteration of it. 1 *Ld. Raym.* 211.

RECORDER. L. Fr. In Norman law. To recite or testify on recollection what had previously passed in court. This was the duty of the judges and other principal persons who presided at the *placitum*,—thence called *recordeurs*. *Steph. Pl.* Appendix, Note (11.) In the Assises de Jerusalem, it is one of the directions given to litigants, that they should collect as many of their own friends as possible in court, and request them to be attentive to what was said, with a view of enabling themselves to retain and *record* it properly (*si que il sachent bien le* recorder) at the time of judgment or trial. *Assis. de Jerus.* c. 44.

In old English law. To state, recite or relate, as a judge did to a jury. *Britt.* c. 52.

RECORDER. [L. Lat. *recordator.*] In old English law. A person whom the mayor or other magistrate of any city or town corporate, having jurisdiction or a court of record within their precincts, associated to him for his better direction in matters of justice and proceedings according to law. *Cowell.*

In modern law. The chief judicial officer of a borough or city, exercising within it, in criminal matters, the jurisdiction of a court of *record*. *Brande.* The chief criminal judge of a city.

In some of the United States, as in Pennsylvania and Ohio, registers of deeds are called *recorders*. *Purdon's Dig.* 219, (ed. 1857.) *Swan's Statutes*, 789, ch. 96, (ed. 1854.)

RECORDUM. L. Lat. In old English and Scotch law. A record. *Si curia* recordetur *quod querens, &c. tunc querens* recordum *illud dedicere poterit, et cognitionem contra* recordum *curiæ;* if the court should record that the plaintiff, &c. then the plaintiff may deny that record, and the acknowledgment, against the record of the court. *Bract.* fol. 157 b. See *Fleta*, lib. 2, c. 13, § 9. *Id.* c. 53, § 3. *Skene de Verb. Sign.*

Recorda sunt vestigia vetustatis et veritatis; records are the traces of antiquity and of truth. 2 *Roll. R.* 296.

RECOUPE, *Recoop.* [from L. Fr. *recouper*, to cut again, or to cut out and keep back.] To diminish a claim for damages by cutting out or keeping back a part.* Cowell interprets it, "to defalk or discount." Where a man had ten pounds issuing out of certain lands, and he disseised the tenant of the land, in an assise brought by the disseisee, the disseisor might *recoupe* the rent in the damages, in order to avoid circuity of action. 5 *Co.* 30 a, *Coulter's case.* An executor *de son tort* is not allowed to retain or *recoupe* any

part of the deceased's goods to satisfy his own debt. *Id. ibid.* 3 *Campb.* 282.

This old word has been revived to a considerable extent in modern law. "Where a man brings an action for breach of a contract between him and the defendant, and the latter can show that some stipulation in the same contract was made by the plaintiff, which he has violated, the defendant may, if he choose, instead of suing in his turn, *recoupe* his damages, arising from the breach committed by the plaintiff, whether they be liquidated or not. The law will *cut off* so much of the plaintiff's claim as the cross damages may come to." Cowen, J. 22 *Wendell's R.* 156. See *Recoupment.*

RECOUPER. The old form of *Recoupment*, (q. v.)

RECOUPMENT. [from *recoupe*, q. v.] In practice. Defalcation or discount from a demand. A keeping back something which is due, because there is an equitable reason to withhold it. Reduction or diminution of damages in an action on a contract, from breach of warranty or defects in the performance. The principle of *recoupment* has been established in the state of New-York in several cases of recent occurrence. 22 *Wendell's R.* 155. 3 *Hill's R.* 171, 174. 5 *Id.* 63, 71, 76. 7 *Id.* 53. 3 *Kernan's R.* 151. It is distinguished from set-off. 3 *Hill's R.* 171. See 2 *Kent's Com.* 472. *Sedgw. Meas. of Dam.* ch. 17. In the late Vermont case of Barber *v.* Chapin, (28 *Vermont R.* 413, 415,) Redfield, C. J. observed that "the modern use of this term is confessedly so indefinite as to afford no reliable grounds upon which it is safe to proceed." See the different applications of the term shown. *Id. ibid.*

RECOUSSE. Fr. In French law. Recapture. *Emerig. Tr. des Ass.* ch. 12, sect. 23.

RECOVER. [from L. Fr. *recoverer*, from Lat. *recuperare*, qq. v.] To obtain by course of law; to obtain by means of an action, or by the judgment rendered in an action; to succeed in an action. The ordinary judgment for a plaintiff in an action at law is "that he do *recover.*" See *Quod recuperet.*

RECOVEREE. In old conveyancing. The party who suffered a common recovery; the tenant of the freehold, against whom lands were recovered by the process of a common recovery, and by that means conveyed to the party recovering.* 2 *Bl. Com.* 357—359.

RECOVERER, *Recovrir.* L. Fr. [from Lat. *recuperare*, q. v.] To recover; to obtain by action, or course of law. *Le villeyn ne purra jammes* recoverer *encontre son seigniour;* the villein may never recover against his lord. *Britt.* c. 43. *Le seigniour del soil* recovera *damages vers eux;* the lord of the soil shall recover damages against them. *Id. ibid.* Hence the English *recover*, which form indeed appears in the French of Littleton. *Si home* recover *debt ou damages. Litt.* sect. 504.

RECOVEROR. In old conveyancing. The party recovering lands by the process of a common recovery; the party to whom the lands were, by this process, conveyed.* 2 *Bl. Com.* 357, 358.

RECOVERY. The obtaining a thing by the judgment of a court, as the result of an action brought for the purpose.

A species of conveyance now abolished or disused. See *Common recovery.*

RECREANT. L. Fr. and Eng. [L. Lat. *recreantus*, q. v.] In old English law. Cowardly; faint-hearted; yielding to an adversary; acknowledging defeat. "An odious word," by which a combatant in the trial by battel, acknowledged himself to be vanquished, or acknowledged his guilt. See 3 *Bl. Com.* 340. See *Recreantus, Craven.*

RECREANTIA. L. Lat. In old English law. Recreancy; cowardice; submission to an adversary; acknowledgment of guilt. *Bract.* fol. 153. See *Recreantus.* Called in Glanville and Fleta, *recreantisa. Glanv.* lib. 2, c. 3. *Fleta*, lib. 1, c. 38, § 18.

RECREANTUS. L. Lat. In old English law. Recreant; cowardly; yielding to an adversary; acknowledging defeat or guilt. *Non sufficit quod appellatus cognoscat se fuisse socium suum, vel latronem, vel aliquid consimile ad* recreantiam, *nisi dicat illud verbum odiosum quod* recreantus *sit;* it is not enough that the appellee acknowledges himself to have been his accomplice, or a robber, or any thing like to recreancy, unless he say that odious word, that he is *recreant. Bract.* fol. 153.

RECRIMINATION. [from *re*, back, and *crimen*, an accusation; L. Lat. *compensatio criminis.*] A counter-accusation; an accusation made by an accused party against the accuser.* A set-off by a de-

fendant of equal guilt on the part of the complainant in a suit for a divorce, on the ground of adultery. *Shelf. Marr. & Div.* 440.

RECTARE, *Rettare, Retare.* L. Lat. In old English law. To accuse; to charge. See *Arrectare.*

RECTATIO. L. Lat. In old records. A claim of right, or appeal to law for the recovery of it. *Chartul. Radinges*, MS. cited in *Cowell.*

RECTATUS, *Rettatus.* L. Lat. [from L. Lat. *rectum;* L. Fr. *rette*, an accusation.] In old English law. Suspected; accused; charged; summoned to answer an accusation, (*ad rectum vocatus.*) *Spelman. Glanv.* lib. 1, c. 31. In the old writ *De odio et atia*, given by Bracton, the sheriff was commanded to summon a jury to inquire "*utrum A. de N. captus et detentus in prisona nostra de tali loco, de morte B. unde* rectatus *et appellatus est*, rectatus *sit vel appellatus de morte illa odio et atya*," &c.; whether A. of N. taken and detained in our prison of such a place, for the death of B. whereof he is accused and appealed, be accused or appealed of that death by hatred and malice, &c. *Bract.* fol. 123. In the form of the same writ in the Register, *rettatus* is the word employed. *Reg. Orig.* fol. 133 b. See *Rettatus.* Rectati *de morte hominis;* charged with the death of a man. *Bract.* fol. 117 b. Rectati *de latrocinio;* accused of robbery. *Id. ibid.* See *Arrect, Arrectare.*

Skene translates this word, "summoned to court *to do right*," (*vocatus in jus ut* rectum *faciat.*) *Sken. not. ad Leg. Burg.* c. 80. But this is not approved by Spelman. It occurs several times in a special writ issued by Henry III. to certain justices in eyre, and which is given at length in Blount.

RECTE. Lat. In the civil law. Rightly. *Dig.* 50. 16. 73. As to the interpretation of this word, see *Id. ibid.*

RECTITUDO. L. Lat. In Saxon and old English law. A right or legal due. *Rectitudines;* rights. *LL. Edw. Conf.* c. 30. *LL. Hen.* I. c. 6. *Cowell.*

RECTO, *De.* L. Lat. Of right. See *De recto.*

RECTOR. Lat. and Eng. [from *regere*, to govern.] In English ecclesiastical law. A person having the charge or care of a parish church; a parson; literally, the governor of a church. 1 *Bl. Com.* 384. The word is as old as the time of Bracton, who applies it in precisely its modern sense. *Et sciendum quòd tantum* rectoribus ecclesiarum parochialium, *qui instituti sunt per episcopos et ordinarios*, ut personæ; and it is to be known that it [the assise of *Utrum*] lies only for rectors of parish churches, who are instituted by the bishops and ordinaries, as parsons. *Bract.* fol. 285 b. See *Fleta*, lib. 4, c. 20, §§ 9—11. It appears to have been used on the continent at an early period. *Spelman*, voc. *Rector ecclesiæ.*

RECTOR PROVINCIÆ. Lat. In the Roman law. The governor of a province. *Cod.* 1. 40.

RECTORY. [L. Lat. *rectoria.*] In ecclesiastical law. The office of a rector. *Spelman*, voc. *Rectoria.*

An entire parish church, with all its rights, glebes, tithes and other profits whatsoever; otherwise commonly called a benefice. *Id.*

A rector's manse, or parsonage house, (*pro mansione seu domicilio rectoris.*) *Id.*

RECTUM. Lat. In old English law. Right; law. *Nulli vendemus, nulli negabimus, aut differemus justitiam vel* rectum. To none will we sell, to none will we deny justice or right. *Magna Charta*, c. 29. See 2 *Inst.* 56. *De* recto *deficere;* to fail of right; to fail in doing right or justice. *Bract.* fol. 330 b. A term peculiar to the law of England. *Quod in jure scripto* jus *appellatur, id in lege Angliæ* rectum *esse dicitur;* what in the written (civil) law is called *jus*, in the law of England is said to be *rectum. Fleta*, lib. 6, c. 1, § 1.

A right claimed by a party; a right to land claimed by the writ called a writ of right, (*breve de* recto.) *Præcipimus vobis* [*tibi,*] *quod sine dilatione plenum* rectum *teneatis* [*teneas*] *tali de tanto terræ*, &c.; we command you that without delay you do full *right* to such a one, of so much land, &c. *Reg. Orig.* 1. *Bract.* fol. 328.

RECTUM, *Rettum.* L. Lat. [from L. Fr. *rette.*] In old English law. An accusation or charge of crime; suspicion of crime. *Spelman. Illi qui per commune* rectum *sunt retenti, si plegios invenire possunt standi* ad rectum *si quis adversus eos loqui voluerit, liberentur;* those who are detained upon common accusation [of the county or hundred,] if they can find pledges to stand to the accusation [that is to appear and answer it,] if any one choose to speak against them, shall be discharged. *Rog. Hoved. Annal.* part. post.

fol. 273 a, n. 40. This passage, given by Spelman from Hoveden, is repeated by the editor of Cowell, but misinterpreted to mean a *trial*.

In the Register, *rettum* occurs as a form of this word, closely resembling the Fr. *rette*, from which it is undoubtedly derived. *Reg. Orig.* 77 b. See *Rettum*.

RECTUS. Lat. Right; upright; straight; straight forward; direct. See *Rectus in curia*, *Linea recta*.

RECTUS IN CURIA. L. Lat. Right in court; free from charge or impeachment; in a proper position before a court; regularly in court.* One that stands at the bar, and no man objects any thing against him. *Cowell.* One who has cleared himself of a charge, as by reversing an outlawry in an action, and is thereby restored to his former position.* *Id.*

Rectus, in this still common phrase, has not only the sense of *proper*, *lawful* or *regular*, but also the radical meaning of *upright*, expressive of the posture of one who "*stands* at the bar," and in the confidence of innocence, boldly confronts an adversary. The figurative term "*stand*" is used in a variety of applications, both in ancient and modern law. See *Stand*, *Stare*, *Persona standi in judicio*.

RECUPERARE. Lat. To recover; to regain; to get again what one has lost, (*quod amissum in nostram potestatem redigere.*) *Calv. Lex.*

RECUPERATIO. Lat. [from *recuperare*, q. v.] In old English law. Recovery; restitution by the sentence of a judge, of a thing that has been wrongfully taken or detained. *Co. Litt.* 154 a. According to Lord Coke, "it is all one with *evictio*, in the civil law." *Id. ibid.*

RECUPERATORES. Lat. [from *recuperare*, to recover.] In the Roman law. Persons appointed by the prætor, in private actions, to examine the facts, or try the cause. They seem to have been peculiar to actions in which the recovery of some certain thing was demanded by the *actor* or plaintiff, and are thus distinguished by Dr. Hallifax, from the *judices*, properly so called. *Hallifax*, *Anal.* b. 3, c. 8, num. 11.

RECUSANTS. [Lat. *recusantes*, from *recusare*, to refuse.] In English law. Persons who refused to attend the service of the Church of England. 4 *Bl. Com.* 56. Chiefly papists, and otherwise termed *popish recusants*. *Id. ibid.* Persons refusing to conform to the ceremonies of the Church of England, or take the oath appointed against papists. 1 *Steph. Com.* 103.

RECUSATIO JUDICIS. Lat. In the civil and canon law. Refusal or rejection of a *judex* or judge; disapprobation of, or objection to a person proposed or assigned as a judge. *Cod.* 3. 1. 16. *Decretal.* lib. 2, tit. 28, c. 26. Supposed to correspond to the *challenge of a juror*, in the practice of the common law. 3 *Bl. Com.* 361.

In Bracton's time, a judge or justice might be objected to, and refused for sufficient cause, as if he were of kin to the demandant, or his dependent, (*homo vel subditus*,) relative or friend, or the enemy of the tenant, (defendant) or if he had been the party's counsellor, or counter, (*narrator*) in that or another cause. *Bract.* fol. 412. But the law has long been otherwise. *Co. Litt.* 294 a. 3 *Bl. Com. ub. sup.*

RECUSATIO TESTIS. Lat. In the civil law. Rejection of a witness, on the ground of incompetency. *Best on Evid.* Introd. 60, § 60.

RED BOOK OF THE EXCHEQUER. [L. Lat. *Liber Ruber Scaccarii.*] In English law. An ancient manuscript volume kept in the exchequer, containing several miscellaneous treatises; an account of the number of hides of land in several counties before the Conquest; a collection of the escuages under Henry II. Richard I. and John; a description of the ceremonies used at the coronation of Queen Eleanor, wife to Henry III. and other matters. *Cowell.* It is supposed by Mr. Madox to have been compiled by Alexander de Swereford, Archdeacon of Shrewsbury, and an officer in the exchequer in the latter end of Henry II. 1 *Reeves' Hist. Eng. Law*, 220, note. But the compiler is otherwise described as Archdeacon of Salop, and treasurer of St. Paul's, who died A. D. 1246, in the 31st year of Henry III. *Cowell.* See 2 *Show.* 299.

REDDENDO. L. Lat. [from *reddere*, to render.] In old conveyancing. Rendering. The formal word by which a rent was reserved to a grantor. Reddendo *inde per annum, tantum, ad certos terminos tales;* rendering therefor so much per year, at such certain times. *Bract.* fol. 35. *Fleta*, lib. 3, c. 14, § 7. See *Co. Litt.* 47 a. *Bell's Dict.* This was a more grammatically correct expression than *reddendum*, which was afterwards used, as it agreed with "*tali*," the grantee, to whom it referred.

REDDENDO SINGULA SINGULIS. Lat. Rendering or assigning separate things to separate persons, or separate words to separate subjects; making distribution; construing distributively. 5 *Co.* 7 b, *Justice Windham's case.* An expression used to denote the separation and distribution of the words of an instrument among several subjects, so as to give effect to the intention of the parties. 1 *Spence's Chancery*, 540. Lord Ellenborough, 11 *East*, 451.

REDDENDUM. L. Lat. [from *reddere*, q. v.] In conveyancing. Rendering; yielding. The technical name of that clause in a conveyance by which the grantor creates or reserves some new thing to himself, out of what he had before granted, as "*rendering* therefor yearly, the sum of ten shillings, or a pepper corn," &c. 2 *Bl. Com.* 299. 1 *Steph. Com.* 450, 451. *Perkins*, ch. 10, ss. 625, 630, 631. That clause in a lease in which a rent is reserved to the lessor, and which commences with the word "*yielding*," or "*rendering*."

REDDENS CAUSAM SCIENTIÆ. L. Lat. (Giving the reason of his knowledge.) In Scotch practice. A formal phrase used in depositions, preceding the statement of the reason of the witness' knowledge. 2 *How. Stat. Trials*, 715.

REDDERE. Lat. In old English law. To render; to pay; to give or yield. *Ad debitum reddendum;* to pay the debt. *Mag. Cart.* 9 Hen. III. c. 8. *Et si capitalis debitor deficerit in solutione debiti, non habens unde* reddat, *aut* reddere *nolit, cum possit;* and if the principal debtor fail in payment of the debt, not having wherewith to pay, or shall refuse to pay when able. *Id. ibid.* See *Reddendum*, *Redditus.*

In the civil law. To give back, (*retro dare;*) to restore. *Calv. Lex.* Lord Coke, in giving the etymology of *redditus*, adopts this sense of the word. Reddere *est quasi* retro dare. 10 *Co.* 128 a, *Clun's case.* See *Redditus. Reddere*, however, had in the civil law the sense of *giving* also. *Verbum* reddendi *quamquam significatum habet* retro dandi, *recipit tamen et per se* dandi *significationem. Dig.* 50. 16. 94. And see *Id.* 89.

REDDIDIT SE. L. Lat. (He has rendered himself.) In old English practice. A term applied to a principal who had rendered himself in discharge of his bail. 7 *Mod.* 98. *Holthouse.*

REDDITARIUS. L. Lat. [from *redditus*, q. v.] In old records. A renter; a tenant. *Cowell.*

REDDITARIUM. L. Lat. [from *redditus*, q. v.] In old records. A rental, or rent-roll. *Cowell.*

REDDITION. In old practice. A judicial confession and acknowledgment that the land or thing in demand belonged to the demandant, or, at least, not to the person so surrendering. *Cowell.*

REDDITUS. L. Lat. [from *reddere*, to render, yield or pay.] In old English law. A rent; a payment; a thing rendered, paid or yielded. *Item potest quis esse tenens meus* reddendo *mihi* redditum, *et possum* redditum *illum dare alicui, et attornare tenentem meum ad* reddendum redditum *illum meo feoffato per manum suam;* also a man may be my tenant by rendering (or paying) to me a rent, and I may give that rent to any one, and attorn my tenant to pay that rent to my feoffee with his own hand. *Bract.* fol. 160.

Reditus is another form of this word, which occurs in the Register. *De* reditu *unius libræ zinziberis;* of a rent of one pound of ginger. *Reg. Orig.* 2. This is the form adopted by Sir W. Blackstone, who makes the radical sense of the word to be, *return*, (from *redire*, to return.) 3 *Bl. Com.* 231. *Id.* 42. And Lord Coke, even while adopting the orthography *redditus*, and the etymology, *reddere*, gives to both the same sense of *going back.* Reddere *est quasi* retro dare, *et* redditus *dicitur a* reddendo, *quia* retro *it, sc.* to the lessor. 10 *Co.* 128 a, *William Clun's case.* But this is giving to *reddere* its civil law sense.

That *redditus* is the proper form of this word, seems apparent from the passage above quoted from Bracton, in which the derivation from *reddere* is very clearly pointed out by the mere collocation of the words.

REDDITUS SICCUS. L. Lat. In old English law. Rent seck; dry or barren rent. 2 *Bl. Com.* 42. *Redditus cœcus et siccus.* 6 *Co.* 58 a.

REDDOUR. L. Fr. A rendering. *Kelham.*

REDEMPTIO. L. Lat. In old English law. A ransom, or fine. *Stat. Marlbr.* c. 1. Spelman calls it the heaviest kind of fine, (*mulcta gravissima,*) and makes it to be the same with the Saxon *were* or *weregild.*

A ransom. A sum paid as a condition

of liberation from confinement. *Fleta*, lib. 1, c. 42, § 2.

REDEUNDO. Lat. Returning; in returning; while returning. 3 *East*, 89. 2 *Stra.* 985.

REDEVANCE. Fr. In old French and Canadian law. Dues payable by a tenant to his lord, but not necessarily in money. *Dunkin's Address*, 19.

REDHIBERE. Lat. In the civil law. To have again; to have back; to cause a seller to have again what he had before, (*facere ut rursus habeat venditor quod habuerit.*) *Dig.* 21. 1. 21, pr.

REDHIBITIO. Lat. [from *redhibere*, q. v.] In the civil law. A returning, (*redditio.*) *Dig.* 21. 1. 21, pr. The returning of a thing purchased to the seller. *Id.* See *Redhibition.* Some copies, in place of *redditio* in this passage, have *rehabitio*, a re-having.

REDHIBITION. [Lat. *redhibitio*, from *redhibere*, to have back.] In the civil law. The returning of a thing purchased to the seller, on the ground of some defect or fraud;* the annulling or undoing of a sale, (*venditionis resolutio.*) *Calv. Lex.* The avoidance of a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed that the buyer would not have purchased it, had he known of the vice. *Civil Law of Louis.* art. 2496.

REDHIBITORY ACTION. In the civil law. An action by the buyer of a thing against the seller, to compel the latter to take it back and return the price. *Pothier, Contr. of Sale*, num. 203. *Civ. Code of Louis.* art. 2512.

REDHIBITORY DEFECT (or VICE.) In the civil law. A defect in an article sold, for which the seller may be compelled to take it back; a defect against which the seller is bound to warrant. *Pothier, Contr. of Sale*, num. 203.

REDIMERE. Lat. In old English law. To ransom; to punish by a fine; to compel to pay a fine or ransom. *Stat. Westm.* 2, c. 36. *Cart. de Forest.* c. 10.

RE-DISSEISIN. [L. Lat. *re-disseisina.*] In old English law. A second disseisin of a person of the same tenements, and by the same disseisor, by whom he was before disseised. 3 *Bl. Com.* 188. *Fleta*, lib. 4, c. 29. Called, in the statute of Marlbridge, (c. 8,) a repeated disseisin, (*iterata disseisina.*)

A writ which lay in such case, (*breve de redisseisina.*) *Reg. Orig.* 206 b.

REDITUS. Lat. [from *redire*, to return.] In the civil law. A return; the fruit, profit or income of a thing. *Calv. Lex.* It is observed that it might also be written *redditus*, and derived from *reddere*, to yield. *Id. ibid.* See *Redditus.*

In the common law. A rent; rents. Blackstone translates it a compensation or *return*, (which justifies the derivation from *redire*, to return,) but he translates it also a *render*, (which requires the derivation from *reddere*, to render.) 2 *Bl. Com.* 41. This form of the word is apparently taken from the civil law. See *supra.* For reasons why the form *redditus* is preferred, see *Redditus.*

Reditus albi. White rents, or blanch farms. 2 *Bl. Com.* 42. See *Blanch ferme.*

Reditus capitales. Chief rents. *Id. ibid.* See *Chief rents.*

Reditus nigri. Black rents or black mail. *Id. ibid.* See *Black rents.*

Reditus quieti. Quit rents. *Id. ibid.* See *Quit rents.*

Reditus siccus. Rent seck. *Id. ibid.* See *Rent seck.*

REDOBATORES. L. Lat. In old English law. Redubbers. Persons who changed stolen clothes into a new form, making out of a mantle a coat or overcoat, (*de mantello tunicam vel supertunicam facientibus.*) *Stat. Walliæ*, 12 Edw. I. *Barr. Obs. Stat.* 124.

REDUBBOURS. L. Fr. [L. Lat. *redobatores*, q. v.] In old English law. Persons who knowingly bought stolen clothes, and changed them into another form; (*achatauntz ascient dras embles, et les attirent en auter forme.*) *Britt.* c. 29. *Cowell.*

REDUCE. In Scotch law. To rescind or annul; to declare void judicially. See *Reduction.*

REDUCTION. In Scotch law. An action brought for the purpose of rescinding, annulling or cancelling some deed, bond, contract or other instrument in writing. 1 *Forbes' Inst.* part 4, p. 158, 159. See *Bell's Dict.*

RE-ENTRY. The resuming or retaking a possession that one has lately foregone. *Cowell.* Particularly applied to land. The entry by a lessor upon the premises leased, on failure of the tenant to pay the rent or perform the covenants in the lease; such re-entry being made pursuant to a proviso contained in the lease.

REEVE, *Reve.* [from Sax. *gerefa*, q. v.] In old English law. A ministerial officer appointed to execute process. *Crabb's Hist.* 25. The *shire-reeve* answered to the modern *sheriff*. *Id.* 1 *Bl. Com.* 116. An officer appointed to collect taxes or public dues. *Spelman*, voc. *Grafio.*

A chief officer or governor; a superintendent, (*præfectus*, *præpositus.*) A disposer or director. *Co. Litt.* 61 b. See *Reve.*

An officer of a court leet. 1 *Crabb's Real Prop.* 502, § 647.

RE-EXCHANGE. [Fr. *rechange;* L. Lat. *recambium.*] In commercial law. The amount which the holder of a bill of exchange which has been protested for non-payment, is entitled to receive from the drawer or indorser, to indemnify him for its non-payment, together with his necessary expenses and interest.* The amount for which a bill of exchange drawn upon the drawer or indorser of an unpaid bill can be purchased by the holder, in the country where the acceptance is made, to indemnify him for its non-payment.* *Story on Bills*, § 400.

Properly, the current rate of exchange payable on a bill so re-drawn. See 3 *Kent's Com.* 115, 116. According to Heineccius, it includes all the damage or expenses to which the holder is entitled, (*damnum illud omne repetitur sub nomine recambii.*) *Heinecc. de Camb.* c. 4, § 45.

RE-EXTENT. In English practice. A second extent made upon lands or tenements, upon complaint made that the former extent was partially performed. *Cowell.*

REFECTIO. Lat. [from *reficere*, q. v.] In civil and old English law. Repair; reparation; restoration; as of a way, &c. *Dig.* 43. 19. 3. 16. *Fleta*, lib. 4, c. 27, § 1.

REFEREE. In practice. A person to whom a cause pending in a court is referred by the court, to take testimony, hear the parties and report thereon to the court, and upon whose report, if confirmed, judgment is entered.

REFERENCE. In practice. The act of a court in referring a cause or matter pending before it to one or more referees, to examine, take testimony and report to the court.

REFERENDARIUS. L. Lat. In civil and mediæval law. An officer through whom petitions to the emperor were presented, or to whom they were referred. *Nov.* 10, 113, 124. *Cod.* 1. 50. 2. *Calv. Lex. Brissonius.* Supposed to correspond with the officer called "master of requests."

REFERENDARY. [L. Lat. *referendarius.*] In Saxon law. A master of requests; an officer to whom petitions to the king were referred. *Spelman*, voc. *Referendarius.*

REFERENDO SINGULA SINGULIS. Lat. Referring individual or separate words to separate subjects; making a distributive reference of words in an instrument; construing distributively. Lord Ellenborough, 11 *East*, 322. 2 *Powell on Devises*, (by Jarman,) 112. See *Reddendo singula singulis.*

REFERRE. Lat. In old English law. To refer. Referantur *ad justiciarios n'ros de banco, et ibi terminentur;* they shall be referred to our justices of the bench, and shall there be determined. *Mag. Cart.* 9 Hen. III. c. 12.

REFFARE. L. Lat. [from Sax. *rœfare*, to spoil.] In old European law. To rob, or rifle; to plunder. *L. Salic.* tit. 29, § 6. *Spelman. LL. Hen.* I. c. 83. *Cowell.* See *Reif.*

REFICERE. Lat. In the civil law. To repair; to restore; to reduce a way or road to the original form or state, (*ad pristinam formam reducere.*) *Dig.* 43. 19. 3. 15. To restore a thing (as a trench or water-course) to its former state, (*in pristinum statum restaurare.*) *Id.* 43. 21. 6. Bracton adopts the word and its definition, (*in pristinum statum reformare.*) *Bract.* fol. 233. See *Fleta*, lib. 4, c. 27, § 11.

REFOIL, *Refoule.* L. Fr. [L. Lat. *refullum.*] A flowing out, or back. *Refoil de la mere;* ebbing of the sea. *Kelham.*

REFORM. Literally, to form again; to correct or amend; to treat as corrected or amended. In equity jurisprudence,—to treat an instrument in which an error of fact has been committed, as though such error did not exist; to construe it according to the original intent of the parties.* Equity will *reform* a contract where there is a mistake of facts. 1 *Story's Eq. Jur.* §§ 152, 166.

REFULLUM. L. Lat. In old English law. A flowing back. *Fleta*, lib. 4, c. 27, § 4.

REFUTANTIA. L. Lat. In old records. An acquittance or acknowledgment of renouncing all future claim. *Cowell.*

REG. GEN. An abbreviation of *Regula Generalis.* 6 *East*, 1.

REGALE. L. Lat. In old French law. A payment made to the seigneur of a fief, on the election of every bishop or other ecclesiastical feudatory, corresponding with the relief paid by a lay feudatory. *Steph. Lect.* 235.

REGALIA. Lat. [*regalis*, royal, from *rex*, king.] In English law. Royal rights or prerogatives. 1 *Bl. Com.* 241. The word is used in feudal law. *Feud. Lib.* 2, tit. 56.

REGARD. L. Fr. Reference; relation. *Kelham.*

Respect. *Id.*

Reward; fee; a perquisite or allowance. *Id.*

REGARD. [L. Lat. *regardum*, *rewardum*, from L. Fr. *regarder*, to look to, or look at.] In forest law. Inspection or supervision of a forest. *Manwood. Cowell.* See *Regardum.*

REGARDANT. L. Fr. and Eng. In old English law. A term applied to a villein who was annexed to the land. 2 *Bl. Com.* 93. So called because he had the charge to do all base or villeinous services within the manor. *Co. Litt.* 120 a, b.

REGARDATOR. L. Lat. In old forest law. A regarder, (q. v.) *Regardatores nostri eant per forestas ad faciendum regardum;* our regarders shall go through the forests to make regard. *Cart. de For.* 9 Hen. III. c. 5.

REGARDER. [L. Lat. *regardator*, from L. Fr. *regardeur*, an inspector.] In forest law. An officer of the forest, appointed to supervise all other officers. *Crompt. Jurisd.* 153. *Manwood. Cowell.*

REGARDUM. L. Lat. In old forest law. Regard; inspection of a forest. *Cart. de For.* 9 Hen. III. c. 5. *Fleta*, lib. 2, c. 41, §§ 1, 5.

REGIA VIA. Lat. [L. Fr. *real chymin.*] In old English law. The royal way; the king's highway. *Co. Litt.* 56 a.

REGIAM MAJESTATEM. Lat. The most ancient treatise extant on the law of Scotland, commonly supposed to have been compiled by order of David I. but shown by Lord Kames not to be older than the reign of David II. *Home's Brit. Ant.* Essay 1. It consists of four books, and derives its title from the two words with which it commences, like the *Regiam potestatem* of Glanville, and from this and numerous other points of resemblance, it is now generally admitted, even by Scotch writers, to have been copied from Glanville's treatise. Dr. Robertson observes that "it seems to be an imitation, and a servile one, of Glanville." 1 *Robertson's Charles* V. Appendix, Note xxv. 1 *Reeves' Hist. Eng. Law*, 225, 226. *Crabb's Hist.* 70, 71. 1 *Steph. Com.* 83, note (*l.*) Sir Matthew Hale, in his History of the Common Law, (c. x.) goes into a comparison of the two works. The Regiam Majestatem is still quoted in the Scotch courts. See 3 *Bell's Appeal Cases*, 131, 132. 2 *Swinton's R.* 409. Skene's Glossary *De Verborum Significatione* is principally intended as an interpreter of this work.

REGIDOR. Span. In Spanish-American law. A member of a municipal or town council, (*ayuntamiento.*) 12 *Peters' R.* 442, note. The body of *regidores* constituted what was called the *regimiento. Id. ibid.*

REGIMIENTO. Span. In Spanish American law. The body of *regidores*, composing a part of the *ayuntamiento*, or municipal council of a town. 12 *Peters' R.* 442, note.

REGISTER. An officer authorized to keep a public record, or charged with the custody of records. In the city of New-York, the register of deeds is an officer whose duty it is to receive and record deeds, mortgages, and other instruments, and to preserve such records. In Pennsylvania, a register is an officer charged with probate of wills. *Purdon's Dig.* 187, *et seq.*

REGISTER. L. Fr. and Eng. [L. Lat. *registrum;* from O. Fr. *gister*, to lay, or put in a place.] A repository; a place where a thing is laid up, (*locus quo quid reponitur.*) *Spelman.*

A book in which things are entered or registered for their preservation.* *Cowell.*

REGISTER, or REGISTER OF WRITS. [L. Lat. *Registrum Brevium.*] A celebrated collection, in Latin, of writs, original and judicial, generally called, by way of eminence, "The Register," and one of the most ancient books of the common law. *Co. Litt.* 73 b, 159 a. Lord Coke, indeed, has pronounced it to be the oldest book in the law, and considers it as a component part of what he calls "the very body, and, as it were, the very text of the common law of England." 4 *Inst.* 140. 8 *Co.* pref. Sir William Blackstone speaks of it as

"that most ancient and highly venerable collection of legal forms, the *registrum omnium brevium*, or register of such writs as are suable out of the king's courts." 3 *Bl. Com.* 183. It is otherwise called *Registrum Cancellariæ*, (The Register of Chancery,) and is supposed to have been compiled by Ranulph de Hengham, chief justice of the King's Bench in the reign of Edward I. *Crabb's Hist.* 199. It contains upwards of a thousand writs, adapted to every variety of case or injury, generally expressed with great brevity of language, and so perfect in construction as to receive from Blackstone the eulogy that "every man who is injured will be sure to find a method of relief exactly adapted to his own case, described in the compass of a few lines, and yet without the omission of any material circumstance." 3 *Bl. Com. ub. sup.* In confirmation of this remark, it may be observed that the writs of trespass (*de transgressione*) alone comprise upwards of two hundred and fifty forms. It has, however, been said by Lord Holt, that "half the writs used in Westminster Hall are not in the Register." 12 *Mod.* 645. And Lord Ellenborough observed, that "there are a multitude of writs in daily use and of unqualified legal validity and effect, which are not inserted in that collection." 9 *East*, 473.

The authority of the Register has always been of the very highest kind, and under the old system of remedy *by writ*, it was constantly referred to and regarded as the standard of form, absolutely decisive where any question of form was raised. *Plowd.* 125, 228. See 1 *Leon*, 169. It is called in Plowden, "our *Calapine*, that is, the Register," probably with reference to the author (Calepine) of a standard dictionary of the time. *Id.* 125. It is now rarely referred to, but is still valuable as a principal foundation of the remedial law of England and the United States. The purity of its Latin is particularly commended by Lord Bacon. *Bac. Read. Uses.*

REGISTER. In commercial law. A name frequently given to the certificate of registry of a vessel. 3 *Kent's Com.* 146, and note. *Id.* 150. *Jacobsen's Sea Laws*, 55. Properly, however, the *register* is the original entry made at the custom house, stating the time and place where the vessel was built, and the other particulars required by law, and of which the certificate of registry is an abstract. *Act of Congress*, 31st Dec. 1792, sect. 3, 4, 9. 3 *Kent's Com.* 142, 143.

REGISTRAR. An officer whose business is to write and keep a register.

In English law. An officer whose business is to keep a register of births, marriages and deaths, under the civil system of registration lately established. 3 *Steph. Com.* 349, 350.

REGISTRY. In commercial law. The registration of a vessel at the custom house, for the purpose of entitling her to the full privileges of a British or American built vessel. 3 *Kent's Com.* 139. *Abbott on Shipping*, 58—96.

In conveyancing. The entering on record of deeds, mortgages and other conveyances and instruments, in public offices appointed for the purpose, in order to give them validity as against *bona fide* purchasers and mortgagees. 4 *Kent's Com.* 456—459. This practice may be traced as far back as the time of Fleta. *Fleta*, lib. 3, c. 14, § 13.

REGLAMENTO. Span. In Spanish colonial law. A written instruction given by a competent authority, without the observance of any peculiar form. *Schmidt's Civ. Law*, Introd. 93, note.

REGRATER, *Regrator*. [L. Lat. *regratarius*, from Fr. *regrateur*, a retailer or huckster.] In old English and Scotch law. A person who bought up corn [grain] or other dead victual [provisions] in any market, and sold it again in the same market, or within four miles of the place. 4 *Bl. Com.* 158. 4 *Steph. Com.* 291, note (*m.*) 2 *Show.* 52. *Skene de Verb. Sign.*

The more ancient sense of the word, according to Spelman, was that of *retailer*, (*propola.*)

REGRATING. In old English law. The offence of buying grain or provisions in any market, and selling it again in the same market, or within four miles of the place.* 4 *Bl. Com.* 158. See *Bell's Dict.*

REGRESS. [Lat. *regressus*, from *regredi*, to go back.] A going back. *Dyer*, 31 b. *Ingress*, *egress* and *regress*, comprise the rights of going or entering upon land, going off it, and going back upon it.

REGRESSUS. Lat. [from *regredi*, to go back.] A going back; recourse; a going back to a party for the purpose of obtaining indemnity. *Sine* regressu *habendo versus suum feoffatorem;* without having recourse against his feoffor. *Bract.* fol. 179 b. *Fleta*, lib. 2, c. 64, § 17.

REGULA. Lat. In the civil law. A rule. *Regula est quæ rem quæ est, breviter enarrat;* that is a rule which briefly sets forth the subject matter of it. *Dig.* 50. 17. 1. See *Fleta*, lib. 2, c. 13, § 2. The seventeenth and last title of the fiftieth book of the Digests is entitled *De Diversis Regulis Juris Antiqui*, (Of divers rules of the ancient law.)

REGULA. Lat. In practice. A rule; a rule of court.

Regula generalis; a general rule. A standing rule or order of a court. Frequently abbreviated, *Reg. Gen.*

REGULA CATONIANA. Lat. In the Roman law. The rule of Cato. A rule respecting the validity of dispositions by will. See *Dig.* 34. 7.

REGULAR CLERGY. In old English law. Monks who lived *secundum regulas* (according to the *rules*) of their respective houses or societies were so denominated, in contradistinction to the parochial clergy who performed their ministry in the world, *in seculo*, and who from thence were called *secular* clergy. 1 *Chitt. Bl. Com.* 387, note.

REGULARITER. L. Lat. In old English law. Regularly; strictly; according to rule; as a general rule. *Bract.* fol. 87 b. *Regulariter non valet pactum de re mea non alienanda;* regularly an agreement not to alien my property is not valid. *Co. Litt.* 223.

REGULUS. Lat. In Saxon law. A title sometimes given to the earl or *comes*, in old charters. *Spelman.*

REHABERE FACIAS SEISINAM. L. Lat. (You cause to re-have seisin.) In old practice. A writ which lay where a sheriff had delivered seisin of a greater part than he ought, commanding him to re-deliver seisin of the excess.* *Reg. Jud.* 12, 51, 54.

REHABILITATE. [L. Lat. *rehabilitare*, from *re*, again, and *habilitare*, to enable, from *habilis*, able.] In Scotch and French criminal law. To restore to a former capacity or ability.* To re-instate a criminal in his personal rights which he has lost by a judicial sentence. *Brande.* In Scotland, a pardon from the king is said to *re-habilitate* a witness laboring under *infamia juris. Id.*

REHABILITATION. [L. Lat. *rehabilitatio*, from *rehabilitare*, to re-enable.] In French and Scotch criminal law. The reinstatement of a criminal in his personal rights which he has lost by a judicial sentence. *Brande.*

In old English law. A papal bull or brief for re-enabling a spiritual person to exercise his function, who was formerly disabled; or a *restoring* to a former *ability. Cowell.*

RE-HEARING. In equity practice. A second hearing of a cause, for which a party who is dissatisfied with the decree entered on the former hearing may apply by petition. 3 *Bl. Com.* 453. 4 *Steph. Com.* 31. 3 *Daniell's Chanc. Pr.* 1602.

REHERCER. L. Fr. To rehearse; to state or recite. *Britt.* c. 52.

REI. Lat. [plur. of *reus*, q. v.] In the civil law. In a special sense. Persons from whom a thing is demanded, (*ii unde petitur.*) *Heinec. Elem. Jur. Civ.* lib. 3, tit. 17, § 841. Defendants. See *Reus*, **Favorabiliores rei**, &c.

In a general sense. Parties to an action; litigating parties, (*ii quorum de re disceptatur*) including both the *actor* and the *reus* proper. *Id. ibid.*

Parties to a contract. *Id. ibid.*

REI. Lat. [gen. of *res*, q. v.] Of a thing. See *Res.*

Rei turpis nullum mandatum est. The mandate of an immoral thing is void. *Dig.* 17. 1. 6. 3. A contract of mandate requiring an illegal or immoral act to be done, has no legal obligation. *Story on Bailm.* § 158.

REI INTERVENTUS. Lat. In Scotch law. A part performance of a contract. 2 *Bell's Appeal Cases*, 115.

REIF. Sc. [from Sax. *reaf.*] In old Scotch law. Robbery. *Skene ad Leg. Alexandri R.* c. 2, par. 2. *Cowell.*

RE-INSURANCE. See *Re-assurance.*

REISA. L. Lat. [from Sax. *ræse*, a rush.] In old European law. A sudden military expedition; a sally, (*procursus militaris.*) *Spelman.*

REJOIN. [L. Lat. *rejungere.*] In pleading. To answer a plaintiff's replication in an action at law, by some matter of fact. See *Rejoinder.*

REJOINING GRATIS. In English practice. Rejoining voluntarily, or without being required to do so by a rule to rejoin. 10 *Mees. & W.* 12.

REJOINDER. L. Fr. and Eng. [L. Lat. *rejunctio.*] In pleading. A defendant's answer of fact to a plaintiff's replication. *Steph. Pl.* 58, 59. *Co. Litt.* 303 b. 3 *Bl. Com.* 310. Corresponding to the *du-*

plicatio of the civil law, and the *triplicatio* of Bracton. *Inst.* 4. 14. 1. *Bract.* fol. 400 b.

The term *rejunctio*, of which *rejoinder* is a mere translation, seems to have been invented by the modern civilians. Spiegelius, who is cited by Cowell, defines it to be "an allegation which is allowed a defendant, to invalidate the plaintiff's replication, and strengthen his own exception (or plea.") Rejoinders were formerly common in chancery pleading, but have long been disused. *West's Symboleog.* part 2, tit. Chancery, sect. 113, p. 232 b.

RELATIO. Lat. [from *referre*, to carry back.] In old English law. Relation; reference; a carrying back. See *Relation.* *Relatio est fictio juris, et intenta ad unum.* Relation is a fiction of law, and intended for, or directed to one thing. 3 *Co.* 28 b, *Butler and Baker's case.* That is, it will not be applied to a collateral matter. *Id. ibid.*

Relatio semper fiat ut valeat dispositio. Reference [of a disposition made by will] should always be made, so that the disposition may have effect. 6 *Co.* 76 b, *Sir George Curson's case.*

RELATION. [L. Lat. *relatio*, from *referre*, to carry back.] The carrying back of an act or proceeding to some past or previous time or date, and giving it operation or validity from such time.* Thus letters of administration in certain cases take effect by *relation*, from the death of the intestate. 1 *Williams on Exec.* 528. So, a deed delivered as an escrow, and subsequently delivered as a deed, will sometimes be allowed to *relate back* to the first delivery, so as to give it effect from that time. 4 *Kent's Com.* 454. So, at common law, a judgment had effect by relation, from the first day of the term of which it was entered. 3 *Bl. Com.* 420. 1 *Arch. Pr.* 227. So, in England, the transfer of a bankrupt's property to the assignees, operates, by a retrospective relation, from the period when the trader became bankrupt. 2 *Steph. Com.* 206, 207.

Relation, as Lord Coke observes, is a fiction of law; the act or proceeding related being *supposed to have taken place* at the previous time or date. "The doctrine of *relation back* to a former period is a fiction which is often indulged in advancement of justice, to sustain legal proceedings; but it is never resorted to when the result would be to deprive a party of a clear legal right, or when it would work manifest injustice." Chilton, J. 21 *Alabama R.* 169, 175.

"RELATIONS," in a will, means persons entitled according to the statute of distributions. 4 *Kent's Com.* 537, note. It has long been settled, that a bequest to *relations* applies to the person or persons who would, by virtue of those statutes, take the personal estate under an intestacy, either as next of kin, or by representation of next of kin. 2 *Jarman on Wills*, 45, (33, Perkins' ed. 1849.)

RELATIVE FACT. In the law of evidence. A fact having relation to another fact; a minor fact; a circumstance. *Burr. Circ. Evid.* 121, note (*d.*)

RELATIVE RIGHTS. Those rights of persons which are incident to them as members of society, and standing in various relations to each other. 1 *Bl. Com.* 123.—Those rights of persons in private life which arise from the civil and domestic relations. 2 *Kent's Com.* 1.

RELATOR. In practice. An informer; a person in whose behalf certain writs are issued, such as attachments for contempt, writs of *mandamus* and informations in the nature of a *quo warranto*, &c. 3 *Bl. Com.* 264. See *Id.* 427. These are said to be prosecuted *on the relation* (*ex relatione*) of the person at whose instance they are issued. See *Ex relatione.*

RELATRIX. L. Lat. and Eng. In practice. A female relator, or petitioner. 14 *Peters' R.* 500, 517.

RELAXARE. L. Lat. In old conveyancing. To release. *Relaxavi, relaxasse;* have released. *Litt.* sect. 445. In Lampet's case, (10 *Co.* 52 b) reference was made to a case in 4 Edw. VI. where it was said that *laxare* is properly to set prisoners in fetters at liberty, and *relaxare* is to do it quickly; and *metaphoricè, relaxare* is to set at liberty fettered estates and interests, and to make them free and absolute.

RELAXATIO. L. Lat. [from *relaxare*, q. v.] In old conveyancing. A release; an instrument by which a person relinquishes to another his right in any thing. *Yearb.* P. 18 Hen. VI. 9. *Spelman.* A deed of release. See *Release.*

RELAXATION. In old Scotch practice. Letters passing the signet (q. v.) by which a debtor was relaxed [released] from the horn, that is, from personal diligence. *Bell's Dict.* See *Horning.*

RELEASE. [L. Fr. *reles, relesse, release,*

relais; L. Lat. *relaxatio.*] In conveyancing. A relinquishment or renunciation of some right or claim by one person, in favor of another.*—The giving or discharging of the right or action which a man hath, or may have or claim against another man, or that which is his. *Shep. Touch.* 320.

In a stricter sense—the conveyance of a man's interest or right which he hath unto a thing, to another that hath the possession thereof, or some estate therein. *Id. ibid.*—A discharge or a conveyance of a man's right in lands or tenements to another that hath some former estate in possession. 2 *Bl. Com.* 324.—The relinquishment of a right or interest in lands or tenements, to another who has an estate in possession in the same lands or tenements. *Watkins on Conv.* 213.—A conveyance of an ulterior interest in lands or tenements to a particular tenant, or of an undivided share to a co-tenant, (the relessee being in either case in privity of estate with the relessor,) or of the right, to a person wrongfully in possession. 1 *Steph. Com.* 479. The various kinds of release recognised in England are enumerated *infra.*

In the United States, the technical principles relating to a release seem to be wholly, or in great measure, inapplicable. The conveyance corresponding with a release at common law is with us a *quit-claim* deed, (q. v.) 2 *Hilliard's Real Prop.* 302, [316.]

RELEASE BY WAY OF ENLARGING AN ESTATE, (or *enlarger l'estate.*) A conveyance of the ulterior interest in lands to the particular tenant. As if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 1 *Steph. Com.* 480. 2 *Bl. Com.* 324.

RELEASE BY WAY OF PASSING AN ESTATE, (or *mitter l'estate.*) As where one of two co-parceners releases all her right to the other, this passes the fee simple of the whole. 2 *Bl. Com.* 324, 325.

RELEASE BY WAY OF PASSING A RIGHT, (or *mittèr le droit.*) As if a man be disseised and releaseth to his disseisor all his right, hereby the disseisor acquires a new right, which changes the quality of his estate, and renders that lawful which before was tortious or wrongful. 2 *Bl. Com.* 325.

RELEASE BY WAY OF EXTINGUISHMENT. As if my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A. this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder, as well as of A.'s particular estate. 2 *Bl. Com.* 325.

RELEASE BY WAY OF ENTRY AND FEOFFMENT. As if there be two joint disseisors, and the disseisee releases to one of them, he shall be sole seised, and shall keep out his former companion; which is the same in effect as if the disseisee had entered and thereby put an end to the disseisin, and afterwards had enfeoffed one of the disseisors in fee. 2 *Bl. Com.* 325.

RELEASE. An instrument whereby a party, having a right of action as creditor or otherwise, formally remits the same, and thus estops himself from again setting up his claim. *Pulling on Merc. Accounts,* 18. Having this operation, a release should always be in the form of a deed under seal, and contain a plain and distinct remission of the claim to which it relates. *Id. ibid.*

A release under seal, although reciting only a nominal consideration, extinguishes the debt to which it relates. 5 *Duer's* (N. Y.) *R.* 294. There is a wide distinction between a *release* and a *receipt.* The first, by its own operation, extinguishes a pre-existing right, and therefore cannot be contradicted or explained by parol; the second has never the effect of destroying a subsisting right, but is merely evidence of a fact—the fact of payment, and, therefore, like all other facts given in evidence, may be refuted or explained. Oakley, C. J. *Id. ibid.* citing 16 *Wendell's R.* 474. See *All, Demand.*

RELEFE, *Relef.* L. Fr. [from *relever,* q. v.] Relief; an incident of feudal tenure. *Britt.* c. 69.

RELEGATIO. Lat. [from *relegare,* to send away, to banish.] In the civil law. Banishment without the loss of civil rights. *Calv. Lex. Inst.* 1. 12. 2. *Dig.* 48. 22. It was, by this circumstance, chiefly distinguished from *deportatio,* (q. v.) Some have supposed a further distinction to be, that *deportatio* was for life, and *relegatio* for years. But this was not always the case. *Calv. Lex.*

RELEGATION. [from Lat. *relegatio*, q. v.] In old English law. Banishment for a time only. *Co. Litt.* 133.

RELEVAMEN. L. Lat. [from *relevare*, to lift up.] In old English law. Relief; one of the incidents of the feudal tenure. *Lib. Rames.* sect. 310. *Spelman.* In Domesday, it is called *relevamentum;* in the laws of Edward the Confessor, *relevatio;* in Magna Charta, and generally in old English and Scotch law, *relevium. Domesd.* titt. *Berocscire, Walingford. LL. Edw. Conf.* c. 35. See *Relevium.*

RELEVANCY. In practice. The quality of being relevant or applicable. A term applied to evidence.

RELEVANT. In the law of evidence. Having relation; applicable. *Relevant* evidence is evidence applicable to the issue.

RELEVER. L. Fr. To relieve; to pay a relief, (*relefe.*) *Britt.* c. 69.

RELEVIUM. L. Lat. [from L. Fr. *relever*, to raise or lift again.] In old English and Scotch law. Relief; one of the incidents of the feudal tenure. *Glanv.* lib. 9, c. 4. *Bract.* fol. 84. *Magna Charta*, c. 3. *Spelman*, voc. *Relevamen. LL. Malcolm.* II. c. 1. *Hæreditas quæ jacens fuerit per eorum decessum* relevetur *in manus hær', et propter talem* relevationem *facienda erit ab hær' quædam præstatio quæ dicitur* relevium; the inheritance which was fallen in by their decease, shall be taken up into the hands of the heir, and for such taking up, a payment shall be made by the heir, which is called a relief. *Fleta*, lib. 3, c. 17, § 1.

RELICTA. Lat. (Being relinquished.) In practice. The confession of the plaintiff's action by a defendant, after plea pleaded. A species of *cognovit*, (q. v.) so called from the emphatic words of the old Latin form, the defendant *relinquishing or withdrawing his plea*, (*relicta verificatione.*) 1 *Tidd's Pr.* 559.

RELICTION. [Lat. *relictio*, from *relinquere*, to leave.] A leaving; a leaving dry. Recess of the sea, by which land formerly covered with water is left dry. *Hale de Jur. Maris*, pars 1, c. 4. *Schultes on Aquatic Rights*, 121, 127. *Angell on Water-Courses*, § 57. *Angell on Tide-Waters*, 264.

RELIEF. [from L. Fr. *relefe, relef*, from *relever*, to lift or raise again; L. Lat. *relevium, relevatio, relevamen, relevamentum, introitus.*] In old English and Scotch law. A sum of money paid by the heir of a deceased tenant, by way of fine or composition with the lord for *taking up* (or, in the ancient sense of the word, *relieving, propter relevationem*) the estate, which was lapsed or fallen in, (*quæ jacens fuit,*) by the death of the last tenant.* 2 *Bl. Com.* 65. *Bract.* fol. 84. *Fleta*, lib. 3, c. 17. *Co. Litt.* 76 a. *Wright on Ten.* 97. A principal and very oppressive incident of the feudal tenure. The idea of a *fallen* estate is clearly derived from the *hæreditas jacens* of the civil law; and a payment in the nature of a relief seems to have been known to that law, under the name of *introitus. Fleta*, lib. 3, c. 17, § 1. *Calv. Lex.*

Britton uses the verb *relever. Volons nous mye que ascun tenaunt soit tenu à* relever *sa terre plus de une foits en sa vie;* we will not that any tenant be bound to relieve his land more than once in his life. *Britt.* c. 69. But the corresponding English word *relieve* seems never to have been adopted.

RELIGIOUS MEN. [Lat. *religiosi.*] In old English law. Such as entered into a monastery or convent, there to live devoutly. *Cowell.* Clauses were frequently inserted in ancient deeds of sale of land, restraining the vendee from giving or alienating it to religious persons or Jews, to the end that the land might not fall into mortmain. *Id.*

RELIQUA. Lat. In the civil law. The balance or arrears of an account. *Spelman.* Money left unpaid.

RELIQUARE. L. Lat. [from *reliqua*, q. v.] In old exchequer practice. To owe a balance of account. *Skene de Verb. Sign.* voc. *Scaccarium.*

RELIQUI. Lat. In the civil law. The rest. Held to signify "all," (*universos, omnes.*) *Dig.* 50. 16. 95, 160.

RELIVERER. L. Fr. To re-deliver. *Kelham.*

RELOCATIO. Lat. [from *re*, again, and *locatio*, a letting.] In the civil law. A re-letting. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 926.

Relocatio tacita; a tacit or implied re-letting, as in case of holding over after expiration of the term. *Id.* Closely translated in Scotch law, *tacit relocation. Bell's Dict.*

REM domino vel non domino vendente duobus,
In jure est potior venditione prior.

Where one, whether owner or not owner, sells a thing to two persons, the party who

is first sold to, has the better right. A Latin couplet quoted in Fleta. Lib. 3, c. 15, § 8.

REMAINDER. [L. Lat. *remanentia, remanere.*] A residue of an estate in land, depending upon a particular estate, and created together with it. *Co. Litt.* 49 a. *Id.* 143 a.—An estate limited to take effect and be enjoyed after another estate is determined. As if a man seised in fee simple grant lands to A. for twenty years, and after the determination of the said term, then to B. and his heirs forever; here A. is tenant for years, *remainder* to B. in fee. 2 *Bl. Com.* 163, 164.—A remnant of an estate in land, depending upon a particular prior estate, created at the same time, and by the same instrument, and limited to arise immediately on the determination of that estate, and not in abridgment of it. 4 *Kent's Com.* 197.—An estate limited to commence in possession at a future day, on the determination by lapse of time or otherwise, of a precedent estate, created at the same time. 1 *N. Y. Rev. St.* [723,] 718, §§ 10, 11. See *Estate in remainder.*

REMAINDER-MAN. One who is entitled to a remainder.

REMALLARE. L. Lat. [from *re*, again, and *mallare*, to summon.] In old European law. To summon to court a second time; to re-summon. *Formul. Solen.* 124. *Spelman.*

REMAND. [L. Lat. *remandare;* L. Fr. *remaunder.*] To send back; to recommit. Where a party brought up on *habeas corpus* is sent back without obtaining the benefit of the writ, he is said to be *remanded.* 2 *Kent's Com.* 30.

REMANENTIA. L. Lat. [from *remanere*, q. v.] In old English law. A remainder. *Spelman.*

A perpetuity, or perpetual estate, (*pro perpetuo.*) *Glanv.* lib. 7, c. 1. *Bract.* fol. 244. *Reg. Maj.* lib. 2, c. 23.

REMANERE. Lat. In old English practice. To remain; to stop or stay; to *demur*, in the old sense of the word. *Primo queratur à tenente si aliquid velit vel sciat dicere quare assisa debeat* remanere; it first should be inquired of the tenant if he will or know to say any thing why the assise should stay; [that is, why it should not proceed.] *Bract.* fol. 184 b. *Non propter minorem ætatem petentium* remanebit *assisa;* the assise shall not stay on account of the non-age of the demandants. *Id.* fol. 276. Hence the term *remanet*, in modern practice.

REMANERE. L. Lat. In old English law. A remainder. *Co. Litt.* 49 a. 2 *Co.* 51 a, *Cholmley's case.*

REMANET. L. Lat. (It remains.) In English practice. The postponement of a trial. When a cause is postponed, it is said to be made a *remanet.* 2 *Tidd's Pr.* 758.

REMAUNDER. L. Fr. To send back; to remand. *Kelham.*

REMEDIAL STATUTE. A statute providing a remedy for an injury, as distinguished from a penal statute. A statute giving a party a mode of remedy for a wrong, where he had none, or a different one, before. 1 *Chitt. Bl. Com.* 86, 87, notes.

Remedial statutes are those which are made to supply such defects, and abridge such superfluities, in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned (or even learned) judges, or from any other cause whatsoever. 1 *Bl. Com.* 86.

REMEMBRANCERS. In English law. Officers of the exchequer, whose principal duty is to put the judges of that court in remembrance of such things as are to be called on, and dealt in for the king's benefit. *Cowell. Stat.* 3 & 4 *Will.* IV. c. 99.

REMENAUNT. L. Fr. Remaining; to come after; remainder. *A remenaunt;* for ever after. *Kelham.*

REMISE. To remit or give up. A formal word in deeds of release and quitclaim. *Litt.* sect. 445. *Co. Litt.* 264 b.

"REMISE, RELEASE AND QUITCLAIM," in a deed to one not in possession, when an intent to convey the estate of the grantors is recited, and a pecuniary consideration appears, are effectual as words of bargain and sale. 2 *Selden's R.* 422.

REMISE, *Remys.* L. Fr. Remised; released. *Kelham.*

REMISI, REMISISSE. L. Lat. In old conveyancing. Formal words in deeds of release. *Remisisse, relaxasse et quietam clamasse;* have remised, released and quitclaimed. *Litt.* sect. 445.

REMIT. [Lat. *remittere*, q. v.] Literally, to send back. To send or transmit; as to *remit* money.

To give up; to relinquish; as to *remit* a fine.

REMITTER. [from Lat. *remittere*, to send back.] The sending back of a person to a title he had before.* *Remitter* is where he who has the true property, or *jus proprietatis* in lands, but is out of possession thereof, and has no right to enter without recovering possession in an action, has afterwards the freehold cast upon him by some subsequent, and of course defective title; in this case he is *remitted*, or sent back by operation of law, to his ancient and more certain title. The right of entry which he has gained by a bad title, shall be *ipso facto* annexed to his own inherent good one; and his defeasible estate shall be utterly defeated and annulled by the instantaneous act of law, without his participation or consent. 3 *Bl. Com.* 19. See 2 *Hilliard's Real Prop.* 152, [156.]

Littleton calls *remitter* "an ancient term in the law," and defines it to be "where a man hath two titles to lands or tenements, viz: one, a more ancient title, and another, a more latter title, (*title pluis darrein*;) and if he come to the land by a latter title, yet the law will adjudge him in by force of the elder title, because the elder title is the more sure and more worthy title." *Litt.* sect. 659.

REMITTERE. Lat. [from *re*, again, and *mittere*, to send.] In old English practice. To send back; to give up or relinquish; to remise or release. *Postea jus suum* remisit, *et quietum clamavit*; afterwards remised and quit-claimed his right. *Bract.* fol. 313 b. See *Remise, Remisi.*

To remand on *habeas corpus.* 3 *How. St. Trials*, 161.

REMITTITUR. Lat. (Is sent back, or remitted.) In practice. A sending back (of a record.) See *infra.*

A relinquishment (of damages.) See *Remittitur damna.*

REMITTITUR DAMNA. Lat. In practice. An entry made on record, in cases where a jury has given greater damages than a plaintiff has declared for, remitting the excess. 2 *Tidd's Pr.* 896.

REMITTITUR OF RECORD. In practice. The sending back of a record or transcript from a superior to an inferior court, for the purpose of issuing execution. 2 *Tidd's Pr.* 1185. 2 *Burr. Pr.* 150.

Remoto impedimento, emergit actio. The impediment being removed, the action rises. When a bar to an action is removed, the action rises up into its original efficacy. *Shep. Touch.* (by Preston,) 150.

REMOTUM. Lat. Removed; remote. **Id quod est magis remotum non trahit ad se quod est magis junctum, sed e contrario in omni casu.** That which is more remote does not draw to itself that which is more near, but the reverse, in every case. *Co. Litt.* 164 a.

REMOUNTER. L. Fr. To go up again. *Et cel droit descent ascune foitz, ausi come chose pesaunte, et ascune foits* remounte; and this right descends sometimes, like a thing falling, and sometimes goes up again. *Britt.* c. 118.

REMOVE. "One *removes* when he changes his domicil. The word does not mean simply going out of or leaving a country." Pearson, J. 3 *Jones' Law R.* 93.

REMUE. L. Fr. [from Lat. *remotum.*] Removed. *Si le brefe soit* remue. *Britt.* c. 46.

Remote, or distant. *Le procheyn forclost l'*remue, *et l'*remue, *l'plus* remue; the nearer forecloses the remote, and the remote the more remote. *Id.* c. 119. *Ascuns* remues, *et ascuns plus* remues. *Id.* c. 118.

REN, *Rein, Rens.* L. Fr. Any thing; nothing. *Kelham.*

RENABLE. L. Fr. Reasonable. *De renable partie;* of reasonable part. *Britt.* c. 73. *Renables estovers. Yearb.* M. 8 Edw. III. 2.

RENDER, *Rendre.* L. Fr. To give or yield; to pay or perform; to return. Used also as a substantive, as in the phrase "to lie in *render*;" to consist in being rendered, paid or yielded. See *To lie in.*

To RENDER. [L. Lat. *reddere.*] In practice. To give up; to surrender. 1 *Arch. Pr.* 311.

RENDERING. [L. Lat. *reddendo.*] A term in conveyancing, expressive of the reservation of a rent. See *Doing.*

RENEEZ. In old records. A renegado; an apostate from Christianity to Mahometanism. *Hoveden in Ric.* I. sub. an. 1192. *Spelman.*

RENOUNCE. [from Lat. *renunciare.*] To give up a right.

To refuse to assume a duty. See *Renouncing probate.*

To disclaim or cast off an obligation, as to *renounce* one's allegiance.

RENOUNCING PROBATE. In English practice. Refusing to take upon one's self the office of executor or executrix. Refusing to take out probate under a will

wherein one has been appointed executor or executrix. *Holthouse.* 1 *Williams on Exec.* 230, 231.

RENOVARE. Lat. In old English law. To renew. *Annuatim renovare;* to renew annually. A phrase applied to profits which are taken and the product renewed again. *Ambl.* 131.

RENT. L. Fr. and Eng. [L. Fr. *rente,* from *rendre,* to render, yield, give or pay; L. Lat. *redditus, reditus,* qq. v.] A certain profit issuing yearly out of lands and tenements corporeal; a species of incorporeal hereditament. 2 *Bl. Com.* 41.—A compensation or return yielded periodically, to a certain amount, out of the profits of some corporeal hereditaments, by the tenant thereof. 2 *Steph. Com.* 33.—A certain yearly profit in money, provisions, chattels or labor, issuing out of lands and tenements, in retribution for the use. 3 *Kent's Com.* 460. See 2 *Penn. St.* (Barr's) *R.* 292, Kennedy, J.

Rent, or *rente,* (as it was formerly sometimes written,) is a purely French word, framed from *rendre,* on the analogy of the Lat. *redditus,* from *reddere,* and radically importing a thing rendered. See *Rente.*

RENT CHARGE. A rent reserved on a conveyance of land in fee simple, or granted out of lands by deed; so called because by a covenant or clause in the deed of conveyance, the land is *charged* with a distress for the payment of it.* *Co. Litt.* 143 b. 2 *Bl. Com.* 42. A rent with liberty to distrain. *Finch's Law,* b. ch. 7. Otherwise called a *fee-farm rent.* 2 *Bl. Com.* 43. 3 *Kent's Com.* 461. 1 *Hilliard's Real Prop.* 238, [231.]

RENT SECK. [L. Lat. *redditus siccus.*] Barren rent; a rent reserved by deed, but without any clause of distress. 2 *Bl. Com.* 42. 3 *Kent's Com.* 461. A rent without liberty to distrain. *Finch's Law,* b. 2, c. 8.

RENT SERVICE. In English law. Rent reserved out of land held by fealty or other corporeal service; and so called from such *service* being incident to it.* 2 *Bl. Com.* 41, 42. 3 *Kent's Com.* 461. 1 *Hilliard's Real Prop.* 238, [231.]

RENTE. L. Fr. In old English law. Rent. *Si la dette soit issuaunte de ascun tenement come annule* rente *due,* &c.; if the debt be issuing out of any tenement, as an annual rent due, &c. *Britt.* c. 28. *Si pleynte soit fait de* rente. *Id.* c. 45. *Que ad done* rente *en fee, ou à terme de vie;* who hath given a rent in fee, or for term of life. *Id. ibid. Rente de chambre;* a rent from the coffer; an annuity, (*redditus de camera.*) *Id.* c. 68. *Terre ou rente. Id.* c. 79. See *Id.* c. 81.

RENTE. L. Fr. Fined. *Stat. Westm.* 1, c. 13. *Et si ul le face, soit grevement* rente; and if any do so, he shall be grievously fined. *Id.* c. 16.

RENTAL. (Said to be corrupted from *rent-roll.*) In English law. A roll on which the rents of a manor are registered or set down, and by which the lord's bailiff collects the same. It contains the lands and tenements let to each tenant, the names of the tenants, and other particulars. *Cunningham. Holthouse.* 10 *East,* 206.

"RENTS," in a devise, will pass land itself. *Cro. Jac.* 104.

"RENTS AND PROFITS" will pass the estate itself. 1 *Meriv.* 213, 232, 233. 2 *Ves. & B.* 65. 8 *Howard's R.* 25, arg.

"RENTS, ISSUES AND PROFITS" more commonly signify in the books a chattel real interest in land; a kind of estate growing out of the land, for life or years, producing an annual or other rent. Redfield, C. J. 26 *Vermont R.* 741, 746.

RE-OUSTER. L. Fr. To oust again, or in return. *Yearb.* T. 10 Edw. III. 27.

REPARATIONE FACIENDA, *Breve De.* L. Lat. (Writ for making repair.) In old English practice. The name of a writ which lay to compel the repairing of a house, mill, bridge, &c. *F. N. B.* 127 A. *Reg. Orig.* 153 b.

REPEAL. The abrogation or annulling of a statute by a subsequent one.

To REPEAL. [L. Fr. *repealer, repeller, re-appeler;* to call back.] To annul a law or statute by a subsequent one; literally, to revoke or recall it. See *Repealer, Repeler.*

REPEALER. L. Fr. To repeal or revoke. *De* repealer, *et de ennoyter, et de amender;* to revoke, and to annul, and to amend. *Britt.* fol. 1.

REPELLER. L. Fr. To demand back. *Ne purra mie* repeler, *ne reaver;* may not demand back nor have back. *Britt.* c. 93.

Repellitur a sacramento infamis. An infamous person is repelled from an oath; is thrust back from taking an oath, or not allowed to be sworn as a witness. *Bract.* fol. 185. *Co. Litt.* 158 a. A leading maxim in the law of evidence, very recently abrogated in England by the statute

called Lord Denman's Act, 6 & 7 Vict. c. 85. *Best on Evid.* 163, § 129.

In Fleta, the maxim is applied to jurors. *Fleta*, lib. 4, c. 8, § 2.

REPENTER. L. Fr. To change one's mind; to repent. *Mes ne se purrount* repenter *ne retrere;* but they may not repent nor draw back. *Britt.* c. 120.

REPETITION. [Lat. *repetitio*, from *repetere*, to demand back.] In the civil law. The recovery back of money paid under a mistake of law. 1 *Story's Eq. Jur.* § 111, note.

REPETITUM NAMIUM. L. Lat. In old English practice. A repeated, second or reciprocal distress; withernam. 3 *Bl. Com.* 148.

REPETUNDARUM CRIMEN. Lat. In the Roman law. The crime of bribery or extortion in a magistrate, or person in any public office. *Calv. Lex. Hallifax, Anal.* b. 3, c. 12, num. 73. *Dig.* 48. 11. *Cod.* 9. 27.

REPLEADER. In practice. To plead again; to plead over again. A pleading over again. This is sometimes allowed by the court, on motion, in cases where, by the misconduct or inadvertence of the pleaders, issue has been joined on a fact totally immaterial or insufficient to determine the right, so that the court, upon the finding of the jury, cannot know for whom judgment ought to be given. As if, in an action on the case in assumpsit against an executor, he pleads that *he himself*, instead of the testator, made no such promise; or if, in an action of debt on bond conditioned to pay ten pounds ten shillings on a certain day, the defendant pleads payment of *ten pounds*,—in such cases the court will, after a verdict, award a repleader, (*quod partes replacitent;*) the effect of which is, that the pleadings must begin *de novo*, at that stage of them, whether it be the plea, replication or rejoinder, &c. wherein there appears to have been the first defect or deviation from the regular course. 3 *Steph. Com.* 630. 3 *Bl. Com.* 395.

REPLEDER. L. Fr. In old practice. To replead. *Repledes si vous voulez;* replead, if you will. *Yearb.* P. 3 Hen. VI. 4.

REPLEGIARE. L. Lat. In old English and Scotch practice. To take back a pledge; to replevy. 3 *Bl. Com.* 13. Scottice, to replege. *Skene de Verb. Sign.*

To take back on pledge, or surety.* To redeem a thing detained or taken by another, by putting in legal sureties. *Cowell.*

To replevy a man. See *De homine replegiando.* A writ for this purpose. *Fleta*, lib. 2, c. 70, § 14. Otherwise written *replegiari. Id. ibid.*

An action or writ of replevin. *Litt.* sect. 219. *En* replegiare *port per;* in replevin brought by. *Dyer*, 1 b.

REPLEGIARE DE AVERIIS. L. Lat. In old English practice. Replevin of cattle. A writ brought by one whose cattle were distrained, or put in the pound, upon any cause by another, upon surety given to the sheriff to prosecute or answer the action in law. *Cowell. F. N. B.* 68 D. *Reg. Orig.* 81.

REPLEGIARI FACIAS. L. Lat. (You cause to be replevied.) In old English law. The original writ in the action of replevin; superseded by the statute of Marlbridge, c. 21. 3 *Bl. Com.* 146.

REPLEVER. L. Fr. In old English law. To replevy. *Si le tenaunt face* replever *la distresse;* if the tenant cause the distress to be replevied. *Britt.* c. 68.

REPLEVIABLE. That may be replevied, or taken back on pledge. See *Replevisable.*

REPLEVIN. [L. Lat. *replevina*, from L. Fr. *repliver*, q. v.] In practice. A personal action which lies to recover possession of goods wrongfully taken. It was originally the peculiar remedy in cases of wrongful distress, but may now be brought in all cases of unlawful taking. 3 *Bl. Com.* 13, 146. 1 *Arch. N. Prius*, 466. In New-York, it is allowed in cases of wrongful detention also. 2 *R. St.* [522,] 430, § 1. It is the proper form of action to recover the specific thing taken, and is the regular mode of contesting the validity of the taking; the plaintiff being bound by sureties to prosecute the suit with effect, and to return the goods if return thereof be adjudged. See *United States Digest*, Replevin.

Replevin is said to have originally meant *a re-delivery of the pledge*, or thing taken in distress, to the owner, upon his giving security to try the right of the distress. 3 *Bl. Com.* 13, 146. But its radical meaning, (as expressed by *replevir*, (q. v.) its probable root,) seems to have rather been, *a re-delivery on pledge;* and this supposition is confirmed by its ancient use in the sense of *bail.* See *infra.*

REPLEVIN. L. Fr. [from *replevir*,

q. v.] In old English law. Bail; delivery of a person on pledges or sureties. *Stat. Westm.* 1, c. 15.

REPLEVIR. L. Fr. In old English law. To take back on pledge; to replevy, *Britt.* c. 20. Applied to land. *Fet Assaver*, §§ 24, 25.

To let go, on bail. *Et les plevissables jesques mesme le temps* replevir; and those that are bailable to deliver on bail until the same time. *Britt.* c. 29.

REPLEVISABLE, *Replevissable, Plevissable.* L. Fr. Bailable. *Britt.* c. 29. *Stat. Westm.* 1, c. 15.

REPLEVISH. In old English law. To let one to mainprise upon surety. *Cowell.*

REPLEVY. In practice. To get back goods on a writ of replevin.

REPLICARE. Lat. [from *re*, again, and *plicare*, to fold.] In the civil law and old English pleading. To reply; to answer a defendant's plea, (*exceptio.*) *Querens replicationem non habet, nec pertinet ad ipsum* replicare, *donec*, &c.; the plaintiff has not the replication, nor does it belong to him to reply, until, &c. *Bract.* fol. 191 b. *Id.* 194 b. *Fleta*, lib. 4, c. 16, § 3.

Literally, to fold back, or unfold. See *Replicatio.*

REPLICATIO. Lat. [from *replicare*, to unfold.] In the civil law and old English pleading. The answer of a plaintiff (*actor*) to the exception or plea of a defendant, (*reus;*) corresponding with, and giving name to the *replication* in modern pleading. *Inst.* 4. 14, pr. See *Dig.* 44. 1. 2. 1. Called by Paulus, a contrary exception, (plea,) as it were, the exception of an exception, (*contraria exceptio, quasi exceptionis exceptio.*) *Id.* 44. 1. 22. 1. *Contra exceptionem vero, licet ab initio competens videatur, subveniri poterit petenti ope* replicationis; *ut si quis petat, excipere poterit tenens de pacto postea interveniente ne petat, contra quam* replicari *poterit à petente de pacto posterius interposito quod petat.* But against the exception, (plea) though at first it may seem sufficient, the demandant (plaintiff) may be aided by means of a replication; as if one should demand (sue,) the tenant (defendant) may except (plead) a subsequent agreement not to sue, against which the plaintiff may plead in reply a still subsequent agreement that he might sue. *Bract.* fol. 400. This is substantially the same example as that given by Justinian. *Inst. ub. sup.* Called in Fleta, *exceptio quæ competit actori contra exceptionem rei. Fleta*, lib. 6, c. 36, § 10. This is in conformity with the language of the Digests. *Dig. ub. sup.*

The nature of this pleading and the derivation of the word itself are thus explained in the Institutes: Sometimes it happens that an exception [the defendant's answer to the plaintiff's action] which *primâ facie* seems just, yet operates as a bar unjustly, (*tamen iniquè noceat;*) and when this takes place, there is need of another allegation to help the plaintiff; which is called a *replication*, because by it the force or law of the exception is *unfolded* and destroyed, (replicatio *vocatur quia per eam* replicatur *atque resolvitur jus exceptionis.*) *Inst.* 4. 14, pr. According to the modern civilians, it is so called because it *unfolds* and lays open (*replicet ac patefaciat*) the injustice of the exception that had been folded together, and, as it were, covered up; or rather because it unfolds and opens (*explicet atque aperiat*) the equity of the action that had been covered up, and, as it were, folded together, by the defendant's exception. *Hotomannus. Prateus. Calv. Lex.*

REPLICATION. [L. Fr. *replicacion;* Lat. *replicatio*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's plea in an action at law.* *Steph. Pl.* 58, 59. 3 *Bl. Com.* 309, 310.

The plaintiff's or complainant's reply to the defendant's answer, in a suit in equity.*—The contestation of the answer. *Gilb. For. Rom.* 113.—The plaintiff's avoidance or denial of the answer or defence, and in the maintenance of the bill, to draw the matter to a direct issue, which may be proved or disproved by testimony. *Cooper's Eq. Pl.* 328, 329. *Story's Eq. Pl.* § 877.

This pleading, together with its name, is obviously taken from the Roman law, as will appear on comparing the Institutes with Bracton, under the appropriate heads. See *Replicatio.* And see *Story's Eq. Pl.* § 677.

REPONE. [from Lat. *reponere*, to put back.] In Scotch practice. To replace; to restore to a former state or right. 2 *Alison's Crim. Pr.* 351.

REPORT. [L. Lat. *reportus, relatio*, from *reportare*, to bring again, to relate.] A public account or relation of a case judicially argued and determined; includ-

ing a statement of the facts of the case, the arguments of counsel, and the opinion of the court, expressing the reasons for the judgment or decision given.* Lord Coke defines *report* to be "a public relation, or a bringing again to memory cases judicially argued, debated, resolved or adjudged in any of the king's courts of justice, together with such causes and reasons as were delivered by the judges of the same." *Co. Litt.* 293. The reports of judicial decisions now constitute, both in Great Britain and the United States, a principal and most authoritative source of municipal law. 1 *Bl. Com.* 71. 1 *Kent's Com.* 470. The word itself seems essentially French. *Litt.* sect. 514.

REPORT. In practice. The formal statement in writing made to a court by a master in chancery, a clerk, or referee, as the result of his inquiries into some matter referred to him by the court.

REPORTARE. L. Lat. In old English practice. To report. *Claus.* 28 Edw. I. m. 3, d.

REPORTUS. L. Lat. A report. Spelman gives this barbarous word, but Lord Coke uses *relatio.* 8 *Co.* pref.

REPOSITION OF THE FOREST. [L. Lat. *repositio forestæ.*] In old English law. An act whereby certain forest grounds, being made *purlieu* (q. v.) upon view, were by a second view laid to the forest again, [put back into the forest.] *Manwood. Cowell.*

REPREHENSAILLES. L. Fr. Seizures; reprisals. *Kelham.*

REPREIGNER, *Reprendre, Reprender.* L. Fr. To retake; to take back. *Kelham. Represt, reprist;* taken back. *Id.*

REPRESENTATION. [Lat. *repræsentatio*, from *repræsentare*, to be like.] The occupying of another's place; the acting in the place of another. The principle by which an heir, executor or administrator, succeeds to the rights and liabilities of his ancestor, testator or intestate.* 2 *Steph. Com.* 243.

In the law of distribution and descent. The principle upon which the issue of a deceased person take or inherit the share of an estate which their immediate ancestor would have taken or inherited, if living; the taking or inheriting *per stirpes.* 2 *Bl. Com.* 217, 517. 2 *Kent's Com.* 425. 4 *Id.* 391. 2 *Hilliard's Real Prop.* 195, [202.]

REPRESENTATION. In the law of insurance. A collateral statement, either by writing not inserted in the policy, or by parol, of such facts or circumstances relative to the proposed adventure, as are necessary to be communicated to the underwriters, to enable them to form a just estimate of the risks. 1 *Marshall on Ins.* 450. Mr. Duer objects to this definition, and substitutes the following: A statement of facts, circumstances or information, tending to increase or diminish the risks as they would otherwise be considered, made prior to the execution of the policy by the assured or his agent to the insurer, in order to guide his judgment in forming a just estimate of the risks he is desired to assume. It is usually made by parol, or by a writing not inserted in the policy, but when the intention as to the construction is sufficiently declared, may be expressed in the policy. 2 *Duer on Ins.* 644, 656. See 1 *Phillips on Ins.* 214. 3 *Kent's Com.* 282. 5 *Hill's* (N. Y.) *R.* 188.

REPRESENTATIVE. One who represents another; one who occupies another's place, and succeeds to his rights and liabilities. Executors and administrators represent, in all matters in which the personal estate is concerned, the person of the testator, [or intestate] as the heir does that of his ancestor; so that the heirs and executors (or administrators) of a deceased party are sometimes compendiously described as his *real* and *personal representatives.* 2 *Steph. Com.* 243.

REPRESTARE. L. Lat. In old European law. To re-grant a thing to the grantor, for a certain term; to re-let a thing or estate to the lessor. *Spelman.*

REPRIEVE. [from L. Fr. *reprendre*, to take back.] In criminal law. The withdrawing of a sentence of death for an interval of time, whereby the execution is suspended. 4 *Bl. Com.* 394. Cowell writes the word *reprive.*

REPRISAL, *Reprisel.* [L. Lat. *reprisalia*, (q. v.) from L. Fr. *reprise*, a retaking.] A taking again; a taking back; retaking; recaption. The re-possessing one's self of a thing unjustly taken by another.* 3 *Bl. Com.* 4. See *Recaption.*

A taking of one thing in satisfaction for another, (*captio rei unius in alterius satisfactionem.*) *Spelman.* Frequently used in the plural, *reprisals*, (*reprisaliæ, represaliæ.*) *Id. Loccen. de Jur. Mar.* lib. 3, c. 5. 1 *Kent's Com.* 61. A taking in return; a

taking by way of retaliation. See *Letters of marque and reprisal.*

REPRISALIA, *Represalia, Repræsalia, Repressalia, Pressalia.* L. Lat. In civil and old maritime law. Reprisal. *Spelman. Loccen. de Jur. Mar.* lib. 3, c. 5.

REPRISES. In English law. Deductions and duties which are yearly paid out of a manor and lands, as rent-charge, rent-seek, pensions, corrodies, annuities, &c. so that when the clear yearly value of a manor is spoken of, it is said to be so much per annum *ultra reprisas*, besides all *reprises. Cowell.*

Reprobata pecunia liberat solventem. Money refused [the refusal of money tendered] releases him who pays [or tenders it.] 9 *Co.* 79 a, *Peytoe's case.*

REPROBATOR, *Action of.* In Scotch law. An action or proceeding intended to convict a witness of perjury; to which the witness must be made a party. *Bell's Dict.*

REPROBUS, *Reproba.* Lat. [from *reprobare*, to reject.] In old English law. Bad or spurious; reprobate. A term applied to money which might be rejected or refused. *De illis qui falsam fabricant monetam, et qui de non* reproba *faciunt* reprobam, *sicut sunt retonsores denariorum;* of those who make false or counterfeit money, and who out of good money make bad, such as clippers of coin. *Bract.* fol. 119 b. See *Fleta*, lib. 1, c. 22, § 4. "*Reprobate* silver" is used in the English translation of the old Testament. *Jerem.* vi. 30.

REPUBLICATION. A second publication of a will, either expressly or by construction. See 1 *Jarman on Wills*, 174, (199, Perkins' ed.) See *Publication.*

REPSILVER. In old records. Money paid by servile tenants for exemption from the customary duty of *reaping* for the lord. *Cowell.*

REPUDIUM. Lat. In the Roman law. A breaking off the contract of espousals, or a marriage intended to be solemnized. Sometimes translated *divorce.* But this was not the proper sense. *Dig.* 50. 16. 191. *Id.* 50. 16. 101. 1. *Id.* 24. 2. 2. See *Taylor's Civ. Law*, 349.

REPUGNANT. [Lat. *repugnans*, from *repugnare*, to fight against.] Contrary to; in conflict with. A condition *repugnant* to the nature of the estate to which it is annexed, is void. 1 *Steph. Com.* 281.

REPUTATION. [Lat. *reputatio*, from *reputare*, to consider.] In the law of evidence. The estimation in which a person is held in the community where he has resided. Marcy, J. 2 *Wendell's R.* 352, 354. Character. Duncan, J. 3 *Serg. & Rawle's R.* 337. "Reputation is not what this or what that man thinketh, but that which many men have said or thought, who have more reason to know it; *et quænam est inter illos reputatio.*" 1 *Leon.* 15.

REPUTED. [Lat. *reputatus*, from *reputare*, to consider.] Considered; generally supposed.

This word has a much weaker sense than its derivation would appear to warrant; importing merely a supposition or opinion derived or made up from outward appearances, and often unsupported by fact. The term "reputed owner" is frequently employed in this sense. 2 *Steph. Com.* 206.

"REQUEST," in a will, held to raise a trust or bequest by implication. 1 *Bro. C. C.* 489. 2 *Id.* 226. *Ambl.* 520, note (2.)

REQUESTS. See *Court of Requests.*

REQUISITION. [Lat. *requisitio*, from *requirere*, to demand.] In international law. The formal demand by one government upon another, of the surrender of a fugitive criminal. 1 *Kent's Com.* 36—38, and notes.

RERE. L. Fr. [from Lat. *radere.*] To rase; to erase. *Kelham.*

RERE-FIEFS. In Scotch law. Inferior fiefs; portions of a fief or feud granted out to inferior tenants. 2 *Bl. Com.* 57.

Rerum ordo confunditur, si unicuique jurisdictio non servatur. The order of things is confounded, if its proper jurisdiction is not preserved to each. 4 *Inst.* Proœm.

Rerum suarum quilibet est moderator et arbiter. Every one is the regulator and disposer of his own property. *Co. Litt.* 223 a.

RES. Lat. In the civil and old English law. A thing; things. A term of the most extensive import in the law, including both objects of property, and things not the objects of property, (*quæ vel in nostro patrimonio, vel extra patrimonium nostrum habentur.*) *Inst.* 2. 1, pr. *Dig.* 50. 16. 5, pr. *Bract.* fol. 7 b. According to Lord Coke, it has a general signification, including both corporeal and incorporeal things of whatever kind, nature or species. 3 *Inst.* 182.

By "*res*," according to the modern

civilians, is meant every thing that may form an *object* of rights, in opposition to *persona*, which is regarded as a *subject* of rights. *Res*, therefore, in its general meaning, comprises *actions* of all kinds; while in its restricted sense, it comprehends every object of right except actions. 1 *Mackeld. Civ. Law*, 151, § 146. This has reference to the fundamental division of the Institutes, that all law relates either to *persons*, to *things*, or to *actions*. *Inst.* 1. 2. 12.

Under the name of *res*, (a thing,) is included, also, according to the Digests, any part of a thing; (*appellatione* rei pars *etiam continetur.*) *Dig.* 50. 16. 72. It also included both the fruits (*causæ*) of a thing, and the rights (*jura*) incident to it. *Id.* 50. 16. 23. The following are among the various significations of this word in the civil law:

A business, (*negotium ;*) matter, (*materia ;*) question, (*quæstio.*) *Dig.* 48. 19. 38. 5.

Equity, (*æquum et bonum ;*) reason, (*causa.*) *Dig.* 48. 8. 1. 3.

An inheritance, (*hæreditas.*) *Calv. Lex.*

A suit, (*lis.*) *Id.* The subject matter of a suit; a thing sued for. *Story's Confl. of Laws*, § 592 a. 20 *Howard's R.* 599. See *In rem.*

Substance, (*substantia.*) *Calv. Lex.*

Property, (*proprietas.*) *Id.*

Ownership, (*dominium.*) *Id. Dig.* 41. 1. 52.

A contract, (*contractus.*) *Dig.* 50. 16. 6. *Calv. Lex.*

Punishment, (*pœna.*) *Dig.* 48. 19. 2, pr.

Truth, (*veritas.*) *Dig.* 48. 10. 1. 4.

Profit and emolument, (*utilitas et emolumentum.*) See *Actio de in rem verso.*

Empire. *Tayl. Civ. Law*, 62.

Res denominatur a principaliori parte. A thing is named from its more principal part. 5 *Co.* 47 b, *Gilbert Littleton's case.* Thus, a suit in equity is frequently termed a *bill* in equity, the bill being the commencement and foundation of the suit, (*origo rei et caput sectæ.*) *Id. ibid.*

Res perit [suo] domino. The thing perishes or is lost to its owner; the loss of the thing falls upon its owner. A maxim in the law of bailment, expressive of the principle that where an article bailed is damaged or lost without fault of the bailee, the loss must fall upon the owner. *Story on Bailm.* § 426, 427 a. 2 *Kent's Com.* 591. Story, J. 3 *Story's R.* 359. *Broom's Max.* 112, [176.] Applied also to cases where a loss is to be shared among several having an interest. 1 *Story's Eq. Jur.* 102. Story, J. 3 *Sumner's R.* 58.

Res transit cum suo onere. The thing passes with its burden. Where a thing has been encumbered by mortgage, the incumbrance follows it, wherever it goes. *Bract.* fol. 47 b, 48. *Fleta*, lib. 3, c. 10, § 3. See **Transit terra cum onere.**

RES ACCESSORIA. Lat. In the civil law. An accessory thing; that which belongs to a principal thing, or is in connection with it. 1 *Mackeld. Civ. Law*, 155, § 152. Otherwise termed *accessio. Id.* § 153. **Res accessoria sequitur rem principalem.** An accessory thing follows the principal thing. *Broom's Max.* [368.]

RES CADUCA. Lat. In the civil law. A fallen or escheated thing; an escheat. *Hallifax, Anal.* b. 2, c. 9, n. 60.

RES COMMUNES. Lat. In the civil law. Common things. Things common to all, by the law of nature; as air, running water, the sea, and sea-shore. *Inst.* 2. 1. 1. *Dig.* 1. 8. 2. 1. Bracton and Fleta make a distinction between common and public things, but Justinian uses the terms indifferently. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 4. *Inst.* 2. 1. 2. Later civilians have distinguished them thus: *Res communes* are those things which, considered with reference to the property in them, are *res nullius*, belonging to no one, but considered with reference to their use, belong to all men. *Res publicæ* are those the property of which is in the people, the use being common to every one of the people. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 325. See *Tayl. Civ. Law*, 471, 472.

RES CONTROVERSA. Lat. In the civil law. A matter controverted; a matter in controversy; a point in question; a question for determination; (Gr. τὸ κρινόμενον.) *Calv. Lex.*

RES CORONÆ. L. Lat. In old English law. Things of the crown; such as ancient manors, homages of the king, liberties, &c. *Fleta*, lib. 3, c. 6, § 3.

RES CORPORALES. Lat. In the civil law. Corporeal things; things which can be touched, (*quæ tangi possunt,*) or are perceptible to the senses. *Dig.* 1. 8. 1. 1. *Inst.* 2. 2. *Bract.* fol. 7 b, 10 b, 13 b. *Fleta*, lib. 3, c. 1, § 4. Called by Cicero, *res quæ sunt*, (things which are,) as distinguished from incorporeal things, which are termed *res quæ intelliguntur*, (things

which are understood, or mentally perceived.) *Cic. Topic.* 5.

RES FUNGIBILES. Lat. In the civil law. Fungible things, (q. v.)

RES FURTIVÆ. L. Lat. In Scotch law. Goods which have been stolen. *Bell's Dict.*

RES GESTA. Lat. A thing done; a transaction. RES GESTÆ. Things done; the essential circumstances of a transaction. Story, J. 3 *Story's R.* 504. See 36 *Maine R.* 295. 5 *Maryland R.* 450. *United States Digest*, Evidence.

RES IMMOBILES. Lat. In the civil law. Immovable things. Such things as, by their nature, are physically incapable of a change of place; such as lands; or which cannot be removed to another place without injury to their substance; such as buildings. 1 *Mackeld. Civ. Law*, 152, § 147. *Tayl. Civ. Law*, 475.

RES INCORPORALES. Lat. In the civil law. Incorporeal things; things which cannot be touched, (*quæ tangi non possunt;*) such as those things which consist in right. *Inst.* 2. 2. *Dig.* 1. 8. 1. 1. *Bract.* fol. 7 b, 10 b. *Fleta*, lib. 3, c. 1, § 4.—Such things as the mind alone can perceive, (*res quæ intelliguntur.*) See *Res corporales.*

RES INTEGRA. Lat. In the civil law. A thing not acted upon; a thing as it was; a thing entire or untouched; a thing not made the subject of action or decision; a new thing or matter, (*res nova.*)* A thing was said to be *integra*, until something was begun to be done about it, (*donec quid geri cœptum est.*) *Calv. Lex.* In the contract of sale, the matter was said to be *integra*, until closed by the payment of the price, or delivery of the thing. *Calv. Lex. Inst.* 3. 30. 4. A question while under debate in the Roman Senate, was called *res integra;* when determined, *res peracta. Adam's Rom. Ant.* 21. *Plin. Epist.* vi. 13.

This has become a common phrase in English and American law, to denote a new case, or a perfectly new point, unaffected by any former adjudications. 1 *Wooddes. Lect.* 120. "If this was *res integra*, and I was at liberty to follow my own opinion, I should be very unwilling to admit such evidence." Lord Talbot, C. *Cas. temp. Talb.* 79, 80. "If the question was *res integra*, untouched by *dictum* or decision," &c. Lord Eldon, C. *Jacob's R.* 126. "If this case were perfectly *res integra*, there might have been great doubt." Lord Ellenborough, 9 *East*, 206. See *Id.* 10 *East*, 123.

Res integra is well contrasted with *res judicata* by Blackstone, *arg.* 1 *W. Bl.* 238.

RES INTER ALIOS ACTA. Lat. A thing done between others, or between third parties or strangers.

Res inter alios acta alteri nocere non debet. A thing done between others ought not to injure another. A transaction between other or strange parties, ought not to injure a person. A transaction between two parties ought not to operate to the disadvantage of a third. *Co. Litt.* 155 b. *Wingate's Max.* 327, max. 86. *Broom's Max.* 432, [735.] Persons are not to be affected by the acts or words of others to which they were neither party nor privy, and which consequently they had no power to prevent or control. *Best on Evidence*, 120, § 102. The use of *alios* and *alteri*, both having the sense of *other*, perhaps adds force to this maxim, the parties to the transaction being "*others*" as to the third person, and he in turn being "*another*," as to them; but it renders a close translation scarcely intelligible. The substitution of *nemini* for *alteri*, in one of the following forms, avoids this verbal difficulty.

Res inter alios actæ alteri nocere non debent, is a plural form of this maxim, quoted by Mr. Best in his Treatise on Evidence. A third party is not to be injured or affected by the acts of others with whom he is unconnected, either personally, or by his agents, or by those whom he represents. *Best on Evid.* 378, § 339. The same maxim is otherwise expressed, **Res inter alios actæ nemini nocere debent, sed prodesse possunt.** Things done between others ought to injure no one, but may benefit. 6 *Co.* 1 b, *Bruerton's case. Wingate's Max.* 327, max. 86. And see 4 *Inst.* 279. These additions, however, are, according to Mr. Best, unnecessary, for the rule is only of general, not universal application, there being several exceptions both ways. Neither does the expression **inter alios** mean that the act done must be the act of more than one person, it being also a maxim of law that **Factum unius alteri nocere non debet.** *Co. Litt.* 152 b.

This important maxim seems to be immediately derived from the canon law, in which it was expressed, **Res inter alios acta aliis præjudicium regulariter non adfert.** A thing done between others regularly works no prejudice to third parties. *Lan-*

cell. Inst. Jur. Can. lib. 3, tit. 15, § 9. Or it may have been taken from the caption of title 60, book 7, of the Code of Justinian: **Inter alios acta vel judicata, aliis non nocere.** That its ultimate source is in the civil law, appears from the following rules which embody its principle: **Inter alios res gestas aliis non posse præjudicium facere sæpe constitutum est.** *Cod.* 7. 60. 1. **Inter alios factum transactionem absenti non posse facere præjudicium notissimi juris est.** *Id.* 7. 60. 2. It is found appealed to, as a recognized maxim of law, as early as the reign of Edw. II. *Yearb.* M. 3 Edw. II. 53. See *Broom's Max.* 432—443. In the Digests, the maxim appears to be confined to *res judicata*, (q. v.)

RES JUDICATA, (or ADJUDICATA.) Lat. A matter adjudged; a thing judicially acted upon or decided; a judgment. That which puts an end to controversy by the decision of a judge, (*quæ finem controversiarum pronuntiatione judicis accipit.*) *Dig.* 42. 1. 1. A phrase of the civil law, constantly quoted in the books. 3 *Kent's Com.* 120. *Best on Evid.* 464. 3 *Hill's* (N. Y.) *R.* 399.

Res judicata pro veritate accipitur. A matter adjudged is taken for truth. *Dig.* 50. 17. 207. A matter decided or passed upon by a court of competent jurisdiction, is received as evidence of truth. 2 *Kent's Com.* 120. A maxim adopted in the common law, to express the authority and finality of judicial decisions. *Co. Litt.* 103 a. *Broom's Max.* 428, [242, 729.] *Best on Evid.* 41, § 44. See *Id.* 464—470, §§ 422—429. Another form of this maxim is **Judicium pro veritate accipitur.** *Co. Litt.* 39 a, 168 a, 236 b. The doctrine of *res judicata* is held not to apply to motions in the course of practice. 5 *Hill's* (N. Y.) *R.* 493.

Sæpe constitutum est, res inter alios judicatas aliis non præjudicare. It has often been determined that matters adjudged between other parties do not prejudice. *Dig.* 42. 1. 63. **Res inter alios judicata aliis non obest.** *Id.* 44. 1. 10. **Res inter alios judicatæ nullum aliis præjudicium faciant.** *Id.* 44. 2. 1.

RES MOBILES. Lat. In the civil law. Moveable things; things which may be transported from one place to another, without injury to their substance and form. 1 *Mackeld. Civ. Law*, 152, § 147. Things corresponding with the chattels personal of the common law. 2 *Kent's Com.* 347.

RES NOVA. Lat. A new matter; a new point or question. "If it were *res nova*, I should be apt to think so too." Holt, C. J. 6 *Mod.* 161.

RES NULLIUS. Lat. In the civil law. Things of no one; the property of nobody; such as things sacred, (*sacræ*,) religious, (*religiosæ*,) and holy, (*sanctæ.*) *Inst.* 2. 1. 7. *Dig.* 1. 8. 2. *Tayl. Civ. Law*, 470. Bracton ranks also under this head, wild animals, derelict property, wrecks, waifs, and strays. *Bract.* fol. 8. And see *Fleta*, lib. 3, c. 1, §§ 6, 9. *Grotius, de Jur. Bel.* lib. 3, c. 6, § 9.

RES PRIVATÆ. Lat. In the civil law. Private things; things belonging to individuals, (*quæ singulorum sunt.*) *Dig.* 1. 8. 1. pr.

RES PUBLICÆ. Lat. In the civil law. Public things; such as rivers, harbors, the banks of rivers, &c. *Inst.* 2. 1. 2, 4. *Dig.* 1. 8. 1, pr. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 4. *Tayl. Civ. Law*, 472. Sometimes called *res publici juris.* 2 *Wooddes. Lect.* 3.

RES QUOTIDIANÆ. Lat. Every day matters; familiar points or questions. The title of a work of Gaius, from which the Institutes of Justinian were in part compiled. *Inst.* proœm. § 6.

RES RELIGIOSÆ. Lat. In the civil law. Religious things. Places in which a dead body was laid. *Inst.* 2. 1. 9. *Dig.* 1. 8. 6. 4.

Res sacra non recipit æstimationem. A sacred thing does not admit of valuation. *Dig.* 1. 8. 9. 5.

RES SACRÆ. Lat. In the civil law. Sacred things. Things consecrated by the pontiffs to the service of God, such as sacred edifices, and gifts or offerings, (*donaria.*) *Inst.* 2. 1. 8. *Dig.* 1. 8. 6. 3. Chalices, crosses, censers. *Bract.* fol. 8. The place where a sacred edifice stood, continued to be sacred, though the edifice was destroyed. *Inst. ub. sup. Dig. ub. sup.* See *Tayl. Civ. Law*, 470.

RES SANCTÆ. Lat. In the civil law. Holy things; things protected against injury by man; such as the walls and gates of a city. *Inst.* 2. 1. 10. *Dig.* 1. 8. 8, pr. and 2. Walls were said to be holy, because any offence against them was punished capitally. *Inst.* 2. 1. 10. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 7. Fleta calls them *quasi sacra.*

RES UNIVERSITATIS. Lat. In the civil law. Things of a community; such

as theatres and race-grounds, (*stadia,*) and other like things which were the common property of a city. *Inst.* 2. 1. 6. *Dig.* 1. 8. 6. 1. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 6. See *Tayl. Civ. Law*, 473.

RESCEIT. [Lat. *receptio.*] In old English practice. An admission or receiving a third person to plead his right in a cause formerly commenced between two others. As, in an action by tenant for life or years, he in the reversion might come in and pray *to be received* to defend the land, and to plead with the demandant. *Cowell. Bro. Abr.* Resceit. Called by the civilians, *admissio tertii pro suo interesse*, (the admission of a third person, on account of his interest.)

RESCEU, *Rescue.* L. Fr. Received. *Novæ Narr.* 5 b. *Kitchin. Resceux*, (plur.) *Britt.* c. 2.

RESCISSIO. Lat. [from *rescindere*, to annul or avoid.] In the civil law. An annulling, avoiding, or making void; abrogation; rescission. *Cod.* 4. 44. *Pothier, Contr. of Sale*, num. 331.

RESCISSORY ACTION. [Lat. *actio rescissoria.*] In the civil law. An action to rescind or avoid a title by prescription. *Inst.* 4. 6. 5. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1132.

An action to rescind a contract of sale, on the ground of injustice in the price, or what is termed *lesion. Cod.* 4. 44. *Pothier, Contr. of Sale*, num. 331, *et seq.*

In Scotch law. An action to rescind a contract or deed. 1 *Forbes' Inst.* part 4, p. 158. See *Bell's Dict.*

RESCOUS. L. Fr. and Eng. [from Fr. *rescourrer*, to force from, or recover back; L. Lat. *rescussus.*] A forcible taking back of goods distrained, or in the custody of the law.* 3 *Bl. Com.* 146.

The forcible delivery of a defendant, or other party arrested, from the officer who is carrying him to prison.* *Id. ibid.*

A writ which lay in cases of rescous, (*breve de rescussu.*) *F. N. B.* 101 C. D. *Reg. Orig.* 116 b, 117.

RESCRIPTA. Lat. In the civil law. Rescripts. *Cod.* 1. 23. See *Rescriptum.* A term sometimes applied to the original writs of the common law. *Co. Litt.* 11 a.

RESCRIPTUM. Lat. [from *rescribere*, to write back.] In the civil law. A species of imperial constitution, in the form of an answer to some application or petition; a rescript. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 1, tit. 2, § 53. Otherwise called a letter or epistle, (*epistola.*) *Inst.* 1. 2. 6. See a form of *rescript, Dig.* 37. 14. 17.

RESCUE. [L. Fr. *rescouse;* L. Lat. *rescussus.*] The modern form of *rescous*, (q. v.) A forcible taking back of persons or property out of the custody of the law.* 3 *Bl. Com.* 12. 4 *Id.* 125.

In criminal law. The forcibly and knowingly freeing another from an arrest or imprisonment.* 4 *Bl. Com.* 131. 4 *Steph. Com.* 256.

RESCUSSOR. L. Lat. In old English law. A rescuer; one who commits a rescous. *Cro. Jac.* 419. *Cowell.*

RESCUSSUS. L. Lat. [from L. Fr. *rescous.*] In old English law. Rescue; forcible liberation or release. *Spelman.*

RESCUTERE. L. Lat. In old English law. To rescue. *Rescussit;* (he) rescued. *Reg. Orig.* 117. 3 *P. Wms.* 484. *Rescusserunt;* (they) rescued. *Reg. Orig.* 118.

RESCYT. L. Fr. Resceit; receipt; the receiving or harboring a felon, after the commission of crime. *Britt.* c. 23.

RESEANTISA. L. Lat. [from L. Fr. *reseance.*] In old English and Scotch law. Residence. *Fleta*, lib. 6, c. 3, § 2. *Spelman.*

A severe or long continued illness, confining a person to his house, (*morbus validus, seu veteranus quo quis exire de suis ædibus prohibetur.*) *Id. Glanv.* lib. 1, c. 11. Described by Skene, as "a long and old sickness, or a resident heavy infirmity and sore sickness." *Skene ad Reg. Maj.* lib. 1, c. 8. See *Id. De Verb. Signif.* The essoin *de malo lecti* was more anciently termed *de infirmitate reseantisæ*, or *de reseantisa.* 1 *Reeves' Hist.* 115. *Fleta*, lib. 6, c. 10, § 1.

RESEAUNT, *Reseant.* L. Fr. Abiding; dwelling; residing. *Britt.* c. 98.

RESEISER. [L. Lat. *reseisire.*] In old English law. A taking back of seisin.* A taking again of lands into the hands of the king, whereof a general livery or *ouster-le-main* was formerly mis-sued, contrary to the form and order of law. *Staundf. Prær. Reg.* 26. *Cowell.*

RESERVANDO. L. Lat. (Reserving.) In old conveyancing. An apt word of reserving a rent. *Co. Litt.* 47 a.

RESERVATION. [Lat. *reservatio*, from *reservare*, to keep back or save out.] In conveyancing. A clause in a deed whereby the grantor reserves some new thing to himself, out of the thing granted,

and not in *esse* before. 4 *Kent's Com.* 468. *Co. Litt.* 47 a. Distinguished from an *exception*, which is always of part of the thing granted, and of a thing in *esse*. *Id. ibid.* See 2 *Selden's R.* 458.

RESET. In Scotch law. The receiving or harboring of a proscribed or outlawed person. *Skene de Verb. Signif. Cowell. Reset of theft*, is the receiving goods knowing them to be stolen, or the harbouring and concealing the thief from justice. *Bell's Dict. Resetter;* a receiver. *Cowell.* See *Resset, Recettour.*

RESIANCE, *Resiancy.* [L. Lat. *resiantia*, from L. Fr. *reseant*, resident.] In old English law. Residence; a man's abode or continuance in a place. *O. N. B.* 85. *Cowell.* 2 *Inst.* 99. 1 *Crabb's Real Prop.* 498, § 641. "*Resiance* and mansion of the council." *Bacon's Works*, iv. 261.

RESIANT, *Resient, Resyaunt.* [from L. Fr. *reseant*, resident.] In old English law. Continually dwelling or abiding in a place; resident; a resident. *Kitchin*, 33. *Cowell.* 2 *Inst.* 99. "*Resiants* and inhabitants within a manor." 3 *Leon.* 8, case 21. See *Resyaunt.*

RESIANTIA, *Reseantia.* L. Lat. In old English law. Resiance; residence. *Spelman.* See *Resiance.*

RESIDENCE, [O. Eng. *resiance;* L. Fr. *reseaunce;* L. Lat. *resiantia, reseantia, reseantisa;* from Lat. *residere*, to sit down.] The act or state of being seated or settled in a place; the act, state or habit of dwelling or abiding in a place; the act or state of being resident, or inhabitant; inhabitancy or habitancy.* The act of abiding or dwelling in a place for some continuance of time. *Webster.*

The place where one resides, (*locus quo quis residet;*) habitation; domicil. *Spelman.* The place which one has made his seat, (*sedes,*) abode or dwelling.* A man's home. 15 *Mees. & W.* 433.

Residence imports not only *personal presence* in a place, but an attachment to it by those acts or habits which express the *closest connection* between a person and a place, as by usually *sitting* or *lying* there. The radical idea of the word is well illustrated by its use in English ecclesiastical law, to denote the actual and *settled* presence and abode of a parochial minister *in and upon* his parsonage house; otherwise expressed by the word *incumbency*, from *incumbere*, to lie upon. 1 *Bl. Com.* 390, 392. See 5 *Burr.* 2722. The same idea of *lying* was inherent in the old word *reseantisa*, (from the same root,) which imported a settled infirmity, ("a *resident* infirmity," as Skene translates it,) by which one was *confined to his house or bed.* See *Reseantisa.* And see 8 *Mod.* 308. *Burr. Sett. Cas. passim.* The radical idea of the pure Latin *residere* is a *sitting.* Hence justices while holding a court were said to be *resident* (*residentes*) or sitting there. See *Residens.*

Residence has been declared to mean the same thing with *inhabitancy. Burr. Sett. Cas.* 708. Walworth, C. 8 *Wendell's R.* 140. Spelman makes it synonymous with *habitation*, (*habitatio.*) It is made also synonymous with *domicil*, (*domicilium,*) by the same writer and other high authorities; but *domicil* in some of its applications imports something more than residence. 2 *Kent's Com.* 430, 431, note, 1 *Id.* 76, 77. It might be said that *residence* imported, *ex vi termini*, fixedness or permanence of location, were it not for the distinction between *permanent* and *temporary residence*, which seems to have become established. See 2 *Kent's Com. ub. sup.*

RESIDENS. [from *residere*, to sit.] In old English law. Sitting. *Justitiarii* residentes *in banco;* the justices sitting in the bench. *Bract.* fol. 353 b. These are distinguished from the *justitiarii itinerantes in comitatu;* justices itinerating or going about in the county. *Id. ibid.*

RESIDENT. L. Lat. [from *residere*, to sit or be fixed.] In old English practice. [They] remain. *Quarum recorda et processus coram nobis* resident; the records and process whereof remain before us. *Reg. Orig.* 308 b.

RESIDENT. [Lat. *residens*, from *residere*, to sit; O. Eng. *resiant.*] One who has a seat or settlement in a place; one who dwells, abides or lies in a place.* An inhabitant. 20 *Johns. R.* 208. Walworth, C. 8 *Wendell's R.* 134, 140. One who resides or dwells in a place for some time. *Webster.* See 12 *Grattan's R.* 440.

RESIDER. L. Fr. [from Lat. *residere*, q. v.] To continue; to abide. *L. Fr. Dict.*

RESIDERE. Lat. In old English law. To sit down; to sit still; to rest; to remain or continue. See *Resident.*

RESIDENT MINISTER. In international law. A public minister who resides

at a foreign court. Resident ministers are ranked in the third class of public ministers. *Wheaton's Intern. Law*, part 3, ch. 1, § 6. See 1 *Kent's Com.* 39, note.

RESIDUARY. Giving the residue, as a *residuary* clause.

Taking the residue, as a *residuary* devisee.

Constituting the residue, as a *residuary* estate. See *Residue.*

RESIDUARY CLAUSE. That clause in a will by which a testator disposes of such part of his estate as *remains* undisposed of by previous devises or bequests.* 4 *Kent's Com.* 541, 542.

RESIDUARY DEVISEE. The person named in a will, who is to take all the real property remaining over and above the other devises.

RESIDUARY ESTATE. That part of a testator's estate and effects which *remains* after payment of debts and legacies.

RESIDUARY LEGATEE. The person to whom a testator bequeaths the residue of his personal estate, after the payment of such other legacies as are specifically mentioned in the will.

RESIDUE, (or RESIDUUM.) The surplus of a testator's estate remaining after all the debts and particular legacies have been discharged. 2 *Bl. Com.* 514.

RESIGNATION. In ecclesiastical law. The yielding up a benefice or spiritual living to the bishop. *Wharton's Lex.*

In Scotch law. The return of a fee into the hands of the superior. *Bell's Dict.*

RESIGNATION BOND. In English law. A bond given by the incumbent of a living, conditioned to resign on a certain contingency. *Smith on Contracts*, 176—181.

RESILIRE. Lat. In old English law. To draw back from a contract before it is made binding. Literally, to leap back, or start back. *Adhunc possunt partes* resilire; the parties may yet draw back. *Bract.* fol. 38. *Fleta*, lib. 2, c. 58, § 3. The Scotch law, with its accustomed closeness, renders this word *resile.*

RESOLUCION. Span. In Spanish colonial law. An opinion formed by some superior authority on matters referred to its decision, and forwarded to inferior authorities for their instruction and government. *Schmidt's Civ. Law*, 93, note 1.

RESOLUTION. In practice. The judgment of a court. 5 *Mod.* 438. 10 *Id.* 209.

RESOLUTIVE. In Scotch conveyancing. Having the quality or effect of resolving or extinguishing a right. *Bell's Dict.* voc. *Clauses irritant and resolutive.*

Resoluto jure concedentis, resolvitur jus concessum. Where the right of the grantor is extinguished, the right granted is extinguished. *Broom's Max.* [352.]

RESOMOUNSE. L. Fr. Re-summons. *Britt.* c. 121.

RESON. L. Fr. Reason; truth; right; title; justice; act; argument; charge; expression; method; case; article; point. *Kelham.*

De reson; in reason. *Id. Funde sa reson;* grounds his title. *Id. Feare noz reson;* make us satisfaction. *Id. Deux resons;* two circumstances. *Id. Ses resons;* his evidences. *Id.*

RESORT. [from Fr. *resorter*, q. v.] To go back. "It resorted to the line of the mother." *Hale's Hist. Com. Law*, c. 11.

RESORTER. L. Fr. In old English law. To go back. *A force* resortera *le tenement au seigniour del fee;* the tenement must necessarily go back to the lord of the fee. *Britt.* c. 119.

To resort to; to adopt on failure of other proceedings. *Ne purra* resorter *à breve semblable;* he may not resort to a similar writ. *Id.* c. 46.

To go. *Dyer*, 135 b. (Fr. ed.)

RESPECTARE, *Respectuare.* L. Lat. In old English law. To respite. *Fortescue de L. L. Angliæ*, c. 53, note. *Reg. Orig.* 319. *Respectuabitur;* shall be put off. *Fleta*, lib. 6, c. 23, § 21.

RESPECTIVE. L. Lat. Respectively; with reference to the subject. "It must be taken *respective.*" Holt, C. J. 1 *Show.* 190.

RESPECTUS. L. Lat. In old English and Scotch law. Respite; delay; continuance of time; postponement. *Ponere in respectum;* to put in respite; to respite or continue. *Glanv.* lib. 12, c. 9. *Fleta*, lib. 4, c. 5, § 11. *Habebit* respectum, *si velit, certæ diei;* shall have respite, if he will, to a certain day. *Reg. Maj.* lib. 4, c. 20. *Spelman.*

Time for payment. *Mag. Cart.* 9 *Hen.* III. c. 19.

RESPI. L. Fr. Delay; putting off. *Kelham. L. Fr. Dict.*

RESPITE. [L. Lat. *respectus, respectuatio.*] Delay; a putting off. The putting off the execution of a capital sentence; a reprieve. 4 *Bl. Com.* 394.

Continuance. In English practice, a jury is said, on the record, to be *respited* till the next term. 3 *Bl. Com.* 354.

RESPOIGNER, *Respoyner.* L. Fr. To answer. *Respoignable;* answerable. *L. Fr. Dict.*

RESPONDE BOOK. In Scotch practice. A book kept by the directors of chancery, in which are entered all non-entry and relief duties payable by heirs who take precepts from chancery. *Bell's Dict.*

RESPONDEAT OUSTER, (or QUOD RESPONDEAT OUSTER.) Lat. and L. Fr. In practice. The judgment for the plaintiff on a plea in abatement, *that* the defendant *answer over;* that is, answer in a better manner, or put in a more substantial plea. 3 *Bl. Com.* 303, 397.

Respondeat superior. The superior or master must answer. Let the principal answer. The principal or master must answer, or is responsible for the acts of his agent or servant. 2 *Kent's Com.* 600. *Broom's Max.* 374, 387, [668.] *Fleta*, lib. 2, c. 70, § 14. *Story on Agency*, § 308, 452. Expressed in law French, **Respondera son soveraigne.** *Artic. sup. Chart.* c. 18.

The rule of *respondeat superior*, or that the master shall be civilly liable for the tortious acts of his servant, is of universal application, whether the act be one of omission or commission; whether negligent, fraudulent or deceitful. If it be done in the course of his employment, the master is liable; and it makes no difference that the master did not authorize or even know of the servant's act or neglect; or even if he disapproved or forbade it, he is equally liable, if the act be done in the course of his servant's employment. Grier, J. 14 *Howard's R.* 486. The rule applies to municipal corporations, when in the exercise of ministerial or executive powers. 3 *Comstock's R.* 463. 1 *Selden's R.* 369. 4 *Ohio St. R.* 80. As to its applicability in general, see 1 *Selden's R.* 49. 4 *Ohio St. R.* 399. 5 *Id.* 38, 41. Held not to apply so as to make a public officer responsible for the misconduct or malfeasance of such persons as he is obliged to employ. 3 *Hill's* (N. Y.) *R.* 531. And see *United States Digest*, Master and Servant.

RESPONDENT. [Lat. *respondens*, from *respondere*, to answer.] In practice. A party answering. A *respondent* in admiralty answers to a *defendant* at common law and in equity. A party against whom an appeal is taken.

RESPONDENTIA. Lat. [from *respondere*, to answer.] In mercantile law. A loan of money upon the pledge of the cargo of a vessel, to be repaid with maritime interest, if the subject arrives safe, or if it shall not have been injured except by its own defect, or the fault of the master or mariners.* 3 *Kent's Com.* 354, 355. Called *respondentia*, because it is generally only a personal obligation on the borrower, who is bound to *answer* the contract. *Id. ibid.* 2 *Bl. Com.* 458. The contract is executed in the form of a bond, called a *respondentia bond.* 3 *Kent's Com.* 354. See *Abbott on Ship.* 150.

RESPONDES. L. Fr. Answer. *Respondes oustre;* answer over. Words of the court used in giving judgment. Of frequent occurrence in the Year Books. P. 3 Hen. VI. 13. T. 4 Hen. VI. 5, 11, *et passim.* M. 8 Hen. VI. 22. M. 20 Hen. VI. 23. *R'nd's, R'n's*, were contractions of the word. *Respondez à v' peril.* T. 1 Edw. II. 14.

RESPONSA PRUDENTUM. Lat. In the Roman law. Answers or opinions of lawyers, jurists or jurisconsults. One of the principal sources of Roman jurisprudence. 1 *Kent's Com.* 530, 532. 1 *Mackeld. Civ. Law*, 23, § 34. *Id.* 31, § 43. Supposed to have partaken of the character of what are now called *precedents* or *reports. Butler's Co. Litt.* Note 253, lib. 3. *Tayl. Civ. Law*, 217, 218. See an example of a question and response, *Dig.* 28. 1. 27.

RESPONSALIS. L. Lat. In old English law. One who answered or gave answer for another, (*qui responsum defert.*) The term seems to be used by Glanville in the sense of *attorney. Glanv.* lib. 12, c. 1. *Steph. Pl.* Appendix, Note (5.) But Bracton makes a clear distinction between the two offices, and is followed by Fleta. *Bract.* fol. 212 b. But see *Id.* fol. 361 b. *Fleta*, lib. 4, c. 6. Lord Coke defines *responsalis* to be "he that was appointed by the tenant or defendant, in case of extremity and necessity, to allege the cause of the party's absence, and to certify the court upon what trial he will put himself, viz. the combat or the country." *Co. Litt.* 128 a.

In the canon law. A proctor; one who excuses an absent party. *Cowell.*

RESPONSIBLE. Able to respond; Able to pay a sum for which a person may become liable. 6 *Foster's* (N. H.) *R.* 527.

RESPONSIO. Lat. An answer. **Responsio unius non omnino audiatur.** The answer of one witness shall not be heard at all. A maxim of the Roman law of evidence. 1 *Greenl. Ev.* § 260.

RESPONSURUS. Lat. In old practice. To answer. *Fleta*, lib. 2, c. 65, § 11. The same with *ad respondendum*, (q. v.)

RESSEANT. L. Fr. Continually abiding; resident. *Kelham.*

RESSET. In Scotch law. Receipt or harboring of a felon; concealment of felony. *Resset of thift;* concealment of theft. *Scott's Minstrelsy of Scottish Border*, Introd. App. viii. See *Reset.*

"REST and RESIDUE," in a will, may in certain connections carry a fee; but the words attain their force from their juxtaposition with other words which fix the sense in which the testator has used them. Story, J. 10 *Wheaton's R.* 204, 235. See 1 *Jarman on Wills*, 658, 661, (567, 569, Perkins' ed.)

RESTITUERE. Lat. In the civil law. To restore. Distinguished from *exhibere*. *Dig.* 50. 16. 22. As to the construction of this word, see *Id.* 50. 16. 35, 75, 81, 246. *Id.* 50. 17. 173. 1.

RESTITUTIO IN INTEGRUM. Lat. In the civil law. Restitution to a former condition. *Dig.* 4. 1. The rescinding of a contract or transaction, on grounds of equity, and restoring the parties to the situation in which they were before the contract was made, or the transaction took place. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1150.

The restoration of a cause to its first state, on petition of the party who was cast, in order to have a second hearing. *Hallifax, Anal.* b. 3, c. 9, num. 49.

RESTITUTION. [Lat. *restitutio*, from *restituere*, to restore.] The yielding up again or restoring of any thing unlawfully taken from another. *Cowell.* The putting one in possession of lands or tenements who has been unlawfully disseised of them. *Id.* If after money has been levied under a writ of execution, the judgment be reversed by writ of error, or set aside, the party against whom the execution was sued out shall have restitution. 2 *Tidd's Pr.* 1033. 1 *Burr. Pr.* 292. So, on conviction of a felon, immediate restitution of such of the goods stolen as are brought into court, will be ordered to be made to the several prosecutors. 4 *Steph. Com.* 434.

RESTITUTION OF CONJUGAL RIGHTS. In English ecclesiastical law. A species of matrimonial cause or suit which is brought whenever either a husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the ecclesiastical jurisdiction will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 *Bl. Com.* 94.

RESTITUTION, *Writ of.* In practice. A writ which lies, after the reversal of a judgment, to restore a party to all that he has lost by occasion of the judgment. 2 *Tidd's Pr.* 1186.

RESTRAINING STATUTE. A statute which restrains the common law, where it is too lax and luxuriant. 1 *Bl. Com.* 87. Statutes restraining the powers of corporations in regard to leases have been so called in England. 2 *Id.* 319, 320.

In some of the United States, statutes have been enacted, restraining the powers of banking corporations. See the New-York Restraining Act, 1 *Rev. St.* [711—713,] 707—711. *Cleaveland on the Banking System*, 39—49.

RESULTING TRUST. A trust raised by implication, for the benefit of a party granting an estate.* Thus, if the legal estate in land be conveyed to A. upon such trusts as the grantor shall thereafter appoint; as such trusts are, prior to appointment, incapable of taking effect, and as it is clear that A. is not intended to hold the land for his own benefit, there arises by necessary implication, until the appointment be made, a trust for the grantor. 1 *Steph. Com.* 346. 2 *Crabb's Real Prop.* 558, § 1777 a. *Cruise's Dig.* tit. xii. ch. 1, sec. 61.

Various kinds of trust are ranked under this head in the books, such as trusts raised by implication for the benefit of a person who advances the purchase money of an estate, &c. 1 *White's Equity Cases*, 138, and notes. 4 *Kent's Com.* 305, 306. *Cruise's Dig.* tit. xii. c. 1, sec. 40, *et seq.* But these are rather *implied* than resulting trusts, properly so called; the term *resulting*, in strictness, importing a *going back* or

reverting of an estate to the party from whom it proceeded. 2 *Crabb's Real Prop.* 571, § 1796.

RESULTING USE. A use which returns back to a party conveying an estate.* Thus, if A. conveys by feoffment or lease and release to B. in fee, without consideration, and without declaring any use, there will be a *resulting use*, by implication of law, to himself, the grantor, which use the statute will execute accordingly. 1 *Steph. Com.* 498. 2 *Crabb's Real Prop.* 470, § 1641, *et seq.* In fact, no estate passes in such case from the grantor, but he remains seised as before. 1 *Hilliard's Real Prop.* 294, [297.]

RE-SUMMONITIO. L. Lat. [from *re-summonere*, to re-summon.] In old practice. A re-summons; a second summons, where the party did not appear on the first. *Fleta*, lib. 5, c. 3, § 2.

RE-SUMMONS. [L. Lat. *re-summonitio.*] In practice. A second summons. The calling a person a second time to answer an action, where the first summons is defeated upon any occasion, as the death of a party, or the like. *Cowell.*

RESUMPTION. [L. Lat. *resumptio.*] In old English law. The taking again into the king's hands such lands or tenements as before, upon false suggestion, or other error, he had delivered to the heir, or granted by letters patent to any man. *Stat.* 31 *Hen.* VI. c. 7. *Cowell.*

RESYAUNT. L. Fr. and O. Eng. Resident. "By people dwelling and *resyaunt* in the same counties." *Stat.* 8 *Hen.* VI. c. 7.

RETAINER. The retaining or keeping by an executor or administrator, out of the personal estate in his hands, of so much as will pay a debt due himself by the testator or intestate; a species of redress by operation of law.* 3 *Bl. Com.* 18. If a person indebted to another makes his creditor or debtee his executor, or if such a creditor obtains letters of administration to his debtor; in these cases, the law gives him a remedy for his debt, by allowing him to *retain* so much as will pay himself, before any other creditors whose debts are of equal degree. *Id. ibid.* 2 *Id.* 511. 2 *Steph. Com.* 247. 3 *Id.* 378. 1 *Chitt. Gen. Pr.* 534, 668. 2 *Williams on Exec.* 894.

In New-York, executors or administrators cannot retain in preference to other debts of equal degree. 2 *Rev. St.* [88,] 29, § 33.

RETAINER. In practice. The engagement by a client, of an attorney, solicitor or counsel to act in his behalf; as to institute, or to defend a suit, to try a cause or the like. The special authority given by a client to an attorney or solicitor, to act in his behalf.* This authority is rarely given in writing, though the propriety of written retainers has been contended for by high authority on such subjects. 2 *Chitt. Gen. Pr.* 18, 19. 3 *Id.* 115.

In English practice, a *retainer*, as applied to counsel, is commonly used to signify a notice given to a counsel by an attorney on behalf of the plaintiff or defendant in an action, in order to secure his services as advocate when the cause comes on for trial. *Holthouse.* See 2 *Chitt. Gen. Pr.* 71.

RETAINING FEE. [Lat. *merces retinens.*] In practice. A fee given to a counsel to secure his services, or rather, as it has been said, to prevent the opposite side from engaging them. *Brande.* The first fee given to any serjeant or counsellor at law, whereby to make him sure that he shall not be on the contrary part, (*honorarium seu premium causidici præcedaneum, quo clienti suo obligatur ne adversarii causam agat.*) *Cowell.*

RETALLIA. L. Lat. [from L. Fr. *retailler*, to cut again.] In old English law. Retail; the cutting up again, or division of a commodity into smaller parts. *Nec in grosso, nec ad* retalliam; neither in gross [by wholesale] nor at retail. *Reg. Orig.* 184.

RETARE. L. Lat. In old English law. To suspect; to accuse. Retatus *de murdro;* accused of murder. *Assis. de Clarendon*, temp. Hen. II. § 1. *Spelman. De furto* retatus; charged with theft. *Cowell.* See *Rettatus.*

RETEINER, *Retener.* L. Fr. To retain, or keep back; to detain. *Kelham.*

RETENEMENTUM. In old English law. Restraint; detainment; withholding. A full and absolute conveyance was anciently made in this phrase,—*sine ullo retenemento*, (without any withholding.) *Cowell.*

RETENTION. The right of retaining property, until a debt due from the owner of such property to him who retains it, is paid. *Holthouse.* See *Lien.*

RETONDERE. L. Lat. In old English law. To clip. *Retonsus;* clipped. *De moneta retonsa;* respecting clipped money. *Fleta*, lib. 1, c. 20, § 128.

RETONSOR. L. Lat. [from *retondere*, q. v.] In old English law. A clipper of money. *Fleta*, lib. 1, c. 20, § 122.

RETORNA BREVIUM. L. Lat. In old practice. The returns of writs. The *retorna brevium* day was the third day of the term, so called, because the sheriff on that day returned his writs into court. *Crabb's Hist.* 218.

RETORNARE, *Returnare.* L. Lat. In old English practice. To return (a writ;) to return in execution of a writ. *Ad brevia falsum* retornant *responsum;* make a false return to the writs. *Stat. Westm.* c. 39. *Retornaverit;* shall have returned. *Fleta*, lib. 2, c. 64, § 20. *Retornâsti;* you returned. *Id.* § 21. *Retornabile;* returnable. *Reg. Orig.* 276.

To return, or restore. Retornari *facias;* you cause to be returned. *Reg. Jud.* 4.

RETORNUM. L. Lat. In old practice. Return; a return. *Fleta*, lib. 2, c. 45, §§ 4, 7.

RETOUNDER. L. Fr. To clip (money.) *Ceux que averount nostre monoye* retoundu; those who have clipped our money. *Britt.* c. 4.

RETOUR. In Scotch law. To return a writ or brieve to the office in chancery from which it issued.* *Hubback's Evid. of Succession*, 597. See *Retour of service.*

RETOUR OF SERVICE. In Scotch law. An authenticated copy of the verdict of a jury (called a *service*) taken under a brieve of succession, by which the legal character of a party as heir is judicially established.* *Hubback's Evid. of Succession*, 597. 1 *Forbes' Inst.* part 3, p. 80. See *Bell's Dict.*

RETRACTO O TANTEO. Span. In Spanish law. The right of revoking a contract of sale; the right of redemption of a thing sold. *White's New Recop.* b. 2, tit. 13, c. 2, § 4.

RETRACTUS AQUÆ. L. Lat. In old English law. Retreat of the water.* Ebb, or low water; the retreat of tide. *Placit. Cor. Rege*, Pasch. 30 Edw. I. *apud Cantuar.* Rot. 58. *Cowell.*

RETRACTUS FEUDALIS. L. Lat. In old Scotch law. The power which a superior possessed of paying off a debt due to an adjudging creditor, and taking a conveyance to the adjudication. *Bell's Dict.*

RETRAHERE. Lat. [from *re*, back, and *trahere*, to draw.] In old English practice. To draw back; to withdraw. *Si simpliciter se* retrahat *à brevi, non tamen se* retrahit *ab actione,—nisi expresse dicat quod se* retrahat *ab utroque;* if he merely withdraw himself from the writ, he does not thereby withdraw himself from the action, unless he expressly says that he withdraws himself from both. *Bract.* fol. 182 b. See *Fleta*, lib. 4, c. 7, § 1.

RETRAHO. Lat. In old practice. I withdraw. *Sed quicunque et qualitercunque se* retraxerit, *simpliciter sive dicat* retraho *me de brevi isto, vel recedo, vel nolo amplius sequi, vel alio modo, impune non recedit;* but whoever he may be, and in whatever way he may have withdrawn himself, whether he simply say, "I withdraw myself from that writ," or "I retire," or "I will not further prosecute," or in any other way, he shall not withdraw with impunity. *Bract.* fol. 182 b. This passage exhibits the original form of the proceedings by *retraxit* and *nolle prosequi.* And see *Fleta*, lib. 4, c. 7, § 1.

RETRAICTER, *Retrair, Retreir, Retrere.* L. Fr. [from Lat. *retrahere*, q. v.] To draw back; to withdraw. *Kelham. L. Fr. Dict.*

RETRAIT. Fr. [from *retraire*, to draw back.] In old French and Canadian law. The taking back of a fief by the seignior, in case of alienation by the vassal. *Dunkin's Address*, 93.

A right of preëmption by the seignior, in case of sale of the land by the grantee. *Id.* 40.

RETRAXIT. L. Lat. [from *retrahere*, q. v.] In practice. (He withdrew, or has withdrawn.) An open and voluntary renunciation by a plaintiff, of his suit, in court, made when the trial is called on, by which he forever loses his action, or is barred from commencing another action for the same cause. 3 *Bl. Com.* 296. 2 *Arch. Pr.* 250. So called from the emphatic word of entry on the record, that the plaintiff *withdrew*, or *has withdrawn.* The words actually used by the plaintiff appear to have been "*retraho me,*" (I withdraw myself,) or "*retraho me de brevi isto,*" (I withdraw myself from this writ.) See *Retraho.* The proceeding by *retraxit* has, for the most part, become obsolete. See 17 *Georgia R.* 249.

RETRERE, *Retreir, Retreher.* L. Fr. To draw back. *Britt.* c. 120. *Yearb.* M. 3 Edw. III. 40.

RETRET. L. Fr. [from *retrere*, q. v.] Retreat; the drawing back or ebbing of water. *De un flot, et d' un* retret *d' la*

meer; of one flow or flood, and one ebb of the sea. *Britt.* c. 123. See *Retractus aquæ, Recessus maris.*

RETRO. Lat. Back; backward; behind. *Retrofeodum;* a rere fief, or arriere fief. *Spelman.*

RETROCOMITATUS. L. Lat. [from *retro*, behind, and *comitatus*, county court.] In old English law. The morrow after the county court. *Fleta*, lib. 2, c. 67, § 18. Translated by Spelman, *rier county*, (q. v.)

RETROSPECTIVE. [from Lat. *retrospicere*, to look back, from *retro*, back, and *aspicere*, to look.] Looking back; contemplating what is past.

RETROSPECTIVE LAW. A law which retrospects or looks back; a law which contemplates or affects an act done, or a right accrued before its passage.* Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, must be deemed *retrospective.* Story, J. 2 *Gallison's R.* 139. See 4 *Texas R.* 470, 474—480. See *Ex post facto.*

RETROTRAHERE. Lat. In civil and old English law. To draw back. *Retrotrahitur;* is drawn back; operates retrospectively; has relation back. *Retrotrahitur tempus;* the time relates back. *Fleta*, lib. 1, c. 28, § 4. See **Omnis ratihabitio**, &c.

To recall or countermand. *Fleta*, lib. 2, c. 3, § 5.

RETTARE, *Retare.* L. Lat. [from L. Fr. *rette*, an accusation.] In old English law. To accuse; to charge with a crime. *Rettatus;* accused. *Reg. Orig.* 68 b. *Rettatus de morte. Id.* 133 b. See *Fortescue L. L. Angliæ*, c. 27, note.

RETTE. L. Fr. In old English law. An accusation or charge. *Quant clerk est prise par* rette *de felony;* when a clerk is taken on a charge of felony. *Stat. Westm.* 1, c. 2.

RETTER. L. Fr. In old English law. To accuse; to charge; to lay to the charge; to account; in old English, to arret, or arrect. *Ceo purra il* retter *à sa negligence;* he must charge this to his own negligence. *Britt.* c. 59. *Ceo poies* retter *à vostre folly demesne;* you may lay this to your own folly. *Yearb.* H. 10 Edw. III. 8. *Il serra* rette *la folly;* it shall be accounted the folly. *Litt.* sect. 261.

RETTUM. L. Lat. [from L. Fr. *rette*, q. v.] In old English law. An accusation; a charge. *Si clericus aliquis pro crimine aliquo vel* retto—*arrestatus fuerit;* if any clerk shall have been arrested for any crime or charge. *Stat. Marlbr.* c. 28, [27.] See *Fortescue de L. L. Angliæ*, c. 27, note. *Nisi capti sunt per speciale preceptum nostrum, vel capitalis justitiarii nostri, vel pro morte hominis, vel pro foresta nostra, vel pro aliquo alio* retto *quare secundum consuetudinem Angliæ non sunt replegiabiles;* unless they have been taken by our special command, or that of our chief justice, or for the death of man, or for our forest, or for any other charge wherefor, according to the custom of England, they are not repleviable. *Reg. Orig.* 77 b. *Dyer*, 61. The excepting clause in the old writ *de homine replegiando.* In Fitzherbert's Natura Brevium, the word *retto* in this passage is translated *right. F. N. B.* 66 F. And so in the English translation of Dyer.

RETURN. [L. Lat. *retornum, returnum, retornatio;* from L. Fr. *returner*, (q. v.) or *retour*, a turning back.] In practice. Strictly, the carrying or *sending back* of a writ to the court from which it issued, by the officer to whom it was directed, in compliance with its mandate to that effect; the sheriff being reqired to *have the writ* itself *in court* on a certain day.* 3 *Bl. Com.* 273, 275. *Steph. Pl.* 21. The return, however, as actually made, is not to the court itself, but to the office of its clerk, which is considered as representing the court for this purpose.

The answer made in writing by a sheriff, or other officer, to the court out of which a writ directed to him has been issued, stating what he has done in execution of it, or how he has executed it; called by the civilians, *certificatorium.* This answer is endorsed on the writ in a certain prescribed form, and is thus remitted or *sent back* with it to the court.* *Id. ibid.*

The day in term on which sheriffs are required to *bring in* their writs, and *report* how far they have obeyed them. 3 *Bl. Com.* 275, 277. *Spelman*, voc. *Retorna.* Otherwise called the *return day*, (q. v.)

To RETURN. [L. Fr. *returner;* L. Lat. *retornare, returnare, mittere.*] In practice. To remit or send back a writ to the court out of which it issued, with a memorandum or certificate endorsed, of the manner in which it has been executed.* "Whatever the sheriff does in pursuance of the

writ, he must *return* or certify to the court, together with the writ itself." 3 *Bl. Com.* 273.

RETURN DAY. In practice. The day on which a writ is appointed or required to be returned. *Return days* are certain stated or fixed days in term on which writs are returnable.* 3 *Bl. Com.* 277. In modern practice, the use of fixed return days has been, to a considerable extent, dispensed with. See *Stat.* 2 *Will.* IV. c. 39.

RETURNABLE. In practice. To be returned; appointed or required to be returned.* 3 *Bl. Com.* 277.

RETURNARE. L. Lat. In old English practice. To return; to re-deliver. *Returnabit domino averia capta;* he shall return to the lord the beasts taken. *Bract.* fol. 156. *Returnari facias;* you cause to be returned. *Reg. Jud.* 61 b.

RETURNER. L. Fr. To return. *Si le visconte* returne *que el defendaunt soit clerke;* if the sheriff return that the defendant is a clerk. *Britt.* c. 26.

RETURNUM, *Retornum.* L. Lat. In old practice. Return; a return. *Returnum brevium;* return of writs. *Fleta*, lib. 1, c. 19, § 4.

Returnum (or *retornum*) *irreplegiable;* return irreplevisable. A final return of goods or chattels, admitting of no replevin.* The name of a writ which issued for a defendant in replevin, where he had judgment on verdict or demurrer, or where the plaintiff, after obtaining a writ of second deliverance, was non-suited a second time. 3 *Bl. Com.* 150. *Reg. Jud.* 27.

REUS. [from *res*, a thing, matter, suit.] In the civil and canon law. A person from whom some thing is demanded by suit; a person complained of by suit; a person judicially called upon to make satisfaction for an injury; a person sued; a defendant. *Calv. Lex. Bract.* fol. 106, 106 b. *Fleta*, lib. 2, c. 61, § 2. 3 *Bl. Com.* 25. 4 *Reeves' Hist.* 11. **Favorabiliores rei potius quam actores habentur.** Defendants are regarded more favorably than plaintiffs. *Dig.* 50. 17. 125. **Reus excipiendo fit actor.** The defendant, by excepting or pleading, becomes a plaintiff; that is, where, instead of simply denying the plaintiff's action, he sets up some new matter in defence, he is bound to establish it by proof, just as a plaintiff is bound to prove his cause of action. *Bounier Tr. des Preuves*, §§ 152, 320. *Best on Evid.* 294, § 252.

A person judicially accused of a crime; a person criminally proceeded against. *Hallifax, Anal.* b. 3, c. 13, num. 7.

A party to a suit, whether plaintiff or defendant; a litigant. This was the ancient sense of the word. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 3, tit. 16, § 841.

A party to a contract. *Reus stipulandi;* a party stipulating, (*qui stipulatur;*) the party who asked the question in the form prescribed for stipulations. *Reus promittendi;* a party promising, (*qui promittit;*) the party who answered the question. *Inst.* 3. 16. *Dig.* 45. 2. 1. *Hallifax, Anal.* b. 2, c. 16, num. 3. *Reus credendi;* the party crediting; a creditor. *Reus debendi;* the party owing; a debtor. *Id. ibid. Calv. Lex. Prateus.*

REVE, or GREVE. [Lat. *gerefa*, or *refa*, from *ræfan*, to seize.] In English law. A chief officer or superintendent, (*præpositus, præfectus.*) Properly, according to Spelman, a collector or exactor of public monies or fines.

Shire-reve; the reve or chief officer of the shire, (*pagi præpositus.*) Hence sheriff.

Tun-greve; the reve or chief officer of a town, (*villæ præpositus.*) Afterwards simply called *reve*, and bailiff. *Spelman.* See *Reeve.*

REVE LAND. In Saxon law. Land over which the *shire-reve*, or sheriff, had jurisdiction. 1 *Reeves' Hist. Eng. Law*, 5. This word occurs in Domesday Book, and is explained by Lord Coke to be "land held by socage." *Co. Litt.* 86 a. It is otherwise explained to be, land left in charge of the *reve* or bailiff of a manor. *Cowell.*

REVE MOTE. In Saxon law. The court of the *reve, reeve*, or *shire-reve.* 1 *Reeves' Hist. Eng. Law*, 6.

REVENDICATION. In the civil law. The right of a vendor to reclaim goods sold, out of the possession of the purchaser, where the price was not paid. *Story's Confl. Laws*, § 401. *Wharton's Lex.*

REVENIR, *Revener.* L. Fr. To come back; to return. *Kelham. L. Fr. Dict.*

REVENUE. L. Fr. and Eng. [from *revenir*, q. v.] That which returns, or is returned; a rent, (*reditus.*) Income; annual profit received from lands or other property.* *Cowell.*

REVERA. Lat. In truth; in fact. *Fleta*, lib. 2, c. 60, § 21.

To REVERSE. To turn back; to act

in an opposite direction; to undo or annul, on the ground of error.

REVERSER. In Scotch law. The proprietor of an estate who grants a wadset (or mortgage) of his lands, and who has a right, on repayment of the money advanced to him, to be replaced in his right. *Bell's Dict.*

REVERSIO. L. Lat. [from *reverti*, to return.] In old English law. The returning of land to the donor. *Fleta*, lib. 3, cc. 10, 12.

REVERSION. [Lat. *reversio*, from *reverti*, to return.] Literally, a returning; or that which returns.* The returning of land into the possession of the donor, or his heirs, after the gift is ended. *Co. Litt.* 142 b.—The residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 *Bl. Com.* 175. Thus, where a lease for life or years is made by a person seised in fee, the reversion or residue of the fee continues in the lessor, and on the expiration of the lease, the possession *returns* to him.*

Mr. Stephen, in his New Commentaries, substitutes in place of Blackstone's definition, the following: "An estate in *reversion* is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived; the latter interest is called the *particular estate*, (as being only a small part or *particula* of the original one,) and the ulterior interest, the *reversion*." 1 *Steph. Com.* 290.—The Revised Statutes of New-York have defined a reversion to be "the residue of an estate left in the grantor, or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised." 1 *Rev. St.* [723,] 718, § 12. Perhaps the briefest definition, consistent with retaining the radical idea of the word, is,—"a *return* of an estate to the original or general owner, or his heirs, after a limited or less estate carved out of it, and conveyed by him, has determined." See 4 *Kent's Com.* 354.

REVERSIONARY INTEREST. The interest which a person has in the reversion of lands or other property. A right to the future enjoyment of property, at present in the possession or occupation of another. *Holthouse.* See *Reversion.*

REVERSIONER. A person having the reversion of an estate; a person entitled to a reversion. See 2 *Bl. Com.* 176.

REVERTER. L. Fr. and Eng. The reverting or going back of lands to a donor, his heirs or assigns.* 3 *Bl. Com.* 192. See *Formedon in the reverter.*

REVERTI. Lat. In old English law. To return. *Fleta*, lib. 3, c. 10, § 1.

REVEST. To vest again. A seisin is said to *re-vest*, where it is acquired a second time by the party out of whom it has been devested. 1 *Roper's Husb. & Wife*, 353.

REVESTIRE. L. Lat. In old European law. To return or resign an investiture, seisin or possession that has been received; to re-invest; to re-enfeoff. *Spelman.*

REVIEW, *Bill of.* In equity practice. A bill, in the nature of a writ of error, filed to procure an examination and alteration or reversal of a decree made upon a former bill, which decree has been signed and enrolled. *Story's Eq. Pl.* § 403.

REVIEW, *Commission of.* In English ecclesiastical law. A commission formerly sometimes granted, in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. 3 *Bl. Com.* 67.

REVISING BARRISTERS. In English law. Barristers appointed to revise the lists of voters for county and borough members of parliament, and who hold courts for that purpose in the autumn throughout the country. *Wharton's Lex.*

REVIVOR, *Bill of.* In equity practice. A bill filed to revive and continue the proceedings, whenever there is an abatement of a suit, before its final consummation, by the death or marriage of one of the original parties.* *Story's Eq. Pl.* 354.

REVOCATION. [Lat. *revocatio*, from *revocare*, to call back.] The calling back of a thing granted or act done, thereby annulling it, or putting an end to its legal effect. The most important applications of this word are to testamentary dispositions, to agencies and powers; but it is also sometimes applied in practice, as to judges' orders, &c. See *Revoke.* As to the revocation of a will, see 1 *Jarman on Wills*, 106—173, (150—205, Perkins' ed. 1859.) 4 *Kent's Com.* 520—534.

REVOKE. [from Lat. *revocare*, from *re*, again, and *vocare*, to call.] To call back; to recall; to annul an act by calling or

taking it back. The word is properly expressive of the voluntary act of a party in matters within his discretion.

REWARD. [Lat. *præmium, merces.*] Compensation or remuneration for services. Frequently used in law, in connection with the word *fee.*

A sum of money paid or taken for doing or forbearing to do some act.

REWME. O. Eng. [from L. Fr. *reaume.*] In old records. Realm; kingdom. "In the name of Fader, Son and Holy Ghost, I, Henry of Lancaster, chalenge this *rewme* of Ynglonde and the croun, with all the members and the appurtenances, als I that am descendit be right line of the blode comyng fro the gude Lord King Henry therde, and thorgho that right that God, of his grace, hath sent mee, with helpe of my kyn and of my frendes to recover it; the which *rewme* was in poynt to be ondone for defaut of governance and undoyng of the gude laws." Claim of Henry, Duke of Lancaster, (afterwards Henry IV.) to the crown of England. 1 *State Trials*, 152.

REX. Lat. In old English law. King; a king; the king. *Rex debet esse sub lege, quia lex facit regem;* the king ought to be under the law, because the law makes the king. 1 *Bl. Com.* 239.

Rex non potest peccare. The king cannot do wrong; the king can do no wrong. 2 *Roll. R.* 304. An ancient and fundamental principle of the English Constitution. *Jenk. Cent.* 9, case 16. *Id.* 308, case 84. 1 *Bl. Com.* 246. This maxim is explained by Blackstone to mean, first, that whatever is exceptionable in the conduct of public affairs, is not to be imputed to the king, nor is he answerable personally for it to his people; and secondly, that the prerogative of the crown extends not to do any injury; it is created for the benefit of the people, and therefore cannot be exerted to their prejudice. *Id. ibid.* And see a more detailed explanation in *Broom's Maxims*, 23—26, [40—45.]

Rex nunquam moritur. The king never dies. *Broom's Max.* 22. The law of England ascribes to the king, in his political capacity, an absolute immortality; and immediately upon the decease of the reigning prince, in his natural capacity, the kingly dignity and the prerogatives and political capacities of the supreme magistrate, by act of law, without any interregnum or interval, vest at once in his successor, who is, *eo instante*, king, to all intents and purposes. 1 *Bl. Com.* 249.

RHODIAN LAW. [Lat. *Lex Rhodia.*] A code of maritime law, established and promulgated by the Rhodians, or inhabitants of the Island of Rhodes, and the oldest collection of the kind now known. Only some fragments of it, however, have been preserved, which are contained in a single title of the Pandects. *Dig.* 14, 2; *De lege Rhodia de Jactu.* 3 *Kent's Com.* 3, 4.

A collection of laws, published in 1561 and 1596, under the title of *Rhodian laws*, has been recognised by some eminent jurists as the ancient Rhodian laws, but pronounced by others to be spurious. 3 *Kent's Com.* 4, and note. The correct opinion, probably, on this point, is that of M. Pardessus,—that it is a genuine compilation, but of comparatively modern date, being a collection of the laws and usages which prevailed in the Mediterranean during the middle ages. *Lois Mar.* tom. i. 336. 3 *Kent's Com. ub. sup.*

RIBALDUS. L. Lat. [from Fr. *ribauld, ribaud.*] In old European law. A worthless person; a vagabond; a rogue or ruffian. *Spelman.* It was not always, however, used in a bad sense, but sometimes denoted an inferior attendant or servant. *Id.*

RIBAUD, *Rybaud.* L. Fr. A vile or worthless person; a vagabond; a ruffian. *Britt.* c. 25.

RICOHOME. Span. In Spanish law. A nobleman; a count or baron. *White's New Recop.* b. 1, tit. 5, c. 3, § 4.

RIDER. A separate piece of parchment tacked to a bill in parliament, containing a new clause added after the bill has been read a third time.* 1 *Bl. Com.* 183. It seems to have been also spelled *ridder.*

RIDER (or RIDDER) ROLL. In old English practice. A schedule or small piece of parchment added to some part of a roll or record. *Cowell. Blount.* A supplementary roll. 2 *Tidd's Pr.* 730.

RIDING. A division of the county of York in England, of which there are three; the East Riding, North Riding and West Riding. Considered to be a corruption of *trithing*, (q. v.) 3 *Bl. Com.* 116.

RIEN CULP. L. Fr. In old pleading. Not guilty. *Yearb.* H. 9 Hen. VI. 16. M. 10 Hen. VI. 53.

RIEN DIT. L. Fr. In old pleading. Says nothing, (*nil dicit.*) *Yearb.* M. 8 Hen. VI. 16.

RIEN LUY DOIT. L. Fr. In old pleading. Owes him nothing. The plea of *nil debet*. *Yearb.* M. 3 Hen. VI. 16.

RIENS, *Rien, Ryen.* L. Fr. Nothing. *Litt.* sect. 53.

RIENS EN ARRERE. L. Fr. Nothing in arrear. A plea in an action of debt for arrearages of account. *Cowell.*

A plea in an action of debt for rent. 1 *Tidd's Pr.* 650. *Roscoe's Real Act.* 475.

A plea to an avowry in replevin. *Id.* 638. 2 *Greenl. Ev.* § 566. A *quasi* general issue. 2 *Selden's R.* 141.

RIENS LOUR DEUST. L. Fr. Not their debt. An old form of the plea of *nil debet*. 2 *Reeves' Hist.* 332.

RIENS PASSA PER LE FAIT. L. Fr. Nothing passed by the deed. A plea by which a party might avoid the operation of a deed, which had been enrolled or acknowledged in court; the plea of *non est factum* not being allowed in such case. *Yearb.* 9 Hen. VI. 60. 1 *Gilb. Evid.* 145. See 2 *Hilliard's Real Prop.* 399, [422.]

RIENS PER DISCENT. L. Fr. Nothing by discent. The plea of an heir, where he is sued for his ancestor's debt, and has no land from him by descent, or assets in his hands. *Cro. Car.* 151. 1 *Tidd's Pr.* 645. 2 *Id.* 937.

RIER COUNTY. [L. Lat. *retrocomitatus*, q. v.] In old English law. After-county; i. e. after the end of the county court. A time and place appointed by the sheriff for the receipt of the king's money after the end of his county, or county court. *Cowell.* Fleta (lib. 2, c. 67,) calls it the day after the county, (*dies crastinus post comitatum.*) It is opposed to *open county*, (that is, open county court,) in the statute 2 Edw. III. c. 5.

RIFLETUM. L. Lat. In old records. A coppice or thicket. *Cowell.*

RIFFLURA, *Rufflura, Ruflura.* L. Lat. [from O. Eng. *rufflyn*, to disorder.] In old English criminal law. A slight removal of the skin; a scratch, (*scarificatio, decortatio.*) *Bract.* fol. 144, 145. *Fleta*, lib. 1, c. 41, § 3. *Spelman.*

RIGA. L. Lat. In old European law. A species of service and tribute rendered to their lords by agricultural tenants. Supposed by Spelman to be derived from the name of a certain portion of land, called in England a *rig* or *ridge*, an elevated piece of ground, formed out of several furrows.

RIGHT. [Sax. *riht*, Germ. *recht*, L. Fr. *droit, droict, dreit, dreyt;* from Lat. *rectus, rectum*, straight, upright; Lat. *jus.*] Justice; equity. This seems to have been the sense of the word in the old writ of right; the person to whom it was directed being commanded to "do full right (*plenum* rectum *teneatis*) to the demandant," "that we may hear no more clamor thereupon for want of right," (*pro defectu recti.*) *Reg. Orig.* 1. The word *jus*, it will be seen, is not used. See *Writ of right.*

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense, right has the force of *claim*, and is properly expressed by the Latin *jus.* Lord Coke considers this to be the proper signification of the word, especially in writs and pleadings, where an *estate is turned to a right*, as by discontinuance, disseisin, &c. *Co. Litt.* 345 a.

That interest which a person actually has in any subject of property, entitling him to hold or convey it at pleasure.* An estate *in esse* in conveyances. *Co. Litt.* 345 a. In this sense, right (*jus*) has the force of *ownership* or *property.* Lord Coke, comparing the terms *right* and *title*, observes that "*title* is the more general word, for every right is a title, but every title is not such a right for which an action lies." *Co. Litt.* 345 b. Sir Matthew Hale distinguishes between the *right* of an estate and the *title* of an estate. *Hale's Anal.* sect. xxxii.

That which a person, having it, is entitled to keep and enjoy, and to be protected by law in its enjoyment; as the right of personal liberty, and other rights of persons. See 1 *Bl. Com.* 129.

An interest in a thing; a claim to hold or use it; or to have some benefit in or from it.

RIGHT. [L. Lat. *rettum*, q. v.] In old English law. An accusation or charge of crime. *F. N. B.* 66 F.

RIGHT AND TITLE. A devise by a testator of "all my right" will carry an estate of inheritance, if there be nothing in the other parts of the will to limit or control the operation of the words. 4 *Kent's Com.* 535. A devise of freehold lands, with "all right and title" to the same, carries the fee. 4 *Moore & P.* 445. 2 *Jarman on Wills*, 192, (141, Perkins' ed.)

RIGHT OF POSSESSION, [L. Lat. *jus possessionis,*] considered separately

from the actual possession of lands, is the right of a person disseised or kept out of possession by another, to recover the possession by action. United with possession, it is considered by Blackstone the second step to a good and perfect title. 2 *Bl. Com.* 196.

RIGHT OF PROPERTY. [Lat. *jus proprietatis.*] The mere right of property in land; the abstract right which remains to the owner after he has lost the right of possession, and to recover which the writ of right was given. See 2 *Bl. Com.* 197—199. United with possession, and the right of possession, this right constitutes a complete title to lands, tenements and hereditaments. *Id. ibid.*

RIGHT OF SEARCH. See *Search, Right of.*

RIGHT OF WAY. See *Way.*

RIGHT TO BEGIN. [Lat. *ordo incipiendi.*] In English practice. The right to open a case, or the evidence in a case, at the trial. So far as the *pleadings* are concerned, the right to begin is always the plaintiff's, as the pleadings are always opened by him or his counsel, and never by the defendant. And in regard to the *proofs*, the plaintiff also has, in most cases, the right to begin, even where the affirmative of the issue is, in point of form, with the defendant. See *Best on Evid.* 474—478, §§ 433—435. See 5 *Ad. & Ell.* (N. S.) 447. 9 *Grattan's R.* 16. *United States Digest*, Trial.

RIGHT. [Lat. *rectus.*] Direct; upright; as the *right* line of descent. See *Linea recta.*

Lawful; proper; true; as *right* heirs, (Fr. *droits heirs et vrayes.*) *Britt.* c. 119.

Legal, as distinguished from equitable. See *Dominium directum.*

RIGHTS OF PERSONS. [Lat. *jura personarum.*] Rights which concern and are annexed to the *persons* of men. 1 *Bl. Com.* 122.

RIGHTS OF THINGS. [Lat. *jura rerum.*] Rights which may be acquired over external objects or things unconnected with the person.* 1 *Bl. Com.* 122.

RIGOR JURIS. L. Lat. Strictness of law. *Latch*, 150. Distinguished from *gratia curiæ;* favor of the court. *Id.*

RINGA. L. Lat. In old English law. A belt, or girdle; a sword-belt. *Bract.* fol. 5 b. *Spelman.*

RINGS, GIVING. In English practice. A custom observed by serjeants at law, on being called to that degree or order. The rings are given to the judges, and bear certain mottoes according to the fancy of the giver. See the English reports, *passim.* This is a relic of the very imposing ceremonies once connected with the assumption of the degree, which are detailed with great minuteness in some of the old reports. See *Serjeant at law.* The giving of rings was formerly a very considerable item in the expenses incurred on such occasions, every newly created serjeant being required to make presents of gold rings to the value, in the whole, of forty pounds at the least, English money, or nearly 200*l.* in modern currency. *Fortescue de L. L. Angliæ*, c. 50, and note. "I very well remember," observes Sir John Fortescue, "when I took upon me the state and degree of a serjeant at law, that my bill for gold rings came to fifty pounds." *Id. ibid.*

RIOT. [L. Lat. *riota, riottum*, from Fr. *riotte*, a brawl, or a band by which things are tied in bundles.] In criminal law. The forcible or violent doing of an act against the peace, by three or more persons assembled together for that purpose.* *Cowell.* —The assembling of three or more persons against the public peace, and their unlawful action thereupon. *Spelman.* A riot, being usually the act of large numbers of persons, is otherwise described as "a tumultuous disturbance of the peace by three persons, or more, assembling together of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful." 4 *Steph. Com.* 278. 1 *Russell on Crimes*, 266, (Am. ed. 1850,) and notes. *Wharton's Am. Crim. Law*, § 2474, *et seq. Id.* §§ 2456—2472.

RIOTOSE. L. Lat. Riotously. A formal and essential word in old indictments for riots. 2 *Stra.* 834. *Riotosè et routosè;* riotously and routously. 2 *Salk.* 593.

RIOTOUS ASSEMBLY. In English criminal law. The unlawful assembling of twelve persons or more, to the disturbance of the peace, and not dispersing upon proclamation. 4 *Bl. Com.* 142. 4 *Steph. Com.* 273.

RIOTOUSLY. In criminal pleading. A technical word properly used in an indictment for a riot, and *ex vi termini* implying violence. 2 *Chitt. Crim. Law*, 488, 490, note (f.) 2 *Sess. Cas.* 13, cited *ibid.* In the English forms, "riotously and routously" is the expression invariably used. 2 *Chitt. C. L. ub. sup.* 3 *Burr.* 1262. And this has been adopted in American practice. *Wharton's Prec. of Indict.* 849, *et seq.* (ed. 1857.)

RIPA. Lat. In the civil law. The bank of a river; that which contains or encloses a river at its fullest height, (*ea quæ plenissimum flumen continet.*) *Dig.* 43. 12. 3. 1. That which contains the river, holding the natural force of its current, (*id quod flumen continet, naturalem rigorem cursus sui tenens.*) *Id.* 43. 12. 1. 5. Riparum *usus publicus est jure gentium, sicut ipsius fluminis;* by the law of nations, the use of a river's banks is as public as that of the river itself. *Inst.* 2. 1. 4. *Dig.* 1. 8. 5, pr. *Bract.* fol. 8. *Fleta*, lib. 3, c. 1, § 5. *Loccen. de Jur. Mar.* lib. 1, c. 6, § 12.

The bank, side or border of a port; a wharf. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 6.

RIPARIA, *Rivaria.* L. Lat. In old English law. A river. *Nec villa nec homo distringatur facere pontes ad* riparias *nisi qui ex antiquo et de jure facere debet. Nulla* riparia *de cetero defendatur*, &c.; nor shall a vill nor a man be distrained to make bridges at rivers, unless one who ought to do it according to custom and law. No river shall henceforth be defended, &c. *Mag. Cart.* 9 Hen. III. cc. 15, 16. *Pontes ad* riparias. *Id. Johan.* c. 23. *De* ripariis *quæ posita sunt in defenso;* concerning rivers which are put in defence. *Id.* c. 47. And see *Stat. Westm.* 2, c. 48. 2 *Inst.* 478. *Hale de Jur. Mar.* pars 1, c. 2.

RIPARIAN. [Lat. *riparius*, from *ripa*, a bank.] Belonging or relating to the bank of a river; of or on the bank.

RIPARIAN OWNER or PROPRIETOR. The owner or proprietor of land on the bank of a river or stream.* 3 *Kent's Com.* 427—432. See 2 *Selden's R.* 522.

RIPARIAN RIGHTS. The rights of the owners of lands on the banks of rivers and streams. 3 *Kent's Com.* 427—432.

RIPATICUM. L. Lat. [from *ripa*, a bank.] In old European law. A revenue derived from the banks of rivers. *Feud. Lib.* 2, tit. 56. *Loccen. de Jur. Mar.* lib. 1, c. 6, § 13.

RIPE. L. Fr. [Lat. *ripa.*] Bank; a bank. *Dyer*, 33, (Fr. ed.)

RIPUARIAN LAW. [Lat. *Lex Ripuariorum.*] An ancient code of laws by which the Ripuarii, a tribe of Franks who occupied the country upon the Rhine, the Meuse and the Scheldt, were governed. They were first reduced to writing by Theodoric, king of Austrasia, and completed by Dagobert. *Spelman*, voc. *Lex Ripuariorum. Esprit des Loix*, liv. 28, c. 1. *Butler's Co. Litt.* Note 77, to lib. 3. *Butler's Hor. Jur.* 84. According to Spelman, many of the provisions of this code were copied into the laws of Henry I. of England.

RISCUS. L. Lat. In the civil law. A chest for the keeping of clothing. *Calv. Lex.*

In old pleading. A trunk. *Cro. Jac.* 664.

RISICUM. L. Lat. In old insurance law. Risk; hazard; peril. *Straccha, Gloss.* 16. *Emerig. Tr. des Ass.* ch. 12.

RISK. [Fr. *risque;* L. Lat. *risicum;* Lat. *periculum.*] In insurance law. A peril, hazard, or danger; an adventure; a chance of loss. See 1 *Marshall on Ins.* 214, *et seq.* 3 *Kent's Com.* 253, 291.

RISTOURNE. Fr. In insurance law. The dissolution of a policy or contract of insurance, for any cause. *Emerig. Tr. des Ass.* ch. 16.

RITE. Lat. In due form. "The rule of presumption is *ut res ritè acta est*," (that a thing is done in due form.) Lord Ellenborough, 8 *East*, 248. See **Omnia præsumuntur rite**, &c.

RIVAGE. Fr. In French maritime law. Shore; the shore of the sea. *Ord. Mar.* liv. 4, tit. 7.

RIVARIA. L. Lat. In old English law. A river. *De forestis et* rivariis. *Artic. Mag. Cart. Johan.* c. 39.

RIVER. [Lat. *flumen.*] A body of running water confined between two opposite sides or banks, (*ripæ.*)* A running stream, pent in on either side with walls and banks. *Callis on Sewers*, [77,] 95. *Woolrych on Sewers*, 51. A water-course of the larger kind. See *Angell on Water-Courses*, § 3, and note. A river consists of water, bed and banks. See 13 *Howard's R.* 381, 415. See 3 *Rob. Adm. R.* 341. 3 *Grattan's R.* 655.

RIVERA. L. Lat. In old European law. A river. *Spelman.*

RIVIATION. In old English law. The use of a river for the purposes of fishing, &c. *Hale de Jur. Mar.* pars 1, c. 2.

RIVUS. Lat. In the civil law. A trench for water to pass. Defined by Ulpian, a place sunk for a distance along, where water may run, (*locus per longitudinem depressus quo aqua decurrat.*) *Dig.* 43. 21. 1. 2. Derived by the same writer from the Gr. ῥεῖν, to flow.

In old English law. The channel of a water-course. *Bract.* fol. 233. *Fleta*, lib. 4, c. 27, § 10. Both these writers adopt the definition of the Digests, (*supra*,) word for word.

RIXA. Lat. In the civil law. A quarrel; a strife of words, (*verbosa contentio.*) *Calv. Lex.*

RIXATRIX. L. Lat. In old English law. A scold; a scolding or quarrelsome woman. 4 *Bl. Com.* 168. 6 *Mod.* 11, 239.

R'NA. A contraction of *Regina*, (queen.) 1 *Inst. Cl.* 12.

R'N'S. A contraction of *Respondes*, (answer.) *Yearb.* II. 3 Hen. VI. 32.

ROAD. [Fr. *rade.*] In maritime law. An open passage of the sea, that receives its denomination commonly from some part adjacent; which, though it lie out at sea, yet, in respect of the situation of the land adjacent, and the depth and wideness of the place, is a safe place for the common riding or anchoring of ships, as Dover Road, Kirkley Road, &c. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 2.

ROADSTED. In maritime law. A known general station for ships, (*statio tutissima nautis,*) notoriously used as such, and distinguished by the name; and not any spot where an anchor will find bottom and fix itself. Sir Wm. Scott, (The Rebekah,) 1 *Rob. Adm. R.* 232.

ROBA, *Rauba.* Ital. and Lat. In old English law. A garment; a robe. *Spelman. Unam* robam *de viridi;* one robe of green. *Bract.* fol. 146.

ROBARIA. L. Lat. [from *roba*, a robe or garment.] In old English law. Robbery. In its original sense, the violent taking of one's *robe*, (*roba*) or garment. *Spelman.* Bracton writes the word *roberia*, (q. v.) Fleta, *robberia*, (q. v.)

ROBATOR. L. Lat. [from *roba*, a robe.] In old English law. A robber. *Robatores;* robbers. *Hoveden*, part. post. in *Ric.* I. A. D. 1198. Sturdy thieves, who falling upon the persons of men, plunder them of their goods (*latrones validi, qui in personas hominum insilientes, bona sua diripiunt.*) *Spelman.* So called originally, because they spoiled travellers of their *robes*, or garments. *Id.* Bracton writes the word *robbator*, (q. v.)

ROBBARE. L. Lat. In old English law. To rob; to take away violently. *Docere oportet quod de custodia sua* robbata *fuerit;* he ought to show that it was robbed out of his custody. *Bract.* fol. 146. *Fleta*, lib. 1, c. 39, § 3.

ROBBATOR. L. Lat. [from *robbare*, q. v.] In old English law. A robber. Robbatores *et burglatores;* robbers and burglars. *Bract.* fol. 115 b. *Fleta*, lib. 2, c. 52, § 9.

ROBBER. L. Fr. To rob. *Robbe;* robbed. *Emble ou* robbe; stolen or robbed. *Britt.* c. 4. *Robbans;* robbing. *Id.* c. 15.

ROBBERIA. L. Lat. In old English law. Robbery. *Fleta*, lib. 1, c. 39.

ROBBERY. [L. Fr. *robberie;* L. Lat. *robaria, roberia, robberia*, (qq. v.;) Lat. *rapina.*] In criminal law. A felonious taking away of a man's goods from his person. *Co. Litt.* 288 a.—The felonious and forcible taking from the person of another, of goods or money, to any value, by violence or putting him in fear. 4 *Bl. Com.* 242.—A felonious taking of money or goods of any value from the person of another, or in his presence, against his will, by violence, or putting him in fear. 1 *Russell on Crimes*, 867. *Wharton's Am. Crim. Law*, § 1695—1704.

***This word is a slight variation from the Fr. *robberie*, (probably its immediate origin,) and is derived by Spelman (through its L. Lat. form, *robaria*, or *roberia*,) from *roba*, or *rauba*, a robe or garment. *Robatores*, (robbers,) he observes, were originally so called because they spoiled travellers of their *robes*, or garments, (*primo sic dicti quod viatores* robis *seu* raubis, *i. vestibus spoliarent,*) from which circumstance, robbery of this kind is at this day called by the Germans raub, and to rob, rauben. *Spelman*, voc. *Robaria.* Lord Coke substantially adopts the same derivation, although he applies it differently; robbery is so called, "because the goods are taken, as it were, *de la robe*, from the *robe*, that is, from the person." *Co. Litt.* 288 a. This derivation is not noticed by Webster, but it is strikingly confirmed by the following passage from Bracton, being the commencement of the

old appeal of robbery: A. *appellat* B. *quod sicut fuit in pace domini regis, tali loco, tali die, &c. venit idem B. cum vi sua, et nequiter, et in felonia, et contra pacem domini regis, et* in roberia *abstulit ei C. s. iii. d. et unum equum talis pretii, et unam* robam *de viridi talis precii;* A. appeals (accuses) B. that as he was in the peace of the lord the king, in such a place, on such a day, &c. the said B. came with his force, and wickedly and feloniously, and against the peace of the lord the king, and *in robbery* [that is, as a robber] took away from him a hundred shillings and three pence, and one horse of such a price, and one *robe* of vert [of green] of such a price. *Bract.* fol. 146.

ROBBOUR, *Robour.* L. Fr. [from *robber*, to rob.] A robber. *De* robbours *et de larouns;* of robbers and of thieves. *Britt.* c. 15. *Yearb.* M. 3 Edw. II. 55.

ROBE. Fr. A term used by the people of the sea, for a vessel's cargo. Spanish and Italian navigators use the same word in the same way. It is, says Cleirac, *nome generalisimo che comprende boni mobili, immobili et merci.* Further on he says, it is the same with χρῆμα in Greek, *res* in Latin, and *bien* or *richesse* in French, and comes from the French *desrober* or the Spanish *robar*, (Anglicè, to rob.) *Meredith's Emerigon on Ins.* 359, 360, note.

ROBERIA. L. Lat. In old English law. Robbery. *In robberia;* in robbery; in the manner of a robber; as a robber. *Bract.* fol. 146.

ROBERDSMEN, *Robersmen.* In old English law. Persons who, in the reign of Richard I. committed great outrages on the borders of England and Scotland. Said to have been the followers of Robert Hood, or Robin Hood. 4 *Bl. Com.* 245. 3 *Inst.* 197.

ROBUR BELLI. Lat. Strength of war. Words used by Bracton in explaining the meaning of the word *barones*, (barons.) *Bract.* fol. 5 b. Quoted in 2 *State Trials*, 1358.

RODA. L. Lat. In old English law. A rod, or perch. A measure of land. *Spelman.*

RODKNIGHTS, *Rodknyghts.* [from Sax. *rad*, road, and *cnyt*, an attendant.] In old English law. Mounted retainers; vassals or tenants whose service was to *ride* with their lord or lady, from manor to manor. *Bract.* fol. 79 b. *Spelman. Fleta*, lib. 3, c. 14, § 7.

ROGARE. Lat. In the Roman law. To ask. *Rogare legem;* to ask for a law, to propose it for adoption. Derivatively, to vote for a law thus proposed, to pass a law. Laws were passed in the assemblies of the people, in the form of *asking* and answering a question. The consuls *asked*, "*Velitis, jubeatis, Quirites?*" (Do you so will, or order, Romans?) Those who were in favor of the law, in giving their vote, answered, "*Uti* rogas, *volo, vel jubeo;*" (As you *ask*, I will or order;) or, when the vote was by tablet or ballot, they threw in a ballot, marked with the letters U. R. (*uti rogas.*) *Calv. Lex. Adam's Rom. Ant.* 97—100. *A. Gell. Noct. Att.* x. 20. *Tayl. Civ. Law*, 9, 155.

In modern legislative assemblies, also, laws are passed by the same formula of interrogation. The question "Shall the bill pass?" may be compared to the "*Velitis, jubeatis?*" of the Romans.

ROGATIO. Lat. [from *rogare*, q. v.] In the Roman law. An asking; a question or interrogation. An asking for a law; a proposal of a law for adoption or passage. Derivatively, a law passed by such a form. Gellius calls it the very head, origin and fountain of all popular legislation. *Noct. Att.* x. 20. 7. Laws are passed at the present day by the same form of taking a *question.*

ROGATOR. Lat. [from *rogare*, q. v.] In the Roman law. The proposer of a law. *Tayl. Civ. Law*, 195.

ROGO. Lat. In the Roman law. I ask. A common word in wills. *Dig.* 30. 108. 13, 14. *Id.* 31. 77. 25.

ROGUE. In English criminal law. A sturdy beggar; a vagrant of either sex. The word is commonly associated with *vagabond* in English statutes, though neither seems to be anywhere explicitly defined. The statute 5 Geo. IV. c. 83, (amended by 1 & 2 Vict. c. 38,) enumerates fourteen different descriptions of persons as coming under the general head of "*rogues and vagabonds.*" 4 *Steph. Com.* 309.

ROIAUME. L. Fr. Realm; kingdom. *Conf. Cartar.* 25 Edw. I.

ROIGN. L. Fr. Queen. 1 *And.* 44.

ROL, *Roule, Roly.* L. Fr. A roll. *Kelham.* See *Roule.*

ROLL. [L. Fr. *roule;* L. Lat. *rotulus;* Lat. *volumen.*] In practice. A sheet, or connected series of sheets, of parchment, upon which the records of courts and other

proceedings are written; and which, when completed, is *rolled* up, and permanently kept in that form. See *Rotulus*.

In English practice, there were formerly a great variety of these *rolls*, appropriated to the different proceedings; such as the *warrant of attorney* roll; the *process* roll; the *recognizance* roll; the *imparlance* roll; the *plea* roll; the *issue* roll; the *judgment* roll; the *scire facias* roll; and the roll of proceedings on writs of *error*. 2 *Tidd's Pr.* 729, 730.

The ancient public records of Great Britain consist of a great variety of *Rolls;* as the Rolls of Parliament, the most important branch; the Charter Rolls, the Patent Rolls, the Close Rolls; the Gascon, Norman, French, Roman, Scotch and Welch Rolls; the Coronation Rolls; the Pipe Rolls; the Memoranda Rolls, and others; the Rolls of the *Curia Regis*, &c. See all these particularly described in *Hubback's Evidence of Succession*, 607—636.

Rolls, (*rotuli*) and counter-rolls, (*contra rotuli*) were anciently kept by coroners and sheriffs. See *Fleta*, lib. 1, c. 18. But none of these appear to have been preserved. Rolls were also kept by ordinary persons, such as bailiffs and receivers of moneys; and with these rolls and tallies accounts were kept. See *Fleta*, lib. 2, c. 70, § 11.

ROLL. In modern practice. A term applied to judicial and other records, whether kept on parchment or paper, and although rarely or never *rolled* up, or kept in *roll form*. In this respect, the word has entirely departed from its original and appropriate signification.

ROLLS OFFICE OF THE CHANCERY. An office in Chancery lane, London, where are deposited the rolls and records of the High Court of Chancery, of which the *Master of the Rolls* (q. v.) is, by virtue of his office, the keeper. Anciently called *Domus Conversorum*, (q. v.)

ROLLS OF PARLIAMENT. A series of rolls commencing in the reign of Edward I. and forming, according to Mr. Hubback, by far the most important branch of the public records of the kingdom, from their antiquity, and the multiplicity of subjects which, in the earlier periods of English history, came before the parliament. Some of these Rolls are kept in the Chapter-House at Westminster, others in the Tower, and the rest in the Chapel of the Rolls. *Hubb. Evid. of Succession*, 600—613.

ROMAN LAW, in a general sense, comprehends all the laws which prevailed among the Romans, without regard to the time of their origin, including the collections of Justinian, (now generally denominated the *civil law.*) 1 *Mackeld. Civ. Law*, 9, § 18.

In a more restricted sense, the Germans understand by this term, merely the law of Justinian, as adopted by them. *Id. note.* In England and the United States, however, there seems a propriety in limiting its application to all the laws of the times anterior to Justinian, distinguishing the collections of that emperor by the term *civil law. Butl. Hor. Jur.* 30. It is clear that a large portion of the *Roman* law was excluded from the *Corpus Juris Civilis.*

ROMESCOT. [from *Rome*, and Sax. *sceat*, tribute.] In old English law. An annual tribute of one penny from every family, paid to Rome at the feast of St. Peter. Otherwise called *Romepenny*, *Peterpence*, and *Rome fee*, (Rome-feah.) *Spelman. Cowell.*

"ROOM," held not to import a place of public resort. 4 *Ohio St. R.* 467.

ROSETUM. L. Lat. In old records. A low watery place of reeds and marshes. *Cowell.*

ROTA. L. Lat. Succession; rotation. "*Rota* of presentations," "*rota* of the terms." 2 *W. Bl.* 772, 773.

ROTA. The name of a court held at Genoa, in or previous to the sixteenth century, the decisions of which, in maritime and commercial cases, are contained in the work of Straccha *De Mercatura.* These decisions are much admired for their equity and wisdom, and are frequently referred to by Roccus, in his treatise *De Navibus et Naulo.* See *Ingersoll's Roccus*, Note iii.

ROTA. Span. In Spanish law. Obliterated. *White's New Recop.* b. 3, tit. 7, c. 5, § 2.

ROTHER BEASTS. In old English law. Horned cattle. *Cowell.*

ROTULUS. L. Lat. In old English law. A roll, composed of one or more skins (*membranæ*) of parchment; a record on a parchment roll. See *Bract.* fol. 352 b.

ROTULUS WINTONIÆ. L. Lat. The Roll of Winton, or Winchester. A term sometimes applied to Domesday Book. But, according to Spelman, it was properly the name of a similar record made by King Alfred.

ROTURE. Fr. In old French and Canadian law. A free tenure without the privilege of nobility; the tenure of a free commoner. See *Dunkin's Address*, 6.

ROTURIER. Fr. In old French and Canadian law. A free tenant of land on services exigible either in money or in kind. *Steph. Lect.* 229. A free commoner; one who held of a superior, but could have no inferior below him. *Dunkin's Address*, 5, 6.

ROULE, *Roulle*. L. Fr. A roll. *Britt.* c. 1, 26. *Conf. Cart.* 25 Edw. I. *Fet Assaver*, § 30.

ROUP. Sc. In Scotch law. A sale by auction. *Bell's Dict.* voc. *Auction.*

ROUT. [L. Lat. *routa.*] In English criminal law. A disturbance of the peace by persons assembling together with an intention to do a thing, which, if it be executed, will make them rioters, and actually making a motion towards the execution thereof. 4 *Steph. Com.* 278.—The unlawful assembling of a number of persons with intent to commit by violence some unlawful act. *Spelman.*

ROUTA, *Ruta*, *Rutta*, *Rotta*. L. Lat. [from Germ. rott, a ball, band, or company; Græco-barb. ῥοῦτα, from Lat. *rota*, a wheel.] In old European law. A company; a band; a troop. *Spelman.* Hence the English *rout*, (q. v.) which the Saxons called *loth.*

ROUTE. Fr. In French insurance law. The way that is taken to make the voyage insured, (*iter viagii.*) The direction of the voyage assured. *Emerig. Tr. des Ass.* ch. 13, sect. 5, § 1.

ROUTOUSLY. [L. Lat. *routose.*] In pleading. A technical word in indictments, generally coupled with the word *riotously*, (q. v.) 2 *Chitt. Crim. Law*, 488.

ROY, *Rey*, *Rei*. L. Fr. King; a king; the king. *Britt.* fol. 1. *Kelham.*

Roy n'est lie per aseun statute, si il ne soit expressement nosme. The king is not bound by any statute, if he be not expressly named to be so bound. *Jenk. Cent.* 307. *Broom's Max.* 31, [50.]

ROYAL FISH. [Lat. *piscis regalis.*] Whale and sturgeon; so called in English law, as belonging to the king by prerogative, when thrown ashore, or caught near the coast. A branch of the king's ordinary revenue. 1 *Bl. Com.* 290. 2 *Steph. Com.* 554. *Hale's Anal.* sect. viii. According to Sir Matthew Hale, there are but three royal fish, viz., sturgeon, porpoise, and balæna, which is usually rendered a whale. *Hale de Jur. Mar.* pars 1, c. 7. In the Black Book of the Admiralty, they are mentioned as "whales, balens, sturgeon, porpoise ou grampise." Cited *ibid.* The latter word Hale translates "great fish."

ROYAL MINES. In English law. Mines of silver and gold. 1 *Bl. Com.* 294.

ROYNE, *Roygn*, *Roygne*, *Roign*. L. Fr. Queen; a queen; the queen. *Kelham. Yearb.* P. 11 Hen. VI. 20. 1 *And.* 44. *Dyer*, 94.

ROYNES. In old English law. Streams; currents, or other usual passages of rivers and running waters. *Cowell.*

R'S. A contraction of *Regis.* 1 *Instr. Cler.* 12.

RUBRIC. [from Lat. *ruber*, red.] In Scotch law. The title of a statute. So termed because anciently it was written in *red* letters. *Bell's Dict.*

RUCHE. L. Fr. A bee-hive, made of rushes. *Kelham.*

RUINA. Lat. In the civil law. Ruin; the falling of a house. *Dig.* 47. 9.

RULE. L. Fr. and Eng. [from Lat. *regula.*] In practice. An order made by a court for the regulation of its practice; otherwise called a *general rule*, (*regula generalis.*)

An order made a court between the parties to an action or suit, either upon the actual motion of counsel, or without motion. A *rule* of court is distinguished from a judge's *order.* See *Order.*

RULE NISI. In practice. A rule to show cause why a party should not do a certain act required, or why the object of the rule should not be enforced; a rule which is made absolute after service, *unless* (*nisi*) good cause is shown to the contrary.

To RULE. In practice. To require by rule; to enter a rule against. To *rule* a sheriff to return a writ, is to enter a rule requiring him to return it.

To determine or decide. A court is said to *rule* a point; to *rule* in favor of one or the other party.

RULE IN SHELLEY'S CASE. A celebrated rule in English law, propounded in Lord Coke's reports in the following form,—that whenever a man, by any gift or conveyance, takes an estate of freehold, and in the same gift or conveyance an estate is limited, either mediately or immediately, to his heirs in fee or in tail, the word *heirs*

is a word of *limitation* and not of *purchase*. 1 *Co.* 104 a, *Shelley's case*. In other words, it is to be understood as expressing the quantity of estate which the party is to take, and not as conferring any distinct estate on the persons who may become his representatives. 1 *Steph. Com.* 308. Or, as it may be more concisely expressed, the limitation to the heirs entitles the ancestor to the whole estate. 1 *Preston on Estates*, 263. 4 *Kent's Com.* 215. See 3 *Maryland R.* 505.

RULE OF 1756. In international law. A rule relating to the trade of neutral nations in time of war, first practically established in the year 1756; the substance of which is,—that neutrals are not to carry on with a belligerent power a trade not open to them in time of peace. 1 *Kent's Com.* 82—85.

RULES. In American practice. This term is sometimes used to denote proceedings in an action out of court, or in vacation, and the times of such proceedings. Thus, in Virginia, "an irregularity committed at *rules* may be corrected at the next term of the court." 12 *Grattan's R.* 312. "At the August rules, 1852, the declaration was filed and a common order taken." *Id. ibid.*

RULES OF THE KING'S BENCH PRISON. In English practice. Certain limits beyond the walls of the prison, within which all prisoners in custody in civil actions were allowed to live, upon giving security by bond, with two sufficient sureties, to the marshal, not to escape, and paying him a certain per centage on the amount of the debts for which they were detained. *Bagley's Pr. Holthouse.*

The term "*rules*" has sometimes been used in this sense in American practice. 3 *Bibb's R.* 202.

RUMPERE. Lat. In the civil law. To break; to revoke. Rumpitur *testamentum cum, in eodem statu manente testatore, ipsius testamenti jus vitiatur;* a testament is broken when, the testator remaining in the same state, the legal force of the testament itself is destroyed. *Inst.* 2. 17. 1. A testament was thus broken (*ruptum,*) by the subsequent adoption of a child, or by the making of a subsequent testament. *Id.* 2. 17. 1, 2, 3. See *Dig.* 28. 3.

To RUN. [Lat. *currere;* L. Fr. *courir.*] To operate; to have or take effect. A statute of limitations is said to *run* against a claim, to commence *running*, to continue to *run*, &c. See *Currere.*

To pass; to follow; to go with, or accompany. A covenant is said to *run* with land, where it is inseparably annexed to the estate, and passes with it. See *Covenant running with land.*

RUN. In American law. A watercourse of smaller size. 2 *Bibb's R.* 354.

RUNCARIA, *Roncaria.* L. Lat. [L. Fr. *roncier.*] In old English law. Land full of brambles and briers. *Co. Litt.* 5 a.

RUNCINUS. L. Lat. In old English law. A load-horse; a sumpter horse or cart-horse; a *rowncy*, as Chaucer calls it. *Domesd.* titt. *Norfolk. Rex H. de Galgow. Spelman.*

RUNNING ACCOUNT. An open unsettled account, as distinguished from a stated and liquidated account. "Running accounts mean mutual accounts and reciprocal demands between the parties, which accounts and demands remain open and unsettled." Blackford, J. 1 *Indiana R.* (Carter,) 335.

RUNNING DAYS. In maritime law. Days allowed in a charter-party, for loading and unloading a vessel, and for other purposes. *Abbott on Ship.* 254, 255, 259.

RUN-RIG. Sc. In Scotch law. A species of land tenure. Explained to mean, "furrow by furrow, that is, a certain narrow space." 7 *Wils. & Shaw's R.* 378.

RUPTA. L. Lat. In old records. A band or troop. *Cowell. Spelman.*

Ruptarii; soldiers; troopers. *Id.*

RUPTUM. Lat. [from *rumpere*, q. v.] In the civil law. Broken. A term applied to a will; (*ruptum testamentum.*) *Inst.* 2. 17. 3. *Dig.* 28. 3.

RUPTURA. L. Lat. [from *rumpere*, to break.] In old records. Grounds broken up, (by the plough;) arable land. *Orderic. Vital.* lib. 5, p. 596. *Cowell.*

RURAL DEAN. [L. Lat. *decanus ruralis.*] In English ecclesiastical law. An ancient officer of the church, now grown out of use, otherwise called bishop's dean, (*decanus episcopi.*) A kind of bishop's deputy, appointed to inspect the conduct of the parochial clergy, and clothed with an inferior degree of judicial and coercive authority.* 1 *Bl. Com.* 383. *Spelman*, voc. *Decanus.*

RURAL SERVITUDE. [Lat. *servitus prædii rustici.*] In the civil law. A ser-

vitude annexed to a rural estate, (*prædium rusticum.*) 1 *Mackeld. Civ. Law*, 338, § 309.

RUSCA, *Ruscha.* L. Lat. [from L. Fr. *ruche.*] In old English law. A hive, or bee-hive, (*mellarium, alveare.*) *Spelman. Cowell.*

RUSCARIA. L. Lat. In old English law. Soil where *rusci*, or kneeholm grows. *Co. Litt.* 5 a.

RUSSATI, *Russetti.* L. Lat. In old English law. Russets; a kind of cloth mentioned in Magna Charta, (c. 25.)

RUSTICI. Lat. [from *rus*, country.] In feudal law. Natives of a conquered country. *Feud. Lib.* 2, tit. 27, §§ 9—11. 2 *Bl. Com.* 413.

In old English law. Inferior country tenants, churls, or chorls, [Sax. *ceorles*,] who held cottages and lands by the services of ploughing, and other labors of agriculture, for the lord. *Paroch. Antiq.* 136. *Cowell.*

RUSTICUM JUDICIUM. L. Lat. In maritime law. A rough or rude judgment or decision. 3 *Kent's Com.* 231. *Story on Bailm.* § 608 a.

RUTA ET CÆSA. Lat. In the civil law. Things dug, (as sand and lime,) and things cut, (as wood, coal, &c.) *Dig.* 19. 1. 17. 6. Words used in conveyancing.

RUTARII, *Ruttarii.* L. Lat. In old records. Stipendiary forces; mercenary soldiers. *Cowell.* This word occurs in the Articles of King John's Magna Charta, (c. 4,) but is omitted in the charter itself. See *Ruptarii.*

RYBAUD. L. Fr. In old English law. A ruffian; a vagabond. *Brownl.* (part 2,) 340.

RYCHE. L. Fr. Rich. *Poure ou ryche. Britt.* c. 68.

RYVAILLE. L. Fr. Shore. Ryvaille *de la meer*; sea-shore. *Britt.* c. 23.

RYVIRE. L. Fr. A river. *Kelham.*

S.

S. The common abbreviation of *Salutem*, in the epistolary correspondence of the Romans. See *Salutem.*

S. A common abbreviation of *scilicet*, (to wit,) in the old books. *Dyer*, 2, 31 b. *Bract.* passim.

S. F. S. An abbreviation, in the civil law, of *sine fraude sua*, (without fraud on his part.) *Calv. Lex.*

S. P. An abbreviation of *sine prole*, (q. v.)

SA ET LA. L. Fr. Here and there. *Kelham.*

SAAL, *Sagel.* L. Fr. A seal. *Kelham.*

SABBATUM. Lat. In old records. Peace; rest. *Postquam Willielmus Rex advenit et sedebat in* sabbato, &c.; after King William came and settled in peace, &c. *Domesday*, cited in *Spelman.*

SABULO. Lat. In old English law. Gravel. *Hale de Jur. Mar.* pars 1, c. 6.

SABULONARIUM. L. Lat. [from *sabulo*, q. v.] In old records. A gravel-pit, or the free use of it. *Cowell.*

SABURRA. L. Lat. In old maritime law. Ballast. *Loccen. de Jur. Mar.* lib. 2, c. 1, § 7.

SAC, SAK. [L. Lat. *saca, sacha*; from Sax. *sac*, a cause, sake.] In old English and Scotch law. The cognizance which a lord had in his court, of *causes* and suits arising among his vassals or tenants. The privilege which a lord had within his manor, of holding pleas of trespasses and other controversies arising there, and of imposing, levying and collecting of his tenants, fines and amercements in regard of the same. *Spelman. Bract.* fol. 154 b. —A privilege touching plea, or correction of trespasses of men within a manor. *Minshew*, cited in *Cowell. Rastal, Expos.*

A forfeiture. *Id. ibid.*

SACA, *Sacca, Sacha.* L. Lat. In old English and Scotch law. Sak or sac, (q. v.) *LL. Edw. Conf.* c. 21. *Reg. Maj.* lib. 1, c. 4, § 2.

SACABURTH, *Sakaburth, Saccabor, Sacaber, Sacborgh.* Sax. [Sc. *sacreborgh, sickerborgh*; L. Fr. *sakaber.*] In old English law. The person from whom a thing had been stolen, and by whom the thief, having it on his person, was freshly pursued. *Ubi latro deprehensus est seysitus de aliquo latrocinio,—et insecutus fuerit per aliquem cujus res illa fuerit, qui dicitur* sakaburth. *Bract.* fol. 150 b. *Insecutus per* saccabor. *Id.* fol. 154 b. *Insecutus per aliquem cujus res illa fuerit, quæ dicitur* sacborgh. *Fleta*, lib. 1, c. 38, § 1. See *Id.* c. 47, § 2.

Spelman supposes this word to import the same thing with the Scotch *sickerborgh*, that is, a sure pledge; from *sicker*, sure, and *borgh*, a pledge; the finding of the thing stolen on the person of the thief when caught, being considered the *surest pledge* or token of his guilt. Or it might be so called from *sac*, a cause or prosecution, and *burh*, a pledge; the thing stolen being, as it were, the *pledge* or proof of *cause*

of action. Or, in the form *saccabor*, or *sacaber*, it might mean one who *bears*, brings, or prosecutes a *cause*, (*saca.*) Lord Coke interprets *sakebere*, *sacbere* or *sacburgh*, (as he writes the word,) to mean one who "did *bear* the *bag*," from "*sak*, an ancient French word, signifying a bag, purse or pouch," being, in legal understanding, he that was robbed of his money in his bag. 3 *Inst.* 69.

SACCABOR. Sax. In old English law. The person from whom a thing had been stolen, and by whom the thief was freshly pursued. *Bract.* fol. 154 b. See *Sacaburth.*

SACCULARII. Lat. [from *saccus*, a bag or purse.] In the civil law. Persons who cheated in wares or money, by means of *sacks* or bags which they carried with them; (*vetitas in* sacculo *artes exercentes.*) *Dig.* 47. 11. 7, and gloss. *in marg.* Blackstone, referring to this passage, translates the word *cutpurses.* 4 *Bl. Com.* 242. But this is hardly warranted by the text.

SACCUS. L. Lat. In old English law. A sack. A quantity of wool weighing thirty or twenty-eight stone. *Fleta*, lib. 2, c. 79, § 10. According to Cowell, twenty-six stone. Two ways made a sack, and twelve sacks a last. *Fleta*, lib. 2, c. 12, § 2.

A sack or pack; a pack-saddle. *Fleta*, lib. 2, c. 21.

In a MS. *compotus* or household book of Bolton Priory, in the possession of the Duke of Devonshire, (A. D. 1851,) the *ductor saccorum* is mentioned among the *liberi servientes* (free servants) of the priory, and is translated *sackman.*

SACCUS CUM BROCHIA. L. Lat. In old English law. A sack with a broche, broach, or pointed iron. *Si quis teneat per servitium inveniendi domino regi, certis locis et certis temporibus, unum hominem, et unum equum, et* saccum cum brochia *pro aliqua necessitate vel utilitate exercitum suum contingente;* if any one holds by the service of finding for the king, at certain places and certain times, one man and one horse, and *a sack with a broach*, for any necessity or advantage happening to his army. *Bract.* fol. 36. It was a species of petty serjeanty, which Bracton otherwise describes,—*ut si quis teneatur invenire domino regi equum et* saccum cum brochia, *eunti in Walliam cum exercitu;* as if one should be bound to find for the king a horse, and *a sack with a broach*, on his going to Wales with his army. *Id.* fol. 87 b. See *Fleta*, lib. 1, c. 11, § 1.

*** Spelman supposes the words *saccus* and *brochia* to be expressive of two measures of capacity; *saccus*, a sack or bag for carrying dry articles, and *brochia*, (from Fr. *broc*,) a large bottle or jar for carrying liquids. *Gloss.* voc. *Brochia. Brochia*, however, seems to be merely the Latin form of the Fr. *broche*, the meaning of which appears from what may be considered the parallel passage of Britton, in which he observes that "petit serjeanty is a service issuing out of tenements, to do to us (the king) some small service, when we have occasion to ride with our army, (*quant nous devons chevaucher en hoste,*) amounting to a demi-mark, or a lance, (*ou un broche,*) or a buckler, (*ou un boson,*) or a bow without a string, or a pair of spurs, or any like service." *Britt.* c. 66. *Brochia* seems to have been the same thing with what is called *pryk* in a passage (closely resembling those above quoted from Bracton,) cited by Spelman from the Roll of Fines in 1 Ric. II. where it is said that the tenant holds *per servicium inveniendi unum equum, unum saccum, et unum* pryk, *in guerra Walliæ, quandocumque contingerit regem ibi guerrare.* Spelman gives no definition of the word *pryk*, but merely refers to the word *brochia* in his own glossary. Cowell also passes it over without any explicit definition, but Blount observes that "it seems to signify an old fashioned spur, with one point, not a rowel." But why *one* spur, (*unum pryk,*) should be so emphatically reserved, contrary to the *deus esporouns* (two spurs) of Britton, and the "*pair* of spurs" in all the old reservations of service, does not appear. And see *Fleta*, lib. 1, c. 11, § 1. The use of a pointed iron instrument (*stimulus ferreus*, or *cuspis,*) as part of a horseman's military equipment, is further illustrated by the quotation which follows.

Saccus seems to have been a sack, or pack of cloth, used either ordinarily with a saddle, (*sella,*) or occasionally, as a substitute for it. A passage from an old record quoted by Cowell, throws some light upon its meaning: *Edmundus Busche tenet terras in Morton, Com. Essex, per servitium inveniendi* unum stimulum ferreum *pro uno Warroks, super quoddam* clothsak, *quandocunque D. rex equitaverit in exercitu versus partes Walliæ, tempore guerræ;* Edmund Busche holds lands in Mor-

ton, county of Essex, by the service of finding one iron point [spur?] for one Warroks, upon a certain *cloth-sack*, whenever the king shall ride in his army towards the parts of Wales, in time of war. 22 *Ric.* II. *Blount, of Tenures*, 32. *Cowell*, voc. *Warroks*. The meaning of the important word *warroks*, in this passage is, however, unexplained, either by Spelman or Cowell. In some of the old copies of Bracton, it may be further observed, the passages above quoted from that author have *sellam*, (a saddle,) instead of *saccum*.

The word *cum*, (with,) in the phrase under consideration, denotes that the *saccus* and the *brochia* were ordinarily used or kept *together*. *Brochia* has sometimes been translated *needle*, as though carried for the purpose of repairs to horse equipments. That it was a *pointed instrument of iron*, and not a jar or pitcher, as Spelman has supposed, seems clear from the authorities above referred to.

SACHAUMENT. L. Fr. [from *sacher*, to know.] Knowingly; willingly. *Kelham*.

SACHENT. L. Fr. [from *sacher*, to know.] Know; know ye, (*sciant, noverint.*) A word used in the commencement of deeds or charters. Sachent *à toutz ceux que icy sount, et à toutz ceux que avouer sount, que jeo Johan ay done*, &c. Know all those who are here, and all those who are to come, that I, John, have given, &c. *Britt.* c. 39. See *Sciant præsentes et futuri*.

SACHER. L. Fr. [from Lat. *scire*, q. v.] To know. *Saches, sachez, sachiez;* know; know ye. *Stat. Confirm. Chartar.* c. 1. *Kelham. Et chescun* sache *son several;* and each one knows his several, [separate portion.] *Britt.* c. 55. *Saches touts gens;* know all people. *Yearb.* M. 3 Hen. VI. 34.

SACIRE. L. Lat. In old European law. To seise; to take into possession. Supposed by Spelman to be the original form of *saisire* and *seisire*, (qq. v.) and to be ultimately derived from the Lat. *sociare*, to join, to add another's property to one's own, (*rem alterius nostris* sociare;) to appropriate. The phrase *ad proprium sacire* occurs in the *Formulæ Solennes*, num. 19, 150. In the Laws of the Bavarians, *sociare* is actually used in a similar connection. *Sibi* sociare *in patrimonium. LL. Boior.* tit. 17, l. 2.

SACQUIER. Fr. In old French maritime law. An officer in the ports of Guyenne, mentioned by Cleirac in his Observations on the Laws of Oleron, whose business was to load and unload vessels laden with salt, corn or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandize otherwise. *Laws of Oleron*, Art. xi. The term seems to be derived from the *saccarius* of the Roman law. *Cod. Theodos.* lib. 14.

SACRA. Lat. In the Roman law. The right to participate in the sacred rites of the city. *Butler's Hor. Jur.* 27.

SACRAMENTALES. L. Lat. [from *sacramentum*, an oath.] In feudal law. Compurgators; persons who came to purge a defendant by their oath that they believed him innocent. *Feud. Lib.* 1, tit. 4, sect. 3. *Id.* titt. 10, 26.

SACRAMENTUM. Lat. [from *sacrare*, to consecrate, *sacrum facere*, to make sacred.] In the Roman law. A sum of money deposited by both the parties to an action, which fell to the gaining party, after the cause was determined. *Festus. Varro de Ling. Lat.* iv. 36. *Adam's Rom. Ant.* 249.

A suit or cause. *Id. ibid.*

A military oath; an oath taken by soldiers on their enlistment. *Calv. Lex.* Its form is given by Aulus Gellius. *Noct. Att.* xvi. 4, citing *Cincius de Re Militari*, lib. 5.

SACRAMENTUM. Lat. [L. Fr. *serement.*] In the old common law. An oath; the oath of a juror, witness or party to a suit. **Repellitur a sacramento infamis.** An infamous person is thrust back [kept from, prevented by disqualification,] from taking an oath. *Bract.* fol. 185. *Dicunt super* sacramentum *suum;* say upon their oath. *Cowell.*

Sacramentum *habet in se tres comites, veritatem, justitiam et judicium; veritas habenda est in jurato, justitia et judicium in judice;* an oath implies or requires three attendant circumstances; truth, justice and judgment; truth is to be observed in the party sworn, justice and judgment in the judge [before whom the oath is taken.] 3 *Inst.* 160.

Lord Coke's derivation or composition of this word from *sacra*, sacred, and *mens*, mind, "because it ought to be performed with a sacred and religious mind," will hardly be acquiesced in. 3 *Inst.* 165. See *Agreamentum, Testamentum*.

SACRAMENTUM DECISIONIS. Lat.

In the civil law. The oath of decision; the decisive oath; the voluntary oath of a party to a suit, by which it was allowed to be decided.* Where one of the parties to a suit was not able to prove his charge, he might offer to refer the *decision* of the cause to the *oath* of his adversary. *Cod.* 4. 1. 12. 3 *Bl. Com.* 342.

SACRAMENTUM FIDELITATIS. L. Lat. In old English law. The oath of fealty. See the form of this oath in law French. *Reg. Orig.* 303.

SACREBORGH. Sc. More properly *sickerborgh*, (q. v.)

SACREMENT, *Sagrament.* L. Fr. An oath. *Kelham.*

SACRILEGE. [from Lat. *sacrilegium*, from *sacra*, sacred things, or *sacrum*, sacred, and *legere*, to steal.] In English criminal law. Larceny from a church. 4 *Steph. Com.* 164. The crime of breaking a church or chapel, and stealing therein. 1 *Russell on Crimes*, 843. See *Sacrilegium.* This does not seem to be recognized as a distinct crime, in American jurisprudence.

In old English law. Profanation of holy things;* the alienation to lay-men or to profane or common purposes, of what was given to religious persons, and to pious uses. *Cowell.*

SACRILEGIUM. Lat. [from *sacrum*, sacred, and *legere*, to steal.] In the civil law. The stealing of sacred things, or things dedicated to sacred uses; the taking of things out of a holy place. *Calv. Lex. Brissonius.*

The violation of an imperial rescript or constitution. Sacrilegii *instar est rescripto principis obviari;* it amounts to sacrilege, to oppose or hinder the execution of the prince's rescript. *Cod.* 1. 23. 5. 1 *Bl. Com.* 74. The text of the Code, here referred to, reads, *Sacrilegii instar est—divinis obviare beneficiis.*

SACRILEGUS. Lat. In the civil and common law. A sacrilegious person; one guilty of sacrilege.* He who takes away any thing that is given for the divine and true service of God. Sacrilegus *omnium prædonum cupiditatem et scelera superat;* a sacrilegious person exceeds all robbers in cupidity and wickedness, [surpasses the cupidity and wickedness of all robbers.] 4 *Co.* 106 a, *Adam's and Lambert's case.*

The word *sacrilegus* in this passage is erroneously translated *sacrilege*, in Branch's Principia and Wharton's Lexicon.

SACR'M. A contraction of *sacramentum.* 1 *Instr. Cler.* 12.

SACROBARRA. L. Lat. A word given by Spelman from an old manuscript entitled *De officio coronatoris*, which he suggests might mean the same with *sacrilegia.*

Sæpenumero ubi proprietas verborum attenditur, sensus veritatis amittitur. Oftentimes where the propriety of words is attended to, [where the attention is occupied with the proper meaning of words,] the true sense is lost. *Branch's Pr.* 7 *Co.* 27.

SÆPIUS. Lat. In old practice. Often. See *Pluries.*

SÆVITIA. Lat. [from *sævus*, cruel.] In the law of divorce. Cruelty; any thing which tends to bodily harm, and in that manner renders cohabitation unsafe. 1 *Hagg. Cons. R.* 458. One of the grounds of divorce *à mensa et thoro.* To constitute cruelty, proof must be given of a reasonable apprehension of bodily hurt. *Id.* 37—40. See *Shelford, Marr. & Div.* 425—438. 2 *Kent's Com.* 125, 126.

SAFE-CONDUCT. [Fr. *sauf-conduit;* L. Lat. *salvus conductus.*] In old English law. A license or permission in the form of a writ, granted by the king under the great seal, to a stranger or foreigner, to come into, remain in, go through and depart from the kingdom without molestation, during a certain specified time. *Spelman. Reg. Orig.* 25 b. All merchants were allowed by Magna Charta, (unless publicly prohibited beforehand,) to have safe-conduct of this kind, except in time of war. *Mag. Chart.* c. 30. 1 *Bl. Com.* 260.

In international law. A passport or privilege granted in war, exempting the party to whom it is granted from the legal effects of war, during the time and to the extent described in the permission.* 1 *Kent's Com.* 162.—A passport or privilege granted, in time of war, by the sovereign or government of a country, or other persons duly authorized, to the subjects of a hostile power, permitting them to depart in safety, and to take with them certain effects specified; or it may be granted for the removal of effects only.* See *Id.* 162, 163.

A document granted to the master of a merchant vessel, for the protection of the vessel in time of war. See *Passport.*

SAFE-GUARD. [L. Fr. *sauf-guard;* L. Lat. *salva gardia.*] In old English law.

A special privilege or license, in the form of a writ, under the great seal, granted to strangers seeking their right by course of law within the king's dominions, and apprehending violence or injury to their persons or property from others. *Reg. Orig.* 26.

SAFE PLEDGE. [L. Lat. *salvus plegius.*] In old English law. A sufficient surety. *Bract.* fol. 160 b. See *Salvus plegius.*

SAGE. L. Fr. Learned; wise. *Jeo oye un foits un* sage *home dire que*, &c.; I once heard a learned man say that, &c. *Yearb.* H. 6 Edw. III. 16.

SAGEMENT. L. Fr. Cautiously; prudently. *Fet Assaver*, § 44.

SAGES DE LA LEY. L. Fr. Sages of the law; persons learned in the law. *Art. sup. Chart.* c. 5. A term applied to the chancellor and justices of the King's Bench. *Id. ibid.*

SAGIBARO. L. Lat. [from *sac*, or *sag*, a cause, and *baro*, a man.] In old European law. A judge or justice; literally, a man of causes, (*vir causarum,*) or having charge or supervision of causes, (*causis et litibus præpositus.*) *Spelman.* One who administered justice and decided causes in the *mallum*, or public assembly. *Id. L. Salic.* tit. 56, §§ 2, 3, 4. *LL. Inæ*, c. 6.

SAID. [Lat. *dictus;* L. Fr. *dit.*] A very common word of reference in modern as well as ancient law. In Scotch law, the plural *saids* (O. Sc. *saidis*) is used. 3 *How. St. Trials*, 597, 602. "Saidis personis;" said persons. 1 *Id.* 926.

SAIEL. L. Fr. Seal. *Kelham.*

SAIGA. L. Lat. In old European law. A German coin of the value of a penny, or of three pence. *L. Alaman.* tit. 6, § 2. *L. Boior.* tit. 8, c. 2, § 3. *Spelman.*

To SAIL. In insurance law. To move, on the prosecution of a voyage; to make a movement for the purpose of proceeding to sea.* Cowen, J. 3 *Hill's* (N. Y.) *R.* 126. Lord Denman, C. J. 1 *Crompt. M. & R.* 809, 818. The least locomotion, with readiness of equipment and clearance, satisfies a warranty to *sail.* 3 *B. & Ad.* 514.

SAIN, *Saine.* L. Fr. Sound; strong. *Kelham.*

SAINC. L. Fr. Blood. *LL. Gul. Conq.* l. 9.

SAINTS. [L. Fr. *saintz, seintz, seyntz.*] In old English practice. Holy things, (Lat. *sancta;*) gospels on which oaths were taken.

From the L. Fr. *seintz*, or *seyntz*, used in old statutes and treatises, it has been supposed that it was formerly common in England to swear *by the saints*, or *by God and the saints.* See *Barringt. Obs. Stat.* 177, and notes. This was doubtless the practice on some occasions; but *judicial* oaths seem to have been uniformly made by, or rather *on* the gospels. The expressions in Britton,—*si luy eyde Dieu et les saintz*, (so help him God and the saints,) *si lour eyde Dieu et ses seyntz*, (so help them God and his saints,) and other passages, (see *Britt.* cc. 2, 22, 52, 68,) may be explained by the use of the corresponding Latin word *sancta*, in the parallel passages in Bracton and Fleta. *Sicut me Deus adjuvet et* hæc sancta. *Fleta*, lib. 1, c. 18, § 4. *Sic ipsum Deus adjuvet et* hæc sancta. *Id.* lib. 2, c. 63, § 12. And see *Id.* lib. 4, c. 9, § 1. That *sancta*, in these passages, cannot be translated *saints*, is obvious, not only from the neuter form of the word, but from the invariable use of the pronoun *hæc*, (these,) in connection with it, indicating that the things sworn by were actually *present* before the party who made the oath. That *evangelia* (gospels) was the word to be understood and supplied, appears from passages in which it is actually expressed. See *Fleta*, lib. 2, c. 12, § 17. The following passage from Bracton is conclusive on this point: After giving the words of the oath taken by the first juror sworn, *Hoc auditis justitiarii, quod ego veritatem dicam*, &c. *sic me Deus adjuvet et hæc* sancta *Dei evangelia*, (Hear this ye justices, that I will speak the truth, &c. so help me God, and these holy gospels of God,) he adds, *Et post eum jurabit quilibet aliorum separatim, et per se; Tale sacramentum quale A. primus jurator*, s. *hic, juravit, ego tenebo ex parte mea, sic me Deus adjuvet et hæc* sancta; (and after him shall each of the others separately and by himself swear, such an oath as A. this first juror has sworn, will I keep on my part, so help me God and these holy [gospels.] *Bract.* fol. 116.

SAIO. L. Lat. In Gothic law. The ministerial officer of a court or magistrate, who brought parties into court, (*qui reos protraxit in judicium,*) and executed the orders of his superior. Spelman thinks the word may be derived from the Sax.

sagol, or *saiol*, a staff, giving it the sense or the modern *tipstaff*.

SAIREMENT. L. Fr. An oath. *Kelham.*

SAISINA. L. Lat. An old form of *seisina*, (q. v.)

SAISIRE. L. Lat. [from L. Fr. *saisir*, to seise.] An old form of *seisire*, (q. v.)

SAKE, *Sak.* In old English law. A lord's right of amercing his tenants in his court. *Keilw.* 145.

Acquittance of suit at county courts and hundred courts. *Fleta*, lib. 1, c. 47, § 7.

SAKEBER. The French form of *saccabor* or *sacaburth*, (qq. v.) *Britt.* c. 15, 29.

SALA. L. Lat. [L. Fr. *sale.*] In old European law. A hall. *L. Alam.* tit. 81, § 1. *Spelman.*

SALARIUM. Lat. [from *sal*, salt.] In the civil law. An allowance of provisions. *Calv. Lex.*

A stipend, wages or compensation for service. *Id. Dig.* 7. 1. 7. 2. *Id.* 44. 7. 61. 1.

An annual allowance or compensation. *Id. ibid.*

SALARIUM. L. Lat. In old European law. The rents or profits of a *sala*, hall or house. *Cowell.*

Wages; stipend; annual allowance; salary. *Id.* But *quære* if this word be not the same with the *salarium* of the civil law. See *supra.*

SALARY. [from Lat. *salarium*, q. v.] An annual compensation for services rendered; a fixed sum to be paid by the year for services.

SALE. [Lat. *venditio;* Fr. *vente.*] A transmutation of property from one man to another, in consideration of some price or recompense in value. 3 *Bl. Com.* 446.—A transfer of goods for money. *Id. ibid.*—A contract for the transfer of property from one person to another, for a valuable consideration. 2 *Kent's Com.* 468.—"*Sale* is a word of precise legal import, both at law and in equity. It means, at all times, a contract between parties to give and to pass rights of property for money, which the buyer pays or promises to pay to the seller for the thing bought and sold." Wayne, J. 8 *Howard's R.* 496, 544. See *United States Digest*, Sale. And see *Bell's Contract of Sale*, chap. 1.

"SALEABLE UNDERWOODS" construed. 10 *East*, 219, 446.

SALE NOTE. A note or memorandum of the sale of goods, given by the broker to the buyer. Called, also, a *sold note*, (q. v.)

SALET. In old English law. A headpiece; a steel cap or morion. *Cowell.*

SALIC (or SALIQUE) LAW. [Lat. *Lex Salica.*] A body of law framed by the Salians, or Salian Franks, after their settlement in Gaul under their king Pharamond, about the beginning of the fifth century. *Esprit des Lois*, liv. 28, c. 1. It is the most ancient of the barbarian codes, (as they are sometimes called,) and is considered one of the most important compilations of law in use among the feudal nations of Europe. *Butler's Co. Litt.* Note 77, lib. 3. See *Butler's Hor. Jur.* 83. Dr. Robertson calls it "the most venerable monument of French jurisprudence." 1 *Rob. Charles* V. Appendix, Note xxxviii. It received considerable additions from Clovis, Childebert, Clotaire, Charlemagne, and Louis le Debonnaire, and was re-published by Charlemagne in 798. See *Lex Salica.*

SALIC LAW. In French jurisprudence. A term frequently applied to that fundamental law of France which excluded females from succession to the crown. Supposed to have been derived from the sixty-second title of the Salic Law, *De alode. Brande.*

SALICETUM. L. Lat. [from *salix*, willow.] In old English law. A wood of willows. *Co. Litt.* 4 b. *Shep. Touch.* 95.—An osier bed, or low moist place on the banks or eyts of a river, for the growth of osiers, willows or withies. *Cowell. Salictum* is used in the civil law. *Dig.* 7. 1. 9. 7.

SALINA. L. Lat. [from *sal*, salt.] In old English law. A salt-pit; a house or place where salt is made. *Cowell.* In Coke on Littleton, this word is printed *saliva. Co. Litt.* 4 b.

SALLIRE. L. Lat. In old European law. To assault. The same with *assalire*, (q. v.) *Spelman.*

SALTATORIUM. L. Lat. In old records. A deer-leap. *Cowell*, citing *Pl. apud Cestriam*, 31 Edw. III. An engine for taking wild animals. *Spelman.*

SAL'T'M. A contraction of *salutem*, (q. v.)

SALTUS. Lat. In old English law. A high thick wood, or forest. *Cowell*, voc. *Boscus.* A lawn in a park or forest. *Fortescue de L. L. Angliæ*, c. 29, note.

SALUS. Lat. Health; prosperity,

good or welfare. **Salus populi suprema lex.** The good or welfare of the people is the supreme law. *Bacon's Max.* 55, in reg. 12. *Broom's Max.* 1.

Safety; salvation. **Salus ubi multi consiliarii.** There is safety where there are many counsellors. 4 *Inst.* 1. *Prov.* xi. 14.

SALUTE. [Lat. *salus.*] A gold coin stamped by Henry V. in France, after his conquests there, whereon the arms of England and France were stamped quarterly. *Stow's Chron.* 589. *Cowell.*

SALUTEM. Lat. [Gr. χαιρειν, εὖ πράττειν.] Health; greeting; prosperity; salvation. An expression of salutation used by the Romans in the commencement of their letters or epistles, generally abbreviated, S. "C. Plinius Cornelio Tacito suo, S." *Plin. Ep.* i. 6, *et passim.* In legal instruments, it was written at length, *Titius Seio salutem. Dig.* 17. 1. 60. *Ille illi salutem. Id.* 59.

A formal word in the commencement of Roman deeds and charters, which, during the later periods of the empire, were written in an epistolary form. See *Epistola.* The corresponding Greek word, used in wills and other instruments, was χαίρειν. *Dig.* 31. 34. 1. In a conveyance in Greek, preserved in the Digests, the corresponding words are πλεῖστα χαίρειν; most health, or all health. *Dig.* 8. 3. 37. After Christianity had become established, *salutem* seems to have been used in its religious sense of *salvation.*

A formal word in the commencement of old English deeds, probably derived from the Roman practice above noticed. *Omnibus Christi fidelibus ad quos præsentes literæ indentatæ pervenerint, A. de B.* salutem *in Domino sempiternam; Sciatis me dedisse,* &c. To all Christian people to whom these present [present letters] indented shall come, A. of B. sends greeting [or salvation,] in our Lord everlasting. *Litt.* sect. 372.

A formal word invariably used in the address of old English writs, which commenced in the epistolary form. *Rex vicecomiti, &c. salutem;* the king to the sheriff, &c. Greeting. *Reg. Orig. & Jud. per tot.* Translated "*greeting,*" and retained in modern English and American writs. See *Breve.* Called by Finch the "*salutation*" of the writ. *Law,* b. 4, c. 1.

SALVA GARDIA. L. Lat. Safeguard. *Reg. Orig.* 26. See *Safe-guard.*

SALVAGE. In maritime law. A compensation allowed to persons by whose assistance a ship or its cargo has been saved, in whole or in part, from impending danger, or recovered from actual loss, in cases of shipwreck, derelict or recapture. 3 *Kent's Com.* 245. "The relief of property from an impending peril of the sea, by the voluntary exertions of those who are under no legal obligation to render assistance, and the consequent ultimate safety of the property, constitute a case of *salvage.*" Curtis, J. 1 *Curtis' R.* 376, 378. See *Id.* 353. See *Abbott on Ship.* 554. 1 *Peters' Adm. Dec.* 31, 48, 70, 87. 2 *Id.* 278, 284, 361. *United States Digest,* Salvage. *Marvin on Wreck and Salvage,* ch. 15.

SALVAGE SERVICE. In maritime law. Any service rendered in saving property on the sea, or wrecked on the coast of the sea. Story, J. 1 *Sumner's R.* 210.

SALVAGE, *Sauvage.* L. Fr. Wild; savage. *Kelham.*

SALVAIGNE, *Savagnie, Sauvagine.* L. Fr. Wild animals; animals *feræ naturæ;* the wild or savage state. *Kelham.*

SALVAMENTUM. L. Lat. In old European law. Safety. *Hincmar. Epist.* c. 8. *Spelman.*

SALVARE. L. Lat. [from *salvus,* q. v.] In old English law. To save. *Salvare defaltam;* to save a default. *Fleta,* lib. 6, c. 13, § 2. *Salvans;* saving; economical. *Id.* lib. 2, c. 87.

SALVER. To save. *Yearb.* H. 9 Edw. III. 3. *Salvant;* saving. M. 8 Edw. III. 38.

SALVIAN INTERDICT. See *Interdictum Salvianum.*

SALVO. L. Lat. [from *salvus,* safe.] In old conveyancing. Saving. One of the apt words of exception in a deed. *Co. Litt.* 47 a. *Perkins,* ch. 10, s. 645.

In old practice. Safely. *Fleta,* lib. 2, c. 64, §§ 19, 22. *Salvo et securè;* safely and securely. 5 *Man. G. & S.* 877.

SALVOR. In maritime law. A person by whose assistance a vessel or its cargo is saved, in whole or in part, from impending danger or actual loss; a person entitled to salvage.* 2 *Kent's Com.* 245. See *Salvage.*

SALVUS. Lat. In old English law. Safe. *Salvus conductus;* safe conduct. *Reg. Orig.* 26. See *Safe conduct. Salvus et securus conductus;* safe and secure conduct. *Magna Charta,* c. 30.

SALVUS PLEGIUS. L. Lat. In old English practice. A safe pledge. *Bract.* fol. 160 b. Called, also, *certus plegius*, a sure pledge. *Id. ibid.*

SALYNE. L. Fr. A salt-pit. *Kelham.*

SAMPLE. A small quantity taken from the bulk of a commodity for the purpose of showing its quality.

SANÆ MENTIS. L. Lat. In old English law. Of sound mind. *Fleta*, lib. 3, c. 7, § 1.

SANARE. L. Lat. In old practice. To cure. *Nisi defaltam sanaverit;* unless he cure the default. *Fleta*, lib. 2, c. 7, § 13.

SANCTA. Lat. [plur. of *sanctus.*] Holy (gospels.) *Fleta*, lib. 1, c. 18, § 4. *Id.* lib. 4, c. 9, § 1. See *Saints.*

SANCTIO. Lat. [from *sanctus*, holy; inviolable.] In the civil law. That part of a law by which a penalty was ordained against those who should violate it. *Inst.* 2. 1. 10. That part of a law by which its inviolability was secured.

Sanctio justa, jubens honesta, prohibens contraria; a just [or formal] sanction, [or rule of civil conduct,] commanding what is right, prohibiting the contrary. *Bract.* fol. 2. A definition of municipal law. 1 *Bl. Com.* 122. 3 *Id.* 1, note.

SANCTION. [from Lat. *sanctio*, q. v.] The vindicatory part of a law, or that part which ordains or denounces a penalty for its violation. 1 *Bl. Com.* 56. See *Tayl. Civ. Law*, 171. In Fleta, it is said that a law is specially called a sanction, (*sanctio,*) because it imposes a punishment on wrong-doers. *Fleta*, lib. 3, c. 1, § 8.

SANCTUARY. [Lat. *sanctuarium*, from *sanctus*, holy; Sax. *fridstoll, grithstole.*] In old English law. A consecrated or privileged place, such as a church or churchyard, to which, if an offender fled, his person was, (except in cases of treason and sacrilege,) secure from punishment.* 4 *Bl. Com.* 332, 333. All privilege of sanctuary was abolished by statute 21 *Jac.* 1, c. 28.

SANCTUS, *Sanctum.* Lat. [from *sancire.*] In the civil law. That which is guarded and fenced round against injury, (*quod ab injuria hominum defensum atque munitum est.*) *Dig.* 1. 8, pr. Derived by Marcian, in the Digests, from *sagmina*, which were certain herbs carried by the legates of the Roman people to secure them from harm. *Id.* § 1.

SANE. L. Fr. and Eng. [from Lat. *sanus*, q. v.] Sound. *De non* sane *memorie;* of unsound memory; *non compos mentis. Litt.* sect. 405.

SANG, *Sanc, Sank.* L. Fr. [from Lat. *sanguis*, q. v.] Blood. *Kelham.*

SANGUIS. Lat. In the civil and old English law. Blood; consanguinity. *Sanguinem redimere;* to redeem one's blood; to pay the *merchet* or accustomed fine, for leave given to servile tenants to dispose of their daughters in marriage. *Blackst. L. Tr.* 4, 5. *Cowell.*

SANITY. [from Lat. *sanus.*] Soundness of mind. This is always presumed. 2 *Kent's Com.* 451.

SANS, *Sauns, Santz.* L. Fr. [from Lat. *sine.*] Without. See *infra.*

SANS CEO QUE. L. Fr. [Lat. *absque hoc quod.*] Without this that. Technical words formerly used in pleading by way of special traverse. *Ou mesme celuy Johan de tener sa terre en N. sicome non several,* sans ceo que *l'avaundit Peres et les autres y deyvent communer;* or the said John to hold his land in N. as his several, without this, that the aforesaid Peter and the others ought to have common there. *Britt.* c. 59. See *Absque hoc.*

SANS IMPEACHMENT DE WAST. L. Fr. Without impeachment of waste. *Litt.* sect. 152. See *Absque impetitione vasti.*

SANS JOUR, *Sauns iour.* L. Fr. Without day. *Aler sans jour;* to go without day. *Litt.* sect. 201. See *Sine die. Irra quites saunz iour;* shall go quit without day. *Fet Assaver*, § 16.

SANS NOMBRE. L. Fr. [Lat. *sine numero.*] Without number; without stint or limit. See *Common sans nombre.*

SANS PLUIS. L. Fr. Without more; without further words. *Dyer*, 31 b.

SANS RECOURS. Fr. Without recourse, (q. v.)

SANS WASTE. L. Fr. Without waste. 12 *East*, 209.

SANS, *Sens.* L. Fr. Sense; understanding. *Kelham.*

SANTZ. L. Fr. Without. *Santz delay. Art. sup. Cart.*

SANUS. Lat. Sound. See *Sanæ mentis.*

Sapiens incipit a fine, et quod primum est in intentione, ultimum est in executione. A wise man begins at the end, and that which is first in intention is last in execution. 10 *Co.* 25 b. *The case of Sutton's Hos-*

pital. *Finis*, (end,) here has the sense of *object.* *Id.* See *Co. Litt.* 70 b.

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum. It is the part of a wise judge to think that a thing is permitted to him, only so far as it is committed and entrusted to him. 4 *Inst.* 163. That is, he should keep his jurisdiction within the limits of his commission. *Id.* The word *permissum* is, in Branch's Principia, misprinted *premissum*, leading to the following wholly inaccurate and unintelligible translation: "A wise man should consider as much what he premises as what he commits and believes"!

SARCINA. L. Lat. In old English law. A pack. *Comb.* 295.

SARCLO. L. Lat. A weeding-hook. *Spelman.*

SARCULATURA. L. Lat. In old records. Weeding corn. A tenant's service of weeding for the lord. *Cowell.*

SARPLAR. In old English law. A pocket or half a sack of wool. *Cowell.*

SART. In old English law. A piece of woodland, turned into arable. *Cowell.* See *Assart.*

SARTARE. L. Lat. In old records. To clear a place of woods and thickets. *Spelman.* See *To assart.*

SARUM. L. Lat. In old records. The city of Salisbury in England. *Spelman.*

SASINE. In Scotch law. The symbolical delivery of land, answering to the livery of seisin of the old English law. 4 *Kent's Com.* 459.

SASSE. In old English law. A kind of wear with flood-gates, most commonly in cut rivers, [canals?] for the shutting up and letting out the water, as occasion required, for the more ready passing of boats and barges to and fro; a lock; a turnpike; a sluce. *Cowell.*

SATIO. Lat. [from *serere*, to sow.] In the civil law. A sowing of seed. One of the modes of gaining property by accession. *Frumenta quæ* sata *sunt solo cedere intelliguntur;* grains which are sown, are understood to go with the soil, or become a part of it. *Inst.* 2. 1. 32.

SATISDATIO. Lat. [from *satisdare*, from *satis*, sufficient, or equivalent, and *dare*, to give.] In the civil law. Security given by a party to an action, as by a defendant, to pay what might be adjudged against him, (*judicatum solvi.*) *Inst.* 4. 11. 3 *Bl. Com.* 291. Properly, security given by sureties or fidejussors. See *Dig.* 2. 8. 1. *Gloss. Cujac.* in *Dig.* 50. 16. 61.

SATISFACTION. [Lat. *satisfactio*, from *satisfacere*, from *satis*, enough, and *facere*, to make.] In practice. The making amends for an injury done; the giving an equivalent required by law; payment of a legal debt or demand, usually such as is due by matter of record, as a judgment, mortgage, &c.

The discharging or cancelling a judgment or mortgage, by paying the amount of it, or an amount accepted as sufficient by the party holding it, or by having property taken and sold to an equal amount.

SATISFACTION PIECE. In practice. A memorandum in writing, entitled in a cause, stating that satisfaction is acknowledged between the parties, plaintiff and defendant. Upon this being duly acknowledged and filed in the office where the record of the judgment is, the judgment becomes satisfied, and the defendant discharged from it.

Satius est petere fontes quam sectari rivulos. It is better to seek the fountains than to follow the streams. 10 *Co.* 113. In the common translations of this maxim or adage, the word *sectari* has been strangely mistaken for *secare*, to cut.

SAUCES DER MER. L. Fr. Creeks of the sea. *Kelham.*

SAULX, *Saulices*, *Sawces.* L. Fr. Sallows; willows. *Kelham.*

SAUMA, *Soma.* L. Lat. [Fr. *saume;* Ital. *soma;* Germ. some, sommt.] In old records. A load, pack or burden. *Spelman.*

SAUMARIUS, *Soumarius*, *Summarius.* L. Lat. In old records. A sumpter-horse or mule; a pack-horse. *Spelman.*

SAUNKE, *Saunk*, *Saunc.* L. Fr. [from Lat. *sanguis.*] Blood. *Hors del saunke;* out of the blood. *Britt.* c. 68. *Par defaute de* saunk; by failure of blood. *Id.* c. 119.

SAUNKEFIN. L. Fr. End of blood; failure of the direct line in successions. *Spelman. Cowell. Britt.* c. 19.

SAUNS, *Saunz*, *Sauntz.* L. Fr. Without. *Sauns faire alienacion;* without making alienation. *Britt.* c. 39. *Kelham.* See *Sans. Saunz plus dire;* without more saying. *Yearb.* H. 1 Edw. II. 3.

SAUTE, *Sautie*, *Sauvtie.* L. Fr. Safety; health. *Kelham.*

SAUVAGINE. L. Fr. Wild animals. *De pessons et de autre sauvagine. Britt.* c. 33, fol. 85.

The wild disposition of an animal, (*fera natura.*) *Mes si ele eschape et repreigne la* sauvagine *en son natural estate ;* but if it escape, and resume its wildness, in its natural estate. *Id. ibid.*

SAUVEMENT. L. Fr. Safely. *Sauvement gardes ;* safely kept. *Britt.* c. 87.

SAVAGE. L. Fr. Wild. *Bestes savages ;* wild animals. Deer so called. *Keilw.* 30.

SAVANT. L. Fr. Saving; knowing. *Kelham.*

To SAVE THE STATUTE OF LIMITATIONS. In practice. To prevent the operation of the statute; to save a debt or demand from being barred by the operation of the statute. *Holthouse.*

SAVER, *Savor, Savoer.* L. Fr. To know. *Fait à saver ; fet assaver ;* be it known or understood; (it is a thing to be known.) *Kelham.* See *Fet assavoir. Cest à saver ;* it is to wit; it is to be known; that is to say. See *C'est ascavoir.*

SAVER DEFAULT. L. Fr. In old English practice. To excuse a default. *Termes de la Ley. Cowell.*

SAWCES. In old English law. Willows. *Co. Litt.* 4 b.

SC. An abbreviation of *scilicet. Hob.* 171.

SCABINI, *Scabinei, Scabinii.* L. Lat. [Fr. *echevins.*] In old European law. The judges or assessors of the judges in the *mallus*, or court held by the count, (*comes,*) or *missus dominicus.* 1 *Robertson's Charles* V. Appendix, Note xl.—Assistants or associates of the count; officers under the count. *Spelman. Esprit des Lois*, liv. 28, c. 28.—The permanent selected judges of the Franks. 1 *Spence's Chancery*, 61, note (*l.*)—Judges among the Germans, Franks and Lombards, who were held in peculiar esteem. *Spelman.*

This word is found in an English charter granted by the wardens of Lynn in Norfolk, in the reign of Henry VIII. in which they are described as *Scabini. Spelman. Cowell.*

SCACCARIUM. L. Lat. In old English law. Exchequer. *Fleta*, lib. 2, c. 25. *Spelman.* See *Exchequer.*

SCALA. L. Lat. In old English law. Scale; the scale. To pay *ad scalam,* (according to the scale,) was the old way of paying into the exchequer twenty shillings and sixpence for a pound sterling, the sixpence being superadded to make up the full weight. *Lowndes' Essay on Coin*, 4. *Hale on Sheriff's Acc.* 21. *Cowell.*

SCALE. In early American law. To adjust, graduate or value according to a scale. "The court *scaled* the debt." Marshall, arg. 2 *Wash.* (Va.) *R.* 5, 6. A term used after the establishment of American independence, to signify a process of adjusting the difference in value between paper money and specie, rendered necessary by the great depreciation of the former. The act of assembly of Virginia of February 10, 1781, establishing a *scale* of depreciation, and declaring that outstanding current money contracts should be regulated by such scale, as at the date of such contracts, is called an "An act for *scaling* paper money contracts." 2 *Wash.* (Va.) *R.* [41,] 52. *Id.* [98, 99,] 127. *Id.* [103, 104,] 132, 134.

SCALINGA. L. Lat. In old records. A quarry, or pit, for stones or slates. 2 *Mon. Angl.* 130.

SCAMNUM, (or SCANNUM) CADUCUM. L. Lat. In old records. The cucking-stool, or ducking-stool. *Cowell.*

SCANDAL. In equity practice. The allegation of any thing either in a bill, answer or any other pleading, which is unbecoming the dignity of the court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause. *Wyatt's Pract. Reg.* 383. 1 *Daniell's Ch. Pr.* 397. *Story's Eq. Pl.* §§ 266, 862.

SCANDALUM MAGNATUM. L. Lat. In English law. Scandal or slander of great men or nobles. Words spoken in derogation of a peer, a judge, or other great officer of the realm, for which an action lies, though it is now rarely resorted to. 3 *Bl. Com.* 123. 3 *Steph. Com.* 473.

SCAPELLARE. L. Lat. In old European law. To chop; to chip or haggle. *Spelman.*

SCAPHA. Lat. In the Roman law. A boat; a lighter. *Dig.* 14. 2. 4, pr. A ship's boat. *Id.* 6. 1. 3. 1. *Id.* 21. 2. 44. *Loccen. de Jur. Mar.* lib. 1, c. 2, § 6.

SCARA. L. Lat. In old European law. A troop, (*turma ;*) a division of an army. A phalanx, (*cuneus.*) *Spelman.*

SCAVAGE, or SCHEWAGE. [L. Lat.

scavagium; from Sax. *sceawian,* to show.] In old English law. A tribute exacted of merchants by the owners of fairs, for leave to *show* or offer their wares for sale there. *Spelman. Cowell.*

SCAVER, *Scavoir.* L. Fr. To know. *Scait, scet, sciet;* knows. *Britt.* c. 70. *Kelham. Scevent, secivent, sceuvent;* know. *Id.* Scavez *rien dire p' qui nous ne rendrom' jug't;* know you nothing to say why we should not render judgment? *Yearb.* M. 4 Edw. III. 43.

SCEATTA, *Scætta.* Sax. A Saxon coin, of less denomination than a shilling. *Spelman.*

SCEDULA. L. Lat. In old English law. An escrow. *Dyer,* 34 b.

SCEN. L. Fr. Sense; knowledge. *Kelham.*

SCEPP. L. Fr. Stock; a stock. *Kelham.*

SCHEDULA. L. Lat. In old English law. A scroll; an escrow. *Fleta,* lib. 5, c. 9, § 13.

A paper containing a list of items. *Schedula expensarum;* a bill of costs. *Clerke's Prax. Cur. Adm.* tit. 9.

SCHEDULE. [Lat. *schedula,* dimin. of *scheda,* a sheet of parchment or paper.] In practice. A small sheet or scroll; a sheet of parchment or paper appended to any written instrument, containing a detailed statement of matters generally mentioned and referred to in such instrument.

An inventory, or paper containing an inventory.

SCHETES. In old English law. Usury, so called. *Rot. Parl.* 14 *Ric.* II. *Cowell.*

SCHIRA, *Schyra, Shira, Shyra.* L. Lat. [from Sax. *scyran,* to shear, cut or divide.] In old English law. A shire or county. *Spelman.*

SCHIREFF. The old Scotch form of sheriff. *Skene de Verb. Signif.*

SCHIREMAN. [Sax. *scyremon.*] In Saxon law. An officer having the civil government of a *shire,* or county; an earl. 1 *Bl. Com.* 398.

"SCHOOL-KEEPING," held to be a "business." 1 *M. & S.* 95. Lord Ellenborough, *Id.* 99. A public business. 36 *Eng. Law & Eq. R.* 83.

"SCHOOL-MASTER," held not to be an addition within the statute of additions. 5 *Taunt.* 759.

SCHOUT. Belg. [from schuld, debt.] In Dutch law. An officer of a court who convenes the judges and demands from them justice for litigating parties. Usually translated *sheriff. O'Callaghan's New Netherlands,* i. 101.

The *schout fiscaal* was an important officer in New Netherlands. His duties were equivalent to those performed among us by a sheriff and an attorney-general. *Id. ibid.* 102.

SCIANT PRÆSENTES ET FUTURI. L. Lat. Know [all men] present and to come. *Litt.* sect. 372. *Bract.* fol. 34 b. *Fleta,* lib. 3, c. 14, § 5. A form of commencing deeds, of very great antiquity in the common law. Expressed in the French of Britton, *Sachent à toutz ceux que icy sount, et à toutz ceux que avener sount;* Know all those who are here, and all those who are to come. *Britt.* c. 39.

SCIENDUM EST. Lat. It is to be known, or understood. A phrase frequently used in the civil law, in the commencement of paragraphs or other divisions of a subject, as preliminary to some explanation, or as calling attention to some particular rule. Sciendum *itaque est, omnia fidei-commissa primis temporibus infirma fuisse;* it is to be known, then, that all trusts were, in their origin, weak. *Inst.* 2. 23. 1. *In primis igitur* sciendum *est, opus esse,* &c.; in the first place, it is to be understood, that it is necessary, &c. *Id.* 2. 23. 2. See *Dig.* 10. 4. 3. 9, 15. *Id.* 21. 1. 19, pr. It corresponded with *notandum est,* (it is to be marked or noted.) *Id.* 10. 4. 3. 2. The civilians who wrote in Greek used the corresponding expressions, εἰδέναι δεῖ, (it should be known,) and εἰδέναι χρή. *Dig.* 26. 3. 1. 3. *Id.* 26. 5. 21, pr. *Id.* 27. 1. 13. The expression *sciendum* or *sciendum est* occurs frequently in Bracton and Fleta, and corresponds with the L. Fr. *est ascavoir,* or *c'est ascavoir,* constantly used in Littleton and other writers. See *Ascavoir.*

SCIENTER. L. Lat. Knowingly; with knowledge. *Bract.* fol. 48 b. 2 *East,* 446. A term used in pleading, to express *knowledge* on the part of a defendant or prosecuted party, of certain facts essential to constitute a valid ground of complaint against him; and also used as the name of that part of a declaration or indictment in which such knowledge is charged. Thus, in an action for keeping a mischievous animal by which some injury has been done, it must be alleged that the defendant kept it *with knowledge* of its habits or mischievous nature. 2 *Chitt. Pl.* 597. And

in an indictment for passing counterfeit coin, it must be alleged, that the accused did so, *knowing* it to be counterfeit. *Wharton's Prec. of Indict.* 174, 175. This is called, *laying* the action or indictment with a *scienter*.

This term is merely the emphatic word used in the old Latin forms of declarations and indictments, retained in use from its peculiar expressiveness.

Scienti et volenti non fit injuria. An injury is not done to one who knows and wills it. An act done to a person with his knowledge and consent, is not an injury. *Bract.* fol. 20.

SCIENTIA. Lat. [from *scire*, to know.] Knowledge; information. **Scientia sciolorum est mixta ignorantia.** The knowledge of sciolists is a mixed ignorance. 8 *Co.* 159.

Scientia utrimque par pares contrahentes facit. Equal knowledge on both sides makes contracting parties equal. Lord Mansfield, C. J. 3 *Burr.* 1905, 1910. An insured need not mention what the underwriter knows, or what he ought to know. *Id. ibid. Broom's Max.* 363, [609.]

SCILICET. Lat. [from *scire*, to know, and *licet*, it is permitted.] To wit; that is to say. A word used in pleadings and other instruments, as introductory to a more particular statement of matters previously mentioned in general terms. *Hob.* 171, 172. Commonly abbreviated *sc.* or *ss.* In the old books, *s.* The word *videlicet*, (of similar import,) is now more common. See *Videlicet*.

Scilicet radically means, according to its derivation, "You may know," and is closely allied in its form and application to the civil law phrase *sciendum est*, (q. v.) So, in colloquial English, formal explanations of any matter are often introduced by the phrase, "you must know." So, the French phrase *c'est ascavoir* (or *est ascavoir*,) had the double meaning of "it is to be known," and "that is to say," the latter a derivative from the former. And the English "*to wit*," itself, literally signifies "*to know*." See *To wit*, *Wit*.

SCINTILLA. Lat. A spark; a remaining particle; the least particle. "A *scintilla* of equity." Henley, Lord Keeper, 1 *W. Bl.* 180. "There is not a *scintilla* of intention upon the face of the will, to show the contrary." Lord Ellenborough, 11 *East*, 322. "Not a *scintilla* of benefit." *Id.* 1 *M. & S.* 509. See 6 *M. & S.* 180.

SCINTILLA JURIS. L. Lat. A spark of right; a remaining particle of right; a latent particle of right or interest. A very small but sufficient portion of the fee simple of an estate, supposed to remain in feoffees to uses, to serve and support contingent uses when they came *in esse*.* 4 *Kent's Com.* 238—246. 1 *Co.* 120, *Chudleigh's case.*—A possibility of future seisin, to serve future uses. 1 *Steph. Com.* 340, note.—A capacity to receive a future seisin. *Burton's Real Prop.* 57.

Mr. Sugden has observed that the doctrine of *scintilla juris* was first started in Brent's case. *Dyer*, 340 a. *Sugden on Powers*, 13, 14. The words used by Dyer, in the case last referred to, are, "*adhuc remanet quædam* scintilla juris *et tituli, quasi medium quid inter utrosque status, scilicet illa possibilitas futuri usus emergentis, et sic interesse et titulus et non tantum nuda auctoritas seu potestas remanet;* there still remains some *scintilla* (or spark) of right and title, as a kind of middle or intermediate thing between both estates, to wit, that possibility of a future emerging (or arising) use; and so, an interest and title, and not only a naked authority or power remains.

In 1 *Siderfin's Reports*, 99, where the above passage is quoted, the word *tantum* is erroneously printed *tam*, an error occasioned by a misapprehension of the abbreviation *tm*, used in the edition of Dyer, quoted by Mr. Sugden. In an old folio edition of Dyer, in French, (London, 1601,) the word is abbreviated *tatu*, which removes all doubt as to the true reading. This edition seems not to have been consulted at the time the note to 1 Sugden on Powers, 15, was written.

The phrase *scintilla juris* itself, seems to have been taken from Bracton. *Sed quid dicetur de eo qui nullam omnino seysinam habuit, nec aliquam* juris scintillam; but what shall be said of him who had no seisin at all, nor any spark of right. *Bract.* fol. 310. *Nuda* [*possessio,*] *ubi quis nihil juris habet in re, nec aliquam* juris scintillam, *sed tantum nudam pedum positionem;* naked possession, where one has no right in a thing, nor any spark of right, but only a mere foothold. *Id.* fol. 39. And see *Fleta*, lib. 4, c. 7, § 2. *Id.* lib. 4, c. 30, § 2.

Scintilla juris is used by Lord Coke in the sense of a *spark of law.* 3 *Inst.* 79. 4 *Bl. Com.* 360. Lord Bacon calls it "a conceit." *Read. Uses; Works*, iv. 193.

Scire debes cum quo contrahis. You

ought to know with whom you contract or bargain.

SCIRE FACIAS. L. Lat. (You cause to know.) In practice. A judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (in case of a *scire facias* to repeal letters patent,) why the record should not be annulled and vacated. 2 *Arch. Pr.* 86. So called from the words of the writ (when in Latin,) to the sheriff,—*Quod* SCIRE FACIAS *præfato T. quod sit coram, &c. ostensurus, si quid pro se habeat, aut dicere sciat quare, &c.;* that you *cause* the said T. *to know*, [or that you give notice to the said T.] that he be before, &c. to show, if he have or know any thing to say for himself, why, &c. *Co. Litt.* 290 b. See *Reg. Jud.* 11, 12, 21, 41.

The most common application of this writ is as a process to revive a judgment after the lapse of a certain time, or on a change of parties, or otherwise to have execution of the judgment, in which cases it is merely a continuation of the original action. 2 *Arch. Pr.* 86. It is used more rarely as a mode of proceeding against special bail on their recognizance, and as a means of repealing letters patent; in which cases it is an original proceeding. *Id. ibid.* It is said by Lord Coke to be "accounted in law in nature of an action," because the defendant may plead to it, and is sometimes expressly called an *action*. *Co. Litt.* 290 b. 1 *Hill's* (N. Y.) *R.* 339. Cowen, J. *Id.* 342. See 2 *Burr. Pr.* 164. *United States Digest*, Scire facias.

SCIRE FECI. L. Lat. (I have caused to know.) In practice. The name given to the sheriff's retnrn to a writ of *scire facias*, that he has caused notice to be given to the party or parties against whom the writ was issued. 2 *Arch. Pr.* 98, 99. *Arch. Forms*, 439. Derived from the emphatic words of the old Latin return.

SCIREGEMOTE, (or SCYREGEMOTE.) Sax. [from *scyre*, shire, and *gemote*, court.] In Saxon law. The shire mote or county court; the principal court of the Saxons, held twice a year before the bishop and alderman. *Crabb's Hist.* 28. *Spelman*, voc. *Gemotum.*

Scire leges, non hoc est verba earum tenere, sed vim ac potestatem. To know the laws, is not to observe their mere words, but their force and power; [that is, the essential meaning in which their efficacy resides.] *Dig.* 1. 3. 17. 1 *Kent's Com.* 462.

Scire proprie est rem ratione et per causam cognoscere. To know properly is to know a thing in its reason, and by its cause. We are truly said to know any thing, where we know the true cause thereof. *Co. Litt.* 183 b.

SCIREWYTE. In old English law. A tax or prestation paid to the sheriff for holding the assises or county courts. *Paroch. Ant.* 573. *Cowell.*

SCISSIO. Lat. [from *scindere*, to cut.] In old English law. A cutting. *Scissio auricularum;* cropping of the ears. An old punishment. *Fleta*, lib. 1, c. 38, § 10.

Scissor; a cutter. *Scissores bursarum;* cut-purses. *Id. ibid.* § 11.

Scissura; a cutting. *Scissura bursæ;* purse-cutting. *Id. ibid.*

SCITO quod *ut* modus est, *si* conditio, *quia* causa.

Know that *ut* expresses or denotes manner, *si*, condition, *quia*, cause. A rule in the form of a hexameter line, by which the peculiar force and function of the particles *ut*, *si* and *quia*, in old conveyancing, were expressed. *Bract.* fol. 18 b. *Dyer*, 138 b. See *Ut*, *Si*, *Quia.*

SCLANDRE. L. Fr. In old English law. Slander. *Stat. Westm.* 1, c. 34.

SCLUSA, *Slusa*, *Clusa*, *Exclusa*, *Clausa.* L. Lat. In old European law. A place so narrowed by nature or art, as easily to prevent or permit the passage of any thing. *Spelman.*

SCOT. [L. Lat. *scottum*, *scottus*, *scotta;* from Sax. *sceat*, a part or portion.] In old English law. A tax, or tribute; one's *share* of a contribution. Or rather, a contribution of several.

Camden, following Matthew of Westminster, defines this word to mean, "that which is gathered together into one heap, from several things," (*illud quod ex diversis rebus in unum acervum aggregatur.*) *Cowell.* Spelman observes that it properly signifies what the authors of the middle ages called *conjectus*, (a throwing together,) because it was *thrown together* by several *into one*, from Sax. *sceote*, to throw or cast, whence *sceotan*, to shoot. It is found associated with the word *lot*, in the laws of William the Conqueror, and other early records; *scot and lot*, (or, in the Saxon form, *an hlot & an scote*,) signifying a customary contribution laid upon all subjects, according to their ability. *Cowell. Spelman*, vocc. *Scot*, *Lot.*

SCOTALE, *Scotall.* [L. Lat. *scotalla, scotallum;* from Sax. *scot*, money or tribute, and *ale.*] In old English law. A compotation or entertainment with *ale*, given for the purpose of extorting money. Called, in old English, *ale shot*, and in Welch, *camortha. Spelman. Britt.* c. 21. *Cowell.* The word *scotalla* occurs in the Charter of the Forest, (c. 8, or 7,) and is defined by Manwood to be, where any officer of the forest keeps an alehouse within the forest, by color of his office, causing men to come to his house, and there to spend their money, for fear of having displeasure. *Id.* But Spelman gives a different reading of the word, with quite a different interpretion, which he prefers.

SCOTALLA, *Scotala, Scotallum.* L. Lat. In old English law. Scotall or scotale, (q. v.) *Nullus forestarius vel bedellus de cetero faciat* scotallas, *vel colligat garbas vel avenam, vel bladum aliquod, vel agnos vel porcellos, vel aliquam collectam faciat;* no forester or beadle shall from henceforth make *scotales*, or collect sheaves or oats or any corn, or lambs or pigs, or make any collection. *Cart. de Forest.* c. 7. See *Fleta*, lib. 2, c. 41, § 25. *Spelman*, voc. *Scotala.*

SCOTTARE. L. Lat. In old records. To pay scot, tax or customary dues. *Cowell.*

SCRAMA. L. Lat. In old European law. A kind of cutting weapon. *L. Wisigoth.* lib. 9, tit. 2, l. 9. *Spelman.*

SCRAWL. A word used in some of the United States for scrowl or scroll, (q. v.) "The word 'seal,' written in a *scrawl* attached to the name of an obligor, makes the instrument a specialty." 2 *Florida R.* 418.

SCRIBA. Lat. [from *scribere*, to write.] A scribe; a secretary. *Scriba regis;* a king's secretary; a chancellor. *Spelman.*

Scribere est agere. To write is to act. Treasonable words set down in writing amount to overt acts of treason. 2 *Roll. R.* 89. 4 *Bl. Com.* 80. *Broom's Max.* 146, [229.]

SCRIP, held not to be goods, wares or merchandize. 16 *Mees. & W.* 66.

SCRIPT. [from Lat. *scriptum*, q. v.] In practice. A writing. A paper offered for probate as a will, called a *script.* 3 *Jones' Law R.* 154.

SCRIPTORIUM. L. Lat. [from *scribere*, to write.] In old records. A place in monasteries, where writing was done. *Spelman.*

SCRIPTUM. Lat. [from *scribere*, to write.] In old conveyancing. A writing; a thing written. *Fleta*, lib. 2, c. 60, § 25. This word, alone, does not import or signify a deed, (that is, an instrument under seal.) 2 *Stra.* 814.

Scriptum indentatum; a writing indented; an indenture or deed. Reynolds, J. *Id.* 815.

Scriptum obligatorium; a writing obligatory. The technical name of a bond in old pleadings. *T. Raym.* 393. Any writing under seal. *Id. ibid.*

SCRIPTURA. Lat. [from *scribere*, to write.] In old English law. The act or fact of writing. *Fleta*, lib. 2, c. 60, § 25.

SCRIVECT'. In old English practice. Scruet. *Scrivect' finium;* scruet of fines. A species of roll used in cases of *habeas corpus.* 3 *How. St. Trials*, 117.

SCRIVENER. In practice. One who writes, or copies writings for others. Called an office of confidence. 2 *Rep. in Ch.* 29. As to the office of money scrivener, see 3 *Campb. R.* 538.

SCRIVER. L. Fr. To write. *Kelham.*

SCROLL, *Scrowl.* [L. Fr. *escrowe, escrovet.*] In practice. A paper or parchment containing some writing, and rolled up so as to conceal it; an escrow. Littleton speaks of *petits escrovets*, (little scrolls,) used for drawing lots between co-parceners. *Litt.* sect. 246. See *Escrow.* The papers on which jurors' names are written, and so drawn out of the box, are still sometimes called *scrolls.* 8 *Iredell's* (N. C.) *R.* 35.

A flourish with a pen, at the end of a signature, or a circle of ink, or other mark witn a pen, representing a seal, is allowed in some of the United States as a valid substitute for a seal. 4 *Kent's Com.* 453, and notes. 4 *Greenl. Cruise's Dig.* [27,] 36, 38, note. This is sometimes called a *scrawl. Swan's Statutes of Ohio*, 1854, chap. 102. 2 *Hilliard's Real Prop.* 280, [296.]

SCRUET-ROLL, (or SCRUET FINIUM.) In old practice. A species of roll or record, on which the bail on *habeas corpus* was entered. 3 *St. Trials*, 134, arg.

SCRUTATOR. Lat. In old English law. A searcher or bailiff of a river; a water-bailiff, whose business was to look to the king's rights, as his wrecks, his floatsan, jetsan, water-strays, royal fishes. *Hale de Jur. Mar.* pars 1, c. 5.

SCTUM. A common abbreviation, or

contraction, in the civil law, of *senatus consultum*, (q. v.)

SCULDASIUS, *Sculdais*. L. Lat. In old European law. A kind of judicial officer; a judge's assistant, combining ministerial with judicial duties. *Spelman. LL. Longobard.* lib. 1, tit. 2, l. 2. *Id.* tit. 14, l. 7.

SCURIA. L. Lat. In old European law. A barn or stable. *LL. Alaman.* tit. 82, § 2. *Spelman.*

S'C'US. A contraction of *sanctus*. 1 *Instr. Cler.* 12.

SCUSSUS. L. Lat. In old European law. Shaken or beaten out, (*excussus;*) threshed, as grain. *Spelman.*

SCUTAGE. [L. Lat. *scutagium*, from *scutum*, a shield; L. Fr. *escuage*, from *escu*, a shield; Sax. *scild-penig*, shield-money.] In old English law. A sum of money assessed upon those tenants by knight-service who had made default in doing their service, (that is, had not followed their lord in person to the wars, nor found a substitute) being so much for each shield, (*scutum.*) *Reg. Orig.* 88.

A pecuniary aid or tribute originally reserved by particular lords, instead or in lieu of personal service, varying in amount according to the expenditure which the lord had to incur in his personal attendance upon the king in his wars. See *Wright on Tenures*, 121—134.

A pecuniary composition or commutation made by a tenant by knight service, in lieu of actual service. 2 *Bl. Com.* 74. See *Bract.* fol. 36, 37, 77 b.

SCUTAGIUM. L. Lat. [from *scutum*, a shield.] In old English law. Scutage, (q. v.) Scutagium [*nominatur*] *quia talis præstatio pertinet ad scutum quod assumitur ad servitium militare;* it is called scutage because such payment belongs to the shield which is borne for military service. *Bract.* fol. 36. *Id.* fol. 77 b.

SCUTE, *Skute*. [Lat. *scutum.*] A French coin of gold, coined A. D. 1427, of the value of 3s. 4d. *Fortescue de L. L. Angliæ*, c. 29, note.

SCUTELRIA. L. Lat. In old English law. A scullery. *Fleta*, lib. 2, c. 18.

SCUTIFER. L. Lat. In old records. Esquire; the same as *armiger*. *Spelman.*

SCUTUM. L. Lat. In old English law. A pent-house or awning; literally, a shield, or shelter. By the Assise of Measures, 9 *Ric.* I. it was forbidden to all merchants throughout England, to spread over their shop windows red or black cloths or awnings (*scuta,*) or any other things by which the sight of purchasers is often deceived in selecting a good cloth. *Spelman.*

SCUTUM ARMORUM. L. Lat. In old records. A shield or coat of arms. *Cowell.*

SCYRA. L. Lat. In old English law. Shire; county; the inhabitants of a county. Writ cited, *Hale's Hist. Com. Law*, 119.

SE, *Si*. L. Fr. If; whether; his; but; except. *Kelham.*

SE DEFENDENDO. L. Lat. [L. Fr. *soy defendaunt.*] In defending himself; in self defence. *Fleta*, lib. 1, c. 23, § 15. See *Homicide se defendendo.*

SEA-FISH, held not to be *shell-fish*. 2 *M. & S.* 568.

SEA-GREENS. In Scotch law. Those grounds which are over-flowed in spring tides. *Bell's Dict.* Held to be private property. *Id.* Land washed by the sea only at high spring tides. 1 *Bell's Ap. Cas.* 512, arg.

SEA-LETTER. In international law. A document which neutral merchant vessels are bound to carry in time of war, as an evidence of nationality, and for the purpose of protection against belligerent powers.* 4 *Kent's Com.* 157. In form, it is a permission from the neutral state to the master of the vessel, to proceed on the intended voyage, and usually contains his name and residence, the name, description and destination of the vessel, with such other matter as the local law and practice require. *Wheaton on Cap.* 65. 5 *East*, 398. *Jacobsen's Sea Laws*, (Am. ed. 1818,) 69, note. In American law, the term *sea-letter* has generally been used as synonymous with *passport*, (q. v.) *Id.* 67, note. 1 *Kent's Com.* 157. *Wheaton on Cap.* 65. According to Mr. Marshall, however, the *sea-letter* (or *sea-brief*, as it is otherwise termed,) is a different document from the passport, relating to the nature and quantity of the *cargo*, the place from whence it comes, and its destination. 1 *Marshall on Ins.* 317. But see the edition of 1810, p. 406 b. And, in New-York, it has formerly been held to be the same thing with the *certificate of property* or *ownership*. 2 *Johns. R.* 531. But see 1 *Id.* 192. *Jacobsen's Sea Laws*, 66—69, note, (Am. ed.)

SEA-SERVICES. See 3 *How. State Trials*, 869.

SEA-SHORE. [Lat. *littus maris.*] The

ground between the ordinary high and low water mark. *Hale de Jur. Maris*, pars 1, c. 4, 5. 3 *Kent's Com.* 431. See *Littus maris*. According to the Roman law, the shore included the land as high up as the largest wave extended in winter. See *Litus*. And this definition has been substantially adopted in the Civil Code of Louisiana. Art. 442.

SEA-WORTHY. In insurance law. In a condition to perform a voyage. 2 *Steph. Com.* 177. A warranty of sea-worthiness means that the vessel is competent to resist the ordinary attacks of wind and weather, and is competently equipped and manned for the voyage, with a sufficient crew, and with sufficient means to sustain them, and with a captain of general good character and nautical skill. 3 *Kent's Com.* 287, and note. See 1 *Arnould on Ins.* 652. "To constitute sea-worthiness of the hull of a vessel in respect to cargo, the hull must be so tight, staunch and strong, as to be competent to resist all ordinary action of the sea, and to prosecute and complete the voyage without damage to the cargo under deck." Curtis, J. 19 *Howard's R.* 167.

SEAL. L. Fr. and Eng. [Lat. *sigillum, signum.*] In conveyancing. An impression upon wax or wafer, or some other tenacious substance, capable of being impressed. 4 *Kent's Com.* 452. 5 *Johns. R.* 239. Bronson, J. 1 *Denio's R.* 376. 2 *Hill's R.* 227. 3 *Id.* 493. Lord Coke defines a seal to be wax impressed, (*cera impressa,*) or wax with an impression, adding that wax without an impression is not a seal, (*cera sine impressione non est sigillum.*) 3 *Inst.* 169. This is the well-settled definition of the common law, and it has been adopted in several of the United States. In New-York, it has been decided that an impression upon paper alone is not a seal, except where it has been made so by statute. Bronson, J. 1 *Denio's R.* 376. 2 *Hill's R.* 227. 3 *Id.* 493. But see 13 *Howard's R.* 472. The same rule prevails generally in the Eastern States. 4 *Greenl. Cruise's Dig.* [27,] 36, 38, note. See 8 *Howard's R.* 451, 464; Woodbury, J. But in the Southern and Western States, from New-Jersey inclusive, the impression upon wax has been disused, and a scroll, scrawl or flourish with a pen, substituted for many purposes, in its place. See *Id. ibid.* 4 *Kent's Com.* 452, 453, and note. 4 *Texas R.* 231. 2 *Hilliard's Real Prop.* 280, [295, 296.] See *Scroll.*

SEAL. [Lat. *sigillum, signum.*] A plate or disk of metal, usually of circular form, having some device engraved upon it, with which an impression may be made on wax or other substance, on paper or parchment, for the purpose of authentication. See *Merlin Repert.* mot *Sceau.* Of this description are the seals of a government, the seals of courts, of public notaries, and other public officers.

Private seals are also engraved on other materials, such as precious stones; but the use of these in the execution of instruments is comparatively infrequent, and of far less importance than formerly. When sealing was the principal formality in the execution of instruments, the seal used by a donor or grantor was emphatically and literally *his*, that is, it was his private seal, bearing some peculiar device by which it was known, so that the deed or charter upon which it was impressed was by that circumstance known to have been executed by him. Hence the importance attached to the possession of these private seals, which appears in various ancient records. In one of the Clause Rolls of 8 Edw. I. (m. 3, in dorso,) it is recorded that one Henry de Pergount came into the Chancery, and publicly declared that he had lost his seal, and that if any instrument should be found sealed with that seal after that date, it was of no value or moment. *Blount.* In another instrument, dated at Drakelew, in the 18th year of Richard II. one John de Gresley makes known to all Christian people, that he has not had possession of his seal for a whole year last past, and being in good memory and sound mind, gives notice that he disclaims and totally denies any writings sealed with his seal from the time aforesaid until the day when his said seal should be restored. *Blount*, voc. *Sigillum.* And according to Britton, it was customary in such cases, to have public notice of the loss given in churches and market places. *Britt.* c. 28. And see *Bract.* fol. 15, 38.

SEAL. In English practice. The sitting of a court. See 1 *P. Wms.* 523. 3 *Id.* 240.

SEALED AND DELIVERED. In conveyancing. The common formula of attestation of deeds and other instruments, written immediately over the witnesses' names. This has been retained without change from the old practice, when *sealing alone*, without signing, constituted a suffi-

cient execution or authentication. 2 *Bl. Com.* 306. See 15 *Ohio R.* 107.

In England, it has been held that the words "sealed and delivered," in an attestation, does not import *signing*. 5 *M. & S.* 581. 3 *Id.* 512. 4 *Taunt.* 213. But the contrary has recently been held in the Supreme Court of the United States. 8 *Howard's R.* 10, citing 6 *M. & Gr.* 386.

SEALX, *Seaux.* L. Fr. Seals. *Britt.* c. 4. *De fauseours de* sealx, *et de monoye. Id.*

SEAMAN. [Lat. *nauta.*] A mariner; one whose business is navigation; a person who works, or aids in navigating a vessel, a sailor.* See 3 *Kent's Com.* 176. See *Nauta.*

In a large sense, this term includes all persons who do duty on board of a ship, and are instrumental to her navigation. *Roccus de Nav. & Naulo*, Note ix. See *Crew.*

SEARCH, RIGHT OF. In international law. The right of belligerent powers to examine and search private merchant vessels at sea, for enemy's property, and articles contraband of war.* 1 *Kent's Com.* 153. It is generally limited to an inspection of the ship's papers, or the documentary proofs of the property on board. This is wholly distinct from what is termed the *right of visit*, which is conceded for the sole purpose of ascertaining the real character of a vessel sailing under suspicious circumstances. *Id. ibid.* note. The latter right has been termed by the Supreme Court of the United States, the *right of approach.* 11 *Wheaton's R.* 1, 43. In the recent diplomatic correspondence between the governments of Great Britain and the United States, the distinction between the right of *visit* and that of *search* has been denied on the part of the latter.

SEARCH WARRANT. In criminal law. A warrant granted by a justice or magistrate, upon the oath or affirmation of a party, authorizing the search of premises, usually for goods stolen, but sometimes for other purposes. 2 *Chitt. Gen. Pr.* 179, 180. 1 *N. Y. Rev. St.* [93,] 84, § 11. 2 *Id.* [746,] 625, §§ 25—28. *Id.* [149,] 83, § 5. 1 *Id.* [125, § 54,] 115, § 59.

SEAWANT, *Seewan, Zeawan.* In old American law. The Dutch name for *wampum*, or Indian money, which consisted of perforated beads, (white, and black or purple,) manufactured from the inside of shells, and strung together. See *O'Callaghan's N. Netherlands*, i. 60, 61. *Id.* ii. 543.

SEAUPWERPE, *Seawerpe.* Sax. [from *sæ*, sea, and *upwerpen*, to throw up.] In old records. Wreck; that which is cast up by the sea. (Lat. *jactura maris;* Fr. *varech.*) *Spelman.*

SECOND DELIVERANCE, *Writ of.* [L. Lat. *breve de secunda deliberatione.*] In practice. A writ allowed a plaintiff in replevin, where the defendant has obtained judgment for return of the goods, by default or nonsuit, in order to have the same distress again delivered to him, on giving the same security as before. 3 *Bl. Com.* 150. 3 *Steph. Com.* 668. This writ has been formally abolished in New-York. 2 *Rev. St.* [533,] 439, § 63.

SECOND SURCHARGE. In English law. The surcharge of a common a second time, by the same defendant against whom the common was before admeasured; and for which the *writ of second surcharge* was given by the statute of Westminster, 2. 3 *Bl. Com.* 239.

SECONDARY. In English practice. An officer of the courts of King's Bench and Common Pleas; so called, because he was *second* or next to the chief officer. In the King's Bench he was called Master of the King's Bench office, and was a deputy of the prothonotary or chief clerk. 1 *Arch. Pr.* 11, 12. By statutes 7 Will. IV. and 1 Vict. c. 30, the office of secondary was abolished.

SECONDARY CONVEYANCES. The name given to that class of conveyances which pre-suppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore or transfer the interest granted by such original conveyance. 2 *Bl. Com.* 324. Otherwise termed *derivative conveyances*, (q. v.)

SECONDARY EVIDENCE. In practice. The next best evidence that can be given of the contents of an instrument or writing, where the best possible evidence the nature of the case will admit (that is, the instrument or writing itself,) cannot be produced, as where it has been lost or destroyed, or withheld by the opposite party.* *Arch. Pl. & Evid.* 373. Parol evidence is frequently made use of for this purpose. See 9 *Wheaton's R.* 483. *Id.* 581. *United States Digest*, Evidence.

SECTA. L. Lat. In old English practice. Suit. A number of persons which a plaintiff produced in court, immediately

after making his count or declaration, for the purpose of confirming his allegations by their testimony, before the defendant pleaded. *Et inde statim producat* sectam *sufficientem, duos ad minus, vel tres, vel plures, si possit;* and thereupon he should immediately produce a sufficient *suit*, two persons, at the least, or three or more, if he can. *Bract.* fol. 410. See *Id.* 214 b, 400 b. *Fleta*, lib. 2, c. 47, §§ 25, 28, 38. *Id.* c. 55, § 2. *Id.* c. 63, §§ 10, 12. Called *secta*, (from *sequi*, to follow,) because they were usually the plaintiff's *followers* or retainers, (*domestici et familiares.*) 3 *Bl. Com.* 295. *Bract.* fol. 214 b, 400 b. This production of suit became a mere form as early as the reign of Edward II. but the formula by which it was expressed,—"*Et inde producit sectam*," continued to be retained on the record, and in this way came to be used as the concluding clause of the plaintiff's declaration; though, in the modern forms, it is translated, (with reference to another meaning of *secta*,) "And thereupon he *brings suit*," or, "And therefore he *brings* his *suit*," &c. *Steph. Pl.* 429, 430. 3 *Bl. Com.* 295. Spelman seems to have overlooked this meaning of the word.

Pursuit of a felon. *Et sic quod fiat* secta *de terra in terram, cum omni diligentia, donec malefactores comprehendantur;* and so that suit (or pursuit) be made from land to land, (from one lord's land to another's) with all diligence, until the malefactors be taken. *Bract.* 116. *Recens secta;* fresh pursuit. *Fleta*, lib. 1, c. 24, § 3.

A suit or action; the prosecution, or following up of one's right at law. *Spelman. Stat. Westm.* 2, c. 40. Secta *est pugna civilis; sicut actores armantur actionibus, et quasi accinguntur gladiis, ita rei* [*è contra,*] *muniuntur exceptionibus, et defenduntur quasi clypeis.* A suit is a civil battle; as plaintiffs are armed with actions, and girded [with them] as it were, with swords, so defendants, on the other hand, are guarded with exceptions, [pleas or defences,] and defended [with them] as it were, with shields. *Hob.* 20. This, with the exception of the words *secta est pugna civilis*, is a quotation from Bracton. *Bract.* fol. 399 b.

A feudal service, by which a tenant was bound to attend his lord's court. See *Secta curiæ.*

A customary service on the part of a tenant, to grind his grain at his lord's mill. See *Secta ad molendinum.*

In old records. A suit of clothes. *Cowell. Spelman.*

SECTA AD MOLENDINUM. L. Lat. [L. Fr. *sute à molyn.*] In old English law. Suit at mill; suit to mill; the customary service of doing *suit* to another's *mill. Hale's Anal.* sect. xlii. A service which was due by usage time out of mind, from the persons resident in a particular place, of carrying their corn to a certain mill to be ground. 3 *Bl. Com.* 235. The writ *de secta ad molendinum* was given as a remedy for the withdrawal of this service. *Id. ibid.*

SECTA AD FURNUM. L. Lat. In old English law. Suit due to a man's public oven or bake-house. 3 *Bl. Com.* 235.

SECTA AD TORRALE. L. Lat. In old English law. Suit due to a man's kiln or malt-house. 3 *Bl. Com.* 235.

SECTA CURIÆ. L. Lat. In feudal and old English law. Suit of court; suit to court; the service of following the lord in his court, or of attending his court. A service which all feudal tenants were bound to perform; the object of such attendance being to answer such complaints as might be alleged against themselves, as well as to form a jury or homage for the trial of their fellow tenants.* 2 *Bl. Com.* 54. *Hale's Anal.* sect. xlii.

SECTATOR. L. Lat. [from *secta*, suit.] In old English law. A suitor; one who was bound to do suit, especially suit at court. The *sectatores*, or suitors of the courts, were the judges who transacted the business. *Worthington on Juries*, 19. See *Fleta*, lib. 2, c. 2, § 13; c. 53, § 1.

SECTORES. Lat. In the Roman law. Purchasers at auction, or public sales. *Babington on Auctions*, 2. Properly, the purchasers of confiscated property. *Adam's Rom. Ant.* 49.

SECUNDUM. Lat. In the civil and common law. According to. *Secundum bonos mores;* according to good usages; according to established custom; regularly; orderly. *Calv. Lex. Secundum quantitatem terræ;* according to the quantity of land. *Plowd.* 10. *Secundum æquum et bonum;* according to what is just and good. 13 *East*, 419. *Secundum consuetudinem husbandriæ manerii;* according to the custom of husbandry of the manor. 7 *Id.* 409.

For; in favor of; (*pro.*) *Calv. Lex.*

Near; (*prope.*) *Secundum ripam;* near

the bank. *Id.* *Secundum parietem;* near the wall. *Id.*

SECUNDUM ALLEGATA ET PROBATA. Lat. According to the things alleged and proved; according to the allegations and proofs. 1 *Sumner's R.* 375. "Courts and juries cannot do otherwise than decide *secundum allegata et probata* in each particular case." Lord Ellenborough, 15 *East*, 81. See 3 *Taunt.* 30.

SECUNDUM FORMAM STATUTI. Lat. According to the form of the statute. This phrase is adduced by Sir W. Blackstone to show the inferiority of the English language to the Latin, in point of conciseness; *seven* English words being necessary to express the meaning of *three* Latin. 3 *Bl. Com.* 323, and note. The phrase *secundum statutum* is found in the civil law. *Calv. Lex.*

SECUNDUM LEGEM COMMUNEM. L. Lat. According to the common law. *Fleta*, lib. 2, c. 2, § 13. *Non* secundum *legem communem, sed* secundum *suas consuetudines diu obtentas;* not according to the common law, but according to their own long established customs. *Id. ibid.*

SECUNDUM NATURAM. Lat. According to nature; natural. **Secundum naturam est commoda cujusque rei eum sequi, quem sequentur incommoda.** It is according to nature that the advantages of any thing should attach to him to whom the disadvantages attach. *Dig.* 50. 17. 10.

SECUNDUM NORMAM LEGIS. Lat. According to the rule of law; by the intendment and rule of law. *Bacon's Arg.* Low's case; *Works*, iv. 234.

SECUNDUM SUBJECTAM MATERIAM. L. Lat. According to the subject matter. 1 *Bl. Com.* 229. All agreements must be construed *secundum subjectam materiam*, if the matter will bear it. 2 *Mod.* 80, arg. Delivery must be *secundum subjectam materiam.* 2 *Kent's Com.* 439.

SECURUS. Lat. Secure; safe or sure. See *Si te fecerit securum.*

SECURITAS. Lat. [from *securus*, q. v.] In old English law. Security; surety. *Capta securitate à creditore de prosequendo;* having taken security from the creditor to prosecute. *Fleta*, lib. 2, c. 60, § 33. See *infra.*

In the civil law. An acquittance, or release, (*apocha.*) *Spelman. Calv. Lex.*

SECURITATE PACIS, *Breve De.* L. Lat. In old English practice. Writ of security of the peace. A writ which lay for one who was in fear of some bodily harm from another; as where another had threatened to kill, beat or assault him. *F. N. B.* 79 G. Called, in the Register, *breve de minis*, a writ of threats, or in case of threats. *Reg. Oriy.* 88 b.

SECURITY. [Lat. *securitas*, q. v.] That which makes secure. An instrument given to secure the performance of an act or contract.

A surety; a person bound by such an instrument. But *surety* is the more proper term in this application.

SECURITY FOR COSTS. In practice. A security which a defendant in an action may require of a plaintiff who does not reside within the jurisdiction of the court, for the payment of such costs as may be awarded to the defendant. 1 *Tidd's Pr.* 534. 2 *Arch. Pr.* 213. 1 *Burr. Pr.* 116.

Securius expediuntur negotia commissa pluribus, et plus vident oculi quam oculus. Matters entrusted to several are more securely dispatched, and [several] eyes see more than [one] eye. 4 *Co.* 46 a.

SECUS. Lat. Otherwise, (*aliter.*) 12 *Mod.* 229. 1 *P. Wms.* 447. See *Aliter.*

Amiss; contrary. *Calv. Lex.*

SED NON ALLOCATUR. L. Lat. But it is not allowed. A phrase used in the old reports, after giving the argument of counsel, where the court is *contra. Latch*, 106. "It was argued," &c. "It was insisted," &c. "*Sed non allocatur.*" *Com.* 329. *Id.* 576, 577. "*Sed non allocatur*, because it has been otherwise adjudged." *Latch*, 171. See *Allocatur.*

SED PER CURIAM. L. Lat. But by the court. 2 *P. Wms.* 24, 25.

SEDATO ANIMO. L. Lat. With settled purpose. 5 *Mod.* 291.

SEDENTE CURIA. L. Lat. The court sitting; during the sitting of the court.

SEDERE. Lat. To sit, as a court, or the judges of a court. See *Sedente curia.* Bracton uses *residere.*

In the civil law. To be satisfactory to a judge, (*placere.*) *Si hoc judici sederit;* if this be approved by the judge. *Dig.* 2. 8. 7. 2.

SEDERUNT. L. Lat. (They sat.) In Scotch law. The session or sitting of a court. See *Acts of sederunt.*

SEDES. Lat. A see; the dignity of a bishop. 3 *Steph. Com.* 65.

SEDITIO. Lat. [from *seorsum*, apart and *ire*, to go.] In the civil law. Disturb-

ance of the public tranquillity, (*quietis publicæ perturbatio.*) See *Cod.* 9. 30. 1.

In old English law. Sedition; treason. *Glanv.* lib. 1, c. 2. 1 *Hale's P. C.* 77, note.

SEDITION. [from *seditio*, q. v.] In criminal law. An offence against the government of a country, not capital, and not amounting to treason, consisting of attempts made by meetings, or by speeches or publications, to disturb the tranquillity of the state, or to excite discontent against the government.* It is of the like tendency with treason, but without the overt acts which are essential to constitute the latter crime. *Brande.*

Sedition, (*seditio*,) is used by the oldest writers on English law, (Glanville, Bracton and Hengham,) in the sense of treason, and *seditio* continued to be the technical word in legal proceedings until the term *proditio* prevailed in its room. In the time of Sir Matthew Hale, sedition had lost this ancient sense, which accounts for the comparative disuse of the term in modern English law, and its entire omission in some of the dictionaries and standard treatises. 1 *Hale's P. C.* 77, and note. For a minute discussion of its meaning, with a copious reference to authorities, see 3 *Howell's State Trials*, 242, 243, 244, 248, 249, 254, 261, 267, 279, 283, 284.

SEDUCTION. [from Lat. *seductio*, from *seducere*, to draw aside.] The debauching of a woman; the offence of inducing a woman to consent to unlawful intercourse. See 3 *Bl. Com.* 140. 3 *Steph. Com.* 540.

SEE. L. Fr. Seat. *Kelham.*

SEEL. L. Fr. In old English law. Seal; a seal. *Le* seel *est consut' et glué al fait;* the seal is sewed to and glued to the deed. *Yearb.* M. 7 Hen. VI. 27.

SEHOMSOKNE. A word in Fleta, which, in the errata to the edition of 1647, is corrected *sahomsokne*. *Fleta*, lib. 1, c. 34, § 8. From the context, it seems to be a misprint for *homsokne*, or *hamsokne*, (q. v.)

SEI. L. Fr. Him; his; them. *Kelham.*

SEIGNEUR. Fr. and L. Fr. In old English law. Lord; a lord. Used, also, in the sense of owner or master, (*dominus.*) See *Barringt. Obs. Stat.* 286, 287.

SEIGNIORESS. In old English law. A female superior; a lady. *Perk.* c. 6, s. 462.

SEIGNIORY. [L. Fr. *seignioury;* Fr. *seigneurie;* L. Lat. *dominicum, dominium.*] In feudal and English law. Lordship; the estate which a lord had in the land held by his tenant; the ultimate property retained by the lord. See *Dominicum.*

A lordship or manor. *Cowell.*

SEIGNIOUR. L. Fr. [Lat. *dominus.*] Lord; a lord. *Britt.* c. 68.

SEISED. This word excludes chattels. *Bac. Read. Uses; Works*, iv. 189. Anciently, however, it was applied to personal property. See *Seisi.*

"Seised," in the New-York statutes of escheats, construed. 3 *Comstock's R.* 294.

SEISER. L. Fr. To take; to take hold of. *Seiser et tener;* to take and hold. *Britt.* c. 40.

SEISI. L. Fr. In old English law. Seised; possessed. Seisi *de deux juments;* seised of two beasts. *Yearb.* M. 4 Edw. III. 11.

SEISIARE. L. Lat. In old English law. To seize. *Nos vero, vel ballivi nostri non* seisiemus *terram aliquam nec redditum pro debito aliquo;* but we or our bailiffs will not seize any land nor rent for any debt. *Mag. Cart.* c. 8.

SEISIE. L. Fr. [from *seiser*, q. v.] In old English law. Seised. Called by Lord Coke, "a word of art, and in pleading only applied to a freehold at least, as *possesse*, (possessed,) is, for distinction sake, to a chattel real or personal." *Co. Litt.* 200 b, 17 a. *Litt.* sect. 324. See *Seisi, Seised.*

SEISIN. [L. Fr. *seisine*, from *seiser, saisir*, to seize; L. Lat. *seisina, seysina*, q. v.] Possession; possession of land; possession of an estate of freehold in lands. *Co. Litt.* 153 a. 2 *Crabb's Real Prop.* 1000, § 2374.

In its feudal sense, actual corporal possession of land;* investiture. *Spelman.* The ownership of a feudal tenant. 1 *Spence's Chancery*, 135, note. "Seisin is a technical term to denote the completion of that investiture by which a tenant was admitted into the tenure, and without which, no freehold could be constituted or pass." Lord Mansfield, 1 *Burr.* 60, 107. See *Seisina, Seysina.*

Seisin is properly applied to freehold, *possession* to goods and chattels, although sometimes the one is used instead of the other. *Co. Litt.* 17 a. Seisin *in deed* is actual possession of the freehold; seisin *in law* is a legal right to such possession. 4 *Kent's Com.* 386, note. In some of the United States, seisin means merely ownership, and the distinction between seisin in

deed and in law is not known in practice. 1 *Hilliard's Real Prop.* 82, 83, [41, 42.]

SEISINA, *Seysina, Saisina.* L. Lat. [from L. Fr. *seisine*, q. v.] In old English law. Seisin; possession of a freehold estate. *Fleta*, lib. 4, c. 7, §§ 2, 3.

Seisina facit stipitem. Seisin makes the stock. 2 *Bl. Com.* 209. Actual seisin of a person makes him the root or stock from which all future inheritance by right of blood must be derived. *Id. ibid.* This maxim has been, in effect, discarded in England, by the Inheritance Act, 3 & 4 Will. IV. c. 106, which establishes in every case the rule that descent shall be traced from the purchaser. 1 *Steph. Com.* 367. *Broom's Max.* 226—229, [401, 404.] It is abrogated, also, in most of the United States. 4 *Kent's Com.* 388, 389. 13 *Georgia R.* 238.

SEISIRE. L. Lat. In old English law. To take; to be seised. *Seisitus;* seised. *Cro. Jac.* 634. See *Seysire.*

SEIZURE. Capture. "Every capture is a seizure." Lord Ellenborough, 15 *East*, 13.

SELDA. L. Lat. In old English law. A window; a shop-window. *Assis. Mensur.* 9 *Ric.* 1. *Spelman.*

A shop, shed or stall. *Cowell.*

A wood of sallows, willows, or withies. *Co. Litt.* 4 b.

SELECTI JUDICES. Lat. In the Roman law. Selected judges; persons chosen by lot, out of a larger number, to act as *judices* in criminal cases. *Hallifax, Anal.* b. 3, c. 13, num. 4, 20. *Adam's Rom. Ant.* 276, 280. The points of resemblance between these *judices* and the *jurors* of the common law, have been particularly noticed by Blackstone, but, as remarked by Dr. Hallifax, his observations on this head would have been better placed, if inserted in that part of the commentaries which treats of *criminal* proceedings. 3 *Bl. Com.* 366. The *selecti judices* were exclusively used in what were termed *publica judicia*, or criminal trials, and not at all in the trial of civil causes. *Hall. Anal.* b. 3, c. 13, num. 31, note.

SELEZ. L. Fr. Saddled. *Selez e enfrenez;* saddled and bridled. *LL. Gul. Conq.* l. 22.

SELF DEFENCE. In criminal law. The protection of one's person or property against some injury attempted by another. The right of such protection. An excuse for the use of force in resisting an attack on the person, and especially for killing an assailant. See *Wharton's Am. Crim. Law*, §§ 1019—1026.

SELI. L. Fr. Of this; this. *Kelham.* A corruption of *celui.*

SELIO. Lat. [L. Fr. *selion*, from Fr. *seillon*, ground raised between two furrows, from Sax. *sul*, or *syl*, a plough.] In old English law. A selion or ridge of land, containing no certain quantity, but sometimes more and sometimes less. *Spelman. Co. Litt.* 5 b. *Cowell.*

SEMB. An abbreviation of *semble*, (q. v.)

SEMBLABLE. L. Fr. Similar; like. *Britt.* c. 66.

SEMBLE. L. Fr. Seems; it seems. A term used in the books, expressive of an opinion on some point not definitely settled; or expressive of an opinion as to the application or bearing of some decision upon a particular point. Used by the reporters of cases, where they are not confident as to the ruling of the court on a particular point.

In the older books, it is constantly used by counsel and judges, on argument, expressive of an opinion. *Il* semble *à moy;* it seems to me; I think. *Dyer*, 10. See *Id.* 13, 14. Shelley semble *le feffement bone;* Shelley thought the feoffment good. *Id.* 33. It is used also to express an unsettled opinion of the court. *Semble per curiam que n'est bone; sed advisari volunt;* it seems, by the court, that it is not good; but they will be advised. *Freem.* 247.

SEMBLEMENT. L. Fr. [Lat. *similiter.*] Likewise. 11 *Mod.* 218.

SEME. O. Eng. [L. Lat. *summa.*] In old records. A horse-load. *Cowell.*

SEMER. L. Fr. To sow. *Seme;* sown. *Britt.* fol. 147 b. *Yearb.* T. 4 Edw. III. 7.

SEMESTRIS, *Semestre.* Lat. [from *sex*, six, and *mensis*, month.] Of, or for six months. *Dig.* 27. 1. 41. *Stat. Westm.* 2, c. 5. 2 *Inst.* 361.

SEMI-MATRIMONIUM. Lat. In the Roman law. Half-marriage. Concubinage was so called. *Tayl. Civ. Law*, 273.

SEMINARE. Lat. [from *semen*, seed.] To sow. *Tempus seminandi;* time of sowing; seed-time. *Fleta*, lib. 2, c. 73, §§ 2, 13.

SEMINARIUM. Lat. [from *semen*, seed.] In the civil law. A nursery of trees. *Dig.* 7. 1. 9. 6. *Id.* 47. 7. 3. 4.

"SEMINARY," held in New-York, to

import an *incorporated* institution. 3 *Kernan's R.* 220. The word is said to have "not acquired any definite and fixed legal meaning." Hand, J. *Id.* 229.

SEMI-PLENA PROBATIO. Lat. In the civil law. Half-full proof; half-proof. 3 *Bl. Com.* 370. See *Half-proof.*

SEMITA. L. Lat. In old English law. A path. *Fleta*, lib. 2, c. 52, § 20.

SEMPER. Lat. Always. **Semper in dubiis benigniora præferenda sunt.** In doubtful cases, the more favorable constructions are always to be preferred. *Dig.* 50. 17. 56.

Semper in dubiis id agendum est, ut quam tutissimo loco res sit bona fide contracta, nisi quum aperte contra leges scriptum est. In doubtful cases, such a course should be taken that a contract made *bona fide* should be in the safest condition, [most carefully upheld] unless when it has been openly made against law. *Dig.* 34. 5. 21.

Semper in obscuris, quod minimum est, sequimur. In cases of obscurity we always follow that which is the least. *Dig.* 50. 17. 9. See **In obscuris, &c.**

Semper in stipulationibus, et in ceteris contractibus, id sequimur quod actum est. In stipulations and in other contracts, we follow that which was done, [we are governed by the actual state of the facts.] *Dig.* 50. 17. 34.

Semper ita fiat relatio, ut valeat dispositio. Reference [of a disposition in a will] should always be so made, that the disposition may have effect. 6 *Co.* 76 b.

Semper præsumitur pro legitimatione puerorum. The presumption always is in favor of the legitimacy of children. 5 *Co.* 98 b, *Bury's case.* *Co. Litt.* 126 a. *Best on Evid.* 335, § 297.

Semper præsumitur pro sententia. The presumption always is in favor of a sentence. 3 *Bulstr.* 42. *Branch's Pr.*

Semper qui non prohibet pro se intervenire, mandare creditur. He who does not prohibit the intervention of another in his behalf, is supposed to authorize it. 2 *Kent's Com.* 616. *Dig.* 14. 6. 16. *Id.* 46. 3. 12. 4.

Semper sexus masculinus etiam femininum sexum continet. The male sex always includes the female. *Dig.* 32. 62.

Semper specialia generalibus insunt. Specials are always included in generals. *Dig.* 50. 17. 147.

SEMPER PARATUS. Lat. In old pleading. Always ready; always prepared. See *Tout temps prist.*

SEN, *Sens.* L. Fr. [from Lat. *sensus.*] Sense; reason; mind; understanding. *En son droit* sen; in his right mind. *Britt.* c. 86. *En lour droit* sens. *Id.* c. 28.

SENATOR. Lat. In the Roman law. A member of the *senatus*, (senate.) *Dig.* 1. 9. *Calv. Lex.*

In Saxon law. An alderman. 1 *Rep. in Ch.* Appx. 8.

In old English law. A member of the king's council, or council board; a king's councillor. *Senatores sunt partes corporis regis;* councillors are parts of the king's body. *Staundf.* 72 E. 4 *Inst.* 53, in marg. They are incorporated to the king himself, and bear part of his cares. *Id.* 53.

SENATUS. Lat. In the Roman law. The senate; the great national council of the Roman people.

The place where the senate met. *Calv. Lex. Aul. Gell. Noct. Att.* xviii. 7. 5. But this was more commonly termed *curia*, (q. v.)

SENATUS CONSULTUM. Lat. In the Roman and civil law. A decree of the senate. *Dig.* 1. 2. 2. 9, 12. Defined in the Institutes to be "that which the senate orders and ordains," (*quod senatus jubet atque constituit.*) *Inst.* 1. 2. 5. See a form in *Dig.* 5. 3. 20. 6. *Tayl. Civ. Law*, 564, 566. The *senatus consulta* were among the most important sources of Roman jurisprudence. 1 *Kent's Com.* 527, 532. 1 *Mackeld. Civ. Law*, 19, 28, §§ 28, 38.

SENATUS-CONSULTUM MARCIANUM. Lat. In the civil law. The Marcian decree of the senate. A decree enacted in the consulate of Quintus Marcius and Spurius Postumus, in relation to the celebration of the Bacchanalian mysteries. This decree has been preserved entire to the present day, and is given in full by Dr. Taylor, with a commentary abounding in curious learning. *Tayl. Civ. Law*, 546—584. It was obtained from a copper plate dug up about the year 1640, in the territories of J. Bapt. Cigala, in the kingdom of Naples, and now in the imperial library at Vienna. *Id.* 547.

SENATUS CONSULTUM ORFICIANUM. Lat. In the civil law. The Orfician decree of the Senate. A decree enacted in the consulate of Orficius and Rufus, in the reign of the Emperor Marcus Antoninus, by which children, both sons and daughters, were admitted to the in-

heritance of their intestate mothers. *Inst.* 3. 4, pr.

SENATUS CONSULTUM PEGASIANUM. Lat. In the civil law. The Pegasian decree of the Senate. A decree enacted in the consulship of Pegasus and Pusio, in the reign of Vespasian, by which an heir, who was requested to restore an inheritance, was allowed to retain one-fourth of it for himself. *Inst.* 2. 23. 5. This was declared by Justinian to be superseded by the *Senatus consultum Trebellianum*, (q. v.) *Id.* 2. 23. 7. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 23, § 668.

SENATUS CONSULTUM TREBELLIANUM. Lat. In the civil law. The Trebellian decree of the Senate. A decree enacted in the consulate of Trebellius Maximus and Annæus Seneca, in the reign of Nero, by which it was provided that if an inheritance was restored under a trust, all actions which, by the civil law, might be brought by or against the heir, should be given to and against him to whom the inheritance was restored. *Inst.* 2. 23. 4. *Dig.* 36. 1. See the words of the decree, *Id.* § 2.

SENATUS CONSULTUM ULTIMÆ NECESSITATIS. Lat. A decree of the senate of the last necessity. The name given to the decree which usually preceded the nomination of a dictator. 1 *Bl. Com.* 136.

SENATUS CONSULTUM VELLEIANUM. Lat. In the civil law. The Velleian decree of the Senate. A decree enacted in the consulship of Velleius, by which married women were prohibited from making contracts. *Dig.* 16. 1. *Story's Confl. of Laws*, § 425.

SENDA. Span. [from Lat. *semita?*] In Spanish law. A path; the right of a path. *Las Partidas*, part. 3, tit. 31, l. 3. The right of foot or horse-path. *White's New Recop.* b. 2, tit. 6, § 1.

SENESCALCIA. L. Lat. In old English law. The office of a seneschal, (*senescallus.*) *Fleta*, lib. 2, c. 72, § 1.

SENESCALLUS. L. Lat. In old English law. A seneschal; a steward; the steward of a manor. *Fleta*, lib. 2, c. 72. The steward of the king's household. *Id.* cc. 2, 3.

SENESCHAL. L. Fr. [L. Lat. *senescallus*, *seneschallus*, from *sein*, a house or place, and *schalc*, an officer or governor.] In old European law. A French title of office and dignity, derived from the middle ages, answering to that of steward or high steward in England. Seneschals were originally the lieutenants of the dukes and other great feudatories of the kingdom; sometimes termed *baillis* or *bailiffs*. *Brande.*

In old English law. A steward. *Bailera à le* seneschal; shall deliver to the steward. *Litt.* sect. 78. *Co. Litt.* 61 a. *Cowell.*

SENEUCIA. L. Lat. In old records. Widowhood. *Cowell.*

SENIOR. L. Lat. Lord; a lord. *Grotius, de Jur. Bell.* lib. 2, c. 3, § 19, n. 2.

SENIORES. Lat. In old English law. Seniors; ancients; elders. A term applied to the great men of the realm, (*regni magnates.*) *Spelman. Feud. Lib.* 2, tit. 52.

SENORIO. Span. In Spanish law. Dominion or property. *Las Partidas*, part. 3, tit. 28, l. 6.

SENSUS. Lat. Sense; meaning; reason; understanding. **Sensus verborum est anima legis.** The sense of the words is the soul of the law. 5 *Co.* 2 b, *Elmer's case.*

Sensus verborum ex causa dicendi accipiendus est; et sermones semper accipiendi sunt secundum subjectam materiam. The sense of words is to be taken from the occasion of speaking them, and discourses are always to be interpreted according to the subject matter. 4 *Co.* 13 b. Applied to cases of slander by words. *Id. ibid.* See 2 *Kent's Com.* 555.

SENTENCE. [Lat. *sententia*, q. v.] In the civil law. The judgment of a court pronounced after the hearing of a cause. *Hallifax, Anal.* b. 3, c. 9, num. 41. *Id.* c. 11, num. 25. Used in admiralty practice, in the same sense. 1 *Kent's Com.* 402.

In the common law, sentence is exclusively used to denote the judgment in *criminal cases.* 4 *Bl. Com.* 376.

SENTENTIA. Lat. In the civil law. Sense; import; meaning, as distinguished from mere words. *Dig.* 50. 17. 67, 96. *Calv. Lex.*

The deliberate expression of one's will. See *Tayl. Civ. Law*, 532. See *Testamentum.*

The sentence of a judge or court. *Inst.* 4. 11. 4. Judicial opinion. **Sententia facit jus, et legis interpretatio legis vim obtinet.** Judicial opinion makes law, and the interpretation of law obtains the force of law. *Ellesm. Postn.* 55. *Branch's Pr.* Sen-

tentia a non judice lata nemini debet nocere. A sentence passed by one who is not a judge [has not jurisdiction] ought to harm no one. *Fleta*, lib. 6, c. 6, § 7.

Sententia interlocutoria revocari potest. An interlocutory sentence, or order of a judge, may be revoked, (but a judgment cannot. *Bacon's Max.* 81, in reg. 20.

Sententia non fertur de rebus non liquidis. Sentence is not given upon matters that are not clear. *Jenk. Cent.* 7, case 9.

SENTENTIALITER. L. Lat. In old English law. By sentence. *Sententialiter terminatum. Artic. Cleri.* c. 6.

SENTEZ. L. Fr. Holy (things.) The Gospels. (Lat. *sancta.*) *Jurra sur sentez;* let him swear upon the gospels. *LL. Gul. Conq.* l. 11.

SEP. L. Fr. Stock; a stock. *Britt.* c. 31. *Seps; ceps;* the stocks. *Kelham.*

SEPARALE. L. Lat. In old English law. Several; a several or separate share or portion. *Ita quod nullus sciat suum* separale; so that no one knows his several. *Bract.* fol. 226.

A separate property. *In suo separali;* in his several. *Fleta*, lib. 2, c. 49, § 1.

SEPARATE ESTATE. Property given or settled to the separate use of a married woman. See 2 *Roper on Husb. & Wife*, 151, *et seq.* 2 *Kent's Com.* 162.

SEPARATE MAINTENANCE. The maintenance of a woman by her husband, on an agreement to live separately.* An allowance made by a husband to his wife for her separate support and maintenance. *Bouvier.* See 2 *Roper on Husb. & Wife*, 267, *et seq.* 2 *Steph. Com.* 309.

SEPARATIM. Lat. In old conveyancing. Severally. A word which made a several covenant. 5 *Co.* 23 a, *Mathewson's case.*

SEPES. Lat. In old English law. A hedge or enclosure. *Fleta*, lib. 2, c. 41, § 2. *Id.* lib. 4, c. 27, § 17.

The enclosure of a trench or canal. *Dig.* 43. 21. 4.

SEPTIMANA. Lat. In old English law. A week; a seven-night, or sennight. *Fleta*, lib. 1, c. 24, § 5. *Id.* lib. 2, c. 35. *Id.* lib. 5, c. 40, § 2.

SEPTUM. Lat. [from *sepere*, to enclose.] In the Roman law. An enclosure; an enclosed place where the people voted; otherwise called *ovile. Adam's Rom. Ant.* 99.

In old English law. An enclosure or close. *Cowell.*

SEPTUNX. Lat. In the Roman law. A division of the *as*, containing seven *unciæ*, or duodecimal parts; the proportion of seven-twelfths. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note. See *As.*

SEQUATUR SUB SUO PERICULO. L. Lat. (Let him follow at his peril.) In old English practice. A writ which issued where a sheriff had returned *nihil*, upon a *summoneas ad warrantizandum*, and after an *alias* and *pluries* had been issued. So called, because the tenant lost his lands without any recovery in value, unless upon that writ he brought the vouchee into court. *Roscoe's Real Act.* 268. *Cowell.*

SEQUELA. L. Lat. [from *sequi*, to follow or sue.] In old English law. Suit; process or prosecution. *Sequela causæ;* the process of a cause; the process and depending issue of a cause or trial. *Cowell. Sequela curiæ;* suit of court. 2 *Mon. Angl.* 253.

Suit; following or followers; retinue. *Et totam* sequelam *eorundem;* and all the suit of the same. *Mag. Cart. Johan.* c. 50.

The suit of a villein; his issue or offspring; the retinue and appurtenances to the goods and chattels of servile tenants. *Cum* sequela, *et catallis suis quæ corpus sequuntur;* with his suit and all his chattels which follow his body. *Bract.* fol. 197 b. *Fleta*, lib. 3, c. 13, § 3. *Ovesque ses chateux, et tout sa* suyte. *Britt.* c. 38. See *Barringt. Obs. Stat.* 306.

SEQUESTER. Lat. [from *sequi*, to follow.] In the civil law. A person with whom two or more contending parties deposited the subject matter of the controversy, (*apud quem plures eandem rem de qua controversia est deposuerunt.*) *Dig.* 50. 16. 110. So called, say the Digests, from the circumstance that it is entrusted to one who meets, or, as it were, *follows* the contending parties, (*ab eo quod occurrenti aut quasi* sequenti *eos qui contendunt, committitur.*) *Id. ibid.* Or, according to Gellius, because both parties *followed* or relied upon the good faith of the person so chosen, (*quod ejus, qui electus sit, utraque pars fidem* sequatur.) *Noct. Att.* xx. 11.

A mediator or umpire between two parties, (*interventor;*) a middle-man, (Gr. μεσέγγυος.) *Calv. Lex.*

To SEQUESTER (or SEQUESTRATE.) [Lat. *sequestrare.*] In the civil law. To deposit a thing which is the subject of a controversy, in the hands of a third person, to hold for the contending parties. See

Sequester. To take a thing which is the subject of a controversy, out of the possession of the contending parties, and deposit it in the hands of a third person. *Calv. Lex.*

In equity practice. To take possession of the property of a defendant, and keep the same until he shall have cleared himself of a contempt. See *Sequestration.*

In English ecclesiastical practice. To gather the fruits of a void benefice, and keep them for the use of the next incumbent. *Stat.* 28 *Hen.* VIII. c. 11. *Cowell*, voc. *Sequestration.* To take possession of the ecclesiastical property of a defendant, and hold it until, out of the rents, tithes and profits, the plaintiff's debt be satisfied. See *Sequestrari facias.* To dispose of the goods and chattels of one deceased, whose estate no man would intermeddle with. *Cowell*, voc. *Sequestration.*

In international law. To seize the property of an individual, and appropriate it to public use; to confiscate. Particularly applied to the confiscation, by a belligerent power, of *debts* due from its subjects to the enemy. 1 *Kent's Com.* 62, *et seq.*

SEQUESTRARE. Lat. [from *sequester*, q. v.] In the civil law. To sequester or sequestrate. *Calv. Lex. Sequestravit, et sub sequestro arcto tenuit;* (he) sequestered, and held under close sequestration. *Mem. in Scacc.* T. 19 Edw. I. *Bona sunt* sequestranda, *et neutri litigantium tradenda;* the goods are to be sequestered and to be delivered to neither of the litigants. *Clerke's Prax. Cur. Adm.* tit. 40.

SEQUESTRARI FACIAS. L. Lat. (You cause to be sequestered.) In English ecclesiastical practice. A process in the nature of a *levari facias*, commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes and profits thereof, and of the other ecclesiastical goods of a defendant, he have levied the plaintiff's debt. 3 *Bl. Com.* 418.

SEQUESTRATION. [Lat. *sequestratio*, from *sequestrare*, q. v.] In the civil law. The depositing of a thing in controversy, by the contending parties themselves, in the hands of a third person, called *sequester*, (q. v.) to be held indifferently between them, and to be delivered to the party who should be found to be entitled to it.

The taking a thing in controversy out of the possession of the contending parties, by order of a court, and entrusting it to a third person, to be held indifferently between them, and delivered to the successful party. *Calv. Lex. Cowell.*

In English practice. The taking possession of a defendant's property, by virtue of a judicial process, and holding it until some act be done, or claim satisfied; as until a defendant in equity clears himself of a contempt, or, in ecclesiastical practice, until, out of the rents and profits, the plaintiff's debt be levied.* 3 *Bl. Com.* 444, 418. See *Sequestrari facias.*

The act of the ordinary in disposing of the goods and chattels of one deceased, whose estate no one will meddle with. *Cowell.* Or, in other words, the taking possession of the property of a deceased person, where there is no one to claim it.

In international law. The seizure of the property of an individual, and the appropriation of it to the use of the government. See *To sequester.*

SEQUI. Lat. To follow. **Sequi debet potentia justitiam, non præcedere.** Power ought to follow justice, not go before it. 2 *Inst.* 454.

In old English practice. To sue; to prefer an action; to prosecute or follow up a suit or cause. *In electione illius qui* sequitur; at the election of him who sues. *Stat. Westm.* 2, c. 18.

To sue out; to obtain or issue process from a court. *Pro hujusmodi debito aut damnis*, sequi *breve;* for such debt or damages, to sue out a writ. *Id. ibid.*

SERA. Lat. In the civil law. A lock. *Dig.* 19. 1. 17, pr.

SEREMENT, *Serment.* L. Fr. [from Lat. *sacramentum.*] In old English law. An oath. *Stat. Westm.* 1, c. 38. *Britt.* c. 45.

SERF, *Serfe.* L. Fr. [from Lat. *servus.*] In old English law. A slave. *Que celuy que serroit pris* [*en bataille*] *demorast* serfe *à son parnour à toutz jours;* that he who should be taken [prisoner in battle] should remain a slave to his captor forever. *Britt.* c. 31.

A villein. *Id. ibid.*

SERIANT. L. Fr. [L. Lat. *seriandus.*] In old Scotch law. Serjeant. *Skene de Verb. Sign.*

SERIANTIA. L. Lat. [from L. Fr. *seriaunt*, q. v.] In old English law. Serjeanty. *Bract.* fol. 35 b. See *Serjeanty.*

SERIATIM. L. Lat. [from *series*, order.] In order; one after another. A term used in the reports to denote the

delivery of separate opinions by the judges, one after another, beginning with the junior puisne judge, and ending with the chief justice; which is done in some cases, instead of having the opinion of the court delivered by a single judge. "The court delivered their opinions *seriatim*." 1 *Show.* 172, 266. *Seriatim et separatim.* 2 *Id.* 491.

SERIAUNT. L. Fr. In old English law. Serjeant. *Britt.* fol. 25, 34 b, 37, 39 b, 40, 40 b, 50, 52, 70, 103 b, 104 b, 123 b, 204, 275 b.

SERJAND. Sc. In old Scotch law. Serjeant. *Skene de Verb. Signif.*

SERJANS, *Serjantus*, *Serziantus*, *Sargantus*. L. Lat. In old European law. A serjeant. *Spelman.* See *Serjeant.*

SERJANT. L. Fr. Servant. *LL. Gul. Conq.* l. 49.

SERJANTERIA. L. Lat. In old English law. Serjeanty. *Mag. Cart.* 9 Hen. III. c. 27. Written, in King John's Charter, (c. 37,) *sergenteria.* In the Articles of the charter, (c. 27,) *sergantisa.*

SERJANTIA, *Seriantia.* L. Lat. In old English law. Serjeanty. *Spelman. Bract.* fol. 35 b. *Fleta*, lib. 1, cc. 10, 11. See *Serjeanty.*

SERJEANT, *Serjant*, *Serjent.* L. Fr. and Eng. [L. Fr. *seriaunt;* L. Lat. *serjans*, *serjantus*, *serjandus*, *seriandus*, *sargantus*, *serziantus*, *serzientus;* from Lat. *serviens*, serving, one who serves.] The title of several officers in the common law, generally of the ministerial class. *Spelman*, voc. *Serjans.* See *infra.* Written by Cowell, *sergeant*, which is also the form preferred in some modern dictionaries. But that *serjeant* is the proper form, is clearly shown by the use of the Fr. *seriaunt* in Britton, and the Lat. *seriantia*, in Bracton, the modern *j* being constantly written *i*, in the old books.

SERJEANT. L. Fr. Servant. *Vous aves cy E. P. ove son* serjeant *J. le fits W.* You have here E. P. with his servant J. the son of W. *Yearb.* M. 4 Edw. III. 12.

SERJEANT AT LAW. [L. Fr. *serjeant al ley;* Lat. *serviens ad legem.*] The highest degree of counsel in the common law, corresponding with *doctor* in the civil law. Called, also, anciently, *serjeant of the coif*, and *serjeant countor*, (*serviens narrator.*) *Cowell. Spelman*, voc. *Serjans. Fortescue, de L. L. Angliæ*, c. 50. The title literally imports, one who attends the service of the king and his people, in the study, profession and practice of the law. *Id. ibid.* note.

*** This has always been a degree of the highest dignity in the English law, being what an old writer describes as "the seminary of justice, out of which the judges are called;" and, down to the present day, none but a serjeant at law can be a judge of either of the superior courts at Westminster. 3 *Bl. Com.* 27. Until within a very late period, also, the serjeants (or *countors*, as they were termed,) had the exclusive privilege of pleading and practising in the Court of Common Pleas, or Bench, that being the court in which the common law of England was supposed to be most strictly observed. *Cowell.* 3 *Mann. Gr. & S.* 537. See *Countor, To count.*

Serjeants are made by the king's or queen's writ, addressed to such as are called, commanding them to take upon them that degree by a certain day. See *Dyer*, 72. The assumption of the degree was formerly marked by peculiar ceremonies. The candidates for the degree assembled at Serjeant's Inn, before the two chief justices and the justices of both benches, and after *counting*, and having their *coifs* and *scarlet hoods* put on, were attired in their *party-colored robes*, and walked in procession to Westminster, where they *counted* at the bar of the Common Pleas, had their writs read, and gave rings to the judges, with inscriptions. See *Cro. Car.* Introd. *Fortescue, de L. L. Angliæ*, c. 50. Of all these ceremonies, the last alone is retained at the present day. See *Rings giving.*

SERJEANT AT ARMS. [L. Lat. *serviens ad arma.*] In English law. The title of an officer whose duty is described by Cowell to be, "to attend the person of the king, to arrest traitors, or persons of quality offending, and to attend the Lord High Steward of England sitting in judgment upon any traitor, and such like." Two of these, by the royal permission, attend on the two houses of parliament, and another in the Court of Chancery. *Cowell.* In the House of Lords, the serjeant at arms attends upon the chancellor with the mace, and executes the orders of the house for the apprehension of delinquents; in the Commons, he attends upon the speaker with the mace, carries messages from the bar to the table, and executes the orders of the house with respect to delinquents to be taken into his custody for breaches of its privileges. *Holthouse.*

In the United States, serjeants at arms are officers who attend upon the sessions of Congress, and of the state legislatures, with duties similar, in many respects, to those of the same officers in England. The ministerial officers attending courts of chancery are also generally styled serjeants at arms.

SERJEANT OF THE MACE, or SERJEANT AT MACE. [L. Lat. *serviens ad clavam.*] In English law. An officer who attends the Lord Mayor of London, and the chief magistrates of other corporate towns. *Holthouse.* 5 *East*, 304. 2 *Mod.* 58.

SERJEANTY. [L. Fr. *serjaunty;* L. Lat. *seriantia, serjantia, serjanteria, sergenteria, sergantisa.*] In English law. Service; an honorary kind of feudal service due to the crown for lands held of it, and which is still retained. See *Grand serjeanty, Petit serjeanty.*

SERMENT. L. Fr. [from Lat. *sacramentum*, q. v.] In old English law. Oath; an oath. *Le loy est lie par son* serment *à faire ses liges droit;* the king is bound by his oath to do his lieges justice. *Yearb.* H. 8 Hen. VI. 6.

SERMO. Lat. Speech; language; discourse; conversation. **Sermo index animi.** Speech is the index of thought or intent. 5 *Co.* 118.

Sermo relatus ad personam intelligi debet de conditione personæ. Language, which is referred to a person, ought to be understood of the condition of the person. 4 *Co.* 16 a.

SERRATED. [Lat. *serratus*, from *serra*, a saw.] In old practice. Marked or cut in notches, resembling the teeth of a saw. Some of the Roman coins were thus serrated, indented, (or *milled*, in modern phrase,) as a security against forgery. *Tac. de Mor. Germ.* v. The serrated or indented line was used in old English deeds for a similar purpose of precaution. See *To indent, Indenture.*

SERURA. L. Lat. In old English law. A lock. *Fleta*, lib. 3, c. 5, § 12.

SERVANT. [Lat. *serviens.*] One who serves; one who serves another, (termed his master,) under a contract of hire; one who serves or undertakes to serve another for a stipulated consideration or wages. See 2 *Kent's Com.* 258—261.

SERVE. In practice. To deliver with judicial effect; to deliver so as to charge a party, in law, with such delivery; to execute. To *serve* a paper is to deliver or otherwise communicate it to the opposite party, or his attorney, so as to charge him with the receipt of it. To *serve* process is to apply it to the party named, so as to subject him to its operation, as by showing and reading it, or showing it and delivering a copy, &c. See *Service.*

SERVE. In Scotch practice. To render a verdict or decision in favor of a person claiming to be an heir; to declare the fact of his heirship judicially. A jury are said to *serve* a claimant *heir*, when they find him to be heir, upon the evidence submitted to them. *Bell's Dict.*

SERVI. Lat. [plur. of *servus*, q. v.] In old European law. Slaves; persons over whom their master had absolute dominion. 1 *Rob. Charles* V. *Appendix*, Note ix.

In old English law. Bondmen; servile tenants. *Cowell.*

SERVICE. L. Fr. and Eng. [Lat. *servitium.*] In feudal and old English law. The duty which a tenant, by reason of his fee, owed to his lord. See *Servitium.* That which he was bound to render in recompense for the land he held. 2 *Bl. Com.* 54. *Pour* service *que arrere luy est. Britt.* c. 27. *Pur arrerages de ascun* service *issuant de ascun tenement;* for arrearages of any service issuing out of any tenement. *Id. ibid.*

SERVICE. In Scotch law. The inquisition or verdict of a jury, by which the character of an heir is judicially established. *Hubback's Evid. of Success.* 597. The term includes the whole proceeding before the jury. *Bell's Dict.*

SERVICE. In practice. Judicial delivery or communication of papers; execution of process. The delivery or communication of a pleading, notice or other paper in a suit, to the opposite party, so as to charge him with the receipt of it, and subject him to its legal effect. The communication or application of process to a party or witness, so as to subject him to its operation. As applied to writs, it properly means execution *without arrest.* See 3 *Chitt. Gen. Pr.* 259.

SERVIDUMBRE. Span. In Spanish law. A service or servitude; the right and use which one man has in the buildings and estate of another, to use them for the benefit of his own. *Las Partidas*, part. 3, tit. 31, l. 1. *White's New Recop.* b. 2, tit. 6.

SERVIENS. L. Lat. [L. Fr. *seriant, seriaunt.*] In old English law. A serjeant; a counter or pleader. *Spelman.*

Fleta, lib. 2, c. 37. *Britt.* fol. 39 b, 40, 40 b. See *Serviens ad legem.*

A bailiff. The *servientes hundredorum* (serjeants of hundreds,) are mentioned by Bracton in immediate connection with bailiffs, (*ballivi.*) *Bract.* fol. 116. A bailiff, chamberlain or receiver. *Stat. Westm.* 2, c. 11. *Seriaunt* is used by Britton to denote the bailiff, steward or attorney of a private person. *Britt.* fol. 50, 70, 123 b, 204.

A sheriff's officer, (*serviens vicecomitis.*) *Bract.* fol. 157. *Fleta*, lib. 2, c. 47, § 9. Britton enumerates hundredors, *serjeants*, and bedels, as officers under the sheriff. *Britt.* fol. 2.

Any ministerial officer. *Fleta*, lib. 2, c. 71.

A vassal, or feudal tenant. *Spelman.*

A servant. *Reg. Orig.* 189, 190.

SERVIENS AD CLAVAM. L. Lat. Serjeant at mace. 2 *Mod.* 58.

SERVIENS AD LEGEM. L. Lat. In old English practice. Serjeant at law. *Spelman*, voc. *Serjans.* See *Serjeant at law.*

SERVIENS DOMINI REGIS. L. Lat. In old English law. King's serjeant; a public officer, who acted sometimes as the sheriff's deputy, and had also judicial powers. *Bract.* fol. 145 b, 150 b, 330, 358. Spelman supposes that he acted as public prosecutor in behalf of the crown.

SERVIENT. [from Lat. *serviens.*] Serving; subject to a service or servitude. A *servient* estate is one which is burdened with a servitude. 1 *Mackeld. Civ. Law*, 392, § 306.

SERVITIUM. Lat. [from *servire*, to serve.] In feudal and old English law. The duty of obedience and performance which a tenant was bound to render to his lord, by reason of his fee. *Spelman.* See *Co. Litt.* 65 a. *Servitium semper sequitur homagium;* service always follows homage. *Fleta*, lib. 3, c. 11, § 1.

Servitium forinsecum; forinsic, foreign, or extra service; a kind of service that was due to the king, over and above (*foris*) the service due to the lord. *Ideo* forinsecum *dici potest quia fit et capitur* foris, *sive* extra servitium *quod fit domino capitali.* *Bract.* fol. 36.

Servitium intrinsecum; intrinsic or ordinary service; the ordinary service due the chief lord, from tenants within the fee. *Bract.* fol. 36, 36 b.

Servitium liberum; free service. *Id.* fol. 24 b. *Fleta*, lib. 3, c. 13, § 1. See *Free services.*

SERVITIUM MILITARE. L. Lat. [L. Fr. *service de chivaler.*] In old English law. Knight-service; the service of a *miles* or military tenant; military service.* 2 *Bl. Com.* 62. *Mag. Cart.* 9 *Hen.* III. c. 27. *Id. Johan.* c. 37. Called, also, *servitium hauberticum, brigandinum* or *loricatum*, from the armor in which the tenant performed it. *Co. Litt.* 108 a.

SERVITIUM REGALE. L. Lat. In old English law. Royal service; a royal prerogative or privilege, granted to the lord of a manor, to be exercised within it. *Paroch. Ant.* 60. *Cowell.*

SERVITORS OF BILLS. In old English practice. Servants, or messengers of the marshal of the King's Bench, sent out with bills or writs to summon persons to that court. Now more commonly called *tipstaves. Cowell.*

SERVITUDE. [Lat. *servitus*, q. v.] A charge upon one estate for the benefit of another. 3 *Kent's Com.* 434. A species of incorporeal right derived from the civil law, resembling and answering to the *easement* of the common law. *Id. ibid.* For the various descriptions of this right, see *Servitus.*

Service is used by Dr. Cooper, in his translation of the Institutes, as the translation of *servitus;* and in this, he observes, he follows Wood, Taylor and Harris. *Cooper's Justin.* 88, and note. *Servitude*, however, seems to have the support of higher authority, being the form adopted by Lord Mansfield and Chancellor Kent, as well as the modern German civilians, and in the Civil Code of Louisiana. 1 *Burr.* 443. 3 *Kent's Com. ub. sup.* 1 *Mackeld. Civ. Law*, 319, § 294. *Civ. Code of Louis.* Art. 642.

SERVITUS. Lat. [from *servire*, to serve.] In the civil law. Slavery; bondage; the state of service. Defined in the Institutes of Justinian, (after Florentinus in the Digests,) to be "an institution of the conventional law of nations, by which one person is subjected to the dominion of another, contrary to natural right," (*est constitutio juris gentium, qua quis dominio alieno contra naturam subjicitur.*) *Inst.* 3. 2. *Dig.* 8. 5. 4. 1. This passage is quoted verbatim by Bracton, and from Bracton by Lord Coke. *Bract.* fol. 4 b. See *Fleta*, lib. 1, c. 3. *Co. Litt.* 116. In Branch's Principia, the word *dominio* is mis-printed *domino*, which has occasioned error in the translation.

SERVITUS. Lat. In the civil law.

A service or servitude; a burden imposed upon persons or estates for the benefit of others. *Dig.* 8. 1. See 1 *Mackeld. Civ. Law*, 319—355.

Servitus prædiorum; a prædial servitude, (q. v.;) a service, burden, or charge upon one estate, (*prædium*) for the benefit of another. *Inst.* 2. 3. 3.

Servitus prædii rustici; the servitude of a rural or country estate; a rural servitude. *Inst.* 2. 3. pr. & 3. *Dig.* 8. 3. 1 *Mack. Civ. Law*, 338, § 309.

Servitus prædii urbani; the servitude of an urban or city estate; an urban servitude. *Inst.* 2. 3. 1. *Dig.* 8. 2. 1 *Mack. Civ. Law, ub. sup.*

Servitus actûs; the servitude or right of walking, riding, or driving over another's ground. *Inst.* 2. 3, pr. 1 *Mack. Civ. Law*, 343, § 313. A species of right of way. See *Actus.*

Servitus altius non tollendi; the servitude of not building higher. A right attached to a house, by which its proprietor can prevent his neighbor from building his own house higher, (*ne altius tollat ædes suas.*) *Inst.* 2. 3. 4. *Dig.* 8. 2. 2. 1 *Mack. Civ. Law*, 340, § 311. See 2 *Wilson & Shaw's R.* 293.

Servitus aquæ ducendæ; the servitude of leading water; the right of leading water to one's own premises, through another's land. *Inst.* 2. 3, pr. Called, also, *aquæ ductus. Id. ibid.*

Servitus aquæ educendæ; the servitude of leading off water; the right of leading off the water from one's own on to another's ground. *Dig.* 8. 3. 29. 1 *Mack. Civ. Law*, 345, § 315.

Servitus aquæ hauriendæ; the servitude or right of drawing water from another's spring or well. *Inst.* 2. 3. 2.

Servitus cloacæ mittendæ; the servitude or right of having a sewer through the house or ground of one's neighbor. *Dig.* 8. 1. 7.

Servitus fumi immittendi; the servitude or right of leading off smoke or vapor through the chimney or over the ground of one's neighbor. *Dig.* 8. 5. 8. 5—7.

Servitus itineris; the servitude or privilege of walking, riding, and being carried over another's ground. *Inst.* 2. 3, pr. 1 *Mack. Civ. Law*, 343, § 313. A species of right of way.

Servitus luminum; the servitude of lights; the right of making or having windows or other openings in a wall belonging to another, or in a common wall, in order to obtain light for one's building. *Dig.* 8. 2. 4. 1 *Mack. Civ. Law*, 346, § 311, and Kaufmann's note, *ibid.*

Servitus ne luminibus officiatur; a servitude not to hinder lights; the right of having one's lights or windows unobstructed or darkened by a neighbor's building, &c. *Inst.* 2. 3. 4. See *Ancient lights.*

Servitus ne prospectus offendatur. A servitude not to intercept one's prospect. *Dig.* 8. 2. 15.

Servitus oneris ferendi; the servitude of bearing weight; the right to let one's building rest upon the building, wall or pillars of one's neighbor. 1 *Mack. Civ. Law*, 339, § 310.

Servitus pascendi; the servitude of pasturing; the right of pasturing one's cattle on another's ground; otherwise called *jus pascendi. Inst.* 2. 3. 2.

Servitus projiciendi; the servitude of projecting; the right of building a projection from one's house in the open space belonging to one's neighbor. *Dig.* 8. 2. 2. 1 *Mack. Civ. Law*, 340, § 311.

Servitus stillicidii; the servitude or right of drip; the right of having the water drip from the eaves of one's house upon the house or ground of one's neighbor. *Inst.* 2. 3. 1, 4. *Dig.* 8. 2. 2.

Servitus tigni immittendi; the servitude of letting in a beam; the right of inserting beams in a neighbor's wall. *Inst.* 2. 3. 1. 4. *Dig.* 8. 2. 2.

Servitus viæ; the servitude or right of way; the right of walking, riding and driving over another's land. *Inst.* 2. 3, pr.

SERVUS. Lat. [L. Fr. *serf.*] In the civil and old English law. A slave; a bond-man. *Inst.* 1. 3, pr. *Bract.* fol. 4 b. *Omnis homo aut est liber, aut est* servus; every man is either free or a slave. *Id. ibid.* Derived, in the Digests and Institutes, from *servare*, (to preserve,) from the ancient practice of selling prisoners of war, and so *preserving* their lives, instead of putting them to death. *Inst.* 1. 3. 3. *Dig.* 50. 16. 239. 1. See *Fleta*, lib. 1, c. 3, § 1. *Quod attinet ad jus civile*, servi *pro nullis habentur, non tamen et jure naturali, quia, quod ad jus naturale attinet, omnes homines æquales sunt;* as far as regards the civil law, slaves are held as no persons; not so, however, by the law of nature, for as regards the law of nature, all men are equal. *Dig.* 50. 17. 32.

A servant. Servus *facit ut* herus det; the servant does [the work] in consideration of his master's giving [him wages.] 2 *Bl. Com.* 445. *Herus dat ut* servus *faciat;* the master gives [the wages] in consideration of the servant's performing [the work.] *Id. ibid.*

SERVY. L. Fr. Served. *Returne servy;* returned served. *Dyer*, 135 b, (Fr. edition.)

SESS. In English law. A tax, rate or assessment. *Callis on Sewers*, [122,] 148. Called *assess* and *sessment. Id. ibid. Id.* [125,] 151.

SESSIO. Lat. [from *sedere*, to sit.] In old English law. A sitting; a session. *Sessio parliamenti;* the sitting of parliament. *Cowell.*

SESSION. [from Lat. *sessio*, q. v.] The sitting of a court; the sitting of justices or judges in court; the time during which a court is held. Frequently used in the plural, *sessions*, like the word *sittings*, (q. v.)

SESSION, COURT OF. The supreme civil court of Scotland, instituted A. D. 1532, consisting of thirteen (formerly fifteen) judges, viz. the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. *Wharton's Lex. Brande.*

SESSIONS. [L. Lat. *sessiones.*] A sitting of justices in court, upon their commission, or by virtue of their appointment, and most commonly for the trial of criminal cases. The title of several courts in England and the United States, chiefly those of criminal jurisdiction.

SESSIONS OF THE PEACE. In English law. A sitting of justices of the peace for the execution of those duties which are confided to them by their commission, and by charter or statute. They are of the four following descriptions:

A *petty* or *petit session* is a sitting of two or more justices, or in some cases even a single magistrate, for the purpose of trying in a summary way, and without jury, certain minor offences particularized by statute, and for other purposes. 3 *Steph. Com.* 44.

A *special session* is a sitting of two or more justices for the transaction of some special description of business, such as licensing ale-houses, or appointing overseers of the poor, or surveyors of highways. *Id. ibid. Stat.* 7 and 8 *Vict.* c. 33.

A *general sessions* of the peace is a court of record holden before two or more justices, whereof one is of the *quorum*, for execution of the general authority given to justices by the commission of the peace and certain acts of parliament. *Wharton's Lex.* 4 *Steph. Com.* 335, notes (*k*), (*l*).

The *general quarter sessions* of the peace is a court of record held in every county once in every quarter of a year, before two or more justices of the peace, one of whom must be of the quorum. Its jurisdiction by statute 34 Edw. III. c. 1, extends to the trying and determining all felonies and trespasses whatsoever, but it has never been usual to try there any greater offences than small felonies. 4 *Steph. Com.* 335, 336.

SET. A form of *sed*, used in old pleadings. *Towns. Pl.* 19. *Spelman.*

SET. L. Fr. Seven, (*sept.*) *Kelham.*

Knows; known. *Id.* A corruption of *scet* or *scait.*

That; this. *Id.* A corruption of *cet.*

To SET. A word used in old conveyancing, synonymous with *let* or demise. 2 *Term R.* 425. 15 *Johns. R.* 280. It seems to be a translation of the old Latin *ponere. Ad firmam ponere;* to put or set to farm. *Chart. R. Hen.* I. *De libert. Angliæ. Spelman*, voc. *Firma.*

To lay or impose. "If a fine be *set* in court." 6 *Mod.* 273.

SETTER. In Scotch law. The granter of a tack or lease. 1 *Forbes' Inst.* part 2, p. 153.

SET-OFF. [Lat. *compensatio.*] In practice. A counter-claim or demand; a cross demand; a demand set up against another demand, for the purpose of reducing its amount, or of extinguishing it altogether.

A mode of defence to a civil action, being a species of plea in bar, by which a defendant alleges a reciprocal debt due to him from the plaintiff, and claims to have it allowed by way of discharge from the action, either wholly or in part, as the case may be.* 3 *Steph. Com.* 577. 1 *Chitt. Pl.* 568. *United States Digest*, Set-off.

SET OF EXCHANGE. In mercantile law. A bill of exchange drawn in several parts, (called the "first of exchange," "second of exchange," &c.) any one part of which being paid, the others are to be void.* *Story on Bills*, §§ 66, 67.

SETTLE. To make a final disposition of a claim between parties, by payment or otherwise; to adjust a difference between parties; to pay a debt, claim or balance.

See 11 *Alabama R.* 419. But "settle" and "pay" have been held to be not equivalent terms. Authority to an agent "to settle" does not authorize him to submit to arbitration the matters in dispute. 21 *Alabama R.* 488.

SETTLEMENT. [Lat. *sedes.*] A settled place of abode; residence. See *Burrow's Settlement Cases*, passim.

A right growing out of residence; a right to be considered a resident of a particular place, chiefly for the purpose of parochial relief.* 1 *Bl. Com.* 361—363. 1 *Steph. Com.* 200—203. *Id.* 207—210. The law of settlement and the law of relief are the two main branches of which the poor-law of England consists. *Id.* 201. The place where an apprentice lies, or is lodged at night, is the place of his legal settlement. *Burr. Sett. Cas.* 570.

SETTLEMENT. In conveyancing. A disposition of property by deed, usually through the medium of a trustee, and for the benefit of a wife, children or other relations. See *Marriage settlement.*

SEURE, *Seuyr.* L. Fr. To sue; to prosecute. *Kelham.*

To SEVER. In practice. To separate or divide. Defendants are said to *sever* in their pleas, where each pleads separately, instead of all joining in the same plea.* *Steph. Pl.* 257.

SEVERAL. L. Fr. and Eng. [L. Lat. *separale.*] In old English law. A separate share or portion. *Et chescun sache son* several; and each one knows his several. *Britt.* c. 55. *Sicome son* several; as his several. *Id.* c. 59, fol. 60 b, 145, 151 b.

SEVERAL. [L. Lat. *separalis.*] Separate; distinct; independent; the opposite of *joint.* See *Several covenant.*

Separate; exclusive; the opposite of common. See *Several fishery.*

SEVERAL COVENANT. A covenant by two or more, separately; a covenant made so as to bind the parties to it severally, or individually.

SEVERAL FISHERY. [L. Lat. *separalis piscaria.*] A right to fish in a private water, either exclusively, or in conjunction with the owner of the soil. 1 *Crabb's Real Prop.* 114, § 108. See 3 *Kent's Com.* 410, and note. 1 *Chitt. Gen. Pr.* 224. 8 *Ad. & Ell.* N. S. 1000.

SEVERAL. Consisting of a number; more than one.

Several counts are frequently allowed to be used by a plaintiff in the same declaration. *Steph. Pl.* 267.

Several pleas are also allowed to a defendant. *Steph. Pl.* 269—275.

SEVERALTY. A state of separation. An estate in *severalty* is one that is held by a person in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein. 2 *Bl. Com.* 179.

SEVERANCE. In pleading. Separation; division. The separation by defendants in their pleas; the adoption, by several defendants, of separate pleas, instead of joining in the same plea. *Steph. Pl.* 257.

SEWER. [L. Lat. *sewera, severa.*] A fresh-water trench compassed in on both sides with a bank. *Callis on Sewers*, [80,] 99. Callis calls it "a small current or little river;" "a diminutive of a river," "a common public stream." *Id.* 100.—A passage to carry water into the sea or a river. *Cowell.*—A ditch or trench carried through marshy places, to carry off the water. *Spelman.*

SEXTANS. Lat. In the Roman law. A subdivision of the *as*, containing two *unciæ;* the proportion of two-twelfths, or one-sixth. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note.

SEXTARY. [Lat. *sextarius.*] In old records. An ancient measure of liquids, and of dry commodities; a quarter or seam. *Spelman.*

A quart. *Id.* But according to Cowell, it was about a pint and a half. And in Fleta, it is said the *sexterium* should contain four gallons. *Fleta*, lib. 2, c. 12, § 11.

SEXTUS DECRETALIUM. Lat. The sixth of the decretals. One of the subdivisions of the *Corpus Juris Canonici*, or canon law; consisting of a collection of supplements to the *Decretales Gregorii* IX. which consisted of five books. It was published A. D. 1298, and is sometimes called in English, the *Sext* and Sixth Decretal. See 1 *Bl. Com.* 82. 1 *Mackeld. Civ. Law*, 83, Kaufmann's note. *Butler's Hor. Jur.* 115, 116.

SEYSINA. L. Lat. In old English law. Seisin; possession of lands; or of a freehold estate in lands. *Bract.* fol. 38 b, 39, *et passim.* This is the form invariably used by Bracton.

SEYSIRE. L. Lat. In old English law. To take; to take possession; to seise. Seysire *in manum suum;* to seise or take into his hand. *Bract.* fol. 71 b.

Seysitus; seised; possessed of. *Id. et passim.*

SHACK. In English law. The straying and escaping of cattle out of the lands of their owners into other unenclosed land; an intercommoning of cattle. 2 *H. Bl.* 416. See *Common of shack.*

"SHALL BE." See *Erit.*

SHAM PLEA. A false plea; a plea of false or fictitious matter, subtly drawn so as to entrap an opponent, or create delay. 3 *Chitt. Gen. Pr.* 729, 730.

SHAMELLÆ, *Scamellæ.* L. Lat. In old records. Shambles; stalls to sell meat. *Placit. Parl.* 18 Edw. I. *Cowell.*

"SHARE" denotes interest. "*Share* of an estate" will pass a fee. 5 *M. & S.* 408. The word *share* may carry a moiety of a leasehold estate. 5 *East*, 501.

SHARE AND SHARE ALIKE. In equal shares or proportions. See *Ambl.* 656, note (1.) 5 *East*, 505. Create a tenancy in common. 2 *Florida R.* 387. 5 *Johns. Ch.* 334.

SHAW. In old English law. A wood. *Co. Litt.* 4 b.

"SHAWLS," decided by the Supreme Court of the United States to be "wearing apparel," within schedule C. of the tariff act of 1846. 16 *Howard's R.* 251. In this case, the meaning of the word *shawl* underwent an elaborate discussion, and the doctrine was laid down that the popular or received import of words furnishes the general rule for the interpretation of public laws, as well as of private and social transactions. *Id. ibid.* See opinion of Daniel, J. *Id.* 256.

"SHEET," held to be "a book," within the meaning of the English copyright act. 8 *Ann.* c. 19. 11 *East*, 244.

SHERIFF. [from Sax. *scyre-gerefa*, shire-reeve; L. Lat. *vicecomes;* L. Fr. *viscount.*] The chief civil officer of a county, specially entrusted with the execution of the laws and the preservation of the peace. In England, he transacts all the sovereign's business in the county; the crown, by letters patent, committing the custody of the county to the sheriff alone. 1 *Bl. Com.* 339. He has judicial as well as ministerial powers, being authorized to hold courts for the trial of small causes. As keeper of the Queen's peace, both by common law and special commission, he is the first man in the county, and superior in rank to any nobleman therein, during his office. In his ministerial capacity, he is bound to execute all process issuing out of the superior courts, and in this respect is considered as an officer of these courts. And as the Queen's bailiff, it is his business to preserve her rights within his bailiwick. See *Id.* 343—344. *Hale's Anal.* sect. xii. *Sewell's Law of Sheriff*, 7—12.

In the United States, the powers and duties of the sheriff, in addition to those of conservator of the peace, are chiefly ministerial, he being the officer to whom the process of the superior courts in the several states is always directed for execution. In the commencement of civil causes, he serves the writ, and in cases requiring it, arrests and takes bail; when the cause comes to trial, he summons and returns the jury; and when it is determined he sees the judgment of the court carried into execution. In criminal matters, he also arrests and imprisons, he returns the jury, he has the custody of the delinquent, and he executes the sentence of the court, though it extend to death itself. See 1 *Bl. Com.* 344. His judicial powers are much more limited than in England, being chiefly confined to the taking of inquisitions on writs of inquiry of damages, before a jury summoned for the purpose. See *Writ of inquiry.*

The derivation of the word *sheriff*, from the Sax. *scyre-gerefa*, or *scyre-refa*, sufficiently attests the high antiquity of the office. The sheriff was, in the Saxon times, the *reeve* or bailiff of the *shire*, and during the Anglo-Norman period, acted as the deputy of the *count* or earl, (*comes*,) who had the government of the county. Hence his title, in law Latin, of *vice-comes*, (q. v.) and in law French, *viscount*, (q. v.) that is, count's or earl's deputy. The Saxon *scyre-gerefa*, or *scyre-refa*, gradually became the English *shyre-greve*, *shire-greeve*, *shire-reeve* and *schireve*, still further contracted to *shireve* and *shrieve*, and finally softened to *shyrefe*, which was the form of the word in Camden's time. *Camd. Brit.* 104. *Shiriff* is a form used in old records, which by the change of a single letter has become the modern *sheriff*. Blount treats of the word under the forms *shirif*, or *shiref;* Cowell, under *shireve*. Skene, the Scotch expositor, uses *schireff.*

SHERIFF CLERK. In Scotch law. The clerk of the sheriff's court. *Bell's Dict.*

SHERIFF DEPUTE. In Scotch law. The principal sheriff of a county, who is also a judge. *Brande.* 1 *Chitt. Bl. Com.*

339, note. He is not properly a high sheriff. *Bell's Dict.*

SHERIFFALTY. The time of a man's being sheriff. *Cowell.* The term of a sheriff's office.

SHERIFFWICK. The jurisdiction of a sheriff. *Doct. & Stud.* dial. 2, ch. 42, p. 232. Called in modern law, *bailiwick.*

The office of a sheriff. *Finch's Law*, b. 4, ch. 25.

SHERIFF'S JURY. In practice. A jury summoned for the taking of inquisitions before the sheriff or under sheriff, on a writ of inquiry. 1 *Burr. Pr.* 375, 377.

SHETAR, שטר. Heb. (Pronounced *shtar* and *shtor.*) A contract. *Shtor chozi chelec zachar;* a contract for half of a male's share. 1 *Eden*, 317, 325. See *Star.*

SHIFTING USE. A use which is made to *shift* or change from one person to another, by matter *ex post facto*, (of after occurrence.) As if an estate be limited to the use of A. and his heirs, with proviso that when B. returns from Rome, the land shall be to the use of C. and his heirs; here, on the return of B. the use changes or *shifts* from A. to C. and is hence called a *shifting* use. See 1 *Steph. Com.* 503. These shifting uses are common in all settlements; and in marriage settlements, the first use is always to the owner in fee till the marriage, and then to other uses. The fee remains with the owner until the marriage, and then it *shifts* as uses arise. 4 *Kent's Com.* 297.

SHIP, [Sax. *scip;* Lat. *navis;* L. Fr. *nef,*] in its general sense, as used in maritime law, is synonymous with *vessel*, and is a generic term, including all vessels. 1 *Peters' Adm. Dec.* 128, note. By the English statute of 5 & 6 Will. IV. the term *ship* is declared to comprehend every description of vessel navigating on the sea.

In a stricter sense,—a vessel with three complete masts, viz. lower, top, and topgallant masts. *Brande.*

To SHIP. In maritime law. To put on board a ship; to send by ship. Goods, in this sense, are said to be *shipped*, and the merchant or person putting them on board is called the *shipper*, (q. v.)

To engage to serve on board a vessel as a seaman, for a certain voyage or for a specified term; to engage to go on board a vessel as a seaman for a certain voyage or time. See *Shipping articles.*

SHIP-BREAKING. In Scotch law. The offence of breaking into a ship. *Arkley's R.* 461.

SHIPPER. The charterer or freighter of a vessel. 3 *Kent's Com.* 218. The merchant or person who *ships* goods on board a vessel. See *To ship.*

SHIPPING ARTICLES. In maritime law. An agreement in writing made between the master of a vessel and the seamen engaged to serve on board, specifying the voyage or term for which they are shipped, and the rate of wages, and when they are to render themselves on board. 3 *Kent's Com.* 177. *Abbott on Ship.* 606, 611—614. *Id.* 718—725, (Perkins' ed. 1850,) and notes. This contract, though made with the master, is deemed a contract also with the owner, and on the credit of the ship; and it constitutes, also, a several contract with each seaman to all intents and purposes. *Id.* 721, note, and cases cited *ibid.* And see *Id.* (ed. 1854,) 750—770, and notes.

SHIP'S HUSBAND. In maritime law. A person appointed by the several part-owners of a ship, and usually one of their number, to manage the concerns of the ship for the common benefit. 3 *Kent's Com.* 151. *Abbott on Ship.* 105, (131, Perkins' ed. 1850.) Generally understood to be the general agent of the owners in regard to all the affairs of the ship in the home port. *Story on Agency*, § 35.

SHIP'S PAPERS. In maritime and international law. Papers with which a vessel is required by law to be provided, either as evidences of title, or in compliance with custom-house regulations, or the provisions of treaties, or for the manifestation and protection of the ship and cargo in time of war.* The documents expected to be found on board a neutral ship are the register, the passport or sea-letter, the muster roll, the charter party, the bills of lading, the invoice, the log-book, and the bill of health. 1 *Kent's Com.* 157. *Abbott on Ship.* 347, note. See *Id.* 430, Perkins' ed. 1850, note.

SHIP-WRECK. [Lat. *naufragium;* L. Fr. *naufrage.*] The breaking or shattering of a ship or vessel, either by driving ashore, or on rocks and shoals in the mid-seas, or by the mere force of the winds and waves in tempests.* 2 *Arnould on Ins.* § 296. Chancellor Kent observes that there has been some difficulty as to the true definition of shipwreck. 3 *Kent's Com.* 323.

Shipwreck, it appears, may either be *total*, as where a vessel is dashed to pieces, and reduced to a mere congeries of planks or timbers, or sinks in consequence of her injuries; or *partial*, where the vessel continues to preserve her form and construction with more or less of injury. See 2 *Arnould on Ins. ub. sup.* In the French law, various degrees of shipwreck are recognized; such as *naufrage*, *bris absolu*, *bris partial*, *echouement avec bris*, *echouement sans bris*, &c. *Id.* note. See *Naufragium.*

SHIRA, *Schira.* L. Lat. In old English law. Shire; a shire; the shire. *Fleta*, lib. 2, c. 61, § 23.

SHIRE. [L. Lat. *shira*, *scyra*; from Sax. *scyran*, to divide.] A county. So called, because every county or shire is divided and parted by certain metes and bounds from another. *Co. Litt.* 50 a. 1 *Bl. Com.* 116.

SHIRE-MOTE. In Saxon law. The county court. See *Scire gemote.*

SHIRE-REEVE, *Shireve.* In Saxon law. The reeve or bailiff of the shire. The *viscount* of the Anglo-Normans, and the *sheriff* of later times. *Co. Litt.* 168 a. See *Sheriff.*

SHOPA. L. Lat. In old records. A shop. *Cowell.*

SHORE. [Lat. *litus*, *littus.*] Land on the margin of the sea, or a lake, or river.* That space of land which is alternately covered and left dry by the rising and falling of the tide; the space between high and low-water marks. *Hale de Jur. Mar.* pars 1, c. 6. *Angell on Tide-Waters*, 67, c. 3. See *Sea-shore.* The shore of a fresh water river is where the land and water ordinarily meet. 6 *Cowen's R.* 547. But this is more properly called the *bank*, (*ripa.*) A river in which the tide does not ebb and flow, has no *shores* in the legal sense of the term. Walworth, C. 4 *Hill's R.* 375. And a lake without tides cannot properly be said to have a shore. *Ang. on Tide-Waters, ub. sup.* And see 3 *Grattan's R.* 655. 13 *Howard's R.* 391. See *Litus*, *Ripa.*

SHORT NOTICE. In practice. Notice of less than the ordinary time; generally, of half that time. 2 *Tidd's Pr.* 757. 3 *Chitt. Gen. Pr.* 709. 1 *Burr. Pr.* 213.

SHORTFORD. An old custom of the city of Exeter. A mode of foreclosing the right of a tenant by the chief lord of the fee, in cases of non-payment of rent. *Cowell.*

SI, *Cy.* L. Fr. In old English law. So. Si *luy eyde Dieu et les saintz*; so help him God and the saints. *Britt.* c. 22. Si *lour eyde Dieu et ses seyntz*; so help them God and his saints. *Id. ibid.* Si *Dieu moy eyde et les seintz*; so help me God and the saints. *Id.* c. 22. *Id.* c. 52. *Id.* c. 68. See *Saints.*

If. *S'il ne osast*; if he dares not. *Litt.* sect. 419. *Si*, in this sense, is frequently repeated in the same sentence, the latter word answering to the former, thus: Si *les jurours dient que le tenement nest mie en la ville nosme en le brefe*, si *chet le brefe*; if the jurors say that the tenement is not in the town named in the writ, the writ shall abate. *Britt.* c. 48.

SI. Lat. If. The proper word expressive of a condition in old conveyances. *Bract.* fol. 18 b. *Fleta*, lib. 3, c. 9, § 4. *Bacon's Arg.* Case of Revocation of Uses; *Works*, iv. 250. See *Scito quod ut*, &c. *Co. Litt.* 204 a.

An emphatic word in the entry of the old assises on record. *Assisa venit recognitura* SI *Priorissa de K. injustè*, &c. *disseisivit Martinum le Hayward*; the assise came to recognize [i. e. to try,] if the prioress of K. unjustly, &c. disseised Martin the hayward. *Yearb.* M. 1 Edw. II. 2. Constantly used by Bracton in his references to adjudged cases.

Si aliquid ex solemnibus deficiat, cum æquitas poscit, subveniendum est. If any one of certain required forms be wanting, when equity requires, it will be aided. 1 *Kent's Com.* 157. The want of some of a neutral vessel's papers is strong presumptive evidence against the ship's neutrality, yet the want of any one of them is not absolutely conclusive. *Id. ibid.*

Si a jure discedas, vagus eris, et erunt omnia omnibus incerta. If you depart from the law, you will go astray, and all things will be uncertain to every body. *Co. Litt.* 227 b.

Si assuetis mederi possis, nova non sunt tentanda. If you can be relieved by accustomed remedies, new ones should not be tried. 10 *Co.* 142 b. If an old wall can be repaired, a new one should not be made. *Id. ibid.*

SI *antiquitatem spectes, est vetustissima; si dignitatem, est honoratissima; si jurisdictionem, est capacissima*; if you look at its antiquity, it is the oldest; if at its dignity, it is the most honorable; if at its jurisdiction, it is the most comprehensive.

The high court of parliament is thus described by Lord Coke. 4 *Inst.* 36; quoted, 1 *Bl. Com.* 160.

SI CONTINGAT. Lat. If it happen. Words of condition in old conveyances. 10 *Co.* 42 a, *Mary Partington's case.*

SI ITA EST. Lat. If it be so. Emphatic words in the old writ of mandamus to a judge, commanding him, if the fact alleged be truly stated, (*si ita est,*) to affix his seal to a bill of exceptions, (*quod apponat sigillum.*) Marshall, C. J. 5 *Peters' R.* 192, referring to the Register for the form. The writ in the Register is not strictly a *mandamus*, *præcipimus* being the word used. It is called *breve de ponendo sigillum ad exceptionem;* a writ for putting a seal to an exception. *Reg. Orig.* 182.

SI FECERIT TE SECURUM. L. Lat. If [he] make you secure. In practice. The initial and emphatic words of that description of original writ which directs the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gives the sheriff security effectually to prosecute his claim. 3 *Bl. Com.* 274. See *Reg. Orig.* 30, 72, *et passim.*

SI NON OMNES. Lat. (If all cannot.) In English practice. A writ of association of justices whereby, *if all* in commission *cannot* meet at the day assigned, it is allowed that two or more may proceed with the business. *Cowell. F. N. B.* 111 C. *Id.* 186 A. *Reg. Orig.* 202, 206.

SI PRIUS. L. Lat. In old practice. If before. Formal words in the old writs for summoning juries. *Fleta*, lib. 2, c. 65, § 12. See *Nisi prius writ.*

SI QUIS. Lat. In the civil law. If any one. Formal words in the prætorian edicts. The word *quis*, though masculine in form, was held to include women. *Dig.* 50. 16. 1.

SI RECOGNOSCAT. Lat. (If he acknowledge.) In old practice. A writ which lay for a creditor against his debtor for money numbered (*pecunia numerata,*) or counted, that is, a specific sum of money, which the debtor had acknowledged in the county court, to owe him, as received *in pecuniis numeratis. Cowell.*

SIC. Lat. So. **Sic interpretandum est ut verba accipiantur cum effectu.** [A statute] is to be so interpreted that the words may be taken with effect, [that its words may have effect.] 3 *Inst.* 80.

Sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat. Every one ought so to improve his land, as not to injure his neighbor's. 3 *Kent's Com.* 441. A rule of the Roman law.

Sic utere tuo ut alienum non lædas. So use your own [right or property] as not to injure another's. 9 *Co.* 59 a, *William Aldred's case.* 1 *Bl. Com.* 306. 3 *Id.* 217. *Broom's Max.* 160, [274.] One of the fundamental maxims of the law. Thompson, C. J. 15 *Johns. R.* 218. Woodworth, J. 17 *Id.* 99. "A principle of universal obligation." Woodward, J. 26 *Penn. St. R.* 118. But see 4 *Comstock's R.* 198. "A principle as old as civilization itself, and no less of morals than law." Ranney, J. 4 *Ohio St. R.* 415. And see 12 *Grattan's R.* 325.

SIC HIC. Lat. So here. Words used in argument, in the old books. *Yearb.* M. 2 Hen. VI. 1.

SIC SUBSCRIBITUR. Lat. In Scotch practice. So it is subscribed. Formal words at the end of depositions, immediately preceding the signature. 1 *How. St. Trials*, 1379.

SICARIUS. Lat. [from *sica*, a dagger or knife.] In the civil law. An assassin; one who carried a knife, dagger or other weapon, with intent to kill. *Inst.* 4. 18. 5. The *Lex Cornelia de sicariis* was enacted to punish such persons. *Id. ibid. Dig.* 48. 8.

SICH, *Sichet, Siket.* [L. Lat. *sichetum, sikettus.*] In old records. A little current of water, that is dry in summer; a water furrow or gutter. 2 *Mon. Angl.* 426. *Cowell.*

SICKERBORGH. Sc. [from *sicker*, sure, and *borgh*, pledge.] In old Scotch law. A sure pledge. *Skene de Verb. Sign.* voc. *Sacreborgh.* See *Sacaburth.*

SICOME. L. Fr. So; as. Sicome *son several;* as his several. *Britt.* c. 59. Sicome *moy ayde Dieu;* so help me God. *Litt.* sect. 514.

SICUT. Lat. As. *Sicut alias;* as before, or on another occasion. *Yearb.* M. 8 Edw. III. 45. See *Alias. Sicut pluries;* as oftentimes. See *Pluries.* **Sicut natura non facit saltum, ita nec lex.** As nature does nothing by a bound or leap, [in a hurried or irregular manner,] so neither does law. *Co. Litt.* 238 b.

SICUT ME DEUS ADJUVET. Lat. So help me God. *Fleta*, lib. 1, c. 18, § 4.

SIDE BAR RULE. In English practice. A rule authorized by the courts to be granted by their officers as a matter of course, without formal application being made to them in open court. So called, because anciently moved for by the attornies at *side bar*, that is, in an informal way. These rules are also called in the Court of Common Pleas, *treasury* rules, because moved for in the treasury chamber of the court. See 1 *Tidd's Pr.* 483, 484.

SIDELINGS. [L. Lat. *sidlingi*, *sythlingi*.] In old records. Unploughed pieces of land on the *sides* of fields. See *Butts.* Meres or balks on the side of arable lands. 2 *Mon. Angl.* 275. *Cowell.*

SIDESMEN or QUESTMEN. [L. Lat. *synodales.*] In English ecclesiastical law. Persons yearly chosen, according to the custom of every parish, to assist the churchwardens in the inquiry, and presenting such offenders to the ordinary as are punishable in the court christian. *Cowell.* Blount says they are more properly called *synodsmen.*

SIDINGS. In old English law. Boundary lines on the *sides* of lands. *Cro. Jac.* 183. See *Buttals.*

SIEGE. Fr. In French law. Seat. *Dans tous les siéges de l' Amirauté;* in all the seats of the admiralty. *Ord. Mar.* liv. 1, tit. 1, art. 1.

SIEGLE. L. Fr. [Lat. *seculum.*] In old English law. Age. *Kelham.*

SIEL. L. Fr. [Lat. *sella.*] In old English law. A saddle. *Kelham.*

SIEN. L. Fr. Seat. *Kelham.*

SIER. L. Fr. [Lat. *secare.*] In old English law. To mow. *En temps de* sier *blees;* in harvest time. *Kelham.*

SIERVO. Span. [from Lat. *servus*, q. v.] In Spanish law. A slave. *Las Partidas*, part. 4, tit. 21, l. 1.

SIET. L. Fr. Knows. *Ne* siet *rien;* knows nothing. *Kelham.*

SIETE PARTIDAS. Span. Seven parts. See *Las Partidas.*

SIGILLARE. Lat. [from *sigillum*, a seal.] In the civil and old English law. To seal; to affix a seal. *Calv. Lex. Sigillatum;* sealed. 1 *Salk.* 141. *Per literas vestras* sigillatas *sigillo tuo, et sigillis prædictorum juratorum;* by your letters sealed with your seal, and the seals of the aforesaid jurors. *Bract.* fol. 310.

SIGILLUM. Lat. [dimin. of *signum*, a seal.] In old English law. A seal. Sigillum *est cera impressa;* a seal is wax impressed. 3 *Inst.* 169. See *Seal. In cujus rei testimonium, huic scripto* sigillum *meum apposui;* In witness whereof, I have to this writing set my seal. *Bract.* fol. 38. *Fleta*, lib. 3, c. 14, § 13. *Id.* lib. 2, c. 60, § 25.

SIGLA. Lat. In the Roman law. Marks or signs of abbreviation used in writing. *Cod.* 1. 17. 1. 13.

To SIGN. To affix the name to an instrument or writing; to subscribe. Obviously derived from the Lat. *signare*, which, however, signified *to seal*, as distinguished from *subscribere*, to subscribe, or write under.

*** In the construction of that provision of the Statute of Frauds in relation to promises and agreements of certain kinds, which requires a "memorandum or note in writing, *signed* by the party to be charged, or his agent," &c. it has been held that the word "signed" did not necessarily import the writing of the party's name *underneath* the memorandum or instrument, that is, at the *bottom* or *end* of it; but that, if the name appeared in any part of the writing, and was put there by him or his authority, it was sufficient. This has become the settled construction of the word, both in England and in the United States. 3 *Meriv.* 53. 2 *Bos. & Pull.* 238. 2 *M. & S.* 286. 14 *Johns. R.* 484, 486. 13 *Mass. R.* 87. 2 *Kent's Com.* 511, and note. In the state of New-York, however, the courts found themselves so much at large as to what should be considered a *signing* under this statute, as thus construed, that, on the revision of the statutes in 1829, the word "signed" was, on the recommendation of the revisers, stricken out of the provision, and the word "subscribed" inserted in its place. 2 *Rev. Stat.* [135,] 70, § 2. See *Reviser's Notes*, 3 *Rev. St.* 655. And although the substituted word was at first construed as loosely as the word *signed* had been, its meaning has at length been judicially settled in conformity with its literal and popular signification, viz. as importing *an actual underwriting* of the name. 26 *Wendell's R.* 341. 2 *Selden's R.* 9. This was going back to what had been, in the earlier English cases, (and not without reason,) contended for, as the true meaning of the provision as it had been originally enacted.

SIGNARE. Lat. [from *signum*, seal, or mark.] In the civil law. To seal; to affix

a seal; to confirm by a seal, (*sigillo confirmare.*) *Si ab ipso testatore annulum accepero, et* signavero, *testamentum valet, quasi alieno* signaverim; if I should take a ring from the testator himself, and seal [with it,] the testament is valid, as though I had sealed with another's. *Dig.* 28. 2. 22. 2. Literally, to put one's own mark, (*signum,*) upon a thing. *Calv. Lex.*

In old English law. To seal a measure. *Fleta*, lib. 2, c. 82, § 1.

SIGNATORIUS ANNULUS. Lat. In the civil law. A signet-ring; a seal-ring. *Dig.* 50. 16. 74.

SIGNATURE. [Lat. *signatura*, from *signum*, a seal or mark.] The writing or subscribing of one's name at the end of an instrument, by which it is made the act of the party so subscribing; an essential part of every valid instrument. Literally, the impression of a stamp, sign or mark, (*signum,*) upon a thing.

The name of a party subscribed to an instrument.

A signature may be written either by the party himself, or by his authorized agent, and it may be expressed either by the party's actually writing his name, or making his *mark*, (the original meaning of *signum*, q. v.;) and it may be written in some cases in pencil, as well as with ink, and even expressed by the party's initials. See *Mark, Initial.* As to the signature of a deed, see 4 *Kent's Com.* 450, *et seq.* As to the signature of a will, see 2 *Greenl. Evid.* § 674. 1 *Williams on Exec.* 63—71. As to the signature of bills of exchange, see *Story on Bills*, § 53. As to signatures under the Statute of Frauds, see *Blackburn on the Contract of Sale*, 69.

SIGNET. [L. Lat. *signettum.*] In English law. One of the queen's seals in England, used in sealing private letters and grants under the sign manual. It is in the custody of the Secretary of State for the home department. *Brande.* The signet in Scotland is the seal by which the queen's letters and writs for the purpose of justice are now authenticated. *Id.*

SIGNIFICAVIT. L. Lat. [He] hath signified. In English practice. That clause in the writ *de contumace capiendo*, which states that a certain judge, or other competent person, *has signified* to the king that the person against whom the writ is issued is manifestly contumacious. *Holthouse.*

The writ itself, containing this clause. *Id.* The old writ *de excommunicato capiendo* began with the word *significavit. Reg. Orig.* 65.

SIGNING may be by printing as well as writing. 2 *M. & S.* 286. Signing may be by stamping. Le Blanc, J. *Id.* 289.

SIGNING JUDGMENT. In English practice. The signature or allowance of the proper officer of a court, obtained by the party entitled to judgment in an action, expressing generally that judgment is given in his favor; and which stands in the place of its actual delivery by the judges themselves. *Steph. Pl.* 110, 111. The signing of an *incipitur* of the declaration, and of the *postea*, in taxing costs, is called signing judgment. *Id. ibid.* note.

In American practice, *signing judgment* means a signing of the judgment record itself, which is done by any officer authorized to tax costs and sign judgments, on the margin of the record, opposite the entry of the judgment. 1 *Burr. Pr.* 268.

SIGN MANUAL. In English law. The royal signature to grants and letters, written *at the top* of the instrument. 2 *Bl. Com.* 347. 9 *Mod.* 54.

SIGNUM. Lat. In the Roman and civil law. A sign; a mark; a seal. The seal of an instrument. *Dig.* 28. 1. 22. 3, 5. *Calv. Lex.*

A species of proof. By *signa* were meant those species of *indicia* which come more immediately under the cognizance of the senses, such as stains of blood on the person of the accused. *Best on Presumptions*, 13, note (*f.*) See *Fleta*, lib. 1, c. 25, § 14.

In Saxon law. A cross prefixed to the name of a subscribing witness, as a sign of assent and approbation to a charter or other deed; commonly used among the Saxons and some of the first Normans, before the common use of either affixed or appending seals, when subscriptions were in this form: + *Signum Roberti Episcopi Linc.* + *Signum Nigelli de Oyley, &c. Cowell.*

In old English law. A seal. *Ideo in testimonium et rei gestæ probationem, apponat donator* signum, *adjiciendo clausulam istam vel consimilem;* therefore, in testimony and in proof of the thing done, the donor should set to his seal, adding this clause or the like. *Fleta*, lib. 3, c. 14, § 13.

A mark put on sheep. *Id.* lib. 2, c. 79, § 5.

Silent leges inter arma. The power of law is suspended during war. *Bacon's Arg.* Case of the Postnati of Scotland; *Works*, iv. 347.

SILVA. Lat. In the civil law. Wood; a wood. See *Sylva.*

SILVA CÆDUA. Lat. In the civil law. That kind of wood which was kept for the purpose of being cut, (*qui in hoc habetur, ut cæderetur.*) *Dig.* 50. 16. 30. According to Servius, it was that kind, which, when cut down, grew up again from the trunks or roots, (*quæ succisa rursus ex stirpibus aut radicibus renascitur.*) *Id.* See *Id.* 7. 1. 9. 7. *Id.* 7. 1. 10.

In English ecclesiastical law. Underwood; coppice-wood. 2 *Inst.* 642. *Cowell*, voc. *Sylva cædua.* All small wood and under-timber, and likewise timber when cut down, under twenty years' growth; titheable wood. 3 *Salk.* 347. Trees intended to be cut, or "that be able to be cut," as distinguished from fruit-bearing trees. *Doct. & Stud.* dial. 2, ch. 55, p. 291.

SIMILITER. Lat. [L. Fr. *semblement.*] In pleading. Likewise; the like. The name of the short formula used either at the end of pleadings, or by itself, expressive of the acceptance of an issue of fact tendered by the opposite party; otherwise termed a *joinder in issue. Steph. Pl.* 57, 237. The common form of it is,—"And the said plaintiff doth the like." *Id.* This is a literal translation of the old Latin form,—"*Et prædictus* A. *similiter*," the last word of which has been retained as the name of the English formula. The elements of the *similiter* are contained in the following sentence of Bracton: *simpliciter dicat quod liber sit, et inde ponat se super juratam, et alius affirmet quod non, et inde se ponat* similiter *super juratam;* he may simply say that he is a freeman, and thereof may put himself upon the country, and the other party may affirm that he is not, and thereof may put himself *likewise* upon the country. *Bract.* fol. 192 b.

SIMILITUDO. Lat. In old English law. Similitude; likeness; similarity. Similitudo *legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similium valet, valebit in altero;* legal similarity is [consists in] the like reason of different cases when compared together; that which has force in one of the like cases shall have force in the other. *Co. Litt.* 191.

SIMNELL, *Simenel, Symenel.* [L. Lat. *siminellus*, from *simila*, the finest part of flour.] In old English law. The purest white bread. *Fleta*, lib. 2, c. 9, § 1. *Spelman*, voc. *Siminellus. Cowell.*

SIMONY. [Lat. *simonia.*] In English ecclesiastical law. The corrupt presentation of any one to an ecclesiastical benefice, for money, gift, or reward. 2 *Bl. Com.* 278.—An unlawful contract for presenting a clergyman to a benefice. *Brande.* So called from the resemblance it is said to bear to the sin of *Simon Magus*, though, according to Blackstone, the purchasing of holy orders seems to approach nearer to his offence. 2 *Bl. Com. ub. sup.* See 1 *Id.* 388. *Smith on Contracts*, 174—176, and note.

SIMPLA. Lat. In the civil law. The single value of a thing. *Dig.* 21. 2. 37. 2. See *Dupla.*

SIMPLE. [Lat. *simplex.*] Pure; unmixed; unqualified; composed of the fewest elements. See *infra.*

SIMPLE AVERAGE. In French law. Particular average. *Ord. Mar.* liv. 3, tit. 7, art. 2, 3.

SIMPLE CONTRACT. A contract not under seal; an agreement by parol, including both verbal and written agreements.* *Chitty on Contracts*, 4, 7, (Perkins' ed. 1848.)

SIMPLE LARCENY. In criminal law. Mere larceny or theft of goods, as distinguished from larceny from the person or dwelling. See *Larceny.*

SIMPLE OBLIGATION. [Fr. *obligation simple.*] In the civil law. An obligation which does not depend for its execution upon any event provided for by the parties, or which is not agreed to become void on the happening of any such event. *Civil Code of Louis.* Art. 2015.

SIMPLE WARRANDICE. In Scotch law. An obligation to warrant or secure from all subsequent or future deeds of the grantor. *Whishaw.* A simple warranty against the grantor's own acts.

SIMPLEX. Lat. Simple; single; pure; unqualified. *Simplex et pura* [*donatio*] *dici poterit, ubi nulla est adjecta conditio, nec modus;* a gift may be said to be simple and pure, where there is no condition or qualification annexed to it. *Bract.* fol. 17. *Fleta*, lib. 3, c. 8. Lord Coke observes that it is called *simplex, quia sine plicis*, because without folds. *Co. Litt.* 2 a.

SIMPLEX COMMENDATIO. L. Lat.

In the law of contracts. Mere commendation or praise. **Simplex commendatio non obligat.** Mere commendation does not bind. 2 *Kent's Com.* 485.

SIMPLEX DICTUM. L. Lat. In old English practice. Simple averment; mere assertion without proof. *Si autem petens pro se nullam habeat probationem nisi* simplex dictum, *et simplicem vocem de dimissione et termino;* but if the demandant have no proof on his part, except the mere allegation and the mere speech of a demise and a term. *Bract.* fol. 320. The word *vox*, in this passage, illustrates briefly, but expressively, the oral pleading of the time.

SIMPLEX JUSTITIARIUS. L. Lat. In old records. Simple justice. A name sometimes given to a puisne justice. *Cowell.*

SIMPLEX LOQUELA. L. Lat. In old English practice. Simple speech; the mere declaration or *plaint* of a plaintiff. *Nullus ballivus de cætero ponat aliquem ad legem manifestam nec ad juramentum*, simplici loquela *sua, sine testibus fidelibus ad hoc inductis;* no bailiff shall hereafter put any man to his open law, nor to his oath, upon his own mere plaint [or bare saying, as Coke translates it,] without lawful witnesses brought in to [prove] it. *Magna Charta*, c. 28. 2 *Reeves' Hist. Eng. Law*, 259. Called, in Fleta, *simplex vox.* Lib. 2, c. 63, § 9.

SIMPLEX OBLIGATIO. Lat. A single obligation; a bond without a condition. 2 *Bl. Com.* 340.

SIMPLEX PEREGRINATIO. L. Lat. In old English law. Simple pilgrimage. *Fleta*, lib. 4, c. 2, § 2.

Simplicitas est legibus amica, et nimia subtilitas in jure reprobatur. Simplicity is a favorite of the laws, and too great subtlety in law is reprobated. 4 *Co.* 5 b.

SIMPLICITER. Lat. Simply; by itself; in itself; by its own force; without any addition. The word "effects," in a will, if used *simpliciter*, will carry the whole personal estate. *Ward on Legacies*, 209. *Fleta*, lib. 3, c. 8.

SIMULATED FACT. In the law of evidence. A fabricated fact; an appearance given to things by human device, with a view to deceive and mislead. See *Burr. Circ. Evid.* 131.

SIMULATION. [Lat. *simulatio.*] In the civil law. Misrepresentation or concealment of the truth; as where parties pretend to perform a transaction different from that in which they really are engaged. 1 *Mackeld. Civ. Law*, 165, § 168.

SIMUL CUM. Lat. (Together with.) In practice. A *capias simul cum* is a *capias* in which the sheriff is directed to take a certain defendant, to answer *together with* other defendants in the action. 1 *Burr. Pr.* 103. Indictments and declarations in trespass are also sometimes drawn with a *simul cum* clause. 2 *Lill. Abr.* 469. And see *Fleta*, lib. 5, c. 4, § 2. *Id.* lib. 6, c. 49, § 4.

SIMUL ET SEMEL. Lat. Together and at one time. *Fleta*, lib. 2, c. 47, § 5. 1 *Saund.* 323 a, note (6.)

SINE. Lat. Without. See *infra.*

SINE ANIMO REVERTENDI. Lat. Without the intention of returning. 1 *Kent's Com.* 78.

SINE ASSENSU CAPITULI. L. Lat. (Without the consent of the chapter.) In old English practice. A writ which lay where a dean, bishop, prebendary, abbot, prior or master of a hospital, aliened the lands holden in the right of his house, abbey or priory, without the consent of the chapter; in which case his successor might have this writ. *F. N. B.* 194 I. *Cowell.*

SINE CONSIDERATIONE CURIÆ. L. Lat. Without the judgment of the court. *Fleta*, lib. 2, c. 47, § 13.

SINE CURA. L. Lat. Without cure or charge; without any duty attached. See *Cura.*

SINE DECRETO. Lat. Without authority of a judge. 2 *Kames' Equity*, 115.

SINE DIE. L. Lat. [L. Fr. *sans jour.*] Without day; without appointment of a day to appear again. *De hiis qui recedunt* sine die, *per defaltam querentis vel petentis;* from those who go without day, by default of the plaintiff or demandant. *Fleta*, lib. 2, c. 39, § 1. A term expressive of a final discharge or dismissal. See *Eat inde sine die, Dies, Day, Sans jour.*

SINE HOC QUOD. L. Lat. Without this that. A technical phrase in old pleading, of the same import with the phrases *absque hoc quod*, and L. Fr. *sans ceo que*, (qq. v.)

SINE JUDICIO. L. Lat. Without judgment; without a judicial sentence. *Fleta*, lib. 4, c. 14, § 1.

SINE LIBERIS. Lat. Without children. For the construction of this phrase in the civil law, see *Dig.* 50. 16. 148. *Id.* 50. 17. 187.

SINE NUMERO. L. Lat. Without stint or limit. A term applied to common. *Fleta*, lib. 4, c. 19, § 8.

SINE PROLE. Lat. Without issue. A term used in genealogical tables.

SINGLE BILL. A written engagement under seal, for the payment of money without a penalty. See *Bill single.* It seems to have formerly been nearly the same with a single bond, (q. v.) *Shep. Touch.* 367. Single bills are still in use in the United States; as in Pennsylvania, Virginia, South Carolina, Mississippi and Florida. 26 *Penn. St. R.* 142. 10 *Richardson's Law R.* 145. 6 *Florida R.* 357.

SINGLE BOND. [Lat. *simplex obligatio.*] A bond without a condition. 2 *Bl. Com.* 340.

SINGULAR used to include the plural. *Dig.* 50. 16. 158.

SINGULAR SUCCESSOR. In Scotch law. A purchaser, in contradistinction to the heir of a landed proprietor. *Bell's Dict.*—He who acquires any right or thing, by a particular title, for some cause. If for value given, or for valuable consideration, the acquirer is termed a *singular successor*, for an onerous cause; and if for love, or on the score of affection and liberality, he is styled a *lucrative successor.* 1 *Forbes' Inst.* part 3, p. 1.

SINGULARITER. Lat. In the singular. 11 *East*, 77, arg.

Si non appareat quid actum est, in contractibus veniunt ea quæ sunt moris et consuetudinis in regione in qua actum est. If it be not clear [if the instrument do not clearly show] what has been done, the custom and usage of the place in which the transaction took place, may be applied in explanation of the contract. *Dig.* 50. 17. 34. 2 *Kent's Com.* 555.

Si nulla sit conjectura quæ ducat alio, verba intelligenda sunt ex proprietate, non grammatica sed populari ex usu. If there be no conjecture which leads to a different result, [if there be no reasonable ground for a different interpretation,] words are to be understood according to their proper meaning, not in a grammatical but in the popular and ordinary sense. 2 *Kent's Com.* 555.

SI PARET. Lat. (If it appears.) In the Roman law. Words used in the formula by which the prætor appointed a judge, (*judex*,) and instructed him how to decide the cause. *Judex esto.* SI PARET *Aulum Agerium apud Numerium Negidium mensam argenteam deposuisse, eamque dolo malo Numerii Negidii Aulo Agerio redditam non esse, quanti ea res erit, tantam pecuniam judex Numerium Negidium Aulo Agerio condemnato;* SI NON PARET *absolvito.* Let —— be the judge. If it appear that Aulus Agerius has deposited with Numerius Negidius a silver salver, and that it has not been re-delivered to Aulus Agerius through the fraud of Numerius Negidius, let the judge condemn Numerius Negidius to pay Aulus Agerius as much money as the thing shall have been worth: if it does not appear, acquit [him.] *Gaius Inst.* iv. § 47. *Paret* was an old form of *apparet*, (it appears.)

Si quid universitati debetur singulis non debetur, nec quod debet universitas singuli debent. If any thing is due to a corporation, it is not due to the individual members of it, nor do the members individually owe what the corporation owes. *Dig.* 3. 4. 7. A maxim of the civil law. 1 *Bl. Com.* 484.

Si quis in nomine, cognomine, prænomine legatarii erraverit, si de persona constat, nihilominus valet legatum. If one should have made a mistake in the nomen, cognomen or prænomen of a legatee, if it be clear as to the person intended, the legacy is nevertheless valid. *Inst.* 2. 20. 29.

SIST. In Scotch practice. A stay or suspension of proceedings; an order for a stay of proceedings. *Bell's Dict.* voc. *Advocation.*

To SIST. In Scotch practice. To stay proceedings. *Bell's Dict.* voc. *Advocation.*

SISTERE. Lat. In the civil law. To produce a party in court, (*in judicio.*) *Dig.* 2. 10. *Id.* 2. 11. 2. 3. *Clerke's Prax. Cur. Adm.* tit. 19.

To SIT. [Lat. *sedere, residere.*] To occupy a seat; to be permanently fixed; to be prepared for deliberate action. Applied judicially, it signifies,

To occupy the bench of a court, as judges *sit.*

To be formally constituted and held for the transaction of business, as a court *sits.*

To occupy a *fixed seat* of judgment, as distinguished from a moveable one. See *Sittings.*

SITE. [from Lat. *situs*, q. v.] The place where a house stands or has stood.* The standing of any place; the situation of a capital house or messuage. *Cowell.* Sometimes written *scite.* *Stat.* 32 *Hen.* VIII. c. 20. *Stat.* 22 *Car.* II. c. 11.

SITTINGS. [L. Lat. *sessiones.*] In practice. The holding of a court, with full form, and before all the judges; as a *sittings in banc.* 3 *Steph. Com.* 423.

The holding of a court of *nisi prius* by one or more of the judges of a superior court, instead of the ordinary *nisi prius* judge. See *Id.* 422.

SITUS. Lat. Position; situation; location; site. The place where a thing is; as the *situs* of property. 5 *Peters' R.* 524, 525. "The *situs rei.*" 2 *Kent's Com.* 433. See *Lex loci rei sitæ.* Locality for judicial purposes. "A debt has no *situs* or locality." *Ersk. Inst.* b. 3, tit. 9, sec. 4. 2 *Kent's Com.* 458, note.

SIWER. L. Fr. In old English law. To sue. *Siwist;* sued. *Yearb.* H. 1 Edw. II. 3.

SIWITE, *Siwyte.* L. Fr. In old English law. Suit. *A qi siwite;* at whose suit. *Yearb.* T. 1 Edw. II. 8. *Il en ad* siwite *bone;* he hath good suit thereof. *Id.* H. 2 Edw. II. 26.

SIX CLERKS. [L. Lat. *sex clerici.*] In English practice. Officers of the Court of Chancery, who received and filed all bills, answers, replications, and other papers, signed office copies of pleadings, examined and signed docquets of decrees, &c. and had the care of all records in their office. *Holthouse.* 3 *Bl. Com.* 443. *Fleta*, lib. 2, c. 13, § 15. They were abolished by statute 5 Vict. c. 5.

"SIX MONTHS" is sometimes construed to mean half a year, and not merely six lunar months. *Cro. Jac.* 167. 1 *Chitt. Gen. Pr.* 775. 3 *Id.* 108. 2 *Chitt. Bl. Com.* 140, note. See *Month, Half year.*

SKELLA. L. Lat. In old European law. A bell. *L. Salic.* tit. 29, § 3. *Spelman.*

SKERDA. L. Lat. In old English law. A scar. *Bract.* lib. 3, (de corona,) c. 24, num. 2.

SLADE. [Sax. *slæd.*] In old records. A long, flat and narrow piece or strip of ground. *Par. Antiq.* 465. *Kennett's Gloss. Cowell.*

SLAINS. See *Letters of slains.*

SLANDER. [from L. Fr. *esclaunder, eslaunder, slaunder;* Sc. *sklander.*] Oral defamation. *Cooke's Law of Defamation,* 1.—Defamation by words spoken.*—The utterance of false, malicious and defamatory words, tending to the damage and derogation of another.* 3 *Bl. Com.* 123. 3 *Steph. Com.* 472. As where a man utters any thing of another, which may either endanger him in law, by impeaching him of some punishable crime,—as to say that he has poisoned another, or is perjured; or which may exclude him from society,—as to charge him with having an infectious disorder, tending so to exclude him; or which may impair or hurt his trade or livelihood,—as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave; or which may disparage him in an office of public trust,—as to say of a magistrate that he is partial and corrupt. 3 *Steph. Com.* 473. 3 *Bl. Com.* 123. See *Cooke on Defamation,* 7—24.

Defamation generally, whether oral or written. In this sense, the word is used in several of the older books, of established authority. *Bacon's Abr.* Slander. *Com. Dig.* Action upon the case for Defamation, A. *Bull. N. P.* 3. 1 *Starkie on Slander,* (Wendell's ed. 1843,) note.

SLAVE. [L. Fr. *serf;* Lat. *servus;* Fr. *esclave.*] A bond-man; one who is bound to serve for life.* One who is by law deprived of his liberty for life, and becomes the property of another. *Bouvier.*—A person who is wholly subject to the will of another; one who has no freedom of action, but whose person and services are wholly under the control of another. *Webster.*—One who is under the power of a master, and who belongs to him; so that the master may sell and dispose of his person, of his industry, and of his labor, without his being able to do any thing, have any thing, or acquire any thing, but what must belong to his master. *Civil Code of Louis.* 35. See *Servus.*

SLAVERY. [Lat. *servitus.*] The state or condition of a slave; a state of bondage for life. See 2 *Kent's Com.* 247—257.

SLIPPA. L. Lat. In old records. A stirrup, (*stapes.*) *Cart.* 5 Hen. VII. *Cowell.*

SMAKA. L. Lat. In old records. A small light vessel; a smack. *Cowell.*

SMART MONEY. In the law of damages. Vindictive, or exemplary damages. Damages beyond the value of a thing sued for, given by a jury in cases of gross misconduct or cruelty on the part of a defendant. See 14 *Johns. R.* 352. Church, J. 15 *Conn. R.* 225. *Sedgwick on Damages,* 39—45.

SMOKE-FARTHINGS. In old English law. An annual rent paid to cathedral churches; another name for the pentecos-

tals or customary oblations offered by the dispersed inhabitants within a diocese, when they made their processions to the mother cathedral church. *Cowell.*

SMOKE-SILVER. In English law. A sum paid to the ministers of divers parishes as a modus in lieu of tithe-wood. *Blount.*

SO HELP ME GOD. [L. Fr. *ci Dieu moy eyde;* L. Lat. *sic me Deus adjuvet.*] The formula with which an oath concludes when the words of it are repeated by the party swearing. See *So help you God, Oath.*

SO HELP YOU GOD. [L. Fr. *ci Dieu vous ayde;* L. Lat. *ita te Deus adjuvet.*] The formula with which the administration of an oath always concludes. Where the words of the oath are repeated by the party swearing, the expression is "*So help me God,*" which seems to have been the more ancient form. The energy of this sentence, according to Dr. Paley, resides in the particle *so; so*, that is, *hac lege*, upon condition of my speaking the truth, or performing this promise, may *God help me*, and not otherwise. *Paley's Mor. Phil.* b. 3, c. 16. See *Oath, Saints.*

"SO LONG," in a lease, [a lease for years, *so long* as the lessee shall duly pay the rent,] makes a limitation and not a condition. Vaughan, C. J. *Freem.* 25.

SO THAT. See *Ita quod.*

SOBRE. Span. [L. Lat. *supra.*] Above; over; upon. 15 *Texas R.* 586, 592.

SOBRE-JUEZES. Span. In Spanish law. Superior judges. *Las Partidas*, part. 3, tit. 4, l. 1.

SOBRINI and SOBRINÆ. Lat. In the civil law. The children of cousins german in general. *Cooper's Just. Inst.* Notes,* 573. *Dig.* 38. 10. 3, pr.

SOC, *Sock, Sok, Soke.* Sax. [L. Lat. *soca, socha, soka;* from Sax. *socan*, to follow, or *socn*, a privilege.] In Saxon and old English law. A lord's privilege of having suit of court from his tenants; or the right of compelling the attendance of his tenants at his court. *Crabb's Hist.* 26, 27. *Spelman. Skene de Verb. Signif.*— A lord's power or jurisdiction to have a free court, to hold plea of contracts, covenants, and trespasses of his men and tenants. 2 *Inst.* 230. *Soc* and *sac*, (*sock* and *sack*, or *sok* and *sak*, or *soke* and *sake*,) are usually mentioned together in the old charters of liberties, and, thus united, express the full power of administering justice which was granted to the lord within his manor or lordship; *soc*, giving the right to constitute a court, and *sac*, authority to try causes in it. *Spelman.* The words occur in Bracton in all the various forms above given. *Bract.* fol. 56, 122 b, 124 b.

SOC, *Soke.* L. Fr. [L. Lat. *soca, soccus.*] In old English law. A plough. *Litt.* sect. 119.

SOCA, *Socha.* L. Lat. Soc, or sock. See *Soc.* A seigniory enfranchised by the king with liberty of holding a court of his sockmen or soccagers, i. e. his tenants. *Cowell.*

A liberty or privilege; a privileged place. *Spelman.*

A manor or lordship. *Id.* A part of a manor. *Id.*

SOCAGE, *Soccage.* [L. Lat. *socagium, sockagium;* from Sax. *soc*, or *socn*, a liberty or privilege; or Fr. *soke;* L. Lat. *soca, soccus*, a plough.] In English law. A tenure by any certain and determinate service. 2 *Bl. Com.* 79. Free socage, the most honorable species of this kind of tenure, is the tenure by which the great bulk of real property in England is now holden. *Id.* 89. See *Free socage.* For the history of this tenure in the United States, see 3 *Kent's Com.* 509—514. 4 *Id.* 2, 3.

As to the etymology of this word, there have been two opinions, each maintained by high authority; Littleton and Coke, who are followed by Sir Martin Wright, deriving it from the French *soc* or *soke*, a plough or plough-share, and Somner and Blackstone considering it as derived from Sax. *soc*, a franchise or privilege. *Litt.* sect. 119. *Co. Litt.* 86 b. *Wright on Tenures*, 143. *Somner's Gavelk.* 138. 2 *Bl. Com.* 80. Mr. Christian, in his note on the passage of Blackstone here referred to, expresses his preference of the derivation of Littleton and Coke, and quotes, in further support of their opinion, a passage from Bracton in which it is said,—*dici poterit* sockagium *à* socko, *et inde tenentes qui tenent in sockagio*, sokemanni *dici poterunt, eò quòd deputati sunt ut videtur tantummodo ad culturam;* (it may be called *socage* from *soccus*, and those that hold thereby, who hold in socage, may be called sokemen, because, as it seems, they are assigned only to the cultivation of the ground.) *Bract.* fol. 77 b. Mr. Stephen very properly observes of this passage, that it leans, though somewhat doubtfully, towards the derivation from the *plough*, and refers to another passage of Bracton, where

he applies *socagium* in a way which tends strongly to mark its identity with *privileged* tenure, and privileged as being *certain* in its services. 1 *Steph. Com.* 193, note (*h.*) See *Bract.* fol. 208 b, 209. Sir Henry Spelman, whose opinion might be decisive on this point, gives no formal definition of the word *socagium*, but, under the words *socmannus* and *socman*, quotes various passages from which it may be inferred that his opinion was in favor of the derivation from *soc*, a privilege. It may be added that the explanation of Skene, the Scotch expositor, tends to confirm the view of Somner and Blackstone.

SOCAGIUM, *Soccagium*, *Sockagium*, *Sokagium*. L. Lat. In old English law. Socage. *Glanv.* lib. 7, c. 1. *Bract.* fol. 77 b, 209. *Mag. Cart.* 9 Hen. III. c. 27.

A plough-land; a portion of land set apart for the support of one family in the country. *Spelman.*

SOCER. Lat. In the civil law. A wife's or husband's father; a father-in-law. *Dig.* 38. 10. 4. 6. *Calv. Lex. Cooper's Just. Inst.* Notes,* 429. See *Dig.* 50. 16. 146.

SOCIEDAD. Span. [from Lat. *societas*, q. v.] In Spanish law. Partnership. *Schmidt's Civ. Law*, 153, 154.

SOCIETAS. Lat. [from *socius*, q. v.] In the civil law. Partnership; a partnership; the contract of partnership. *Inst.* 3. 26. *Dig.* 17. 2. 1.—A contract by which the goods or labor of two or more are united in a common stock, for the sake of sharing in the gain. *Hallifax, Anal.* b. 2, c. 18, num. 12. A species of consensual contract. *Heinecc. El. Jur. Civ.* lib. 3, tit. 26, § 942. See *Vinnius ad Inst.* lib. 3, tit. 26, Introd. *Dig.* 17. 2. 1, *et seq.* Called, in old English law, *society*. See *Partnership.*

In old English law. Complicity in crime. *Fleta*, lib. 1, c. 38, § 18.

SOCIETAS NAVALIS. Lat. In European law. Naval partnership or company; the sailing of a number of vessels in company, for mutual protection. Otherwise called *admiralitas*. *Loccen. de Jur. Mar.* lib. 2, c. 2. *Id.* lib. 3, c. 7.

SOCIETE. Fr. [from Lat. *societas*, q. v.] In French law. Partnership. See *Commendam.*

SOCIETY. [Lat. *societas.*] In old English law. Partnership. See *Partnership.*

SOCII. Lat. [plur. of *socius*, q. v.] In old English law. Fellows; associates. A title given, in Fleta, to the old masters in chancery. *Fleta*, lib. 2, c. 13, § 12. But improperly, according to the "Treatise of the Maisters of the Chauncerie."

SOCIUS. Lat. In the civil law. A partner. *Solvitur adhuc* societas *etiam morte* socii; a partnership is also dissolved by the death of a partner. *Inst.* 3. 26. 5. *Dig.* 17. 2. *Pro socio.* **Socii mei socius meus socius non est.** The partner of my partner is not my partner. *Dig.* 17. 2. 20. *Id.* 50. 17. 47. 1. This principle is also recognized in the common law. A person may become a partner with one individual of a partnership, without being concerned in that partnership. 3 *Kent's Com.* 52, and note.

In old English law. An associate or companion in crime; an accomplice. *Fleta*, lib. 1, c. 38, § 17. *Socius criminis.* 2 *Alis. Crim. Pr.* 452.

In practice. An associate justice or judge. 1 *Leon.* 90.

SOCMAN, *Sokman*, *Sokeman.* Sax. [from *soc*, privilege, and *man.*] In old English law. A tenant by socage. *Bract.* fol. 77 b. A tenant in ancient demesne. *Spelman*, citing *O. N. B. Britt.* c. 66. A tenant in villenage. *Spelman.* Rather a tenant in privileged villenage; a tenant by certain villein services. *Bract.* fol. 208 b, 209. *Fleta*, lib. 1, c. 8, § 3.

A freeman. *Spelman*, citing *Lib. S. Albani*, tit. *Houcton*, c. 1.

SOCMANNUS, *Sokmannus*, *Sokemannus.* L. Lat. A socman, or sokeman. *Spelman. Bract.* fol. 77 b, 209. *Fleta*, lib. 1, c. 8, § 3. *Id.* lib. 3, c. 16, § 3. *Id.* lib. 5, c. 6, § 11. See *Socman.*

SOCNA. L. Lat. [Sax. *socne.*] In old records. A privilege; a liberty or franchise. *Cowell.*

SOCRUS. Lat. In the civil law. A husband's or wife's mother. *Inst.* 1. 10. 7. *Dig.* 38. 10. 4. 6. See *Id.* 50. 16. 146.

SOCURER. L. Fr. To help, or aid; to relieve or succor. *Britt.* c. 42, 54, 77.

SOEFFRE. L. Fr. To suffer; to permit; to forbear. *Kelham.*

SOEN, *Sien*, *Syen.* L. Fr. Own; one's own; his own; his; his people or agents. *Kelham. De* soen *roiaume;* of his own realm. *Art. sup. Cart. En* soen *parlement. Id.*

SOER, *Soieur.* L. Fr. Sister; a sister. *Britt.* c. 89, 119.

SOIGNER. L. Fr. To excuse. *Kelham.*

SOIL, *Soile, Soyle, Soylle.* L. Fr. and Eng. [from Lat. *solum.*] In old English law. Land; ground; earth. *Dount ascun* soil *acrest par petyt et par petyt;* whereby any land forms by little and little, [by slow accretions.] *Britt.* c. 33. *Isle fait per la meer en ascun* soil. *Id. ibid. Deux soilz;* two lands. *Id.* c. 55. *In auter soile;* in another's land. *Dyer,* 36 b.

SOIT, *Soiet.* L. Fr. Be; is; it be; be it; let it be. *Si don* soit *fait;* if a gift be made. *Britt.* c. 36. *Soient, soint;* are; they are; let them be; they should be. *Kelham. Britt. passim.*

SOIT BAILE AUX COMMONS. L. Fr. Let it be delivered to the commons. The form of indorsement on a bill when sent to the House of Commons. *Dyer,* 93 a.

SOIT BAILE AUX SEIGNEURS. L. Fr. Let it be delivered to the lords. The form of indorsement on a bill in parliament when sent to the House of Lords. *Hob.* 111 a.

SOK, *Soke.* Sax. and O. Eng. In old English law. The lord's right of having suit of tenants; (*libertatem cur' tenentium.*) *Keilw.* 145. *Bract.* fol. 54, 124 b. *Fleta,* lib. 1, c. 47, § 6. See *Sac.*

SOKA. L. Lat. In old English law. Sok or soke, (q. v.) *Fleta,* lib. 1, c. 47, § 6. An assembly of tenants. *Id.* lib. 1, c. 8, § 2.

SOKE. L. Fr. A plough. *Vener ove lour* sokes; to come with their ploughs. *Litt.* sect. 119.

SOKEMANNES. L. Fr. In old English law. Socmen. *Britt.* fol. 164, 165, 212 b, 278 b.

SOKEREVE. [L. Lat. *sokereva.*] In old English law. An officer who collected rents of tenants. *Fleta,* lib. 2, c. 55, § 2.

SOLAR. Span. [from Lat. *solum,* q. v.] In Spanish law. Land; the demesne, with a house, situate in a strong or fortified place. *White's New Recop.* b. 1, tit. 5, c. 3, § 2. *De solar;* landed. *Id. ibid.*

SOLAR DAY. That period of time which begins at sunrise and ends at sunset. *Co. Litt.* 135 a.

SOLAR MONTH. A calendar month, (q. v.) *Co. Litt.* 135 b.

SOLARIUM. Lat. [from *sol,* the sun.] In the Roman law. A place in the upper part of a house, exposed to the rays of the sun; an apartment for basking in the sun; a terrace or gallery where they walked to sun themselves; a solar. *Calv. Lex. Adam's Rom. Ant.* 575.

In old English records. An upper room, chamber or garret; in some parts of England called a *sollar,* or *soller. Spelman. Cowell.*

SOLARIUM. Lat. [from *solum,* soil or ground.] In the civil law. A rent paid for the ground, where a person built on the public land. *Calv. Lex.* A ground rent. 1 *Mackeld. Civ. Law,* 363, § 329. *Spelman. Cod.* 8. 10. 5.

The lower part of a house. *Spelman.*

SOLD NOTE. A note or memorandum of sale, given by the broker effecting it to the buyer. *Story on Ag.* § 28.

SOLDARIUS, *Solidarius, Sollidarius, Soldurius.* L. Lat. [from Germ. sold, sould, a stipend.] In old English law. A soldier; a mercenary. *Spelman. LL. Hen.* I. c. 9.

Soldum, solidata. The pay or stipend of a soldier. *Spelman.*

SOLE. L. Fr. and Eng. [from Lat. *solus,* alone.] Single; alone; composed of a single person. See *Corporation sole, Feme sole.*

SOLEMN. [L. Lat. *solemnis, solempnis, solennis;* L. Fr. *solempne.*] Formal; in regular form; with all the forms of a proceeding. See *infra.*

SOLEMN WAR. [Lat. *bellum solenne,* or *justum.*] In international law. A war made in form. *Grotius De Jure Belli,* lib. 1, c. 3, § 4. A war by public declaration. Cowen, J. 1 *Hill's R.* 409. A war solemnly declared by one state against another. *Molloy de Jure Mar.* 5.

In modern times, the practice of a solemn declaration made to the enemy has fallen into disuse, and the nation contents itself with making a public declaration of war within its own territory, and to its own people. 1 *Kent's Com.* 53.

SOLEMNES LEGUM FORMULÆ. Lat. In the civil law. Solemn forms of laws; forms of forensic proceedings and of transacting legal acts. One of the sources of the unwritten law of Rome. *Butler's Hor. Jur.* 47.

SOLEMNITAS. Lat. [from *solemnis,* solemn.] A solemnity; a solemn form; a formal observance; a proceeding according to strict and regular form. Solemnitas *intervenire debet in mutatione liberi tenementi, ne contingat donationem deficere pro defectu probationis;* solemnity ought to be observed on the change of [ownership of]

a freehold, lest it happen that the gift fail for want of proof. *Co. Litt.* 48 a.

SOLEMNITAS ATTACHIAMENTORUM. L. Lat. In old English practice. Solemnity or formality of attachments. The issuing of attachments in a certain formal and regular order. *Bract.* fol. 439, 440. 1 *Reeves' Hist. Eng. Law*, 480. *Fleta*, lib. 2, c. 65, § 5.

SOLEMPNE. L. Fr. Solemn. *Britt.* c. 26. *Solempne crie;* solemn proclamation. *Id.* c. 121, fol. 279.

SOLEMPNITE. L. Fr. In old English law. Solemnity; formality. *Stat. Mod. Lev. Fines. Solempnite de attachementz. Britt.* c. 36. *Solempnite des esposailles;* solemnization of marriage. *Kelham.*

SOLICITOR. In practice. A person authorized to appear and act for parties to suits in chancery. The professional designation of persons admitted to practice in courts of chancery or equity, corresponding with *attorney* at common law.* 3 *Bl. Com.* 26. 3 *Steph. Com.* 331—335.

SOLICITOR-GENERAL. In English law. A law officer of the crown appointed by patent during the royal pleasure, and who has the care and concern of managing the sovereign's affairs. *Wharton's Lex.*

SOLIDATA. L. Lat. [from *solidus*, a shilling.] In old English law. A shilling rent. *Fleta*, lib. 4, c. 5, § 6. *Id.* lib. 6, c. 22, § 1.

SOLIDUM. Lat. In the civil law. A whole; an entire or undivided thing. See *In solidum.*

SOLIDUS. L. Lat. In old English law. A shilling. *Co. Litt.* 294 b. *Fleta*, lib. 2, cc. 9, 10, 11, 12.

SOLINUM. L. Lat. In old English law. Two plough-lands, and somewhat less than a half. *Co. Litt.* 5 a. Spelman defines it a plough-land.

SOLONQUE, *Solonc, Soloinc.* L. Fr. After; according to. *Kelham. Yearb.* P. 1 Edw. II. 5.

SOLUM. Lat. In the civil law. The soil; land; ground. **Solo cedit quod solo inædificatur.** That which is built upon the soil belongs to the soil. The proprietor of the soil becomes also proprietor of the building erected upon it. 1 *Mackeld. Civ. Law*, 181, § 268. **Omne quod inædificatur solo cedit.** *Dig.* 41. 1. 7. 10.

Solo cedit quod solo implantatur. That which is planted in the soil belongs to the soil. The proprietor of the soil becomes also the proprietor of the seed, the plant and the tree, as soon as these have taken root. 1 *Mack. Civ. Law*, 181, § 268.

SOLUTIO. Lat. [from *solvere*, to pay.] In the civil law. Payment. *Tollitur omnis obligatio* solutione *ejus quod debetur;* every obligation is dissolved by the payment of what is due. *Inst.* 3. 30, pr. See *Fleta*, lib. 2, c. 60, § 25.

The satisfaction or discharge of an obligation in any way; release from obligation. *Dig.* 50. 16. 176. *Id.* 46. 3. 54.

Solutio pretii emptionis loco habetur. The payment of the price [of a thing] is held to be in place of a purchase, [operates as a purchase.] *Jenk. Cent.* 56, case 2. 2 *Kent's Com.* 387.

SOLUTIO INDEBITI. Lat. In the civil law. Payment of what is not due; payment, by mistake, of money not due. *Inst.* 3. 28. 6. 1 *Kames' Equity*, 303.

A contract by which he who, by mistake, had been paid what was not due to him, was bound to make restitution to the person who had paid him. *Hallifax, Anal.* b. 2, c. 19, num. 7.

SOLUTUS. Lat. [from *solvere*, to loose.] In the civil law. Loosed; freed from confinement; set at liberty. *Dig.* 50. 16. 48.

In Scotch practice. Purged. A term used in old depositions. See *Purged of partial counsel.*

SOLVABILITÉ. Fr. In French law. Ability to pay; solvency. *Emerig. Tr. des Ass.* ch. 8, sect. 15.

SOLVENCY. [from Lat. *solvere*, to pay; Fr. *solvabilité.*] Ability to pay; present ability to pay; ability to pay all that one owes; ability to pay one's debts out of one's own present means. See 4 *Hill's* (N. Y.) *R.* 652. See *Solvent, Insolvency.*

SOLVENDO. Lat. Paying. An apt word of reserving a rent in old conveyances. *Co. Litt.* 47 a.

SOLVENDO. Lat. In the civil law. Solvent; able to pay; able to pay in full. **Solvendo esse nemo intelligitur nisi qui solidum potest solvere.** No one is understood [or considered] to be solvent, but him who can pay the whole. *Dig.* 50. 16. 114.

SOLVENDUS. Lat. In old English law. To be paid. *Fleta*, lib. 2, c. 64, § 3.

SOLVENT. [Lat. *solvens*, paying, from *solvere*, to pay.] Able to pay; able to pay in full; able to pay all just debts; able to pay out of present means; able to pay out of one's own means; able to pay one's debts in full out of one's own present

means.* 4 *Hill's* (N. Y.) *R.* 452, Cowen, J.

That *solvent* implies a *present* ability to pay, appears from the formation of the word itself, from the *present* participle (*solvens*) of the Latin *solvere*. It appears still more strikingly in the form of the corresponding civil law term *solvendo*, which literally signifies "*in paying*," or, as we might say, "in paying condition," clearly implying present capacity or power. Ability to pay *in full*, has also always been considered an essential element of solvency. This is shown in the civil law definition of the term *solvendo*, (q. v.) which has been formally adopted in the Civil Code of Louisiana. Art. 3522, n. 28.

SOLVERE. Lat. In the civil law. To pay. *Nec interest quis solvat;* nor does it matter who pays. *Inst.* 3. 30, pr.

To comply with one's engagement; to do what one has undertaken to do. Solvere *dicimus eum qui fecit quod facere promisit. Dig.* 50. 16. 176.

To loosen or disengage; to release one's self from obligation, as by payment of a debt. *Calv. Lex.*

SOLVIT. Lat. [from *solvere*, q. v.] He paid; paid. 10 *East*, 206.

SOLVIT AD DIEM. L. Lat. He paid at the day. The technical name of the plea, in an action of debt on bond, that the defendant paid the money *on the day* mentioned in the condition. 1 *Arch. N. Prius*, 220, 221.

SOLVIT POST DIEM. L. Lat. He paid after the day. The technical name of the plea in an action of debt on bond, that the defendant paid the money *after the day* named for the payment, and before the commencement of the suit. 1 *Arch. N. Pr.* 222.

SOMOUNS. L. Fr. Summons; a summons. *Britt.* c. 74.

SON. Fr. His. Declared, by the Civil Code of Louisiana, to be applicable to females as well as males. Art. 3522, num. 1.

SON ASSAULT DEMESNE. L. Fr. His own assault. The name of the plea to an action of trespass and assault, that it was the plaintiff's *own assault* that occasioned the injury, or that it was done by the defendant in his own defence against the plaintiff's first assault. 3 *Bl. Com.* 120, 121. *Steph. Pl.* 163.

SONIUM, *Sonius*, *Sunium*, *Sonnium*, *Sunnium*, *Sunius*, *Somnus*, *Somnis*. L. Lat. In old European law. An excuse for not appearing in court; an impediment; an essoin. *Spelman.*

SONTICUS. Lat. [from O. Lat. *sontire*, to hurt or hinder.] In the civil law. That which hurts, or hinders; that which tends to delay or put off; that which authorizes or excuses delay. A term applied in the Twelve Tables, to a serious illness, (*morbus sonticus*,) by which a defendant was prevented from appearing in court, and was for that reason excused. *Calv. Lex. A. Gell. Noct. Att.* xx. 1. 27. Hence *causa sontica;* a valid excuse for not appearing in court. *Adam's Rom. Ant.* 245, 272.

There are reasons for supposing this word to be the origin of *essoin*, (q. v.) though the latter word is usually very differently derived.

SORNER. In Scotch law. A person who takes meat and drink from others by force or menaces, without paying for it. *Bell's Dict.*

SOROR. Lat. In the civil law. Sister; a sister. *Inst.* 3. 6. 1. Derived by the jurist Antistius Labeo, from *seorsum*, apart, because she is born as it were *apart*, and is separated from the house in which she was born, and passes into another family, (soror *appellata est, quod quasi* seorsum *nascitur, separaturque ab ea domo in qua nata est, et in aliam familiam transgreditur.*) This is pronounced by Gellius an ingenious and subtile etymon. *Noct. Att.* xiii. 10.

SORS. Lat. In the civil law. A lot; chance; hazard; fortune. *Calv. Lex.*

The capital stock of a partnership, (*prima pecunia quæ confertur in societatem, ut inde lucrum fiat.*) *Id. Grotius de Jur. Bell.* lib. 2, c. 12, § 24, num. 2.

A principal sum of money, as distinguished from interest. *Id.* Used in this sense in old English records. *Super trecentas marcas de* sorte, *et centum marcas de interesse;* for three hundred marks of principal, and a hundred marks of interest. *Cowell.* See *Interesse. Et si debitum Judæi in manum regis devenerit, non capiet rex nisi* sortem, *hoc est, catallum in charta contentum;* and if the debt of a Jew falls into the hands of the king, the king shall claim nothing but the principal, that is, the chattel contained in the deed. *Fleta*, lib. 2 c. 57, § 8.

A thing recovered in an action, as distinguished from the costs of the action. *Clerke's Prax. Cur. Adm.* tit. 11.

SORTITIO. Lat. [from *sortiri*, to cast or draw lots.] In the civil law. A casting or drawing of lots; a determination or choice by lot. *Sortitio judicum;* a drawing of judges, (*judices,*) on criminal trials, resembling the modern practice of drawing a jury.* *Hallifax, Anal.* b. 3, c. 13, num. 20. 3 *Bl. Com.* 366.

SOT. L. Fr. A fool. *Britt.* c. 36. Probably a corruption of *fol*, which, in print, resembles it.

SOUB, *Soubs.* L. Fr. Under. *Kelham.*

SOUL-SCOT. [Sax. *saulsceat*, from *saul*, soul, and *sceat*, a payment.] In Saxon law. A mortuary; a bequest of a thing to the church, as a kind of spiritual expiation and amends for the delinquencies of the giver. See *Mortuary.* 2 *Bl. Com.* 425.

SOULZE, *Souz, Souce.* L. Fr. A shilling. *Kelham.*

SOUN. L. Fr. His. *Yearb.* P. 1 Edw. II. 6.

To SOUND. To have an essential quality. An action is technically said to *sound in damages*, where it is brought not for the specific recovery of a thing, but for damages only. See *Steph. Pl.* 105.

SOURD. L. Fr. [from Lat. *surdus.*] Deaf. *Britt.* c. 34.

SOURNOUN. L. Fr. A surname. *Fet Assaver*, § 33.

SOUTH. L. Fr. Under. *Litt.* sect. 139. *South boys;* underwood. *Kelham. South viscount;* under sheriff. *Stat. Westm.* 1, c. 15. *Southscripts;* underwritten. *Id. South dean;* sub dean. *Yearb.* M. 9 Edw. III. 33.

SOVENT. L. Fr. Often. *Trop sovent;* too often. *Artic. sup. Chart.* c. 13.

SOVERTIE. Sc. In old Scotch law. Surety. *Skene de Verb. Signif.*

SOWMING AND ROWMING. In Scotch law. Terms used to express the form by which the number of cattle brought upon a common by those having a servitude of pasturage may be justly proportioned to the rights of the different persons possessed of the servitude. *Bell's Dict.*

To SOWNE. In old English law. To be leviable. An old Exchequer term applied to sheriff's returns. "Estreats that *sowne* not," were such as the sheriff could not collect. 4 *Inst.* 107. *Cowell. Spelman.* Cowell supposes it to be a corruption of the Fr. *souvenu*, remembered.

SOY, *Soi.* L. Fr. His; himself. *Soy defendaunt;* defending himself; in self defence. *Britt.* c. 23.

SOYT, *Soyte.* Sc. In old Scotch law. Suit; suit to court. *Skene de Verb. Sign.* voc. *Sok.*

Soytor; suitor. *Id. ibid.*

SPARSIM. Lat. [from *spargere*, to scatter.] Scattered about; here and there. 2 *Bl. Com.* 283.

SPEAK TO. In practice. To argue. "The case was ordered to be *spoke to* again." 10 *Mod.* 107. 2 *Wash.* (Va.) *R.* [266,] 339.

SPECIAL AGENT. An agent who is appointed or constituted for a special purpose. 2 *Kent's Com.* 620. Such an agent has no discretion, but his authority must be strictly pursued. *Id. ibid.* and note.

SPECIAL BAIL. In practice. Bail to the action, given by a defendant as a security to abide the event of it. See *Bail to the action.*

SPECIAL BASTARD. In English law. One born before marriage of parents who intermarry afterwards. *Blackst. Mag. Cart.* Intr. lxxxi. Special bastardy *Id.* lxxxv.

SPECIAL CASE. See *Case.*

SPECIAL DAMAGES. In practice. Damages not necessarily resulting from an injury complained of; damages which require to be specially stated, and will not be implied by law.* Where the damages, though the natural consequence of the act complained of, are not the necessary result of it, they are termed *special damages*, which the law does not imply; and therefore, in order to prevent a surprise upon the defendant, they must be particularly specified in the declaration, or the plaintiff will not be permitted to give evidence of them at the trial. 2 *Greenl. Evid.* § 254.

SPECIAL DEMURRER. In pleading. A demurrer to a pleading on the ground of some defect of form, which is specially set forth. See *Steph. Pl.* 140, 141. *Mansel on Demurrer*, 2, 97.

SPECIAL INJUNCTION. In practice. An injunction by which parties are restrained from committing waste, damage or injury to property. 4 *Steph. Com.* 12, note (*z.*)

SPECIAL ISSUE. In pleading. An issue produced upon a special plea. *Steph. Pl.* 162. So called, as being usually more specific and particular than the general issues. *Id. ibid.*

SPECIAL JURY. In practice. A jury ordered by the court, on the motion of either party, in cases of unusual importance

or intricacy. Called, from the manner in which it is constituted, a *struck jury*. 3 *Bl. Com.* 357. 3 *Steph. Com.* 591. 1 *Tidd's Pr.* 787—793. See *Struck jury*.

SPECIAL OCCUPANT. A person having a special right to enter upon and occupy lands granted *pur auter vie*, on the death of the tenant, and during the life of *cestui que vie*. Where the grant is to a man *and his heirs* during the life of *cestui que vie*, the *heir* succeeds as special occupant, having a special exclusive right by the terms of the original grant. 2 *Bl. Com.* 259. 1 *Steph. Com.* 416. This doctrine of *special occupancy* has been adopted in some of the United States, but is not recognized in others. See 4 *Kent's Com.* 27. Where a wife is tenant *pur auter vie*, and dies during the life of *cestuy que vie*, the husband becomes the special occupant. 2 *Id.* 134.

SPECIAL PLEA. A special kind of plea in bar, distinguished by this name from the general issue, and consisting usually of some new affirmative matter, though it may also be in the form of a traverse or denial. See *Steph. Pl.* 52, 162.

SPECIAL PLEADER. In English practice. A person whose professional occupation is to give verbal or written opinions upon statements made verbally or in writing, and to draw pleadings, civil or criminal, and such practical proceedings as may be out of the usual course. 2 *Chitt. Gen. Pr.* 42.

SPECIAL PLEADING. The popular denomination of the science of pleading, so called, as Mr. Stephen seems to suppose, from the *special pleas* which occupy a prominent place in it. See *Steph. Pl.* 162, note. Perhaps the term *special* may have been used to distinguish it from *pleading*, which, in the popular sense, imports oral argument at the bar.

SPECIAL PARTNER. A partner with a limited or restricted responsibility; a limited partner.* 3 *Kent's Com.* 34. A member of a limited partnership, who furnishes certain funds to the common stock, and whose liability extends no farther than the fund furnished. *Id.* 35.

SPECIAL PARTNERSHIP. A partnership limited to a particular branch of business, or to one particular subject.* 3 *Kent's Com.* 30. *Story on Partn.* § 75.

SPECIAL PROPERTY. A property of a special, qualified or temporary kind, arising from the peculiar circumstances under which it is acquired; such as the property of the finder of a thing lost, until the right owner is discovered, and the property of a sheriff in goods taken in execution, between the time of seizure and actual sale. 2 *Steph. Com.* 73, 74.

SPECIAL RULE. In practice. A rule granted upon the actual motion of counsel in court; as distinguished from a *common* rule, or rule of course. 1 *Tidd's Pr.* 485.

SPECIAL SERVICE. In Scotch law. That form of service by which the heir is served to the ancestor who was feudally vested in the lands. *Bell's Dict.* See *Service*.

SPECIAL TRAVERSE. In pleading. A peculiar form of traverse or denial, the design of which, as distinguished from a *common* traverse, is to explain or qualify the denial, instead of putting it in the direct and absolute form. It consists of an affirmative and a negative part; the first setting forth the new affirmative matter tending to explain or qualify the denial, and technically called the *inducement;* and the latter constituting the direct denial itself, and technically called the *absque hoc*. *Steph. Pl.* 169—180.

SPECIAL VERDICT. In practice. A special finding of the facts of a case by a jury, leaving to the court the application of the law to the facts thus found. 1 *Arch. Pr.* 213. 3 *Bl. Com.* 377. 2 *Tidd's Pr.* 897. It must state the facts as proved, and not the evidence given to prove the facts. 5 *Hill's* (N. Y.) *R.* 634. 4 *Id.* 171.

SPECIALIS. L. Lat. In old practice. Special. *Exceptio specialis;* a special exception or plea. *Fleta*, lib. 2, c. 60, § 36.

SPECIALTY. A contract or obligation under seal. *Chitty on Contr.* 3. A contract by deed; an instrument in writing, sealed and delivered. See *Deed*.

SPECIALTY DEBT. A debt due, or acknowledged to be due by deed, or instrument under seal. 2 *Bl. Com.* 465.

SPECIES. Lat. In the civil law. Form; figure; fashion or shape. A form or shape given to materials. *Cum ex aliena materia* species *aliqua facta sit ab aliquo, quæri solet quis eorum naturali ratione dominus sit;* where any form has been made by any one out of another's material, it is often asked which of them ought, in natural reason, to be deemed the owner. *Inst.* 2.

1. 25. 1 *Mackeld. Civ. Law*, 277, § 265. See *Specificatio.*

A thing made, formed or shaped out of any substance or material, (*materia.*) *Fleta*, lib. 3, c. 2, § 14.

SPECIES. Lat. A particular thing; as distinguished from *genus*, (q. v.)

SPECIES FACTI. Lat. In Scotch law. The particular criminal act charged against a person. "The *species facti* amounted to robbery." 2 *Brown's R.* 446.

SPECIFIC. Having a certain form or designation; observing a certain form; particular; precise.

SPECIFIC LEGACY. A legacy or gift, by will, of a particular specified thing, as of a horse, a piece of furniture, a term of years and the like. *Ward on Legacies*, 16.

In a strict sense, a legacy of a particular chattel, which is specified and distinguished from all other chattels of the testator of the same kind; as of a horse of a certain color. See *Id.* 17.

A legacy of a quantity of chattels described collectively, as a gift of all the testator's pictures. *Id.* 18.

SPECIFIC PERFORMANCE. Performance of a contract in the precise form, or according to the precise terms agreed upon; strict performance. This is frequently compelled by a bill in equity filed for the purpose. See 2 *Story's Eq. Pl.* § 712, *et seq.*

SPECIFICATIO. Lat. [from *species*, form, and *facere*, to make.] In the civil law. Literally, a making of form; a giving of form to materials. That mode of acquiring property through which a person, by transforming a thing belonging to another, especially by working up his materials into a new species, becomes proprietor of the same. 1 *Mackeld. Civ. Law*, 277, § 265. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 368. The making of wine, oil or flour, out of the grapes, olives or wheat of another, were common instances of *specificatio. Inst.* 2. 1. 25. *Fleta*, lib. 3, c. 2, § 14.

SPECIFICATION. In patent law. A particular description. A written description of an invention or discovery, and of the manner and process of making, constructing, using and compounding it; expressed in full, clear and exact terms, so as to enable any person skilled in the art or science to which it appertains, to make, construct, compound and use it.* See 2 *Kent's Com.* 366.

SPECIOSUS. Lat. In the civil law. Distinguished. *Dig.* 50. 16. 100.

SPECULUM. Lat. [Germ. spiegel.] Mirror or looking-glass. The title of several of the most ancient law books or compilations. One of the ancient Icelandic books is styled *Speculum Regale.* In the preface to this work, four others, bearing the same title of *Speculum*, are referred to. There is also a collection of the ancient laws of Pomerania and Prussia, under the same title. *Barringt. Obs. Stat.* 1, 2, note [*b.*] See *Mirror.*

SPECUS. Lat. In the civil law. A subterranean passage for water. A word not very satisfactorily defined in the Digests as *locus ex quo despicitur. Dig.* 43. 21. 1. 3.

SPERVARIUS, *Sparvarius*, *Sparverius.* L. Lat. In old English law. A sparrow-hawk, or spar-hawk. *Mem. in Scacc.* 22 Edw. I. *Fleta*, lib. 2, c. 41, § 7. *Spelman*, voc. *Sparverius.*

SPES ACCRESCENDI. Lat. Hope of surviving. 3 *Atk.* 762. 2 *Kent's Com.* 424.

SPES RECUPERANDI. Lat. Hope of recovering (a prize or captured vessel.) 1 *Kent's Com.* 101.

SP'IALIS. A contraction of *specialis.* 1 *Inst. Cler.* 13.

SPINSTER. The addition given to unmarried women, in legal proceedings, and in conveyancing. The term "single woman" is now generally used in its place. *Spinster* is said in Dyer to be an indifferent addition to a man as well as a woman. *Dyer*, 47.

SPIRITUAL COURTS. In English law. The ecclesiastical courts, or courts christian. See 3 *Bl. Com.* 61.

SPITTAL. An old form of *hospital.* 1 *P. Wms.* 426.

SPOLIATIO. Lat. [from *spoliare*, to despoil.] In old English law. Forcible deprivation of possession; disseisin. *Fleta*, lib. 4, c. 2.

SPOLIATION. [Lat. *spoliatio*, from *spoliare*, to despoil or rob.] In English ecclesiastical law. An injury done by one clerk or incumbent to another, in taking the fruits of his benefice without any right to them, but under a pretended title. 3 *Bl. Com.* 90, 91.

A violent deprivation of possession. 4 *Reeves' Hist. Eng. Law*, 18.

In the law of evidence. Destruction of a thing by the act of a stranger; the era-

sure, alteration, mutilation or defacement of a writing by the act of a stranger. See 1 *Greenl. Evid.* § 566.

SPOLIATOR. Lat. [from *spoliare*, to despoil.] In old English law. A despoiler; a disseisor. *Fleta*, lib. 4, c. 2, §§ 19, 20, 22.

A destroyer (of a deed.) See *In odium spoliatoris.*

Spoliatus debet ante omnia restitui. A party despoiled [forcibly deprived of possession] ought first of all to be restored. 2 *Inst.* 714. 4 *Reeves' Hist.* 18.

SPOLIUM. Lat. In the civil and common law. A thing violently or unlawfully taken from another. 1 *Mackeld. Civ. Law*, (by Kaufmann,) 261, note.

SPONDEO. Lat. In the civil law. I undertake; I engage. *Inst.* 3. 16. 1. *Id.* 3. 17, pr.

SPONDERE. Lat. In the civil law. To engage; to undertake; to stipulate, or stipulate for.

Spondet peritiam artis. He promises the skill of his art; he engages to do the work in a skilful or workmanlike manner. 2 *Kent's Com.* 588. Applied to the engagements of workmen for hire. *Id. ibid. Story on Bailm.* § 428.

SPONDES? SPONDEO. Lat. Do you undertake? I do undertake. The most common form of verbal stipulation in the Roman law. *Inst.* 3. 16. 1.

SPONSALIA. Lat. [from *spondere*, to engage.] In the civil and canon law. Spousals, or espousals; betrothment; affiance. A mutual contract of future marriage. *Calv. Lex. Dig.* 23. 1. *Shelf. Marr. & Div.* 28. Sponsalia *sunt mutua repromissio futurarum nuptiarum, rite inter eos quibus jure licet, facta;* spousals are a mutual promise of future marriage; duly made between those persons to whom it is allowed by law. *Swinburne on Spousals*, 8. The passage in the Digests from which this seems to be taken, reads—*sponsalia sunt* mentio et *repromissio nuptiarum futurarum;* spousals are the mention and promise of future nuptials. *Dig.* 23. 1. 1.

Sponsalia de futuro; a mutual promise of marriage to be had afterwards. As when a man said to a woman, "I *will* take thee to my wife," and she answered, "I *will* take thee to my husband." *Swinb. on Spousals*, 8.

Sponsalia de præsenti; a mutual promise of present matrimony. As when the man said to the woman, "I *do* take thee to my wife," who then answered, "I *do* take thee to my husband." *Id. ibid. Shelf. Marr. & Div.* 26, 27. See *Hubback's Evid. of Succession*, 298.

SPONSALIA. Lat. In the common law. Spousals; actual marriage. *Co. Litt.* 34 a. *Hargrave's note*, 210. See *Fleta*, lib. 3, c. 11. *Id.* lib. 6, c. 39.

SPONSIO. Lat. [from *spondere*, to engage.] In the civil law. An engagement or undertaking; particularly such as was made in the form of an answer to a formal interrogatory by the other party. *Calv. Lex. Dig.* 50. 16. 7. See *Spondes.*

An engagement to pay a certain sum of money to the successful party in a cause. *Calv. Lex.*

SPONSIO LUDICRA. Lat. In Scotch law. A trifling or ludicrous engagement, such as a court will not sustain an action for. 1 *Kame's Equity*, Introd. 34.

In the civil law, this term seems to have signified an informal undertaking, or one made without the usual formula of interrogation. *Calv. Lex.* citing *Budæus.*

SPONSIONS. [Lat. *sponsiones*, from *spondere*, to engage.] In international law. Engagements made on behalf of states by agents not specially authorized, or exceeding the limits of the authority under which they purport to be made; and which, to be valid, must be confirmed by express or tacit ratification. Such as the official acts of admirals and generals suspending or limiting hostilities, capitulations of surrender, cartels of exchange, &c. See *Grotius de Jure Belli*, lib. 2, c. 15, § 16. *Id.* lib. 3, c. 22, §§ 1—3. *Wheaton's Internat. Law*, part 3, ch. 2, §§ 3, 4.

SPONTE virum mulier fugiens et adultera facta Dote sua careat, nisi sponsi sponte retracta.

A woman voluntarily leaving her husband and becoming an adulteress shall forfeit her dower, unless taken back by the free act of the husband. *Co. Litt.* 32 b. An old rhyming Latin couplet, framed to express the principle that a wife's dower is forfeited by her adulterous elopement. See 2 *Kent's Com.* 52, *et seq.*

SPORTULA. Lat. In the Roman law. A largess, dole, or present; a pecuniary donation; an official perquisite; something over and above the ordinary fee allowed by law. *Inst.* 4. 6. 24. See *Brissonius.*

Costs of suits. *Nov.* 82, c. 7.

SPOUSALS. [Lat. *sponsalia.*] In old English law. Mutual promises to marry. See *Sponsalia.*

SPOUSE-BREACH. In old English law. Adultery. *Cowell.*

SPREN. O. Eng. In old records. Broken wood or wind-fall. *Cowell.*

SPRING-BRANCH. In American land law. A branch of a stream, flowing from a spring. 12 *Grattan's R.* 196.

SPRINGING USE. A use limited to arise on a future event, where no preceding estate is limited, and which does not take effect in derogation of any preceding interest. If a grant be to A. in fee, to the use of B. in fee, after the first day of January next, this is an instance of a springing use, and no use arises until the limited period. The use, in the mean time, results to the grantor, who has a determinable fee. 4 *Kent's Com.* 297, 298. See 1 *Steph. Com.* 502. 2 *Crabb's Real Prop.* 498, § 1689.

SPUILZIE, *Spulzie.* In Scotch law. The taking away of one's movables, without order of law, or consent of the owner. 1 *Forbes' Inst.* part 2, p. 200. *Bell's Dict.*

SPURIUS. Lat. In the civil law. A bastard; the offspring of promiscuous cohabitation, otherwise called *vulgo quæsitus*, or *conceptus;* (Gr. ἀπάτωρ.) *Inst.* 1. 10. 12.

One born of an unlawful intercourse, (*ex nuptiis injustis*, or *ex damnato coitu.*) *Id. Bract.* fol. 63.

"SQUARE," construed. *Anstr.* 44.

SQUATTER. In American law. One who settles on another's land, usually on new or wild land, without a title.

One who settles on public land without title or authority. See 1 *Hilliard's Real Prop.* 89, [53.]

SS. An abbreviation used in that part of a record, pleading, or affidavit, called the statement of the *venue*, or county in which it is made: as "City and county of New-York, ss." or more briefly in the English forms, "London, ss." Commonly translated or read, "to wit," and supposed to be a contraction of "*scilicet*," (q. v.) It has been otherwise explained to be a mark used to denote a separate section or paragraph in the record. 1 *Chitt. Pl.* 305, note (*t.*) 6th Am. ed. And this opinion is countenanced by the more ancient form of the contraction ff, or *ff*, the latter closely approximating the modern section mark §. Bracton, indeed, expressly uses ff, to denote the sections of the civil law. *Bract.* fol. 114.

Stabit præsumptio donec probetur in contrarium. A presumption shall stand, until proof be made to the contrary. *Wingate's Max.* 712. *Hob.* 297. *Broom's Max.* 429, [731.]

Another form of this maxim is, **Stabitur præsumptioni donec probetur in contrarium.** A presumption will be stood by, or upheld until proof be made to the contrary. This is the form in which it is quoted by Bracton, Coke and Blackstone. *Bract.* fol. 6. *Co. Litt.* 373 b. 3 *Bl. Com.* 371. Still another form is **Standum erit præsumptioni, donec,** &c. *Bract.* fol. 19 b. See *Fleta*, lib. 3, c. 9, § 18.

STABLE-STAND. [L. Lat. *in stabili statione.*] In forest law. One of the four evidences or presumptions whereby a man was convicted of an intent to steal the king's deer in the forest. This was when a man was found at his *standing* in the forest with a cross-bow or long-bow bent, ready to shoot at any deer, or else standing close by a tree with grey-hounds in a leash, ready to slip. *Cowell. Manwood.*

STABULARII. Lat. [plur. of *stabularius*, q. v.] In the civil law. Stable-keepers; hostlers; (*qui stabulum exercent.*) *Dig.* 4. 9. 1. 5. *Story on Bailm.* § 464.

STABULARIUS. Lat. [from *stabulum*, a stable.] In the civil law. A stable-keeper. *Dig.* 4. 9. 4. 1. *Id.* 4. 9. 5.

STACHIA. L. Lat. In old records. A dam or head made to stop a water-course. *Cowell.*

STAFF'. An abbreviation of Staffordshire. 1 *Instr. Cler.* 28.

STAGNUM. Lat. In the civil law. A pool. Defined by Ulpian, in the Digests, as that which contains water resting in it for a time, which water is collected for the most part in winter; (*quod temporalem contineat aquam ibidem stagnantem, quæ quidem aqua plerumque hieme cogitur.*) *Dig.* 43. 14. 1. 4.

STAGNUM. Lat. In old English law. A pool, or pond. *Co. Litt.* 5 a. This word included both the soil and the water. *Vaugh.* 108.

STALLAGE. [from Sax. *stal*, a station; L. Lat. *stallagium.*] In English law. The liberty or right of pitching or erecting stalls in fairs or markets. *Cowell. Spelman.*

A duty paid for the liberty of having stalls in a fair or market, or of removing them from one place to another. *Id.* 1 *Crabb's Real Prop.* 533, § 686. 6 *Ad. & Ell.* N. S. 31.

STALLANGIATORES. L. Lat. [from

stallum, a stall.] In old Scotch law. Foreign merchants, (Sc. "creamers or forraine merchandes,") who, in the time of fair or market, pay certain duty for their stall or stand, in which they sell their merchandize. *Skene de Verb. Signif.*

STALLARIUS. L. Lat. [from Sax. *stal*, a stall.] In Saxon law. A heretoch, or chief military leader. Supposed by Spelman to be of similar origin and import with the continental term *constabularius*. See *Constable of England*.

STAMP. In English law. An impression made upon paper or parchment, upon which many legal proceedings and private instruments are written, and for which a certain duty is required to be paid to the crown. See *Smith on Contracts*, 191, note (*b.*)

STAMP ACTS. In English law. Acts regulating the stamps upon deeds, contracts, agreements, papers in law proceedings, bills and notes, letters, receipts and other papers. The General Stamp Act now in force is the 55 Geo. III. c. 184. See *Smith on Contracts*, 191, note (b,) for a view of the present stamp law.

STAMP DUTIES. In English law. Duties imposed upon and raised from stamps upon parchment and paper; and forming a branch of the perpetual revenue of the kingdom. 1 *Bl. Com.* 323.

STANCE. In Scotch law. A resting place; a field or place adjoining a drove-road, for resting and refreshing sheep and cattle on their journey. 7 *Bell's Appeal Cases*, 53, 57, 58.

To STAND. [Lat. *stare;* L. Fr. *estre.*] To abide; to submit to; to meet a thing, instead of escaping from it. "To *stand* a trial," "to *stand to* the order of a court," are phrases still in use. In Scotch law, the same idea is expressed by the opposite figure of "underlie." To "underlie the law" in a certain court, is to abide by its sentence. 2 *Alis. Cr. Pr.* 337.

To have force or strength; to have strength in itself. An act is said "to *stand* good" against a party. To be good or effectual in law. "That all the words may *stand* is the first and true course." *Bacon's Arg.* Case of Revocation of Uses; *Works*, iv. 255.

To remain as a thing is; to remain in force. Pleadings demurred to and held good, are allowed to *stand*. "The prohibition must stand." 11 *Mod.* 286.

To appear in court. A party is said to have a capacity of *standing* in judgment, (*standi in judicio,*) that is, of appearing in court and litigating there. 1 *Peters' R.* 578.

The radical ideas of this figurative term are those corresponding with its literal meaning, viz.: fixedness of position, inherent firmness or strength, capacity of maintaining an upright position. But these appear more clearly in the application of the Latin equivalent *stare*, (q. v.) See *Rectus in curia.*

STANDARD OF WEIGHT or MEASURE. A weight or measure fixed and prescribed by law, to which all other weights and measures are required to correspond. See 1 *Bl. Com.* 274—276.

STANNARY COURTS. In English law. Courts held for the *stannaries*, or tin mines (from Lat. *stannum*, tin,) in Devonshire and Cornwall, for the administration of justice among the tinners therein. 3 *Bl. Com.* 80. 3 *Steph. Com.* 448.

STAPLE. [L. Lat. *stapula*, q. v.] In English law. A mart or market. A place where the buying and selling of wool, lead, leather and other articles, were put under certain terms. 2 *Reeves' Hist. Eng. Law*, 393.

STAPULA. L. Lat. [from Germ. stapel or staffel, a step or heap.] In European law. Staple; market. *Loccen. de Jur. Mar.* lib. 1, c. 10.

STAR, *Starr.* [L. Lat. *starrum.*] In old English law. A contraction of the Hebrew *shetar*, (שטר,) signifying a deed or contract; or rather, a misapprehension of the Jewish pronunciation (*shtar* or *shtor*) of the word. All the deeds, obligations and releases of the Jews in England, were anciently called *stars*, (*starra,*) and were written for the most part in Hebrew alone, or in Hebrew and Latin, the Hebrew being on the one side or top of the parchment, and the Latin on the other side, or bottom, after the Hebrew. *Blount. Cowell. Molloy de Jur. Mar.* 466. In the second edition of Blount, A. D. 1691, it is said that one of these *stars* yet remains in the treasury of the exchequer, written without points in King John's reign, the substance of which is thus expressed in Latin just under it, like an English condition under a Latin obligation. *Istud* star *fecit Hagius filius Magri de London, Domino Adæ de Stratona, de acquietancia de Stanmore, de omnibus debitis in quibus Dominus S. de Cheyndut ei*

tenebatur. Ita quod idem Judæus *nec hæredes sui nihil exigere possint de prædicto Ade, nec de hæredibus suis, ratione terræ de Stanmore de prædictis debitis.* Which may be translated thus: "This *star* made [was made by] Hagius the son of Mager, of London, to the Lord Adam de Stratton for an acquittance of Stanmore, of all the debts in which the Lord S. de Cheyndut was bound to him. So that neither the said Jew nor his heirs can demand any thing of the said Adam or his heirs, on account of the land of Stanmore for the aforesaid debts." Reference is made both by Cowell and Blount, to the Plea Rolls, *Pasch.* 9 *Edw.* I. Rot. 4, 5, 6, where many *stars*, as well of grant and release, as obligatory and by way of mortgage, are pleaded and recited at large. In Selden's *Titles of Honour*, (p. 798, *et seq.*) there is a copy of a Hebrew *shetar*, taken from the records of the exchequer. By an ordinance of Richard I. preserved by Hoveden, these Jewish *starrs* were commanded to be enrolled and deposited in chests under three keys, in certain places; one, and the most considerable of which, was in the king's exchequer at Westminster. 4 *Bl. Com.* 266, note. See *Arca chirographica Judæorum.*

STAR-CHAMBER. [L. Lat. *camera stellata;* L. Fr. *chaumbre des esteilles.*] The name of a celebrated court in England, abolished in the reign of Charles I. See *Court of Star-Chamber.*

*** This court is said to have been so called either from the Sax. *steoran*, to steer or govern;—or from its punishing the *crimen stellionatus*, or cosenage;—or because the room wherein it sat, the old council chamber of the palace of Westminster, was full of *windows;*—or because *haply* the roof or ceiling was at the first garnished with gilded *stars;* the latter being the opinion of Lord Coke. 4 *Inst.* 66. All these are very reasonably pronounced by Sir W. Blackstone to be merely conjectures, *no stars* being visible in the roof of the apartment in his day, nor are any said to have remained there so late as the reign of Queen Elizabeth. 4 *Bl. Com.* 266, note. The learned commentator's own opinion, as very clearly explained by him, is that the *star-chamber* was so called from being held in that room at the exchequer where the chests containing those Jewish contracts and obligations called *starrs*, (from the Hebrew *shetar*, pronounced *shtar*,) were kept. That the principal repository of these *starrs* was in the king's Exchequer at Westminster, is clearly shown by an ordinance of Richard I. preserved by Hoveden; and the first time the *star-chamber* is mentioned in any record, it is expressly said to have been situated near the receipt of the exchequer at Westminster. *Rot. Claus.* 41 *Edw.* III. m. 13. It may be added, in confirmation of this opinion, that the old technical title of the Rolls Office of the Chancery, (*Domus Conversorum*,) originated in a very similar way, it being held in a *house* built by King Henry III. for Jews *converted* to the Christian faith, but which, on the expulsion of the Jews by Edward III. was assigned as a place for the custody of the rolls and records of the chancery. *Cowell*, voc. *Rolls.* The law Latin and law French titles of this court are of no value in an etymological point of view, as they seem to have become established at a comparatively modern date, when the true meaning of *starr* or *star* was forgotten.

STARE. Lat. In old English law. To stand; to be good or valid in law; the opposite of *cadere*, to fall or fail. *Aut* stabit *appellum aut cadet;* the appeal will either *stand* or fall. *Bract.* fol. 140 b. See *Cadere. Contractus* stare *non poterit;* the contract cannot stand. *Id.* fol. 62.

To meet; to abide. *Ad* standum *recto;* to stand to an accusation; to appear and answer it. *Bract.* fol. 125, 154. Sometimes translated *to stand to the right;* and otherwise expressed *stare juri. Reg. Orig.* 250 b. *Right*, however, in this instance, seems to be merely an Anglicized form of the L. Lat. *rectum*, an accusation. See *Rectum, Rettum.*

To appear in court; to be a party to an action or other judicial proceeding. See *Persona standi in judicio.*

To stop or stay. See *Stet processus.*

To stand; to accept an office to which one has been appointed. *Stare recusare;* to refuse to stand. 3 *M. & S.* 184.

STARE DECISIS. Lat. To stand by decided cases; to uphold precedents; to maintain former adjudications. 1 *Kent's Com.* 477. "It is better *stare decisis.* The very case has already been determined." Grose, J. 13 *East*, 320. A part of an old verse, expressed at length,

Stare decisis, et non quieta movere.

To stand by precedents, and not to disturb settled points.

In a recent case in the New-York Court of Appeals, it was held that the judicial rule, *stare decisis*, should have great force with this court in reference to adjudications on questions of law made by it, after full discussion and examination. Accordingly, where, on a second appeal, the question presented was identical with that on which the cause was previously decided by the court, it was held that the court would not reconsider and depart from its former adjudication, although its members were not unanimous in making that decision, and the reasoning of those who concurred was not in harmony. 3 *Kernan's R.* 500. But see 6 *Ohio St. R.* 78.

STATE. [Lat. *status.*] Condition. See *Status.*

STATE. [Lat. *respublica.*] In public law. A complete or self-sufficient body of persons, united together in one community for the defence of their rights, and to do right to foreigners. 1 *Kent's Com.* 189, note.—A political body, or body politic; the whole body of people united under one government. *Webster.* A government.

STATE. O. Eng. Estate; an estate. A word frequently used by Lord Bacon. *Works*, vol. iv. *passim.*

To STATE. To express the particulars of a thing in writing or in words; to set down or set forth in detail; to relate at length, or in full. As, to *state* an account, to *state* a case.

To set down in gross; to mention in general terms, or by way of reference; to refer. This was held to be the sense of the word, in a case in the Supreme Court of New-York. 6 *Hill's R.* 300.

STATED. Settled; closed. An account *stated* means an account settled, and at an end. *Pulling on Merc. Accounts*, 33. "In order to constitute an account *stated*, there must be a statement of some certain amount of money being due, which must be made either to the party himself, or to some agent of his." Parke, B. 5 *Mees. & W.* 667.

STATIM. Lat. [Fr. *maintenant.*] In old English law. Immediately. This word was not always literally understood, or rather, it was understood not so much of *actual* time, as of *effectual* and *lawful* time; that is, of a time which permitted all the legal adjuncts and accompaniments of an act to be completed. See *Bacon's Argument* in the Case of Revocation of Uses; *Works*, iv. 253, 254.

STATULIBER. Lat. In the Roman law. One who is made free by will under a condition; one who has his liberty fixed and appointed at a certain time or on a certain condition, (*qui* statutam *et destinatam in tempus vel conditionem* libertatem *habet.*) *Dig.* 40. 7.

STATUS. Lat. [from *stare*, to stand.] In the civil law. Standing; state; condition. *Dig.* 1. 5. The condition of a person as being either freeman or slave. *Dig.* 1. 5. 3. A certain civil qualification, otherwise called *caput*, (q. v.;) a civil capacity for rights. 1 *Mack. Civ. Law*, 129, § 119. A quality by reason of which men enjoy a different right. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 3, § 76. See 2 *Kent's Com.* 457, note. The term is of frequent occurrence in Bracton and Fleta. *Bract.* fol. 190 b. *Fleta*, lib. 2, c. 51, § 1. *Id.* lib. 4, c. 11. And it is still currently used in modern law. See the Ohio case of Anderson *v.* Poindexter, 6 *Ohio St. R.* 622—727.

STATUS. Lat. In old English law. Estate. 1 *Mod.* 101. By a grant or release of "*totum statum suum*," the fee simple will pass. Hale, C. J. and Wylde, J. *Id. ibid.*

STATUTE. [L. Fr. *estatut;* L. Lat. *statutum*, from *statuere*, to establish.] An act of the legislature of a state, [declaring] commanding or prohibiting something. *Webster.*—An express act of the legislature of a country. 2 *Kent's Com.* 456. Literally, a thing established. Sometimes called, in the old books, an *establishment*, (q. v.) See 1 *Bl. Com.* 85. 1 *Steph. Com.* 66. A law made with all the formalities of legislation.* Statute law is the express written will of the legislature, rendered authentic by certain prescribed forms and solemnities. 1 *Kent's Com.* 447.

STATUTE. In old English law. A bill or law which, after receiving the royal assent on the parliament roll, was entered on the *statute roll*, by which it became complete. A *statute* was thus distinguished from an *ordinance*, (q. v.) which became complete by the royal assent on the parliament roll, without further entry. *Hale's Hist. Com. Law*, 13, 14, note (C,) Runnington's ed. 1820. But this distinction was not always made, acts of parliament, or statutes, being frequently called ordinances, and ordinances as frequently styled acts of parliament or statutes. *Id. ibid.*

STATUTE. [Lat. *statutum.*] In foreign and civil law. Any particular municipal

law or usage, though resting for its authority on judicial decisions, or the practice of nations. 2 *Kent's Com.* 456.—The whole municipal law of a particular state, from whatever source arising. *Story's Confl. Laws*, § 12.

STATUTE. In English law. An abbreviation of statute staple. *Freem.* 44.

To STATUTE. In old Scotch law. To establish. "Decerns, statutes and ordains." 1 *How. St. Trials*, 1381.

STATUTE OF FRAUDS. See *Frauds, Statute of.*

STATUTE OF LIMITATIONS. A statute by which rights of action are limited to certain prescribed periods of time. A statute fixing and limiting certain periods of time, beyond which rights of action cannot be enforced.* 3 *Bl. Com.* 306—308.

STATUTE-MERCHANT. In English law. A security for a debt acknowledged to be due, entered into before the chief magistrate of some trading town, pursuant to the statute 13 Edw. I. *De Mercatoribus*, by which not only the body of the debtor might be imprisoned, and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits of them the debt be satisfied. 2 *Bl. Com.* 160. Now fallen into disuse. 1 *Steph. Com.* 287.

STATUTE ROLL. In English law. A roll upon which an act, after receiving the royal assent, was formally entered. *Hale's Hist. Com. Law*, 13, (Runnington's ed. 1820.) See 1 *Bl. Com.* 182. "The first Statute Roll we have," says Lord Hale, "is in the Tower; it begins with Magna Charta, and ends with Edward III. and is called *Magnus Rotulus Statutor.*" *Hist. Com. Law*, 16, 17.

STATUTE-STAPLE. In English law. A security for a debt acknowledged to be due, so called from its being entered into before the mayor of the *staple*, that is to say, the grand mart for the principal commodities or manufactures of the kingdom, formerly held by act of parliament in certain trading towns. In other respects it resembled the *statute-merchant*, (q. v.) but like that has now fallen into disuse. 2 *Bl. Com.* 160. 1 *Steph. Com.* 287.

STATUTUM. Lat. [from *statuere*, to determine.] In the civil law. Established; determined. A term applied to judicial action. *Dig.* 50. 16. 46, pr.

STATUTUM. Lat. [from *statuere*, to establish.] In old English law. A statute; an act of parliament. *Fleta*, lib. 2, c. 47, § 10. *Ex* statuto *Magnæ Cartæ;* according to the statute of Magna Charta. *Id.* lib. 5, c. 11, § 1. **Statutum affirmativum non derogat communi legi.** An affirmative statute does not derogate from the common law. *Jenk. Cent.* 24.

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. When the words of a statute are special, but the reason of it general, the statute is to be understood generally. 10 *Co.* 101.

STATUTUM WALLIÆ. Lat. The Statute of Wales. The title of a statute passed in the 12th year of Edw. I. being a sort of constitution for the principality of Wales, which was thereby, in a great measure, put on the foot of England, with respect to its laws and the administration of justice. 2 *Reeves' Hist.* 93, 94. For a view of its provisions, see *Id.* 95—99.

STAURUM, *Staurus.* L. Lat. In old records. A store, or stock of cattle. *Dyer*, 110. A term of common occurrence in the accounts of monastic establishments. *Spelman. Cowell.*

STAY. In practice. A stopping; the act of stopping or arresting a judicial proceeding, by the order of a court or judge. Orders for a *stay* of proceedings are frequent in practice.

To STAY. In practice. To stop; to arrest by a judicial order. "Let it *stay;* and judgment was *stayed.*" 12 *Mod.* 269.

STEALTH. Theft is so called by Finch. "Stealth is the wrongful taking of goods without pretence of title." *Law*, b. 3, ch. 17.

STEELBOW GOODS. In Scotch law. Corns, cattle, straw and implements of husbandry delivered by a landlord to his tenant, by which the tenant is enabled to stock and labour the farm; in consideration of which he becomes bound to return articles equal in quantity and quality, at the expiry of the lease. *Bell's Dict.*

STEEL-YARD, *Stillyard, Stilyard.* [L. Lat. *Guildhalda Teutonicorum.*] In old English law. A place or house in London, where the fraternity of the *Easterling merchants*, otherwise called *The merchants of the Hanse and Almaine*, had their abode. It was at first so denominated from a broad place or court where *steel* was sold, upon which that house was founded. *Cowell.* The *Stilyard Company* was a body of

merchants created in the year 1215 under Henry IV. in favor of the free cities of Germany which had been assistant to him in his wars against France. It took its name from the place where they lived, which was a *yard* near London Bridge where *steel* was sold. *Dyer*, 92 b, note. In the modern books, the *merchants of the Steel-Yard* are said to be a company to whom the *steel-yard* (meaning the balance for weighing goods) was assigned by Henry III. *Brande.*

STELLIONATE. [from Lat. *stellionatus*, q. v.] In Scotch law. The crime of aliening the same subject to different persons. 2 *Kames' Equity*, 40. *Bell's Dict.*

STELLIONATUS. Lat. [from *stellio*, a lizard.] In the civil law. A general term used to denote all kinds of fraud and imposition which were not designated by any more special appellation. *Dig.* 47. 20. The mortgaging or selling another's property as one's own, or the mortgaging one's property a second time without notice of the first mortgage, were acts of *stellionatus*, or *stellionate*, as it is rendered in Scotch law.

ΣΤΕΜΜΑΤΑ, *Στέμματα.* Gr. In the civil law. Tables of genealogy. *Dig.* 38. 10. 9.

STERBRECH, *Strebrech.* Sax. [from *stre*, a way, and *brech*, a breaking.] In old English law. The offence of breaking up, obstructing, or narrowing a way or road. *LL. Hen.* I. c. 81. *Spelman.*

"STERILITY," *ex vi termini*, imports an ungrateful soil; a sort of natural and constitutional infecundity, resisting the ordinary means properly applied to render it otherwise. Lord Ellenborough, 2 *M. & S.* 359.

STERLING. [L. Lat. *sterlingus*, *sterlingum.*] In English law. Current or standard coin, especially silver coin; a standard of coinage. Anciently written *esterling*, (q. v.)

In old English law. A penny. *Fleta*, lib. 2, c. 12, § 11. See *Esterling.*

STET PROCESSUS. L. Lat. (Let the process stay or stand; let the proceedings be stayed.) In practice. An entry on the record, of a nature similar to a *nolle prosequi*, by which a plaintiff agrees that all further proceedings in the action shall be stayed. In English practice, this entry is usually made, where the defendant becomes insolvent pending the action, and the object of it is to prevent him from obtaining judgment as in case of a nonsuit. 1 *Tidd's Pr.* 682, 683.

STETH, *Stede.* In old English law. The bank of a river. *Co. Litt.* 4 b.

STEURA. L. Lat. In old European law. A tribute; an exaction or tax. *Spelman.*

STICH. (plur. *Stiches.*) In English law. A furrow or ridge of land. 2 *Taunt.* 38, 39. See *Id.* note (*a.*)

To STICK. In the old books. To stop; to hesitate; to decline to accede; to accede with reluctance. "The court *stuck* a little at this exception." 2 *Show.* 491. "The law has always *stuck* at new niceties that have been started." North, C. J. 1 *Mod.* 251. "This was what *stuck* with the court." 6 *Mod.* 26.

STILLICIDIUM. Lat. [from *stilla*, a drop, and *cadere*, to fall.] In the civil law. Drip; the dripping of water from the caves of a house. *Inst.* 2. 3. 1. 4. *Dig.* 8. 2. 2. *Id.* 8. 2. 20, 21. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 404. A species of predial servitude. See *Servitus.*

STINGISDINT. O. Sc. [Lat. *fustigatio.*] In old Scotch law. A *dint* or stroke with a *sting* or baton. *Leg. Burg.* c. sciendum est, 9. *Skene de Verb. Sign.*

STINT. In English law. Limit; a limited number. Used as descriptive of a species of common. See *Common sans nombre.*

STIPENDIUM. Lat. In the civil law. The pay of a soldier; wages; stipend. *Calv. Lex.*

Tribute. Said in the Digests to be derived from *stipis*, a small coin of brass, because collected in small sums, (*quod per* stipes, *id est, modica æra colligatur.*) *Dig.* 50. 16. 27. It has been, however, otherwise derived from *stipis*, and *pendere*, to weigh, soldiers anciently receiving their pay by weight, and not by tale.

STIPES. Lat. In old English law. Stock; a stock; a source of descent or title. Literally, the trunk of a tree. *Communis* stipes; the common stock. *Fleta*, lib. 6, c. 2. "The *stipes* from whom the heir is to deduce his pedigree." *Blackst. Law Tr.* 27. **Seisina facit stipitem**, (q. v.) Seisin makes stock.

STIPULA. Lat. In old English records. Straw; stubble left standing on the ground after the grain is reaped and carried away. *Cowell.*

STIPULARI. Lat. In the civil law. In a strict sense, to ask or demand some-

thing to be done or given to one, in a certain form of words, which, when responded to by another party in a similar form, constituted a contract between them. Thus, one party said or asked, "*Spondes?*" (Do you engage?) The other said or answered, "*Spondeo.*" (I do engage.) The party who asked was said to *stipulate* (*stipulari;*) the party who answered was said to *promise*, (*promittere.*) See *Inst.* 3. 16. 1. *Id.* 3. 17, pr. See *Stipulatio.*

In a more general sense,—to promise or engage. In this sense, it was used to denote the act of the party who answered the interrogation, as well as that of him who asked it. *Stipulari est promittere. Isid.* lib. 5, Etymol. c. 24. *Calv. Lex.*

STIPULATIO. Lat. In the civil law. A contract in a solemn form of words, consisting of an interrogation and a reply; as "*Spondes? Spondeo.*" (Do you undertake? I do undertake.) "*Quinque aureos dare spondes? Spondeo.*" (Do you engage to give me five *aurei?* I do.) *Inst.* 3. 6. 1. See *Dig.* 45. 1. By this kind of form the party answering the question was bound to give or do the thing that was asked. *Calv. Lex. Hallifax, Anal.* b. 2, c. 16, num. 2. See *Fleta*, lib. 2, c. 56, § 9.

This word is said in the Institutes to be so called, because what was firm or strong was called by the ancient Romans *stipulum*, derived, perhaps, from *stipes*, the trunk of a tree. *Inst.* 3. 16, pr.

STIPULATION. [from Lat. *stipulatio*, q. v.] In practice. An engagement or undertaking in writing, to do a certain act; as to try a cause at a certain time. 1 *Burr. Pr.* 389.

In admiralty practice. An undertaking in the nature of bail, entered into on the arrest of a defendant, or the seizure of property. 3 *Bl. Com.* 108, 291. *Benedict's Adm. Pr.* 270—277.

STIPULATOR. Lat. In the civil law. The party who asked the question in the contract of stipulation; the party to whom the promise was made; the other party, or he who answered, being called the *promissor. Calv. Lex.* See *Stipulatio.*

In a more general sense, the term was applied to both parties. *Calv. Lex.*

STIRPS. Lat. In the civil law. A stock; a source of descent. Literally, the root, stem or stock of a tree or plant. A parent or ancestor was said to be the *stirps*, root or stock of his children, or descendants. See *Nov.* 118, c. 1. The term has been transferred to the common law. 2 *Bl. Com.* 204.

Stirpes, (plur. of *stirps;*) stocks; roots; sources of descent. *Nov.* 118, c. 1. See *In stirpes, Per stirpes.*

STOCK. [Lat. *stirps, stirpes.*] A source or root of succession, or descent.* 1 *Steph. Com.* 379.

STOCK. In mercantile law. The goods and wares of a merchant or tradesman, kept for sale and traffic.

In a larger sense, the capital of a merchant or other person, including his merchandise, money and credits, or, in other words, the entire property employed in business. See Keep *v.* Sanderson, 2 *Wisconsin R.* 42, 56, 57.

"STOCK," (government stock,) held not to come within the denomination of "money out at interest." 6 *East*, 182.

STOCKS. [L. Lat. *cippi;* L. Fr. *ceps.*] A machine constructed of wood, with holes through which the feet of offenders were passed, and their persons thus confined. Now almost disused, even in England. *Brande.*

STOPPAGE IN TRANSITU. Lat. and Eng. Stoppage on the transit or passage; the stoppage of goods sold on their *transitus*, passage or way, to the buyer.* The right which a vendor, when he sells goods on credit to another, has of resuming the possession of the goods, while they are in the hands of a carrier or middle man, in their transit to the consignee or vendee, and before they arrive into his actual possession, or to the destination which he has appointed for them, on his becoming bankrupt or insolvent. 2 *Kent's Com.* 540. See 2 *Steph. Com.* 122. 2 *Smith's Lead. Cas.* 431. *Russell on Factors*, 218. *Smith on Contracts*, 339. *Blackburn on Contr. of Sale*, 201.

ΣΤΟΡΓΗ, Στοργή. Gr. The natural affection of a parent. 1 *Bl. Com.* 447.

STOURNY. [Ital. *storno.*] In European law. A contraction of the word *ristourne*, (dissolution of a contract of insurance.) A Provencal Italian word. *Emerig. Tr. des Ass.* ch. 16, pr.

STOUTHRIEF. Sc. In Scotch law. Robbery. *Bell's Dict.* A violent taking. 2 *Brown's R.* 146.

STOWE. In old English law. A valley. *Co. Litt.* 4 b.

STRAND. [Sax. *strond.*] A shore or bank of the sea or a river. *Cowell.*

STRANDING. [Fr. *echouement.*] In insurance and maritime law. An accidental striking and remaining of a vessel on the ground or strand, by which she is injured; a grounding and filling with water; the running or drifting of a vessel on shore.* See 3 *Kent's Com.* 323, note.

Stranding is when a ship, by accident, is on the ground or *strand*, and is injured thereby. 7 *B. & C.* 219. A *stranding*, in the sense of a policy, is when a ship takes ground, not in the ordinary course of navigation, but by accident, or the force of wind or the sea, and remains stationary for some time. The vessel must ground from an accident happening out of the ordinary and usual course of navigation. She must be on the *strand* under extraordinary circumstances, or from extraneous causes. 3 *B. & Ad.* 20. Where a vessel in a tide harbor, takes the ground in the ordinary way, upon the ebbing of the tide, it is not a *stranding* within the policy, although, in common language the vessel is on the strand. But to constitute "stranding," she must be on the strand under extraordinary circumstances, or from extraneous causes. Story, J. 2 *Sumner's R.* 203. And see 13 *Ohio R.* 48. In the last case it was decided that where a loss is occasioned by the vessel striking upon a rock and bilging, without remaining stationary, it was not a loss by *stranding.*

STRANGER. One who is not a party or privy to an act or contract. *Cowell.*

STRATA. L. Lat. In old English law. A street, or road. *Strata regalis;* the king's highway. *Fleta*, lib. 2, c. 49, § 11. *Stratæ publicæ;* public streets. *Bract.* fol. 170 b.

Properly, a paved way; but not used in that sense. 10 *Mod.* 382.

STRAY. See *Estray.*

STREAM. A current of water; a body of flowing water. The word, in its ordinary sense, includes rivers. But Callis defines a stream "a current of waters running over the level at random, and not kept in with banks or walls." *Callis on Sewers*, [83,] 133. See *Angell on Water-Courses*, §§ 2, 4, 8, and note.

STREIGHTEN. In the old books. To narrow or restrict. "The *habendum* should not *streighten* the devise." 1 *Leon.* 58.

STREPITUS. Lat. Noise; confusion. The noise and confusion of a judicial tribunal, (*strepitus judicialis;*) the noise of a court. *Sine strepitu;* without noise, in a quiet way. Lord Mansfield, C. J. 1 *W. Bl.* 82.

STREPITUS. L. Lat. In old records. Estrepement or strip; a species of waste or destruction of property. *Spelman.*

STRICT SETTLEMENT. In English law. A settlement of an estate upon a parent for life, with remainder to his first and other sons successively in tail, including the appointment of trustees to preserve contingent remainders. See *Atherley on Marr. Settlements*, 93.

STRICTI JURIS. Lat. Of strict right or law; according to strict law; without equitable interpretation, or enlargement of application. "A license is a thing *stricti juris;* a privilege which a man does not possess by his own right, but it is conceded to him as an indulgence, and therefore it is to be strictly observed." Sir William Scott, (The Juno,) 2 *Rob. Adm. R.* 117. A formal precise action said to be *stricti juris.* 1 *W. Bl.* 388. See *Actio stricti juris.* An objection said to be *stricti juris.* 1 *East*, 17. *Anstr.* 152. Priority among creditors is *stricti juris. Id.* 166. Maritime liens are *stricti juris*, and cannot be extended by construction. 19 *Howard's R.* 82.

STRICTISSIMI JURIS. Lat. Of the strictest right or law; to be interpreted and applied in the strictest manner.* "Licenses being matter of special indulgence, the application of them was formerly *strictissimi juris.*" Sir William Scott, The Goede Hoop, 1 *Edw. Adm. R.* 328. "A ground that is not entitled to any favor, and stands upon the very limits *strictissimi juris.*" Story, J. 3 *Story's R.* 159. "This is a case *strictissimi juris*, therefore we will not assist it." 1 *W. Bl.* 642. See 6 *East*, 144. 2 *H. Bl.* 413.

STRICTO JURE. Lat. In strict law. 1 *Kent's Com.* 65.

STRICTUM JUS. Lat. Strict right or law; the rigor of the law, as distinguished from equity. See *Stricti juris, Strictissimi juris.*

STRIKING A DOCKET. In English practice. The first step in the proceedings in bankruptcy, which consists in making affidavit of the debt, and giving a bond to follow up the proceedings with effect. 2 *Steph. Com.* 199. When the affidavit and bond are delivered at the bankrupt office, an entry is made in what is called the *docket-book;* upon which the petitioning creditor is said to have *struck a docket. Eden's Bankrupt Law*, 51, 52.

STRIKING A JURY. In practice. The peculiar mode of constituting a special jury which has been ordered by the court for the trial of some particular cause, viz. by each party *striking out* a certain number of names from a list of jurors prepared by the clerk or master of the court, so as to reduce it to the number of persons prescribed by law, who are to be summoned and returned as jurors by the sheriff.

The striking of the jury is done before the clerk out of court. The original practice in England was for the master to name forty-eight freeholders, and then each party *struck out* twelve, by one at a time, (the plaintiff, or his attorney, beginning first;) the twenty-four names remaining constituted the jury who were to be returned for the trial of the cause. 2 *Tidd's Pr.* 787, 788. The practice has been of late years somewhat modified, but it has been essentially adopted in the state of New-York. 2 *Rev. St.* [418,] 338, §§ 48, 49.

STROND. Sax. In old records. A shore or bank of a sea or river; a strand. *Over* strond *& streme*, on *wode & felde ;* on shore and stream, in wood and field. *Cart. Ric.* I. cited in *Cowell.*

STRUCK JURY. In practice. A special jury. So called because constituted by *striking out* a certain number of names from a prepared list. See *Striking a jury.*

STRUES. Lat. In old pleading. A rick (of hay.) 1 *Mod.* 289.

STUBULA. Lat. In old English law. Stubble; straw. *Fleta*, lib. 2, c. 73, § 9.

To STULTIFY. [from Lat. *stultus*, foolish, and *fieri*, to be made.] To make out one to be of unsound mind. It is a maxim in the law of England, in regard to transactions merely voidable, that **No man shall be allowed to stultify himself,** that is, to plead his own unsoundness of mind in a court of justice. 1 *Steph. Com.* 441. Mr. Stephen thus qualifies this maxim, which is stated by Blackstone in broader terms, without reference to the distinction between *void* and *voidable* transactions. *Id. ibid.* note. 2 *Bl. Com.* 291, 292. The maxim itself has been pronounced absurd, unjust and mischievous, by the highest American authority. 1 *Story's Eq. Jur.* § 225, and notes. 2 *Kent's Com.* 451. Mr. Justice Story observes that, in America, it has not been of universal adoption in the state courts, if, indeed, it has ever been recognised as binding in any of the courts of common law. 1 *Story's Eq. Jur. ub. sup.* Chancellor Kent and Professor Greenleaf pronounce it to be "exploded." 2 *Kent's Com. ub. sup.* 2 *Greenl. Ev.* § 369.

STULTILOQUIUM. L. Lat. [from *stultus*, foolish, and *loqui*, to speak.] In old English law. Vicious or disorderly pleading, for which a fine was imposed by King John, supposed to be the origin of the fines for *beau-pleader*, (q. v.) *Crabb's Hist.* 135.

STUPPARE. Lat. In old European law. To stop; to close a wound. *L. Alaman.* tit. 59. *Spelman.*

STUPRUM. Lat. In the civil law. Unlawful intercourse with a woman. Distinguished from adultery (*adulterium*) as being committed with a virgin or widow. *Dig.* 48. 5. 6. 1. But the terms were often used indifferently. *Id. ibid.* See *Id.* 50. 16. 101, pr.

SUAPTE NATURA. Lat. In its own nature. *Suâpte naturâ sterilis ;* barren in its own nature and quality; intrinsically barren. Lord Ellenborough, 5 *M. & S.* 170.

SUB. Lat. [L. Fr. *soub, south.*] Under; upon. See *infra.*

SUB CONDITIONE. L. Lat. In old conveyancing. Upon condition; literally, under condition. • One of the words which, by virtue of themselves, make estates upon condition. *Litt.* sect. 328. The most express and proper [words of] condition in deeds. *Co. Litt.* 203 a. 10 *Co.* 42 a.

SUB DISJUNCTIONE. Lat. In the alternative. *Fleta*, lib. 2, c. 60, § 21.

SUB JUDICE. Lat. Under or before a judge or court; under judicial consideration; undetermined. 12 *East*, 409.

SUB MODO. L. Lat. Under, or subject to a qualification; in a qualified manner, or sense. *Fieri autem poterit donatio sub conditione, seu* sub modo; a gift may be made subject to a condition, or subject to a qualification. *Bract.* fol. 19. "Not absolutely, but *sub modo.*" 2 *Mod.* 280.

SUB PEDE SIGILLI. Lat. Under the foot of the seal; under seal. 1 *Stra.* 521.

SUB POTESTATE. Lat. Under power; subject to the power of another; as a slave or a child. *Bract.* fol. 24.

SUB SALVO ET SECURO CONDUCTU. L. Lat. Under safe and secure conduct. 1 *Stra.* 430. Words in the old writ of *habeas corpus. Id. ibid.*

SUB SIGILLO. Lat. Under seal. 1 *Stra.* 674.

SUB SILENTIO. Lat. Under silence; in silence; without notice taken. 1 *Bl.*

Com. 183. Precedents *sub silentio.* 1 *P. Wms.* 223. *Hardr.* 98, arg.

SUB SPE RECONCILIATIONIS. L. Lat. Under the hope of reconcilement. 2 *Kent's Com.* 127.

SUB SUO PERICULO. L. Lat. At his own risk. *Fleta*, lib. 2, c. 5, § 5.

SUB-AGENT. An under agent; a substituted agent; an agent appointed by one who is himself an agent. 2 *Kent's Com.* 633.

SUB-BALLIVUS. L. Lat. In old English law. An under-bailiff; a sheriff's deputy. *Fleta*, lib. 2, c. 68, § 2.

SUB-BOSCUS. L. Lat. [L. Fr. *sub-bois.*] In old English law. Underwood, or coppice. *Fleta*, lib. 1, c. 24, § 8. *Shep. Touch.* 10. 3 *Leon.* 9, case 73.

SUB-CONTRACT. A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a stranger. Heath, J. 1 *H. Bl.* 37, 45.

SUB-DELEGARE. L. Lat. In old English law. To sub-delegate; to appoint a delegate of a delegate; to delegate power already delegated. Applied to the act of a judge, (himself acting by delegation,) in delegating or assigning another to act in his place. *Nullus justitiarius à domino rege sic delegatus, poterit aliquem sibi subdelegare;* no justice so delegated by the king can sub-delegate any to himself. *Bract.* fol. 108 b. See *Id.* fol. 405 b. *Nullus* sub-delegatus *alium potest sibi* sub-delegare, *ut recordum possit præsentare;* no sub-delegated [justice] can sub-delegate another to himself, so as to be able to present a record. *Fleta*, lib. 1, c. 17, § 31.

SUBDITUS. Lat. In old English law. A vassal; a dependent; any one under the power of another. *Spelman. Homo vel subditus. Bract.* fol. 412.

A subject. *Hale's Anal.* sect. xiii.

SUBHASTARE. Lat. [from *sub*, under, and *hasta*, a spear.] In the civil law. To sell at public auction, which was done *sub hasta*, under a spear; to put or sell under the spear. *Calv. Lex.* See *Subhastatio.*

SUBHASTATIO. Lat. [from *subhastare*, q. v.] In the civil law. A sale by public auction, which was done *under* a *spear*, fixed up at the place of sale as a public sign of it. *Calv. Lex. Festus.*

The Roman custom of setting up a *spear* at an auction, seems to have been derived from the circumstance that at first only those things which were taken in *war* were sold in that manner. *Adam's Rom. Ant.* 59. The use of a spear continued to be retained in the middle ages, the Roman terms *subhastatio*, and *subhastator*, being also retained. *Babington on Auctions*, 2, 3. In modern auctions, a *staff* with a flag has taken its place.

SUBINFEUDATION. [from Lat. *sub*, under, and *in*, in, and *feudum*, a fief.] In feudal law. The granting of a *feud* or fief out of another, to be held by an *under* tenant.* A term applied to the practice or system introduced by the inferior lords who held of the king's greater barons in England, of carving out portions of their own fees or estates, (called in feudal law *arriere fiefs*,) and granting them to others, to be held as of themselves. 2 *Bl. Com.* 91. 1 *Spence's Chancery*, 138. 3 *Kent's Com.* 497. See *Bell's Dict.*

SUBJACERE. L. Lat. In old English law. To be subject to. Literally, to lie under. *Subjacere debet juri ubi deliquerit;* he ought to be subject to the law [of the place] where he has offended. *Fleta*, lib. 6, c. 37, § 2. See *Underlie.*

SUBJECT. [from Lat. *subjectus*, from *subjicere*, to put under; Lat. *subditus.*] In public law. One who is under the protection and power of a government and laws; one who owes allegiance to a government.* "A person domiciled in a country, and enjoying the protection of its sovereign, is deemed a *subject* of that country." Story, J. 2 *Wheaton's R.* 227, 245, 246.

In a stricter sense, this term is usually applied to those who live under, or owe allegiance to a *monarchy*, as distinguished from a republic, the members of which are termed *citizens.* But it has been observed by high American authority, that "though the term *citizen* seems to be appropriate to republican freemen, yet we are, equally with the inhabitants of all other countries, *subjects*, for we are equally bound by allegiance and subjection to the government and law of the land." 2 *Kent's Com.* 258, note. The term *subjects*, indeed, has been held by the same authority to be the proper appellation of blacks born within and under the allegiance of the United States. *Id. ibid.*

Sublata veneratione magistratuum, respublica ruit. When respect for magistrates is taken away, the commonwealth falls. *Jenk. Cent.* 43, case 81. Applied to the offence of striking in court. *Id. ibid.*

Sublato fundamento, cadit opus. When the foundation is removed, the work falls. *Jenk. Cent.* 106, case 2.

Sublato principali, tollitur adjunctum. When the principal is taken away, the incident is taken also. *Co. Litt.* 389 a.

SUBMISSION. An agreement by which parties consent to submit their differences to the decision of an arbitrator. Usually formally made in writing, and by bond, but neither of these forms is indispensably necessary to constitute it. See *Russell's Arbitrator*, 2, 49. *Billings on Awards*, 9.

SUBORN. [Lat. *subornare*, from *sub*, under, and *ornare*, to prepare.] In criminal law. To procure another to commit perjury. *Steph. Crim. Law*, 74. Literally, to *instruct* one privily, or in an *underhanded* manner, what to say; to prepare secretly, or underhand. To procure unlawfully. *Say.* 292. Subornare *est quasi* subtus *in aure ipsum male* ornare; to suborn is to instruct one privily, as by whispering in his ear, with a bad design. 3 *Inst.* 167.

SUBORNATION. [Lat. *subornatio*, from *subornare*, q. v.] In criminal law. The offence of procuring another to commit perjury. *Steph. Crim. Law*, 74. Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal. 4 *Bl. Com.* 137. To render the offence of subornation of perjury complete either at common law, or under the statute, the false oath must be actually taken. 3 *Mod.* 122. 1 *Leach*, 455, notes. 2 *Russell on Crimes*, 596, (Am. ed. 1850.)

SUBPŒNA, (or SUB PŒNA.) Lat. Under a penalty. In practice. A writ commanding the attendance or appearance of a witness or party in court, or before a judicial officer, *under a penalty* (*sub pœna*) in case of disobedience. So termed from the emphatic words of the Latin forms. See *infra.*

SUBPŒNA. In equity practice. The process by which a defendant is commanded to appear and answer the plaintiff's bill. 3 *Bl. Com.* 443. 1 *Daniell's Ch. Pr.* 495.

SUBPŒNA AD TESTIFICANDUM. L. Lat. Subpœna to testify. The common *subpœna* requiring the attendance of a witness, on a trial, inquisition or examination. 3 *Bl. Com.* 369. 1 *Arch. Pr.* 170. 2 *Id.* 37.

SUBPŒNA DUCES TECUM. L. Lat. In practice. That kind of *subpœna* by which a witness is commanded to *bring with him* certain documents or writings specified. 1 *Arch. Pr.* 170. 3 *Bl. Com.* 382. Said not to be in the Register. 9 *East*, 473.

SUBREPTIO, *Surreptio.* Lat. [from *subripere*, from *sub*, under, and *rapere*, to take or seize.] In the civil law. The obtaining a grant from the sovereign by false representations. *Calv. Lex.* The French *subreption* is used in the same sense. *Bouvier.* Hence the word *surreptitious.*

SUBROGARE, *Surrogare.* Lat. In the civil law. To substitute; to put in the place of. *Calv. Lex.*

To add to (a law.) *Taylor's Civ. Law*, 155. *Dig.* 50. 16. 102, *in gloss.*

SUBROGATION. Fr. and Eng. [from Lat. *subrogatio*, from *subrogare*, q. v.] In the civil law. The substitution of one person or thing in the place of another.

Strictly, the substitution of one person in the place of another as a creditor, with a succession to the rights of the latter. The mode by which a third person, who pays a creditor, succeeds to his rights against the debtor.* *Subrogatio est transfusio unius creditoris in alium, eadem vel mitiori conditione;* subrogation is the transfusion of one creditor to another, with the same or with modified rights. *Merlin Q. de Droit*, verb. *Subrogation.*

This term has been extensively adopted in American law, especially of late. See 6 *Penn. St.* (Barr's) *R.* 504.

It is a settled rule, that in all cases where a party, only secondarily liable on an obligation, is compelled to discharge it, he has a right, in a court of equity, to stand in the place of the creditor, and be *subrogated* to all his rights against the party primarily liable. 24 *Mississippi R.* 665. The right of *subrogation* is an inherent and natural equity growing out of the circumstances of the case. *Id. Subrogation* gives to the substitute all the rights of the party for whom he is substituted. 4 *Maryland Ch. Dec.* 253.

SUBROGUER, *Surroguer.* L. Fr. To make a deputy or surrogate; to substitute. *Kelham.*

SUBSCRIBE. [from Lat. *subscribere*, q. v.] In the law of contracts. To write under; to write at the bottom or end of a writing or instrument; to write the name under. See 26 *Wendell's R.* 341. 2 *Selden's R.* 9.

SUBSCRIBERE. Lat. [from *sub*, under, and *scribere*, to write.] To write under, or at the bottom of a writing or instrument; to write the name under; to underwrite; to subscribe.

In the civil law. To consent or assent to a thing. *Calv. Lex. Subscribere in crimen. Id.*

To take part in a proceeding; to join with another in an action, (*querelam una experiri.*) *Id.*

To pronounce a judgment; to grant a decree. *Id.*

SUBSCRIPTIO. Lat. [from *subscribere*, q. v.] In the civil law. A writing under, or under-writing; a writing of the name under or at the bottom of an instrument by way of attestation or ratification; subscription. The *subscriptio testium*, (subscription of witnesses,) was one of the formalities in the execution of wills, being required by the imperial constitutions in addition to the *seals* of the witnesses. *Inst.* 2. 10. 3.

That kind of imperial constitution which was granted in answer to the prayer of a petitioner who was present. *Calv. Lex.*

SUBSCRIPTION. [from Lat. *subscriptio*, q. v.] The writing of the name or signature under, or at the foot of an instrument, by way of execution or attestation. See *Subscribere.*

SUBSELLIA. Lat. [from *sub*, under, and *sella*, a seat.] In the Roman law. Lower seats or benches, occupied by the *judices*, (judges or jurors,) and by inferior magistrates when they sat in judgment, as distinguished from the *tribunal* of the prætor. *Calv. Lex. Budæus.*

SUBSIDY. [Lat. *subsidium*, support.] In English law. An extraordinary grant of money by the parliament to the crown. Now more commonly termed a *supply*, or in the plural, *supplies.* 1 *Bl. Com.* 307.

SUBSIGNARE. Lat. [from *sub*, under, and *signare*, to seal or sign.] In the civil law. To undersign; to subscribe. According to the strict etymology, to *seal* under, or seal. But the word is said, in the Digests, to have been used among the ancient Romans in the sense of *writing.* Subsignatum *dicitur quod ab aliquo* subscriptum *est, nam veteres* subsignationis *verbo pro* adscriptione *uti solebant;* that is said to be undersigned which is underwritten by any one, for the ancients were accustomed to use the word *subsignatio* for *adscriptio. Dig.* 50. 16. 39. Some copies of the Digests have *subscriptione* in place of *adscriptione.*

SUBSTANCE. [Lat. *substantia.*] Essence; the material or essential part of a thing, as distinguished from *form* or *circumstance.* **The law favoureth matters of substance more than matters of circumstance.** *Finch's Law*, b. 1, ch. 3, num. 39.

SUBSTITUTIO. Lat. [from *substituere*, to substitute.] A putting of one person in the place of another.

In the civil law. The appointment of one person as heir, in place of another, in the event of the first not taking the inheritance. As, *si ille hæres non erit, ille hæres esto;* if such a one will not be heir, let such a one be heir. *Inst.* 2. 15, pr. And a testator might appoint one heir after another in this way, to what extent he pleased, (*in quantum velit, testator substituere potest,*) which was called making several grades of heirs, (*plures gradus hæredum,*) the person last named, without further alternative, being termed *necessary heir,* (*necessarius hæres,*) or heir at all events. *Id. ibid.*

SUBSTITUTION. In modern civil law. The designation of a person in a will, to take a devise or legacy, either on failure of a former devisee or legatee, or after him.* *Brande. Bouvier.*

In Scotch law. An enumeration of a series of heirs, described in proper technical language. *Bell's Dict.* Taken from the Roman *substitutio*, (q. v.)

SUBTRACTION. [from Lat. *subtractio*, from *subtrahere*, to draw away.] In English law. The offence of withholding or keeping from another, that which by law he is entitled to; as suit and service from a lord, tithes from a parson; the keeping back of legacies by an executor; the withholding of conjugal rights from a husband or wife; the refusing to pay church rates, &c. 2 *Bl. Com.* 88, 94, 98, 230. 2 *Crabb's Real Prop.* 1074, § 2471. *Holthouse.*

SUBVASSORES, *Subvalvassores.* L. Lat. In old Scotch law. Base holders; inferior holders; they who held their lands of knights. *Skene de Verb. Signif.*

SUB-VICECOMES. L. Lat. [L. Fr. *south-viscount.*] In old English law. Under-sheriff. *Spelman.* 9 *Co.* 49 b.

SUCCESSIO. Lat. [from *succedere*, to succeed, to come in place of, to come under, from *sub*, under, and *cedere*, to come.] In the civil law. A coming in place of another, on his decease; a coming into the es-

tate which a deceased person had at the time of his death. This was either by virtue of an express appointment of the deceased person by his *will*, (*ex testamento*,) or by the general appointment of law in case of *intestacy*, (*ab intestato*.) *Inst.* 2. 9. 7. *Id.* 3. 1. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 10. *Id.* lib. 3, tit. 13.

The term *successio* is used by Bracton in the same general sense, but particularly in the latter, or, in other words, as descriptive of that transmission of property by act of law, in case of death, which is termed in modern law *descent*. But his application of it shows that the Roman ideas of succession were not by any means implicitly adopted. His analysis of the word itself places it in contrast with *antecessio*, and *antecessor*, (*ancestor*,) terms wholly unknown, in this sense, to the Roman law. Antecessores—*qui mortui sunt, et hæredes antecedunt*, i. cedunt ante, *et hæredes* cedunt *eis* sub, *quasi* succedunt. *Est enim* cedere, *quasi recedere, et est* cedere *alio sensu* venire. (Ancestors who are dead, and precede their heirs, i. e. go before, (*cedunt ante*,) and the heirs succeed, or, as it were, *come under* (*cedunt sub*,) them. For *cedere* is, as it were, *recedere*, to go from, but, in another sense, it signifies to come.) *Bract.* fol. 67. Again, the terms *successio* and *hæreditas* were clearly distinguished in the Roman civil law, the latter word signifying the estate itself; the former, the means by which it was attained. See *Inst.* 2. 9. 7. But Bracton uses them as synonymous. *Hæreditas est successio in universum jus quod defunctus antecessor habuit*, &c.; inheritance is the succession to the whole right which the deceased ancestor had, &c. *Bract.* fol. 62 b.

Britton uses the Fr. *succession* in a similar way, to denote the attainment of property as heir. *Britt.* c. 119. And *succession* is still employed in the law of France and Scotland, in the general sense of the civil law. See *Succession*. But in the common law, it has been for the most part superseded by the term *descent*, (q. v.)

SUCCESSION. Fr. and Eng. [from Lat. *successio*, q. v.] In Scotch and modern civil law. A right to enter upon that estate, real or personal, which one deceased had at the time of his death. 1 *Forbes' Inst.* part 3, p. 74. See *Hallifax, Anal.* b. 2, c. 5, num. 20.—Succession is where one comes to enjoy property in place of another. *Bell's Dict.*

In the Civil Code of Louisiana, it is variously defined; as,

The transmission of the rights and obligations of one deceased to his heir. Art. 867.

The whole estate, rights and charges, which a person leaves after his death. Art. 868.

That right by which the heir can take possession of the estate of the deceased, such as it may be. Art. 870. In both the latter senses, it is made synonymous with inheritance, (*hérédité*.)

SUCCESSION. In the common law. The right by which one set of men may, by succeeding another set, acquire a property in all the goods, moveables and other chattels of a corporation. 2 *Bl. Com.* 430. The power of perpetual *succession* is one of the peculiar properties of a corporation. 2 *Kent's Com.* 267.

SUCCESSOR. Lat. and Eng. [from *succedere*, to succeed, to come in place of.] One who follows another; one who comes into the place of another; one who comes into, and occupies the place which another has left; the correlative of *predecessor*. A term applied to corporations, in the same sense as *heir* to individuals. The *successors* of a corporation correspond to the heirs of a natural person. See 2 *Bl. Com.* 430, 431. 2 *Kent's Com.* 273.

SUCCISION. L. Fr. Cutting. *Dyer*, 35 b, (Fr. ed.)

SUCCURRITUR. Lat. In old English law. Relief (or succor) is given. *Fleta*, lib. 2, c. 62, § 1; c. 63, § 4.

Succurritur minori; facilis est lapsus juventutis. A minor is [to be] aided; a mistake of youth is easy, [youth is liable to err.] *Jenk. Cent.* 47, case 89.

"SUCH," in a will, construed. 11 *East*, 594.

SUCKEN. Sc. In Scotch law. Lands bound or astricted to a particular mill, or the tenants or proprietors of which are bound to use a particular mill. *Bell's Dict.*

To SUE. [from L. Fr. *suer*, *seure*, *suyre*, from Lat. *sequi*, to follow.] In practice. To follow at law; to prosecute judicially; to commence a suit; to bring an action.

To prosecute an action already commenced; to follow up an action to its proper termination. This seems to have been the original meaning of the word. See *Suer*.

To SUE OUT. In practice. To obtain judicially; to issue. Applied only to process; particularly such as is granted special-

ly. To *sue out* a writ is to obtain and issue it; to issue it on leave obtained for the purpose.

SUER, *Seuer, Suyre.* L. Fr. To follow; to sue; to prosecute or follow up. *Que trova seuerte de* suer *sa pleynte;* who shall find surety to prosecute his plaint. *Britt.* c. 27. *Si nul voet* suer, *eit le roy là suit;* if no one will sue, the king shall have the suit. *Stat. Westm.* 1, c. 1.

SUERTE, *Seurte.* L. Fr. Surety. *Britt.* c. 26, 27.

SUERTE. Span. In Spanish law. A small lot of ground. 5 *Texas R.* 83.

SUFFERANCE. [from L. Fr. *suffraunce;* L. Lat. *patientia.*] Toleration; permission, without right; permission by neglect to enforce a right. See *Estate at sufferance.*

SUFFRAGAN. [L. Lat. *suffraganeus.*] In English ecclesiastical law. A title given to bishops, who are styled *suffragan* in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called suffragan bishops, and resemble the *chorepiscopi*, or bishops of the country, in the early times of the Christian church. 1 *Gibson's Codex*, 155. *Hargr. Co. Litt.* 94 a, note 3.

SUFFRAGIUM. Lat. In the Roman law. A vote; the right of voting in the assemblies of the people. *Butler's Hor. Jur.* 27.

Aid or influence used or promised to obtain some honor or office; the purchase of office. *Cod.* 4. 3. *Nov.* pr. § 1. *Id. per tot.*

SUFFRAUNCE. L. Fr. Sufferance. *Par la* suffraunce *et la negligence le verey possessour;* by the sufferance and neglect of the true possessor. *Britt.* c. 47.

SUGGESTIO FALSI. Lat. Representation of untruth; false representation. To recite in a deed that a will was duly executed, when it was not, is *suggestio falsi;* and to conceal from the heir that the will was not duly executed, is *suppressio veri.* 1 *P. Wms.* 240. See *Suppressio veri.*

SUGGESTION. [Lat. *suggestio*, from *suggerere*, to suggest.] In practice. A statement or entry made on a record by way of information to the court; a statement made incidentally, or out of the course of pleading; a statement on record, of some fact which has occurred in the progress of a cause, such as the death of a co-plaintiff. 2 *Arch. Pr.* 294. *Arch. Forms.* 561.

SUGGRUNDIA, *Subgrundia, Suggrunda, Subgrunda, Sugrunda.* Lat. In the Roman law. The eaves of a house. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 3, § 403, note. *Calv. Lex. Brissonius.*

SUI HÆREDES. Lat. In the civil law. One's own heirs; proper heirs. *Inst.* 2. 19. 2. *Dig.* 38. 16. See *Hæredes sui.*

SUI JURIS. Lat. In the civil law. One's own master; independent; not subject to the power of another. The title of one of the leading divisions of persons. *Quædam personæ* sui juris *sunt, quædam alieno juri subjectæ;* some persons are independent, some subject to another's power. *Inst.* 1. 8, pr. Sui juris *sunt omnes qui non sunt in aliena potestate;* all those are *sui juris* who are not in another's power. *Bract.* fol. 6. See *Dig.* 1. 6.

Having capacity to manage one's own affairs; not under legal disability to act for one's self. See *Story on Agency*, § 2. 9 *East*, 206.

SUICIDE. [L. Lat. *suicidium*, from *sui*, of one's self, and *cædes*, a killing; *felonia de se.*] In criminal law. The felonious killing of one's self; the deliberate and intentional destruction of one's self, by a person of years of discretion and in his senses; self murder.* 4 *Bl. Com.* 189. Suicide involves the deliberate termination of one's existence, while in the possession and enjoyment of his mental faculties. Self-slaughter by an insane man, or a lunatic, is not an act of suicide, within the meaning of the law. Nelson, C. J. 2 *Hill's* (N. Y.) *R.* 75. See *Felo de se.*

In a larger sense,—the voluntary killing of one's self, from whatever cause. See 5 *Man. & Gr.* 639. 3 *Man. Gr. & Scott*, 458.

SUIT. L. Fr. and Eng. [L. Lat. *secta*, from *sequi*, to follow; Lat. *lis*, *actio.*] A following; pursuit; prosecution.* The prosecution of some claim, demand, or request. Marshall, C. J. 6 *Wheaton's R.* 407.

In law language, the prosecution of some demand in a court of justice. *Id. ibid.* A following, or following up at law; the pursuit of a right or remedy in form of law; judicial prosecution. In this sense, *suit* is a term of more comprehensive import than *action*, though commonly used as synonymous with it. Sir Matthew Hale speaks of "the business of prosecution or *suit*," "the business of *suit*." *Anal.* sect. lii. liii. In Finch's words, "*suit* is the parties

dealing in the action." *Law*, b. 4, ch. 2. According to Lord Coke, the word *suit* includes an execution, but the word *action* does not. Thus, if the body of a man be taken in execution, and the plaintiff release all *suits*, the execution is gone, but if he release all *actions*, the defendant shall remain in execution. *Co. Litt.* 291 a. See 10 *Wheaton's R.* 30, Marshall, C. J. 2 *Peters' R.* 449. 14 *Id.* 564.

In a stricter sense,—an action. The terms *suit* and *action* are constantly used as synonymous. Thus Blackstone speaks of "the redress of private wrongs by *suit* or *action* in courts." 3 *Bl. Com.* 3. "Mixed *actions* are *suits*," &c. *Id.* 118. And in every day practice, an action is constantly termed a suit. To *sue*, is to commence an *action*. But even in this application, *suit* is the more general term of the two, embracing proceedings both at law and in equity. The expression "*suit* at law," "*suit* in equity," "law *suit*," "chancery *suit*," are constantly employed; but the term *action* seems to be properly confined to *law* proceedings. "*Action* in equity" is an expression rarely or never used. See 10 *Paige's Chanc. R.* 516, 517, Walworth, C.

The term *suit* itself is purely French, and had various senses in the old common law, but, in the sense of an action or judicial prosecution, seems to be derived from that species of *suit* or *secta* which a plaintiff produced in court on making his count. See *infra*.

SUIT. L. Fr. and Eng. [L. Lat. *secta;* O. Sc. *soyt.*] In old English law. A following another; attendance by a tenant on his lord, especially at his court; called *suit of court*. A service by coming to the lord's court. *Finch's Law*, b. 2, ch. 6, p. 144. See *Secta curiæ*.

Attendance for the purpose of performing some service, as to grind at a certain mill. See *Secta ad molendinum*.

Pursuit of a fugitive felon. 1 *Bl. Com.* 297. See *Recens insecutio*.

A number of persons produced by a plaintiff in court, simultaneously with making his count or declaration, for the purpose of confirming his allegations. *Steph. Pl.* 429. See *Secta*.

SUIT, *Suyt, Suyte.* L. Fr. In old English law. Suit; action. *Et si nul voile suer, eit le roy la* suit; and if none will sue, the king shall have the suit. *Stat. Westm.* 1, c. 1. *Apres quel temps cesse lour* suyt, et *soit la* suyt *nostre;* after which time their suit [right of action] shall cease, and the suit shall be ours. *Britt.* c. 24.

The retinue, chattels, offspring and appurtenances of a villein. *Son villein oves-que toute sa* suite, *et toutz ses chateux. Britt.* c. 31.

The followers of a plaintiff, whom he produced to support his count or declaration. *Car il en ad* suyte *bone et suffisaunte;* for he hath good and sufficient suit thereof. *Id. ibid. Que tiel fuit son droit, il tendy* suit *& dereigne bon;* that such was his right he offers suit and good proof. *Yearb.* H. 5 Edw. III. 41.

SUITAS. L. Lat. In the civil law. The condition or quality of a *suus hæres*, or proper heir. *Hallifax, Anal.* b. 2, c. 9, num. 11. *Calv. Lex.* This term seems to have been framed by the later civilians.

SUITOR. [L. Lat. *sectator;* O. Sc. *soytour.*] In old English law. One who attended at court; one who did *suit* at court; a tenant who attended his lord's court; one who attended court as a judge. In the Saxon county court, the *suitors of the court*, as they were called, that is, the freemen or landholders of the county, were the judges. 1 *Reeves' Hist.* 7.

A credible witness by whom a plaintiff supported his *loquela* or declaration; one of his *suit, secta*, or following. 1 *Reeves' Hist.* 248, 249.

In modern law. One who has a suit; a party to a suit; one who attends court as a party to a suit.

SULCUS. L. Lat. In old records. A small brook or stream of water. *Paroch. Ant.* 531. *Cowell.*

SULLERYE. In old English law. A plough-land. *Co. Litt.* 5 a. Perhaps a misprint for *sulling*, (q. v.)

SULLING. [L. Lat. *sulinga.*] In old English law. A plough-land. *Cowell*, voc. *Swoling.*

Sullings are explained to be elders, (alders, a species of tree,) in *Co. Litt.* 4 b.

SUM. [L. Lat. *summa.*] In English law. A summary or abstract; a compendium; a collection. Several of the old law treatises are called *sums*. Lord Hale applies the term to summaries of statute law. See *Summa*.

SUMA, *Summa.* L. Lat. In old English law. A horse-load; called, in English, a *soame*. *Cowell. Fleta*, lib. 2, c. 21.

A measure of grain containing eight

bushels; a quarter or *seam*. *Cowell*. *Spelman*.

SUMAGE, *Summage*. [L. Lat. *sumagium*, *summagium*.] In old English law. A horse-load; a full load, (*onus integrum*.) *Spelman*. *Cowell*.

A toll for carriage on horse-back. *Cowell*.

Summa ratio est quæ pro religione facit. That reason or argument is of paramount weight or authority which makes for [or operates in support of] religion. *Co. Litt.* 341 a. 5 *Co.* 14 b. 10 *Co.* 55 a. If ever the laws of God and man are at variance, the former are to be obeyed in derogation of the latter. *Broom's Max.* 17, [15.]

This maxim is taken from the civil law. **Summam esse rationem quæ pro religione facit.** *Dig.* 11. 8. 43. *Grotius, de Jur. Bell.* lib. 3, c. 12, sect. 7.

Summa est lex quæ pro religione facit. That is the highest law which makes for [goes in support of] religion. 10 *Mod.* 117, 119.

SUMMA. L. Lat. A summary; a compendium. The compendium of Hengham is divided into *Summa Magna*, and *Summa Parva*, which, in some of the old books, are called *sums*. See *Hengham*. Gilbert de Thornton, chief justice of the King's Bench in the reign of Edward I. was the author of a *summa* or abridgment of Bracton, of which Mr. Selden met with a copy in Lord Burleigh's library. *Crabb's Hist.* 199.

SUMMAGIUM. L. Lat. [from *summa*, q. v.] In old English law. A horse-load. *Pro equo qui portat* summagium. *Cart. de Forest.* c. 14.

SUMMING UP. In practice. The closing address of the counsel in a cause, before the court and jury, after the evidence has been gone through, recapitulating the testimony, and urging the conclusions sought to be drawn from it in behalf of the client.

In English practice, the judge, in charging the jury, is said to *sum up*. See *Charge*.

SUMMONEAS. L. Lat. (You summon.) In old practice. A writ of summons; a writ by which a party was summoned to appear in court. The emphatic word in many original writs, especially those of *præcipe quod reddat*, and in various others.

Summoneas ad auxiliandum; (you summon to aid.) A writ to summon a prayee in aid. *Roscoe's Real Act.* 280.

Summoneas ad warrantizandum; (you summoned to warranty.) A writ which issued to summon a party who had been vouched to warranty. *Roscoe's Real Act.* 268. 1 *Reeves' Hist.* 440.

SUMMONER. [L. Lat. *summonitor*.] In old practice. A person by whom a defendant was summoned to appear in court, in compliance with a writ. These persons are expressly mentioned in original writs; the sheriff being directed to summon the defendant "by good *summoners*." It was necessary that there should be two summoners at least, who, if required, might be able to testify that the summons was duly made. *Bract.* fol. 333 b. They are mentioned by Blackstone as sheriff's messengers, by whom defendants were summoned or warned to appear in court at the return of the original writ. 3 *Bl. Com.* 279.

A petty officer who called or cited persons to appear in court. Called, in old English, a *sumner*. *Cowell*.

SUMMONITIO. L. Lat. [from *summonere*, to summon.] In old English practice. A summoning or summons; a writ by which a party was summoned to appear in court, of which there were various kinds. *Spelman*. *Fleta*, lib. 6, c. 6.

A command or precept of the king that one be before him, to answer or to do something; or that one be, and have such a one to answer, or to do something. *Bract.* fol. 333.

A precept to the sheriff, that he cause some one to come, or attach him, or have the body of some one, or so attach him as to be secure of having his body. *Id. ibid.*

SUMMONS. [L. Fr. *sumounse;* L. Lat. *summonitio*.] In old practice. A writ directed to a sheriff, requiring him to summon a defendant to appear in court to answer a plaintiff's action. Original writs were, in their nature, for the most part, *summonses*.

A process by which a defendant was summoned to appear in court in compliance with an original writ, or by which he had notice that the writ had been issued. See 3 *Bl. Com.* 279. *Roscoe's Real Act.* 147, 148.

*** The process to bring the tenant or defendant into court in all real actions, with one or two exceptions, as in assise of novel disseisin and the writ of deceit, was a *summons*, commanding the sheriff to

summon the tenant to appear in court, according to the requisition of the writ. This command was contained in the original writ, and no separate writ of summons issued to the sheriff. *Id.* 146. The summons, when actually made, was made by the sheriff issuing his warrant to two persons, called *summoners* in the original writ, (and who usually were the sheriff's bailiffs,) directing them to command the tenant to render the land, as in the writ, and unless he should do so, to *summon* him to appear at the return of the writ. On receiving this warrant, the bailiffs prepared a summons, which pursued the form of the warrant, and served it on the tenant of the land. This was the correct practice, as stated by Mr. Roscoe, though according to Booth and Mr. Serjeant Williams, no actual summons was, in their time, ever made in any real action. *Id. ibid.*

SUMMONS. In modern practice. A writ or process by which an action is commenced, the defendant being thereby summoned to appear in court to answer the plaintiff.* In England, all personal actions are now commenced by one uniform *writ of summons*, which is a writ issued out of the court in which the action is brought, directed to the intended defendant, commanding him to cause an appearance to be entered in the action within eight days after the writ shall have been served upon him. 3 *Steph. Com.* 566.

The word *summons* is immediately derived from the L. Fr. *somounse*, and seems to be merely the Lat. *summoneas*, slightly contracted. See *Summoneas.*

SUMMUM JUS. Lat. Strict right; extreme right. 3 *Bl. Com.* 392. Lord Mansfield, C. J. 1 *Burr.* 54. The extremity or rigor of the law. *Burr. Sett. Cas.* 588. Lord Bacon applies the phrase to strict law, untempered by equity. *Works*, iv. 274.

Summum jus, summa injuria. The rigor of the law is the height of injury, or, (to preserve the antithesis more closely,) extreme right is extreme wrong. *Hob.* 125. *Branch's Pr.* Right carried to an extreme becomes wrong.

SUMPTUARY LAWS. [from Lat. *sumptus*, expense.] Laws passed by a government to restrain the expenditure of its subjects or citizens, either in apparel, food or otherwise; laws against luxury and extravagant expenses of living.* In England, there were formerly a multitude of penal laws to restrain excess in apparel, chiefly made in the reigns of Edward III. Edward IV. and Henry VIII. all of which were repealed by the statute of 1 Jac. I. c. 25. 4 *Bl. Com.* 170. See *Montesquieu, Esprit des Lois*, liv. 7, cc. 1—6. 2 *Kent's Com.* 329, 330.

SUNDAY. [Lat. *Dies Solis, Dies Dominicus.*] The first day of the week, on which no judicial act can be done, and no arrest made except in criminal cases. 3 *Bl. Com.* 290. 3 *Chitt. Gen. Pr.* 104. 13 *Wendell's R.* 425. But a private contract made on Sunday is not for that reason invalid. *Id. ibid.* In Alabama, all contracts made on Sunday, unless under the circumstances and for the purposes specified, are, by statute, declared void. *Code of Alabama*, (ed. 1852,) § 1571.

In computing the time of notices and rules in practice, intermediate Sundays are included and counted with ordinary week days; but where the last day falls on Sunday it is usually excluded, and the party has the whole of the following Monday. See 3 *Chitt. Gen. Pr.* 702.

SUP'D'C'US. A contraction of *supradictus*, (q. v.) 1 *Inst. Cler.* 13.

SUPELLEX. Lat. In the Roman law. Household furniture. *Dig.* 33. 10.

SUPER. Lat. Upon; above; over.

SUPER. A term in the English exchequer. *Bunb.* 117.

SUPER ALTUM MARE. L. Lat. On the high sea. *Hob.* 212. 2 *Ld. Raym.* 1453. *Molloy de Jur. Mar.* 231. 1 *Kent's Com.* 378.

SUPER VISUM CORPORIS. L. Lat. Upon view of the body. 1 *Bl. Com.* 348. The inquisition must be *super visum corporis.* 11 *Mod.* 271.

SUPERARE RATIONES. L. Lat. In old Scotch law. To have a balance of account due to one; to have one's expenses exceed the receipts. *Skene de Verb. Sign.* voc. *Scaccarium.*

SUPERDEMANDA. L. Lat. In old English practice. An over demand; a demand of more than was just or due. *Cadit in misericordiam pro superdemanda;* becomes subject to amercement for his over demand. *Bract.* fol. 179 b.

SUPERFICIARIUS. Lat. [from *superficies*, q. v.] In the civil law. One to whom a *superficies*, or right of surface, was granted; a superficiary. 1 *Mackeld. Civ. Law*, 362, 363, §§ 329, 330.

Superficiariæ ædes were buildings erected on hired ground, (*in conducto solo.*) *Dig.* 43. 18. 2.

SUPERFICIES. Lat. In the civil law. Surface; every thing on the surface of a piece of ground or of a building, and which is so closely connected with it by art or nature, as to constitute a part of the same; as houses, trees and vines. 1 *Mackeld. Civ. Law*, 361, § 329. See *Dig.* 43. 18. According to Dr. Kaufmann, *superficies* or *superficium* properly signifies the surface, or every thing connected with the surface of a piece of ground; in legal language, however, it denotes the things connected with the surface of *another's* ground as its accessory parts, and especially a real right in them which is granted to a person, (*jus in re aliena.*) *Id. ibid.* note.

Superflua non nocent [noceant.] Superfluities do [should] not prejudice. *Jenk. Cent.* 184. *Cod.* 6. 23. 17. Surplusage does not vitiate.

SUPERINDUCTIO. Lat. In the civil law. A species of obliteration. *Dig.* 28. 4. 1. 1. See *Inductio.*

SUPERIOR. In Scotch law. One of whom lands are held by another, answering to the lord, (*dominus,*) of the English law. One who had the *dominium directum*, (direct property,) of lands; the direct proprietor. See 1 *Forbes' Inst.* part 2, p. 97. —The grantor of a feudal right, to be held of himself. *Bell's Dict.*

SUPERIOR COURTS. In English law and practice. The courts of the highest and most extensive jurisdiction. A general term of description, including the *Court of Chancery*, and the three common law courts of *Queen's Bench*, *Common Pleas*, and *Exchequer*, which, from the circumstance of their being all holden at Westminster, are otherwise termed *the Courts at Westminster.* 3 *Steph. Com.* 405.

According to Sir Matthew Hale, the term *superior*, as applied to courts, denotes a lower degree than *supreme.* *Hale's Anal.* sect. xi.

SUPERIOR AND VASSAL. In Scotch law. A feudal relation corresponding with the English *lord and tenant.* See *Bell's Dict.* 3 *Bell's Appeal Cases*, 128.

SUPERIORITY. In Scotch law. The *dominium directum* of lands, without the profit. 1 *Forbes' Inst.* part 2, p. 97. See *Bell's Dict.*

SUPERONERARE. L. Lat. [from *super*, over, and *onerare*, to burden.] In old English law. To surcharge; to overburden. *Superoneravit;* has surcharged. 3 *Bl. Com.* 238. *Quod talis injuste* superoneravit *communem pasturam suam;* that such a one has unjustly surcharged his common pasture. *Bract.* fol. 229.

SUPERONERATIO. L. Lat. [from *superonerare*, q. v.] In old English law. Surcharge; a surcharging; a putting of more cattle on a common than the pasture would sustain, or than the party had a right to do. *Duo competunt remedia de* superoneratione; *vel amensuratio, vel assisa novæ disseysinæ de communia pasturæ;* two remedies lie for the surcharge; either an admeasurement, or an assise of novel disseisin of the common of pasture. *Bract.* fol. 229 b. See *Fleta*, lib. 4, c. 23, § 4.

SUPERPLUSAGIUM. L. Lat. In old English law. Overplus; surplus; residue or balance. *Bract.* fol. 301. *Spelman.*

SUPERSEDE. [Lat. *supersedere*, from *super*, above, and *sedere*, to sit.] Literally, to set above; to make void or inoperative by a superior authority.

To stay, suspend or discharge some judicial proceeding, by another proceeding of higher efficacy. In this way, one writ is frequently superseded by another writ; as execution by a writ of error, a *capias* by a *supersedeas*, (q. v.)

In old practice. To omit; to forbear; to refrain or desist from doing a thing. In this sense, (which is the proper classical meaning,) the word is uniformly used in the writs in the Register, being applied to persons exclusively. Thus, a sheriff is commanded that he *supersede* taking the body of a party; bailiffs, that they *supersede* holding plea, &c. See *Supersedeas.* And the word is used in the same sense in modern writs of *supersedeas.*

To neglect; to disregard; to refuse to do. *Quam si* supersederint, *tunc primo distringantur;* which, if they disregard, they shall first be distrained. *Fleta*, lib. 2, c. 60, § 36; c. 62, § 3.

SUPERSEDEAS. Lat. (You supersede or desist.) In practice. A writ issued for the purpose of relieving a party from the operation of another writ, which has been or may be issued against him; a writ issued to a ministerial officer, commanding him to desist from executing or acting under another writ, which has been, or may be, delivered to him. Thus, a de-

fendant may, in certain cases, procure his discharge from custody, under a *capias*, by obtaining a writ of *supersedeas* to be directed to the sheriff for that purpose. 1 *Tidd's Pr.* 279. 1 *Burr. Pr.* 399.

The name of this writ is derived from its emphatic word in the Latin forms, a great variety of which are to be found in the Register. *Tibi præcipimus quod captioni corporis prædicti Roberti, occasione præmissa*, supersedeas *usque ad*, &c.; we command you that you supersede the taking of the body of the aforesaid Robert, on the occasion aforesaid, until, &c. *Reg. Orig.* 70 b, 71 a. *Vobis præcipimus quod, si ita est, tunc executioni judicii per vos in curia prædicta redditi omnino* supersedeatis; we command you that if it be so, then you wholly supersede the execution of the judgment rendered by you in the court aforesaid. *Id.* 145. And see *Id.* tabula.

SUPER-VIDERE. L. Lat. In old English law. To over-see. *Fleta*, lib. 2, c. 73, § 4.

SUPPLEMENT, *Letters of.* In Scotch practice. A process by which a party not residing within the jurisdiction of an inferior court, may be cited to appear before it. *Bell's Dict.*

SUPPLEMENTAL AFFIDAVIT. In practice. An affidavit made in addition to a previous affidavit, for the purpose of supplying some deficiency in it. See 1 *Burr. Pr.* 344.

SUPPLEMENTAL BILL. In equity pleading. A bill filed in addition to an original bill, in order to supply some defect in its original frame or structure. *Story's Eq. Pl.* § 332. It is the appropriate remedy where the matter sought to be supplied cannot be introduced by amendment. *Id. ibid.* § 333. *Id.* §§ 334—338. See 3 *Bl. Com.* 448.

SUPPLETORY OATH. In modern civil law. An oath administered to a party himself, in cases where a fact has been proved by only one witness, in order to *supply* or make up the necessary complement of witnesses; *two* witnesses being always required to constitute full proof.* 3 *Bl. Com.* 370. *Hallifax, Anal.* b. 3, c. 9, num. 30.

SUPPLICATIO. Lat. In the civil law. A pleading corresponding to the rejoinder of the common law. *Calv. Lex.* voc. *Explicatio.*

SUPPLICAVIT. Lat. (He hath besought.) In practice. A writ in the nature of process at the common law, to find sureties of the peace upon articles filed by a party for that purpose. Now rarely used. 2 *Story's Eq. Jur.* § 1476. 4 *Bl. Com.* 253. See *Gilbert's For. Rom.* 202. 2 *Rep. in Ch.* 68.

SUPPLICIUM. Lat. In the civil law. Punishment. *Cod.* 1. 9. 9.

SUPPO'IT'. A contraction of *suppositus.* 1 *Inst. Cler.* 13.

SUPPONERE. Lat. In old English law. To put under; to put in place of another; to substitute fraudulently; to put a false thing in place of the true or genuine; to put a strange child in place of the true heir. *Aliquando partus* supponitur *ab uxore, —et aliquando à custode, qui* (*mortuo vero hærede*) supponit *extraneum, et nutrit ut hæredem;* sometimes a child is fraudulently substituted by the wife, and sometimes by the guardian, who (on the death of the true heir) substitutes a strange child and brings it up as heir. *Bract.* fol. 69. *Partus suppositus;* a substituted or suppositious child. *Id. ibid.*

SUPPORT, *Right of.* A right arising from contract, or prescription which supposes a contract, where the owner of a house stipulates to allow his neighbor to *rest* his timbers on the walls of his house. 3 *Kent's Com.* 436.

SUPPRESSIO VERI. Lat. Suppression or concealment of the truth; one of the classes of fraud. "It is a rule of equity as well as of law, that a *suppressio veri* is equivalent to a *suggestio falsi;* and where either the suppression of the truth, or the suggestion of what is false can be proved, in a fact material to the contract, the party injured may have relief against the contract." Spencer, C. J. 18 *Johns. R.* 405. See 13 *Peters' R.* 36, Barbour, J. See *Suggestio falsi.*

SUPRA. Lat. Above; over.

SUPRA PROTEST. (Over protest.) In mercantile law. A term applied to an acceptance of a bill by a third person, after protest for non-acceptance by the drawee. 3 *Kent's Com.* 87.

SUPRADICTUS. L. Lat. Above said; aforesaid.

SUPREMA VOLUNTAS. Lat. The last will. *Et* suprema voluntas *quod mandat fierique jubet, parere necesse est;* and what a last will commands and orders to be done, must be obeyed. Doderidge, J. *Latch*, 137.

SUPREMUS. Lat. In the civil law. Last; the last. Supremus est quem nemo

sequitur. He is last, whom no one follows. *Dig.* 50. 16. 92.

SUPREME. [from Lat. *supremus*, highest.] The proper title of the highest courts in a state. *Hale's Anal.* sect. xi.

SUR. L. Fr. Upon. *Sur cognizance de droit;* upon acknowledgment of right. See *Fine of lands.*

SURCESSER. L. Fr. In old practice. To supersede; to desist; to surcease. *Yearb.* II. 3 Hen. VI. 15.

SURCHARGE. L. Fr. and Eng. [Lat. *superoneratio.*] The putting by a commoner, of more beasts on the common than he has a right to. 3 *Bl. Com.* 237.

In equity practice. The showing an omission in an account for which credit ought to have been given. *Pulling on Merc. Accounts*, 161. 1 *Story's Eq. Jur.* § 525. It is used in contradistinction to the word *falsify. Id. ibid.*

SURCHARGER. L. Fr. To surcharge. *Surcharger cele commune. Britt.* c. 58.

SURDRE. L. Fr. To arise; to be raised. *Purrount* surdre *excepcions;* exceptions or pleas may be raised. *Britt.* c. 48.

SURDUS. Lat. In the civil law. Deaf; a deaf person. *Inst.* 2. 12. 3. *Surdus et mutus;* a deaf and dumb person. *Id. ibid. Dig.* 28. 1. 6. 1. *Id.* 28. 1. 7. *Id.* 50. 17. 124. *Fleta*, lib. 6, c. 38, § 1; c. 40, § 2.

SURETY. [Lat. *fide-jussor;* O. Sc. *sovertie.*] One who is bound for another who is primarily liable, and is called the principal. One who engages to be answerable for the debt, default, or miscarriage of another; one who undertakes to do some act in the event of the failure of another to do it, and as a security for its being done. See *Suretyship.*

SURETYSHIP. [Lat. *fide-jussio; cautio.*] The liability or contract of a surety. A contract of suretyship is a contract whereby one person engages to be answerable for the debt, default, or miscarriage of another. *Pitman, Princ. & Surety*, 1, 2. See *Burge on Suretyship*, 1—15.

SURMISE. L. Fr. and Eng. In old practice. Suggestion. "The plaintiff, upon a *surmise* of goods come to the hands of the executors, shall have a *sci. fa.*" 1 *Leon.* 68. *Id.* 286. *Hardr.* 82. 311.

To SURMISE. In old practice. To suggest. "A plaintiff *surmised* by his counsel." 1 *Leon.* 44. "A juror did *surmise.*" *Id.* 207.

SURNOSME. L. Fr. A surname; an over-name. *Britt.* c. 48.

SURPLUS, *Surpluis.* L. Fr. Excess. *Britt.* c. 110.

SURPLUSAGE. L. Fr. and Eng. [L. Lat. *surplusagium.*] Excess; superfluity; more than is necessary or proper.

In old law. A sum remaining over; a balance. "Surplusage of an account." 1 *Leon.* 219.

In pleading. Unnecessary matter of whatever description. *Steph. Pl.* 422.

In a stricter sense,—matter wholly foreign and irrelevant. *Id. ibid.* note.

SURPRISE. L. Fr. and Eng. [from Fr. *surprendre*, from *sur*, over, and *prendre*, to take.] The state of being taken unexpectedly or unawares; sudden confusion or perplexity. Literally, an overtaking. One of the grounds of relief in equity.

Mr. Justice Story has observed, that "there does not seem any thing technical or peculiar in the word *surprise*, as used in courts of equity. Where a court of equity relieves on the ground of surprise, it does so upon the ground that the party has been taken unawares, and that he has acted without due deliberation, and under confused and sudden impressions." 1 *Story's Eq. Jur.* § 120, note.

In a looser sense, the word *surprise* is sometimes used to denote fraud, or something presumptive of, and approaching to fraud. *Id. ibid.*

SURREBUTTER. [from Fr. *sur*, above, and *rebutter*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's *rebutter. Steph. Pl.* 59.

SURREJOINDER. [from Fr. *sur*, above, and *rejoinder*, q. v.] In pleading. The plaintiff's answer of fact to the defendant's rejoinder. *Steph. Pl.* 59.

SURRENDER. L. Fr. and Eng. [from *sur*, over, and *rendre*, to give or render.] A yielding up an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown [merge,] by mutual agreement between them. *Co. Litt.* 337 b. The falling of a less estate into a greater. 2 *Bl. Com.* 326. 4 *Kent's Com.* 103.

The giving up by bail, of their principal into custody, in their own discharge. 1 *Burr. Pr.* 394.

SURRENDEROR. In English law. A party who surrenders, or makes a surrender. 5 *East*, 132. 9 *Id.* 405.

SURRENDEREE. In English law. A party to whom a surrender is made.

SURREPTITIOUS. [Lat. *surreptitius*, from *surrepere*, to creep in, or under.] Stealthily or fraudulently done, taken away or introduced.

SURROGATE. [from L. Lat. *surrogatus*, from *surrogare* or *subrogare*, to substitute.] One who is substituted or appointed in the room or place of another; one who represents or acts for another.

In English law. A bishop's chancellor; an officer who usually presides in the bishop's diocesan court, and by whom, as the representative of the ordinary, letters of administration are granted where the spiritual court is not presided over by a judge. *Holthouse.*

In American law. A county officer who has jurisdiction in granting letters testamentary and letters of administration, and of other matters relating to the settlement of the estates of testators and intestates. 2 *Kent's Com.* 409, *et seq.*

SURSISA. L. Lat. [from L. Fr. *sursise*, q. v.] In old English law. Neglect; default. *Potest defendere summonitionem et* sursisam; he may defend [deny] the summons and the default. *Bract.* fol. 356.

SURSISE. L. Fr. [from *sursiser*, q. v.] In old English law. Neglect; omission; default; a ceasing or cessation. *De somounses, et de* sursises, *et de essoines. Britt.* c. 120. *E ki le cri orat e* sursera, *la* sursise *li Rei amend;* and whoever hears the cry [hue and cry] and neglects to pursue it, shall make amends for the neglect to the king. *LL. Gul. Conq.* l. 48.

SURSISER, *Surcesser.* L. Fr. To neglect; to omit doing a thing; to surcease; to fail to obey process. *Si levesque* sursist *nostre somounse, si soit attache de vener par destresse;* if the bishop fail to obey our summons, he shall be attached to appear by distress. *Britt.* c. 26. See *Sursise.*

SURSUM REDDERE. L. Lat. In old conveyancing. To render up; to surrender.

SURSUM REDDITIO. L. Lat. In old conveyancing. A surrender.

SURVIVE. [from Fr. *survivre*, from *sur*, over, and *vivre*, to live.] To outlive; to live beyond another; to over-live.

SURVIVOR. [See *survive.*] One who survives another; one who outlives another; one of two or more persons who lives after the other or others have deceased; the longest liver of two or more joint-tenants, or of any two or more persons who have a joint interest in any thing. See 2 *Bl. Com.* 183, 184.

Survivors, (plur.) Two or more of certain individuals named or referred to, who are living when any other or others of them happen to die. See 1 *Cushing's R.* 118. 11 *Grattan's R.* 67.

This is the natural and proper meaning of the term, which is usually given to it by the courts, in the constructions of wills. 2 *Jarman on Wills*, 609—616, (435—439, Perkins' ed. 1849.) In some cases, however, *survivor* has been construed to mean *other*, where it has appeared necessary in order to give effect to the apparent intention of the testator. See *Id.* 616—619, (440—442, Perkins' ed.) 2 *Williams on Exec.* 1256.

SUS. L. Fr. Upon. *Susdit;* aforesaid. *Kelham.*

SUS. PER COLL. L. Lat. An abbreviation of *suspendatur per collum;* let him be hanged by the neck. Words formerly used in England in signing judgment against a prisoner who was to be executed; being written by the judge in the margin of the sheriff's calendar or list, opposite the prisoner's name. 4 *Bl. Com.* 403. "Judgment was given *quod suspendatur per collum.*" 11 *Mod.* 230. "All the men condemned at the Old Bailey are hanged by this short note,—*suspens. per coll.*" Holt, C. J. 5 *Id.* 22.

SUSPENDERE. L. Lat. In old English law. To hang; to execute by hanging. *Suspensus;* hanged. See *Sus. per coll.*

SUSPENSION. In Scotch law and practice. A writ passing under the signet, by which the diligence of the law, or the effect of a judgment of a court may be suspended. *Bell's Dict.*

SUSUM. In old European records. A form of the Lat. *sursum*, up, upwards. *Susum aut jusum* was written for *sursum aut deorsum*, up or down. *Spelman*, vocc. *Susum, Josum.* The phrase *sursum versum vel deorsum*, (upwards or downwards,) occurs in the Digests. *Dig.* 38. 10. 10. 9, 12. But in the late Kriegel editions of the Corpus Juris, *susum* is substituted for *sursum.*

SUTE. L. Fr. In old English law. Suit; prosecution; service. *Kelham. Sute à molyn;* suit at mill. See *Secta ad molendinum.*

SUTH. L. Fr. In old English law.

Under. *Suth dit;* under said; hereafter said. *Kelham.*

SUTORIA. L. Lat. In old English law. The trade or occupation of a shoemaker. *Etiam de hiis qui duobus utuntur officiis, videlicet,* sutoriæ *et tanneriæ;* also of those who practice two trades, for instance, those of shoemaker and tanner. *Fleta,* lib. 2, c. 52, § 35.

SUUM. Lat. His; his own. As to the construction of this word, in the civil law, see *Dig.* 56. 16. 239. 9.

SUUS. Lat. His. As to the construction of this word, in the civil law, see *Dig.* 32. 71, *et seq.*

SUUS HÆRES. Lat. In the civil law. A proper heir; a right heir. *Inst.* 3. 1. 4.

SUUS JUDEX. L. Lat. In old English law. A proper judge; a judge having cognizance of a cause. Literally, one's own judge. *Bract.* fol. 401.

SUYT, *Suyte.* L. Fr. Suit; following. *Britt.* c. 28.

SUZEREIGN. L. Fr. In French and feudal law. The immediate vassal of the king; a crown vassal. *Butler's Co. Litt.* Note 77, lib. 3.

SWAIN-MOTE, *Swein-mote, Swain-gemote.* [from Sax. *swang,* an attendant, or bocland-man, or freeholder, and *mote,* or *gemote,* a meeting.] In forest law. A court holden before the verderors, as judges, by the steward of the swein-mote, thrice in every year, the *sweins* or freeholders within the forest composing the jury. Its principal jurisdiction is first, to inquire into the oppressions and grievances committed by the officers of the forest; and secondly, to receive and try presentments certified from the court of attachments against offences in vert and venison. 3 *Bl. Com.* 71, 72. *Cowell.*

SWANIMOTUM, *Swainimotum, Swaynmotum.* L. Lat. In old English law. The swain-mote, or court of swainmote, (q. v.) *Spelman. Cart. de Forest.* c. 8.

SWOLING, *Swuling, Suling.* [from Sax. *sul,* a plough; L. Lat. *swulinga, sulinga.*] In old records. A plough-land, or hide of land. *Cowell. Spelman.*

SWORN BROTHERS. [Lat. *fratres jurati.*] In old records. Persons who by mutual oath covenanted to share each other's fortune. *LL. Edw. Conf.* c. 35. *Paroch. Ant.* 57. *Cowell.*

SY, *Si.* L. Fr. If; so. See *Si.*

SYB & SOM. Sax. Peace and security. Words occurring in the laws of Canute. *Eallum Cristenum mannum* syb & som *gemene;* to all Christian men let there be common peace and security. *LL. Eccles. Canuti R.* c. 17.

SYLVA. Lat. In the civil law. Wood. See *Silva.*

In old Scotch law. "Ane wood neare adjacent to ane flude of water." *Skene de Verb. Sign.* voc. *Forestarius.*

SYLVA CÆDUA. Lat. In ecclesiastical law. Wood of any kind which was kept on purpose to be cut, and which being cut grew again from the stump or root. *Lyndw. Prov.* 190. 4 *Reeves' Hist.* 90. See *Silva cædua.*

SYMBOLÆOGRAPHY. [from Gr. συμβολαιογράφος, q. v.] The art of drawing written instruments. So defined by West, in his "Symboleography," part 1, lib. 1, sect. 1. West's Symboleography is referred to, as authority, by Mansfield, C. J. 2 *Taunt.* 85.

ΣΥΜΒΟΛΑΙΟΓΡΑΦΟΣ, Συμβολαιογράφος. Gr. [from συμβόλαιον, an instrument, and γράφειν, to write.] In the civil law. A writer of instruments; a tabellion. *Nov.* 44, in tit. *Id.* pr. *Id.* cc. 1, 2. *Nov.* 47, c. 1. *Nov.* 73, c. 5.

ΣΥΜΒΟΛΑΙΟΝ, Συμβόλαιον. Gr. In the civil law. An instrument in writing; a written instrument. *Nov.* 18, c. 10. *Nov.* 19. *Nov.* 44, pr. c. 1, §§ 1, 2, 4; c. 2. *Nov.* 47, in tit. *Id.* pr. *Id.* c. 1. *Id.* 73.

SYMBOLIC DELIVERY. In the law of sale. A delivery by symbol; the delivery of a thing by delivering another thing as the symbol or representation of it; as the delivery of goods deposited in a warehouse by delivering the key of the warehouse, the transfer of a ship at sea by the delivery of a bill of sale, and of a cargo by the indorsement and delivery of the bill of lading. 2 *Kent's Com.* 500—502. See 8 *Howard's R.* 399, Taney, C. J.

ΣΥΜΠΛΟΙΑ, Συμπλοια. Gr. [from σὺν, together, and πλέω, to sail.] A sailing together; a sailing of vessels in company, (SYMPLOIA.) *Loccen. de Jur. Mar.* lib. 2, c. 2, § 1.

ΣΥΝΑΛΛΑΓΜΑ, Συνάλλαγμα. Gr. [from συναλλάττω, to contract mutually, from σὺν, together, and ἀλλάττω, to change.] In the civil law. An exchange or interchange; an exchange of acts by the parties to a contract; a reciprocal performance of both parties to a contract, each giving or doing

something; the giving or doing of one thing in exchange for, or in consideration of, the giving or doing of another thing. A mutual obligation; a contract. *Dig.* 50. 16. 19. It implied the doing of some *act* by both parties, in addition to the *words* of the contract. *Calv. Lex.* See *Cowell*, voc. *Quid pro quo.*

SYNALLAGMATIC CONTRACT. [from Gr. συνάλλαγμα, q. v.] In the civil law. A bilateral or reciprocal contract, in which the parties expressly enter into mutual engagements, each binding himself to the other. *Pothier Obl.* part 1, c. 1, sect. 1, art. 2. *Civil Code of Louis.* Art. 1758.

SYNDIC. In French law. The assignee of an insolvent's or bankrupt's estate. 9 *Peters' R.* 182. 17 *Howard's R.* 157.

A person elected by a commune, or other society, to have the care of their suits and legal affairs, or of their affairs generally. *Meredith's Emerigon on Ins.* 43, note.

An officer in a village, answering to the Span. *regidor*, whose duty was to see to the repairs of common fences. 12 *Peters' R.* 450.

SYNDICUS. Græco-Lat. [from Gr. σὺν, with, and δίκη, a cause.] In the civil law. A defender (*defensor;*) one who was chosen to prosecute or defend a certain cause. *Dig.* 50. 4. 18. 13. Hence the modern *syndic*, (q. v.)

SYNGRAPHON, *Syngrapha.* See the next word.

ΣΥΓΓΡΑΦΟΝ, Σύγγραφον. Gr. [from σὺν, together, and γράφειν, to write.] In the civil and canon law. A writing comprising some contract between two, and being indented in the top, answerable to another that likewise contains the same contract; an indenture. *Cowell*, voc. *Indenture. Co. Litt.* 229 a. The civilians defined this kind of instrument to be,—a writing indented between creditor and debtor, on the cutting of which (*in cujus scissura*, that is, the part where it was cut through,) is written in capital letters this word, ΣΥΓΓΡΑΦΗ, or, in the plural, ΤΑ ΣΥΓΓΡΑΦΑ; and it differs from a chirograph, (χειρόγραφον) because the latter is written by the hand of one only, say the debtor, and left in possession of the creditor. *Cowell, ub. sup.* See 2 *Bl. Com.* 296.

SYNOTH, *Synod.* A name given to the national councils of the Saxons, from their religious character. *Crabb's Hist. Eng. Law*, 229. See *Michel-synoth.*

SYR. L. Fr. Sir. A word used by counsel in addressing a court. *Keilw.* 170 b. *Year Books*, passim.

T.

T. An abbreviation of *Teste*, (q. v.) in old writs. 1 *Inst. Cler.* 13.

T. An abbreviation of *Termino*, or *Term*, in the old reports.

T. R. E. An abbreviation of *Tempore Regis Edwardi*, (in the time of King Edward,) of common occurrence in Domesday, when the valuation of manors, as it was in the time of Edward the Confessor, is recounted. *Cowell.*

TABELLA. Lat. In the Roman law. A tablet; a small table, on which something short might be written. Used in voting, and in giving the verdicts of juries; and when written upon, commonly translated *ballot. Adam's Rom. Ant.* 100, 285. The laws which introduced and regulated the mode of voting by ballot were called *leges tabellariæ. Id.* 99. *Calv. Lex.* 1 *Kent's Com.* 232, note.

TABELLIO. Lat. [from *tabella*, or *tabula*, a tablet or written instrument; Gr. συμβολαιογράφος.] In the civil law. An officer whose functions were similar to those of the modern *notary*, being described as "a public writer of contracts," and "one who drew, wrote out, and attested instruments." *Calv. Lex.* See *Cod.* 4. 21. 16, 17. *Nov.* 7, c. 7. *Nov.* 44. *Nov.* 73. His office seems to have been to write out, in form, the rough drafts or *notes* of instruments prepared by another officer called *notarius*, and attest and authenticate their execution. *P. Cyclopædia*, voc. *Notary.* The *tabelliones* were important officers, having charge of the public records, and exercising in some cases judicial powers. *Brande.*

In France, the title and office of *tabellion* were united with those of notary, at an early period. In England, Matthew Paris, writing A. D. 1236, observes, that they were not known. *Tabellionum usus in regno Angliæ non habetur. Matt. Par.* fol. 424. *Cowell.* Bracton, however, distinctly mentions such an officer, and speaks of him as a public servant. *Tabellio qui dicitur servus publicus. Bract.* fol. 4 b.

TABERNA. Lat. [from *tabula*, a

board.] In the civil law. A shop, as being inclosed with boards, (*quod* tabulis *clauditur.*) *Dig.* 14. 3. 3. *Id.* 14. 3. 5. 10, 13. *Id.* 14. 3. 8. *Id.* 14. 3. 13. 2. *Id.* 14. 3. 18.

Any building fit for habitation, (*omne utile ad habitandum ædificium.*) *Dig.* 50. 16. 183.

A wine-shop. *Calv. Lex.*

In old English law. A drinking house; a tavern. Taverns and wakes (*tabernæ vigiliæque,*) are spoken of in Fleta, as places of nocturnal resort by servants, to the neglect of their duties. *Fleta*, lib. 2, c. 72, § 9. And see *Id.* c. 82, § 3.

TABERNACULUM. L. Lat. In old records. A public inn, or house of entertainment. *Consuet. Dom. de Farendon, MS.* fol. 48. *Cowell.*

TABERNARIUS. Lat. [from *taberna*, a shop.] In the civil law. A shop-keeper. *Dig.* 14. 3. 5. 7.

In old English law. A taverner or tavern-keeper. *Fleta*, lib. 2, c. 12, § 17.

TABLE RENTS. [L. Lat. *redditus ad mensam.*] In old English law. Rents paid to bishops or religious prelates, reserved or appropriated to their tables or house-keeping. *Cowell.*

TABLE DE MARBRE. Fr. In old French law. Table of Marble; a principal seat of the Admiralty, so called. These Tables de Marbre are frequently mentioned in the Ordonnance of the Marine. *Ord. Mar.* liv. 1, tit. 1, art. 10; tit. 2, art. 13; tit. 3, art. 3.

TABULA. Lat. In the civil law. A table or tablet; a thin sheet of wood which, when covered with wax, was used for writing.

An instrument written on such a tablet. *Tabulæ*, in the plural, is commonly used to signify a testament. *Inst.* 3. 10. 1. See *Id.* 2. 10. 12. *Dig.* 29. 3. *Id.* 37. 11. But it was immaterial, in this case, what was the material of the table; whether wood, or any other material, as paper, parchment, or the skin of an animal. *Dig.* 37. 11. 1, pr.

A tablet or board for painting pictures on. *Inst.* 2. 1. 34. *Si quis in aliena* tabula *pinxerit, quidam putant* tabulam *picturæ cedere; aliis videtur picturam, qualiscunque sit,* tabulæ *cedere; sed nobis videtur melius esse,* tabulam *picturæ cedere. Ridiculum est enim picturam Apellis vel Parrhasii in accessionem vilissimæ* tabulæ *cedere;* if one should paint on the tablet of another, some think that the tablet goes with the painting; others think that the painting, of whatever kind it be, goes with the tablet; but it appears to us to be the better opinion that the tablet should go with the painting. For it would be ridiculous that a painting of Apelles or Parrhasius should go as an accessory to a worthless tablet. *Id. ibid.* See 1 *W. Bl.* 324; Blackstone, arg.

TABULA. Lat. A board or plank.

Tabula in naufragio; a plank in a shipwreck. A figurative expression used in the English books, to denote that preference or priority among mortgagees, for which they are allowed to struggle, and which is gained by *tacking.* The English doctrine of tacking was first solemnly established in Marsh *v.* Lee, (2 *Vent.* 337,) under the assistance of Sir Matthew Hale, who compared the operation to a *plank in a shipwreck*, gained by the last mortgagee. 4 *Kent's Com.* 177.

TABULÆ. Lat. In the Roman law. Tables. Writings of any kind used as evidences of a transaction. *Adam's Rom. Ant.* 284. *Brissonius.*

Tabulæ accepti et expensi; tables of receipt and expense; account books. *Ad. Rom. Ant.* 284, 547.

TABULARIUS. Lat. [from *tabula*, q. v.] A notary, or tabellio. *Calv. Lex.* An officer who drew up or prepared writings, (*tabulæ.*) *Nov.* 73, c. 8. See *Tabellio.*

TAC, *Tak.* In old records. A kind of customary payment by a tenant. *Cowell.*

TAC-FREE. In old records. Free from the common duty or imposition of *tac. Cowell.*

TACIT. [from Lat. *tacitus*, q. v.] Implied; not expressed. See *Tacitus.*

TACITUS. Lat. [from *tacere*, to be silent.] Silent; not speaking; not expressed in words; tacit; implied. *Conditio tacita;* a tacit condition. *Bract.* fol. 19. *Tacita quædam habentur pro expressis;* some tacit things are regarded as expressed. *Branch's Pr. Tacitum vel expressum. Fleta*, lib. 3, c. 12, § 1.

TACIT RELOCATION. In Scotch law. An implied re-letting of premises, where the tenant continues in possession after the expiration of his term; a tacit renewal of the lease or tack. 1 *Forbes' Inst.* part 2, p. 153.

TACIT TACK. In Scotch law. An implied tack or lease; inferred from a

tacksman's possessing peaceably after his tack is expired. 1 *Forbes' Inst.* part 2, p. 153.

TACK. In Scotch law. A contract whereby the use of any thing is set or let for hire, or a reserved rent, called the *tack duty*, from and to a determined time. Termed also an *assedation*. 1 *Forbes' Inst.* part 2, p. 153. A lease.

TACKSMAN. In Scotch law. A tenant, or lessee; one to whom a *tack* is granted. 1 *Forbes' Inst.* part 2, p. 153.

TACKING. The uniting securities given at different times, so as to prevent any intermediate purchaser from claiming a title to redeem or otherwise discharge one lien, which is prior, without redeeming or discharging the other liens, also, which are subsequent to his own title. 1 *Story's Eq. Jur.* § 412. The term *tacking* in English law is particularly applied to mortgages, and is descriptive of the method by which a third mortgagee may obtain a priority over a second by buying in the first mortgage and uniting it to his own. See *Coote on Mortgages*, 391, *et seq.* 4 *Kent's Com.* 176. 1 *White's Eq. Cas.* 406, 410. The doctrine of *tacking* is not recognized in American law. 4 *Kent's Com.* 179. 1 *White's Eq. Cas.* 414, (Am. ed. note.)

TACTIS SACROSANCTIS. L. Lat. In old English law. Touching the holy (evangelists.) *Fleta*, lib. 3, c. 16, § 21. "A bishop may swear *visis evangeliis* (looking at the Gospels) and not *tactis*, and it is good enough." Vaughan, C. J. *Freem.* 133.

TACTIS SACROSANCTIS SCRIPTURIS. Lat. In old European law. Touching the holy Scriptures. *Feud. Lib.* 2, tit. 2, pr. *Sacrosanctis evangeliis tactis. Cod.* 3. 1. 14, § 1.

TACTO PER SE SANCTO EVANGELIO. L. Lat. Having personally touched the holy Gospel. *Cro. Eliz.* 105. The description of a corporal oath. See *Corporal oath.*

TAIL. L. Fr. and Eng. [from *tailler*, to cut; L. Lat. *tallium*, *talliatum.*] Limitation; abridgment; limited; abridged; reduced; curtailed, as a fee or estate in fee, to a certain order of succession, or to certain heirs. Literally, *cut* off, or *cut* down to certain limits. The word is used both as a substantive and adjective; as in the expressions, *tenant in tail*, *fee-tail.* See *Fee tail.*

TAILE. *Taille.* L. Fr. A tally. *Dyer*, 23, (Fr. ed.) Used also as an English word. *Cowell. Une* taille *de bois;* a tally of wood. *Id. Mist avant un* taille *enseale que avoit xvi noches;* produced a sealed tally which had sixteen notches. *Yearb.* T. Edw. II. 278. See *Tally.*

TAILLE. Fr. In old French law. An imposition levied by the king or any other lord, on his subjects. *Brande.* The royal *taille* was a tax imposed at once *in rem* and *in personam;* that is, each contributor was rendered personally liable to pay a sum proportionate to the estimated value of his immoveable property. It was a property tax affecting the roturier exclusively. *Steph. Lect.* 358.

TAILLER, *Tailer*, *Tayler.* L. Fr. In old English law. To cut; to limit; to tax; to bar. *Kelham. Yearb.* H. 9 Edw. III. 4. M. 10 Edw. III. 14.

To pronounce; to declare. *Kelham.*

TAILZIE. In Scotch law. An entail. A tailzied fee is that which the owner, by exercising his inherent right of disposing of his property, settles upon others than those to whom it would have descended by law. 1 *Forbes' Inst.* part 2, p. 101. *Bell's Dict.* See 3 *Bell's Appeal Cases*, 128.

TAINI, *Thaini.* L. Lat. In old English law. Freeholders. *Co. Litt.* 5 b.

TAKE. [Lat. *capere;* L. Fr. *prendre.*] To seize a thing or person by authority of law; to arrest a person. Constantly used in this sense, both in ancient and modern practice. See *Cape*, *Capias.*

To receive from another by some title; to be entitled to, as a party is said to *take* by descent, or by purchase, or under a will.

To obtain possession of a thing unlawfully, or feloniously; to appropriate to one's own use with a felonious intent. A felonious *taking* is of the essence of larceny. 4 *Bl. Com.* 230.

To lay hands upon an article, without removing it. There may be a taking without an *asportation*, or carrying away. See *Asportation.*

To receive the verdict of a jury; to superintend the delivery of a verdict; to hold a court. The commission of assise in England empowers the judges to *take the assises*, that is, according to its ancient meaning, to take the verdict of a peculiar species of jury called an *assise;* but in its present meaning, to *hold the assises.* 3 *Bl. Com.* 59, 185.

To obtain from a jury; as a counsel

is said to *take* a verdict for his client in court.

TALARE. L. Lat. [from Sax. *talan*, to pull off.] In old European law. To take or carry away. *L. Alaman.* tit. 34. *Taltum;* carried away. *Id. ibid. Talaverint. L. Ripuar.* tit. 64.

TALE. In old pleading. A plaintiff's count, declaration, or narrative of his case. 3 *Bl. Com.* 293. *Monstre son* tale. *Dyer*, 11 b.

TALE. The count or counting of money. Cowell derives this word from the same source with *tally*, (q. v.)

TALEA, *Talia.* L. Lat. In old English law. A tally. *Spelman. Cowell.* See *Tallia.*

TALENT. L. Fr. Right; truly. *Vous dites* talent; you say well or truly. *Yearb.* P. 4 Edw. III. 7.

TALES. Lat. Such; so many. A term applied to jurors. A *tales* is a supply of *such* men as are necessary to make up a deficiency of jurors. Such supplementary jurors are called *tales-men*, and are commonly taken from the bystanders or persons in court. 3 *Bl. Com.* 364, 365. A *tales* may be awarded if one only of the regular jurors appears; and it is said that, at common law, a jury might be composed entirely of tales-men. 10 *Co.* 102 a, 103 b. This is the law in Ohio. *Swan's Statutes of Ohio*, (ed. 1854,) c. 62, (17,) sect. 18. 15 *Ohio R.* 217.

TALES DE CIRCUMSTANTIBUS. L. Lat. So many of the bystanders. The emphatic words of the old writ awarded to the sheriff to make up a deficiency of jurors out of the persons present in court. 3 *Bl. Com.* 365.

TALIARE, *Talliare.* L. Lat. In old English law. To cut. *Si quis nemus alicujus sine licentia comburat vel* taliat; if any one shall burn or cut the wood of another without permission. *LL. Aluredi*, MS. c. 13, *apud Spelman.* See *Talliare.*

TALIO. Lat. [from *talis*, such, like.] In the civil law. Like for like; punishment in the same kind; the punishment of an injury by an act of the same kind, as an eye for an eye, a limb for a limb, &c. Called *similitudo supplicii*, (likeness of punishment;) *reciproca pœna*, (reciprocal punishment.) *Calv. Lex. Adam's Rom. Ant.* 291.

TALIS. Lat. In old English law. Such; such a one. A word constantly used by Bracton, Fleta, and other early writers, in their illustrations. Tali *die*, tali *anno*, *et* tali *hora*, *venit idem* B. *cum* tali *et* tali; on such a day, in such a year, and at such an hour, came the said B. with such and such a one. *Fleta*, lib. 1, c. 31, § 6.

Used also in the sense of the expression, "as follows;" though translated "such" in the old books. "The form of the writ is *such.*"

Talis non est eadem, nam nullum simile est idem. "Such" or "*like*" is not *the same*, for **Nullum simile est idem**, (q. v.) *Branch's Pr.* 4 *Co.* 18 b.

TALITER. Lat. [from *talis*, such.] In old pleading. In such a manner; so. Taliter *processum est;* it was proceeded in such a manner; such proceedings were had. Lord Ellenborough, 1 *M. & S.* 187. Taliter *processum fuit.* 2 *Mod.* 192, 195. See *Comb.* 125. 3 *Comstock's R.* 193.

TALLAGE. [L. Lat. *tallagium*, (q. v.) from Fr. *tailler*, to cut, or cut out.] In old English law. A share of a man's substance paid by way of tribute, toll or tax. *Cowell.* Lord Coke derives and defines this word as follows: "*Tallagium or tailagium* cometh of the Fr. word *tailer*, to share, [shear,] or cut out a part, and metaphorically is taken when the king or any other hath a *share* or part of the value of a man's goods or chattels, or a *share* or part of the annual revenue of his lands, or puts any charge or burthen upon another; so as *tallagium* is a general word and doth include all subsidies, taxes, tenths, fifteenths, impositions or other burthens or charge put or set upon any man, and so is expounded in our books." 2 *Inst.* 533. In the statute *De Tallagio non Concedendo*, the word is restrained to tallages, set or levied by the king or his heirs. *Id. ibid.*

According to Spelman, *tallages* were anciently called in English, *cuttings*, (the literal meaning of the word,) a term which, he observes, was used in Ireland in his day, to denote the exactions of a landlord.

TALLAGIUM. L. Lat. [from Fr. *tailler*, to cut.] In old English law. Tallage; tax; tribute; imposition. See *Tallage. Nullum* tallagium *vel auxilium, per nos vel hæredes nostros, in regno nostro ponatur seu levetur*, &c. No tallage or aid shall be set [imposed] or levied by us or our heirs, in our kingdom, &c. *Stat. de Tallagio non Concedendo*, c. 1.

The taking an inventory, or making a

list of property rated for paying tax. *Spelman.*

TALLATIO. L. Lat. In old records. A keeping account by tallies. *Cowell.*

TALLEA, *Tallia, Talea, Talia.* L. Lat. [L. Fr. *taille*, from *tailler*, to cut.] In old English law. A tally; a piece of wood *cut* with notches in two corresponding parts. *Si creditor habet* talleam, *oportet probare illam;* if the creditor have a tally, he ought to prove it. *MS. Codex*, cited in *Cowell. Ut patet per* talliam; as appears by a tally. *Paroch. Ant.* 571. See *Tallia.*

TALLIA. L. Lat. In old English law. A tally. *Fleta*, lib. 2, c. 27, § 5; c. 30; c. 61, § 2; c. 63, § 12. See *Tallea.*

TALLIA. L. Lat. [from Fr. *tailler*, to cut.] A tax or tribute; tallage; a share taken or *cut out* of any one's income or means. Called in Ireland, literally, a *cutting. Spelman.* The word *excise*, (from Lat. *excidere*, to cut out,) has precisely the same meaning.

TALLIARE, *Taliare.* L. Lat. [L. Fr. *tailler;* Ital. *tagliare;* from Sax. *talan*, or *tælan*, to take away, to correct, according to Spelman.] In old English law. To cut; to cut off; to cut out; to cut down; to reduce, abridge or limit by cutting; to limit or restrain.* To set or put to some certainty, or to limit to some certain inheritance; (*ad quandam certitudinem ponere, vel ad quoddam certum hæreditamentum limitare.*) *Litt.* sect. 18. *Co. Litt.* 22 a. *Feodum talliatum;* a fee tail. *Id.* See *Tail.*

To impose a tax or tallage. *Spelman. Fleta*, lib. 2, c. 47, § 34.

TALLIUM. L. Lat. [from L. Lat. *talliare;* Fr. *tailler*, to cut.] In old English law. Tail; a species of limited estate. See *Tail.*

A tally. *Spelman* See *Tally.*

A tax or tallage. *Spelman.*

TALLY. [L. Fr. *taille*, from *tailler*, to cut; L. Lat. *talea, talia, tallea, tallia, tallium.*] A piece of wood *cut* with indentures or notches in two corresponding parts, of which one was kept by the creditor, and the other by the debtor. *Cowell.* Formerly the common way of keeping all accounts. *Id. Fleta*, lib. 2, c. 70, § 11; c. 82, § 5. See *Tallia.* "If the tally have only notches or scotches indented, every scotch for twelve pence, according to the common usage." *Dyer*, 23.

Spelman more closely describes a tally as "a small piece or slip of wood, made smooth on both sides, (*clavola vel ligni portiuncula, utrinque complanata,*) upon which the amount of a debt was cut, (*cui summa debiti inciditur;*) and being then split into two parts, one was delivered to the debtor and the other to the creditor, as an evidence of the account, (*fissaque inde in duas partes, una debitori, altera creditori traditur in rationis memoriam.*) *Spelman*, voc. *Tallium.* They were sometimes sealed. *Dyer*, 23.

In French law, tallies are described as "the parts of a piece of wood cut in two, which two persons use to denote the quantity of goods supplied by the one to the other. For this purpose, each of them has one of the pieces; that in possession of the debtor is properly called the tally, and the other the *echantillon.* When the goods are delivered, the two pieces are joined together, and a notch cut in them, denoting the quantity supplied; such are the tallies of bakers. These tallies are used instead of writings, and are a kind of written proof of the quantity supplied, when the buyer has the *echantillon* to join to the tally." *Poth. Oblig.* part 4, ch. 1, art. 2, § 8.

Tallies were used in the English Exchequer, until abolished by the statute 23 Geo. III. c. 82. The old tallies were ordered to be destroyed by 4 & 5 Will. IV. c. 15. *Wharton's Lex.*

TAM. Lat. So; as well. Frequently used with *quam*, in the expression *tam quam*, (q. v.)

TAM QUAM. Lat. (As well—as.) In practice. A phrase used where a proceeding is applied or referred to two things or persons. Tam *de fortia* quam *de facto;* as well of force as of fact. *Bract.* fol. 138. A *venire tam quam*, was one by which a jury was summoned, *as well* to try an issue, *as* to inquire of the damages on a default; (tam *ad triandum* quam *ad inquirendum.*) 2 *Tidd's Pr.* 722, 895. See *Qui tam.*

TAMEN. Lat. Yet; notwithstanding. *Tamen per cur'.* 1 *P. Wms.* 530.

TAMPS. L. Fr. Time. *Kelham.* An old form of *temps.*

TANGANARE. L. Lat. In old European law. To adjure; to call solemnly upon; to interrupt. *L. Salic.* tit. 60, § 1. *L. Ripuar.* tit. 35. *Id.* tit. 58, § 19.

TANISTRY. In Irish law. A species of tenure, founded on immemorial usage,

by which castles, manors, lands and tenements descended to the eldest and worthiest man of the blood and race of the deceased. *Davies' R.* 28. *Ware's Antiq. Hibern.* 38. *Cowell.*

TANNERIA. L. Lat. In old English law. Tannery; the trade or business of a tanner. *Fleta*, lib. 2, c. 52, § 35.

TANT, *Taunt.* L. Fr. As; so; as well. *Kelham.*

Tant come; inasmuch as; while; so long as. *Id.*

Tant que, tanque, tanqe; until. *Id.*

Tant solement; all only; (Lat. *solummodo, duntaxat.*) *Co. Litt.* 9 a.

TANTEO. Span. In Spanish law. Preëmption. *White's New Recop.* b. 2, tit. 2, c. 3.

TANTOST. L. Fr. Forthwith; presently; by and by; almost; so much. *Kelham.*

TANTUS. Lat. In old English law. So much. *Tantam terram cum pertinentiis;* so much land with the appurtenances. *Fleta*, lib. 3, c. 14, § 5.

TANTUM. Lat. In old English law. So much; as much. **Tantum bona valent, quantum vendi possunt.** Things are worth so much as they can be sold for. *Shep. Touch.* 142. *Perkins*, ch. 11, s. 809.

TARD, *Tarde.* L. Fr. [from Lat. *tarde*, q. v.] In old practice. Slow; late. *Pur ceo que le brefe vynt si* tard *que il ne poit faire nule execucion;* for that the writ came so late, that he could make no execution. *Britt.* c. 121. *Trop tarde;* too late. *Fet Assaver*, § 57. *Dyer*, 138.

TARDE. Lat. [from *tardus*, slow.] In practice. Late; too late. A return made by a sheriff, when a writ was delivered to him too late for execution, that the writ was delivered to him so late, (*quod breve adeo* tardè *sibi liberatum fuit,*) or came so late, (*adeo* tardè *venit,*) that it could not be executed, (*quod illud exequi non poterit.*) *Reg. Jud.* 31 b. *Roscoe's Real Act.* 150. *Breve tam* tardè *venit quòd exequi non potuit. Fleta*, lib. 2, c. 67, § 4. *Stat. Westm.* 2, c. 39. This return is still used. 7 *Penn. St.* (Barr's) *R.* 128.

TASSARE. L. Lat. In old English law. To stack; to heap up. Tassari *et co-operiri;* to be stacked and covered. *Fleta*, lib. 2, c. 73, § 9. See *Id.* cc. 81, 82.

TASSUM, *Tassa.* L. Lat. In old English law. A heap; a hay-mow, or hay-stack. *Fœnum in tassis;* hay in stacks. *Reg. Orig.* 96.

TAUNT. L. Fr. So; so much; so far. *Britt.* c. 69. *Taunt come;* so much as. *Id. ibid. Tauntost;* presently. *Id.* c. 96.

TAUR. L. Fr. [from Lat. *taurus.*] A bull. *Yearb.* H. 9 Edw. III. 6.

TAVERN. [from L. Fr. *taverne*, (q. v.) from Lat. *taberna*, (q. v.) a wine-shop.] A house licensed to sell liquors in small quantities, to be drank on the spot. *Webster.* This seems to be the proper sense of the word. See *infra.*

In a larger sense,—an inn or hotel; a house for the entertainment of travellers, as well as for the sale of liquors, licensed for that purpose. *Webster.* In New-York, and several other states, the words *inn* and *tavern* are used as synonymous. 1 *N. Y. Rev. St.* [678—681,] 677—680. 3 *Hill's* (N. Y.) *R.* 150. 2 *Kent's Com.* 597, note.

*** That *tavern* originally signified, in England, a wine-shop or wine-house, a place where wine was sold in small quantities and drank, a drinking-house,—appears from the use of the Fr. *taverne*, and L. Lat. *taberna*, in the times of Britton and Fleta. See *Taverne, Taberna.* And this corresponds with the proper meaning of the Lat. *taberna*, from which it is undoubtedly derived, which was used to signify a wine-shop, (*œnopolium*, from Gr. οἰνοπώλιον,) and essentially imported a *shop* or place constructed of *boards*, (*ex tabulis constructa,*) where any thing was *sold. Calv. Lex.* As, in process of time, however, the seller of wine, (including other strong drinks,) began to supply food and lodging for wayfaring men, the term *tavern* came to be synonymous with *inn*, (q. v.) and this has been traced as far back as the reign of Elizabeth. 1 *Cheeves'* (S. C.) *Law R.* 220. 2 *Kent's Com.* 597, note. The general disuse of the word "*inn*" in the United States, has necessarily led to the employment of "*tavern*" in its place, though without much uniformity or strictness of signification. Thus, in the Revised Statutes of New-York, *tavern* is used in the sense of a house where liquors are retailed and drunk, and requiring a license as such. 1 *Rev. St.* [678—681,] 677—680. In the laws of Pennsylvania and Ohio, it is employed in the same sense. *Purdon's Dig.* (ed. 1857,) 428, pl. 2. *Swan's Statutes of Ohio*, (1854,) chap. 112, (21,) sect. 1. 2 *Kent's Com.* 597, note. In other states, the term has been applied to houses where liquor is *not* retailed. Thus, in Kentucky, taverns must be licensed, even though spiritous liquors

be not retailed. *Revised Statutes*, (ed. 1852,) 665, § 2. And see *Swan's Statutes of Ohio*, c. 112, (19.) And, in New-York, by Act of 12th April, 1843, c. 97, licenses to keep *taverns* may be granted *without* including a license to sell spiritous liquors or wine. So that the word has, by a process of gradual departure from its original and proper meaning, come at last to import the very reverse of it.

TAVERNE. Fr. [from Lat. *taberna*, q. v.] In old English law. A house or shop where wine was sold and drunk; a wine-shop or wine-house; a drinking-house; a tippling-house; a tavern. *Et si per felonie, le quel la felonie fuit faite, dedens meson ou dehors, ou en* taverne, *ou à la lute, ou à autre assemble;* and if feloniously [slain, the coroner shall cause inquest to be made] in what place the felony was committed, within a house, or without, or in a *tavern*, or at a wrestling-match, or other gathering. *Britt.* c. 1. *Que ils le counterent pur verite à la* taverne, *ou aillourz de ascun ribaud ou autre, à que home ne doit rien crere;* that they heard it mentioned for truth at a *tavern*, or elsewhere, from some vagabond or other, to whom no credence should be given. *Id.* c. 4. See *Taverner.* The word *taverne* is not found in Kelham's Dictionary.

TAVERNER. L. Fr. and Eng. [Fr. *tavernier*, from *taverne*, q. v.] In old English law. A seller of wine; one who kept a house or shop for the sale of wine. *Et puis soit enquis de* taverners *que ount vendu vyns encontre la droit assise;* and afterwards it shall be inquired of *taverners* who have sold wines against the right assise. *Britt.* c. 30. A retailer of wines. *Hardr.* 338. *Taverner* is used as the addition of a person in a writ in the Register. *Reg. Orig.* 195. But *tavern-keeper* has now, for the most part, taken its place.

TAVERN-KEEPER. [Fr. *taverner*, q. v.] One who keeps a tavern. *Webster.*

One who keeps an inn; an inn-keeper. In New-York and several of the other states, the terms *tavern-keeper* and *inn-keeper*, or *inn-holder*, are used as synonymous. 1 *N. Y. Rev. St.* [678,—681,] 677—680. 2 *Kent's Com.* 97, note. See *Tavern.* Webster defines the word, as used in the United States, to mean, "one who is licensed to sell liquors to be drank in his house, and to entertain travellers and lodgers, together with the horses or oxen composing their teams."

TAX. [L. Fr. *taxe;* L. Lat. *taxa*, from Gr. τάξις, from τασσειν, to set in order, to arrange or adjust.] A rate or sum of money assessed on the person or property of a citizen, by government, for the use of the nation or state. *Webster.*

In a general sense,—any contribution imposed by government upon individuals, for the use and service of the state; whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name. *Story on the Const.* (Abr.) § 472. See 1 *Kent's Com.* 254—257.

In a stricter sense,—a rate or sum imposed by government upon individuals, (or polls,) lands, houses, horses, cattle, possessions and occupations; as distinguished from customs, duties, imposts and excises. *Id. Webster.* This is the ordinary sense of the word. In New-York, the term *tax* has been held not to include a street assessment. 11 *Johns. R.* 77. 3 *Wendell's R.* 263. 4 *Hill's R.* 76. 4 *Comstock's R.* 419.

Literally, or according to its derivation, —an imposition laid by government upon individuals, *according to* a certain *order* and proportion, (*tributum* certo ordine *constitutum.*) *Spelman*, voc. *Taxa.* Webster observes, that taxes in free governments are usually laid upon the property of citizens, *according to their income* or the *value* of their estates. Cowell says it may be so called from the Gr. τάξις, because it was a thing done *orderly* and moderately. The radical idea of the word seems to be, arrangement, *adaptation* or *adjustment* of one thing to another. See *To tax, Taxare.* It imports, also, essentially, according to Cowell, *regularity* of imposition and *certainty* of amount, as distinguished from occasional, extraordinary or uncertain impositions, such as subsidies were. And, according to Spelman, it imports, also, *moderation* in amount, (*non solum* ordinem, *sed et* modum *ratione temperatum significat.*)

For the distinction between a tax and an assessment, see *Assessment.*

To TAX. [from L. Lat. *taxare*, (q. v.) L. Fr. *taxer;* see *Tax.*] To lay, impose or assess upon the citizens [or subjects of a government] a certain sum of money, or amount of property, to be paid to the public treasury, to defray the expenses of the government. *Webster.*

In practice. To assess, fix or determine judicially; to adjust, adapt or proportion.

This is the original and proper sense of the word, retained in the common phrase "to *tax* costs," but much more expressively shown in the old, but now obsolete phrase, "to *tax* damages." 2 *Leon.* 199. Where a clerk, master or judge examines an attorney's or solicitor's bill of costs, and certifies it to be of the proper amount, he is said to "*tax* the costs." But anciently a jury were said "to *tax* the damages," when they gave them in their verdict, implying, according to the strict radical meaning of the word, an *adjustment* or *adaptation* of the damages to the injury sustained. *Bract.* fol. 187, 98 b. *Britt.* c. 53, 87. *Fleta*, lib. 2, c. 1, § 24. See *Taxare*, *Taxatio*, *Taxer*. *Assess* is the word substituted, in the latter application, in modern practice, the *damages* being said to be *assessed*, and the *costs taxed*. But *assess* itself imports radically the same idea of *adjustment*, (*assidere*, its Latin form, being compounded of *ad*, to or by, and *sedere* or *sidere*, to set or place.)

In the New-York Code of Procedure the terms *adjust* and *adjustment* have been substituted in place of *tax* and *taxation*, in their application to costs. *Code*, (ed. 1859,) § 311.

TAXA. L. Lat. A tax. *Spelman.*

In old records. An allotted piece of work; a task. *Ad* taxam *operarius;* a workman by the piece; a tasker. *Cowell. Triturator ad* taxam; a thresher in the barn, who worked by the measure, or job, and not by the day. *Paroch. Ant.* 576.

TAXACION. L. Fr. [from Lat. *taxatio*, q. v.] In old English law. Taxation; assessment; the finding of damages by a jury. *Soit agarde que ele recovere seisine de sa dower, et ses damages par* taxacion *de jurours;* it shall be awarded that she recover seisin of her dower, and her damages by the taxation of the jurors. *Britt.* c. 111.

TAXARE. Lat. In the civil law. To rate or value. *Calv. Lex.*

To tax; to lay a tax or tribute. *Spelman.*

In old English practice. To assess; to rate or estimate; to moderate or regulate an assessment or rate. *Item damna dabit per sacramentum juratorum estimanda, et per justitiarios* (*si opus faerit*) taxanda *ad minorem quantitatem, si juratores forte modum excesserint; ad plus autem æstimari non debent à justitiariis quam juratores dixerint in sacramento, nisi forte juratores illa damna ex certa scientia ad minus* taxaverunt *quam deceret;* also he shall pay the damages, to be estimated by the oath of the jurors, and to be *taxed* by the justices (if need be) at a less amount, if the jurors should happen to have exceeded measure; but they ought not to be estimated by the justices at more than the jurors have said in their verdict, unless perchance the jurors have intentionally *taxed* those damages at less than was proper. *Bract.* fol. 187. See *Fleta*, lib. 2, c. 60, § 36; c. 62, § 4. *Dampna quæ taxantur per juratos ad duas marcas;* the damages which are taxed by the jurors at two marks. *Pasch.* 14 *Edw.* I. rot. 10, coram Rege.

TAXATI. L. Lat. [from Gr. τάξις, order.] In old European law. Soldiers of a garrison or fleet, assigned to a certain station. *Spelman.*

TAXATIO. Lat. [from *taxare*, to rate or adjust.] In the civil law. The assessment or moderation by a judge, (*judex*,) of the damages claimed or sworn to by the *actor* or plaintiff; the limiting of the damages to a certain amount. *Officio judicis debet*—taxatione *jusjurandum refrænari. Dig.* 4. 3. 18. 1 *Spence's Chancery*, 211, note (*c.*) In the Novels of Justinian, it is used for a rated sum limited by a judge, (ῥητῆς ποσότητος ὁριζομένης παρὰ τοῦ δικάζοντος.) *Nov.* 53, c. 1. *Nov.* 82, c. 10.

Bracton, in his commentary on the civil law definition of an action, (which he adopts,) uses the words *taxatio* and *taxare*, in a similar sense. *Bract.* fol. 98 b.

TAXATIO EXPENSARUM. L. Lat. In old English practice. Taxation of costs. *Clerke's Prax. Cur. Adm.* tit. 9.

TAXATIO NORWICENSIS. L. Lat. A valuation of ecclesiastical benefices made through every diocese in England, by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III. *Cowell.*

TAXATION. [Lat. *taxatio.*] The act or process of taxing, or of imposing a tax. The act or process by which a government imposes upon individuals the payment of a rateable contribution in money, for public uses. See *Tax.* For the distinction between *taxation* and *assessment*, see *Assessment.*

TAXATION. L. Fr. and Eng. In practice. Assessment; adjustment. *La* taxation *des damages. Yearb.* M. 5 Edw. III. 24. The act of taxing. See *To tax.*

TAXER. L. Fr. In old English law. To tax; to assess; to rate or estimate. *Taxe, taxes;* taxed; assessed; rated. *Et solonc la value annuele soyent* taxes *les damages par les justices, singles ou doubles,*

&c.: and according to the annual value shall the damages be taxed by the justices, single or double, &c. *Britt.* c. 53. *Et puis soient* taxes *lour damages par les jurours;* and afterwards shall their damages be taxed by the jurors. *Id.* c. 87. *Que le pleintife recov'a sa debt et ses damages* taxes; that the plaintiff recover his debt and his damages taxed. *Yearb.* P. 10 Edw. III. 21.

TEAM, *Theam, Tem, Them.* Sax. [from *tyman,* to propagate, to teem.] In old English law. Literally, an offspring, race or generation. *Spelman.* A royalty or privilege granted by royal charter to a lord of a manor, of having, keeping and judging in his court, his bondmen, neifes and villeins, and their offspring or suit, (*sequela.*) *Id.* They who had a jurisdiction of this kind, were said to have a court of *Theme. MS. Anon.* cited *ibid.* The word is constantly used in the old books in connection with *toll,* in the expression *Toll & Team. Bract.* fol. 122 b, 124 b, 154 b.

TECHNICAL. [Græco-Lat. *technicus;* Gr. τεχνικὸς, from τέχνη, art.] Belonging, or peculiar to an art or profession. Technical terms are frequently called in the books, "words of *art,*" (*verba* or *vocabula artis.*)

TEDDING. Spreading. Tedding grass is spreading it out after it is cut in the swarth. 10 *East,* 5.

TEDING-PENNY. *Tething-penny.* Sax. In old English law. A small tax or allowance to the sheriff from each tithing of his county, towards the charge of keeping courts, &c. *Cowell.*

TEGULA. [Lat. from *tegere,* to cover.] In the civil law. A tile. *Dig.* 19. 1. 18.

TEINDS. In Scotch law. Tithes. 1 *Forbes' Inst.* part 2, p. 89. *Bell's Dict.*

TEINLAND, *Tainland, Thainland.* Sax. In old English law. Land of a thane or Saxon noble; land granted by the crown to a thane or lord. *Cowell.* 1 *Reeves' Hist. Eng. Law,* 5. Hereditary land, not subject to the service of agricultural tenants, (*terra hæreditaria, et colonorum servituti non obnoxia.*) *Spelman.*—Land held by knight-service. *Co. Litt.* 86 a.

TEKNA, Τέκνα. Gr. [plur. of τέκνον, from τίκτειν, to bring forth.] In the civil law. Children. A word answering to the Lat. *nati,* in its legal as well as common import. *Calv. Lex. Connanus,* cited *ibid.* Ἡ τῶν τέκνων προσηγορία καὶ ἐπὶ τοὺς ἐγγόνους ἐκτείνεται: the term τέκνα (children) is extended also to grandchildren. *Dig.* 50. 16. 104.

TEAEYTH, Τελευτὴ. Gr. In the civil law. Death; (the *end* of life.) *Nov.* 39, pr.

TEAEYTAIA BOYAHΣIΣ. Gr. In the civil law. Last will, (*ultima voluntas.*) *Dig.* 48. 22. 16.

TEAEYTΩN, Τελευτῶν. Gr. In the civil law. Dying; a person dying or deceasing. *Nov.* 48. *Nov.* 90. The origin of the modern word *decedent,* (q. v.)

TELLIGRAPHUM, *Telligraffum, Telligraphium.* Latino-Gr. [from Lat. *tellus,* land, and Gr. γράφειν, to write.] In Saxon law. A charter or deed of land, (*charta seu libellus prædialis.*) *Spelman.* 1 *Reeves' Hist. Eng. Law,* 10. A writing showing and protecting the title to lands, (*scriptum quo prædiorum jus continetur et tuetur.*) *Spelman.* Literally, a land-writing. *Telligraphia* were evidences or muniments of title. *Id. Tandem Cenulphus Rex, serâ ductus pœnitentiâ,* telligraphia, *id est, libellos quos a supradictis hominibus Uriheh et Osberto injustè perceperat, cum magnâ pecuniâ Ecclesiæ Christi in Dorobernia remisit;* at last king Kenulf, led by late repentance, restored the land-writings, that is, the books [*bocs,* Sax. land-*bocs,*] which he had unjustly taken from the aforesaid men, Uriheh and Osbert, with a large sum of money, to the Church of Christ in Canterbury. *MS. Concil. apud Clovesho,* A. D. 800. *Spelman.* Mr. Reeves observes that the word *telligraphum* was probably adopted after the Conquest, as a translation of the Saxon *land-boc.* 1 *Reeves' Hist. ub. sup.* This supposition seems to be reduced to certainty, by the above quotation.

TELONIUM, *Teloneum.* Græco-Lat. [Gr. τελώνιον, from τέλος, tax.] In the civil law. A place where tax is collected or received. *Calv. Lex.* In old English records, a toll-booth. *Cowell.* Converted into *theolonium,* in old English law, and used to signify a tax or toll. See *Theolonium.*

In feudal law. A tax, (*vectigal.*) *Vectigalia quae vulgo dicuntur telonia. Feud. Lib.* 2, tit. 56.

TELUM. Lat. [from Gr. τῆλε, or τηλοῦ, far off.] In the civil law. A weapon. Any thing that a man can hurt with. Telorum *appellatione, omnia ex quibus singuli homines nocere possunt, accipiuntur;* under the appellation of weapons are included all things with which individual men can hurt. *Dig.* 48. 6. 11. 1. This definition is copied in Fleta. Lib. 4, c. 4, § 4. The *Lex Cornelia de Sicariis,* punished with

death those who went about with a weapon, (*cum telo*,) with the intent of killing some one. Justinian, commenting on the meaning of *telum*, in this law, observes, that "according to Caius' interpretation of the Twelve Tables, it commonly signified that which was shot from a bow, [viz. an arrow,] but it now signifies every thing that is thrown from the hand, [any missile weapon,] so that missiles of wood, stone and iron are embraced under the appellation." *Inst.* 4. 18. 5. See *Dig.* 48. 8. Teli *appellatione et ferrum et fustis, et lapis, et denique omne quod, nocendi causâ, habetur, significatur. Dig.* 47. 2. 54. 2. See *Arma.*

TEM. Sax. An old form of *team*, (q. v.) Toll & tem. *Bract.* fol. 104 b.

TEMERE. Lat. In the civil law. Rashly; inconsiderately; without sufficient cause. A plaintiff was said *temere litigare*, who demanded a thing out of malice, or sued without just cause, and who could show no ground or cause of action. *Brissonius.*

TEMPLES. The two English inns of court, (the Inner Temple and Middle Temple,) so called, because anciently occupied as the residence of the Knights Templars, on the suppression of which order they were purchased by some professors of the common law, and converted into *hospitia*, or Inns of Court. They are called the *Inner* and *Middle* Temple, in relation to Essex House, which was also a part of the house of the Templars, and called the *Outer* Temple, because situated without Temple Bar. *Encyc. Lond.*

TEMPORALIS. Lat. [from *tempus*, time.] In the civil law. Temporary; limited to a certain time; not perpetual.

Temporalis actio; an action limited within a certain period, beyond which it could not be brought. *Inst.* 4. 12.

Temporalis exceptio; a temporary exception; an exception which barred or delayed an action for a time. Otherwise called *dilatoria. Inst.* 4. 13. 8, 10.

TEMPORALITIES. [L. Lat. *temporalia.*] In English law. The lay-fees of bishops, with which their churches are endowed or permitted to be endowed by the liberality of the sovereign, and in virtue of which they become barons and lords of parliament. *Spelman*, voc. *Temporalia.*

TEMPORIS EXCEPTIO. Lat. In the civil law. A plea of time; a plea of lapse of time, in bar of an action. 1 *Mack. Civ. Law*, 200, § 200. Answering to the plea of the statute of limitations at common law.

TEMPS. L. Fr. In old English law. Time; times. *Temps descovenables;* non-juridical seasons. *Britt.* c. 52. *Par temps;* presently; shortly. *Kelham.*

TEMPTATIO, *Tentatio.* L. Lat. [from *tentare*, to try.] In old English law. Assay or trial. Temptatio *panis fiat bis in anno;* the assay of bread shall be made twice a year. *Cart.* 20 *Edw.* I. n. 51. *Cowell.*

TEMPUS. Lat. In civil and old English law. Time; a time or term; a limited period of time. See *infra. Tempus enim modus tollendi obligationes et actiones, quia* tempus *currit contra desides et sui juris contemptores;* time is a means of removing obligations and actions; because time runs against the slothful and those who are neglectful of their right. *Fleta*, lib. 4, c. 5, § 12.

TEMPUS CONTINUUM. Lat. In the civil law. A continuous or absolute period of time. A term which begins to run from a certain event, even though he for whom it runs has no knowledge of the event, and in which, when it has once begun to run, all the days are reckoned as they follow one another in the calendar. *Dig.* 3. 2. 8. 1 *Mack. Civ. Law*, 180, § 187.

TEMPUS SEMESTE. Lat. In old English law. The period of six months or half a year, consisting of one hundred and eighty-two days. *Reg. Jud.* 50 b. 6 *Co.* 62 a. *Yelv.* 100. *Cro. Jac.* 166.

TEMPUS UTILE. Lat. In the civil law. A profitable or advantageous period of time. A term which begins to run from a certain event, only when he for whom it runs has obtained a knowledge of the event; and in which, when it has once begun to run, those days are not reckoned on which one has no *experiundi potestas*, i. e. on which one cannot prosecute his rights before a court. *Dig.* 3. 6. 6. 1 *Mack. Civ. Law*, 180, § 187.

TENANCY. [L. Fr. *tenaunce;* L. Lat. *tenentia.*] A holding or mode of holding an estate.

In old English law. A house of habitation, or place to live in, held of another. *Stat.* 23 *Eliz.* c. 4. *Cowell.*

TENANCY IN COMMON. The holding of an estate in lands by several persons, by several and distinct titles, but by unity of possession.* 2 *Bl. Com.* 191. 4 *Kent's Com.* 367. A tenancy in common is where

two or more hold the same land, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph. Com.* 323.

The holding of a personal chattel, as of a ship or vessel, by several persons at the same time, with distinct but undivided interests. See 3 *Kent's Com.* 151.

TENANT. L. Fr. and Eng. [L. Fr. *tenaunt*, from *tener*, to hold; L. Lat. *tenens*, from *tenere*, to hold.] One who holds; a holder, especially of lands or tenements.

In feudal law. One who holds of another, (called lord or superior,) by some service, as fealty or rent. See *Tenure.*

In English law. One who holds of another, (according to the fiction or maxim of tenure,) though, in point of fact, the absolute owner of what he so holds; as a tenant in fee simple.* 2 *Bl. Com.* 59, 104, 105. 3 *Kent's Com.* 487.

One who actually holds of another; one who has temporary possession and use of that which is in reality the property of another; as a tenant for life or years. The correlative of *landlord.*

One who has actual seisin or possession of lands or tenements. *Co. Litt.* 1 b.

One who has actual possession of lands claimed in suit by another; the defendant in a real action. The correlative of *demandant.* 3 *Bl. Com.* 180.

One who holds or possesses lands or tenements by any kind of right, either in fee, for life, years or at will. *Cowell.* This definition sufficiently expresses the general meaning of the word, as at present used both in English and American law.

*** Lord Coke, commenting on the word *tenant* as used by Littleton, observes that it has all the significations of the Lat. *teneo*, from which it is derived. For the tenant *has* [*tenet*] the estate of the land; he *holds* [*tenet*] the land of some superior lord; he is to *perform* [*tenere*] the services due; and thereunto he is *bounden*, [*tenetur*] by doom and *judgment* of law. *Co. Litt.* 1 b. *Litt.* sect. 1. See *Teneo, Tenere.*

The word *tenant* continues to be extensively employed in American law, although the principle of *tenure*, in the feudal sense, from which it is derived, and which it radically imports, is no longer recognized. See 3 *Kent's Com.* 488, 513, 514. Its principal use now is to distinguish the degree or quantity of right or interest which persons may have in lands or other subjects of property, as whether in fee, for years, &c. whether in severalty, or in common, &c. As applied to estates in fee simple, it signifies *owner* or *proprietor;* as applied to less estates, it signifies *holder, occupier*, or *possessor.* In the latter application, however, particularly in regard to estates for years, the word continues to retain in a degree its ancient and peculiar sense of a holding of *another by service;* and though the service is now a stipulated *rent* paid as a mere equivalent for the occupation, the proprietor is still known, even in common speech, by the feudal appellation of *land lord.*

TENANT IN CAPITE. L. Fr. and Lat. In feudal and old English law. Tenant in chief; one who held immediately under the king, in right of his crown and dignity. 2 *Bl. Com.* 60.

TENANT IN FEE SIMPLE, (or TENANT IN FEE.) He who has lands, tenements or hereditaments, to hold to him and his heirs forever, generally, absolutely and simply; without mentioning *what* heirs, but referring that to his own pleasure, or to the disposition of the law. 2 *Bl. Com.* 104. *Litt.* sect. 1. 2 *Crabb's Real Prop.* 6, § 948. See *Fee simple.*

TENANT IN TAIL. In English law. He who has lands, tenements or hereditaments, to hold to him and the heirs of his body.* *Litt.* sect. 14. 2 *Bl. Com.* 113. 2 *Crabb's Real Prop.* 23, §§ 971, 972. See *Fee tail.*

TENANT FOR LIFE. One who holds lands or tenements for the term of his own life, or for that of any other person, (in which case he is called tenant *pur auter vie*,) or for more lives than one. 2 *Bl. Com.* 120. See *Estate for life.*

TENANT IN DOWER. A woman who holds the third part of the lands and tenements of which her deceased husband was seised, for the term of her life, as her dower.* 2 *Bl. Com.* 129. See *Estate in dower.*

TENANT BY THE CURTESY. One who, on the death of his wife seised of an estate of inheritance, after having by her issue born alive and capable of inheriting her estate, holds the lands and tenements for the term of his life. After the birth of the issue and before the death of the wife, he is called tenant by the curtesy *initiate;* after the death of the wife, tenant by the curtesy *consummate. Co. Litt.* 30 a. See *Estate by the curtesy.*

TENANT FOR YEARS. One who holds lands or tenements under a lease or demise from another, for the term of a certain number of years agreed upon; a lessee for years.* 2 *Bl. Com.* 140. See *Estate for years.*

TENANT FROM YEAR TO YEAR. One who holds lands or tenements under the demise of another, where no certain term has been mentioned, but an annual rent has been reserved. See 1 *Steph. Com.* 271. 4 *Kent's Com.* 111, 114.

One who holds over, by consent given either expressly or constructively, after the determination of a lease for years. *Id.* 112.

TENANT AT WILL. One who holds lands or tenements let to him by another, at the will of the lessor.* *Litt.* sect. 68. 2 *Bl. Com.* 145. 4 *Kent's Com.* 110. See *Estate at will.*

TENANT BY (or AT) SUFFERANCE. One that comes into the possession of land by lawful title, but holds over by wrong, after the determination of his interest. 4 *Kent's Com.* 116. 2 *Bl. Com.* 150. *Co. Litt.* 57 b. See *Estate at sufferance.*

TENANT A VOLUNTE. L. Fr. Tenant at will. *Litt.* sect. 68.

TENANT PERAVAILE, (or PARAVAIL.) L. Fr. The lowest tenant, (literally, the under or bottom tenant,) of land, one who held of a mesne lord.* *Litt.* sect. 555. See *Paravail.*

TENAUNT. L. Fr. [from *tener*, to hold.] In old English law. Tenant; a tenant. *Pur ceo que le pleintyfe est son* tenaunt, *et del tenement que il tient de luy est arere;* for that the plaintiff is his tenant, and of the tenement which he holds of him is in arrear. *Britt.* c. 27.

The defendant in a real action. *Si le garaunt veigne al jour que il serra somouns, et le pleyntyfe ausi, et le* tenaunt *nent;* if the warrantor come at the day that he shall be summoned, and the plaintiff also, and the tenant not. *Britt.* c. 75.

TENCON. L. Fr. A dispute; a quarrel. *Kelham.*

TEND. In old English law. To tender or offer. *Cowell.*

To TENDER. L. Fr. and Eng. [L. Fr. *tendre*, (q. v.) from Lat. *tendere*, to stretch or hold out, to extend.] To offer, by presenting a thing, and as it were holding it out to another; to offer to pay an amount of money, by presenting it to another. See *Tender.*—To carefully offer, or circumspectly endeavor the performance of any thing belonging to us. *Cowell.* See *Tendre.*

To offer in words, or by a form of words. See *Tender of issue.*

TENDER. An offer of a sum of money in satisfaction of a debt or claim, by producing and showing the amount to the creditor or party claiming, and expressing verbally a willingness to pay it.* A mere offer to pay is not, in legal strictness, a tender. 2 *Dall.* 190. Marshall, arg. 1 *Wash.* (Va.) *R.* [348,] 450. The word imports not only a verbal offer, but a corresponding corporeal act, as by producing and showing the amount; and this is strictly sustained by its etymology, the Lat. *tendere*, from which it is derived, signifying to *stretch* or *hold out*, to *extend;* implying that what is tendered is *held out* to the party for his acceptance; the party tendering thus representing, both by word and act, not only his willingness, but his readiness, to do *all in his power* to satisfy the demand. As to the kind of money in which a tender should be made, and generally what is a good tender, see 3 *Chitt. Bl. Com.* 304, note. *United States Digest*, Tender.

To constitute a valid legal tender there must be an actual offer of the sum due, unless the actual production of the money be dispensed with by a refusal to accept, or something equivalent thereto; and this offer must be an absolute one, not coupled with any condition. 2 *Stark. Evid.* 778, 779. 15 *Wendell's R.* 637; cited by Crawford, J. 1 *Wisconsin R.* 141, 147. A declaration of willingness and readiness to pay is not a legal tender of payment. *Id.*

TENDER OF ISSUE. A form of words in a pleading, by which a party offers to refer the question raised upon it to the appropriate mode of decision. The common tender of an issue of fact by a defendant, is expressed by the words, "And of this he puts himself upon the country." *Steph. Pl.* 54, 230.

TENDRE, *Tender.* L. Fr. [from Lat. *tendere*, to reach, to offer.] In old English law. To offer; to tender; to express a readiness. *Si ascun pl'—monstre chartres, et* tendent *averement;* if any plaintiff—show charters, and offer proof. *Britt.* c. 76. *Et si le breve soit covenable et bon, si coviendra au pleyntyfe* tendre *d'averer toute sa entente;* and if the writ be regular

and good, it behooves the plaintiff to offer to aver or prove [to express himself ready to verify] all his count. *Id.* c. 98. Littleton uses this word in its present English form. *Al jour assesse, de* tender *à luy;* at the day set, to tender to him. *Litt.* sect. 340.

TENEMENT. L. Fr. and Eng. [from Fr. *tener*, to hold; L. Lat. *tenementum*, from *tenere*, to hold.] A thing holden. 2 *Bl. Com.* 59.—"A possession holden." *Finch's Law*, b. 2, ch. 4.—Any thing that may be holden, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial ideal kind. 2 *Bl. Com.* 17. See 3 *Kent's Com.* 401. 17 *Pick. R.* 105. *Tenement* is a word of greater extent than *land*, including not only land, but rents, commons and several other rights and interests issuing out of, or concerning land. 1 *Steph. Com.* 158, 159. A tenement must lie in tenure and must relate to land. *Burr. Sett. Cas.* 318.

In the popular sense, a house or building. 2 *Bl. Com.* 16, 17. A building for a habitation. *Webster.* A house with the home-stall, or immediate appurtenances. *Brande.* Sometimes construed in law to have this sense. See 10 *Wheaton's R.* 236, Story, J. 17 *Pick. R.* 105, Wilde, J. 2 *East*, 189. 4 *Id.* 362. And see *Tenementum.*

This word is purely French, and in composition is expressed by the English *hold.* Thus, frank-*tenement* is translated free-*hold.* See *Hold.*

TENEMENT. L. Fr. [from *tener*, to hold.] Tenement; a tenement; land held of another by service. *Del* tenement *que il tient de luy;* of the tenement which he holds of him. *Britt.* c. 27. *Chateux que demorent en le* tenement; chattels which remain on the tenement. *Id.* c. 40. *Trova le* tenement *pleyne;* finds the tenement full. *Id. ibid. Fraunk tenement;* freehold. *Id. ibid. Id.* c. 47, *et passim.*

"TENEMENTS," in a will, in its ordinary sense, imports a mere local description of the property; but it sometimes carries a fee, as where the context, or apparent intention of the testator, requires such a construction. See 10 *Wheaton's R.* 236, Story, J. "The word 'tenements' has never been construed in a will, independently of other circumstances, to pass a fee." *Id.* 238.

TENEMENTARY (or TENEMENTAL) LAND. [L. Lat. *terra tenementalis.*] In English law. That part of a manor which is granted out to tenants, as distinguished from the demesne lands of the lord; the tenant's land or tenancy. Called, in Saxon law, the *outland. Cowell. Spelman*, vocc. *Inland, Utland.* 2 *Bl. Com.* 90.

TENEMENTUM. L. Lat. [from *tenere*, to hold.] In old English law. A tenement; a thing held by service; a fee, fief or feudal estate; an estate which a tenant holds of a lord. *Spelman. Devenio homo vester, de* tenemento *quod de vobis teneo;* I become your man, of the tenement which I hold of you. *Bract.* fol. 80. *Liberum tenementum;* a free tenement, or freehold, as distinguished from *villenagium. Id.* fol. 207. *Tenementorum, aliud liberum, aliud villenagium;* of tenements, one kind is free, the other villeinage. *Id. ibid.*

A corporeal thing held of another; a thing capable of being viewed, entered upon, measured, cultivated, fed upon. Hence, primarily, *land* held by service. *Intrat dominus in* tenementum *tenentis sui, et facit ei disseysinam;* the lord enters into the tenement of his tenant, and disseises him. *Bract.* fol. 46 b. *Videant* tenementum *ad quod communia pertinere dicitur.* Tenementum *videlicet in quo communia pasturæ petitur, qualitatem et quantitatem, et per quas metas;* they should view the tenement to which the common of pasture is said to be appurtenant. The tenement, too, in which the common is demanded, its quality and quantity, and by what metes [it is bounded.] *Id.* fol. 224. *Plures habere possunt jus pascendi in uno* tenemento; several may have a right of pasture in one tenement. *Id. ibid. Nemo possit communiam petere in aliquo* tenemento *quod excoli possit, vel includi, vel poni in defensum;* no one can claim common in any tenement which can be cultivated, or enclosed, or put in defence, [i. e. exclusively appropriated.] *Id.* fol. 228.

Tenure; the mode or circumstance of holding. Tenementum *non mutat statum liberi, non magis quam servi. Poterit enim liber homo* tenere *purum villenagium, faciendo quicquid ad villenagium pertinebit, et nihilominus liber erit, cum hoc faciat ratione villenagii, et non ratione personæ suæ;* the tenure [or mode of holding,] does not alter the condition of a freeman, any more than of a slave. For a freeman may hold pure villeinage, doing whatever

shall pertain to villeinage, and nevertheless be a freeman, since he does this in regard of the villeinage, and not in regard of his own person. *Bract.* fol. 26.

A tenement; a building for habitation or occupation; a messuage, house or shop. There is a writ in the Register, *De tenementis legatis*, (about tenements bequeathed.) One form of this writ, directed to the mayor and sheriffs of London, recites that, "whereas, according to custom in the said city hitherto used and approved, it is lawful for every citizen of the said city to bequeath his *tenements* in the said city, by his last will and testament, to whomsoever he pleases, in the same way as his chattels, (*licet unicuique civi ejusdem civitatis* tenementa *sua in eadem civitate, in testamento suo in ultima voluntate sua, tanquam catalla sua legare cuicunque voluerit;*) and that one S. late a citizen of the said city, had in his last will and testament bequeathed four *shops*, with the appurtenances, (*quatuor* shopas *cum pertinentiis,*) or four *messuages* and ten *shops*, (*quatuor* mesuagia *et decem* shopas,) with the appurtenances, &c. to E." *Reg. Orig.* 244 b. Another writ, directed to the bailiffs of Great Yarmouth, recites a similar custom of the burgesses of that town, and applies it to a *messuage* bequeathed by will, &c. *Id. ibid.*

A chattel; a thing bought and held by a villein. *Et quod* tenementum *contineri possit sub generalitate catallorum, quantam ad dominum, videtur, quia ex catallis illorum servorum,* (*quæ dominorum esse debent,*) *empta sunt* tenementa; and it seems, that as far as concerns the lord, a *tenement* may be embraced under the general designation of *chattels;* because, with the chattels of those bondmen, (which ought to be their lords',) tenements are bought. *Bract.* fol. 26.

A manor. *Spelman.*

TENENDAS. In Scotch conveyancing. That clause of a charter by which the particular tenure is expressed. *Bell's Dict.*

TENENDUM. L. Lat. [from *tenere*, to hold; L. Fr. *à tener.*] In old conveyancing. To hold; literally, to be held. A formal word in charters, by which a tenement was conveyed, expressive of *tenure*, or indicating that the thing conveyed was *to be held*, in the feudal sense of the term. It was constantly and closely associated with the word *habendum*, as in the following examples: *Do tali, &c. habendum et* tenendum *sibi et hæredibus suis;* I give to such a one, &c. to have and to hold to him and his heirs. *Bract.* fol. 17 b, 18. The word, however, was usually made to vary in gender and number, according to the precise appellation of the thing conveyed; *tenendam* being used with *terram* or *acram*, and *tenendas* with *acras. Sciant præsentes et futuri, quod ego talis, dedi et concessi, &c. tantam terram cum pertinentiis, in tali villa, habendam et* tenendam *tali*, &c. Know [all men] present and to come, that I, such a one, have given and granted, &c. to such a one, &c. so much land, with the appurtenances, in such a town; to have and to hold, [literally, to be had, and to be held,] to such a one, &c. *Id.* fol. 34 b, 35.

The *tenendum* clause, as it is termed, in old deeds, is described as being expressed at length,—"*tenendum per servitium militare*," (to hold by knight service;) "*tenendum in burgagio*," (to hold in burgage;) "*tenendum in libero socagio*," (to hold in free socage.) 2 *Bl. Com.* 299. After the statute of *Quia Emptores*, it was expressed,—"*tenendum de capitalibus dominis feodi*," (to hold of the chief lords of the fee.) But this expressing nothing more than the statute had already provided for, the clause, according to Blackstone, gradually grew out of use; and Sheppard remarks that, in his day, it was, for the most part, omitted altogether. *Shep. Touch.* 80. The single word *tenendum*, (to hold,) was, however, retained, and joined to the *habendum*, in one clause. *Cruise's Dig.* tit. xxxii. ch. 2, sect. 52.

In modern conveyancing, the *tenendum* in this abridged form, (which corresponds with the use of it by Bracton, *ub. sup.*) is still in use, or, in other words, the English "*to hold*" is invariably used in immediate connection with "*to have*," (the ancient *habendum;*) and though deprived of its peculiar ancient significance, seems entitled to be regarded as something more than a mere word of form: the word "hold," in its ordinary sense of actual possession and entire control of a thing, adding in a considerable degree to the significance of the word "have," with which it is associated.

TENENS. Lat. [from *tenere*, to hold.] In old English law. A tenant; a holder; one who holds. The correlative of *dominus*, (lord.) *Fleta*, lib. 3, c. 12, § 3. *Debet* tenens *manus suas utrasque ponere*

inter manus utrasque domini sui; the tenant ought to put both his hands between both the hands of his lord. *Bract.* fol. 80. *Potest quis esse* tenens *meus reddendo mihi reddditum;* a man may be my tenant by rendering to me a rent. *Id.* fol. 169.

TENENS. L. Lat. In old practice. Tenant; the tenant; the defendant in a real action. *Fleta*, lib. 6, c. 6, § 1.

TENEO. Lat. I hold, (or TENERE, to hold,) is said by Lord Coke to have the following significations:

To have, as an estate. *Co. Litt.* 1 b.

To hold of some superior. *Id. ibid.*

To keep, as a covenant. *Id. ibid.*

To bind, as an obligation. *Id. ibid.*

To judge or deem. *Id. ibid.*

See these senses applied to the word tenant. *Id. ibid.* See *Tenere.*

TENER. L. Fr. In old English law. To hold. *A aver et* tener *à luy et à ses heires;* to have and to hold to him and his heirs. *Litt.* sect. 625.

To keep. Tener *hors de droit heire;* to keep out the right heir. *Britt.* c. 65. *Si l' uncle ou l' aunte soit en seisine, ei* teigne *hors l' neveu;* if the uncle or the aunt be in seisin, and hold out the nephew. *Id.* c. 119. *Tenes vous al un;* keep yourself to one [issue.] *Yearb.* M. 5 Edw. III. 106, [plea,] M. 7 Edw. III. 31. T. 1 Edw. II. 14.

TENERE. Lat. In the civil law. To hold. A term expressive of mere *fact* without reference to right; or expressive of what was termed corporeal and natural possession. *Habere*, (to have,) and *possidere*, (to possess,) on the other hand, were terms expressive of right, or what was termed *civil* possession. *Calv. Lex.* See *Habere.*

To observe or keep. *Calv. Lex.*

To bind. *Id.*

To be of force or validity. *Id.*

TENERE. Lat. In old English law. To hold by service, in the feudal sense. *De tenemento quod de vobis* teneo; of the tenement which I hold of you. *Bract.* fol. 80. *Co. Litt.* 1 b.

To hold, judicially. *Tenere placitum;* to hold plea; to take cognizance of an action; to exercise or entertain jurisdiction. *Prohibemus vobis ne* teneatis *placitum;* we prohibit you that you do not hold plea. *Reg. Orig.* 34. *Tenere placita;* to hold pleas; to have a court of one's own. *Finch's Law*, b. 2, c. 14.

To hold, or be seised of; to have. *Co. Litt.* 1 b.

To hold; to bind. *Teneri;* to be held or bound. *Noverint universi me A. de tali com'*, teneri *B, in x marc';* Know all men that I, A. of such a county, am bound to B. in ten marks. *Fleta*, lib. 2, c. 64, § 3.

To keep, fulfil or perform. *Præcipe A. quod, &c.* teneat *B. conventionem inter eos factum*, &c. Command A. that, &c. he keep with B. the covenant made between them. *Reg. Orig.* 165.

To do, perform or render. *Præcipimus vobis quod sine dilatione plenum rectum* teneatis *W. B. de uno mesuagio*, &c. We command you, that without delay you do full right to W. B. of one messuage, &c. *Reg. Orig.* 1.

To stand good; to have effect. *Tenet—tenebit breve;* the writ holds—will hold. *Bract.* fol. 189. *Cadit breve versus tales, licet* teneat *versus alios;* the writ falls or abates against such, though it holds against the others. *Id.* fol. 203.

TENET, (he holds,) and TENUIT, (he held.) L. Lat. In old practice. Words formerly applied to the writ of waste; the writ being said, with regard to the defendant, to be brought either in the *tenet* or the *tenuit.* In the *tenet*, where the particular estate was still subsisting, and the place wasted was to be recovered with damages; in the *tenuit*, where the particular estate had expired, and damages only were sought to be recovered. *Roscoe's Real Act.* 123.

TENHEVED. [Sax. *tienheofod*, from *tien*, ten, and *heofod*, head.] In old English law. The head of a tithing, or decennary; a tithingman, chief pledge, head borough or borsholder. *Spelman.*

TENIER, *Tener.* L. Fr. To hold; to accept or take. *Kelham.*

To think; to regard or look upon. *Id.*

TENMANTALE, *Tenmentale.* Sax. [from *tien*, ten, *men*, and *tale*, a number or count.] In Saxon and old English law. A tithing or decennary; the number of ten men. *LL. Edw. Conf.* c. 19.

A tribute paid to the king, of two shillings for every plough-land. *Hoveden*, A. D. 1194, cited in *Spelman. Cart.* 29 *Edw.* I. cited in *Cowell.*

TENOR. Lat. [from *tenere*, to hold or direct.] In feudal law. Tenor, or tenure; the mode of holding an estate or fee; a limiting or restricting to a certain course, time or quantity; the declaration or limitation of an estate; the express terms of the feudal donation. Tenor *est pactio, contra*

communem feudi naturam ac rationem, in contractu interposita; tenor is an agreement, contrary to the common nature and reason of a fee, interposed or inserted in the contract [by which it is conveyed.] *Hotoman de Verb. Feud.* voc. *Tenor feud.*

Tenor est qui legem dat feodo. It is the tenor [express terms of the feudal donation] which gives law to the fee. 2 *Bl. Com.* 310. *Wright on Ten.* 35, 21, 152. It is the tenor of the feudal grant which regulates its effect and extent. *Broom's Max.* 304, [346.] The declaration by the lord from whom the feud or fee moved, of the continuance or quantity of estate which he meant to confer, governed the fee. 2 *Bl. Com.* 310. Tenor *est qui dat legem feudo, et plerumque naturam feudi mutat;* it is the tenure which gives law to the fee, and for the most part changes the nature of the fee. *Crag. de Jur. Feud.* 50. *Zasius in Us. Feud.* fol. 123. *Wright on Tenures,* 21, note.

TENOR. Lat. and Eng. [from *tenere,* to hold on; to have a continuous progress.] The exact copy of a writing, pursuing the course of its words as they succeed one another.* *Tenor* always imports a true copy of the thing written, and consists in identity. 3 *Salk.* 225. *Reg. Orig.* 220 b. "Tenor signifies the very words." Holt, C. J. 12 *Mod.* 218. See 1 *Cushing's R.* 65, 66. See *Purport.*

The true intent and meaning of an instrument. To do a thing according to the *tenor* of a writing, is to do it according to the true intent and meaning thereof. *Cowell.* "According to the *tenor,* true intent and meaning of these presents," is a clause of frequent occurrence in deeds and other instruments, from which the above explanation may have been derived.

TENS. L. Fr. Time. *Kelham.* An old form of *temps.*

TENSER. L. Fr. To keep; to perform. *Kelham.*

TENTHS. [Lat. *decimæ.*] In English law. A temporary aid issuing out of personal property, and granted to the king by parliament; formerly the real tenth part of all the moveables belonging to the subject. 1 *Bl. Com.* 308.

In English ecclesiastical law. The tenth part of the annual profit of every living in the kingdom, formerly paid to the Pope, but by statute 26 Hen. VIII. c. 3, transferred to the crown, and afterwards made a part of the fund called Queen Anne's Bounty. 1 *Bl. Com.* 284—286.

TEN'TUM. A contraction of *tenementum.* 1 *Instr. Cler.* 13. *Com.* 228.

TENTUS, *Tentum.* L. Lat. In old English law. Held; holden. A barbarous participle formed from the verb *tenere,* (q. v.) *Ad curiam* tentam *ibidem quinto die Aprilis;* at a court held in the same place on the fifth day of April. *Chartuary of forms,* cited *Bl. Law Tr.* 108, note.

TENUIT. Lat. He held. See *Tenet.*

TENURA. L. Lat. In old English law. Tenure. *Mag. Cart.* 9 Hen. III. c. 33.

TENURE. L. Fr. and Eng. [from *tener,* to hold; L. Lat. *tenura.*] A manner of holding; the mode of holding a feudal estate. Tenure *est la maniere par quoy les tenements sont tenues des seigneurs;* tenure is the manner by which tenements are held of lords. *Custum. de Norm.* c. 28. The mode or principle of holding of a superior by service; the fundamental principle of the feudal system.

In the law of England, the principle of *tenure* is still expressly retained, it being a fundamental maxim that all the land in the kingdom is *held,* mediately or immediately, of the sovereign. *Co. Litt.* 93 a, 1 a, 1 b, 65 a. *Wright on Tenures,* 136, 137. 2 *Bl. Com.* 59. 1 *Steph. Com.* 173. 3 *Kent's Com.* 487.

In the United States, government is theoretically considered the source of all titles to land, but in the proper feudal sense, the principle of tenure seems to be abrogated; tenants in fee being to all intents and purposes the absolute owners of their estates. See 1 *Hilliard's Real Prop.* 79—81, [37.] In some of the states, tenure in socage is said still to exist in theory, but in others it has been expressly abolished, and practically all land is now held by an allodial title. See 3 *Kent's Com.* 488, 509—514. 1 *Hilliard's Real Prop.* 80, 81, [39.] There is high authority, however, for the opinion that the great feudal principle of tenure has been acknowledged in American jurisprudence, and that we have no lands which are properly allodial, that is, which are not holden. 1 *Greenleaf's Cruise Dig.* 23, note. The *idea* of tenure certainly pervades, to a considerable degree, the law of real property in this country; and the *language* of tenure is everywhere in constant use, all proprietors, owners, or holders of

real estates being technically denominated *tenants*.

TENUS. L. Fr. Holden. *Dyer*, 29 b.

TERCE. [from Lat. *tertius*, third.] In Scotch law. Dower; right of dower. A relict's right to the life rent of a third of lands, tithes, wadsets, and annual rents in fee whereof her husband died infeft. 1 *Forbes' Inst.* part 2, p. 145.—The right which a widow has to the third part of the rents of the heritage in which her husband died infeft. *Bell's Dict.*

TERCER. In Scotch law. A widow that possesses the third part of her husband's land as her legal jointure. 1 *Kames' Equity*, pref.

TERM. [from L. Fr. *terme*; from Lat. *terminus*; Gr. τέρμα.] A limit; a bound or boundary, particularly of time.

A limitation of time. *Co. Litt.* 45 b. A limitation of an estate to a certain period; the period of time for which an estate is granted, as for life or years; the duration of an estate. See 1 *Chitt. Gen. Pr.* 159.

An estate or interest conveyed for a certain time, or limited to a certain period of time. *Co. Litt.* 45 b. *Burton's Real Prop.* 270, pl. 835. An estate for years is called a *term*, (*terminus*,) because its duration or continuance is bounded, limited, and determined; for every such estate must have a certain beginning and certain end. 2 *Bl. Com.* 143.

A limited and fixed period of time during which courts are statedly held, sit, or are open for the hearing and trial of causes. See *Terms of Court*, *Terminus*.

A word, (*vocabulum*;) a word of art, or technical word; a descriptive expression. See *Terme*, *Terminus*, *Terms*.

TERM. In the civil law. A space of time granted to a debtor for discharging his obligation. *Poth. Obl.* part 2, ch. 3, art. 3, § 1.

TERM PROBATORY. In English ecclesiastical practice. A certain time within which the plaintiff is required to prove so much of the libel as the defendant has not confessed in his personal answers. *Hallifax, Anal.* b. 3, c. 11, num. 12. The appointment by the judge of such time. *Id.*

TERM TO PROPOUND ALL THINGS. In English ecclesiastical practice. An appointment by the judge of a time at which both parties are to exhibit all the acts and instruments which make for their respective causes. *Id. ibid.* num. 22.

TERM TO CONCLUDE. In English ecclesiastical practice. An appointment by the judge, of a time at which both parties are understood to renounce all further exhibits and allegations. *Id. ibid.* num. 23.

TERME. L. Fr. [from Lat. *terminus*, q. v.] In old English law. A period of time; the term or period of an estate. *A* terme *que n'est mye uncore passe*; for a term which is not yet passed. *Britt.* c. 64. *Ceo mot* terme *se estent ausibien à* terme *de vie, come à* terme *des ans*; this word "term" extends as well to a term of life, as to a term of years. *Id.* c. 114.

A term; an estate for a certain limited period. *Graunde droit ad le fermer à recoverer son* terme, *et son chatell*; great right hath the fermor, [termor or lessee,] to recover his term and his chattel. *Id. ibid.*

A term of court; a judicial period or season. *Et que les leyes et custumes de dit roialme*, termes *et processes, soient tenus et gardes, come ils sount et ount este avant ses heurres*; and that the laws and customs of the said realm, the terms and processes, shall be observed and kept, as they are, and heretofore have been. *Stat.* 36 *Edw.* III. c. 15. *Spelman.*

A term, word, or technical expression; a word of art. *Et que per les aunciens formes et* termes *de counter nul home soit perdant, issint que la matter del action soit pleniment monstre*; and that no man shall be a loser by the ancient forms and terms of pleading, so that the matter [or substance] of the action be fully shown. *Id. ibid.*

TERMINARE. Lat. In old English law. To end or determine; to dispose of judicially; to decide. *Loquelæ quæ atterminatæ fuerunt coram justitiariis de banco, et non* terminatæ, *remaneant sine die*; plaints which have been adjourned before the justices of the bench, and not determined, shall remain without day. *Bract.* fol. 355 b. *Et ea quæ per eosdem* [*justiciarios*] *propter difficultatem aliquorum articulorum* terminari *non possint, referantur ad justitiarios nostros de banco, et ibi* terminentur; and those matters which cannot be determined by the same [justices] on account of difficulty in some points, shall be referred to our justices of the bench, and shall be determined there. *Mag. Cart.* 9

Hen. III. c. 12. See *Fleta*, lib. 2, c. 3. § 8. Used in a similar sense in the civil law. *Oldendorpius. Prateus.*

TERMINER. L. Fr. [from Lat. *terminare*, q. v.] To determine. *A oyer et* terminer *toutes quereles;* to hear and determine all complaints. *Britt.* fol. 1.

TERMINI. Lat. (plur. of *terminus*, q. v.) Ends; bounds; limiting or terminating points.

TERMINUS. Lat. [from Gr. τέρμα.] A bound or limit, either of space or time; a limiting object, line, or point.

In the civil law. A mark or physical object, as a tree or stone, dividing one piece of land from another. *Dig.* 47. 21. *Calv. Lex. Prateus.*

A period of time fixed by law, (*terminus juris.*) *Id.*

A limited number. *Id.*

In old English law. A dividing or division line between lands, where metes or marks were set up. *Bundæ, et metæ, et rationabiles divisæ, quæ ponuntur* in terminis *et finibus agrorum;* bounds and metes and reasonable partitions, which are set up on the boundary lines and limits of lands. *Bract.* fol. 166 b, 167.

A term; a continuance of time; a fixed or limited period of time. *Si fiat donatio ad* terminum *annorum, quamvis longissimum, qui excedat vitas hominum, tamen ex hoc non habebit donatorius liberum tenementum, cum* terminus *annorum certus sit, et determinatus, et* terminus *vitæ incertus;* if a gift be made for a term of years, though of the longest duration, exceeding the lives of men, yet the donee shall not, in consequence of this, have a freehold, since a term of years is certain and limited, and the term of life uncertain. *Bract.* fol. 27. *Durante termino;* during the term. *Id. ibid. Post* terminum *completum;* after the term ended. *Id. ibid. De* termino *in* terminum; from term to term. *Id. ibid.* Bracton makes a distinction between *terminus* and *tempus. Fieri poterit donatio ad* terminum, *vel ad* tempus; *ad* terminum, *vitæ vel annorum,—ad* tempus, i. *quousquè, vel donec provisum fuerit donatorio;* a gift may be made for a term, or for a time; for a term, of life or years; for a time, as until provision be made for the donee. *Bract.* fol. 26 b.

A term; an estate granted for a limited period; a term for years or life. *Co. Litt.* 45 b. 2 *Bl. Com.* 143. **Terminus et feodum non possunt constare simul in una eademque persona.** The term and the fee cannot exist together in one and the same person. *Plowd.* 29.

A term of court; a juridical period of time. *Spelman. Terminus Paschæ;* Easter Term. *Terminus Trinitatis;* Trinity Term. *Terminus Sancti Michaelis;* Michaelmas Term. *Terminus Sancti Hilarii;* Hilary Term. *Id.*

A term or word, (*vocabulum.*) *Id.*

TERMINO. Span. In Spanish law. A common; common land. Common because of vicinage. *White's New Recop.* b. 2, tit. 1, c. 6, § 1, note.

TERMINUS. Lat. In modern law. A limiting point either of time or space, and either at the beginning or end of a period. The *termini* of a voyage are the two local points at which it begins and ends. The *terminus à quo* (limit from which,) is the point where it begins; the *terminus ad quem*, (limit to which,) is the point where it ends. 3 *Kent's Com.* 185. The *termini* of a road or way, are the two points at which it begins and ends. 1 *East*, 377. 8 *Id.* 4, 394.

In insurance law, the *termini* of the voyage are the two local points specified in the policy as the limits of the risk. 1 *Arnould on Ins.* 333, (339, Perkins' ed.) The *terminus à quo*, or place at which the risk commences, in policies on ships, is the port of departure; in policies on goods, the port of lading, which frequently but not necessarily, is the same place. *Id. ibid.* The *terminus ad quem*, or point at which the risk ends, is the port of the ship's destination, or the port or ports of the cargo's discharge. *Id. ibid. Emerig. Tr. des Ass.* ch. 13, sect. 4, § 1.

The expressions, *terminus à quo*, and *terminus ad quem*, are also sometimes applied to points of time. See 7 *Man. & Gr.* 149, 150, arg.

TERMINUS HOMINIS. L. Lat. In English ecclesiastical practice. A time for the determination of appeals, shorter than the *terminus juris*, appointed by the judge. *Hallifax, Anal.* b. 3, c. 11, num. 38. See *Terminus juris.*

TERMINUS JURIS. L. Lat. In English ecclesiastical practice. The time of one or two years, allowed by law for the determination of appeals. *Hallifax, Anal.* b. 3, c. 11, num. 38.

TERMOR. [L. Fr. *termer;* L. Lat. *firmarius.*] One who has a term in lands; one who holds lands for a certain time, as for a limited number of years; one who is

entitled to a term of years; a lessee for a term. 2 *Bl. Com.* 142. Called, in the French of Britton, *termer* and *fermer*, and in the statute of Glocester, *termour*. *Britt.* c. 64. *Stat. Gloc.* c. 11. Called, by Lord Bacon, *terminor*. *Works*, iv. 216, 217.

TERMS. In the law of contracts. Conditions; propositions stated, or promises made, which, when assented to or accepted by another, settle the contract and bind the parties. *Webster*. "Terms is an expression applicable to the conveyances and covenants to be given, as much as to the amount of, and the time of paying the consideration." Woodbury, J. 8 *Howard's R.* 451, 466, citing 10 *Wendell's R.* 219. See 1 *Wisconsin R.* 313, 314.

TERMS OF COURT. In practice. Those stated periods of the year, during which courts sit for the dispatch of business. The terms of the English courts are supposed by Mr. Selden to have been instituted by William the Conqueror, but Sir Henry Spelman has clearly shown, in the opinion of Blackstone, that they were gradually formed from the canonical constitutions of the church; being indeed no other than those leisure seasons of the year which were not occupied by the great festivals or fasts, or which were not liable to the general avocations of rural business. 3 *Bl. Com.* 275.

TERRA. Lat. In old English law. Land; properly, arable land. *Reg. Orig.* 2. 10 *Mod.* 186. So called, according to Lord Coke, *à terendo, quia vomere* teritur; (from breaking up, because it is broken by the ploughshare.) *Co. Litt.* 4 a. 1 *Chitt. Gen. Pr.* 179, 180, note. See *Land*.

Terra culta; tilled or cultivated land. *Cowell.*

Terra excultabilis; land that may be tilled or ploughed. 1 *Mon. Angl.* 426.

Terra frusca, or *frisca;* fresh land; not lately ploughed. 2 *Mon. Angl.* 327.

Terra lucrabilis; land that might be gained from the sea, or enclosed out of a waste, to particular use. 1 *Mon. Angl.* 406.

Terra Normannorum; Norman's land. Land so called in the reign of Henry III. being such as had been lately held by some noble Norman, who, by adhering to the French king or dauphin, had forfeited his estate in England, which by this means became an escheat to the crown. *Paroch. Ant.* 197. *Cowell. Hale's Anal.* sect. viii.

Terra nova; new land. Land newly granted, or newly cleared. *Spelman.*

Terra sabulosa; gravelly or sandy ground. *Cowell.*

Terra testamentalis; land held by charter or writing; boc-land. *Spelman.* Land that might be disposed of by will; devisable land. *Cowell.*

Terra vestita; land sown with corn; (*terra segete sata.*) *Spelman.* Called, in Saxon, *gesettes-landes*. *LL. Canuti*, 65 MS.

TERRA SALICA. L. Lat. [from *sala*, a house.] In the Salic law. Salic land; the land of the house; the land within that enclosure, which belonged to a German house. *Esprit des Loix*, liv. 18, c. 22. *De* terra *vero* Salica *in mulierem nulla portio hæreditatis transit, sed hoc virilis sexus acquirit, hoc est, filii in ipsa hæreditate succedunt;* no portion of the inheritance of Salic land passes to a woman, but this the male sex acquires, that is, the sons succeed in that inheritance. *L. Salic.* tit. 62, § 6.

TERRAGE. [L. Lat. *terragium*, from *terra*, land.] In old English law. A kind of tax or charge on land; a boon or duty of ploughing, reaping, &c. *Cowell.*

TERRAR. [L. Lat. *terrarium*, from *terra*, land.] In old English law. A book or roll containing a description of the several lands of an individual or of a town; a list of lands, (*catalogus terrarum.*) *Spelman.* Otherwise written *terrier*, (q. v.)

TERRARIUS. L. Lat. [from *terra*, land.] In old records. A land-holder, (*qui* terram *possidet.*) *Annal. Waverl.* in ann. 1086. *Spelman.*

TERRE, *Tere.* L. Fr. [from Lat. *terra*, q. v.] Land. *Taunt de* terre *ove les appurtenances;* so much land with the appurtenances. *Britt.* c. 39.

TERRE-TENANT, *Ter-tenant.* L. Fr. and Eng. A tenant, holder or occupier of land; a person in actual possession or occupation of land. *Cowell.* 2 *Bl. Com.* 91, 328.

TERRIER. [from L. Fr. *terre*, land.] In English law. A register or survey of lands; a book or roll in which the several lands, either of an individual or corporation, are described, containing the quantity of acres, boundaries, tenants' names, &c. Called anciently *terrar*, (q. v.) *Cowell.* See *Arch. Pl. & Evid.* 413, 414. Particularly applied to ecclesiastical lands. *Tamlyn's Law of Evid.* 144. By the ecclesiastical canons, an inquiry is directed to be made from time to time, of the temporal rights of the clergyman in every parish, and to be returned into the registry of the bishop.

This return is denominated a *terrier*. 2 *Phillips on Evid.* 119. See *Anst.* 300—305. 15 *East*, 641.

TERRITORIUM. Lat. [from *terra*, land.] A territory, or district; the territorial limits of a government; the extent or limits of the jurisdiction of a court. See *Extra territorium*. Called by Pomponius in the Digests, the whole amount of the lands within the limits of any state, (*universitas agrorum intra fines cujusque civitatis.*) *Dig.* 50. 16. 239. 8. The same writer observes that, according to some, the word was derived from the circumstance that the magistrate of the place has within those limits, the right of terrifying, that is, of clearing away, (*terrendi, id est summovendi jus habet.*) See the various derivations of the word in *Grotius, de Jur. Bell.* lib. 3, c. 6, § 4, n. 2. Gronovius, in a note on Grotius, (*in loc.*) remarks that the etymon of Pomponius is the only true one, and explains it by a reference to the usages of the Roman magistrates.

TERTIA. Lat. In old English and Scotch law. Third; (third part, *tertia pars ;*) dower. *Spelman. Crag. de Jur. Feud.* 308. 2 *Bl. Com.* 129. Closely rendered in Scotch, *terce*, (q. v.)

TERTIA DENUNCIATIO. Lat. In old English law. Third publication or proclamation of intended marriage. *Cum bannum et* tertia denunciatio *fiat ;* when the banns and third publication are made. *Bract.* fol. 307 b.

TERTIUS INTERVENIENS. L. Lat. In the civil law. A third person intervening; a third person who comes in between the parties to a suit; one who interpleads. *Gilbert's For. Rom.* 47. A party intervening in behalf of his interest. *Clerke's Prax. Cur. Adm.* tit. 35.

TESMOYN, *Tesmoyne*. L. Fr. In old English law. A witness. *Et les nosmes des* tesmoynes *soient lus, et escritz en la chartre ; et bone cautele serra de procurer que les seals de* tesmoynes *fussent mys ;* and the names of the witnesses should be read, and written in the charter [deed;] and it will be a good precaution to have the seals of the witnesses affixed. *Britt.* c. 39.

TESMOYNAGE. L. Fr. Testimony. *Britt.* c. 15.

TESMOYNAUNCE. L. Fr. Testimony. *Britt.* c. 1.

TEST ACT. In English law. The popular name of the statute 25 Car. II. c. 2, by which it was provided, that all persons having any office, civil or military, (with the exception of some few of an inferior kind,) or receiving pay from the crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the sacrament of the Lord's Supper, according to the usage of the Church of England. 3 *Steph. Com.* 105. This provision had the effect of excluding not only Papists, but many classes of Protestant Dissenters, also, from every considerable place of trust or public employment; but it was mainly pointed against the former. *Id. ibid.* Sir William Blackstone calls this and the Corporation Acts, "two bulwarks, erected in order the better to secure the established church against perils from nonconformists of all denominations, infidels, Turks, Jews, heretics, Papists and sectaries." 2 *Bl. Com.* 58. It was repealed, however, in the year 1828, by statute 9 Geo. IV. c. 17, so far as regarded the administration of the sacrament, and a new form of declaration substituted. 3 *Steph. Com.* 108.

TEST PAPER. In practice. A paper or instrument shown to a jury as evidence. A term used in the Pennsylvania courts. 7 *Penn. St.* (Barr's) *R.* 428. Called also a standard paper. 6 *Wharton's R.* 284.

TESTA DE NEVIL. An ancient and authentic record in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, said to be compiled by Jollan de Nevil, a justice itinerant, in the eighteenth and twenty-fourth years of Henry III. *Cowell.* These volumes were printed in 1807, under the authority of the Commissioners of the Public Records; and contain an account of fees held either immediately of the king, or of others who held of the king *in capite ;* fees holden in frankalmoign; serjeanties holden of the king; widows and heiresses of tenants *in capite*, whose marriages were in the gift of the king; churches in the gift of the king; escheats, and sums paid for scutages and aids; especially within the county of Hereford. *Cowell. Wharton's Lex.*

TESTAMENT. L. Fr. and Eng. [from Lat. *testamentum*, from *testari*, to testify, or attest.] A disposition of property, to take effect after the death of the person making it.* 4 *Kent's Com.* 501. See *Will.*

A disposition of *personal* property, to

take effect after the death of the person making it.* *Id. ibid.* This is considered the proper sense of the term, in some of the old books. *Co. Litt.* 111 a. See *infra.*

A formal declaration or expression of a person's will, as to the disposition he would have made of his property after his death. This is a translation of the celebrated definition of the civil law,—*Testamentum est voluntatis nostræ justa sententia, de eo quod quis post mortem suam fieri velit. Dig.* 28. 1. 1. Blackstone's translation of this definition is, "the legal declaration of a man's intentions, which he wills to be performed after his death." 2 *Bl. Com.* 499. For other translations, see *Testamentum.* Webster's definition presents essentially the same idea,—"a solemn authentic instrument in writing, by which a person declares his will as to the disposal of his estate and effects after his death."

*** A *testament* has been distinguished from a *will*, both by common lawyers and civilians, but on different grounds. Swinburne, and other civilians, while they admit that, in a general sense, the words are synonymous, contend that, in a strict and proper sense, a *testament* was that kind of a will *in which an executor was named*, and that the appointment of an executor was of the essence of a testament, without which a will was no proper testament. *Swinburne on Wills*, part 1, sect. 1, 3. See *Finch's Law*, b. 2, ch. 15. This idea was derived from the *testamentum* of the civil law, an essential requisite of which was the appointment of an *heir*, (*hæres*,) to take the testator's property. *Inst.* 2. 23. 2. A different distinction was made between a *testament* and a *will* by the old common lawyers. Lord Coke observes that, "in law, most commonly *ultima voluntas in scriptis*, (a last will in writings,) is used where *lands* or tenements are devised, and *testamentum*, (testament,) where it concerneth *chattels*." *Co. Litt.* 111 a. Mr. Cruise notices both these distinctions, and expressly adopts the latter, in distinguishing a testament from a *devise*. *Cruise Dig.* tit. xxxviii. ch. 1, sect. 11. The distinction made by Swinburne, though adopted by Wentworth and other writers, may be considered as exploded in modern law. That of Lord Coke has maintained its ground more effectually. See 4 *Kent's Com.* 501. 1 *Jarman on Wills*, 1. And yet Sheppard expressly observes that "these words [*testament* and *will*, or last will,] are synonyma, and are, as it seems, promiscuously used in our law." *Shep. Touch.* 399. And Littleton himself, in the very section commented on by Lord Coke, applies the word *testament* to a disposition of lands. *Home poit deviser per son* testament *ses terres et tenements. Litt.* sect. 167. In modern law, the terms *will* and *testament*, are generally used without distinction, to express the instrument by which a man makes disposition of his property after his death. 1 *Steph. Com.* 544. Where the instrument is more formally described, both terms are made use of, and it is called a *last will and testament.* See 4 *Kent's Com.* 501. This conjoint use of both terms may be traced back as far as the old writ *de tenementis legatis* in the Register, in which the phrase, *in testamento suo, in ultima voluntate suâ*, occurs twice. *Reg. Orig.* 244 b.

The derivation of *testamentum* from *testari* and *mens*, formally adopted in the Institutes of Justinian, will be considered under *Testamentum.*

TESTAMENTARY. [from *testamentum*, a will.] Pertaining to a will or testament; as *testamentary* causes.

Derived from, founded on, or appointed by a testament or will; as a *testamentary* guardian, letters *testamentary*, &c.

TESTAMENTARY CAUSES. In English law. Causes or matters relating to the probate of wills, the granting of administrations, and the suing for legacies, of which the ecclesiastical courts formerly had jurisdiction. 3 *Bl. Com.* 95, 98.

TESTAMENTARY GUARDIAN. A guardian appointed by the last will of a father, for the person, and real and personal estate of his child, until the latter arrives of full age. 1 *Bl. Com.* 462. 2 *Kent's Com.* 224.

TESTAMENTO. Span. [from Lat. *testamentum.*] In Spanish law. A testament. *Testamento abierto;* an open testament; one dictated *vivâ voce. Schmidt's Civ. Law*, 214. *Testamento cerrado;* a close testament; one made in secret. *Id.* 215.

TESTAMENTUM. Lat. [from *testari*, to witness or attest; Gr. διαθήκη, (q. v.) a disposition.] In the civil law. A testament; a will, or last will; (Gr. τελευταία βουλήσις.) See *Voluntas.*

Testamentum *est voluntatis nostræ justa sententia, de eo quod quis post mortem suam*

fieri velit. A testament is the formal expression of one's will, respecting what one would have done after his death. *Dig.* 28. 1. 1. See *Id.* 29. 3. 2. 1. Translated, in the more antiquated language of Swinburne, "the just sentence of our will, touching that we would have done after our death." *Swinburne on Wills*, part 1, sect. 2. This has been adopted as the definition of a testament, in 1 *Williams on Executors*, 6. And see *Taylor's Civ. Law*, 531, 532, 534. Blackstone translates the same definition, "the legal declaration of a man's intentions, which he wills to be performed after his death." 2 *Bl. Com.* 499. In the *Termes de la Ley*, it is rendered, "the true declaration of our last will, in that we would to be done after our death." In Sheppard's Touchstone,—"the full and complete declaration of a man's mind, or last will of that he would have to be done after his death." *Shep. Touch.* 399. It will be seen that in the original definition, there is no express reference to *property*, as the subject of the testamentary disposition. Mr. Preston, in his edition of Sheppard, has supplied this idea, by adding to the translation of that author, the clause, [by way of disposition of his property.]

Swinburne goes largely into detail in commenting on this definition, dwelling especially on the force of the words *justa* and *sententia;* but the essence of his observations is much more forcibly and elegantly given by Blackstone.

*** The celebrated etymology of *testamentum* in the Institutes, may be noticed under this head. In the *principium* of the tenth title of the second book, Justinian briefly but emphatically declares that *Testamentum ex eo appellatur, quod* testatio mentis *sit;* a testament is so called, because it is a testifying of the mind. This derivation seems to have been adopted from Servius Sulpicius, a distinguished jurist who flourished before the reign of Augustus, and who, in his second book, *De sacris detestandis*, declared the word to be composed of *contestatio* and *mentis.* Its absurdity was long ago pointed out by Aulus Gellius, and later, by the grammarian Laurentius Valla, who very satisfactorily show *testamentum* to be a simple word, framed from the verb *testari*, by the use of a common termination, and belonging to the same class with the words *calceamentum, condimentum, pavimentum, regimentum, salsamentum, vestimentum* and others. *A. Gell. Noct. Att.* vi. 12. *Laurent. Vall. Elegant.* lib. 6, c. 36. The civilians, however, as might be expected, have strongly sustained the derivation, though upon different grounds. Swinburne defends it as being not intended as a precise etymology of the word, but "a certain allusion rather of the voice only," meaning probably that it was an explanation drawn from the casual coincidence between the *sound* or form of the word and its essential meaning. *Swinburne on Wills*, part 1, sect. 1. Other civilians have treated it as being properly a mere definition,—*testatio mentis*, a solemn declaration of the mind or intention. That it was intended, however, as an etymon in the proper sense, is clear from the text of the Institutes. Calvin concedes this, and boldly justifies it to its full extent, claiming for jurisconsults the license or right of framing their derivations according to the supposed nature of things, without regard to the proprieties of language or the niceties of grammar. (!) *Calv. Lex.* voc. *Testamentum.*

Lord Coke agrees with Justinian in the composition of the word *testament*, it being entirely to his taste in matters of derivation, as evidenced in his analysis of *sacramentum*, and other words of similar form. *Co. Litt.* 322 b. 3 *Inst.* 165. Blackstone, however, pronounces it to be "an etymon which seems to savour too much of the conceit," adding, very justly, that "the definition of the old Roman lawyers is much better than their etymology." 2 *Bl. Com.* 499.

TESTAMENTUM. Lat. [from *testari*, q. v.] In old English law. A testament, or will; a disposition of property made in contemplation of death. *Bract.* fol. 60. Bracton treats it as a species of *donatio mortis causa. Id. ibid.* See *Fleta*, lib. 2, c. 57. *Executoribus ad faciendum* testamentum *defuncti;* to executors to carry into effect the testament of the deceased. *Mag. Cart.* 9 Hen. III. c. 18.

A writing, charter or instrument, by which conveyances of lands and other things were made; so called, because it operated as a *testimony* or evidence of the transaction, or because it comprehended the names of the witnesses, (*testium nomina contineret.*) *Spelman.*

TESTARI. Lat. [from *testis*, a witness.] In the civil law. To testify; to attest; to declare, publish or make

known a thing before witnesses. *Calv. Lex.*

To make a will. *Id.*

TESTATE. [from Lat. *testatus.*] One who has made a will; one who dies leaving a will; the opposite of *intestate*, but much less frequently used. See 25 *Penn. St. R.* 31.

TESTATO. Lat. In the civil law. Testate; having made a will. *Dig.* 50. 17. 7. See *Testatus.*

TESTATOR. Lat. and Eng. [from *testari*, to make a will.] One who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from the civil law. *Inst.* 2. 14. 5. 6.

TESTATRIX. L. Lat. and Eng. [fem. of *testator*, q. v.] A woman who makes, or has made a testament or will; a woman who dies leaving a will; a female testator.

TESTATUM. Lat. (Testified.) In practice. The name of a clause inserted in a writ of *capias*, or execution, when it is issued after the return of *non est inventus*, or *nulla bona* to a previous writ, but to the sheriff of a *different* county; reciting the former writ, and that it is *testified*, (*testatum est*, in the old forms,) that the defendant lurks or wanders, or has goods in the county to which the second writ is issued. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 128. 2 *Id.* 1022.

TESTATUM WRIT. In practice. A writ containing a *testatum* clause; such as a *testatum capias*, a *testatum fi. fa.* and a *testatum ca. sa.* See *Testatum.*

TESTATUS. Lat. In the civil law. Testate; one who has made a will. *Testatus et intestatus;* testate and intestate. *Dig.* 50. 17. 7.

TESTE. L. Lat. (Witness.) In old English practice. The initial and emphatic word of the clause at the conclusion of writs, containing the attestation of the sovereign, or chief justice out of whose court it was issued, and the day on which it was issued or granted. In original writs, it ran thus: TESTE MEIPSO, *apud Westmonasterium, xxiiii die Junii, anno regni nostri tricesimo septimo.* (Witness ourself at Westminster, the twenty-fourth day of June, in the thirty-seventh year of our reign.) *Reg. Orig.* 1, *et passim. Id.* Appendix, 1—10. In judicial writs, the clause ran thus: TESTE *Matthæo Hale, Milite, apud Westmonasterium*, &c. (Witness, Sir Matthew Hale, Knight, at Westminster, &c.) *Cowell.* It corresponded to the *date* of other instruments, and is called the date, (L. Lat. *data*, L. Fr. *date*,) in Bracton and Britton. See *Data, Date.*

In modern practice, the word *teste* has been retained as the name of the corresponding clause in modern writs, (which is merely a translation of the old form,) being particularly applied to the *day* on which the writ is *witnessed*, that is, issued or supposed to be issued, though it is expressive also of the *place* where the court is or was sitting at such time. It has indeed been converted into a verb, a writ being frequently said to be *teste'd* (or, as it is usually written, *tested*) of such a day.

TESTE MEIPSO. L. Lat. (Witness ourself.) In old English law and practice. A solemn formula of attestation by the sovereign, used at the conclusion of charters, and other public instruments, and also of original writs out of chancery. *Spelman.*

Teste meipsa, were the words used by a queen. The first writ in the Register is a writ of right patent, running in the name of Queen Elizabeth, and concluding with the clause, *Teste meipsa apud Westmonasterium*, &c. *Reg. Orig.* 1.

TESTES. Lat. [plur. of *testis*, q. v.] In the civil and old English law. Witnesses. *Possunt omnes* testes *et uno annulo signare testamentum;* all the witnesses may seal the will with one ring or signet. *Inst.* 2. 10. 5.

Ponderantur testes, non numerantur, (q. v.) Witnesses are weighed, not counted.

Testibus deponentibus in pari numero, dignioribus est credendum. Where the witnesses who testify are in equal number [on both sides,] the more worthy are to be believed. 4 *Inst.* 279.

TESTES. L. Fr. In old English law. Heads; polls. *Yearb.* T. 5 Edw. III. 21.

TESTIFICARE. Lat. [from *testis*, witness, and *facere*, to make.] In practice. To testify; to give evidence. *Ad testificandum;* to testify. See *Habeas corpus ad testificandum.*

TESTIFY. [from Lat. *testificare*, q. v.] To give evidence; to bear witness; to declare under oath or affirmation before a tribunal, court, judge or magistrate, for the purpose of proving some fact.

TESTIMONIO. Span. [from Lat. *testimonium*, q. v.] In Spanish-American law. An attested copy of an instrument; a second original. 8 *Texas R.* 210. 7 *Id.* 332, 378.

TESTIMONIUM. Lat. In civil and old English law. Testimony; evidence of a witness. *Calv. Lex.* **Testimonia ponderanda sunt, non numeranda.** Evidences are to be weighed, not numbered or counted. *Bell's Dict.*

Attestation of an instrument. *Fleta*, lib. 2, c. 60, § 25.

TESTIMONIUM CLAUSE. In conveyancing. That clause of a deed or instrument with which it concludes: "In witness whereof, the parties to these presents have hereunto set their hands and seals." This, in the old Latin forms, ran: *In cujus* testimonium, *partes*, &c. whence the clause has received its name. It is said to be introduced, not as constituting any part of the deed, but merely to preserve the evidence of the due execution of it. Daniel, J. 8 *Howard's R.* 33—39. See 6 *Man. & Gr.* 386. A deed without it was held good in *Dyer*, 22 b. Both Coke and Blackstone, however, enumerate it among the formal and orderly parts of a deed. *Co. Litt.* 6 a. 2 *Bl. Com.* 304.

TESTIMONY. [from Lat. *testimonium.*] Evidence of a witness, or witnesses; evidence given by a witness, under oath or affirmation; as distinguished from evidence derived from writings, and other sources.

TESTIS. Lat. In the civil and common law. A witness. *Dig.* 22. 5. *Cod.* 4. 20. *Nov.* 90. Called, in the old Roman law, *superstes*, and *antistes*. *Calv. Lex.* See *Best on Evid.* 140, § 114, note.

Testis de visu præponderat aliis. An eye-witness is of more weight than others. 4 *Inst.* 279.

Nemo in propria causa testis esse debet, (q. v.) No man ought to be a witness in his own cause. **Nullus idoneus testis in re sua intelligitur.** No one is considered a fit witness in his own matter, [business or cause.] *Dig.* 22. 5. 10.

Testis corruptus; a bribed or corrupted witness; one prevailed upon by money or persuasion to give evidence. *Calv. Lex.*

Testis incertus; a doubtful or unreliable witness; one who testifies from hearsay. *Id.*

Testis inimicus; an unfriendly or hostile witness. *Id.*

Testis juratus; a sworn witness. *Id.*

TEXTUS ROFFENSIS. L. Lat. In old English law. The Rochester Text. An ancient manuscript containing many of the Saxon laws, and the rights, customs, tenures, &c. of the church of Rochester, drawn up by Ernulph, bishop of that see, from A. D. 1114, to 1124. *Cowell.* Blount gives it a much higher antiquity.

THANAGE OF THE KING. [L. Lat. *thanagium regis.*] In old English law. A certain part of the king's land or property, of which the ruler or governor was called *thane*. *Cowell. Blount.*

THANE, *Thayne.* [Sax. *thegen*, from *thenian*, to serve; L. Lat. *thanus.*] In Saxon law. A noble; a freeman of the highest rank. 1 *Reeves' Hist. Eng. Law*, 5. 1 *Spence's Chancery*, 5.

One who served the king; a king's tenant. *Cowell.* Mr. Selden supposes *thane* to have been a feudal title. *Wright on Tenures*, 47, note (c.)

THASSARE, *Tassare.* L. Lat. In old records. To lay up hay or corn [grain] into a tass, toss, stack, rick or mow. *Paroch. Antiq.* 550. *Cowell.*

THEADA, *Theoda, Theuda.* L. Lat. [from Sax. *theod.*] People; a people or nation. *L. Salic.* tit. 48. *Spelman.*

THECLATURA. L. Lat. In old European law. A mark upon a tree. *LL. Longobard.* lib. 1, tit. 26. *Spelman.*

THEFT. See *Larceny.*

THEFT-BOTE. [from Sax. *theofte*, theft, and *bote*, a composition or fine.] In Saxon law. A sum paid by way of composition or satisfaction for a theft. *Spelman.*

In old English law. The receiving of goods from a thief, to favor and maintain him. *Spelman. Cowell.* In this application, Spelman supposes *bote* to have the sense of *booty*, or plunder (*præda.*)

ΘΕΙΑ, *Θεία.* Gr. In the civil law. An aunt. A term applied to both paternal and maternal aunts. *Inst.* 3. 6. 1. Expressed in Latin, *Thia*, (q. v.).

ΘΕΙΟΣ, *Θεῖος.* Gr. In the civil law. An uncle. A term applied to both paternal and maternal uncles. *Inst.* 3. 6. 1.

THELONIUM. L. Lat. Toll. See *Theolonium.*

ΘΗΛΥΓΟΝΙΑ, *Θηλυγονία.* Gr. [from *θῆλυς*, female, and *γόνος*, generation.] In the civil law. The female line. *Nov.* 118, c. 1.

THEM. Sax. In old English law. Another form of *theme*, (q. v.) Fleta defines it "an acquittance of amercements of the following of their villeins," (*acquietantiam amerciamentorum sequelæ propriorum suorum.*) *Fleta*, lib. 1, c. 47, § 9.

THEME. Sax. In Saxon law. The

power of having jurisdiction over naifs or villeins, with their suits or offspring, lands, goods and chattels. *Co. Litt.* 116 a. Otherwise written *them* and *team*, (qq. v.) The word occurs in old Scotch law, and is defined by Skene, the power of having servants and slaves. *De Verb. Signif.*

THEMITIÆ. L. Lat. In old records. Trees planted in fields for fencing or protecting hedges. *Spelman.*

THEN. Sax. In old English law. A slave. *Co. Litt.* 116 a. *Spelman.* Misprinted in Fleta, (lib. 1, c. 47, § 27,) *thett.*

THEN. [Lat. *tunc*, L. Fr. *donque.*] A common word of reference in wills and other instruments. Where life interests are bequeathed to several persons in succession, terminating with a gift to children, or any other class of objects, "*then* living," the word "*then*" is held to point to the period of the death of the person last named, (whether he is, or is not the survivor of the several legatees for life,) and is not considered as referring to the period of the determination of the several prior interests. 8 *Sim.* 448.

THEODEN. Sax. In Saxon law. A husbandman or inferior tenant; an under thane. *Cowell.*

THEODOSIAN CODE. See *Code of Theodosius.*

THEOLONIUM. L. Lat. [from Lat. *telonium*, q. v.] In old English law. Toll. *Quieti de* theolonio *per totum regnum nostrum;* quit of toll throughout our whole realm. *Reg. Orig.* 258 b. See *Fleta*, lib. 2, c. 50, § 30. Otherwise written *thelonium* and *tholonium. Spelman*, voc. *Thol.* Called "a barbarous word, and derived from τέλος and τελώνες, receivers of tribute." 2 *Show.* 35. See *De essendo quietum de theolonio.*

THEOLNETUM. L. Lat. In old English law. Toll. *Fleta*, lib. 2, c. 50, § 30.

THEOTHING, *Thething.* Sax. In Saxon law. A tithing. 2 *Inst.* 73. See *Tithing.*

Theothing-man; a tithing-man. *Id. ibid.*

ΘΕΟΥ ΒΙΑ, *Θεοῦ βία.* Gr. In the civil law. The force or power of God; the act of God. *Dig.* 19. 2. 25. 6. *Vinnius ad Inst.* lib. 3, tit. 15, § 2, n. 5. *Story on Bailm.* § 30.

"THEREUNTO BELONGING," in a will, construed. 8 *Moore*, 665. 2 *B. & Adol.* 680. 1 *Jarman on Wills*, 771—713, (608, 609, Perkins' ed.)

THESAURER. Sc. Treasurer. 3 *St. Trials*, 691.

THESAURUS. Lat. In the civil law. Treasure; a sum of money hidden or buried. *Inst.* 2. 1. 39. A deposit or concealment of money made so long ago that no memory of it exists, so that it is now without an owner, (*vetus depositio pecuniæ, cujus non extat memoria, ut jam dominum non habeat.*) *Calv. Lex. Brissonius.* This description of treasure is copied by Bracton, and from Bracton by Lord Coke. *Bract.* fol. 120. 3 *Inst.* 132. See *Fleta*, lib. 1, c, 43, § 2.

In old English law. Treasury, or exchequer. *Cowell.*

THESAURUS ABSCONDITUS. Lat. In old English law. Treasure hidden, or buried. *Spelman.*

THESAURUS INVENTUS. Lat. In old English law. Treasure found; treasure-trove. *Bract.* fol. 119 b, 122. *Fleta*, lib. 1, c. 18, § 20. *Id.* lib. 2, c. 52, § 11. 1 *Bl. Com.* 95.

THEYN. Sax. In old English law. A freeman. *Fleta*, lib. 1, c. 47, § 26.

THIA. Lat. In the civil and old European law. An aunt. The Latin form of the Gr. *θεια*, (q. v.) The Ital. *zia*, and Span. *tia* are from the same source. *Spelman.*

THIFT. Sc. In Scotch law. Theft. *Thift-bute;* theft-bote, (q. v.) 1 *Pitc. Cr. Trials*, part 2, p. 144.

THING, *Thung.* Sax. In Saxon law. A lathe, or hundred. *Spelman. In quibusdam verò provinciis Angliæ, vocatur lede quod isti* thing: but in some provinces of England, that is called *lede* (lathe) which they call *thing. LL. Edw. Conf.* c. 34. Hoved. ed. *apud Spelman*, voc. *Thungrevius.*

THINGS. [Lat. *res;* Fr. *choses.*] The most general denomination of the subjects of property, as contradistinguished from *persons.* 2 *Bl. Com.* 16.

"THINGS," in a will, is generally construed to mean things *ejusdem generis*, (of the same kind.) 1 *Dow*, 73. *Sugden's Law of Property*, 221, 222. It will be limited to personal effects, if its connection with other words require. 1 *Jarman on Wills*, 693, (595, Perkins' ed.)

Things are construed according to that which was the cause thereof. *Finch's Law*, b. 1, c. 3, n. 4.

Things are dissolved as they be contracted. *Id.* b. 1, c. 3, n. 7.

Things grounded upon an ill and void begin-

ning cannot have a good perfection. *Id.* b. 1, c. 3, n. 8.

Things incident cannot be severed. *Id.* b. 1, c. 3, n. 12.

Things accessary are of the nature of the principal. *Id.* b. 1, c. 3, n. 25.

THINGS REAL, (otherwise called REALTY.) Such things as are permanent, fixed and immoveable, which cannot be carried out of their place, as lands and tenements. 2 *Bl. Com.* 16. This definition has been objected to, as not embracing incorporeal rights. Mr. Stephen defines *things real* to "consist of things substantial and immoveable, and of the rights and profits annexed to, or issuing out of these." 1 *Steph. Com.* 156. *Things real* are otherwise described to consist of lands, tenements and hereditaments. See *Real.*

THINGS PERSONAL. Goods, money and all other moveables, which may attend the owner's person wherever he thinks proper to go. 2 *Bl. Com.* 16. Things personal consist of goods, money, and all other moveables, and of such rights and profits as relate to moveables. 1 *Steph. Com.* 156.

THINGUS. L. Lat. [from Sax. *thœng*, or *theing*, a minister.] In old records. A nobleman; a knight or freeman; a thane, (*thanus.*) *Sciatis me concessisse omnibus militibus, et omnibus* thingis, *et omnibus libere tenentibus*, &c.; know ye that I have granted to all knights, and all thanes, and all free tenants, &c. *Crompt. Jurisd.* 197. *Cowell. Spelman.*

THIRD-BOROW. In old English law. A constable. *Stat.* 28 *Hen.* VIII. c. 10. *Cowell.* Skinner, however, supposes it to mean the third pledge in a decennary. *Blount.*

THIRD NIGHT AWN-HYNDE. (Sax. *thrid night agen-hine.*) A phrase in the Laws of Edward the Confessor, (c. 17,) descriptive of a person who was entertained a *third night* in the house of another, and was thence called his *domestic*, or the *inmate* of his family. *Spelman.* The word *agenhine* is written by Bracton, *hogenehyne*, (q. v.) and occurs in the old books in various other forms.

THIRD OFFENCE. The third offence it [the law] esteemeth more heinous. *Finch's Law*, b. 1, c. 3, n. 52.

THIRD-PENNY. Sax. [Lat. *tertius denarius comitatûs.*] In Saxon law. A third part of the profits of fines and penalties imposed at the county court, which was among the perquisites enjoyed by the earl. *LL. Edw. Conf.* c. 31, 33. *Cowell. Crabb's Hist.* 17.

THIRDEN-DELE. O. Eng. Third part. Old deed in 1 *And.* 54.

THIRLAGE. In Scotch law. A service by which the possessor of lands was bound to carry his grain to a certain mill to be ground, and to pay a duty therefor called a *multure.* 1 *Forbes' Inst.* part 2, p. 140. Now commuted for an annual payment in grain, by stat. 39 Geo. III. c. 55. See *Bell's Dict.*

THOL. In old records. A form of *toll*, (q. v.) Hence the L. Lat. *tholonium.* A certain portion of grain and other things sold in a market, paid to its owner. *Reg. Priorat. Cokeford*, cited in *Cowell.*

THOLONIUM, *Thollonium.* L. Lat. [from *thol*, (q. v.) or a corrupted form of *telonium*, q. v.] In old English law. Toll; a liberty or privilege of buying and selling within one's own land; (*libertas emendi et vendendi in terrâ suâ.*) *Lamb. Archaion.* fol. 132.

THORNTON. The author of a *Summa*, or abridgment of Bracton, written in the reign of Edward I. Gilbert de Thornton was Chief Justice of the King's Bench in the eighteenth year of this king, and is supposed by Mr. Selden to have written his *summa* by the king's command, or at least under his favor. Selden describes him as "not a bare epitomizer, but sometimes also an excellent interpreter and expositor of Bracton." *Diss. ad Flet.* c. 2, sect. 4. *Id.* c. 3, sect. 1.

THRAVE, *Threave.* Sax. [L. Lat. *trabes, trava.*] In old English law. A measure of corn or grain, consisting of twenty-four sheaves or four shocks, six sheaves to every shock. *Stat.* 2 *Hen.* VI. c. 2. *Cowell.*

THREAD. [L. Lat. *filum.*] A middle line; a line running through the middle of a stream or road. "The *thread* of the stream." Shaw, C. J. 2 *Cushing's R.* 207. 4 *Wisconsin R.* 486, 508. "An abuttor runs to the *thread* of the street, unless his deed contains an express provision limiting him to the edge." 26 *Penn. St. R.* 223. See *Filum, Filum aquæ, Filum viæ.*

THRIMSA, *Thrymsa.* Sax. [from *thrim*, three.] A Saxon coin of the value of three shillings. *Lamb. Archaion. Spelman.*

A coin of the value of the third of a shilling, that is, four-pence, or a groat. *Selden's Tit. of Hon.* fol. 604. *Cowell.* 1 *Reeves' Hist.* 15.

THRITHING, *Trithing.* Sax. In Saxon and old English law. The third part of a county; a division of a county consisting of three or more hundreds. *Cowell.* Corrupted to the modern *riding*, which is still used in Yorkshire. 1 *Bl. Com.* 116.

THURG TOLL. See *Toll thorough.*

THURINGIAN CODE. [*Lex Aneliorum Werinorum.*] One of the barbarian codes, as they are termed; supposed by Montesquieu to have been given by Theodoric, King of Austrasia, to the Thuringians, who were his subjects. *Esprit des Lois*, lib. 28, c. 1.

THUTHINGA. L. Lat. A tithing. *Bract.* fol. 117.

TIE. To bind. "The parson is not *tied* to find the parish clark." 1 *Leon.* 94.

TIEL, *Til.* L. Fr. [from Lat. *talis.*] Such. *Litt.* sect. 10. *Kelham.*

Tielx, tiex, tieux, tilz; (plur.) such. *Litt.* sect. 10. *Kelham.*

TIERCE. L. Fr. [from Lat. *tertius.*] Third. *Tierce mien;* third hand. *Britt.* c. 120.

TIGH, *Teage.* In old records. A close or enclosure; a croft. *Cowell.*

TIGNUM. Lat. In the civil law. A beam; the beam of a house. See *Servitus tigni immittendi.*

In a larger sense, every kind of material out of which houses were built. *Appellatione* tigni *omnis materia significatur, ex qua ædificia fiunt. Inst.* 2. 1. 29. See *Dig.* 10. 4. 7, pr. *Id.* 41. 1. 7. 10. *Id.* 47. 3. 1. *Id.* 50. 16. 62.

TIMBER. Properly, such trees only as are fit to be used in building, as oak, ash and elm, [and pine in the United States.] 2 *Bl. Com.* 281. 1 *Crabb's Real Prop.* 20, § 26. But some trees may, by the custom of the country, be reckoned timber which are not properly so; as birch, beech, cherry, aspen, willow, white-thorn, holly, black-thorn, horse chestnut, lime, yew, crab and hornbeam. 1 *Crabb's Real Prop.* 20, § 26. *Cruise's Dig.* tit. iii. ch. 2, sect. 7, (White's ed.)

TIME. [Lat. *tempus;* Fr. *temps.*] A word expressive both of a precise *point* or *terminus*, and of an *interval* between two points.

When time is to be computed *from*, or *after* a certain day, it has been held that that day is to be *excluded* in the computation, unless it appear that a different computation was intended; for no moment of time can be said to be *after* a given day, until that day has expired. See 1 *Pick. R.* 485. 7 *J. J. Marsh. R.* 202. 1 *Blackf. R.* 392. 4 *N. Hamp. R.* 267. 3 *Penn. R.* 200. See *United States Digest*, Time. So, if time is to be computed from any *act done*, it has been held that the day on which the act is done is to be *excluded* in the computation, for a day is to be considered as an indivisible point of time, and there can be no distinction between a computation from an *act done*, and a computation from the day on which the act was done. See 1 *Pick. R.* 485, 494, 495. But there are cases in which the contrary has been held. 9 *Cranch*, 104. 4 *Wash. C. C. R.* 232. It has indeed been said that there is no general rule on this subject, and in computing time from an act or an event, the day is to be inclusive or exclusive, according to the reason of the thing, and the circumstances of the case. 15 *Vesey, Jr.* 248. See 4 *Kent's Com.* 95, note.

In computing the six years mentioned in the statute of limitations, the words of the statute being "within six years next after the cause of action accrued," the day on which the cause of action accrued is to be included. 15 *Mass. R.* 193.

TIME IMMEMORIAL. [L. Lat. *tempus immemoriale.*] Time out of memory; time out of mind. Described in the old books as "time whereof the memory of man is not to the contrary," (*tempus cujus contrarium memoria hominum non existit.*) *Litt.* sect. 170, 143, 145. This is apparently taken from the civil law, in which the phrases *quod memoriam excedit, cujus origo memoriam excedit, cujus contrarium memoria non extat*, occur. 1 *Mack. Civ. Law*, 299, § 283, note (*e.*) *Id.* 300, Kaufmann's note.

There is a singular confusion in the English books between the phrases "time immemorial," or "time out of memory," and the opposite phrase, "time of memory;" both being applied to the same arbitrary period of time commencing from the reign of Richard I. Thus, it has been said so late as the preamble of the statute 2 & 3 Will. IV. c. 71, that the expression "time immemorial," or "time whereof the memory of man runneth not to the contrary," was then, by the law of England, in many cases, considered to include and denote the whole period of time *from* the reign of Richard I. But this same period is expressly called by Hale and Blackstone "time of memory."

Hale's Hist. Com. Law, 4. 2 *Bl. Com.* 31. The expression "time whereof the memory of man runneth not to the contrary" properly refers to the period *anterior* to the reign of Richard I. and is so explained by Mr. Serjeant Stephen in his New Commentaries. 1 *Steph. Com.* 45. See *Time of memory*, *Time out of memory*.

TIME OF MEMORY. [L. Lat. *tempus memoriæ;* L. Fr. *temps de memorie.*] In English law. Time commencing from the beginning of the reign of Richard I. 2 *Bl. Com.* 31. *Hale's Hist. Com. Law*, 4. "Whatsoever was before that time is before time of memory. What is since that time is, in a legal sense, said to be within or since time of memory." *Id. ibid.*

Lord Coke defines *time of memory* to be "when no man alive hath had any proof to the contrary, nor hath any conusance to the contrary." *Co. Litt.* 86 a, b.

TIME OUT OF MEMORY. Time beyond memory; time out of mind; time to which memory does not extend. This phrase being the opposite of *time of memory*, ought to be referred to a time *anterior* to that described as "time of memory." But it has been strangely referred to the *same* period. See *Time immemorial.* What is before time of memory is supposed without a beginning, or at least, such a beginning as the law takes notice of. *Hale's Hist. Com. Law*, 4.

TIME POLICY. In the law of insurance. A policy in which the risk is limited to a certain fixed term or period of time specified, instead of being limited by local *termini.* 1 *Arnould on Ins.* 409, (414, Perkins' ed.) A policy on time insures no specific voyage, but covers any voyage within the prescribed time, and the loss and damage the ship may sustain by the perils insured against, within the limited period. 12 *Peters' R.* 378. 3 *Wendell's R.* 283.

TIMOR. Lat. In the civil law. Fear. **Vani timoris justa excusatio non est.** The excuse of a groundless fear is not valid. *Dig.* 50. 17. 184.

TINEL. L. Fr. A place where justice was administered. *Kelham. Tinel* (or *tynel*) *le roy;* the king's hall. *Id. Blount.*

TINEMAN. Sax. In old forest law. A petty officer of the forest who had the care of vert and venison by night, and performed other servile duties. The word occurs in the forest laws of Canute, where it is explained to mean *homo minutus.* *Const. Canut. R. de Foresta*, c. 4. *Spelman.*

TINET. [L. Lat. *tinettum.*] In old records. Brush-wood and thorns for fencing and hedging. *Cart.* 21 *Hen.* VI. *Cowell. Blount.*

TINEWALD. The ancient parliament, or annual convention in the Isle of Man, held upon Midsummer-day, at St. John's chapel. *Cowell.*

TINNELLUS. L. Lat. In old Scotch law. The sea-mark; high-water mark; tide-mouth. *Skene de Verb. Signif.*

TIN-PENNY. [Sax. *teon-penig*, from *teon*, ten.] In Saxon law. A customary tribute paid to the tithing-man, to support the trouble and charge of his office. *Cowell. Chartul. Abbat. Radinges, MS.* cited *ibid.* Dufresne seems to have been mistaken in defining this word to mean a tax of acknowledgment paid for *tin* mines, or the liberty of digging tin.

TINSEL OF THE FEU. In Scotch law. The loss of the feu, from allowing two years of feu duty to run into the third unpaid. *Bell's Dict.*

TIPSTAFF. [L. Lat. *saio*, from Sax. *saiol*, or *sagol*, a staff.] In English practice. A ministerial officer who attends the judges while sitting in court, and at their chambers, and is particularly charged with the custody of prisoners, or persons committed to prison. 1 *Tidd's Pr.* 54, 349. See 12 *Mod.* 634. So called from the *staff* he carries, which is painted or ornamented at the extremity, or, according to Cowell, *tipt* with silver. The *tipstaffs* were formerly appointed by the Warden of the Fleet Prison. 1 *Tidd's Pr.* 53.

TITHES. [from Sax. *teotha*, tenth; L. Lat. *decimæ.*] In English law. The *tenth* part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants. 2 *Bl. Com.* 24. A species of incorporeal hereditament; being an ecclesiastical inheritance collateral to the estate of the land, and due only to an ecclesiastical person by ecclesiastical law. 1 *Crabb's Real Prop.* 151, § 133.

The above definition of Blackstone has been censured as faulty, in its supposing tithe to consist in all cases of the tenth part of the increase *yearly* arising and renewing. 2 *Chitt. Bl. Com.* 24, note. It has been adopted, however, without objection, by Mr. Stephen. 3 *Steph. Com.* 123. Mr. Crabb very succinctly defines tithes to

be the "tenths of the produce of the ground, or of personal industry." 1 *Crabb's Real Prop. ub. sup.*

Prædial tithes are such as arise immediately from the ground; as grain of all sorts, hay, wood, fruits, and herbs. *Id. ibid.*

Mixed tithes are such as do not arise immediately from the ground, but from things nourished by the ground; as calves, lambs, chickens, colts, milk, cheese, and eggs. *Id. ibid.*

Personal tithes are such as arise by the industry of man, being the tenth part of the clear gain, after charges deducted. *Id. ibid.* See 2 *Chitt. Bl. Com.* 24, note.

Tithes are now commuted into a rent charge, the amount of which is annually adjusted according to the average price of corn, [grain.] 1 *Crabb's R. Prop.* 161, *et seq.* *Wharton's Lex.*

TITHING. [Sax. *teothung, theothing;* a company of ten; L. Lat. *tithinga, tithingum, tethinga, theothinga, decenna, decuria.*] In Saxon law. The number or company of *ten* freeholders, with their families, who all dwelt together and were sureties or free-pledges to the king for the good behavior of each other. *Cowell.* 1 *Bl. Com.* 114. 1 *Reeves' Hist.* 13. Otherwise called a *decennary* or *friborg*, (qq. v.)

TITHING-MAN. [Sax. *tienhefod*, head of ten; L. Lat. *decanus friborgi, capitalis plegius; thethingmannus.*] In Saxon law. The head or chief of a tithing; one of the ten freeholders or pledges who composed the tithing, annually appointed to preside over the other nine; a chief pledge, head borough, or borsholder.* 1 *Bl. Com.* 114. 2 *Inst.* 73. *Spelman*, vocc. *Friborga, Decanus friborgi.*

In modern law,—a constable. "After the introduction of justices of the peace, the offices of constable and *tithing-man* became so similar, that we now regard them as precisely the same." *Willcock on Constables*, Introd.

In New-England,—a parish officer annually elected to preserve good order in the church during divine service, and to make complaint of any disorderly conduct. *Webster.*

TITHING-PENY, *Thething peny, Tedinpeni.* In Saxon and old English law. Money paid to the sheriff by the several tithings of his county. *Cowell.*

TITIUS. Lat. A Roman name, very commonly used in the civil law, in illustrating rules by examples; like the "John Stiles," or "John Doe" of the old English books, and the "A. B." of modern treatises. *Si in chartis membranisve tuis carmen vel historiam vel orationem* Titius *scripserit, hujus corporis non* Titius *sed tu dominus esse videris;* if Titius shall have written a poem, or a history, or an oration upon your papers or parchments, you and not Titius will be deemed the owner of the *corpus*, i. e. the poem, &c. so written. *Inst.* 2. 1. 33. Titius *filius hæres mihi esto;* let Titius my son be my heir. *Id.* 2. 16, pr. *Dig.* 28. 5. 1, 2, 3.

Titius (or *Ticius*) is also sometimes used by Bracton, in his illustrations. Ticius *alienam plantam in solo suo posuit; ipsius erit planta.* Titius has set another man's plant in his ground; the plant shall be his. *Bract.* fol. 10. *Si* Titius *consul factus fuerit;* if Titius shall be made consul. *Id.* fol. 99 b. But these are obvious quotations from the civil law. Occasionally the name is employed in illustrating the practice of the English courts. Titius *de tali loco, et socii sui justitiarii itinerantes in tali comitatu;* Titius of such a place, and his companions, justices itinerating in such a county. *Id.* fol. 236 b. But the instances of this are very rare; the letters of the alphabet being generally employed in the examples, as they are in the writs in the Register. *Si feoffavero* A. *et* A. B. *et* B. C. *et sic in infinitum.* *Id.* fol. 81. Sir William Blackstone makes occasional use of this name. 1 *Bl. Com.* 56. 2 *Id.* 10.

TITLE. [L. Fr. *tytle;* Lat. *titulus*, q. v.] The lawful cause or ground of possessing that which is ours, (*justa causa possidendi quod nostrum est.*) *Co. Litt.* 345 b.—The means whereby the owner of lands has the just possession of his property. 2 *Bl. Com.* 195.—The means whereby the owner of lands, or other real property, has the just and legal possession and enjoyment of it. *Cruise Dig.* tit. xxix. ch. 1, sect. 2.—The means whereby a man cometh to land. *Co. Litt. ub. sup.* See *Titulus.* These definitions, it will be seen, confine the application of the word to *real* property. In modern law, however, it is constantly applied to personal property also. **When two titles concur, the best is preferred.** *Finch's Law*, b. 1, c. 4, n. 82.

According to Lord Coke, the word *title* seems strictly to have imported, in the old law of real property, something less than *right*, or, as he describes it, "title properly is, as some say, where a man has a lawful

cause of entry into lands, whereof another is seised, for the which *he can have no action.*" *Co. Litt.* 345 b. 8 *Co.* 153 b. "But legally," he adds, "it includes a right also, for every right is a title, but every title is not such a right for which an action lies." *Co. Litt. ub. sup.* Hale and Finch make a distinction between the terms. See *Hale's Anal.* sect. xxxii. *Finch's Law*, b. 2, ch. 2. In modern practice, however, they are constantly associated together.

A title is further described in the old books as consisting for the most part of *muniments*, which fortify and protect the ground of possession, (*plerumque constat ex munimentis quæ muniunt et tuentur causam.*) 8 *Co.* 153 b. See *Title deeds*, *Abstract of title.*

TITLE DEEDS. Deeds which constitute, or are the evidence of title to lands; muniments of title; the written evidences of ownership of lands. See *Title*, *Abstract of title*, *Muniments.*

TITTLE. A point used in the spelling or abbreviation of words. Thus, the writing of South. instead of South'. is called a defect of a tittle. *Yearb.* T. 7 Hen. VI. 25. See 6 *Mod.* 273, arg.

TITULADA. Span. [from Lat. *titulus.*] In Spanish law. Title. *White's New Recop.* b. 1, tit. 5, c. 3, § 2.

TITULATUS. Lat. In canon law. Annexed to a church, (*ecclesiæ ascriptus.*) *Spelman.*

TIT'LUS. A contraction of *titulus.* 1 *Inst. Cler.* 13.

TITULUS. Lat. [from *tueri*, to protect.] In the civil law. Title; the source or ground of possession, (*causa possessionis;*) the means whereby possession of a thing is acquired, whether such possession be lawful or not. 1 *Mack. Civ. Law*, 243, § 233. *Id.* 197, § 279. Heineccius makes a distinction between *titulus*, (title,) and *modus adquirendi*, (the manner of acquiring;) describing the former as the remoter, the latter as the proximate or immediate cause of ownership. *Hein. Elem. Jur. Civ.* lib. 2, tit. 1, § 339.

In old English law. Title; ground of ownership of land. *A vero domino ejici potuit et impune, si tempus quod sufficiat pro titulo non intervenerit;* but he may be ejected by the true owner, and with impunity, if a time have not intervened sufficient to constitute a title. *Bract.* fol. 165 b.

A lawful cause or ground of possession. Titulus *est* justa *causa possidendi id quod nostrum est;* title is the lawful ground of possessing that which is ours. 8 *Co.* 153 b. *Co. Litt.* 345 b.

TITULUS. Lat. In old ecclesiastical law. A temple or church; the material edifice, (*ecclesiæ materialis.*) *Spelman.* So called, as Spelman supposes, because the priest in charge of it derived therefrom his name and *title.*

T'LE. A contraction of *tale.* 1 *Inst. Cler.* 13.

T'NSGR'. A contraction of *transgressio.* 1 *Inst. Cler.* 13.

TO, [Lat. *ad*, *usque ad*,] in expressing a boundary, is a term of exclusion, unless, by necessary implication, manifestly used in a different sense. "I consider the law to be clearly settled, that a boundary *on* a stream, or *by* a stream, or '*to*' a stream, includes the flats at least to low-water mark, and in many cases to the middle thread of the river. It may be different when the boundary is '*to* the bank,' for in such cases, the boundary is or may be limited to the very bank, and may not extend into the stream, or the flats thereof." Story, J. 3 *Sumner's R.* 178.

TO LANGE AND TO BRED. A Saxon or old English phrase used in Bracton, the meaning of which is very obscure. It occurs in the following passage: *Et sciendum quod statim in ipsa inquisitione, et coram coronatoribus, præsentatur Englischeria, sed diversimodè tamen, secundum diversas consuetudines comitatuum. In quibusdam vero comitatibus, presentatur Englischeria, sive mortuus fuerit masculus sive fœmina, per duos masculos ex parte patris, et per duas fœminas ex parte matris, de propinquioribus parentibus interfecti, qui olim dicebantur* To lange and To bred. (And it is to be known that Engleschery is to be presented immediately, at the time of taking the inquest, and before the coroners, but yet in a different manner, according to the different customs of counties. In some counties, Engleschery is presented, whether the dead person be a male or a female, by *two males* on the part of the father, and by *two females* on the part of the mother, of the nearest relatives of the slain person, who were anciently called *To lange and To bred.*) *Bract.* fol. 135. The context seems to explain this phrase to mean, "two males and two females." The word "to," at least is clearly expressive of *number*, and Cowell's version, "Too long and too broad," is obviously absurd. In

the parallel passage in Fleta the phrase does not appear. *Fleta*, lib. 1, c. 30, § 2.

TO WIT. [O. Eng. *to wyt, to wyte;* Lat. *videlicet, scilicet, sciendum;* L. Fr. *ascavoir, asaver.*] Literally, to know. See *Wit.* A term used to call attention to something particular, or as introductory to a detailed statement of what has been just before mentioned generally. See *Scilicet.*

The ancient use and import of this now familiar expression may be understood from an order of King James III. of Scotland for dissolving the parliament and calling a new one, entered in the records of parliament, 21st February, 1487, which commences as follows: "We do you *to wit*, [that is, we make you to know, or give you to understand] that our sovereign lord, by the advice of his council, has," &c. The same form of expression is used in the New Testament. 2 *Cor.* viii. 1. The declaration of thanks of Henry IV. on being made king of England commences thus: "Sirs, I thank God and zowe [you,] spiritual and temporal, and all the states of the land, and do zowe *to wyte* it es noght my will," &c. 1 *State Trials*, 154.

TOFT. [L. Lat. *toftum.*] In old English law. The place where a messuage has stood; the site of a decayed house. *Cowell. Shep. Touch.* (by Preston,) 95.

TOFTMAN. [L. Lat. *toftmannus.*] In old English law. The owner of a toft. *Cowell. Spelman.*

TOFTUM. L. Lat. In old English law. A toft; the place where a messuage or house has stood. *Glanv.* lib. 8, c. 2. *Reg. Orig.* 2. *Yearb.* M. 1 Edw. II. 1. *Spelman.*

TOIL, *Toyle.* In Scotch law. Toll. *Qui habent* Toyle *et Theme*, &c. *Reg. Maj.* lib. 1, c. 4, § 2.

ΤΟΚΟΣ, *Τόκος.* Gr. [from *τίκτω*, to beget.] In the Roman law. Interest; the interest of money. *Dig.* proœm. (*De Conf. Dig.*) § 5.

TOL, *Thol.* Old forms of *Toll. Spelman.* See *Toll.* A lord's privilege of buying and selling within his own manor. *LL. Gul. Conq.* l. 3, *Kelham's note.*

A lord's privilege of taking toll of what is bought and sold within his manor. *Id. ibid.*

A lord's exemption from taxes or tolls for what was sold off his own domains. *Id. ibid.*

An acquittance from paying toll in any part of the kingdom. *Id. ibid. Fleta*, lib. 1, c. 47, § 8.

TOLER, *Toller.* L. Fr. [from Lat. *tollere*, q. v.] To take away. *Britt.* c. 38.

Tolet, tolets, tols, toluz, tolz; taken away. *Kelham.*

TOLL. [Sax. *tol, thol;* L. Lat. *tolnetum, tholonium, theolonium, thelonium;* L. Fr. *tolne, toloun.*] In Saxon and old English law. A liberty to buy and sell within the precincts of a manor. *Lambard. Archaion.* fol. 132. *Cowell.* The liberty of having a fair or market. *Spelman.*

A tribute or custom paid for passage. *Cowell.*

A custom or port duty. *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 6.

A lord's right of having tallage of his villeins. *Keilw.* 145.

In modern English law. A reasonable sum due to the lord of a fair or market for things sold there which are tollable. 2 *Crabb's Real Prop.* 350, § 683.

A duty imposed on travellers and goods passing along public roads, bridges, &c. *Brande.*

To TOLL. [from L. Fr. *toller*, from Lat. *tollere*, q. v.] In old English law. To take away; to bar, or defeat. To *toll* an entry was to bar or defeat it; to take away the right of entry. 3 *Bl. Com.* 176. Descents were said to *toll* entries. See *Toller.*

TOLL AND TEAM, *Toll and Them, Toll and Tem, Tol and Team.* Sax. Words constantly associated in Saxon and old English grants of liberties to the lords of manors. *Bract.* fol. 56, 104 b, 124 b, 154 b. They appear to have imported the privileges of having a market, and jurisdiction of villeins. See *Team.*

TOLL-THOROUGH. In English law. A toll for passing through a highway, or over a ferry or bridge. *Cowell.* A toll paid to a town for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it. *Com. Dig.* Toll, (C.) A toll claimed by an individual where he is bound to repair some particular highway. 3 *Steph. Com.* 257. Called *thurg-toll.* 5 *East*, 2.

TOLL-TRAVERSE. In English law. A toll for passing over a private man's ground. *Cowell.* A toll for passing over the private soil of another, or for driving beasts across his ground. *Cro. Eliz.* 710. 1 *Crabb's Real Prop.* 100, § 102. 3 *Steph. Com.* 257.

TOLL-TURN. In English law. A toll on beasts returning from a market.

1 *Crabb's Real Prop.* 101, § 102. A toll paid at the return of beasts from fair or market, though they were not sold. *Cowell.*

TOLLER, *Toler.* L. Fr. [from Lat. *tollere*, q. v.] To take away; to bar or defeat. *Discents que* tollent *entries;* descents which *toll* or bar entries. *Litt.* sect. 385.

TOLLERE. Lat. In the civil law. To lift up or raise; to elevate; to build up. See *Servitus altius non tollendi.*

To take away; to dissolve or destroy. Tollitur *omnis obligatio solutione ejus quod debetur;* every obligation is dissolved by the payment of that which is due. *Inst.* 3. 30, pr. See *Fleta*, lib. 2, c. 60, § 5.

To put an end to an action. *Calv. Lex.* To quash, or annul a judgment. *Id. Spiegelius.*

To bring up, or educate. *Calv. Lex. Adam's Rom. Ant.* 51.

In old European law. To take away. *Eidem terram suam in loco nuncupante illo, per forciam* tulisset; took away by force from the same, his land in that place named. *Marculf.* lib. 1, c. 28. *De quacunque libet re forciam fecerit, et per vim* tulerit; of whatever thing he shall have done violence, and taken away by force. *L. Ripuar. apud Spelman.*

TOLLUTUS, *Toltus, Tultus.* L. Lat. In old European law. Taken away. Barbarous participles formed from the verb *tollere*, (q. v.) *Quicquid ibi* toltum *fuerit;* whatever shall have been there taken. *L. Salic.* tit. 34. *Suum mansum ei* tollutum *fuisset;* his manse was taken from him. *Chart. Alaman.* 99. *Spelman.*

TOLNE. L. Fr. Toll; toll to a fair or market. *Stat. Westm.* 1, c. 31. 2 *Inst.* 220.

TOLNETUM, *Theolnetum.* L. Lat. In old English law. Toll. *Si sit aliquis qui de concessione domini regis, talem habeat libertatem, sicut Sock & Sack,* Tolnetum, *Team*, &c.; if there be any one who has, by the grant of the king, such a liberty as Sock and Sack, Toll, Team, &c. *Bract.* fol. 122 b. The same with *theolonium*, (Lat. *vectigal.*) 8 *Co.* 46 b.

A tax, charge or imposition. *Sine omnibus malis* tolnetis; without any manner of evil tolls. *Magna Charta*, c. 30. See *Male tolt.*

TOLSESTER, *Tolsaster, Tolcester.* [L. Lat. *tolcestrum.*] In old English law. A *toll* or tribute of a sextary or *sester* of ale, paid to the lords of some manors by their tenants, for liberty to brew and sell ale; a species of excise. *Cowell.*

TOLT. [L. Lat. *tolta*, from *tollere*, to remove.] In old English practice. A writ by which a cause pending in a court-baron was removed to the county court. *Cowell. Termes de la Ley. F. N. B.* 3 F. 3 *Bl. Com.* 34, 195. So called, *quia* tollit *atque eximit causam è curia baronum*, (because it takes away and removes the cause from the court baron.) 3 *Co.* pref. It was a precept directed by the sheriff to his bailiff, commanding him to go to the lord's court, and take away the plaint which was there into his county court. *F. N. B. ub. sup.* 3 *Bl. Com.* Appendix, No. i. sect. 2. It seems now to be disused. 3 *Steph. Com.* 393. See 1 *W. Bl.* 397. See *Tolta.*

TOLTA. L. Lat. In old English law. Tolt; a process for removing a cause from a court-baron. *Spelman.*

A process for removing a cause from the jurisdiction of a temporal court. *Plac. cor. Reg. Term. Pasch.* 22 *Edw.* I. Rot. 18. *Spelman.*

Wrong; rapine; extortion; any thing exacted or imposed contrary to right and justice. *Pat.* 48 *Hen.* III. in *Brady's Hist. Eng.* Appendix, 235. See *Mala tolta.*

TONEL. L. Fr. In old English law. A hogshead or tun. Tonel *de vin;* a tun of wine. *Yearb.* H. 6 Edw. III. 15. H. 20 Hen. VI. 2.

A place of confinement for night-walkers; a round-house. *Kelham.* According to Mr. Barrington it was anciently either an old butt or hogshead, or something built in the shape of one. *Obs. Stat.* 154.

TONNA. L. Lat. In old English law. A ton. *Spelman.*

TONNAGIUM. L. Lat. In old English law. A custom or impost upon wines and other merchandize exported or imported, according to a certain rate per ton. *Spelman. Cowell.*

TONNETIGHT. In old English law. The quantity of a ton or tun, in a ship's freight or bulk, for which tonnage or tunnage was paid to the king. *Pat.* 2 *Ric.* II. *Cowell.*

TONODERACH. In old Scotch law. A thief-taker, (*qui fures exquirit.*) *LL. Kenethi Regis*, § 5. *Spelman.*

TONSURA. Lat. [from *tondere*, to shave or clip.] In old English law. A shaving, or polling; the having the crown of the head shaven; tonsure. One of the peculiar badges of a clerk or clergyman. *Habitus et* tonsura *clericalis;* the clerical habit and tonsure, without which no man originally could be admitted to the privilege of clergy. 2 *Hale's P. C.* 372. 4 *Bl. Com.* 366. See *Nov.* 5, c. 2. See *Clerical tonsure.*

The clipping of money. *Fleta*, lib. 1, c. 20, §§ 123, 125, 126, 127, 130.

TONSURE. [Lat. *tonsura*, q. v.] In old English law. A being shaven; the having the head shaven; a shaven head. 4 *Bl. Com.* 367. See *Tonsura*, *Clerical tonsure.*

TONSUS. Lat. [from *tondere*, to shave.] In old European law. Shaven; initiated in holy orders, (*sacris initiatus.*) *Spelman.* "Trimmed with the clerical tonsure." 4 *Bl. Com.* 367. Hence priests were sometimes called in derision, "shavelings."

TONTINE. [from *Tonti*, the inventor.] A loan raised on life annuities, with the benefit of survivorships. *Brande.* A loan upon the principles of a *tontine* was proposed to congress by Mr. Hamilton, in his *Report on Public Credit*, Jan. 9, 1790.

TOP ANNUAL. In Scotch law. An annual rent out of a house built in a burgh. *Whishaw.* A duty which, from the act 1551, c. 10, appears to have been due from certain lands in Edinburgh, the nature of which is not now known. *Bell's Dict.* See *Skene de Verb. Sign.* voc. *Annuell.*

TOR. Sax. [L. Lat. *torra.*] In old records. A mount or hill. *Cowell.*

TORAILE. L. Fr. A kiln. *Yearb.* T. 4 Edw. III. 26.

TORCENOUSE. L. Fr. [from *tort*, q. v.] Wrongful; injurious; tortious; distinguished from *damaiouse*, (q. v.) *En la mercy pur sa torcenouse occupacion;* in mercy for his wrongful occupation. *Britt.* c. 50. *Si la nosaunce soit damaiouse et* torcenouse, *adonques, &c. Et si nent* torcenouse, *uncore fait a suffrer, tout soit ele damaiouse;* if the nuisance be damageous and tortious, [i. e. productive both of loss and wrong, *damnum cum injuria,*] then, &c. And if not tortious, it must be submitted to, though it may be damageous. *Britt.* c. 61.

TORCULARIUM. Lat. In the civil law. A wine-press. *Dig.* 19. 1. 17, pr.

TORMENTUM. L. Lat. In old practice. An engine. *Tormentum*, Anglicè *vocat'* a pistol, *onerat' cum pulvere bombardico et glandine plumbea;* Ang. charged with gunpowder and one leaden bullet. 2 *State Trials*, 745.

TORN. An old form of *tourn*, the sheriff's county court in England. *Mirr.* c. 1, § 16.

TORNARE. L. Lat. To turn; to return. *Spelman.*

TORNEAMENTUM. L. Lat. In old records. A tournament, or tourney. *Spelman. Cowell*, voc. *Turney.*

TORNETUM. L. Lat. In old records. A tax or acknowledgment paid to the sheriff, for holding his *tourn. Cowell.*

TORRALE, *Torralium.* L. Lat. [from *torrere*, to roast, or dry by fire.] In old English and Scotch law. A kiln or malt-house; a house or place where grain or malt was dried. *Spelman.* 3 *Bl. Com.* 235. *Skene de Verb. Sign.* voc. *Torralium.*

TORT. L. Fr. and Eng. [from Lat. *tortus, tortum*, twisted, or crooked.] Wrong; injury; the opposite of right, (*droit.*) So called, according to Lord Coke, because it is *wrested*, or crooked, being contrary to that which is right and straight. *Co. Litt.* 158 b. *Celuy que* droit *avera, recovere; et que* tort *avera, soit puny;* he who shall have the right, shall recover; and he who shall have [done] wrong shall be punished. *Britt.* c. 68. *De son* tort *demesne*, (q. v.) of his own wrong. *De fait et à* tort; *de facto* and wrongfully. *Britt.* c. 107. The Spanish *tuerto* (q. v.) has the same sense.

In modern practice, *tort* is constantly used as an English word to denote a wrong or wrongful act, for which an action will lie, as distinguished from a *contract.* 3 *Bl. Com.* 117.

TORT FEASOR. L. Fr. and Eng. A wrong-doer; a trespasser. *Cro. Jac.* 383. *Cowell.*

TORTIOUS. [L. Fr. *torcenouse.*] Wrongful; having the quality of a *tort*, (q. v.)

TORTUM. Lat. [from *torquere*, to twist or crook.] Crooked; twisted; not straight.

Injustice; wrong; the opposite of right, (*rectum.*) *Spelman.*

Tortura legum pessima. The torture or wresting of laws is the worst [kind of torture.] *Bacon's Works*, iv. 434.

TOSCHEODERACH, *Toschodairach, Tochederach.* In old Scotch and Irish law. A serjeant, or serjeant-at-arms, (*serviens curiæ;*) one who executed the process of the courts in summoning parties; a messenger or summoner. *Reg. Mag.* lib. 1, c. 6, § 7. Skene, on this passage, translates the word "ane mair of fee." *Spelman.* In Skene's *De Verborum Significatione* several senses are given.

TOT. In old English practice. A word written by the foreign opposer or other officer, opposite to a debt due the king, to denote that it was a *good* debt; which was hence said to be *totted. Stat.* 42 *Edw.* III. c. 9. *Stat.* 1 *Edw.* VI. c. 15. *Cowell.*

TOT. L. Fr. [from Lat. *totus.*] All; although. *Kelham.*

Tot à primer; as soon; immediately. *Id.*

Tot en tot; wholly; entirely. *Id.*

Tot fois; tot voies; always. *Id.*

Tot le meins; full at the least. *Id.*

Tot outre; entire. *Id.*

TOTA CURIA. L. Lat. In the old reports. The whole court. *Tota curia contra eum;* the whole court against him. *Yearb.* M. 9 Hen. VI. 34.

TOTAL LOSS. In insurance law. A loss on account of which the assured is entitled to recover from the underwriter the whole amount of his subscription. 2 *Arnould on Ins.* 990, (993, Perkins' ed.) A total loss, within the meaning of the policy, may arise either by the total destruction of the thing insured, or, if it specifically remains, by such damage to it as renders it of little or no value. 3 *Kent's Com.* 318. A loss is said to be *total*, if the voyage be entirely lost or defeated, or not worth pursuing, and the projected adventure frustrated. *Id. ibid.*

An *absolute* total loss takes place when the subject insured wholly perishes, or its recovery is rendered irretrievably hopeless; and it is one which entitles the assured to claim from the underwriter the whole amount of his subscription, without giving notice of abandonment. 2 *Arnould on Ins.* 990, (993, Perkins' ed.)

A *constructive* total loss takes place when the subject insured is not wholly destroyed, but its destruction is rendered highly probable, and its recovery, though not utterly hopeless, yet exceedingly doubtful. *Id. ibid.* It is a constructive total loss if the thing insured, though existing in fact, is lost for any beneficial purpose to the owner. In such cases, the insured may abandon all his interest in the subject insured, and all his hopes of recovery, to the insurer, and call upon him to pay as for a total loss. 3 *Kent's Com.* 318. To recover from the insurer in such cases, an abandonment is indispensable. *Id.* 320, 321.

TOTHUL. L. Fr. In English law. Tothill Fields, where trials by battel were conducted. *Yearb.* M. 4 Edw. III. 12.

TOTIDEM VERBIS. Lat. In so many words.

TOTIES QUOTIES. Lat. Literally, so often,—as often. As often as; as often as it shall happen. *Cas. temp. Talbot,* 52. Lord Ellenborough, 6 *M. & S.* 81. Toties quoties *sibi, aut eorum numero majori, conveniens fore videbitur;* as often as it shall seem meet to them, or the greater number of them. 7 *Man. & Gr.* 39.

TOTIS VIRIBUS. Lat. With all one's might or power; with all his might; very strenuously. A phrase in the old reports. "Baron Price *totis viribus contra.*" *Bunb.* 36. *Id.* 197. "Holt, C. J. *totis viribus contra.*" 12 *Mod.* 289.

TOTUM. Lat. The whole; all. **Totum præfertur unicuique parti.** The whole is preferred to any single part. 3 *Co.* 41 a, *Ratcliff's case.* The whole blood should inherit before the half blood. *Id. ibid.* For the construction of the word *totum* in the civil law, see *Dig.* 50. 16. 25.

TOUCH. In insurance law. To stop at; to stop at a port. If there be liberty granted by the policy to *touch*, or to *touch and stay*, at an intermediate port on the passage, the better opinion now is, that the insured may *trade* there, when consistent with the object and the furtherance of the adventure, by breaking bulk, or by discharging and taking in cargo, provided it produces no unnecessary delay, nor enhances nor varies the risk. 3 *Kent's Com.* 314, and cases there cited. These words were formerly construed more strictly. 1 *Arnould on Ins.* 364, (370, Perkins' ed.)

TOUCHER. L. Fr. In old English law. To relate to; to affect; to touch. *Une manere de accion y ad pledable en nostre court, que est appele mixte, par taunt que ele* touche *la persone v's que la demaunde est faite, et estre ceo, ele* touche *la chose demaunde;* there is one kind of action pleadable [i. e. that may be brought] in our court, which is called mixt, for as much as it

touches the person against whom the demand is made; and besides this, it *touches* the thing demanded. *Britt.* c. 71. *Articles* touchauntz *nostre corone. Id.* c. 29.

TOUCHING A DEAD BODY. In criminal evidence. An old method adopted to ascertain the guilt of a person suspected of murder, by requiring him or her to *touch* the corpse of the murdered person; the belief being that the body would *bleed* at the touch of the murderer. See 11 *How. State Trials*, 1402, 1403. 14 *Id.* 1324, 1326. *Burr. Circ. Evid.* 478, 479.

TOUCHING THE GOSPELS. See *Tactis, Tacto*, &c.

TOURN, *Torn, Turn.* [L. Fr. *tourne;* L. Lat. *tournus, turnus*, from *tour*, a circuit, or perambulation.] In old English law. The county criminal court, held before the sheriff twice a year, in every hundred of the kingdom. The *tourn* and the *leet* were originally one; and hence this court is called the turn [i. e. the circuit] of the sheriff to keep a court leet in each respective hundred. 2 *Inst.* 71. *Mirr.* c. 1. § 13, 16. *Magna Charta*, c. 35. *Bract.* fol. 155. 4 *Bl. Com.* 273. Britton observes, that that which is called before the sheriff, the *tour* of the sheriff, (*tour de viscounte,*) is called, in the court of a freeman, and in franchises and in hundreds, *view of frank-pledge*, (the old name of the leet.) *Britt.* c. 29. See *Turnus.*

TOUT. (pl. *Touts.*) L. Fr. [from Lat. *totus.*] All.

TOUT ATRENCHE (or ATTRENCHE.) L. Fr. Altogether; entirely. *Yearb.* P. 5 Edw. III. 18. P. 8 Edw. III. 7, 8.

TOUT TEMPS PRIST. L. Fr. [L. Lat. *semper paratus.*] Always ready. The emphatic words of the old plea of tender; the defendant alleging that he has always been ready, (*tout temps prist,*) and still is ready, (*et uncore prist,*) to discharge the debt. *Yearb.* M. 3 Hen. VI. 30. P. 11 Hen. VI. 6. 3 *Bl. Com.* 303. 2 *Salk.* 622.

TOUT UN SOUND. L. Fr. [L. Lat. *idem sonans.*] All one sound; sounding the same. An expression formerly applied to a name where it sounded in pronunciation so like another, as not to be distinguished. In debt, where the writ was against *Baxster*, and the obligation was *Baxter*, the writ was held good, because it is all one sound in speech, (*eo que il est* tout un sound *en parlans.*) *Yearb.* M. 3 Hen. IV. 4.

TOWN. [L. Fr. *ville;* L. Lat. *villa;* Lat. *oppidum.*] A collection of houses in one neighborhood;* a generical term, comprehending under it the several species of cities, boroughs and common towns. 1 *Bl. Com.* 115.

In modern law, the term *town* is usually applied to a collection of houses *larger than a village*, but anciently it seems to have comprehended *any* collection of houses, however small. Indeed, Sir William Blackstone supposes the word to have particularly denoted a *tithing*, which was almost the smallest civil division of the kingdom, consisting of *ten* houses or families. 1 *Bl. Com.* 114, 115. "Tithings, towns, or vills," he observes, "are of the same signification in law." *Id.* 114. Lord Coke gives to *towns*, one mark of distinction, viz. the circumstance of having, or having had, in time past, a church and celebration of divine service, sacraments and burials; without which, he observes, it cannot be a town in law. *Co. Litt.* 115 b. But Blackstone regards this as rather an ecclesiastical than a civil distinction. 1 *Bl. Com.* 114. Littleton observes, that every borough is a town, but not *è converso. Litt.* sect. 171.

In the United States, the term *town* is generally used to denote those civil divisions or subdivisions of a state which are intermediate between *villages* on the one hand, and *cities* on the other. It is, however, said to denote in Pennsylvania, and some other of the middle states, both a village and a city. *Bouvier.* This is preserving the ancient general sense of the word. In New-York and the eastern states, towns or townships are the subdivisions of counties, including within their limits, villages and towns proper. Webster observes that "in the United States, the circumstance that distinguishes a town from a city, is generally that a city is *incorporated* with special privileges, and a town is not." But in many of the states there are *incorporated* towns which are not cities, and there are also *incorporated villages.*

*** *Town* is derived by Webster from the Sax. *tun*, from *tynan*, to shut, and originally imported, according to the same authority, a walled or fortified place; a collection of houses enclosed with walls, hedges, or pickets for safety. This is making the radical idea of the word the same with that claimed for *borough*, from *burgus*, (qq. v.) But according to Blackstone, the original import of the word *town* was *tith-*

ing or vill, a neighborhood of *ten* families, which would justify the derivation of the word from the Sax. *tien*, ten; and this accords with the derivation of *borough* from the Sax. *borg*, *borh*, or *borhoe*, the Saxon name of the tithing or decennary. See *Borough*.

The corresponding Latin word *villa* seems to have undergone, in England, changes of signification similar to those of the English *town*. Spelman observes that *villa*, among the Anglo-Saxons, was used in its Roman sense of a farm or private country residence, (*pro prædio unius alicujus in rure*,) provided with suitable buildings for laying up the fruits raised upon it, (*cum idoneis ædibus ad reponendos ejusdem fructus honestato*;) and that it was not originally employed in the sense of a collection or neighborhood of several mansions, (the proper signification of the Latin *oppidum*,) though in the course of time it came to be. *Spelman*, voc. *Villa*. Bracton, in explaining the origin in England, of the word *villa*, throws some light on the primitive meaning of *town*. *Et unde videndum est, quid sit mansio et quid sit villa. Et sciendum quod de jure gentium agris sunt termini positi, ædificia sunt collata sive vicinata, et ex qua collatione fiunt civitates et villæ, et ex pluribus ædificiis collatis et vicinatis, et non ex uno ædificio constructo. Ut si quis in agris unicum faciat ædificium, non erit ibi* villa, *sed cum ex processu temporis inceperint coadjuvari* [*coadunari?*] *et vicinari plura ædificia, incipit esse* villa, &c. (We must see, then, what a mansion is, and what a town or vill is. And it is to be understood that according to the law of nations, [that is, the public or general law of states,] certain limits are marked out in lands, and houses built together, [within them] or erected into a neighborhood, out of which cities and towns are formed, which are thus composed of several buildings erected together, and not of a single edifice. Hence where a man builds a single house in the fields, it will not be a town or vill; but when, in process of time, several buildings have become united together for common safety, and formed into a neighborhood, it begins to be a town, &c.) *Bract.* fol. 211. From what the same author has said in another passage, it would appear that *two* houses standing in the neighborhood of each other would not constitute a *vill*, or town, but any larger number would. See *Bract.* fol. 434.

TOWN-REEVE. In English law. The reeve or chief officer of a town. See *Reve*.

TRA. In old practice. The mark ʌ made to show where a clause or word left out, and interlined in writing, should come in. According to the *Instructor Clericalis*, it was derived from the Lat. *trahere*, to draw; "because by it the words left out are signified to be these (where 'tis placed) drawn into writing." 1 *Instr. Cler.* 20.

TRABES. Lat. In the civil law. A beam or rafter of a house. *Calv. Lex.*

In old English law. A measure of grain, containing twenty-four sheaves; a thrave. *Spelman.*

TRACEA. L. Lat. In old English law. The track or trace of a felon, by which he was pursued, with the hue and cry; a foot-step, hoof-print or wheel-track. *Bract.* fol. 116, 121 b.

TRACTARE. Lat. In old English law. To treat, or handle. *Male tractare;* to mal-treat, or ill-treat. *Verberaverunt et male* tractaverunt; beat and ill treated. *Bract.* fol. 57.

To draw or drag (to execution.) *Tractari et suspendi;* to be drawn and hanged. *Fleta*, lib. 1, c. 22, § 6.

TRADAS IN BALLIUM. L. Lat. (You deliver to bail.) In old English practice. The name of a writ which might be issued in behalf of a party who, upon the writ *de odio et atia*, had been found to have been maliciously accused of a crime; commanding the sheriff that if the prisoner found twelve good and lawful men of the county who would be mainpernors for him, he should *deliver* him *in bail* to those twelve, until the next assize. *Bract.* fol. 123. 1 *Reeves' Hist. Eng. Law*, 252.

TRADE. The act or business of exchanging commodities by barter; or the business of buying and selling for money; traffic; barter. *Webster.*

The business which a person has learned and which he carries on for procuring subsistence, or for profit; occupation, particularly mechanical employment; distinguished from the liberal arts and learned professions, and from agriculture. *Id.*

TRADE MARK. A distinctive mark used by persons in trade; a distinctive mark, sign or device used by merchants and manufacturers; a mark, sign, device, ticket, wrapper or label put upon manufactured goods to distinguish them from others. See 3 *B. & C.* 541. 2 *Keen*, 213.

TRADER. One who trades; one who is engaged in trade, or the business of buying and selling; one who gets a livelihood by buying and selling for gain.* 2 *Kent's Com.* 389. 2 *Bl. Com.* 476. 2 *Steph. Com.* 195.

The meaning of the word *trader* in the English bankrupt law has been enlarged from time to time by statute, until it now includes the following descriptions of persons: viz. bankers, brokers, persons using the trade of a scrivener, receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, livery-stable keepers, coach proprietors, carriers, ship-owners, auctioneers, apothecaries, market-gardeners, cow-keepers, brick-makers, alum-makers, lime-burners and millers. *Stat.* 6 *Geo.* IV. c. 16, s. 2. *Stat.* 5 & 6 *Vict.* c. 122, s. 10. 2 *Steph. Com.* 194, note (*g.*)

TRADERE. Lat. To deliver; to transfer the possession. In the civil law, this word was properly expressive of the mere *fact* of transfer, without reference to the right. *Calv. Lex.* But it signified also a transfer of the property. *Inst.* 2. 1. 40.

To betray. Hence *traditor*, a traitor.

TRADESMAN. In England, a shopkeeper; a small shop-keeper.

In the United States, a mechanic or artificer of any kind, whose livelihood depends upon the labor of his hands. Bell, J. 4 *Penn. St.* (Barr's) *R.* 472.

In a larger sense, any person engaged in mechanical pursuits and employments; including manufacturers of every class. *Id.* 473.

TRADICION. Span. [from Lat. *traditio*, q. v.] In Spanish law. Delivery. *White's New Recop.* b. 2, tit. 2, c. 9.

TRADITIO. Lat. [from *tradere*, to deliver.] In the civil law. Delivery; transfer of possession; a giving possession of a corporeal thing. Heineccius defines it, *modus acquirendi derivativus quo dominus, qui jus et animum alienandi habet, rem corporalem ex justa causa in accipientem transfert;* (a derivative mode of acquiring, by which the owner of a corporeal thing, having the right and the will of aliening it, transfers it for a lawful consideration to the receiver.) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, § 380.

In old English law. Delivery or livery. *Est* traditio *de re corporali propria vel aliena, de persona in personam de manu propria vel aliena, sicut procuratoria, dum tamen de voluntate domini, in alterius manum gratuita translatio. Et nihil aliud est* traditio, *in uno sensu, nisi in possessionem inductio de re corporali, ideo dicitur quod res incorporalis non patitur traditionem; sicut ipsum jus quod rei sive corpori inhæret; et quia non possunt res incorporales possideri sed quasi, ideo* traditionem *non patiuntur, sed quasi, nec adquiruntur nec retinentur nisi per patientiam et usum;* delivery is the voluntary transfer of one's own or another's corporeal thing, from person to person, out of one's own hand or another's (as of an attorney's, if with the consent of the principal) into the hands of another person. And delivery is nothing else, in one sense, than the induction into possession of a corporeal thing, so called, because an incorporeal thing does not admit of delivery, such as the right itself which inheres in the thing or *corpus;* and because incorporeal things cannot be possessed, but *as it were*, therefore they do not admit of delivery, but *as it were*, nor are they acquired nor retained except by sufferance and use. *Bract.* fol. 39 b. This passage is materially abridged by Blackstone in quoting it. 2 *Bl. Com.* 317. Fleta follows Bracton, but with considerable modification. *Fleta*, lib. 3, c. 15, § 4.

Traditio loqui facit chartam. Delivery makes a deed speak. 5 *Co.* 1 a, *Clayton's case.* Delivery gives effect to the words of a deed. *Id. ibid.*

Traditio nihil amplius transferre debet vel potest, ad eum qui accipit, quam est apud eum qui tradit. Delivery ought to, and can, transfer nothing more to him who receives than is with him who delivers. *Dig.* 41. 1. 20, pr.

TRADITIO CLAVIUM. Lat. In the civil law. Delivery of keys; a symbolical kind of delivery, by which the ownership of merchandize in a warehouse might be transferred to a buyer. *Inst.* 2. 1. 44.

TRADITIO REI. Lat. Delivery of a thing. Lord Ellenborough, 5 *M. & S.* 82.

TRADITION. Delivery. A close translation or formation from the Lat. *traditio*, (q. v.) 2 *Bl. Com.* 307.

TRADITOR. L. Lat. [from *tradere*, to betray.] In old English law. A traitor; one guilty of high treason. *Fleta*, lib. 1, c. 21, § 8. *Id.* lib. 2, c. 52, § 14.

TRADITUR IN BALLIUM. L. Lat. In old practice. Is delivered to bail. Emphatic words of the old Latin bail-piece. 1 *Salk.* 195.

TRAHENS. Lat. [from *trahere*, to draw.] In French law. The drawer of a bill. *Story on Bills*, § 12, note.

TRAHERE. Lat. In old English law. To draw; as a principal thing does an incident. Id quod majus est trahit ad se id quod minus est. That which is greater draws to it that which is less. *Bract.* fol. 175.

To draw or bring in by superior power; to draw a person against his will; to bring into court. *Trahere in placitum;* to draw into plea; to make one a party to a suit; to implead. A. *queritur quod* B. trahit *eum in placitum;* A. complains that B. draws him into plea. *Reg. Orig.* 34. *Si contra voluntatem* trahatur *in placitum;* if against his will he be drawn into plea. *Bract.* fol. 402.

To draw to execution. Trahitur *et decollatur;* is drawn and beheaded. 1 *Pitc. Crim. Trials*, part 2, pp. 202, 203.

In the civil law. To put off; to delay or protract. *Calv. Lex.*

TRAHIR, *Trair.* L. Fr. [from Lat. *trahere*, q. v.] In old English law. To draw. *Trait et pend';* drawn and hanged. *Yearb.* M. 19 Hen. VI. 102.

TRAIL-BASTON. [from Fr. *trail*, to draw, and *baston*, a staff.] Draw-staff. The name given to certain justices appointed by Edward I. with extraordinary powers to try offences, and particularly with authority to inquire into and punish the malpractices of sheriffs, coroners, sub-escheators, constables, bailiffs and other officers. *Yearb.* (Add.) T. 2 Edw. III. 14. See *Justices of Trail-baston.* Spelman gives at length a commission of this kind granted by the king in the fifth year of his reign to Roger de Grey, and others his justices for the counties of Essex, Hertfordshire, Cambridgeshire and Huntingdonshire. It was sometimes called *Trebaston. Yearb. ub. sup.*

TRAISTIS. Sc. In old Scotch law. A roll containing the particular dittay (q. v.) taken up upon malefactors, which, with the *portuous*, (q. v.) is delivered by the justice clerk to the coroner, to the effect that the persons whose names are contained in the portuous may be attached, conform to the dittay contained in the traistis. So called, because committed to the *traist*, [trust] faith and credit of the clerks and coroner. *Skene de Verb. Signif.*

TRAITOROUSLY. In criminal pleading. An essential word in indictments for treason. The offence must be laid to have been committed *traitorously. Wharton's Am. Crim. Law*, 100.

TRAJECTITIUS. Lat. [from *trajicere*, to send across.] In the civil law. Sent across the sea. See *Pecunia trajectitia.*

TRANSACT. In Scotch law. To compound. Lord Hardwicke, *Ambl.* 185.

TRANSACTIO. Lat. [from *transagere*, to finish.] In the civil law. The settlement of a suit or matter in controversy, by the litigating parties, between themselves, without referring it to arbitration. *Hallifax, Anal.* b. 3, c. 8, num. 14. An agreement by which a suit, either pending or about to be commenced, was forborne or discontinued on certain terms. *Calv. Lex.* See *Dig.* 2. 15. *Fleta*, lib. 4, c. 17, § 2.

TRANSCRIBERE. Lat. [from *trans*, over or across, and *scribere*, to write.] To write over; to copy; to transcribe.

In the civil law. To transfer; to transfer one's rights to another. *Calv. Lex.*

TRANSCRIPT. L. Fr. and Eng. [L. Fr. *transescrit*, from Lat. *transcriptum*, q. v.] In practice. A copy, particularly of a record. This has always been the import of the word, it rarely or never being applied to copies of other writings. *Et le* transcript *de cel enroulement soit delivere al visconte;* and the transcript of this enrolment shall be delivered to the sheriff. *Britt.* c. 2. *Le* transcript *del fin. Yearb.* M. 9 Edw. III. 2.

TRANSCRIPTUM. Lat. In old practice. A transcript. *Reg. Orig.* 169. See *Fleta*, lib. 3, c. 14, § 2.

To TRANSFER. [from Lat. *transferre*, q. v.] To carry or pass over; to pass a thing over to another; to convey. Usually applied to the acts of persons, but expressive also of the act or operation of the law.

TRANSFER. [Lat. *translatio.*] The passing of a thing or property from one person to another; alienation; conveyance. 2 *Bl. Com.* 294.

TRANSFERRE. Lat. [from *trans*, over

or across, and *ferre*, to bring.] In the civil and old English law. To bring over or across; to bring or carry from one place or person to another; to transfer. *Dig.* 50. 17. 11.

According to Lord Coke, this is a more general word than *alienare*, (q. v.) 2 *Inst.* 406. *Transferuntur dominia sine titulo et traditione, per usucapionem*, scil. *per longam, continuam, et pacificam possessionem;* properties are transferred without title and delivery, by usucapion, that is to say, by long, continued and peaceable possession. *Co. Litt.* 113.

TRANSFRETARE. L. Lat. [from *trans*, across, and *fretum*, a strait.] In old English law. To cross a strait, or the strait. Particularly applied to the Straits of Dover. *Reg. Orig.* 193 b. *Fleta*, lib. 4, c. 5, § 17. *Licentia transfretandi;* liberty to cross the strait. *Reg. Orig.* 193 b.

TRANSFRETATIO. Lat. [from *transfretare*, q. v.] In old English law. A crossing of the Strait (of Dover;) a passing or sailing over from England to France. The royal passages or voyages to Gascony, Brittany and other parts of France, were so called; and time was sometimes computed from them. *Stat. of Merton*, c. 8. *Stat. of Marlbridge*, c. 9. *Fleta*, lib. 2, c. 66, § 1.

TRANSGRESSIO. Lat. [from *transgredi*, to pass or step over.] In old English law. Transgression; violation of law, either by going beyond measure, (*excedendo modum et mensuram,*) or doing less than one ought, (*vel faciendo citra debitum,*) out of malice and fraud, or by negligence and omission. *Bract.* fol. 101 b. Transgressio *est cum modus non servatur nec mensura;* transgression (or trespass) is when neither moderation nor measure is observed. *Fleta*, lib. 2, c. 1, § 4.

Trespass. *Brevia de transgressione;* writs of trespass. *Reg. Orig.* 92, *et seq.*

TRANSIGERE. Lat. [from *trans*, across or through, and *agere*, to drive.] Literally, to drive through. To press to a conclusion; to dispatch or bring to an end.

In the civil law. To terminate a controversy; to end or settle a matter in litigation. Properly said of a plaintiff who withdrew or discontinued his action, upon a settlement with the defendant; and was thus said *ab actione transire*, to pass from or relinquish his action. *Calv. Lex.*

TRANSIRE. Lat. [from *trans*, across or over, and *ire*, to go.] To go, or pass over; to pass from one thing, person or place to another; to become changed from one thing into another.

Transit in rem judicatam. It passes into a matter adjudged; it becomes converted into a *res judicata* or judgment. A contract upon which a judgment is obtained is said to pass *in rem judicatam.* Story, J. 2 *Sumner's R.* 436. Lord Kenyon, 1 *East*, 436. Lord Ellenborough, C. J. 3 *East*, 251. Spencer, C. J. 18 *Johns. R.* 480. When a cause of action has once passed *in rem judicatam*, the defendant and every other person is forever afterwards precluded from availing himself of any pre-existing matter, which might have been insisted upon in bar of the recovery. Van Ness, J. 14 *Johns. R.* 442. This phrase occurs in the old statute of *Articuli Cleri. Si aliqua causa vel negotium, cujus cognitio spectat ad forum ecclesiasticum, et coram ecclesiastico judice fuerit sententialiter terminatum, et* transierit in rem judicatam, *nec per appellationem fuerit suspensum*, &c.; if any cause or matter, the cognizance whereof belongs to the ecclesiastical court, and which shall have been terminated by sentence before the ecclesiastical judge, and shall have passed into a matter adjudged, and not been suspended by appeal, &c. *Artic. Cleri*, c. 6. Bracton (who is followed by Fleta,) applies it to a judgment which becomes absolute or final from lapse of time. *Post longum intervallum* transit *judicium* in *autoritatem* rei judicatæ. *Bract.* fol. 288. *Fleta*, lib. 5, c. 21, § 15.

Transit terra cum onere. The land passes with the burden; the land passes with the incumbrance attached to it. Where land passes from one person to another, the covenants created by the original deed of conveyance pass along with it, and bind the present owner or occupier. *Co. Litt.* 231 a. *Shep. Touch.* 178. Applied to the obligation of covenants running with land. *Broom's Max.* 204, 313, [372, 553.]

TRANSIRE. L. Lat. In old English law. The name given to a custom-house warrant or let-pass, [permit.] *Stat.* 14 *Car.* II. c. 11. *Cowell.* See *Hale de Jur. Mar.* pars 2, (*de port. mar.*) c. 11.

TRANSITORY. [from Lat. *transitorius*, from *transire*, to pass over.] Passing from place to place; that may pass or be changed from one place to another; not confined to one place; the opposite of local. A *transitory* action is one that may be

brought, or in which the venue may be laid in any county. *Steph. Pl.* 289. 1 *Tidd's Pr.* 427.

TRANSITURA. L. Lat. In old European law. A tribute paid for the liberty of passage. *Capit. Carol.* lib. 4, c. 59.

TRANSITUS. Lat. [from *transire*, to pass over.] Passage from one place to another; transit. *In transitu;* on the passage, transit or way. 2 *Kent's Com.* 543. "The *transitus* of the goods, and consequently the right of stoppage, is determined by actual delivery to the vendee, or by circumstances which are equivalent to actual delivery." *Id. ibid.* See *Stoppage in transitu.*

TRANSLADO. Span. A transcript. See *Traslado.*

TRANSLATE. In English law. To transfer. *Hale's Anal.* sect. xxxiii.

TRANSLATION. [from Lat. *translatio*, from *transferre*, to transfer.] Transfer; a transferring. "Touching acquisition and *translation* of estates." *Hale's Anal.* sect. xxxiii. "A *translation* or *transfer* of property being thus admitted by law, it became necessary that this transfer should be properly evidenced." 2 *Bl. Com.* 294. This word is closely formed from the *translatio* of the civil law, but is rarely used.

In ecclesiastical law. The removal of a bishop from one diocese to another. *Cowell.* 1 *Wooddes. Lect.* 178.

TRANSPASSARE. L. Lat. In old European law. To pass or go through. *L. Alaman.* tit. 82. *Spelman.*

TRANSPORT. In old New-York law. A conveyance of land.

TRANSPORTATION. [from Lat. *transportatio*, from *transportare*, to carry over.] In English criminal law. The sending of a person out of the kingdom, as a punishment; the sending a convicted criminal into another country; banishment or exile. 1 *Bl. Com.* 137. 3 *Id.* 377.

Transportation is said by Sir W. Blackstone to be "a punishment at present unknown to the common law, and wherever it is now inflicted, it is either by the choice of the criminal himself, to escape a capital punishment, or else by the express direction of some modern act of parliament." 1 *Bl. Com. ub. sup.* It is said by Mr. Barrington to have been first inflicted as a punishment, by statute 39 Eliz. c. 4. *Barr. Obs. Stat.* 445, note [*o*]. Dr. Wooddeson observes that the first mention of transportation *eo nomine*, is in the statute 18 *Car.* II. c. 3, s. 2. 2 *Wooddes. Lect.* 301. It is now chiefly regulated by statute 5 *Geo.* IV. c. 84. 4 *Steph. Com.* 444.

TRANSUMPT. [from Lat. *transumptus*, from *transumere*, to take from one to another.] In Scotch law. A judicial transcript of a writing; an authorized, authentic copy, as of the evidences of title to land. *Transumpts* are copies of deeds produced in the action of *transumpt*, collated and signed by the clerk, and then declared by the court to have the same effect with an extracted decree. *Bell's Dict.*

The name of an action brought for the purpose of obtaining such transcripts or copies. 1 *Forbes' Inst.* part 4, p. 116. *Whishaw.*

TRANSVERSA. L. Lat. In old English law. A toll or tribute paid for the liberty of passage. *Spelman.*

TRANSVERSAL. Cross; oblique. *Hale's Hist. Com. Law.* c. 11.

TRANSVERSALIS. Lat. [from *transversus*, across.] Cross; oblique; transverse. See *Linea transversalis.*

TRASLADO. Span. In Spanish law. A copy; a sight. *White's New Recop.* b. 3, tit. 7, c. 3. *Id.* c. 5, § 2. *Id.* b. 3, tit. 10, c. 1, § 7.

TRASSANS. L. Lat. [from *trassare*, q. v.] Drawing; one who draws. The drawer of a bill of exchange. *Heinecc. de Camb.* c. 6, § 4.

TRASSARE. L. Lat. [from Fr. *tracer*, to track.] In old Scotch law. To draw; to pursue by the foot-marks or foot-steps. *Nullus perturbet aut impediet canem* trassantem, *aut homines* trassantes *cum ipso ad sequendum latronem, aut ad capiendum malefactores;* no one shall disturb or hinder a dog drawing, or men drawing with a dog in pursuit of a robber, or for the purpose of taking malefactors. *Reg. Maj.* lib. 4, c. 32. See *Dog-draw.*

In modern European law. To draw a bill of exchange. See *Trassans, Trassatus.*

TRASSATUS. L. Lat. [from *trassare*, q. v.] One who is drawn, or drawn upon. The drawee of a bill of exchange. *Heinecc. de Camb.* c. 6, §§ 5, 6.

TRAVAILLER. L. Fr. To vex, harass, trouble, or disturb; to prosecute. *Kelham.*

To TRAVERSE. [from L. Fr. *traverser*, q. v.] In pleading. To deny. *Steph. Pl.* 52. *Id.* Appendix, Note (25.) To plead "not guilty" to an indictment.

TRAVERSE. In pleading. Denial. Pleas in bar are either by way of *traverse*,

or by way of confession and avoidance. *Steph. Pl.* 52.

A particular form of denial; otherwise termed a special or formal traverse. *Id.* 153, 165. *Id.* Appendix, note (25.)

TRAVERSER. In pleading. One who traverses or denies. A prisoner or party indicted, so called from his traversing the indictment.

TRAVERSER. L. Fr. In old pleading. To traverse; to deny. *Ou le tenaunt purra* traverser, *et tendre de averrer par l'assise;* where the tenant may traverse and offer to verify by the assise. *Britt.* c. 77. *Si la party le* traverse *et le dedie;* if the party traverse and deny it. *Id.* c. 86.

TREASON. [from L. Fr. *treson*, from *treer*, *trehir*, *trahir*, to betray; O. Sc. *tressone*, *tressoun;* L. Lat. *proditio.*] In criminal law. The offence of attempting to overthrow the government of a state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power. *Webster.*

In England, treason is an offence particularly directed against the person of the sovereign, and consists, (1) in compassing or imagining the death of the king or queen, or their eldest son and heir: (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir: (3) in levying war against the king in his realm: (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere: and (5) slaying the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. 4 *Steph. Com.* 185—193. 4 *Bl. Com.* 76—84. This definition of treason, or rather this enumeration of acts of treason, was settled by the statute 25 Edward III. c. 2.

In the United States, the definition of treason is fixed by the constitution, it being declared to "consist only in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." *Const. U. S.* Art. III. sect. 3. See *Story on the Const.* (Abr.) §§ 939, 940. The words of this definition are, as Mr. Justice Story observes, copied from the English statute of treason of Edward III. *Id.* § 942. See *supra.* And as to the offence of treason in American law, both against the United States, and the several states of the Union, see *Wharton's Am. Crim. Law*, b. 7, ch. 1, §§ 2715—2777. See *United States Digest*, Treason.

TREASURE TROVE. [L. Fr. *tresor trouve;* L. Fr. *thesaurus inventus.*] Literally, treasure found. Money or coin, gold, silver, plate or bullion *found* hidden in the earth or other private place, the owner thereof being unknown. 1 *Bl. Com.* 295. *Finch's Law*, b. 2, c. 17. See *Thesaurus.* Called in the Saxon times, *fynderinga*, (q. v.)

TREATY. [Lat. *fœdus.*] In international law. An agreement between two or more independent states. *Brande.*—An agreement, league, or contract between two or more nations or sovereigns, formally signed by commissioners properly authorized, and solemnly ratified by the several sovereigns, or the supreme power of each state. *Webster.*

A treaty is, in its nature, a contract between two nations; not a legislative act. It does not generally effect of itself the object to be accomplished, especially so far as its operation is infra-territorial, but is carried into execution by the sovereign power of the respective parties to the instrument. Marshall, C. J. 2 *Peters' R.* 314.

In the United States, a different principle is established. Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial, department, and the legislature must execute the contract before it can become a rule for the court. *Id. ibid.*

TREBLE COSTS. In practice. A rate of costs given in certain actions, consisting, according to its technical import, of the common costs, half of these, and half of the latter. 2 *Tidd's Pr.* 988. The word *treble*, in this application, is not understood in its literal sense of thrice the amount of single costs, but signifies merely the addition together of the three sums fixed as above. *Id. ibid.* Treble costs have been abolished in England, by statute 5 & 6 Vict. c. 97.

TREBLE DAMAGES. [L. Lat. *damnum triplum.*] In practice. Damages given by statute in certain cases, consisting of the single damages found by the

jury, actually tripled in amount. The usual practice has been for the jury to find the single amount of the damages, and for the court, on motion, to order that amount to be trebled. 2 *Tidd's Pr.* 893, 894. 1 *Burr. Pr.* 237. 1 *Arch. Pr.* 222.

The practice of giving treble damages prevailed among the Ripuarians, from whose code Spelman intimates it may have been originally borrowed. *L. Ripuar.* tit. 11, § 3.

TREBUCHET, *Tribuch.* [L. Lat. *trebuchetum, terbichetum;* from Celt *tre,* town, and *buchet,* bucket.] In old English law. A tumbrel or cucking-stool. *Cowell.* 4 *Bl. Com.* 169. According to Mr. Barrington, the Fr. *trebuchet* signifies an instrument with which gold is weighed. *Obs. Stat.* 56, note [*c.*]

TREBUCHETUM. L. Lat. A machine anciently used in the siege of towns. *Barr. Obs. Stat.* 54, note [*y.*]

In old English law. The trebuchet, (q. v.)

TREE. (Lat. *arbor,*) distinguished from *lignum,* (wood.) See *Arbor, Lignum.*

TREET. [L. Fr. *treyt;* Lat. *triticum.*] In old English law. Fine wheat. *Stat.* 51 Hen. III. *Blount. Britt.* c. 40. *Fleta,* lib. 2, c. 9, § 1.

TRENCHEA, *Trenchia.* L. Lat. [from Fr. *trancher,* to cut.] In old English law. A trench, dike, or channel for water. *Reg. Orig.* 252 b. *Cowell.*

Tres faciunt collegium. Three make a corporation; three members are requisite to constitute a corporation. *Dig.* 50. 16. 85. 1 *Bl. Com.* 469. A rule of the Roman law, originating in the opinion of Neratius Priscus, as adopted by Marcellus in the first book of his Digests.

TRESAEL. L. Fr. A great great grandfather. *Britt.* c. 119. Otherwise written *tresaiel,* and *tresayle.* 3 *Bl. Com.* 186. *Litt.* sect. 20.

TRESON. L. Fr. [from *treer,* to draw.] Treason. *Britt.* c. 8.

TRESOR. L. Fr. Treasure. Tresor *musce en terre trove;* treasure found hidden in the earth. *Britt.* c. 17. Tresor *musce en terre et trove;* treasure hidden in the earth and found. *Id. ibid.*

TRESORER. L. Fr. In old English law. A treasurer. *Britt.* fol. 2 b.

TRESORIE. L. Fr. Treasury. *Yearb.* M. 9 Edw. III. 21.

TRESPASS. [L. Fr. *trespas;* L. Lat. *transgressio.*] In the largest sense. Any transgression or offence against the law of nature, of society, or of the country in which we live; whether it relates to a man's person or his property. 3 *Bl. Com.* 165. Any misfeasance, or act of one man, whereby another is injuriously treated or damnified. *Id. ibid.*—Any transgression of the law under treason, felony, or misprision of either. *Staundf. Pl. Cor.* fol. 38. *Cowell.*

In a stricter sense,—an injury committed by one person upon another, with *violence,* actual or implied. The law will imply violence though none is actually used, where the injury is of a *direct* and *immediate* kind, and committed on the person, or tangible and corporeal property of another. Of *actual* violence, an assault and battery is an instance; of *implied,* a peaceable but wrongful entry upon another's land. *Steph. Pl.* 17. See *Finch's Law,* b. 3, c. 6.

In the strictest sense,—an entry on another's ground, without a lawful authority, and doing some damage, however inconsiderable, to his real property. 3 *Bl. Com.* 209.

TRESPASS. [Fr. *trespas;* Lat. *transgressio.*] In practice. An action which lies to recover damages for some trespass, or injury committed with force either actual or implied, upon the person, or the personal or real property of another. See 1 *Chitt. Pl.* 166, 167.

TRESPASS DE BONIS ASPORTATIS. (Trespass for goods carried away.) In practice. The technical name of that species of action of trespass for injuries to personal property, which lies where the injury consists in *carrying away* the goods or property. See 3 *Bl. Com.* 150, 151. 1 *Chitt. Pl.* 171. See *De bonis asportatis.*

TRESPASS QUARE CLAUSUM FREGIT. (Trespass wherefore he broke the close.) In practice. The technical name of that species of the action of trespass which lies for unlawfully entering on another's land. 3 *Bl. Com.* 209. See *Quare clausum fregit.*

TRESPASS VI ET ARMIS. (Trespass with force and arms.) In practice. The technical name of the action of *trespass* for injuries to the person or property, as distinguished from trespass *on the case;* it being the proper remedy whenever the act complained of is *directly* and *immediately* injurious, or was done with direct violence, which the law will in such case

imply, whether it was actually used or not. Hence the injury is said to have been committed *with force and arms.* See 3 *Bl. Com.* 208. 1 *Chitt. Pl.* 166. See *Vi et armis, Force and arms.*

TRESPASS ON THE CASE. [L. Fr. *trespas sur le cas;* L. Lat. *transgressio super casum.*] In practice. The technical name of that species of the action of trespass which lies for injuries *unaccompanied* with *force*, or where the damage sustained is merely *consequential.* See 3 *Bl. Com.* 122, 209. Sometimes termed *case*, and so called from the circumstance of the plaintiff's *case* being anciently set forth in the original writ by which it was commenced.

Mr. Serjeant Stephen observes that it is not easy to give a short and sufficiently comprehensive definition of the scope of this action. He himself defines it to be an action which "lies where a party sues for damages for any wrong or cause of complaint, to which covenant or trespass will not apply." *Steph. Pl.* 17. For the distinction between trespass and case, see 2 *Greenl. Evid.* § 224.

TRESPASSAUNT. L. Fr. Passing over; a passer by; a passenger. *A la nosaunce de mesme le chemyn, a peril de* trespassauntz; to the nuisance of the said road, to the peril of passengers. *Britt.* c. 29.

TRESPASSER. L. Fr. To pass over; to pass by. See *Trespassaunt.*

To pass away; to die. *Kelham.*

To offend or transgress; to trespass. *Id.*

TRESPASSER AB INITIO. A trespasser from the beginning, or from the first act. A term applied to a person who, after lawfully entering on another's premises, commits some wrongful act, which in law is construed to affect and have relation back to his *first entry*, so as to make the whole a trespass. See 3 *Bl. Com.* 213. 3 *Steph. Com.* 498. *Broom's Max.* 140. 8 *Co.* 290, *The Six Carpenters' case.* 1 *Smith's Lead. Cas.* 62, 65.

TRESTORNARE. L. Lat. In old English law. To turn aside; to divert a stream from its course. *Aqua trestornata;* a stream diverted from its course. *Bract.* fol. 115, 234 b. *De aquis* trestornatis. *Fleta*, lib. 2, c. 52, § 18.

To turn or alter the course of a road. *Cowell.*

TRESTOURNER. L. Fr. In old English law. To turn aside or divert from its course. *Ewe trestourne;* a stream diverted from its channel. *Britt.* c. 61. Finch uses *misturn*, apparently as a translation of this word. "To reduce a water-course that is *misturned.*" *Law*, b. 2, c. 2.

TRESVIRI. Lat. In the Roman law. Officers who had the charge of prisons, and the execution of condemned criminals. *Calv. Lex.*

TRET. L. Fr. [from *treer*, to draw.] A drawing or draught; the drawing of a net. *Britt.* c. 72, 103.

Drawn, as a juror. *Yearb.* H. 3 Hen. VI. 3.

TRETHINGA. L. Lat. In old English law. A trithing; the court of a trithing. *Mag. Cart. Johan.* c. 25.

TREUGA, *Treuva, Trevia.* L. Lat. [from Teut. *treue*, true or truth.] A suspension of arms which occasionally took place in the middle ages, putting a stop to private hostilities. *Brande. Spelman.* Otherwise called *Treuga Dei*, the Truce of God, and *Pax Dei*, the Peace of God. *Cowell.* 1 *Robertson's Charles* V. Appendix, Note xxi.

TREYNE. L. Fr. In old English law. Drawn; dragged to the scaffold. *Treyne et pendu;* drawn and hanged. *Britt.* c. 23.

TREYT. L. Fr. Drawn, or withdrawn, as a juror. Written, also, *treat.* *Cowell.*

TRIAL. [from L. Fr. *trier;* L. Lat. *triatio*, q. v.] In a general sense. The formal investigation and decision of a matter in issue between parties, before a competent tribunal. Mr. Stephen supposes the word to have originally been used in this sense, without being confined to matters of *fact.* *Steph. Pl.* Appendix, Note (29.) See *Triare.*

In a stricter sense,—the examination before a competent tribunal, according to the laws of the land, of the *facts* put in issue in a cause, for the purpose of determining such issue. 4 *Mason's R.* 232.—The finding out, by due examination, the *truth* of the point in issue, or question between the parties, whereupon judgment may be given. *Co. Litt.* 124 b.—The examination of the matter of fact in issue in a cause. 3 *Bl. Com.* 330. Trial has been long used to express the investigation and decision of *fact* only. *Steph. Pl.* Appendix, Note (29.) Mr. Stephen calls it the decision of an issue in fact. *Id.* 76, 77.

In the strictest sense,—the examination and decision of an issue in fact, by a *jury*, under the supervision of the court. (*Exactissima litis contestatæ, coram judice, per*

duodecemvirale sacramentum exagitatio.) *Spelman.*

TRIAL AT BAR. In practice. A trial which takes place before all the judges, at the *bar* of the court in which the action is brought; a trial before the full court in term.* This mode of trial is allowed only in causes of unusual importance, which require great examination, and cannot be had without leave of the court. 2 *Tidd's Pr.* 747, 748.

TRIAL AT NISI PRIUS. In practice. The ordinary kind of trial which takes place at the sittings, assizes or circuit, before a single judge. 2 *Tidd's Pr.* 751, 819. See *Nisi Prius.*

TRIARE. L. Lat. [from L. Fr. *trier*, q. v.] In old English law. To try. Bracton uses this word in the general sense of *determine*, making it synonymous with *terminare. Dictum est superius, in cujus curia actiones criminales debeant* terminari, *sive in comitatu vel extra, sive in curia domini regis, vel alibi; nunc autem dicendum, ubi* triandæ *sunt actiones civiles, quæ sunt in rem vel in personam.* (It has been explained above, in whose court criminal actions ought to be determined, whether in the county court, or out of it, or in the king's court or elswhere; now we are to consider where civil actions, whether *in rem*, or *in personam*, are to be tried.) *Bract.* fol. 105.

Triabitur; shall be tried. *Fleta*, lib. 4, c. 11, § 5. *Triantur;* are tried. *Id.* § 4.

TRIATIO. L. Lat. [from *triare*, to try.] In old English law. Trial. *Co. Litt.* 124 b. *Spelman.* **Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam.** Trial ought always to be had where the jurors can have the best information. 7 *Co.* 1, *Bulwer's case.*

Triatio bilinguis; trial by a jury *de medietate linguæ. Molloy de Jur. Mar.* 448.

TRIBUERE. Lat. In the civil law. To give. *Calv. Lex.*

To distribute. See *Actio tributoria.*

TRIBUNAL. Lat. In the Roman law. An elevated seat occupied by the prætor, when he judged, or heard causes in form. Originally a kind of stage made of wood in the form of a square, and moveable, but afterwards built of stone in the form of a semi-circle. *Adam's Rom. Ant.* 132, 133. Now used as an English word, in the sense of a court or *forum.*

TRIBUTE. [from Lat. *tributum*, from *tribuere*, to give.] A tax; that which is *given* by a subject to the sovereign of a country. Used in this sense in the old books.

A sum of money paid by an inferior sovereign or state to a superior potentate, to secure the friendship or protection of the latter. *Brande.* A sum paid in acknowledgment of dependence or subjection. This is the modern sense of the word.

TRIBUTUM. Lat. [from *tribuere*, to give.] In the Roman law. Tribute. *Dig.* 50. 16. 27. 1.

TRIDUUM. L. Lat. [from *tres*, three, and *dies*, day.] In old English law. The space of three days. *Fleta*, lib. 1, c. 31, § 7.

TRIENS. Lat. In the Roman law. A subdivision of the *as*, containing four *unciæ;* the proportion of four-twelfths or one-third. *Tayl. Civ. Law*, 492. 2 *Bl. Com.* 462, note (*m.*)

A copper coin of the value of one-third of the *as. Brande.*

In feudal law. Dower, or third. 2 *Bl. Com.* 129.

TRIGAMUS. L. Lat. [from Gr. τρίγαμος, from τρὶς, three times, and γάμος, marriage.] In old English law. One who has been thrice married; one who, at different times and successively, has had three wives; a trigamist. 3 *Inst.* 88. See *Bigamus.*

TRIGILD. Sax. [from *thry*, three, and *gelde*, a payment; L. Lat. *trigeldum.*] In Saxon law. A triple gild, geld or payment; three times the value of a thing, paid as a composition or satisfaction. *Spelman*, voc. *Geldum.*

TRINEPOS. Lat. In the civil law. A great-grandson's or great-grand-daughter's great-grandson. *Inst.* 3. 6. 4. *Fleta*, lib. 6, c. 2, § 1.

TRINEPTIS. Lat. In the civil law. A great-grandson's or great-grand-daughter's great-grand-daughter. *Inst.* 3. 6. 4.

TRINITY TERM. One of the four terms of the English courts of common law, beginning on the twenty-second day of May, and ending on the twelfth of June. 3 *Steph. Com.* 562.

TRINIUMGELDUM. L. Lat. [Sax. *tri-nigon-geld.*] In old European law. An extraordinary kind of composition for an offence, consisting of *three times nine*, or twenty-seven times the single geld or payment. *Spelman.*

TRINODA NECESSITAS. L. Lat. In

Saxon law. A threefold necessity or burden. A term used to denote the three things from contributing to the performance of which no lands were exempted, viz. *pontis reparatio*, (the repair of bridges,) *arcis constructio*, (the building of castles,) *et expeditio contra hostem*, (military service against an enemy.) 1 *Bl. Com.* 263, 357.

TRIORS, *Triers.* In practice. Persons appointed by the court to try challenges of jurors. 1 *Burr. Pr.* 455.

TRIPARTITE. [Lat. *tripartitus*, from *ter*, three times, and *partitus*, divided.] In conveyancing. Of three parts; a term applied to an indenture where the parties to it are arranged in three parts, (a first, second and third part,) and the indenture itself is executed in three parts.

TRIPARTITUS. Lat. In the civil law. Consisting of three parts; threefold. *Inst.* 1. 1. 4.

TRIPLICACION. L. Fr. In old pleading. A rejoinder in pleading; the defendant's answer to the plaintiff's replication. *Britt.* c. 77.

TRIPLICARE. L. Lat. In old pleading. To rejoin; to answer a plaintiff's replication. *Cum servus* replicaverit *contra dominum de manumissione, dominus potest* triplicare *versus eum, quod manumissio non fuit sufficiens nec perfecta;* where the slave has replied against the lord respecting the manumission, [has pleaded a manumission,] the lord may rejoin against him that the manumission was not sufficient nor perfect. *Bract.* fol. 194 b. See *Fleta*, lib. 5, c. 6, § 54.

TRIPLICATIO. Lat. In the civil law. The answer of a plaintiff (*actor*,) to the rejoinder, (*duplicatio*,) of a defendant, (*reus.*) *Inst.* 4. 14. 2. Corresponding to the *surrejoinder* of the common law. See *Fleta*, lib. 6, c. 36, § 11.

In old pleading. The defendant's answer to the plaintiff's replication; a rejoinder. *Ad replicationem sequitur* triplicatio, *et ad* triplicationem *quadruplicatio;* after the replication follows the triplication, (rejoinder,) and after the triplication, the quadruplication, (surrejoinder.) *Bract.* fol. 400 b. See *Fleta*, lib. 6, c. 36, § 10.

TRIPLICAUNT. L. Fr. In old pleading. Rejoining. *A quel le defendaunt purra respondre en* triplicaunt; to which the defendant may answer by way of triplication or rejoinder. *Britt.* c. 27.

TRIPLUM. Lat. In the civil law. The triple value of a thing. *Actio in* triplum; an action for the triple value. *Inst.* 4. 6. 21, 24.

TRIPLY. Sc. In Scotch practice. A pleading corresponding with the Lat. *triplicatio*, from which the term also was taken. 3 *How. St. Trials*, 478, 637, 638.

TRISTRIS, *Tristis, Tritis.* L. Lat. In old forest law. A freedom from the duty of attending the lord of a forest when engaged in the chase. *Spelman.*

TRITAVUS. Lat. In the civil law. A great-grandfather's great-grandfather. *Inst.* 3. 6. 4. *Fleta*, lib. 6, c. 2, § 1.

TRITAVIA. L. Lat. In the civil law. A great-grandfather's great-grandmother. *Inst.* 3. 6. 4.

TRITHING. *Triding.* [L. Lat. *trithinga, trithingus, tritingum.*] In Saxon and old English law. A division of a county, consisting of three hundreds. 1 *Bl. Com.* 116. *Spelman. Cowell. Fleta*, lib. 2, c. 61, § 23. The third part of a county. *Id.*

A court held for a trithing. *Id.*

The *trithing* mentioned in Magna Charta, (c. 36,) seems to have been intended for *tithing.* 2 *Inst.* 73.

TRITHINGREVE. In old English law. An officer who governed a trithing. *Fleta*, lib, 2, c. 61, § 23.

TRITINGUM. L. Lat. In old English law. A trithing; a division of a county consisting of three or four or more hundreds. *Fleta*, lib. 2, c. 61, § 23. Called, also, *tithringum. Id. ibid.*

A court held for such a division of a county. *Id. ibid.* In Fleta, it is said, that *in modern times*, hundreds, wapentakes, and trithings are held as one and the same thing. *Id. ibid.*

TRIUMVIRI. *Tresviri.* Lat. In the civil law. (Three men.) Subordinate magistrates appointed for various purposes. The *triumviri capitales* had the charge of prisons and of the execution of criminals. The *triumviri monetales* had the charge of the mint. The *triumviri nocturni* had the charge of the watch and the preventing of fires. *Calv. Lex. Adam's Rom. Ant.* 158.

TRIVERBIAL DAYS. [from Lat. *tria*, three, and *verba*, words.] In the civil law. Judicial or juridical days; days allowed to the prætor for deciding causes; days on which the prætor might speak the *three* characteristic *words* of his office, viz. *do, dico, addico. Calv. Lex.* Otherwise called *dies fasti*, (q. v.) 3 *Bl. Com.* 424, and note (*w.*) See *Do, dico, addico.*

TR'NS'. A contraction of *transgressio*. *Year Books, passim.*

TRONA. L. Lat. In old English law. A beam for weighing. *Fleta*, lib. 2, c. 12, §§ 2, 15.

TRONAGE. [L. Lat. *tronagium*, from *trona*, a beam for weighing.] In old English law. A custom or toll for the weighing of wool. *Cowell.* 8 *Co.* 46 b. *Fleta*, lib. 4, c. 1, § 16.

Tronator; a weigher. *Cowell.*

TROVE. L. Fr. [from *trover*, q. v.] Found. *De tresor* trove, *de wrekes* trove; of treasure found, of wrecks found. *Britt.* c. 17. *De chose perdu et* trove *sur terre;* of a thing lost, and found upon the earth. *Id. ibid.*

TROVER. L. Fr. In old English law. To find. *Home que le* trovera *en terre;* the man who shall find in the earth. *Britt.* c. 17. *Trover plegges;* to find pledges. *Id.* c. 26. *Trover suerte de suer;* to find surety to sue or prosecute. *Id. ibid.*

TROVER. In practice. An action which lies to recover the value of a personal chattel, or goods, wrongfully converted by another to his own use. So called from the formal allegation in the declaration, that the defendant *found* (from *trover*, to find) the goods in question, being the property of the plaintiff, and that he converted them to his own use. Hence it is sometimes called an action of *trover* and *conversion.*

This action was, in its original, an action of trespass on the case, for recovery of damages against such persons as had actually FOUND another's goods, and refused to deliver them on demand. But from the advantages it possessed in certain respects over *detinue*, it was at length, by a fiction of law, permitted to be brought against any man who had in his possession, by *any means* whatsoever, the personal goods of another, and sold them or used them without the consent of the owner, or refused to deliver them when demanded. 3 *Bl. Com.* 152. The fact of the *finding* (though the allegation of it is still retained in the declaration) is now wholly immaterial; the injury lying in the *conversion. Id. ibid.* See *Browne on Actions*, 424—446.

TROVEURE. L. Fr. [from *trover*, to find.] In old English law. A thing found, such as treasure, wrecks, waifs, &c. *De troveures;* of things found. The title of the seventeenth chapter of Britton. *En quel meyns teles* troveures *sount devenues;* in what hands such things found have come. *Id. ibid. LL. Gul. Conq.* l. 7.

TROVOUR. L. Fr. [from *trover*, to find.] In old English law. A finder. *Car tresor musce en tèrre et trove, volons que soit nostre, et si il soit trove en meer, adonques soit il al* trovour; for treasure hidden in the earth and found, we will that it be ours; and if it be found in the sea, then it shall belong to the finder. *Britt.* c. 17.

TROWE, *Troye, Truffe.* L. Fr. Corrupted forms of *trove*, found. *Kelham.*

TROY WEIGHT. [Lat. *pondus Trojæ.*] A weight of twelve ounces to the pound, chiefly used in weighing gold, silver, diamonds, and other articles of jewelry. Supposed by some to be so called from *Troyes*, a city of France; but by others to have reference to the monkish name anciently given to London, of *Troy Novant*, founded on the legend of Brute. Its meaning, according to this derivation, is *London weight*, and it is considered to have been the original weight of the kingdom of England. *Brande's Dict.* vocc. *Troy weight, Weight.*

TRUCE. [L. Lat. *treuga;* Lat. *induciæ.*] In international law. A suspension or temporary cessation of hostilities between belligerent powers; an armistice. *Wheaton's Intern. Law*, 442, [470.] A truce does not terminate the war, but it is one of the *commercia belli* which suspends its operations. 1 *Kent's Com.* 159. *Vattel*, b. 3, c. 16.

The word *truce* seems to be immediately derived from the L. Lat. *treuga*, which, according to Spelman, properly denoted a suspension of hostilities in the *private* wars of the middle ages; (*pactio de pace pro tempore conservanda, proprie inter privatos homines qui capitales olim sectarentur inimicitias.*) The civilians made a distinction between *induciæ* and *treuga*, explaining the former to mean a suspension of arms for a moderate interval, the latter for a longer period. *Calv. Lex.*

TRUCE OF GOD. [L. Lat. *treuga Dei.*] A suspension of arms which occasionally took place in the middle ages, putting a stop to private hostilities. So called because promulgated under the authority of the *church.* See *Treuga Dei.*

*** This kind of truce was frequently promulgated during the middle ages, for the purpose of restraining the hostilities in which the inferior feudatories of the several monarchies of Europe were constantly en-

gaged. Thus, in the county of Roussillon, A. D. 1027, it was determined in a synod of the clergy, that no man should attack his enemy from the hour of nones on Saturday, to the hour of prime on Monday. In 1041, a general truce of God was accepted by the barons, first of Aquitaine, and then of all France, to last from the Wednesday evening of every week to the Monday morning following. This regulation was admitted by Edward the Confessor in England, in 1042, with some additions of great festivals and other days. It was confirmed by many councils, especially the Lateran council of 1179. The observance of it was sworn by knights, burgesses, and peasants of the age of fourteen and upwards, and the penalty of its infringement was excommunication. *Brande.* Dr. Robertson supposes the clause in the form of an English indictment, which, as an aggravation of the criminal's guilt, mentions his having assaulted a person who was "in the peace of God and of the king," to be borrowed from the *Truce* or Peace *of God* and of the king, (*Treuga* and *Pax Dei*, and *Pax Regis.*) 1 *Rob. Charles* V. Appendix, Note xxi.

TRUE BILL. [L. Lat. *billa vera.*] In criminal practice. The endorsement made by a grand jury upon a bill of indictment, when they find it sustained by the evidence laid before them, and are satisfied of the truth of the accusation. 4 *Bl. Com.* 306.

TRUST. [Lat. *fiducia*, *fides*, *fidei-commissum.*] A confidence; a confidence reposed in one person for the benefit of another; a confidence so reposed, respecting property. See *infra.* "What is a trust? A confidence, for which the party is without remedy, save in a court of equity." Henley, Lord Keeper, in Burgess *v.* Wheate, 1 *W. Bl.* 180.

An obligation or duty, arising out of confidence.* An obligation upon a person, arising out of a confidence reposed in him, to apply property faithfully, and according to such confidence. *Willis on Trustees*, chap. 1, p. 2. *Stair's Inst.* b. 4, tit. 6, § 2, cited *ibid.*

A right or interest, arising out of confidence.* An equitable right, title or interest in property, real or personal, distinct from the legal ownership thereof. 2 *Story's Eq. Jur.* 964. An equitable right or interest in property, which another holds in confidence, as the legal owner.* Both these definitions are essential to make up the complete idea of the word.

*** The radical idea of a trust is *confidence*, and this is the word employed by Lord Coke in his definition of a *use*, which has been adopted by Mr. Butler and Mr. Lewin, as the best and most exact definition of a *trust. Butler's Co. Litt.* Note 249, lib. 3. *Lewin on Trustees*, 15. See *infra.* The same idea is still more aptly expressed by the Roman term *fidei-commissum*, which literally means a thing *committed to* one's *faith;* and Justinian explains that it was so called, because it rested upon no obligation of law, (*nullo vinculo juris,*) but only on the *honor* of those to whom it was committed, (*sed tantum pudore eorum qui rogabantur, continebantur.*) *Inst.* 2. 23. 1.

A trust, then, in its simplest elements, is a *confidence* reposed in one person, who is termed the *trustee*, for the benefit of another, who is called the *cestui que trust;* and it is a confidence respecting *property*, which is thus held by the former for the benefit of the latter. Out of this confidence arise two *estates* in the property which is the subject of it; a *legal* estate in the *trustee*, which consists essentially in *obligation;* and an *equitable* estate in the *cestui que trust*, which consists in *right* and beneficial *enjoyment.* So that a trust embraces the two ideas of an *obligation* on the part of one person, and a corresponding *right* on the part of another, which are presented in the definitions above given; both founded upon, and growing out of the radical idea of *confidence*, which has been already explained.

In a trust thus constituted, the legal owner holds the direct and absolute dominion over the property, in the view of the law; but the income, profits or benefits thereof in his hands belong wholly, or in part, to others. The legal estate in the property is thus made subservient to certain uses, benefits or charges in favor of others; and these uses, benefits or charges, constitute the *trusts* which courts of equity will compel the legal owner, as trustee, to perform, in favor of the *cestui que trust*, or beneficiary. 2 *Story's Eq. Jur.* § 964.

Mr. Cruise defines a trust or trust estate to be "a right in equity to take the rents and profits of lands whereof the legal estate is vested in some other person; to compel the person thus seised of the legal estate, who is called the *trustee*, to execute such conveyances of the land as the person entitled to the profits, who is called the *cestui que trust*, shall direct, and to defend the

title to the land." In the mean time, the *cestui que trust*, when in possession, is considered, in a court of law, as tenant at will to the trustee. *Cruise's Dig.* tit. xii. ch. 1, sec. 3. Chancellor Kent expresses the same idea, in more comprehensive terms: "A trust, in the general and enlarged sense, is a right on the part of the *cestui que trust* to receive the profits, and to dispose of the lands in equity." 4 *Kent's Com.* 304.

Lord Coke's definition of a use, which has been already alluded to, may now be given. "A use is a trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land; *scilicet*, that *cestui que use* shall take the profit, and that the terre-tenant shall make an estate, according to his direction." *Co. Litt.* 272 b. Mr. Butler calls this "the best definition of a trust in equity." *Butler's Co. Litt.* Note 249, lib. 3. Mr. Lewin expressly adopts it as the definition of a trust, (though he modifies the latter part of it,) and comments on its different clauses in detail. *Lewin on Trustees*, 15. The language of the definition savours of the technical and antiquated learning of the times, and requires some such commentary as that of Mr. Lewin to understand it fully; but it is valuable as prominently presenting the radical idea of a *confidence*, which is either omitted, or indirectly alluded to, in most of the standard definitions. As to the learning of trusts in general, see 2 *Story's Eq. Jur.* 960—982. 4 *Kent's Com.* 301—313. 1 *Greenleaf's Cruise's Digest*, tit. xii. 1 *Hilliard's Real Prop.* 297—348. *United States Digest*, Uses and Trusts.

As to the original meaning of uses and trusts, Mr. Stephen has very properly remarked, that "the books are rather vague, and not always correct in their account." Blackstone says, that "uses and trusts were in their original of a nature very similar, or rather exactly the same." 2 *Bl. Com.* 327. Mr. Cruise also remarks, that "the words *use* and *trust* were perfectly synonymous." *Cruise's Dig.* tit. xii. ch. 1, sect. 2. There can be no doubt, however, that there might be "trusts" which involved no "uses," in the proper meaning of that term. Thus, Lord Bacon expressly distinguishes a "use" from a "special" or "transitory trust." *Bac. Read. Uses.* Again, it is clear that a "trust" was referable rather to the person in whom the confidence was reposed; "use" to the person for whose benefit it was reposed. Thus, it is said by Lord Chief Baron Gilbert, "If the use be not a thing annexed to the land, it will be asked of me, what it is; to which I answer, that a use is an equitable right to have the profit of lands, the legal estate whereof is in the feoffee, according to the trust and confidence reposed in him." *Gilb. Us.* (by Sugden,) 374. And again, Lord Bacon remarks: "For a trust *which is the way to a use*, it is exceedingly well defined by a civilian of great understanding, *Fides est obligatio conscientiæ unius ad intentionem alterius.*" *Bac. Read. Uses.* 1 *Steph. Com.* 329, note (*d.*) Mr. Stephen observes, that uses and trusts were in their origin closely united, *but not identical.* A *trust* was the confidence reposed by one man in another, when he invested him with the nominal ownership of property, to be dealt with in some particular manner, or held for some particular person or purpose pointed out. If the trust was of a certain description, viz. to hold land for the benefit of another person, generally, and to let him receive the profits, the sort of interest or right which consequently attached to the latter person was called a *use*, to distinguish it from the nominal ownership or estate of the trustee. 1 *Steph. Com.* 328, 329.

The idea of a trust in the law of England was no doubt originally taken from the *fidei-commissum* (q. v.) of the Roman law; the word itself is of Teutonic origin, and may be traced back to the usages of the ancient Germans. See *Trustis.*

TRUSTEE. One who is entrusted with property for the benefit of another. One to whom property is conveyed, or by whom it is held, or required to be held, for the benefit of another.

One who has the legal estate in lands or other property, as distinguished from the *cestui que trust*, or person beneficially interested. The correlative term *truster*, though used in Scotch law, and in itself very significant and convenient, has not been adopted in England, and is rarely used in the United States. See 9 *Iredell's Law R.* 191.

TRUSTEE PROCESS. The name given, in the New England states, to the process of foreign attachment, or garnishment, (q. v.) The strict trustee process extends to the goods, effects and credits of

the principal debtor in the hands of his agent, trustee or debtor, and who, as trustee, is summoned to appear and answer. It does not extend to the real estate in the hands of the trustee. *Cushing on Trustee Process*, 4—16. 2 *Kent's Com.* 403, note. *Drake on Attachment*, § 451. See *United States Digest*, Trustee process.

TRUSTER. In Scotch law. The maker or creator of a trust. 7 *Bell's Appeal Cases*, 297.

TRUSTIS. L. Lat. In old European law. Trust; faith; confidence; fidelity. *Si quis eum occiderit qui in* truste *dominica est;* if any one slay him who is in his lord's trust, [bound in fealty to his lord.] *L. Salic.* tit. 45, § 4. *Si quis eum occiderit qui in* truste *regis est;* if any one slay him who is in the king's trust, [who has sworn fealty to the king.] *L. Ripuar.* tit. 11. *Spelman. Esprit des Lois*, liv. 30, c. 16, 22.

The vernacular word expressed in these early codes by the barbarous Latin *trustis*, was no doubt the same in form with the modern English *trust*, and as the quotations show, of very similar meaning. It was the root of the word *antrustio*, which denoted a faithful or *trusty* follower. See *Antrustio.*

TRY. [L. Lat. *triare*, q. v.] In practice. To examine or investigate judicially; to examine by means of judicial evidence; to inquire into and test the truth of allegations of fact, by means of judicial evidence adduced for the purpose. The proper function of a court and jury, in cases of issues of fact.

Trial is properly the joint act of judge, jury and counsel; the counsel presenting the allegations and the evidence, and the judge and jury hearing and weighing them. Hence counsel are frequently said to *try* the causes in which they are engaged.

The term *try* is also applied, in criminal cases, to *persons*, as subjects of judicial action. Courts are said to "*try* prisoners" charged with crimes. 1 *W. Bl.* 683.

TU, semper ora, tu protege, tuque labora.

Do thou always pray, do thou protect, and do thou labour. An ancient verse quoted by Lord Bacon, as comprehending the three English tenures of frankalmoign, knight's service, and socage. Arg. in Low's case, *Works*, iv. 235.

TUAS RES TIBI HABETO. Lat. Have (or take) your things to yourself. The form of words by which, according to the old Roman law, a man divorced his wife. *Dig.* 24. 2. 21. Otherwise expressed, TUAS RES TIBI AGITO. *Id.* See *Tayl. Civ. Law*, 363.

TUBUS, (dimin. TUBULUS.) Lat. In the civil law. A pipe by which smoke was conveyed beyond a wall. *Calv. Lex.*

A pipe for conveying water. *Id.*

TUCHAS. Span. In Spanish law. Objections or exceptions to witnesses. *White's New Recop.* b. 3, tit. 7, c. 10

TUER. L. Fr. To kill, or slay. *Tue;* slain. *L. Fr. Dict. Rompur' le lees & tuer' la daim';* broke the leash and killed the doe. *Yearb.* M. 18 Hen. VI. 6.

Tuerie; slaughter. *Kelham.*

TUERI. Lat. In the civil law. To protect; to take care of; to preserve. *Calv. Lex.*

To be protected. *Id.*

TUERTO. Span. [from Lat. *tortum.*] In Spanish law. Tort. *Las Partidas*, part 7, tit. 6, l. 5.

TUGURIUM. Lat. [from *tectum*, a covering.] In the civil law. A hut or cot; a small rude building for sheltering cattle. *Calv. Lex.*

A rude or rustic dwelling. *Dig.* 50. 16. 180. A small country house; a cottage. *Calv. Lex.*

TUICION. L. Fr. [from Lat. *tuitio.*] Protection. *Et prient* tuicion *del esglise;* and pray protection of the church. *Britt.* c. 16.

TUITIO. Lat. [from *tueri*, to protect.] In the civil law. Protection; defence. *Spiegelius.*

TUITISCUS, *Theutiscus*, *Theotiscus.* L. Lat. [from Sax. *theod*, people.] In old European law. Of the people, or native population; the language of a country. *Tuitiscè;* in the vernacular. *Spelman*, voc. *Suonpouch.*

TULIT. Lat. [from *ferre*, to bring.] In old practice. Brought. Tulit *breve de recto;* brought a writ of right. *Yearb.* M. 1 Edw. II. 1.

TULLIANUM. Lat. In the Roman law. That part of a prison which was under ground. Supposed to be so called from Servius Tullius, who built that part of the first prison in Rome. *Adam's Rom. Ant.* 290.

TUMBRELL. [L. Fr. *tumberell;* L. Lat. *tumbrellum*, *timbrellum*, *tymborale.*] In old English law. The ancient name of the castigatory, or trebuchet, (qq. v.) An

engine for the correction or punishment of scolds and unquiet women. *Lamb. Eirenarch.* lib. 1, c. 12. It was used, however, for other purposes, also, and ranked with the pillory and other infamous punishments of the times. Bracton speaks of the *pœna pilloralis et tymboralis* as causing both suffering and disgrace. *Bract.* fol. 104 b. Britton and Fleta associate the gallows, pillory and tumbrell together. *Britt.* c. 20. *Fleta*, lib. 2, c. 12, §§ 18, 29. The pillory and tumbrell are mentioned in similar connection in an old manuscript of the laws, statutes and customs of the borough-town of Montgomery, cited in Cowell.

TUN. Sax. [L. Lat. *tuna.*] A farm or town, (*prædium, villa.*) A common termination in the names of towns in England, now written *ton.* Spelman distinguishes this from *ham*, a similar termination, by the circumstance that *tun* properly signified a rural estate, (*villa rustica,*) and *ham*, a chief house or mansion, (answering to the *villa urbana* of the Romans;) the former, in other words, signifying the tenemental lands of a lordship; the latter, the lord's manor house and demesnes.

TUNC. Lat. Then. The correlative of *nunc*, (now.) *Dyer*, 18 a.

TUNGINUS. L. Lat. In old European law. A judge who ranked next to the count, (*comes.*) Answering, as Spelman supposes, to the *thegn* or *thanus* of the old Anglo-Saxon laws. Tunginus *vel centenarius mallum judicent;* the thane or centenary shall hold a court. *L. Salic.* tit. 48, § 1. *Si quis de parentela tollere se voluerit, in mallo ante* tunginum *aut centenarium ambulet, et ibi quatuor fustes alvinos super caput suum franget,* &c.; if any one desires to remove or relieve himself from parentage, he shall appear in court before the thane or centenary, and there break four alder staves over his head, &c. *Id.* tit. 63.

TUNGREVE. Sax. [from *tun*, town, and *greve, gerefa*, reeve; L. Lat. *tungrevius.*] In Saxon law. The reeve or chief officer of a town; a town-reeve. *Spelman*, vocc. *Tungrevius, Leda.*

TURBA. Lat. [from Gr. θορυβεῖν, to be in disorder.] In the civil law. A multitude, a crowd or mob; a tumultuous assembly of persons. Said to consist of ten or fifteen, at the least. *Dig.* 47. 8. 4. 2, 3. *Calv. Lex. Hotoman. Prateus. Spiegelius.*

TURBA. L. Lat. [O. Fr. *tourbe.*] In old European law. A number of old men to whom judges in the middle ages were sometimes obliged to refer dubious cases, that they might inform them what was the practice or custom with regard to the point to be determined. Dr. Robertson mentions this as a mode of judicial determination established in the middle ages, which affords the clearest proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary customs, were often at a loss how to find out the facts and principles, according to which they were bound to decide. It was called *Enqueste par tourbe.* 1 *Rob. Charles* V. Appendix, No. xxv. *Ducange*, voc. *Turba.*

TURBA, *Turbus.* L. Lat. [from Sax. *tyrb*, a turf, or piece cut out of the ground.] In old English law. A turf or sod, (*cæspes;*) a cut of earth, (*terricidium.*) *Spelman.* Two kinds of *turba* are mentioned by Spelman; one cut or sliced from the surface of the ground; the other dug out of it: both being used for fuel. See *Turbaria.*

TURBARE. Lat. In the civil law. To disturb; to confound; to mix together. *Calv. Lex.*

TURBARE. L. Lat. In old English law. To cut or dig turf. *Spelman*, voc. *Turba.*

TURBARIA. L. Lat. In old English law. The soil or ground from which turf is dug; a turbary or turfery. *Fleta*, lib. 2, c. 41, § 2. *Cum duo vel plures teneant boscum, turbariam, piscariam, vel alia hujusmodi in communi absque hoc quod aliquis sciat suum separale;* when two or more hold a wood, a turbary, a fishery, or other such thing in common, without this that any one knows [without any one's knowing] his several. *Stat. Westm.* 2, c. 22. John de Gray, Bishop of Norwich, granted the monks of that church the liberty of digging turves in his turbaries, (*ut fodiant turbas in turbariis ejus,*) for the necessary uses of their house at Elmham, without waste of the turbary, (*sine wasto turbarii*) and without any sale of the turves. *Registr. Eccles. Norwic.* cited in *Cowell.*

TURBARY. [L. Lat. *turbaria*, from *turba*, a turf.] In English law. A right or liberty of digging turf. A right to dig turves on another man's ground. *Kitchin*, fol. 94. *Cowell.* See *Common of Turbary, Turbaria.*

The ground where turves are dug. *Cowell.*

TURN. See *Tourn.*

TURNPIKE ROADS are distinguished from *highways* in general, by the manner in which the expense attending their maintenance is defrayed, viz. by tolls collected from passengers. 3 *Steph. Com.* 259. A turnpike road, however, is regarded, in law, as a public highway, established by public authority for public use, and is to be regarded as a public easement, and not as private property. Shaw, C. J. 16 *Pick. R.* 177.

TURNUS. L. Lat. In old English law. The turn; the sheriff's court, so called. See *Tourn. Nec aliquis vicecomes vel ballivus faciat* turnum *suum per hundredum, nisi bis in anno, et non nisi in loco debito et consueto, videlicet, semel post Pascham, et iterum post festum Sancti Michaelis;* nor shall any sheriff or bailiff make his turn through the hundred, unless twice in a year, and not unless in the due and accustomed place, to wit, once after Easter, and again after the feast of St. Michael. *Mag. Cart.* 9 Hen. III. c. 42. *Fleta*, lib. 2, c. 52, §§ 1, 2. *Item pertinet ad vicecomitem visus franciplegii in* turnis *suis duobus, singulis annis, per hundreda* [*et*] *wapentakya faciendis, et ideo qualiter debent fieri* turni *videndum est;* the view of frank-pledge also belongs to the sheriff in making his two *turns* every year through the hundreds and wapentakes, and therefore it is to be seen how the *turns* are to be made. *Bract.* fol. 155.

TURPIS. Lat. In the civil law. Base; mean; vile; disgraceful; infamous; unlawful. Applied both to things and persons. *Calv. Lex.*

Turpis arbiter; a bribed or corrupted judge. *Id.*

Turpis persona; an infamous person. *Id.*

Turpe judicium; a sentence of infamy. *Id.*

Turpe lucrum; unlawful gain. *Id.*

Turpis est pars quæ non convenit [congruit] cum suo toto. The part which does not agree with its whole, is of mean account, [entitled to small or no consideration.] *Plowd.* 101. *Shep. Touch.* 87. *Bacon's Works*, iv. 269.

TURPIS CAUSA. Lat. A base or immoral consideration; an iniquitous, or unlawful consideration. **Ex turpi causa non oritur actio.** Out of an immoral consideration no action arises. *Broom's Max.* 350. "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appear to arise *ex turpi causâ*, or the transgression of a positive law of this country, there the court says he has no right to be assisted." Lord Mansfield, C. J. *Cowp.* 343.

TURPIS CONTRACTUS. Lat. An immoral or iniquitous contract. **Ex turpi contractu actio non oritur.** Out of an immoral contract no action arises. 2 *Kent's Com.* 466. It is a general rule that an agreement cannot be made the subject of an action, if it can be impeached on the grounds of dishonesty or as being opposed to public policy,—if it be either *contra bonos mores*, or forbidden by the law. Lord Kenyon, C. J. 6 *Term R.* 16. "The reason why the common law says such contracts are void, is for the public good: *you shall not stipulate for iniquity.* All writers upon our law agree in this,—no polluted hand shall touch the pure fountains of justice." Wilmot, C. J. 2 *Wils.* 341, 350.

TURPITUDO. Lat. [from *turpis*, q. v.] Baseness; infamy; immorality; turpitude. **Nemo allegans suam turpitudinem est audiendus,** (q. v.) No one alleging his own baseness or infamy, is to be heard; no man is allowed to say in court, that he has done an infamous act. *Calv. Lex.*

TURRIS. Lat. In old English law. A tower; the tower; the Tower of London. *Fleta*, lib. 6, c. 11, §§ 6, 7.

TUS. L. Fr. All; a corruption of *touts. Tus jours;* forever. *Kelham.*

TUT. L. Fr. All; a corruption of *tout. Tut le reaume;* the whole kingdom. *Kelham.*

TUTELA. Lat. [from *tueri*, to protect or guard.] In the civil law. Tutelage; that species of guardianship which continued to the age of puberty; the guardian being called *tutor*, and the ward, *pupillus.* 1 *Domat, Civ. Law*, b. 2, tit. 1, p. 260. A guardianship of the person. *Calv. Lex. Est autem* tutela (*ut Servius definivit,*) *vis ac potestas in capite libero, ad* tuendum *eum qui per ætatem se defendere nequit, jure civili data ac permissa;* tutelage, (as Servius has defined it,) is an authority and power given, and permitted by the civil law over a free person, [or person *sui juris*] for the purpose of protecting him who, by

reason of his [tender] age, is unable to protect himself. *Inst.* 1. 13. 1. This is taken, with some variation, from the definition of Paulus in the Digests. *Dig.* 26. 1. 1, pr. *Impuberes autem in* tutela *esse, naturali juri conveniens est; ut is qui perfectæ ætatis non sit, alterius* tutela *regatur;* that persons under puberty should be in, [or under] tutelage, is agreeable to the law of nature, [which dictates] that one who is not of perfect age should be under the government and protection of another. *Inst.* 1. 21. 6. *Pupilli pupillæque, cum puberes esse cæperint à* tutela *liberantur;* pupils [wards,] both male and female, when they arrive at puberty, are freed from tutelage. *Id.* 1. 22, pr.

TUTELA LEGITIMA. Lat. In the civil law. Legal tutelage; tutelage created by act of law, as where none had been created by testament. *Inst.* 1. 15, pr. This resembles the modern appointment of guardian by the court of chancery. *Cooper's Notes*, *446, 447. *Hallifax, Anal.* b. 1, c. 9, num. 6.

TUTELA TESTAMENTARIA. Lat. In the civil law. Testamentary tutelage or guardianship; that kind of tutelage which was created by will. *Dig.* 26. 2. *Calv. Lex. Hallifax, Anal.* b. 1, c. 9, num. 3, 4. *Inst.* 1. 13. 3. *Id.* 1. 14.

TUTELÆ ACTIO. Lat. In the civil law. An action of tutelage; an action which lay for a ward or pupil, (*pupillus,*) on the termination of tutelage, against the *tutor* or guardian, to compel an account. *Inst.* I. 21. 7. *Dig.* 27. 3, 4. *Calv. Lex.* Enumerated by Bracton and Fleta, among actions *ex quasi contractû. Bract.* fol. 100 b. *Fleta*, lib. 2, c. 60, § 1.

TUTELAM REDDERE. Lat. In the civil law. To render an account of tutelage, (*tutelæ rationes reddere.*) *Calv. Lex. Tutelam reposcere;* to demand an account of tutelage. *Id.*

Tutius erratur ex parte mitiori. It is safer to err on the milder side. *Branch's Pr.* 3 *Inst.* 220.

Tutius semper est errare acquietando, quam in puniendo; ex parte misericordiæ quam ex parte justitiæ. It is always safer to err in acquitting than in punishing;—on the side of mercy, than on the side of justice. *Branch's Pr.* 2 *Hale's P. C.* 290.

TUTOR. Lat. [from *tueri*, to protect.] In the civil law. A guardian who had the charge of persons under the age of puberty, and who had also the care of their affairs. *Inst.* 1. 13. 1. *Id.* 1. 20. 7. See *Tutela.* Tutores *autem sunt qui eam vim ac potestatem habent,* [i. e. *vim ac potestatem in capite libero, ad* tuendum *eum qui per ætatem se defendere nequit, jure civili data ac permissa;*] *exque ipsa re nomen acceperunt. Itaque appellantur* tutores, *quasi* tuitores *ac defensores.* (Tutors are those who have such power and authority, [i. e. a power and authority given by law over a free person, for the purpose of protecting him who, by reason of his age, cannot protect himself;] and they have taken their name from that same circumstance. Accordingly they are called *tutores* [tutors,] being, as it were, *tuitores* [protectors, from *tueri*, to protect,] and defenders.) *Inst.* 1. 13. 2. This definition is taken, with some variations, from that of Paulus in the Digests. *Dig.* 26. 1. 1. 1.

In old English law. A guardian. Bracton uses *tutor* and *curator* indifferently, without observing the distinction made between these terms by the civil law; and *custos* is employed in the same sense. *Bract.* fol. 28, 28 b. So *tutrix* and *curatrix. Id. ibid.*

In Scotch law, *tutor* is used in the sense of the civil law, as distinguished from *curator. Ersk. Pr.* b. 1, tit. 7. *Bell's Dict.* And the same distinction (*tuteur* and *curateur*) is adopted in the Civil Code of Louisiana. Art. 263.

TUTRIX. Lat. In old English law. A female tutor or guardian. *Bract.* fol. 28 b.

TUZ. L. Fr. All; a corruption of touts. *Tuz ceuz;* all those. *Kelham. Encontre* tuz *iceaus;* against all those. *Artic. sup. Cart.*

TWA NIGHT GEST. Sax. On the second night, a guest. According to the laws of Edward the Confessor, a person who was entertained in the house of another, was called and to be considered, on the *second night* of his entertainment, a *guest. LL. Edw. Conf.* c. 17. *Spelman*, voc. *Homehyne.* Expressed in the Latin of Bracton, *secunda nocte, gust. Bract.* fol. 124 b. In the French of Britton, *l'autre nuyt geste. Britt.* c. 12. Bracton speaks of this regulation as an ancient custom.

TWAITE. In old English law. A wood grubbed up, and turned to arable land. *Co. Litt.* 4 b.

TWELFHENDE, *Twelfhind, Twelfhundemen.* Sax. [from *twelf*, twelve, and

hynd, hund, a hundred; L. Lat. *twelfhindi.*] The highest order of persons under the Saxon government, who were valued or rated at twelve hundred shillings. *Cowell.*

TWELVE-MONTH, in the singular number, includes all the year; but *twelve months* are to be computed according to twenty-eight days for every month. 6 *Co.* 62. See *Month.*

TWELVE TABLES. [Lat. *Leges Duodecim Tabularum.*] A celebrated body of Roman laws, framed by decemvirs appointed A. U. C. 303, on the return of three deputies or commissioners who had been sent to Greece to examine into foreign laws and institutions. They consisted partly of laws transcribed from the institutions of other nations, partly of such as were altered and accommodated to the manners of the Romans, partly of new provisions, and mainly, perhaps, of laws and usages under their ancient kings. 1 *Kent's Com.* 521. This code has been preserved to modern times, only in fragments, which have been collected and edited by Gothofred, Gravina and other writers. See 1 *Kent's Com.* 521—525, note, where a valuable summary of it is given.

TWICE IN JEOPARDY. See *Once in jeopardy.* 1 *Kent's Com.* 611, note, (7th ed.) *Wharton's Am. Crim. Law*, § 573, *et seq.*

TWIGILD. Sax. [from *twy*, two, and *gild*, or geld, a payment.] In Saxon law. A double payment, or composition for one offence. *Spelman.*

TYHTLAN. Sax. In Saxon law. An accusation, impeachment or charge of any offence. *Nec componat aliquis pro ulla* tyhtlan, *si non intersit testimonium præpositi regis;* nor shall any one compound for any accusation, unless there be present evidence on behalf of the king. *LL. Ethelr.* c. 2. *Cowell.*

TYLWITH. Brit. [from *tyle*, the site of a house, or *tylath*, a beam in a building.] A tribe or family branching or issuing out of another. *Cowell.*

TYMBORALE. L. Lat. In old English law. The tumbrell. *Bract.* fol. 104 b. See *Tumbrell.*

U.

U. L. Fr. Or. *LL. Gul. Conq.* l. 6.

U. R. An abbreviation of *Uti rogas*, (q. v.)

UBERRIMA FIDES. Lat. The most abundant or abounding good faith. An expressive phrase of the Roman law, frequently used in the modern books. 1 *Story's Eq. Jur.* § 317. "The law requires *uberrima fides* in the formation of the contract" [of insurance.] 3 *Kent's Com.* 283. Marine insurance is emphatically a contract—*uberrimæ fidei*, of the most abounding good faith. 2 *Duer on Ins.* 380.

UBI. Lat. Where, (*in quo loco.*) An adverb of place. *Calv. Lex.*

Where, in the sense of *when*, (*quando;*) expressive of circumstance. See the maxims *infra.*

Ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest. Where any thing is granted, that also is granted without which the thing cannot exist. *Broom's Max.* [364.]

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum. Where any thing is impeded by one single cause, if that be removed, the impediment is removed. *Branch's Pr.* citing 5 *Co.* 77 a, *Paget's case.* This maxim in the passage referred to reads, **Cum aliquid**, &c.

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium. Where the ordinary remedy fails, recourse must be had to an extraordinary one. 4 *Co.* 92 b, *Slade's case.*

Ubi eadem ratio, ibi idem jus. Where the reason is the same, there the law is the same. 7 *Co.* 18 b, *Calvin's case.* Like reason doth make like law. *Co. Litt.* 10 a. *Broom's Max.* 64, [114, 115.] Where the reason of a rule established in one case is found to apply to another case, the same rule will be established in the latter. See *Id.* 65, 66. The older and fuller form of this maxim was, **Ubi eadem est ratio, ibi idem jus erit.** *Fleta*, lib. 3, c. 16, § 34. Another form was, **Ubi eadem ratio, ibi idem jus esse debet.** Where the same reason is, there the same law ought to be. *Yearb.* M. 19 Hen. VI. 38.

Ubi culpa est, ibi pœna subesse debet. Where the crime is committed, there ought the punishment to be undergone. *Jenk. Cent.* 325.

Ubi damna dantur, victus victori in expensis condemnari debet. Where damages are given, the vanquished party ought to be condemned in costs to the victor. 2 *Inst.* 289.

Ubi factum nullum, ibi fortia nulla.

Where there is no fact, there can be no force; where there is no principal fact or act done, there can be no accessory act. 4 *Co.* 42 b, *Syer's case.* The significance of this maxim turns upon the technical meaning of the words *factum* and *fortia* in the old law. See *Factum*, *Fortia.* The maxim itself appears to have been taken from Bracton. *Ubi factum, ibi poterit esse forcia quandoquè, sed nunquam forcia sine facto. Bract.* fol. 128. In Branch's Principia, *fortia* has been converted into *sortia*, and the maxim translated, "Where there is no deed committed, there can be no consequences;" and the error and translation have both been followed in Wharton's Lexicon.

Ubi jus, ibi remedium. Where there is a right, there is a remedy; where the law gives a right, it gives a remedy for the recovery of such right.* *Broom's Max.* 91, [146.] There is no wrong without a remedy. *Id. ibid.* If a man has a right, he must have a means to vindicate and maintain it, and a remedy, if he is injured in the exercise and enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal. Holt, C. J. 2 *Ld. Raym.* 953. If the law confer a right, it will also confer a remedy. Lord Kenyon, C. J. 1 *East*, 220. This maxim has been considered so valuable, that it gave occasion for the first invention of that form of action called an action *on the case. Broom's Max. ub. sup.*

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima. Where the law compels a man to show cause, it is necessary that the cause be just and lawful. 2 *Inst.* 289.

Ubi lex est specialis, et ratio ejus generalis; generaliter accipienda est. Where a law is special, but the reason of it general, it is to be taken generally. 2 *Inst.* 43.

Ubi lex non distinguit, nec nos distinguere debemus. Where the law does not distinguish, neither ought we to distinguish. 7 *Co.* 5 b, *Calvin's case.* Holt, C. J. 12 *Mod.* 293.

Ubi major pars est, ibi totum. Where the greater part is, there the whole is. *Moor*, 578. **Ubi major pars, ibi tota.** In corporations, the majority governs. 10 *Mod.* 75.

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia. Where there is no positive law, [applicable to a case,] it must rest in the discretion of the judge, or it must be determined by the principles of similar cases. *Ellesm. Postn.* 41. *Branch's Pr.*

Ubi non est condendi auctoritas, ibi non est parendi necessitas. Where there is no authority for establishing a rule, there is no necessity of obeying it. *Davies' R.* 69.

Ubi non est lex, ibi non est transgressio, quoad mundum. Where there is no law, there is no transgression, as far as relates to the world. 4 *Co.* 16 b. This seems to be an application of the text, *Romans*, iv. 15.

Ubi non est principalis, non potest esse accessorius. Where there is no principal there can be no accessory. 4 *Co.* 43 b, *Syer's case.*

Ubi nulla est conjectura quæ ducat alio, verba intelligenda sunt ex proprietate non grammatica, sed populari ex usu. Where there is nothing to call for a different construction, [the] words [of an instrument] are to be understood, not according to their strict grammatical meaning, but according to their popular and ordinary sense. *Grotius de Jure Belli ac Pacis*, lib. 2, c. 16, § 2. Mr. Duer observes, in reference to this maxim, that the term *conjectura* is constantly used by Grotius, as denoting the collection of the intent by other means than the sole explanation of the words. That is, it denotes *construction*, as distinguished from mere *interpretation.* 1 *Duer on Ins.* 215. The words of Grotius are, *Si nulla sit conjectura quæ ducat aliò, verba intelligenda sunt ex proprietate, non grammatica quæ est ex origine, sed populari ex usu.*

Ubi nullum matrimonium, ibi nulla dos. Where there is no marriage, there is no dower. *Bract.* fol. 92. 2 *Bl. Com.* 130. The converse rule is also given by Bracton: **Ubi matrimonium, ibi dos.** Where there is marriage, there is dower. *Id. ibid.* In Branch's Principia, this maxim is erroneously and ungrammatically made to read *nullum dos*, and the error has been copied by several authors who have cited it. The maxim seems to have been borrowed (though with a different sense attached to the word *dos*,) from that of the civil law: **Ubicunque matrimonii nomen non est, nec dos est.** *Dig.* 23. 3. 3.

Ubi pugnantia inter se in testamento juberentur, neutrum ratum est. Where repugnant or inconsistent directions are con-

tained in a will, neither is valid. *Dig.* 50. 17. 188, pr.

Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque. Where a thing is granted generally, this exception is always implied, that there be nothing contrary to law and right. *Branch's Pr.*

Ubi quis delinquit, ibi punietur. Where a man offends, there he shall be punished. 6 *Co.* 47 b, *Dowdale's case.* In cases of felony, the trial shall be always by the common law in the same place where the offence was, and shall not be supposed in any other place. *Id. ibid.*

UBI REVERA. Lat. Where in reality; where in truth, or in point of fact. *Cro. Eliz.* 645. *Cro. Jac.* 4.

Ubi verba conjuncta non sunt, sufficit alterutrum esse factum. Where words are not conjoined [used conjunctively] it is sufficient that either one [of the things expressed] be done. *Dig.* 50. 17. 110. 3.

UBICUNQUE FUERIMUS IN ANGLIA. L. Lat. Wheresoever we shall be in England. The style of the return of writs in the court of King's or Queen's Bench; it being in theory a moveable court, attendant upon the sovereign's person. 3 *Bl. Com.* 41, 284. See *Fleta*, lib. 2, c. 2, § 5. *Id.* lib. 2, c. 64, § 19.

Ubicunque est injuria, ibi damnum sequitur. Wherever there is an injury, there a damage results. *Branch's Pr.*

UDAL. A term mentioned by Blackstone, as used in Finland to denote that kind of right in real property which is called in English law, allodial. 2 *Bl. Com.* 45, note (*f.*) See *Allodium.* The term is used in Orkney and Zetland. 1 *Forbes' Inst.* part 3, pp. 6, 82.

UL, *Ulle.* L. Fr. [from Lat. *ullus.*] Any; any one. *Kelham.*

ULNA. Lat. In old English law. An ell. So generally translated in the books; but in Dyer it is expressly said that *ulna* means a yard, and not an ell. *Dyer*, 303 b. Blackstone observes that the ancient ell answers to the modern yard. 1 *Bl. Com.* 275. *Duæ* ulnæ *infra listas;* two ells within the lists. *Magna Charta*, c. 25. The Scotch *eln* or *elne* has followed the old Lat. *ulna* more closely than the English word. See *Skene de Verb. Signif.* voc. *Particata.*

ULNA FERREA. L. Lat. In old English law. The iron ell; the standard ell of iron, kept in the Exchequer for the rule of measure. *Totam terram illam quæ continet in fronte—in latitudine* 44 ulnas, *de* ulnis ferreis *Johannis Regis Angliæ, &c.;* all that land which contains in front,—in breadth, 44 ells, of the iron ells of John King of England, &c. 2 *Mon. Angl.* 383.

ULNAGIUM. L. Lat. [from *ulna*, q. v.] In old English law. Aulnage, or alnage; ell or yard measure. *Dyer*, 303 b.

ULNARE. L. Lat. [from *ulna*, q. v.] In old English law. To measure by the *ulna* or ell; to measure cloth. *Si autem filius burgensis, tunc ætatem habere intelligitur, cum denarios discretè sciverit numerare, et pannos* ulnare, *et alia negotia similia paterna exercere;* if he be the son of a burgess, he is considered to be of age, when he knows how to count money correctly, and to measure cloths, and to manage other like matters of his father's. *Bract.* fol. 86 b. *Fleta*, lib. 1, c. 11, § 7.

Ulnator; a measurer; an alnager. *Dyer*, 303 b.

ULTERIUS CONCILIUM. L. Lat. Further argument. A common term in the older reports. 1 *Burr.* 1020. 2 *Wils.* 243.

ULTIMA VOLUNTAS. Lat. In old English law. Last will; the last will. *In testamento suo, in* ultima voluntate *sua;* in his testament, in his last will. *Reg. Orig.* 244 b.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam. The last will of a testator is to be fulfilled according to his true intention. *Co. Litt.* 322 b. Expressed by Littleton, *La volunte de devisour, fait pur son testament, serra performe solonque l' entent del devisour. Litt.* sect. 586.

ULTIMUM SUPPLICIUM. Lat. The extreme punishment; the extremity of punishment; the punishment of death. 4 *Bl. Com.* 17. *Fleta*, lib. 1, c. 21, § 1. A term derived from the civil law. *Ultimum supplicium esse mortem solam interpretamur;* we interpret the extreme punishment to mean death only. *Dig.* 48. 19. 21.

ULTIMUM TEMPUS PARIENDI. Lat. The extreme period of bearing; the extreme period between the conception and the birth of a child. 2 *Steph. Com.* 317.

ULTIMUS HÆRES. Lat. In old English law. The last heir. A term applied to the lord to whom an escheat fell; he being considered as taking by descent in a kind of caducary succession. 2 *Bl.*

Com. 245. *Ultimi hæredes aliquorum sunt eorum domini;* the last heirs of some tenants are their lords. *Glanv.* lib. 7, c. 17. *Spelman.* In Scotch law, it is applied to the king. *Ersk. Pr.* b. 2, tit. 10.

ULTRA. Lat. [L. Fr. *outre, ultre.*] Beyond; the opposite of *infra*, (q. v.) *Talis infirmitas* infra *annum propriè dicitur languor, si autem* ultra *annum duraverit, dici poterit morbus sonticus;* such an infirmity within a year is properly called sickness; but if it last beyond a year, it may be called a settled or incurable sickness. *Bract.* fol. 344 b. Remedial statutes are construed liberally, and *ultra*, but not *contra* the strict letter. 1 *Kent's Com.* 465. *Dwarris on Statutes*, 726.

ULTRA MARE. L. Lat. [L. Fr. *outre meer.*] Beyond sea. One of the old essoins or excuses for not appearing in court at the return of process. *Bract.* fol. 338. See *Essoin.*

ULTRA VIRES. Lat. Beyond the powers or capacity. "A deed *ultra vires* is null and void." 1 *Kames' Equity*, 309. See 35 *Eng. Law & Eq. R.* 13.

ULTRE. L. Fr. [from Lat. *ultra*, q. v.] Beyond; more than; longer than. *LL. Gul. Conq.* l. 46.

ULTRONEOUS WITNESS. In Scotch law. A volunteer witness; one who appears to give evidence, without being called upon. 2 *Alis. Crim. Pr.* 393.

UM. L. Fr. Man. A corrupted form of *home. Kelham.* See *LL. Gul. Conq.* l. 41.

UMBESETTING. O. Sc. In old Scotch law. Obstructing or besetting. "Umbesetting of the hie gait;" obstructing of the highway. 1 *Pitc. Cr. Trials*, part 1, p. 58.

UMBILICUS. Lat. Literally, the navel; the centre of any thing. The name given to the fourth and middle part of the Digests, consisting of eight books, from the twentieth to the twenty-seventh, both inclusive.

UMPIRAGE. Decision by an umpire. *Hale's Anal.* sect. xlvii.

UMPIRE. A person to whom a matter which has been submitted to arbitrators, is, in case of their disagreement, referred for final decision.* The umpire is sometimes named in the submission; but more generally, the submission merely provides that he shall be appointed by the arbitrators. *Russell's Arbitrator*, 214. *Billing on Awards*, 106.

Umpire is supposed to be derived from the Lat. *impar*, uneven or odd. It is, however, also expressed in Latin, *imperator*, with which the Scotch *oversman* and French *sur-arbitre* correspond in signification. 2 *Kames' Equity*, 290. *Civ. Code of Louis.* Art. 3083.

UN FOITZ. L. Fr. One time; once. *Yearb.* P. 6 Edw. III. 75.

Un ne doit prise advantage de son tort demesne. One ought not to take advantage of his own wrong. 2 *And.* 38, 40.

UNA CUM. L. Lat. Together with. *Latch.* 146.

UNA CUM OMNIBUS ALIIS. Lat. Together with all other things. A phrase in old conveyancing. *Hob.* 175.

Una persona vix potest supplere vices duarum. One person can hardly fill the places of two. *Branch's Pr.* citing 7 *Co.* 118 a, *Acton's case.* In the passage referred to, the maxim reads, **Difficile est ut unus homo vicem duorum sustineat.** It is difficult for one man to fill the place, or discharge the duty of two.

UNA VOCE. Lat. With one voice; unanimously; without dissent. "The court, *unâ voce*, gave judgment." *Hob.* 129.

UNANIMITER. L. Lat. [from *unus*, one, and *animus*, mind.] In old English law. Unanimously; without dissent. *Fleta*, lib. 1, c. 34, § 36.

UNANIMITY. In practice. The entire agreement or concurrence of a petit jury in their verdict; all the jurors being of one and the same mind. A quality uniformly required in English and American practice.

*** Anciently, it was not necessary (at least, not in civil causes) that all the twelve should agree; but, in case of a difference among the jury, the method was to separate one part from the other, and then to examine each of them as to the reasons of their differing in opinion; and if, after such examination, both sides persisted in their former opinions, the court caused *both verdicts* to be fully and distinctly recorded, and then judgment was given *ex dicto majoris partis juratorum*, (according to the verdict of the major part of the jurors.) Thus, in a grand assise upon a writ of right, [in the reign of King Henry III.] between the abbot of Kirkstede and Edmund de Eyncourt, eleven of the jury found for the abbot, and one for Edmund de Eyncourt. In this case, the verdict of the eleven was first recorded. "*Robertus de Harblinge et omnes alii præter Radul-*

phum filium Simonis dicunt super sacramentum suum," &c. Then follows the *dictum* of the twelfth: "*Et prædictus Radulphus filius Simonis dicit super sacramentum suum,*" &c. Then follows the judgment: "*Sed quia prædicti undecim concorditer et præcise dicunt quod prædictus abbas et ecclesia sua prædicta majus jus habeant tenendi,* &c. *ideo consideratum est quod prædictus abbas et successores sui teneant prædicta tenementa de cætero in perpetuum,*" &c. *Plac. Cor. Justic. itiner. in Com. Lincoln,* anno. 56 H. III. rot. 29, in dorso. *Hale's Hist. Com. Law,* (Runnington's ed. 1820,) 349, note.

In an assise of novel disseisin, in the reign of Edward I. between William Tristram, plaintiff, and John Simenel and others defendants, where the whole jury consisted of only eleven, ten found for Tristram and one for Simenel, and both verdicts were recorded in this manner: *Decem jurati dicunt quod,*" &c. "*et undecimus juratorum, scilicet Johannes Kineth, dicit,*" &c. "*Et quia dicto majoris partis juratorum standum est, consideratum est quod prædictus Willielmus recuperet,*" &c. (Ten jurors say that, &c. and the eleventh juror, to wit, John Kineth, says, &c. And because the saying of the major part of the jurors should be abided by, it is considered that the aforesaid William recover, &c.) *Pasch.* 44 Edw. I. rot. 10, coram rege.

UNARE. L. Lat. [from *unus*, one.] In old English law. To unite. *Dyer*, 100. *Seipsos unaverunt;* united themselves. *Id. ibid.*

UNARE. L. Lat. In old records. To inn; to get in, or make up hay fit for carriage, after mowing. *Cartul. S. Edmund. MS.* cited in *Cowell.*

UNCIA. Lat. In the Roman law. An ounce; the twelfth of the Roman *as*, or pound. See *As.*

The twelfth part of any thing, as of an inheritance; the proportion of one-twelfth. *Tayl. Civ. Law,* 492. 2 *Bl. Com.* 462, note (*m.*) See *Fleta,* lib. 6, c. 17, § 1.

UNCIA. L. Lat. In old charters of the British kings. A measure of land, the quantity of which is very obscurely explained in the books. In Cowell, it is said to have consisted of twelve *modii*, and each *modius* possibly 100 feet square.

UNCIA. Lat. In old English law. An ounce; the twelfth part of a pound. *Viginti denarii fac'* unciam, *et duodecim* unciæ *faciunt libram;* twenty pennies make an ounce, and twelve ounces make a pound. *Fleta,* lib. 2, c. 12, § 1.

UNCIARIUS HÆRES. Lat. In the Roman law. An heir to one-twelfth of an estate or inheritance. *Calv. Lex.*

UNCORE. L. Fr. Still; again; once more. Uncore *jugement de breve. Yearb.* M. 10 Edw. III. 15.

UNCORE PRIST. L. Fr. Still ready. Formal words in the old plea of tender. See *Tout temps prist.*

UNCUTH. Sax. [from *un*, not, and *cuth*, known.] In Saxon law. Unknown; a stranger. A person entertained in the house of another was, on the first night of his entertainment, so called. *Bract.* fol. 124 b.

UNDE. Lat. Whence; wherefrom. See *infra.*

Whereof. Unde *rectatus est;* whereof he is accused. *Rot. Cl.* 3 Edw. I. m. 61.

Whereupon. *Et* unde *dicit;* and whereupon he says. *Yearb.* M. 1 Edw. II. 1.

UNDE COGNATI. Lat. In the civil law. A species of the *bonorum possessio,* (q. v.) granted to cognates, or relations on the part of the mother. *Inst.* 3. 10. 1, 2. *Dig.* 38. 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 10, § 724. *Hallifax, Anal.* b. 2, c. 11, num. 5.

UNDE LEGITIMI. Lat. In the civil law. A species of the *bonorum possessio* (q. v.) granted to agnates, or the lawful heirs. *Inst.* 3. 10. 1, 2. *Dig.* 38. 7. *Hein. El. Jur. Civ.* lib. 3, tit. 10. § 723. *Hallifax, Anal.* b. 2, c. 11, num. 5.

UNDE LIBERI. Lat. In the civil law. A species of the *bonorum possessio,* (q. v.) granted to emancipated children, or the proper heirs of the deceased. *Hein. El. Jur. Civ.* lib. 3, tit. 10, § 722. *Hallifax, Anal.* b. 2, c. 11, num. 5. *Inst.* 3. 10. 1, 2. *Dig.* 38. 6.

UNDE NIHIL HABET. L. Lat. (Whereof she hath nothing.) In old English law. The name of the writ of dower, which lay for a widow, where *no dower* at all had been assigned her within the time limited by law. 3 *Bl. Com.* 183. *F. N. B.* 147 E. *Roscoe's Real Act.* 39.

UNDE VI. Lat. (Wherefrom by force.) In the civil law. The technical name of that species of interdict which was granted to recover the possession of an immoveable thing *wherefrom* a person had been ejected *by force. Inst.* 4. 15. 6. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 15, § 1303. 1 *Mackeld. Civ. Law,* 250, § 253.

UNDE VIR ET UXOR. Lat. In the civil law. A species of the *bonorum possessio*, (q. v.) granted to a husband or wife, and by which they succeeded each other, on failure of the *cognati*. *Inst.* 3. 10. 1, 2, *Dig.* 38. 11. *Hein. Elem. Jur. Civ.* lib. 3, tit. 10, § 725. *Hall. Anal.* b. 2, c. 11, num. 5.

UNDEFENDED. In pleading. Without defence, or denial. Where judgment passes by default against a defendant, the language in which the default is recorded is, that the defendant "says nothing in bar or preclusion of the action, whereby the plaintiff remains therein *undefended* against the said defendant." *Arch. Forms*, 336.

UNDERLEASE. In conveyancing. A lease granted by one who is himself a lessee for years, for any fewer or less number of years than he himself holds. If a deed passes *all* the estate or term of the termor, it is an *assignment;* but if it be for a *less* portion of time than the whole term, it is an *underlease*, and leaves a reversion in the termor. 4 *Kent's Com.* 96.

UNDERLY, *Underlie.* Sc. In Scotch law. To abide by; to submit to. To underly the law (*ad subeundum legem.*) 1 *Pitc. Crim. Trials*, part 1, p. 92. See *Id.* p. 22.

UNDER-SHERIFF. [L. Lat. *sub-vicecomes;* L. Fr. *south-viscount.*] A person appointed by the sheriff of a county to perform all his ordinary duties in his behalf, and upon whom the whole duties of the office devolve, in case of a vacancy by death or otherwise, until a new sheriff is chosen. Sometimes confounded with a *deputy-sheriff;* but the latter term is properly applicable to those officers whom the sheriff appoints to *execute process* in his behalf, and who have no other powers than such as appertain to that particular duty. See 1 *Chitt. Bl. Com.* 345, note.

UNDER TENANT. A tenant under one who is himself a tenant; one who holds by underlease, from a lessee. See *Underlease.*

UNDERWRITER. In the law of insurance. An insurer; so called from his *underwriting* or *subscribing* the policy. A term constantly applied to insurers, whether they be corporations or individuals, but most properly applicable to the latter.

In England, marine insurances are most commonly undertaken by private persons, a certain number of whom usually *subscribe* the policy, each engaging, on his own separate account, to indemnify to the extent of a particular sum of money, being a proportion of the whole value of the subject of insurance; and these are called, in reference to the method used of thus subscribing their names, *underwriters.* 2 *Steph. Com.* 174. The only parties who sign their names at the foot of the policies, in other words, subscribe them, are the insurers, who are hence called the *underwriters*, or *sub-scribers.* 1 *Arnould on Ins.* 37, (38, Perkins' ed.) In policies of insurance effected with private underwriters, where it is not usual for one person to take upon himself the whole risk of the insurance, each underwriter signs or subscribes the policy, adding on the same line with his name, the sum he intends to insure. The next underwriter to whom the policy is tendered, then in like manner writes under the first subscription his name and the sum he means to insure, and the rest follow in order, until the aggregate of the separate sums written opposite to the name of each underwriter, or, in technical language, "till the aggregate of their several *subscriptions*" amounts to the sum which the party effecting the policy desires to protect by the insurance. *Id. ibid.*

In the United States, where insurances are generally made by incorporated companies, the *underwriting* or subscription usually consists of the signature of the president or vice-president of the company and the sum insured, with the attestation of the secretary.

UNDIQUE. Lat. On all sides; from every quarter. *Undique collatis membris;* members being collected from every quarter. A phrase applied to a contract compounded of different contracts. See 1 *Curtis R.* 350; Curtis, J.

UNDRES. Sax. In old English law. Minors, or persons under age. *Ante ætatem vero viginti unius annorum, robustos vel habiles ad arma suscipienda pro patriæ defensione non reputantur, et ideo* undres *dicuntur, et sub tutela dominorum interim remanebunt;* before the age of twenty-one years, they are not regarded as able-bodied, or fit to bear arms for the defence of the country, and therefore they are called *undres*, and in the mean time they shall remain under the protection of their lords. *Fleta*, lib. 1, c. 9, § 4. *Cowell.*

UN-FREE-MAN. Sc. [L. Lat. *forensis.*] In Scotch law. A stranger. *Skene de Verb. Sign.* voc. *Forensis.*

UNG. L. Fr. One; an old form of *un*. *Kelham*.

UNGELD. Sax. [from *un*, without, and *geld*, payment.] In Saxon law. One for whom no payment was to be made. A person so far out of the protection of the law, that if he were murdered, no *geld* or fine should be paid, or composition made by him that killed him. *Cowell*.

UNIARE. L. Lat. [from *unus*, one.] To unite; to make one; to join in a body. *Si quando* uniantur *duo populi, non amittentur jura sed communicabuntur;* if at any time two nations become one, their rights will not be lost, but shared between them. *Grot. de Jur. Bell.* lib. 2, c. 9, § 9.

UNICA TAXATIO. L. Lat. In old practice. A single taxation. The technical name of the award of the *venire* on the record, where damages on a default or demurrer are to be assessed at the same time with those on an issue; the language of the record being, that "because it is convenient and necessary that there be but *one taxation*, (*unica taxatio*, in the Latin forms,) in the suit, therefore, as well to try the issue as to inquire of the damages," the sheriff is commanded to summon a jury. *Arch. Forms*, 296.

UNICUS. Lat. [from *unus*, one.] A single one. See *Unica taxatio*.

UNIFORMITY OF PROCESS ACT. The English statute of 2 Will. IV. c. 39, establishing a uniform process for the commencement of actions in all the courts of law at Westminster. 3 *Steph. Com.* 566.

UNILATERAL CONTRACT. [Fr. *contrat unilaterale*.] In modern civil law. A contract where the party to whom an engagement is made, makes no express agreement on his part. *Civil Code of Louis.* Art. 1758. *Poth. Obl.* part 1, ch. 1, sect. 1, art. 2.

UNIO. Lat. In canon law. A consolidation of two churches into one. *Cowell*.

UNIO PROLIUM. Lat. In German law. Union of offsprings; a species of adoption by which the children of a former marriage are made equal, in regard to the right of succession, with the children of a second marriage. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 11, § 188. *Hallifax, Anal.* b. 1, c. 8, num. 6.

UNITAS. Lat. [from *unus*, one.] In old English law. Unity; the uniting or consolidating of two or more things together. *Unitas juris;* unity of right. *Bract.* fol. 76 b.

UNITY. In the law of estates. The peculiar characteristic of an estate held by several in joint-tenancy, and which is fourfold, viz. unity of *interest*, unity of *title*, unity of *time*, and unity of *possession*. In other words, joint tenants have one and the same *interest*, accruing by one and the same *conveyance;* commencing at one and the same *time*, and held by one and the same undivided *possession*. 2 *Bl. Com.* 180.

UNITY OF INTEREST. One of the properties of a joint estate; all the joint-tenants being entitled to one period of duration or quantity of interest in the lands. 2 *Bl. Com.* 181.

UNITY OF TITLE. One of the essential properties of a joint estate; the estate of all the tenants being created by one and the same act, whether legal or illegal. 2 *Bl. Com.* 181.

UNITY OF TIME. One of the essential properties of a joint estate; the estates of the tenants being vested at one and the same period. 2 *Bl. Com.* 181.

UNITY OF POSSESSION. One of the essential properties of a joint estate, each of the tenants having the entire possession as well of every parcel as of the whole. 2 *Bl. Com.* 182.

The term *unity of possession* is defined by Cowell, "the joint possession of two rights by several titles," called, in the civil law, *consolidatio fructus et proprietatis*. The example he gives of it is the following: If I take a lease of land from one upon a certain rent, and afterwards I buy the fee-simple, this is an unity of possession by which the lease is extinguished.

Unius omnino testis responsio non audiatur. The answer of one witness shall not be heard at all; the testimony of a single witness shall not be admitted under any circumstances. A maxim of the civil and canon law. *Cod.* 4. 20. 9. *Decret. Greg.* IX. lib. 2, tit. 20, c. 23. 3 *Bl. Com.* 370. *Best on Evid.* 426, § 390, and note.

Uniuscujusque contractus initium spectandum est, et causa. The commencement and cause of every contract are to be regarded. *Dig.* 17. 1. 8. *Story on Bailm.* § 56.

Universalia sunt notiora singularibus. Universal or general things are more known than particular things. 2 *Rol. R.* 294.

UNIVERSAL LEGACY. [Fr. *legs universel.*] A testamentary disposition by which the testator gives to one or several persons the whole of the property which he leaves at his decease. *Civil Code of Louis.* Art. 1599.

UNIVERSAL REPRESENTATION. In Scotch law. A term applied to the representation by an heir, of his ancestor. *Bell's Dict.*

UNIVERSITAS. Lat. [from *universus*, the whole.] In the civil law. A corporation aggregate. *Dig.* 3. 4. 7. Literally, a whole formed out of many individuals. 1 *Bl. Com.* 469. *Si* universitas *ad unum redit, et stet nomen* universitatis; if the corporation be reduced to one member, yet the name of a corporation will be preserved. *Dig. ub. sup.* Universitas *vel* corporatio *non dicitur aliquid facere, nisi id sit collegialiter deliberatum, etiam si major pars id faciat;* a corporation is not said to do any act, unless it have been deliberated upon in corporate form, even though a majority of the members should do it. *Davies' R.* 48.

UNIVERSITAS RERUM. Lat. In the civil law. Literally, a whole of things. Several single things, which, though not mechanically connected with one another, are, when taken together, regarded as a whole in any legal respect, (*corpus quod ex distantibus constat.*) 1 *Mackeld. Civ. Law*, 154, § 149. *Inst.* 2. 20. 18.

UNIVERSITAS FACTI. Lat. In the civil law. A plurality of corporeal things of the same kind, which are regarded as a whole; e. g. a herd of cattle, a stock of goods. 1 *Mackeld. Civ. Law*, 154, § 149. *Inst.* 2. 20. 18.

UNIVERSITAS JURIS. Lat. In the civil law. A quantity of things of all sorts, corporeal, as well as incorporeal, which, taken together, are regarded as a whole; e. g. an inheritance, an estate. 1 *Mackeld. Civ. Law*, 154, § 149.

UNIVERSUS. Lat. The whole; all together. *Calv. Lex.*

In old English law. The whole; all. Universitatem *vestram scire volumus;* we will that all of you know. *Cart. Conf.* 49 Hen. III.

UNKOUTH. Unknown. The L. Fr. form of the Sax. *uncouth*, (q. v.) *Britt.* c. 12.

UNLAGE. Sax. [from *un*, without, and *lag*, law.] An unjust law. *LL. Hen.* I. c. 34, 84. *Cowell.*

UNLARICH. In old Scotch law. That which is done without law, or against law. *Spelman.*

UNLAW. In Scotch law. An amercement for not appearing in court. *Skene de Verb. Signif.* voc. *Amerciamentum.* 2 *Forbes' Inst.* 225.

UNLAWFUL ASSEMBLY. [L. Lat. *illicita congregatio.*] In English criminal law. Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm. 4 *Steph. Com.* 278. An unlawful assembly is when three or more do assemble themselves together to do an unlawful act, as to pull down enclosures, &c., and part without doing it, or making any motion towards it. 4 *Bl. Com.* 146.

In American criminal law, any tumultuous disturbance of the public peace by three persons or more, having no avowed, ostensible, legal or constitutional object, assembled under such circumstances, and deporting themselves in such a manner as to produce danger to the public peace and tranquillity, and which excites terror, alarm and consternation in the neighborhood, is an unlawful assembly. *Wharton's Am. Crim. Law*, § 2473. 4 *Penn. Law J.* 31. 4 *C. & P.* 372, cited *ibid.*

"UNMARRIED," in a will, denotes either never having been married, or not having a husband or wife at the time. The former is its ordinary signification, and it has been so construed in several cases, though the effect of such construction was to render it inoperative. 1 *Jarman on Wills*, 457, (425, Perkins' ed.) But the sound rule, it is said, in such cases, would seem to be, to construe the expression as used in its less accustomed sense. *Id. ibid.*

UNO FLATU. Lat. In one breath. 3 *M. & Gr.* 45. "The whole matter begins in an instant *et quasi uno flatu.*" 3 *Leon.* 12, case 28. *Uno flatu et uno intuitu;* at one breath, and in one view. 3 *Story's R.* 504.

Uno absurdo dato, infinita sequuntur. One absurdity being allowed, numbers without end follow. 1 *Co.* 102.

UNQUES. L. Fr. Ever; always. *Ne unques;* never. See *Ne unques*, &c.

UNQUES PRIST. L. Fr. Always ready. *Cowell.* Another form of *tout temps prist*, (q. v.)

UNSOLEMN WAR. War denounced without a declaration; war made not upon general, but special declaration; imperfect war. Cowen, J. 1 *Hill's* (N. Y.) *R.* 409. A war is none the less public or national, because it is *unsolemn. Id. ibid.*

UNTHRIFT. A prodigal; a spendthrift. 1 *Bl. Com.* 306.

Unumquodque eodem modo quo colligatum est, dissolvitur,—quo constituitur, destruitur. Every thing is [properly] dissolved by the same means by which it is put together,—destroyed by the same means by which it is established. 2 *Rol. R.* 39. *Broom's Max.* 417, 414.

Unumquodque est id quod est principalius in ipso. Every thing is [in other words] that which is the more principal thing in it; the most important constituent of a thing represents, or is the thing itself. *Branch's Pr. Hob.* 123.

Unumquodque principiorum est sibimetipsi fides; et perspicua vera non sunt probanda. Every general principle [or maxim of law] is its own pledge or warrant; and things that are clearly true are not to be proved. *Branch. Co. Litt.* 11.

UNWRITTEN LAW. See *Lex non scripta.*

UPLANDA. L. Lat. [from Sax. *up*, above, and *land.*] In old records. Elevated land; firm or dry land; the opposite of marshy ground. *Spelman. Ingulph. Hist. Croyl.* cited *ibid.*

UPLIFTED HAND. In practice. A form in which an oath is sometimes taken; the right *hand* being *held up* while it is administered, instead of being laid upon the gospels. See *Depose.* It seems to have been occasionally used in England at an early period. *Præsentibus igitur xii. juratoribus, et quatuor villatis, imprimis jurabit quilibet de villata per se, vel omnes simul* erectis sursum manibus *singulorum, in hæc verba;* the twelve jurors then being present, and the four townsmen, in the first place each of the townsmen shall swear by himself, or all of them holding up all their hands together at the same time, in these words. *Bract.* fol. 143 b.

UPPER BENCH. The court of King's Bench, so called during the exile of King Charles the Second. 3 *Bl. Com.* 202, 203.

UPSUN. In Scotch law. Between the hours of sunrise and sunset. Poinding must be executed with *upsun;* [i. e. while the sun is up.] 1 *Forbes' Inst.* part 3, p. 32.

URBAN SERVITUDE. [Lat. *servitus prædii urbani.*] In the civil law. A servitude annexed to an urban estate, or *prædium urbanum*, (q. v.) Such as the servitude or right of support, of drip, of drain, &c. 3 *Kent's Com.* 436.

URBS. Lat. In the civil law. A city. Generally limited to the space within the walls, but in its application to Rome, it included the suburbs. Urbis *appellatio muris*, Romæ *autem continentibus ædificiis finitur, quod latius patet. Dig.* 50. 16. 2, pr. See *Id.* 50. 16. 87. *Id.* 50. 16. 139, pr. *Id.* 50. 16. 147. Derived by Pomponius, in the Digests, from *urbum*, the curvature or curved mark of a plough, which was used in founding a city. *Dig.* 50. 16. 239. 6.

URE. L. Fr. and Eng. Effect; practice. *Mis en ure;* put in practice; carried into effect. *Kelham.* Put in *ure.* 1 *Leon.* 90. *Stat.* 13 *Eliz.* c. 5.

URER. L. Fr. In old English law. To enure. *Un releas prendra effect, et urera;* a release shall take effect and enure. *Litt.* sect. 305, 306, 307.

USA. L. Lat. In old Saxon records. A river or stream. *Spelman.*

USAGE, in its broadest sense, includes both custom and prescription, but is ordinarily applicable to trade; designating the habits, modes and course of dealing which are generally observed either in any particular branch of trade, or in all mercantile transactions. 2 *Greenl. Evid.* § 248. As to the effect of usage in controlling the interpretation of a policy, see 1 *Duer on Ins.* 253—311. As to its effect in the construction of a charter-party, see *Abbott on Ship.* [274,] 353, *et seq.* "The office of an *usage* is strictly one of *exposition*, and it is allowable to be given in evidence as one means of arriving at the *intention* of the parties, and can never be received to thwart it when it is clearly and fully expressed." Bennett, J. 26 *Vermont R.* 136.

USANCE. Fr. In mercantile law. The common period fixed by the usage or custom or habit of dealing between the country where a bill is drawn, and that where it is payable, for the payment of bills of exchange. *Story on Bills*, § 50. It means in some countries, a month, in others two or more months, and in others half a month. *Id.* § 144. See *Id.* § 332, and note.—A period of so many days or months after the date of a bill of exchange, according to the custom of differ-

ent places, before the bill becomes due. *McCulloch's Dict.*

USARE. L. Lat. In old European law. To use, or enjoy. *Villam tenere et* usare; to hold and use a farm. *Chart. Alam.* 67. *Spelman.*

USE. The profit or benefit of lands or tenements. *Shep. Touch.* 501.—The right in equity to have the profit or benefit of lands or tenements. *Id.* (by Preston,) *ibid.* —The equity and honesty to hold the land *in conscientia boni viri. Shep. Touch. ub. sup.*—A confidence reposed in another, who was tenant of the land, or *terre-tenant*, that he should dispose of the land according to the intentions of *cestuy que use*, or him to whose use it was granted, and suffer him to take the profits. As if a feoffment was made to A. and his heirs, to the use of (or in trust for) B. and his heirs; here at the common law, A. the *terre-tenant*, had the legal property and possession of the land, but B. the *cestuy que use*, was in conscience and equity to have the profits and disposal of it. 2 *Bl. Com.* 328. This definition of Blackstone seems to be merely that of Lord Coke, stated in clearer terms. A trust or confidence reposed in some other, which is not issuing out of the land, but as a thing collateral, annexed in privity to the estate of the land, and to the person touching the land; *scilicet*, that *cestui que use* shall take the profit, and that the terre-tenant shall make an estate according to his direction. *Co. Litt.* 272 b. These are the definitions of uses as they existed before the Statute of Uses, 27 Hen. VIII. c. 10. As to the nature of uses before and since the statute, see 2 *Bl. Com.* 327, 337. 1 *Steph. Com.* 328—344. 4 *Kent's Com.* 288—301. 1 *Greenleaf's Cruise's Digest*, tit. xi.

USE. [Lat. *usus.*] In the civil law. The bare use of a thing for necessary purposes. See *Usus.*

USEE. A person for whose use a suit is brought. A term used in some of the Southern states. 24 *Mississippi R.* 77.

USER DE ACTION. L. Fr. In old practice. The pursuing or bringing an action. *Cowell.*

USO. Span. [from Lat. *usus*, use.] In Spanish law. Usage; that which arises from certain things which men say and do and practice uninterruptedly for a great length of time without any hindrance whatever. *Las Partidas*, part. 1, tit. 2, l. 1.

USQUE AD. L. Lat. As far as; till; until; to; up to. See 1 *Stra.* 179, 181, arg. Construed exclusively. 2 *Mod.* 280. 4 *Id.* 182. *Usque ad filum aquæ;* as far as the thread of the stream. *Bract.* fol. 208 b.

UST. L. Fr. Had. *Ust este;* had been. *Yearb.* M. 8 Edw. III. 2. *Ussent;* (they) had. *Usses, ussomus;* should or would have. *Id. ibid.*

USUALIS. Lat. In old English law. Usual, ordinary. *Usualis annus;* the ordinary year, consisting of three hundred and sixty-five days; called, also, *annus minor. Bract.* fol. 359 b.

USUARIUS. Lat. In the civil law. One who had the mere use of a thing belonging to another, for the purpose of supplying his daily wants; an usuary. *Dig.* 7. 8. 10, pr. *Calv. Lex.*

USUCAPERE. Lat. [from *usus*, use, and *capere*, to take.] In the civil law. To acquire by use; to make one's own by possession. *Dig.* 41. 3. *Calv. Lex.* To gain a title by such means.

USUCAPIO. Lat. [from *usus*, use, and *capio*, a taking.] In the civil law. The acquisition of property by continued possession for a time defined by law; (*adjectio dominii per continuationem possessionis temporis lege definiti.*) *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 6, § 438. *Dig.* 41. 3. Commonly Anglicized, *usucapion. Hallifax, Anal.* b. 2, c. 5, num. 2.—The right acquired by the long possession of any thing substantial and corporeal, to the exclusion of the real owner. *Cooper's Just. Inst.* Notes, *472. It was a kind of prescription founded upon the Twelve Tables, and was distinguished from prescription, properly so called, which rested on the prætorian law. *Usucapion* was perfected by one year's possession of a moveable, and two years' of an immoveable chattel; *prescription* required ten years as against parties present, and twenty years as against parties absent. *Usucapion* did not, while *prescription* did take place as to incorporeal hereditaments, as services incident to estates. *Usucapion* transferred the property of the thing itself; *prescription* operated only in bar of the right of the owner or mortgagor. *Id. ibid.* These distinctions were abolished by Justinian, and prescription now comprehends the meaning of both terms. *Hallifax, Anal.* b. 2, c. 5, num. 3. 2 *Bl. Com.* 264, note (f.)

USUFRUCT. [Lat. *ususfructus.*] In the civil law. The right of using and en-

joying the profits of a thing belonging to another, without impairing the substance. *Hallifax, Anal.* b. 2, c. 3, num. 8. It is distinguished from a *use*, which is a mere limited right, importing a use for *necessary* purposes only. *Id.* num. 11. See *Usus, Ususfructus.*

USUFRUCTUARIUS. Lat. [from *ususfructus*, q. v.] In the civil law. One who had the usufruct of a thing; an usufructuary. *Inst.* 2. 4. 3. *Dig.* 7. 9. Distinguished from *usuarius* (one who had a mere use) by the following circumstances: first, he had the full profit or enjoyment of the thing used, whereas the *usuarius* had it only for the purpose of supplying his daily wants and necessities; secondly, he might transfer his right to another, which the *usuarius* could not; and thirdly, he might cultivate the land himself, which the *usuarius* could not. *Calv. Lex.*

USURA. Lat. [from *usus*, use; Gr. τόκος, q. v.] In the civil law. Money given for the use of money; interest. *Dig.* 50. 16. 121. Commonly used in the plural, *usuræ*. *Dig.* 22. 1.

Usura centesima, usuræ centesimæ or *usuræ asses;* twelve per cent. per annum, or one per cent. monthly. The highest rate of interest allowed before the time of Justinian. 2 *Bl. Com.* 462, and note (*m.*) *Hallifax, Anal.* b. 2, c. 15, num. 6. *Calv. Lex.*

Usuræ deunces; eleven per cent. 2 *Bl. Com. ub. sup.*

Usuræ dextances; ten per cent. *Id. ibid.*

Usuræ dodrantes; nine per cent. *Id. ibid.*

Usuræ besses; eight per cent. *Id. ibid.*

Usuræ septunces; seven per cent. *Id. ibid.*

Usuræ semisses; six per cent. *Id. ibid.*

Usuræ quincunces; five per cent. *Id. ibid.*

Usuræ trientes; four per cent. This was the rate established by Justinian. *Id. ibid.*

Usuræ quadrantes; three per cent. *Id. ibid.*

Usuræ sextances; two per cent. *Id. ibid.*

Usuræ unciæ; one per cent. *Id. ibid.*

USURA. Lat. In old English law. Interest, or usury, as it was called. Usura *dicitur quia datur pro* usu æris; usury is so called because it is given *pro usu æris*, for the use of money. 2 *Inst.* 89. Usura *dicitur ab* usu *et* ære, *quasi* usuæra, i. e. *usus æris; usura* (usury) is derived from *usus* and *ære* (*æs*,) as it were *usuæra*, i. e. *usus æris;* the use of money. 5 *Co.* 70 a, *Clayton's case.*

Usura *est commodum certum quod propter usum rei mutuatæ recipitur. Sed secundario spirare de aliqua retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum;* usury is a certain benefit which is received for the use of a thing lent. But to have an understanding [literally, to breathe or whisper] in an incidental way, about some compensation to be made at the pleasure of the borrower, is not unlawful. *Branch's Pr.* 5 *Co.* 70 b, *Clayton's case. Glanv.* lib. 7, c. 16.

USURA MARITIMA. Lat. [Gr. τόκος θαλασσίος.] Maritime interest. 2 *Bl. Com.* 458. Otherwise called *fœnus nauticum*, (q. v.) *Dig.* procem. (*de Conf. Dig.*) § 5.

USURÆ. Lat. In old English law. Usury; interest of money. *Provisum est, et à rege concessum, quòd* usuræ *non currant contra aliquem infra ætatem existentem*, &c.; it is provided and granted by the king that interest shall not run against any one being within age, &c. *Fleta*, lib. 2, c. 57, § 8. *Stat. Merton*, c. 22.

USURARE. L. Lat. In old English law. To pay interest; to carry or be chargeable with interest. *Artic. Mag. Cart. Johan.* c. 34. *Fleta*, lib. 2, c. 57, § 7.

USURARIUS. L. Lat. In old English law. An usurer. *Fleta*, lib. 2, c. 52, § 14.

USURPARE. Lat. In the civil law. To interrupt a use, or usucapion; the opposite of *usucapere*, (q. v.) *Calv. Lex.*

USURPATIO. Lat. [from *usurpare*, q. v.] In the civil law. The interruption of a usucapion, by some act on the part of the real owner. *Dig.* 41. 3. 2. *Calv. Lex.*

USURPATION. The exercise or use of an office or franchise, without authority. 3 *Bl. Com.* 262.

In English ecclesiastical law. The absolute ouster or dispossession of the patron of a benefice, which happens when a stranger that has no right presents a clerk, who is thereupon admitted and instituted. *Co. Litt.* 227. 3 *Bl. Com.* 242.

USURY. [from Lat. *usura*, q. v.] In old English law. Interest of money; increase for the loan of money; a reward for the *use* of money. 2 *Bl. Com.* 454.

In modern law. Unlawful interest; a

premium or compensation paid or stipulated to be paid for the use of money borrowed or returned, beyond the rate of interest established by law. *Webster.*—An unlawful contract upon the loan of money, to receive the same again with exorbitant increase. 4 *Bl. Com.* 156. The illegal profit which is required and received by the lender of a sum of money, from the borrower, for its use. *Bouvier.* See *United States Digest*, Usury.

USUS. Lat. [from *uti*, to use.] In the civil law. Use; the use of a thing; the right to the use of a thing. Properly, the use of a thing, as land or a house, for the mere purpose of supplying one's daily wants or necessities, (*ad necessitatem ;*) as distinguished from *ususfructus*, which was the larger right of using and enjoying a thing at one's pleasure. The *usuarius* had the *usus*, (bare use,) but not the *fructus*, (enjoyment;) the *usufructuarius* had both. *Calv. Lex. Heinecc. Elem. Jur. Civ.* lib. 2, tit. 4, § 415. *Minus juris est in* usu, *quam in* usufructu; *nam is qui fundi nudum habet* usum, *nihil ulterius habere intelligitur, quam ut oleribus, pomis, floribus, fœno, stramentis et lignis ad* usum quotidianum utatur; *inque eo fundo hactenus ei morari licet, ut neque domino fundi molestus sit, neque iis per quos opera rustica fiunt, impedimento ; nec ulli alii jus quod habet, aut locare, aut vendere, aut gratis concedere potest ; cum is, qui usumfructum habet, possit hæc omnia facere ;* there is less of right in a use than in a usufruct; for he who has the naked use of land, is understood to have nothing more than the liberty of using so much of the herbs, fruits, flowers, hay, straw and wood, as may be sufficient for his daily wants; and he is permitted to stay [or be commorant] upon the land, only on condition that he neither becomes troublesome to the owner, nor is a hindrance to those by whom the labors of husbandry are performed; nor can he either let, or sell, or gratuitously grant to any other, the right which he has; whereas he who has the usufruct can do all these things. *Inst.* 2. 5. 1. See *Dig.* 7. 8. *Id.* 50. 16. 203.

USUS. Lat. In old English law. A use. See *Use.* Usus *est dominium fiduciarium ;* a use is a fiduciary ownership. *Bacon's Read. Stat. Uses. Usus et status, sive possessio, potius differunt secundum rationem fori, quam secundum rationem rei ;* the use and the estate, or possession, differ more in the reason of the law, than in the nature of the thing itself. *Id. ibid.*

USUS BELLICI. Lat. In international law. Warlike uses, or objects. "It is the *usus bellici* which determine an article to be contraband." 1 *Kent's Com.* 141.

USUSFRUCTUS. Lat. [from *usus*, use, and *fructus*, fruit or enjoyment.] In the civil law. The right of using and enjoying the profits of things belonging to another, without impairing the substance of the things themselves; (*jus alienis rebus utendi fruendi, salva rerum substantia.*) *Inst.* 2. 4, pr. It is a right to a corporeal thing, (*est jus in corpore,*) which being destroyed, the usufruct itself must necessarily be taken away, (*quo sublato et ipsum tolli necesse est.*) *Id. ibid.* See *Dig.* 7. 1. 1, 2, It is a species of personal servitude, where the land serves the person. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 4, § 414. See *Fleta*, lib. 4, c. 31, § 1.

UT. Lat. In the civil law. That. A particle properly expressive of the final cause or object of a thing, (*proprium est finalem dicere causam.*) *Calv. Lex.*

That. A particle expressive of qualification; the mark of a *modus*. *Id.* As in the four innominate contracts, *do* UT *des, do* UT *facias, facio* UT *des, facio* UT *facias*, (qq. v.) It expresses what in the common law is termed *consideration*, (q. v.)

As, (*sicut ;*) expressive of similitude. *Id.*

As, as though, (*tanquam.*) *Id.*

Although, (*quamvis.*) *Id.*

But, (*sed.*) *Id.*

When, (*quando.*) *Id.*

UT. Lat. In old English law. That. A particle, particularly appropriated to express a *modus*, or qualification, as *si* was used to express a condition. *Bract.* fol. 18 b. *Co. Litt.* 204 a. See *Scito quod ut*, &c. This shows that *modus* and *conditio* had essentially a different import. The use of *ut*, in this peculiar application, was taken from the civil law. See *supra.*

That; in order that. See **Ut res magis valeat**, &c.

As. See *Ut de feodo.*

UT AUDIVI. Lat. As I heard. *Freem.* 5, 19. *Bunb.* 165. *Dyer*, 30 b. A reporter's note.

UT CREDO. Lat. As I believe. *Dyer*, 76 b. A reporter's note.

UT CURRERE SOLEBAT. Lat. As it was wont to run. A part of the maxim, **Aqua currit et debet currere, ut currere sole-**

bat. Every proprietor of land on the bank of a fresh water river has a right to the use of the water as it was wont to run, (*ut currere solebat,*) without diminution or alteration; and no owner has, in general, a right to use it to the prejudice of other owners above or below him, by throwing it back upon the former, or subtracting it from the latter. 2 *Hilliard's Real Prop.* 101.

UT DE FEODO. L. Lat. As of fee. *Et regulariter verum est quod dominicum dici potest omne illud tenementum de quo antecessor obiit seysitus* ut de feodo, *sive cum usufructu, vel sive;* and regularly, it is true that every tenement may be called demesne, of which the ancestor died seised *as of fee*, whether with the usufruct or without. *Bract.* fol. 263. *Fleta*, lib. 5, c. 5, § 25. See *Demesne.*

UT HOSPITES. Lat. As guests. 1 *Salk.* 25, pl. 10.

Ut pœna ad paucos, metus ad omnes perveniat. That the punishment may reach a few, but the fear of it effect all. A quotation from Cicero, (*pro Cluentio*, 46,) adopted as a maxim in criminal law, expressive of one of the principal objects of human punishment. 4 *Inst.* 6. 4 *Bl. Com.* 11.

Ut res magis valeat quam pereat. That the thing, or subject matter, may rather have effect than be destroyed. "We must construe the words of the instrument, if possible, *ut res magis valeat quam pereat.*" Grose, J. 10 *East*, 427. A maxim expressive of one great object regarded by courts in the construction of contracts, viz. the preservation of the contract itself. See 3 *Hill's* (N. Y.) *R.* 235, Cowen, J. It is a part of the maxim, **Benigne faciendæ sunt interpretationes,** &c. and expresses the same sentiment with the maxim, **Benedicta est expositio quando res redimitur a destructione,** (qq. v.) Blackstone applies it to the construction of statutes. 1 *Bl. Com.* 89. The expression *quo res magis valeat quam pereat* occurs in *Dig.* 34. 5. 12. And see *Fleta*, lib. 2, c. 72, § 16.

UTAS. L. Lat. [L. Fr. *utave.*] In old English practice. Octave; the octave, (*octava;*) the eighth day following any term or feast; as the *Utas* of St. Michael, the *Utas* of St. Hilary. *Cowell. Yearb.* H. 9 Edw. III. 4. *Dyer*, 78, (Fr. ed.)

"UTENSILS," in a will, held not to pass plate or jewels. *Dyer*, 59 b, pl. 15. 2 *Williams on Exec.* 1024.

UTERINE. [Lat. *uterinus*, q. v.] Born of the same mother, (*ex eodem utero.*) A uterine brother or sister is one born of the same mother, but by a different father. See *Uterinus.*

UTERINUS. Lat. [from *uterus*, womb.] In old English law. Uterine; born of the same mother. *Soror vel frater de una et eadem matre, sed diverso patre, soror* uterina, *frater* uterinus, *dici poterunt;* a sister or brother from one and the same mother, but a different father, may be called a uterine sister and uterine brother. *Bract.* fol. 68 b.

UTERQUE. Lat. Both; each. "The justices being in doubt as to the meaning of this word in an indictment, demanded the opinions of grammarians, who delivered their opinions that this word doth aptly signify *one of them.*" 1 *Leon.* 241.

UTFANGTHEFE, *Utfangethef.* Sax. [from *ut*, out, *fang*, taken, and *theof*, thief.] In Saxon and old English law. Literally, an out-taken thief, (*fur extra captus.*) *Spelman.* Utfangethef *vero dicitur latro extraneus, veniens aliunde de terra aliena, et qui captus fuit in terra ipsius qui tales habeat libertates. Utfangthefe* signifies a strange thief, who comes from another place, from another's land, and who is taken in the land of him who has such liberties. *Bract.* fol. 154 b. According to this explanation, *ut*, in this compound word, is to be taken in immediate connection with *thefe*, and not with *fang*, as Spelman seems to understand it.

UTHESIUM. Lat. In old English law. Hue; a form of *hutesium*, produced apparently, by a transposition of the aspirate. *Si ceperint misericordias pro defaltis, vel pro* uthesio *non levato vel non secuto;* if they have taken amercements for defaults, or for not raising or following the hue. *Bract.* fol. 116 b. See *Hue, Hutesium.*

UTI. Lat. As. See *Uti rogas, Uti possidetis.*

UTI. Lat. In the civil law. To use. Strictly, to use for necessary purposes; as distinguished from *frui*, to enjoy. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 4, § 415.

UTI FRUI. Lat. In the civil law. To have the full use and enjoyment of a thing, without damage to its substance. *Calv. Lex.* Hence the term *ususfructus*, (q. v.)

UTI POSSIDETIS. Lat. (As you possess.) In the civil law. A species of interdict, (q. v.) for the purpose of retaining possession of a thing, granted to one

who, at the time of contesting suit, was in possession of an immoveable thing, in order that he might be declared the legal possessor. *Hallifax, Anal.* b. 3, c. 6, num. 8. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 15, § 1300. 1 *Mackeld. Civ. Law*, 259, § 252. It was a species of proceeding by which the possession of land or of houses was contended for; and that party succeeded in it who was in possession at the time of the interdict, provided he had not obtained the possession from his adversary by force, (*vi*,) clandestinely, (*clam*,) nor precariously, (*precariò*.) *Inst.* 4. 15. 4. See *Dig.* 48. 17. 1. *Cod.* 8. 6.

UTI POSSIDETIS. Lat. (As you possess, i. e. each keeping what you respectively have.) In international law. A term used to denote the principle of a treaty which leaves belligerent parties mutually in possession of what they have acquired by their arms during the war. *Brande.* The *uti possidetis* is the basis of every treaty of peace, unless it be otherwise agreed. 1 *Kent's Com.* 173.

UTI ROGAS. Lat. (As you ask.) In Roman law. The form of words by which a vote in favor of a proposed law was orally expressed. *Uti rogas, volo vel jubeo;* as you ask, I will or order; I vote as you propose; I am for the law. The letters U. R. on a ballot, expressed the same sentiment. *Adam's Rom. Ant.* 98, 100.

Utile per inutile non vitiatur. The useful is not vitiated by the useless. Where an instrument contains, in addition to proper matter, that which need not have been stated, such unnecessary matter will not vitiate the other. *Calv. Lex.*

This maxim of the civil law has long been adopted in the common law, as a maxim of conveyancing, of pleading, and of evidence. Surplusage does not vitiate that which in other respects is good and valid. *Co. Litt.* 3 a, 227 a. 3 *Co.* 10 a, *Dowtie's case. Broom's Max.* 82, [486.] *Steph. Pl.* 378. Averments wholly immaterial need not be proved. *Best on Evid.* 303, § 263. The maxim is thus further explained in the civil law. Where the useful can be separated from the useless matter, in accordance with nature, law, or the interest of parties, it will not be impaired by it; but where the two are not separable without impugning some rule of nature or of law, or contravening the intention of the parties, there the useful matter is vitiated by the useless. *Calv. Lex.*

UTILIDAD. Span. In Spanish law. The profit of a thing. *White's New Recop.* b. 2, tit. 2, ch. 1.

UTILIS. Lat. In the civil law. Useful; beneficial; equitable; available. *Actio utilis;* an equitable action. *Calv. Lex. Dies utilis;* an available day; one on which a party might sue, or have access to the prætor or judge. *Id.*

UTILITAS. Lat. [from *utilis*, q. v.] Advantage; benefit; interest; utility; profit. See *Calv. Lex.*

UTISME. L. Fr. Eighth. *Art. sup. Cart.*

UTLAGARE. L. Lat. [from Sax. *utlagh*, q. v.] In old English law. To outlaw; to put out of the law; to put out of the protection of the law. *Nullus liber homo capiatur—aut* utlagetur, *aut exulatur*, &c.; no freeman shall be taken,—or outlawed, or exiled, &c. *Magna Charta*, c. 29. *Extunc* utlagabitur, *sicut ille qui est extra legem, sicut* Laughelesman; he shall thenceforth be outlawed, as one who is out of the law, as a lawless man. *Bract.* fol. 125. *Minor vero, et qui infra ætatem duodecim annorum fuerit,* utlagari *non potest, nec extra legem poni;* a minor, and he who is within the age of twelve years, cannot be outlawed, nor put out of the law. *Id.* fol. 125 b.

UTLAGARIA. L. Lat. [from *utlagare*, q. v. L. Fr. *utlagerie.*] In old English law. Outlawry. *Bract.* fol. 128 b. *Fleta*, lib. 1, c. 28.

UTLAGATIO. L. Lat. [from *utlagare.* q. v.] In old English law. The outlawing of a person; outlawry. *Sequi ad* utlagationem; to pursue to outlawry. *Bract.* fol. 125 b. *Fleta*, lib. 1, c. 28.

UTLAGATUS. L. Lat. [from *utlagare*, q. v.] In old English law. An outlawed person; an outlaw. *Bract.* fol. 125 b, 128 b. *Fleta*, lib. 1, c. 28. Utlagatus *est quasi* extra legem *positus; caput gerit lupinum;* an outlaw is, at it were, put *out* of the *law;* he carries a wolf's head. 7 *Co.* 14 a, *Calvin's case.* See *Caput lupinum, Wolf's head.*

UTLAGE. L. Fr. An outlaw. *Britt.* c. 12.

UTLAUGHE, *Utlagh, Utlaghe.* [from Sax. *ut*, out, and *lag*, or *lagh*, law.] Sax. and O. Eng. In old English law. Outlaw; an outlaw. *In primis forisfacit patriam et regnum, et exul efficitur, et talem vocant Anglici* Utlaughe, *et alio nomine antiquitus solet nominari, scilicet,* Frendlesman,

et sic videtur, quod forisfacit amicos; in the first place, he forfeits [puts himself out of] the country and the realm, and is made an exile, and such a one the English call *Ut laughe*, and he was anciently called by another name, to wit, *Frendlesman*, and so it appears that he forfeits [puts himself out of the company of] his friends. *Bract.* fol. 128 b. Utlaghe, *bannitum extra legem; utlaghe* signifies proclaimed out of the law. *Fleta*, lib. 1, c. 47, § 25.

UTLAND. Sax. [from *ut*, out, and *land.*] In Saxon law. Outland, (*terra exteru;*) tenemental land; the tenancy; the lands which lay *without* the demesnes of a manor. *Spelman. To Wutfege that inland, & to Alfege that utland;* to Wulfee the inland or demesnes, and to Elfey the outland or tenancy. *Testam. Brither. in itin. Cantii, apud Lambard. Spelman*, voc. *Inland.*

UTLARY, *Utlawry.* Old forms of *outlawry*, (q. v.) The following appear to have been the successive forms of the word: L. Fr. *utlagerie;* L. Lat. *utlagaria*, (from Sax. *utlagh;*) O. Eng. *utlagery, utlary, utlawry, outlawry.*

UTLEP, *Utlepe.* Sax. In old English law. Escape; the escape of a robber or robbers, (*escapium latronum.*) *Fleta*, lib. 1, c. 47, § 14.

UTRUBI. Lat. In the civil law. With whichever; (Lat. *apud quem;* Gr. παρ ὁποτέρω.) The name of a species of interdict for retaining a thing, granted for the purpose of protecting the possession of a moveable thing, as the *uti possidetis* was granted for an immoveable. *Inst.* 4. 15. 4. *Dig.* 43. 31. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 15, § 1301. 1 *Mackeld. Civ. Law*, 250, § 252. It was, in other words, the mode of contesting or trying the right to the possession of moveable property. *Inst. ub. sup.*

UTRUM. See *Assise of Utrum.*

UTRUMQUE NOSTRUM. L. Lat. Both of us. Words used formerly in bonds. Distinguished from *quemlibet nostrum*, each of us. *Wingate's Max.* 12, pl. 9. See *Dyer*, 19 b.

UTTER. An old form of *outer*, framed apparently from the Sax. *ut*, out. See *Utter barrister.*

To UTTER. [from Sax. *ut*, out.] In criminal law. To put out, or put forth; to publish; to circulate; to offer to circulate. To *utter* and publish an instrument is to declare or assert directly or indirectly, by words or actions, that it is good. *Uttering* it is a declaration that it is good, with an intention to pass, or an offer to pass it. *Wharton's Am. Crim. Law*, § 1445. 1 *Baldwin's C. C. R.* 367. 2 *Michigan* (Gibbs') *R.* 550.

UTTER BARRISTERS, (properly OUTER BARRISTERS, Lat. *juris consulti.*) In English practice. The title of the great body of barristers-at-law; pleaders *without* the *bar.* So called, to distinguish them from *benchers*, or those who have been readers, who are sometimes admitted to plead *within* the bar, as the king's and queen's counsel. *Cowell.* See *Bar, Barrister.*

UTYME. L. Fr. An eighth. *Mem. in Scacc.* 25 Edw. I.

UX'. An abbreviation of *uxor.* 1 *Instr. Cler.* 13.

UXOR. Lat. Wife; a wife; the wife. *Non vir sine* uxore, *quia agitur de jure* uxoris; *nec* uxor *sine viro, quia vir est caput* uxoris, *et eam defendere debet;* not the husband without the wife, because the action is about the right of the wife; nor the wife without the husband, because the husband is the head of the wife, and is bound to defend her. *Bract.* fol. 202.

Uxor *furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habeat, sed vir;* the wife of a thief will not be bound by the act of her husband, because she ought not to accuse her husband, nor disclose his theft or felony, since she has not power of herself, but her husband. 3 *Inst.* 108. *Bract.* fol. 151 b.

Uxor et filius sunt nomina naturæ; wife and son are names of nature. *Bacon's Arg.* Case of the Postnati of Scotland, *Works*, iv. 350.

V.

V. A common abbreviation of *versus*, in the titles of causes, and reported cases.

V. F. An abbreviation of *verba fecit*, (spoke.) *Tayl. Civ. Law*, 564.

V. V. B. C. An abbreviation of *vous voies bien coment*, (you see well how.) Common in the Year Books. M. 2 Hen. VI. 1.

VACANT. [L. Fr. *vacaunt;* Lat. *vacans*, from *vacare*, to be empty, to want.] Unfilled; unoccupied; without a claimant, tenant, or occupier. See *infra.*

VACANT SUCCESSION. [Fr. *succession vacante.*] One that is claimed by no person, or where all the heirs are unknown, or where all the known heirs to it have renounced it. *Civil Code of Louis.* Art. 1088. Hemphill, C. J. 16 *Texas R.* 502.

VACANTIA BONA. Lat. In the civil law. Goods without an owner, or in which no one claims a property; goods claimed as escheats; escheated goods. *Inst.* 2. 6. 4. 1 *Bl. Com.* 298.

VACARE. Lat. In the civil law. To be vacant; to want; to want or to be without an owner, possessor, or claimant; to be unoccupied, unused, or unemployed. A house was said *vacare*, which was inhabited by no one; a possession, which was held by no one; an inheritance, which was unclaimed by the heirs; a portion of an estate, which was given to no one by will; fruits, that were not gathered; money, that was not employed. *Calv. Lex.*

VACARE. Lat. In English ecclesiastical law. To be vacant; to be without an incumbent. Said of a benefice. *Quod ecclesia sive capella non vacat;* that the church or chapel is not vacant. *Fleta*, lib. 5, c. 18, § 1.

VACARIA. L. Lat. In old records. A void place or waste ground. *Memorand. in Scacc.* Mich. 9 Edw. I. *Cowell.*

VACATE. [from Lat. *vacare*, to be void, or *vacatus*, made void.] In practice. To avoid; to make void; to annul. A court will sometimes *vacate* the proceedings in a cause, as a judgment that has been illegally entered, or an order that has been improvidently granted.

VACATIO. Lat. [from *vacare*, to be unoccupied or unemployed.] In the civil law. Exemption; immunity; privilege; dispensation; exemption from the burden of office. *Calv. Lex.*

VACATION. [Lat. *vacatio*, from *vacare*, to be unoccupied; to rest from occupation; *justitium*, q. v.] In practice. Intermission of judicial proceedings; the recess of courts; the time during which courts are not held, (*tempus quo* vacat *à jure dicundo.*) *Spelman.* The period intervening between the end of one term and the beginning of another. *Cowell.* 3 *Bl. Com.* 276.

VACATUR. L. Lat. (It is vacated.) In practice. A rule or order by which a proceeding is vacated; a vacating.

VACATURA. L. Lat. [from *vacare*, to be void.] In old ecclesiastical law. A voidance or vacancy of an ecclesiastical benefice. *Cowell.*

VACCA. Lat. In old English law. A cow. *Vacca lactrix;* a milch cow. *Fleta*, lib. 2, c. 76, § 12.

VACCARIA, *Vaccharia, Vacheria.* L. Lat. [from *vacca*, a cow; L. Fr. *vacherie.*] In old English law. A cow-house. *Fleta*, lib. 2, c. 41, § 13. A dairy-house. *Co. Litt.* 5 b. A vachary, vacchary, or vaccary. *Cowell.*

VACCARIUS. L. Lat. [from *vacca*, q. v.] In old English law. A cow-keeper or cow-herd. *Fleta*, lib. 2, c. 86.

VACHIVIA. L. Lat. In old records. A dairy. *Cowell.*

VACQUER. L. Fr. To be at leisure. *Kelham.*

VACUUS. Lat. In the civil law. Empty; void; vacant; unoccupied. *Calv. Lex.*

In old practice. Not followed up; not prosecuted. *Fleta*, lib. 5, c. 11, § 4.

VADARI. Lat. In the civil law. To give, or put in bail, or sureties (*vades*) for one's appearance in court. *Calv. Lex.*

To require bail; to hold to bail. *Id.*

VADELECT. In old English law. A servant; a ministerial officer. *Cowell*, voc. *Valet.*

VADERE. Lat. To go. *Contra mentem vadere;* to go against the mind. A phrase applied in the old books to those who knowingly, or intentionally uttered falsehood, or swore falsely. *Se pejerant, quia* contra mentem vadunt; they perjure themselves because they go against their mind or conscience. *Bract.* fol. 288 b.

VADES. Lat. [plur. of *vas*, a pledge.] In the civil law. Pledges; sureties; bail; security for the appearance of a defendant or criminal in court. *Calv. Lex.*

VADIA. L. Lat. In old English law. Wages. *Et tres ob' ad* vadia *trium servientium suorum;* and three farthings for the wages of his three servants. *Fleta*, lib. 2, c. 10.

VADIARE. L. Lat. [from *vadium*, gage.] In old English law. To gage; to wage; to give gage or security. See *infra.*

VADIARE DUELLUM. L. Lat. In old English and Scotch law. To wage or gage the *duellum;* to wage battel; to give pledges mutually for engaging in the trial by combat. *Si autem per corpus suum intret in defensionem, nihil excipiendo, sta-*

tim vadictur *inter eos* duellum; if he go into the defence by his body, making no plea, battel shall immediately be waged or gaged between them. *Bract.* fol. 157. *Reg. Maj.* lib. 4, c. 2. *Skene de Verb. Sign.* See *Vadium, Wager of battel.*

VADIARE LEGEM. L. Lat. In old English law. To wage law; to give gage or security to make one's law at a day assigned. *Glanv.* lib. 1, c. 9. *Spelman*, voc. *Lex. Admissus fuisset ad* vadiandum *et faciendum* legem *suam;* was admitted to wage and make his law. *Reg. Orig.* 116. Vadiata lege, *habebit diem ad faciendam legem;* law being waged, he shall have a day to make law. *Bract.* fol. 156 b. *Fleta*, lib. 2, c. 44, § 2. See *Wager of law.*

VADIATIO. L. Lat. [L. Fr. *gager.*] In old English law. Wager. *Vadiatio duelli;* wager of battel, (q. v.) *Vadiatio legis;* wager of law, (q. v.) 3 *Bl. Com.* 341. *Fleta*, lib. 2, c. 53, § 2.

VADIMONIUM. Lat. In the Roman law. Bail or security; the giving of bail for appearance in court; a recognizance. *Calv. Lex.*

VADIUM. L. Lat. [from Lat. *vades*, (q. v.;) L. Fr. *gage.*] In old English law. Gage; security to do some act, as to engage in the duellum, to appear in court, &c.; security by pledge of property. *Dat appellatus* vadium *se defendendi, et appellator* vadium *disrationandi;* the appellee gives gage to defend himself, and the appellor gage to make good his charge. *Bract.* fol. 137. 3 *Bl. Com.* 341. According to Fleta, the word signifies peace, (*vadium pacem significat.*) *Fleta*, lib. 2, c. 47, § 30.

Per vadium *ponere;* to put by gage; to attach a defendant by taking *gage*, that is, certain of his goods, which he forfeited if he did not appear. 3 *Bl. Com.* 280. *Pone per* vadium *et salvos plegios;* put by gage and safe pledges. *Id. ibid.*

In vadio *exponere;* to put in pledge; to pawn. *Cowell.*

VADIUM MORTUUM. L. Lat. [Fr. *mort gage.*] A dead gage or pledge; a mort gage; a mortgage.

VADIUM, (plur. VADIA.) L. Lat. In old records. Wages; salary, or other reward of service upon compact or covenant. *Cowell.* See *Vadia.*

VADUM. Lat. In old records. A ford, or wading place. *Vadibilis;* fordable. *Cowell.*

VAER. L. Fr. [from Lat. *vadere.*] To go. *Kelham. Va;* goes. *L. Fr. Dict.*

VAGABOND. Fr. and Eng. [from Lat. *vagabundus*, from *vagari*, to wander.] A wandering person; one who habitually goes about from place to place; one who has no settled residence or domicil. *Les* vagabonds *sont les gens sans domicile;* vagabonds are people without a domicile. *Vattel*, liv. 1, c. 19, s. 219. A vagabond is said to be a person who, without travelling in quest of a domicil, has really and truly no certain domicil at all. *Phillimore on Domicil*, 23. See *Vagabundus.*

In English and American law, *vagabond* is always used in a bad sense, denoting one who is without a home; a strolling, idle, worthless person. Vagabonds are described in old English statutes as "such as wake on the night and sleep on the day, and haunt customable taverns and ale-houses, and routs about; and no man wot from whence they came, nor whither they go." 4 *Bl. Com.* 169. Rogues and vagabonds are classed together by statutes 17 Geo. II. c. 5; 5 Geo. IV. c. 83; 1 & 2 Vict. c. 38. 4 *Steph. Com.* 309. In American law, the term *vagrant* is employed in the same sense. See *Vagrant.*

VAGABUNDUS. L. Lat. [from *vagari*, to wander.] In public law. A wandering person; one who has no settled residence. Vagabundum *nuncupamus eum qui nullibi domicilium contraxit habitationis;* we call him a *vagabond* who has nowhere contracted a domicile of residence. *Carpzovius*, tit. 3, art. 1, s. 65. *Phillimore on Domicil*, 23, note.

VAGRANT. A wandering, idle person; a strolling or sturdy beggar. A general term, including, in English law, the several classes of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues. 4 *Steph. Com.* 308, 309.

In New-York, all idle persons who, not having visible means to maintain themselves, live without employment; all persons wandering abroad and lodging in taverns, groceries, beer-houses, out-houses, market-places, sheds or barns, or in the open air, and not giving a good account of themselves; all persons wandering abroad and begging, or who go about from door to door, or place themselves in the streets, highways, passages, or other public places, to beg or receive alms, shall be deemed *vagrants.* 1 *Rev. Stat.* [632,] 640, 641, § 1.

VAGRANT ACT. The English statute of 5 Geo. IV. c. 83. 1 *Chitt. Gen. Pr.* 621.

VAIL. L. Fr. Under. *Kelham.* See *Paravail.*

Vail' q' vail' purr'. A L. Fr. form of the maxim *valeat quantum valere potest. Yearb.* M. 4 Hen. VI. 11.

VAILANCE, *Vaillaunce.* L. Fr. [from *vailer*, q. v.] Value. *A la vaillaunce;* to the value. *Britt.* c. 53. *Fet Assaver*, § 63.

VAILLER. L. Fr. To be worth; to be of the value. *Et la chose ne* vaille *mye doze deners;* and the thing is not worth twelve pence. *Britt.* c. 15.

VAILLE. L. Fr. Sufficient. *Kelham.* Vigil; watch. *Id.*

VAL. L. Fr. Down; downwards; under. See *Vail, Paravail.*

VALE. Span. In Spanish law. A promissory note. *White's New Recop.* b. 3, tit. 7, c. 5, § 3.

Valeat quantum valere potest. It shall have effect as far as it can have effect. A leading maxim in the construction of deeds and other instruments. Expressed at length, **Quando res non valet ut ago, valeat quantum valere potest.** When a thing is of no effect as I do it, it shall have effect as far as it can. Lord Mansfield, C. J. *Cowp.* 600. Or more fully, **Cum quod ago non valet ut ago, valeat quantum valere potest.** When that which I do is of no effect as [or in the particular form in which] I do it, it shall have effect as far as it can. 4 *Kent's Com.* 493. When a deed cannot take effect according to the letter, it will be construed so as it may take some effect or other. *Shep. Touch.* (by Preston,) 87. This maxim has been applied to the effect of a confession of judgment. Van Ness, J. 14 *Johns. R.* 450. It has been applied also to statutes. "Clearly we may say of a statute as much as we do every day of deeds, and other private acts, *valeat quantum valere potest.* Cowen, J. 6 *Hill's* (N. Y.) *R.* 48.

VALECTA, *Valetta, Valettus.* L. Lat. [from Fr. *valet.*] In old English law. A body-servant, or attendant, (*qui heri est à persona;*) a valet. *Spelman. Reg. Orig.* 25 b.

A ward of the crown. *De puellis vel* valettis *qui sunt, vel esse debent, in custodia regis. Fleta*, lib. 1, c. 20, § 14. Translated, in old English, valet, valect and vadelect. *Cowell.*

VALENTIA. L. Lat. [from *valere*, to be worth, to be of value; L. Fr. *vaillance.*] In old English law. Value; worth. *Ad valentiam;* to the value. *Bract.* fol. 315 b. A common phrase in old indictments for larceny. *Cowell.* A distinction was made between *valentia* and *pretium*, (price.) Thus, where the number of the things taken was to be expressed in the indictment, as of young doves in a dove-house, young hawks in a wood, there must be said, *pretii*, (of the price,) or *ad valentiam*, (to the value;) but of divers dead things, *ad valentiam*, and not *pretii. West's Symboleog.* part 2, tit. Indictment, sect. 70. *Cowell.* Fleta uses *valentia* and *valor* in close connection. *Ad* valentiam *veri valoris;* to the worth of the true value. *Fleta*, lib. 3, c. 9, § 4.

VALERE. Lat. To be strong; to have strength, force, effect or validity; to be effectual or operative; to be good or valid in law. *Fleta*, lib. 3, c. 9, § 6. See **Valeat quantum, &c.** *Perinde valere.*

To be of value; to be worth. See *Valentia, Valor.*

VALESHERIA. L. Lat. In old English law. Walleschery, or Welshery; the fact of being a Welshman. See *Wallesheria.*

VALET, *Valect, Vadelect.* In old English law. A servitor or gentlemen of the privy chamber, according to Camden. In the accounts of the Inner Temple, it is used for a bencher's clerk or servant. Cowell calls it a French word.

Anciently, a name specially denoting young gentlemen, though of great descent or quality, but afterwards given to those of the rank of yeomen. *Selden's Tit. of Honour*, 831. See *Stat.* 20 *Ric.* II. st. 1, c. 2. In Borel's Glossary it is said that the word was anciently applied to the king's eldest son. See *Barringt. Obs. Stat.* 344, note [*f.*]

VALOR. Lat. [from *valere*, to be worth.] In old English law. Value; worth; rate; a rate; a valuation. See *infra. Ad valorem*, (q. v.) is a phrase still used.

VALOR BENEFICIORUM. Lat. In English law. A rate or valuation of benefices, or spiritual preferments. 1 *Bl. Com.* 284.

VALOR MARITAGII. L. Lat. In old English law. Value of marriage. *Statute of Merton*, c. 6. If an infant ward of a guardian in chivalry refused a match tendered by the guardian, he or she forfeited

the value of the marriage (*valorem maritagii,*) to the guardian; that is, so much as a jury would assess, or any one would *bonâ fide* give to the guardian for such an alliance. 2 *Bl. Com.* 70. Called, in Scotch law, *avail of marriage. Bell's Dict.*

VALOUR. O. Eng. Value. "Of smal substaunce, and of no valour." *Stat.* 8 *Hen.* VI. c. 7. "To the valoure of fourty shelynges by yere." *Stat.* 10 Hen. VI. c. 2.

VALUABLE CONSIDERATION. A consideration which the law esteems an equivalent for a grant, such as money, marriage, or the like. 2 *Bl. Com.* 297. Marriage is a valuable consideration, but, in order to support a conveyance, it must be prospective, or contemporaneous with the deed. See 2 *Selden's R.* 342, 344.

VALUE RECEIVED. In mercantile law. A phrase usually employed in a bill of exchange or promissory note, to denote that a consideration has been received for it. As to its effect, see *Story on Bills*, §§ 63, 64. "The object of inserting these words is to show that it is not an accommodation bill, but made on a valuable consideration given for it by the payee." Bayley, J. 3 *M. & S.* 353.

VALUED POLICY. In insurance law. A policy expressing the value which has been set on the ship or goods insured, in the nature of liquidated damages.* 3 *Kent's Com.* 272, 273. A policy is *valued*, when the parties, having agreed upon the value of the interest insured, in order to save the necessity of further proof, have inserted the valuation in the policy, in the nature of liquidated damages. 1 *Duer on Ins.* 97. See 1 *Arnould on Ins.* 303, (309, Perkins' ed.)

VALVASINI. L. Lat. In feudal law. A name given to the *valvasores minores. Feud. Lib.* 2, tit. 10.

VALVASOR, *Valvassor, Vavasor, Vavassor.* L. Lat. [from *vassalus*, a vassal, according to some feudists; from *valva*, a door, according to others; from Sax. *wal*, a wall or rampart, according to Spelman, conveying the idea of *guard.*] In feudal and old English law. A principal vassal, not holding immediately of the sovereign, but of those who so held; a vassal of the second degree or rank; or of a rank next to the *capitanei. Feud. Lib.* 1, tit. 7. *Lib.* 2, tit. 10. *Spelman.* They were also designated as *valvasores majores*, to distinguish them from *valvasores minores*, who held under them. *Id.* In the Books of Feuds three degrees are mentioned, *majores*, *minores*, and *minimi. Feud. Lib.* 1, tit. 7, § 1; tit. 14, § 1; tit. 15. The *valvasores minores* were also termed *valvasini. Lib.* 2, tit. 10.

Valvasores, however, was a term sometimes used to denote those who held immediately of the king, (*qui à rege tenent immediate*) or *capitanei*, as they were otherwise called. *Spelman.*

Valvasor is mentioned by Lord Coke and Blackstone as an ancient name or title of dignity in England, next beneath a peer. 2 *Inst.* 667. 1 *Bl. Com.* 403. In Bracton the word is written *vavasor*, (q. v.)

Vana est illa potentia quæ nunquam venit in actum. That power is vain [idle or useless] which never comes into action, [which is never exercised.] 2 *Co.* 51.

Vani timores sunt æstimandi, qui non cadunt in constantem virum. Those are to be regarded as idle fears which do not affect a steady [firm or resolute] man. 7 *Co.* 27. See *Timor.*

VANTARIUS. L. Lat. In old records. A fore-footman. *Spelman. Cowell.*

VARDA. L. Lat. In old Scotch law. Ward; custody; guardianship. Answering to *warda*, in old English law. *Spelman*, quoting *Skene.* It had also the sense of *award*, (Sc. *waird.*) *Skene de Verb. Signif.*

VARECH, *Vraicq.* Fr. In French law. Sea-weed. *Ord. Mar.* liv. 4, tit. 10. Otherwise called *sar* and *goüesmon. Id. ibid.*

VARENNA. L. Lat. In old Scotch law. A warren. Answering to *warenna*, in old English law. *Spelman*, quoting *Skene.*

VARRANTIZATIO. L. Lat. In old Scotch law. Warranty. *Crag. de Jur. Feud.* 152.

VAS. Lat. In the civil law. A pledge; a surety; one who became bail or surety for another in a criminal proceeding or civil action. *Calv. Lex.* The plural *vades*, (q. v.) was more commonly used.

VASALLUS. L. Lat. In feudal law. A vassal; the grantee of a fief; a feudatory. *Feud. Lib.* 1, tit. 26. *Lib.* 2, tit. 2, *et passim.* Skene writes the word, *vassallus.*

VASLETTUS. L. Lat. A valet or ward. *Cowell. Spelman.*

VASSAL. [L. Lat. *vasallus*, *vassallus*, from *vassus*, q. v.] In feudal law. The grantee of a fief, feud or fee; one who held of a superior or lord; a feudal tenant; a

feudatory. 2 *Bl. Com.* 53. 1 *Robertson's Charles* V. Appendix, Note viii. *Esprit des Lois*, liv. 30, c. 16.

VASSAL. In Scotch law. A tenant; one who holds of a superior; the grantee or holder of a feu. 1 *Forbes' Inst.* part 2, p. 110. *Ersk. Pr.* b. 2, tit. 3, § 3.

VASSATICUM. L. Lat. In feudal law. Vassalage; the service of a vassal or tenant; feudal service. *Spelman.*

VASSELERIA. L. Lat. Vassalage; the tenure of vassals. *Cowell.*

VASSUS. L. Lat. [from Welsh *gwâs*, a page, according to Sir F. Palgrave; perhaps from the Lat. *vas*, a pledge.] In feudal and old European law. A feudal tenant, or feudatory; a feudal lord. *Esprit des Lois*, b. 30, c. 16. The following passage illustrates the meaning of this word and of *vassalus*, which is supposed to be derived from it: *De* vassis *dominicis, qui adhuc intra casam serviunt, et tamen beneficia habere noscuntur, statutum est, ut quicunque ex eis cum domino imperatore domi remanserint*, vassalos *suos casatos secum non retineant; sed cum comite cujus pagenses sunt, ire permittant;* concerning the king's servants who still serve within the house [palace,] and yet are known to have benefices, [feudal estates,] it is ordained that as many of them as shall remain at home with the lord the emperor, shall not keep their own house vassals with them, but shall permit them to go with the count whose countrymen they are. *Capitul.* 2, A. D. 812, art. 7, ed. Balus. tom. 1, p. 494. From this it would appear that *vassus* denoted one who held immediately of the king, and *vassallus*, an inferior feudatory, or vassal proper.

VASTITAS. L. Lat. [from *vastum*, q. v.] In old English law. A waste. *Fleta*, lib. 4, c. 22, § 6.

VASTUM. L. Lat. [L. Fr. *gast.*] In old English law. Waste. *Stat. Marlbr.* c. 17. *Item de hoc quod dicit* vastum *et exilium, sciendum quod non sunt referenda ad eundem intellectum, sed* vastum *et destructio fere idem sunt, quia convertibiliter se habent* vastum *et destructio, et* vastum *idem est quod destructio, et è converso, et se habent ad omnem destructionem generaliter;* also, as to this that he says, "waste and exile," it is to be known that the words are not to be referred to the same meaning, but *waste* and destruction are almost the same thing, because *waste* and destruction are convertible, and *waste is the same as destruction*, and *è converso*, and they relate to every kind of destruction generally. *Bract.* fol. 316 b. *Vastum* and *destructio* are both mentioned in Magna Charta, and in the statute of Marlbridge, (c. 17.) *Accedat ad locum* vastatum *et inquirat de* vasto *facto;* he shall go to the place wasted, and inquire of the waste done. *Stat. Westm.* 2, c. 14. *Sine destructione et* vasto *hominum vel rerum;* without destruction and waste of men or of things. *Mag. Cart.* c. 4.

VASTUM. L. Lat. In old records. A waste or common lying open to the cattle of all tenants who have a right of commoning. *Paroch. Antiq.* 171. *Cowell.*

VASTUM FORESTÆ VEL BOSCI. L. Lat. In old records. Waste of a forest or wood. That part of a forest or wood, wherein the trees and underwood were so destroyed that it lay in a manner waste and barren. *Par. Antiq.* 351, 497. *Cowell.*

VAULT. L. Fr. [from *vailer*, to be worth, to be of value or force.] In old English law. Is worth. *Litt.* sect. 251. *Id.* sect. 255. *Ne vault;* it avails not. *Vault riens;* it avails nothing. *Yearb.* 26 Hen. VIII. 4. *Le plee ne vault;* the plea is bad. *Dyer*, 29.

VAVASOR, *Valvasor.* L. Lat. [see *valvasor.*] In old English law. The vassal or tenant of a baron; one who held under a baron, and who had also tenants under him. *Vavassores Roberti Fossard reddunt compotum de Lxiii s. 4d.;* the vavasors of Robert Fossard render an account of 63s. 4d. *Rot. Pip.* de an. 5 *Regis Steph.* Everwicscire. *Et si amodo exurgat placitum de divisione terrarum, si interest barones meos dominicos, tractetur placitum in curiâ meâ; et si est inter* vavassores *istorum dominorum, tractetur in comitatu;* and if a plea [controversy] should arise respecting the division of lands, if it concern my barons, the plea [suit] shall be litigated in my court, and if it be between the vavasors of those lords [barons] it shall be managed in the county court. *Chart. Hen.* I. *apud Spelman*, voc. *Valvasor.*

One who in dignity was next to a baron; a title of dignity next to a baron. *Camd. Brit.* 109. See *Valvasor.* Bracton, in enumerating the various ranks of persons under the king, mentions them in the following order: dukes, counts or earls, barons, magnates or vavasors, and knights,

(*duces, comites, barones, magnates sive* vavasores, *et milites.*) *Bract.* fol. 5 b. And again, immediately after describing barons, as powerful men under the king (*potentes sub rege,*) he proceeds to a description of *vavasors* as men of great dignity, (*viri magnæ dignitatis,*) adding the following etymology of the word: Vavasor *enim nihil melius dici poterit quam* vas sortitus *ad* valetudinem; for a vavasor cannot be better described than a vessel or pledge (*vas*) chosen for strength. *Id. ibid.*

The term *vavasor* first came into use in England after the Conquest, being another form of *valvasor*, which was employed in the feudal law of the continent. *LL. Gul. Conq.* l. 24. See *Valvasor.* As a title of dignity, it occurs as late as the time of Chaucer, but afterwards fell into disuse, and is now wholly antiquated. 1 *Bl. Com.* 403. The etymology of the word given by Bracton seems to present *vas*, (a vessel,) *validus*, (strong,) and *sortitus*, (chosen,) as its constituent elements, which is very different from that given of *valvasor*, (q. v.)

VAVASORY. [L. Lat. *vavasoria.*] In old English law. The fee of a vavasor; a lesser fee than a barony. *Bract.* fol. 93 b. *Fleta*, lib. 5, c. 23, § 14.

VAVASOUR. L. Fr. In old English law. A vavasor. *LL. Gul. Conq.* l. 24. A word used by Chaucer. See *Countor.*

VE. L. Fr. [from *veier*, to see.] Saw; seen. *Kelham.*

VE. L. Fr. [contr. of *vale.*] Worth. *Kelham.*

True, (contr. of *verey.*) *Id.*

VEAGE. L. Fr. A voyage. *Kelham.* See *Viage.*

VECORIN. Lomb. In old Lombardic law. The offence of stopping one on the way, (Germ. wegeren:) forestalling. *Spelman.* The Sax. *withercoren* is translated by Spelman, *rebellis;* rebel, rebellious.

VECTIGAL. Lat. [from *vehere*, to carry.] In the civil law. A custom or impost upon goods brought into, or carried out of a state, (*quod pro rebus civitati* invectis *vel* evectis *publico solvitur.*) *Calv. Lex.*

In a general sense, a tax or tribute of any kind, paid for the use of the state. *Id.* See *Dig.* 50. 16. 17. 1. *Id.* 6. 3. *Id.* 39. 4. See a list or tariff of articles subject to this imposition. *Id.* 39. 4. 16. 7.

VECTURA. L. Lat. [from *vehere*, to carry.] In maritime law. Freight. *Loccen. de Jur. Mar.* lib. 3, c. 6, § 7, *et seq.*

VEE. L. Fr. [from *veer*, to forbid.] In old English law. Refusal; refusal to deliver or return a thing. *Defende tort et force, et la torcenouse detenue, et le* vee *des bestes avaunditz;* defends the wrong and the force, and the wrongful taking, and the wrongful detention, and the refusal of the beasts aforesaid. *Britt.* c. 2. *Respoyne al* vee; answer to the refusal. *Id. ibid.*

VEE DE NAME. L. Fr. [L. Lat. *vetitum namium.*] In old English law. Refusal of a thing distrained; refusal to deliver or return a thing taken as a distress; sometimes translated *withernam*, (q. v.) *Plees de vee de name. Britt.* cc. 19, 20, 103. See *Vetitum namium.*

VEEL. L. Fr. Old. *Veelez viscountz;* old sheriffs. *Kelham.*

VEER. L. Fr. [from Lat. *videre.*] In old English law. To see. *Jesques à taunt que home pusse* veer *les estoilles en la firmament;* until a man may see the stars in the sky. *Britt.* c. 22. Another form of *veier*, (q. v.)

VEER. L. Fr. [from Lat. *vadere.*] In old English law. To go; to proceed. *En evant* veer; to go forward. *Kelham.* Veet *la coroner;* let the coroner go. *Id. Qui il* veet *quite;* that he go quit. *Britt.* c. 68.

VEER. L. Fr. [from Lat. *vetare.*] To forbid; to refuse. See *Vee.*

VEFFETE. L. Fr. In old English law. Widowhood. *Yearb.* T. 1 Edw. II. 18.

VEFUE. L. Fr. Widow; a widow. *Kelham.*

VEIER. L. Fr. [from Lat. *videre.*] To see. *Veit;* sees. *Kelham. Veie;* seen. *Id.*

VEIES, *Veez.* L. Fr. (plur. of *vee.*) Distresses forbidden to be replevied; the refusing to let the owner have his cattle which were distrained. *Kelham.*

VEIF, *Vefve, Vefue.* L. Fr. A widow. *Kelham. Veifuage;* widowhood. *Id.*

VEIGNER, *Veiner.* L. Fr. [from Lat. *venire.*] To come. *Kelham.*

VEISIN. L. Fr. [from Lat. *vicinus.*] A neighbor. *Par les taxacions de ascun de ses bone* veisins; by the taxations, [assessment] of some of his good neighbors. *Britt.* c. 27.

VEJOURS. L. Fr. [from *veier, veoir*, to see; L. Lat. *visores.*] In old English

practice. Viewers; persons sent by the court to take *view* of any place in question, for the better decision of the right. *Cowell.* See *Visores.*

VEL. Lat. Or, (*aut.*) *Calv. Lex.*
And, (*et.*) *Id.*
At least, (*saltem.*) *Id.*
Also, (*etiam.*) *Id.*
When, (*quando.*) *Id.*
As, (*veluti.*) *Id.*

VELABRUM. L. Lat. In old English law. A toll-booth. *Cro. Jac.* 122.

VELITIS JUBEATIS QUIRITES? Lat. Is it your will and pleasure, Romans? The form of proposing a law to the Roman people. *Tayl. Civ. Law*, 155.

VELLE. Lat. In the civil law. To will; to be willing; to consent. *Calv. Lex.*

Velle non creditur qui obsequitur imperio patris vel domini. He is not considered to will, who obeys the command of a father or master. *Dig.* 50. 17. 4. See **Ejus est nolle**, &c.

VENARIA. Lat. [from *venari*, to hunt.] In old English law. Animals set apart for hunting, (*animalia venatui dicata;*) not animals of the forest, but of the field, (*campestria,*) as hares, partridges, &c. *Spelman.*

VENATIO. L. Lat. [from *venari*, to hunt.] In old English law. The chase, or hunt. *Cowell.*

The prey taken in the chase; venison. *De viridi et venatione;* of vert and venison. *Paroch. Antiq.* 73. *Convictus de captione* venationis; convicted of the taking of venison. *Cart. de Forest.* c. 10.

VENDEE. The person to whom a thing is sold; a buyer or purchaser; the correlative of *vendor*, (q. v.)

VENDER, *Vendre.* L. Fr. [from Lat. *vendere*, q. v.] In old English law. To sell; to vend. *Vendu;* sold. *Et* vendu *en fee;* and sold in fee. *Britt.* c. 77.

VENDERE. Lat. In the civil and old English law. To sell; to vend. *Dig.* 18. 1. *Mag. Cart.* 9 Hen. III. c. 32. *Si tibi* vendam *quod tibi accommodavi, aut apud te deposui vel ad firmam vel ad vitam, et si quod ad vitam,* vendo *tibi in feodo;* if I sell to you that which I have loaned to you, or deposited with you either to farm [i. e. for a term of years,] or for life; and if I sell to you in fee, what I have [leased you] for life. *Bract.* fol. 41. *Vendens eandem rem duobus falsarius est;* he who sells the same thing to two persons is a cheat. *Jenk. Cent.* 107.

VENDICARE. Lat. In the civil and old English law. To claim a thing as one's own; to assert a right to a thing. To take a thing as one's own. *Calv. Lex. Ubi flumen mihi abstulit meum prædium per alvei constitutionem, deinde redit ad antiquum alveum, de jure stricto, in prædio quodam* [*quondam*] *meo nihil possum* vendicare, *cedit enim iis qui prope ripam prædia habent.* Where a river, in consequence of the form of its channel, has carried away my land, and afterwards returns to its former channel, in strict law I can claim no right in the land that before was mine, for it belongs to those who have the lands on the bank. *Bract.* fol. 9 b. *Fleta*, lib. 3, c. 2, § 10.

VENDICATIO. Lat. [from *vendicare*, q. v.] In old English law. A claim. *Fleta*, lib. 2, c. 60, § 21.

VENDITÆ. L. Lat. [from *vendere*, to sell.] In old European law. A tax upon things sold in markets and public fairs. *Spelman. Bignonius.*

VENDITIO. Lat. [from *vendere*, to sell.] In the civil law. In a strict sense, sale; the act of selling; the contract of sale, otherwise called *emptio venditio. Inst.* 3. 24. *Dig.* 18. 1. *Calv. Lex.*

In a large sense,—any mode or species of alienation; any contract by which the property or ownership of a thing may be transferred. *Id.*

VENDITIONI EXPONAS. L. Lat. (You expose to sale.) In practice. A judicial writ directed to a sheriff, commanding him to expose to sale goods which he has already taken under an execution. So termed, from the emphatic words of the Latin form. *Reg. Jud.* 33 b. *Cowell.* It properly issues on a return made by the sheriff to a *fieri facias*, that he has taken goods which remain in his hands *unsold for want of buyers.* 2 *Tidd's Pr.* 1020.

VENDITOR. Lat. [from *vendere*, to sell.] In civil and old English law. A seller; a vendor. *Inst.* 3. 24. *Cod.* 4. 54. *Bract.* fol. 41.

VENDITOR REGIS. L. Lat. In old English law. The king's seller or salesman; the person who exposed to sale those goods and chattels which were seized or distrained to answer any debt due to the king. *Cowell.*

VENDITRIX. Lat. In the civil law. A female vendor. *Cod.* 4. 51. 3.

VENDOR. [Lat. *venditor.*] A seller;

the person who sells a thing; the correlative of *vendee.*

VENDOR'S LIEN. An equitable lien allowed the vendor of land upon the land sold, for the purchase money.* *Miller's Equit. Mortg.* 4—6. 4 *Kent's Com.* 151, 152. The doctrine of a *vendor's lien*, in its general statement, is, that the vendor of land, if he has taken no security, although he has made an absolute conveyance by deed, with a formal acknowledgment in the deed or on the back of it, that the consideration has been paid, yet retains an equitable lien for the purchase money, unless there be an express or implied waiver and discharge of it; and this lien will be enforced in equity against the vendee, volunteers, and all others claiming under him with notice; that is, against all persons except *bonâ fide* purchasers without notice. 1 *White's Eq. Cas.* 222, Am. ed. note, citing 9 *Cowen's R.* 316, 318. 2 *Rand. R.* 428, 429. 3 *Bibb's R.* 183, 184. 6 *B. Monroe's R.* 74, 75. 5 *Ohio R.* 35, 39. 6 *Yerger's R.* 50. 4 *Blackford's R.* 339, 340. 4 *Scammon's R.* 148, 151. 5 *Alabama R.* 363, 364. 1 *Smedes & Marsh. R.* 197, 206. 4 *Missouri R.* 253. The doctrine, as laid down in the words of Lord Eldon, in the leading case of Mackreth *v.* Symmons, (15 *Ves. Jun.* 329,) is, that "where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt endorsed upon the back, if it is the simple case of a conveyance, the money or part of it not being paid, as between the vendor and the vendee and persons claiming as volunteers, upon the doctrine of this court, which, when it is settled, has the effect of contract, though perhaps no actual contract has taken place, *a lien shall prevail;* in the one case, for the whole consideration, in the other, for that part of the money which was not paid." The principle of the doctrine is thus expressed by the same judge, in the case last referred to: "that *a person having got the estate of another, shall not, as between them, keep it and not pay the consideration;* and there is no doubt that a third person, having full knowledge that the other got the estate without payment, cannot maintain that, though a court of equity will not permit him to keep it, he may give it to another person without payment."

The doctrine of a *vendor's equitable lien* for unpaid purchase-money, upon an absolute conveyance of land, has been adopted in the states of New-York, Maryland, Virginia, Tennessee, Mississippi, Georgia, Alabama, Missouri, Illinois, Indiana, Ohio and Kentucky, and has been recognized in the Circuit and Supreme Courts of the United States. 1 *Mason's R.* 192, 212. 4 *Wheaton's R.* 256. 7 *Id.* 46. In some other states, as Pennsylvania, North Carolina, South Carolina and Massachusetts, it has either been rejected, or never recognized. In Connecticut, Vermont and Delaware, its existence remains undecided and doubtful. See 1 *White's Equity Cases*, 222, Am. ed. note, and the cases there cited.

VENELLA. L. Lat. [from *venire*, to go or pass.] In old English law. A narrow way or passage; a lane. *In viis et* venellis *villæ prædictæ;* in the streets and lanes of the said town. *Reg. Orig.* 267 b. *Spelman.*

VENEOUR. L. Fr. [Lat. *venator.*] A hunter. *Kelham.*

VENER. L. Fr. [from Lat. *venire*, q. v.] In old English law. To come; to appear. Vener *en sa court;* to come, or appear in his court. *Britt.* c. 27. *Vendra;* shall come. *Vent;* comes. *Kelham. Come les parties* viendrount *en court;* when the parties shall have come or appeared in court. *Britt.* c. 91.

VENESON. L. Fr. In old English law. Venison; deer; animals of the chase. *Britt.* c. 21. See *Venison.*

VENIA. Lat. Pardon; forgiveness; indulgence. **Veniæ facilitas incentivum est delinquendi.** Facility of pardon is an incentive to crime. 3 *Inst.* 236.

In the civil law. Favor; privilege; courtesy; permission. *Calv. Lex.* See *Venia ætatis.*

VENIA ÆTATIS. Lat. In the civil law. The privilege of age. A privilege granted to a person not of age, by the prince or sovereign, whereby the party is entitled to act, and to have all the powers to act, as if he were of full age. *Calv. Lex. Cod.* 2. 45. *Vicat. Vocab. Story's Confl. Laws*, § 60, note. This grant does not, except in special cases, include the power of disposing of real property, but it confers all the other privileges of majority, and prevents the minor from being relieved against acts done by him after he has obtained it. *Macpherson on Infants*, 576. Grants of this kind, called *lettres de bene-*

fice d'age, were known to most of the old French *coûtumes*. *Id. ibid.*

The *venia ætatis* is known to the Spanish and Roman Dutch law; but its grant depends upon the conduct and discretion of the minor. *Id. ibid.*

VENIAUNCE.* L. Fr. In old English law. Vengeance; revenge; an avenging. *Suer* veniaunce *de la mort par appel de felonie;* to sue or prosecute vengeance for the death, by an appeal of felony. *Britt.* c. 1. See *Id.* c. 23.

VENIRE. Lat. In the civil and old English law. To come; to appear; to appear in court, (*comparere in judicio.*) *Calv. Lex. Fleta*, lib. 2, c. 64, § 2. See *Venit.*

To arrive, as a time or day. *Dig.* 50. 16. 213.

To come to, or into; to enter upon, (*adire, accedere, ingredi.*) *Calv. Lex.*

To become subject to. *Id. Venire in crimen;* to be accused of a crime. *Id.*

VENIRE. Lat. (To come.) In practice. The name of a writ by which a jury is summoned. Otherwise termed a *venire facias*, (q. v.)

VENIRE FACIAS. L. Lat. (You cause to come.) In practice. A judicial writ, directed to the sheriff of the county in which a cause is to be tried, commanding him that he *cause to come* before the court, on a certain day therein mentioned, twelve good and lawful men of the body of his county, qualified according to law, by whom the truth of the matter may be the better known, and who are in no wise of kin either to the plaintiff or to the defendant, to make a jury of the country between the parties in the action, because as well the plaintiff as the defendant, between whom the matter in variance is, have put themselves upon the jury; and that he return the names of the jurors, &c. 2 *Tidd's Pr.* 777, 778. 3 *Bl. Com.* 352. So termed from the emphatic words of the Latin form: *Præcipimus tibi quod* venire facias *coram justitiariis nostris apud Westmonasterium, à die, &c. duodecim, &c.* We command you that you cause to come before our justices at Westminster, on the day, &c. twelve, &c. *Reg. Jud.* 7, 30 b.

In English practice, though the *venire facias* is always sued out, it is not used; it being the practice of the court to suppose that the jurors have been summoned upon it, and have failed to appear; and upon this fictitious default another writ called a *distringas* is awarded on the record, which is accordingly issued at the same time with the *venire*, and under which the jury are in fact summoned to try the cause. *Steph. Plead.* 80. See *Distringas juratores.*

In the United States, the *venire* has been generally adopted, though in some states it has been dispensed with, except in special cases. 2 *N. Y. Rev. St.* [410,] 331, § 9.

The *venire facias* is a very ancient writ, and was formerly used in England for a great variety of purposes. Bracton mentions a writ of this kind issued to the sheriff to inquire whether a certain grantor of lands was of sound mind, and otherwise of capacity to convey, on the day of the grant. *Bract.* fol. 14 b. Many special writs of *venire* are contained in the Register, but these have long been disused. *Reg. Jud.* tabula.

VENIRE FACIAS DE NOVO. L. Lat. (You cause to come anew.) In practice. A second writ of *venire*, to summon another jury for a new trial, commonly called a *venire de novo.* This is the old common law mode of proceeding to a second trial, and differs materially from the granting a new trial, inasmuch as the *venire de novo* is awarded for some defect appearing upon the face of the record, a new trial is granted for matter entirely extrinsic. 2 *Arch. Pr.* 261.

A new *venire*, issued in certain cases where a cause has not been tried. 1 *Arch. Pr.* 183.

VENISON, *Veneson.* L. Fr. and Eng. [from *venatio*, prey taken in hunting.] In English law. Animals of the chase, particularly deer.* 3 *Bl. Com.* 71. See *Vert.*

VENIT. Lat. [from *venire*, q. v.] In old pleading. Comes. The word which expressed the appearance of a defendant in court. See *Venit et defendit, Comes and defends.*

VENIT ET DEFENDIT. L. Lat. In old pleading. Comes and defends. The proper words of appearance and defence in an action. 1 *Ld. Raym.* 117. *Venit et defendit vim et injuriam;* comes and defends the force and injury. 2 *Show.* 443. Venit et defendit *omnem feloniam, et pacem domini regis infractam;* comes and defends all the felony, and breach of the king's peace. *Bract.* fol. 138 b. See *Fleta*, lib. 4, c. 16, § 6.

VENIT ET DICIT. L. Lat. In old pleading. Comes and says. *Yearb.* M. 1 Edw. II. 2. 2 *Salk.* 544.

VENKU. L. Fr. In old English law. Vanquished; overcome in judicial combat. *Et si le defendaunt soit* venku, *si soit le jugement tiel, que il soit treyne et pendu, et autrement tormente à la mort à nostre volounte;* and if the defendant be overcome, the judgment shall be such, that he be drawn and hanged, and otherwise tormented to death at our pleasure. *Britt.* c. 22.

VENTE. Fr. [from *vendre*, to sell.] In old English law. Sale. *De wast, et de* vente *et destruccion;* of waste, and of sale, and destruction. *Britt.* c. 26. *Destruccion de tenements, exil de villeyns, ou* vente *des terres. Id.* c. 66.

VENTER. Lat. The belly, or womb, (*uterus muliebris.*)

In the civil and old English law. A pregnant woman; a mother; a wife. *Dig.* 25. 4. *Id.* 37. 9. *Calv. Lex.* **Partus sequitur ventrem,** (q. v.) "If a man hath issue two sons by divers *venters.*" *Litt.* sect. 6. "If a man hath issue a son and a daughter by one *venter*, and a son by another *venter*, and the son of the first *venter* purchase lands," &c. *Id.* sect. 7.

An unborn child. *Dig.* 25. 5. *Id.* 25. 6. *Id.* 37. 9. *Tayl. Civ. Law*, 248. *Fleta*, lib. 6, c. 23, § 20.

VENTRICES. L. Lat. In old English law. Fanners of threshed grain. *Fleta*, lib. 2, c. 82, § 2.

VENTRITICUM. See *Molendinum.*

VENUE, *Visne.* L. Fr. and Eng. [from L. Lat. *visnetum*, neighborhood.] In pleading and practice. A neighborhood; the neighborhood, place or county in which an injury is declared to have been done, or fact declared to have happened. 3 *Bl. Com.* 294. *Steph. Pl.* 280.

The statement in a declaration, of the county in which a fact happened. To "lay a *venue*," is to allege a place. *Id.* 281, 283.

A jury summoned from a particular county or place. "The *venue* was to come from Oxford." *Id. ibid.*

The county in which an action is intended to be tried, and from the body of which the jurors who are to try it are summoned. "To change the *venue*," is to direct the trial to be had in a different county from that where the venue is laid. 1 *Tidd's Pr.* 602, *et seq.*

*** The term *venue* is particularly applied in pleading, to the statement of the county in the *margin* of the declaration, in its commencement. It was also applied in England, until recently, to the statement in the *body* of pleadings, of a place at which each traversable fact alleged happened; the rule, as technically expressed, being that every material and traversable allegation should be *laid with a venue. Steph. Pl.* 281. But by Reg. Gen. of Hil. Term, 4 Will. IV. it was provided that no venue should be stated in the body of the declaration, or in any subsequent pleading. *Id.* 287.

The original and proper form of this word seems to have been *visne*, being that in which it occurs in the oldest reports. *Le brefe de faire venir les* 24, *fuit del* visne *de Loundres, et nemy del* visne *de Friday strete;* the writ to cause the twenty-four to come [the *venire* for the 24 jurors] was of the *visne* of London, and not of the *visne* of Friday street. *Year Book*, M. 18 Edw. II. 827. See *Year Book*, P. 12 Ric. II. 641. *Visne* is used for *venue* as late as 1630. *Trye's Jus. Filiz.* 231. The L. Lat. *visnetum*, used by Bracton, closely corresponds with this form of the word. See *Visnetum. Visinetus* (q. v.) is used in the Register. *Reg. Orig.* 33. *Venew* is an old form given in Cowell and Blount. *Venue* seems properly to denote *a coming* (from *vener*, to come,) and is so used in the statute of Westminster 1. See *infra.*

VENUE. L. Fr. [from *vener*, to come.] In old English law. A coming; a resorting or resort. *Per le* venue *des graunds gents;* by the resort of great men. *Stat. Westm.* 1, c. 1.

VER. The old Scotch form of the Sax. *were. Skene ad Reg. Maj.* lib. 3, c. 19. *Spelman.*

VERBA. Lat. (plur. of *verbum*, q. v.) Words. **Verba artis ex arte.** Words of art [are to be taken] according to art. If technical terms are employed in a contract, they are to be taken in a technical sense. 2 *Kent's Com.* 556, note.

Verba accipienda ut sortientur effectum. Words are to be taken [so as] that they may have effect. *Bacon's Arg.* Jurisd. of Marches, *Works*, iv. 258.

Verba æquivoca, ac in dubio sensu posita, intelliguntur digniori et potentiori sensu. Equivocal words, and such as are put in a doubtful sense, are [to be] understood in the more worthy and effectual sense. 6 *Co.* 20 a, *Gregory's case.* Thus, where "the feast of St. Michael" is spoken of, if there are two feasts, it shall be intended of

the most worthy and notorious feast. *Year Book*, 20 Hen. VI. 17. So if mention be made of "J. S." generally, it shall be intended of the father, or of the eldest son, for they are the most worthy. *Year Book*, 37 Hen. VI. 29 b. 21 Hen. VI. 8, 13 Hen. IV. 4 b. So where "any court of the queen, of record," is spoken of, it shall be intended "one of the four eminent and excellent courts at Westminster." 6 *Co.* 19 b.

Verba aliquid operari debent. Words ought to work or operate somewhat; words ought to have some operation or effect.* "Words are so to be understood that they work somewhat, and be not idle and frivolous." *Bacon's Max.* 18, in reg. 3. See **Verba cum effectu, &c.** Mr. Duer refers to Rutherford, (vol. 2, 312,) as furnishing an admirable illustration of this rule, in its application to a supposed bequest. A testator devises all his plate, with the exception of 1,000 ounces, to his eldest son, and directs him, within a certain time after his decease, to deliver the 1,000 ounces to his younger son, of such sort, and in such pieces *as he pleases*. The words "as he pleases," may be referred to either son; but apply them to the elder and they are useless, since without them he would have all the discretion they purport to give; but apply them to the younger, and they are rendered effectual, by conferring on him a valuable privilege that otherwise he could not have claimed. 1 *Duer on Ins.* 216.

Verba fortius accipiuntur contra proferentem. Words are to be taken most strongly against him who uses them. *Bacon's Max.* 11, reg. 3. "This rule," observes Lord Bacon, "that a man's deeds and his words shall be taken strongliest against himself, though it be one of the most common grounds of the law, is, notwithstanding, a rule drawn out of the depth of reason; for first, it is a schoolmaster of wisdom and diligence in making men watchful in their own business; next, it is author of much quiet and certainty, and that in two sorts: first, because it favoureth acts and conveyances executed, taking them still beneficially for the grantees and possessors; and secondly, because it makes an end of many questions and doubts about construction of words; for if the labour were only to pick out the intention of the parties, every judge would have a several sense, whereas this rule doth give them a sway to take the law more certainly one way." *Id. ibid.*

This maxim seems to have been purposely given by Lord Bacon in its most general terms; and is so quoted by Blackstone. 2 *Bl. Com.* 280. Lord Coke confines it to written instruments, or *charters*, and the maxim is generally quoted after him, **Verba chartarum fortius accipiuntur contra proferentem.** The words of charters [deeds or written instruments,] are taken most strongly against him who uses them. *Co. Litt.* 36 a. 13 *East*, 80. *Broom's Max.* 254, [456.] It is applied in the construction of pleadings, as well as of conveyances and contracts. *Id.* 254—258, [461—464.] Being, however, a rule of some strictness and rigor, it is, according to Bacon, "the last to be resorted to, and is never to be relied upon but where all other rules of exposition of words fail; and if any other come in place, this giveth place." *Bac. Max.* 16. 2 *Bl. Com.* 380. See 1 *Duer on Ins.* 210, 211.

Verba cum effectu sunt accipienda. Words are to be taken with effect, or so as to have effect. *Bacon's Max.* 18, in reg. 3. This maxim is derived from the civil law. *Calv. Lex.* See **Verba aliquid operari debent.**

Verba debent intelligi ut aliquid operentur. Words ought to be understood so as to have some operation. 8 *Co.* 94 a, *Edward Fox's case.*

Verba dicta de persona intelligi debent de conditione personæ. Words spoken of a person are to be understood of the condition of the person. 2 *Roll. R.* 72.

Verba generalia generaliter sunt intelligenda. General words are to be understood generally. 3 *Inst.* 76. That which is generally spoken shall be generally understood, unless qualified by some special subsequent words. *Shep. Touch.* 88. *Co. Litt.* 42 a. But see the following maxim.

Verba generalia restringuntur ad habilitatem rei vel personæ. General words are to be restricted to the capacity of the thing or person, [of which they are spoken.] "All words, whether they be in deeds or statutes, or otherwise, if they be general and not express and precise, shall be restrained to the fitness of the matter or person. As if I grant common *in omnibus terris meis* [in all my lands] in D. and I have in D. both open grounds, and several, [enclosed,] it shall not be stretched to common in my several, much less in my gardens and orchards. *Perk.* pl. 103. So, if I grant to a man *omnes arbores meas cres-*

centes super terras meas in D. [all my trees growing upon my lands in D.] he shall not have apple trees or other fruit trees growing in my gardens or orchards, if there be any other trees upon my ground. 14 *Hen.* VIII. 2. So, if I grant to J. S. an annuity of x. *l.* a year, *pro consilio impenso et impendendo*, [for his counsel given and to be given,] if J. S. be a physician, it shall be understood of his counsel in physic; and if he be a lawyer, of his counsel in law. 41 *Edw.* III. 6, 19. So, if I do let a tenement to J. S. near by my dwelling-house in a borough, provided that he shall not erect or use any shop in the same without my license, and afterwards I license him to erect a shop, and J. S. is then a miller, he shall not, by virtue of these general words, erect a joiner's shop." *Bacon's Max.* 50, 51, reg. 10. See, for other illustrations, *Broom's Max.* 275—278, [501—505.] This is a maxim of the civil law, as Lord Bacon mentions in another passage. "It is a rule that general words shall never be stretched too far in intendment, which the civilians utter thus: **Verba generalia restringuntur ad habilitatem personæ vel ad aptitudinem rei.**" *Bacon's Max.* 17, in reg. 3.

Verba in differenti materia per prius, non per posterius, intelligenda sunt. Words on a different subject are to be understood by what precedes, not by what comes after. A maxim of the civil law. *Calv. Lex. Spiegelius.*

Verba intelligenda sunt in casu possibili. Words are to be understood in [of] a possible case. A maxim of the civil law. *Calv. Lex. Accursius in Inst.* 3. 14, De obligationibus, § 1.

Verba intentioni, et non e contra, debent inservire. The words [of an instrument] ought to subserve the intention of the party, and not the reverse, [i. e. the intention, the words.] 8 *Co.* 94 a, *Edward Fox's case.* One of the most ancient and important maxims of construction of deeds as well as wills. 1 *Spence's Chancery*, 527. The construction should be as near to the minds and apparent intents of the parties, as possible it may be, and law will permit. *Shep. Touch.* 86. Otherwise more briefly expressed, **Verba intentioni debent inservire.** 2 *Bl. Com.* 379. 2 *Kent's Com.* 555. The mutual intention of the parties to the instrument is the great, and sometimes the difficult object of inquiry, when the terms of it are not free from ambiguity. To reach and carry that intention into effect, the law, when it becomes necessary, will control even the literal terms of the contract, if they manifestly contravene the purpose; and many cases are given in the books, in which the plain intent has prevailed over the strict letter of the contract. *Id.* 554, and note.

Verba ita sunt intelligenda, ut res magis valeat quam pereat. The words [of an instrument] are to be so understood, that the subject matter may rather be of force than perish, [rather be preserved than destroyed, or, in other words, that the instrument may have effect, if possible.] *Bacon's Max.* 17, in reg. 3. *Plowd.* 156. 2 *Bl. Com.* 380. 2 *Kent's Com.* 555. A leading maxim of construction, very commonly expressed by its latter clause, **Ut res magis valeat quam pereat,** (q. v.) and sometimes still more briefly, **Ut res valeat.**

Verba mere æquivoca, si per communem usum loquendi in intellectu certo sumuntur, talis intellectus præferendus est. [In the case of] words merely equivocal, if they are taken by the common usage of speech in a certain sense, such sense is to be preferred. A maxim of the civil law. *Calv. Lex. Zasius. Prateus.*

Verba nihil operari melius est quam absurde. It is better that words should have no operation at all, than [that they should operate] absurdly. A maxim of the civil law. *Calv. Lex. Baldus. Oldendorpius.*

Verba non tam intuenda, quam causa et natura rei, ut mens contrahentium ex eis potius quam ex verbis appareat. The words [of a contract] are not so much to be looked at, as the cause and nature of the thing [which is the subject of it,] in order that the intention of the contracting parties may appear rather from them than from the words. A maxim of the civilians. *Calv. Lex. Baldus. Oldendorpius. Prateus.*

Verba offendi possunt, imo ab eis recedere licet, ut verba ad sanum intellectum reducantur. Words may be opposed [taken in a contrary sense,] nay, we may disregard them altogether, in order that the [general] words [of an instrument] may be restored to a sound meaning. A maxim of the civilians. *Calv. Lex. Spiegelius. Prateus.*

Verba ordinationis quando verificari possunt in sua vera significatione, trahi ad extraneum intellectum non debent. When the words of an ordinance can be carried into effect in their own true meaning, they ought not to be drawn to a foreign intend-

ment. A maxim of the civilians. *Calv. Lex. Spiegelius.*

Verba posteriora propter certitudinem addita, ad priora quæ certitudine indigent, sunt referenda. Subsequent words, added for the purpose of certainty, are to be referred to the preceding words which require the certainty. *Wingate's Max.* 167, max. 53. *Broom's Max.* 253, [449.]

Verba pro re et subjecta materia accipi debent. Words ought to be understood in favor of the thing and subject matter. A maxim of the civilians. *Calv. Lex. Baldus. Prateus.*

Verba quantumvis generalia, ad aptitudinem restringuntur, etiamsi nullam aliam paterentur restrictionem. Words, however general they may be, are restrained for the purpose of adaptation, even though they may admit of no other kind of restriction. A maxim of the civilians. *Zasius. Spiegelius. Prateus.*

Verba quæ aliquid operari possunt non debent esse superflua. Words which can have any kind of operation, ought not to be considered superfluous. *Calv. Lex. Spiegelius. Prateus.*

Verba relata hoc maxime operantur per referentiam, ut in eis inesse videntur. Related words [words connected with others by reference] have this particular operation by the reference, that they are considered as being inserted in those [clauses which refer to them.] *Co. Litt.* 9 b, 359 a. Lord Ellenborough, C. J. 14 *East*, 568. Words to which reference is made in an instrument, have the same effect and operation as if they were inserted in the clauses referring to them. *Broom's Max.* 288, [521.] Lord Coke gives the following illustration of this maxim: "If a father enfeoff a son, to have and to hold to him and to his heirs, and the son enfeoffs the father as fully as the father enfeoffed him, by this the father hath a fee simple." *Co. Litt.* 9 b. It is sometimes more briefly expressed, **Verba relata inesse videntur.** Tindal, C. J. 4 *Man. & Gr.* 4. Heath, J. 5 *Taunt.* 337. Lord Ellenborough, C. J. 6 *M. & S.* 212.

Verba secundum materiam subjectam intelligi nemo est qui nesciat. There is no one who does not know that words are to be understood according to their subject matter. *Calv. Lex. Baldus. Spiegelius.*

Verba semper accipienda sunt in mitiori sensu. Words are always to be taken in the milder sense. 4 *Co.* 13 a. An old maxim in the law of slander, now exploded. See *Mitior sensus.*

Verba strictæ significationis ad latam extendi possunt, si subsit ratio. Words of a strict or narrow signification may be extended to a broad meaning, if there be ground in reason for it. A maxim of the civilians. *Calv. Lex. Spiegelius. Prateus.*

Verba sunt indices animi. Words are the indices or indicators of the mind or thought; words are the exponents of intention. *Latch*, 106. See **Index animi sermo.**

VERBA CANCELLARIÆ. L. Lat. Words of the chancery. The technical style of writs framed in the office of chancery. *Fleta*, lib. 4, c. 10, § 3.

VERBA PRECARIA. Lat. In the civil law. Precatory words; words of prayer or entreaty; words of trust, or used to create a trust, (*verba fidei-commissaria.*) Such as *peto*, (I beg;) *rogo*, (I ask;) *volo*, (I will;) *mando*, (I commend.) Also *deprecor*, (I entreat;) *cupio*, (I desire;) *injungo*, (I enjoin;) *desidero*, (I desire.) *Calv. Lex.* The most common words of trust were *peto, rogo, volo, mando, fidei tuæ committo. Inst.* 2. 24. 3.

VERBAL CONTRACTS. In the civil law. Contracts in which, besides the consent of the parties, a solemn form of *words* was required to perfect the obligation. *Hallifax, Anal.* b. 2, c. 16, num. 1. They were chiefly two; *stipulation* and *fidejussion. Id. ibid.* See *Inst.* 3. 16, *De verborum obligationibus.*

VERBERA. Lat. In old English law. Blows; beatings. *Fleta*, lib. 2, c. 53, § 1.

VERBERARE. Lat. In the civil law. To beat, so as to cause pain, (*cum dolore cædere.*) *Calv. Lex.* Distinguished from *pulsare*, (q. v.)

VERBUM. Lat. [from *verum*, true.] A word; an expression, or saying; a clause. *Calv. Lex. Verborum ordo;* the order of words; the orderly arrangement of words in writs. *Fleta*, lib. 4, c. 10, § 3.

VERD. [from Lat. *viridis*, green.] In forest law. The privilege of cutting green wood within a forest for fuel. *Spelman.* Called, also, *greenhew*, (q. v.)

The right of pasturing animals in the forest, otherwise called *herbage. Id.* See *Skene de Verb. Signif.*

VERDEROR. [L. Lat. *viridarius;* Fr. *verdeur*, from *verd*, or *vert*, q. v.] In forest law. An officer of the forest, sworn to maintain and keep the assises of the forest, and to view, receive and enrol the attachments and presentments of all manner of trespasses of vert and venison in the forest.

Manwood, part 1, p. 332. His office is properly to look to the *vert*, and see it well maintained. *Cromp. Jur.* 165. *Cowell.* The verderors sit in the courts of attachments and swein-mote. 3 *Bl. Com.* 71, 72.

VERDICT. [Lat. *veredictum*, from *vere*, truly, and *dictum*, said; or *veritas*, truth, and *dictum*, a saying; L. Fr. *verdit*, *verdist.*] In practice. Literally, a saying or declaration of the truth, (*veritatis dictum.*) The opinion declared by a jury as to the *truth* of matters of fact submitted to them for trial. The determination of a jury upon the matters of fact in issue in a cause, after hearing the case, the evidence, and the charge of the court. The finding of a jury in favor of one or the other party to an action at law, with such damages (in case of a finding for the plaintiff,) as they consider him entitled to. See 3 *Bl. Com.* 375—378.

Cowell defines a verdict to be "the *answer* of a jury made upon any cause, civil or criminal, committed by the court to their examination." This is literally true of the verdict in criminal cases, which is in terms of exact *response* to a question; the question submitted to the jury being in effect, "Is the party accused guilty or not guilty?" the answer or verdict,—"guilty," or "not guilty." In civil cases, a verdict, though substantially an answer, also, is in its form a *report*, or, in technical language, a "*finding*;" its language being,—"We *find* for the plaintiff (so much) damages," or "We *find* for the defendant." See *Finding.*

*** The derivation and component elements of this word may be very satisfactorily illustrated by a reference to the practice in trials by jury, as laid down in the oldest books. The oath of a juror, on the trial of assises, is given by Bracton in the following terms: *Hoc auditis justitiarii, quod* VERITATEM DICAM *de assisa ista, &c. et pro nihilo omittam quin* VERITATEM DICAM, *sic me Deus adjuvet, et hæc sancta.* Hear this, ye justices, that *I will say the truth* of this assise, &c. and for nothing will I omit *to say the truth.* So help me God, and these holy [gospels.] *Bract.* fol. 185. See *Fleta*, lib. 4, c. 9, § 1. The words of the oath in the parallel passage of Britton are as follows: *Ceo oyes vous justices, que jeo* VERITE DIRRAY *de ceste assise, &c. et pur rienz ne lerray que jeo* VERITE DIRRAY, *si Dieu moy eyde et les seyntz. Britt.* c. 52. The oath of a juror, corresponding to the modern grand juror, is given by Bracton in the following words: *Hoc audite justitiarii, quod ego* VERITATEM DICAM *de hoc quod à me interrogabitis ex parte domini Regis, et fideliter faciam id quod mihi præcipietis ex parte domini Regis, et pro aliquo non omittam quin ita faciam pro posse meo, sic me Deus adjuvet et hæc sancta Dei evangelia.* Hear this, ye justices, that *I will say the truth* of that which ye shall ask of me on behalf of the lord the king, and I will faithfully do that which ye shall give in charge to me in behalf of the lord the king, and for any thing will I not omit so doing, as far as I am able. So help me God, and these holy gospels of God. *Bract.* fol. 116. The emphatic words of these oaths,—*veritatem dicam*,—*verite dirray*, clearly show the composition of the Latin *veredictum*, and French *verdit*, (used by the writers above quoted,) from which the English *verdict* is formed; the word, in fact, being essentially French. See *Verdit.* In stating the practice on the trials of assises, Bracton proceeds to say, that the jurors having made the oath, should retire to some private place, and there deliberate among themselves upon the matter given them in charge; and that no person should have access to, nor speech with them, until they had declared their verdict, (*donec suum dixerunt* veredictum;) nor should they themselves, by sign or word, communicate to any one what they intended to say. And he then adds: "*Contingit etiam multotiens quod juratores* IN VERITATE DICENDA *sunt sibi contrarii, ita quod in unam declinare non possunt sententiam;*" it happens also very frequently that the jurors *in saying the truth*, [this is the literal meaning,—in modern phraseology, "in declaring their verdict,"] are of different minds, so that they cannot settle into one opinion. *Bract.* fol. 185 b. See *Fleta*, lib. 5, c. 12, § 2. *Truth*, then, was, at this early period of practice, of the essence of a *verdict*, in the grammatical sense of the term. The juror's oath was "to say the *truth*;"—his verdict, "the saying of the *truth.*" The modern expression "a true verdict" would have then been a pleonasm; a false verdict would have been an absurdity in terms. Hence, where the finding of a jury is mentioned by Bracton, as subject to be termed true or false, the simple word *dictum* is constantly used. If true, it was termed *verum dictum*, or verdict proper; if false, *falsum dictum*, a false saying. *Bract.* fol. 186. See *Fleta*, lib. 4, c. 17, § 9. The jurors were said, *verita-*

tem dicere, to say the truth, and *mendacium dicere*, to say a falsehood, according to the case. *Bract.* fol. 185 b. *Veredictum*, in other words, was never applied to a false finding; a false verdict was no verdict at all. The great rule, in fine, applied by Bracton to a juror's oath was: **Veritas habenda est in juratore, justitia et judicium in judice.** *Id.* 186 b.

Dictum, it may be further observed, is frequently used by the writer last named, as the equivalent of *veredictum*. *Cum autem, post sacramentum suum, dixerint* veredictum *suum, sive pro una parte sive pro alia, secundum eorum* dictum *proferetur judicium*. *Bract.* fol. 185 b. The finding of the jury was also sometimes termed *judicium*, (a judgment;) though as a general rule, judgment was the province of the court. See *Id.* fol. 186 b.

VERDIST, *Vereduist.* L. Fr. In old English law. Verdict. *Et solonc le* verdist *du pays sur ceo charge, soient juges;* and according to the verdict of the country upon this charge, they shall be judged. *Britt.* c. 22. *Et solonc le* verdist, *se face le jugement;* and according to the verdict, shall the judgment be. *Id.* c. 68. The more common form of this word was *verdit*, (q. v.)

VERDIT. L. Fr. [from *ver*, true, and *dit*, a saying.] In old English law. Verdict; a *declaration* by a jury of the *truth* of a matter in issue, submitted to them for trial. *Come ilz serrount de un accord, tauntost voysent à la barre devaunt les justices, à doner lour* verdit; *et solonc lour* verdit *soit jugement rendu pour un des parties;* as soon as they [the jurors] shall be of one accord, they shall go to the bar, before the justices, to give their verdict, and according to their verdict shall judgment be rendered for one of the parties. *Britt.* c. 53. The English "verdict" seems to be immediately derived from this word.

VEREBOT. Sax. In old records. A packet boat, or transport vessel. *Cowell.*

VEREDI. Lat. In the civil and old European law. Public post horses. *Cod.* 12. 51. 4, 7, 12, 13, 15. *Calv. Lex.* See *Paraveredus.*

VEREDICTUM. L. Lat. [from *verè*, truly, or *verus*, true, and *dictum*, a saying.] In old English law. A verdict; a declaration of the truth of a matter in issue, submitted to a jury for trial. *Statim dicatur eis, quod de quolibet capitulo, separatim et per se, sufficienter, distincte, et aperte respondeant in* veredicto *suo;* it shall be immediately said to them, that to every article, separately and by itself, they shall make a sufficient, distinct, and open answer in their verdict. *Bract.* fol. 116. *Fleta*, lib. 4, c. 9. *Id.* lib. 5, c. 12. See *Verdict.*

VERECTUM. L. Lat. In old English law. Fallow-ground. *Domesday. Cowell.* See *Warectum.*

VEREK. L. Fr. Wreck. *Kelham.*

VEREY. L. Fr. [from Lat. *verus.*] In old English law. True. *A la* verey *value;* at the true value. *Britt.* c. 18. *De la* verey *value. Id.* c. 21. *Que n'est mye son* vereye *juge;* who is not his true or proper judge. *Id.* c. 121. See *Verray, Verrey.*

VERGE. L. Fr. and Eng. In English law. A privileged space around, or immediately adjoining the king's palace or residence. See *Pax regis.* The compass of the jurisdiction of the Court of the Marshalsea or Palace Court. 3 *Bl. Com.* 76. *Et que le mareshal de nostre hostel tiegne nostre lieu dedans la* verge *de nostre hostel;* and that the marshal of our household hold our place within the verge of our household. *Britt.* fol. 1 b. "We see further, that the law doth so esteem the dignity of the king's settled mansion-house, as it hath laid unto it a plot of twelve miles round, which we call *the verge*, to be subject to a special and exempted jurisdiction depending upon his person and great officers. This is as a half-pace or carpet spread about the king's chair of state," &c. *Bacon's Charge* upon the Commission for the Verge; *Works*, iv. 383, 384.

VERGE. L. Fr. [from Lat. *virga*, q. v.] In old English law. A rod, wand or staff, used as an ensign of office. *Et puis preignent les justices les* verges *del viscounte*, &c.—*Et apres le serement fait, luy soit la* verge *rendue.* And then the justices shall take the staves of the sheriff, &c.—And after the oath made, the staff shall be returned to him. *Britt.* c. 2.

VERGENS AD INOPIAM. L. Lat. In Scotch law. Verging towards poverty; in declining circumstances. 2 *Kames' Equity*, 8.

VERGERS. [L. Lat. *virgatores.*] In English law. Officers who carry white wands before the justices of either bench. *Cowell.* Mentioned in Fleta, as officers of the king's court, who oppressed the people by demanding exorbitant fees, (*gravia feoda petentes.*) *Fleta*, lib. 2, c. 38.

VERIFICARE. Lat. [from *verus*, true,

and *facere*, to make.] In old pleading. To make out or prove to be true; to verify. *Fleta*, lib. 5, c. 37, § 4. See *Et hoc paratus est verificare.*

VERIFICATION. [Lat. *verificatio*, from *verificare*, to verify.] In pleading. Literally, a making out to be true; the proving of an assertion to be true; called, in the old books, an *averment.* An assertion of the ability of the pleader to prove the matter alleged in his plea. 6 *Man. & Gr.* 37, note (*c.*) A formula with which all affirmative pleadings, not concluding to the country, are required to conclude, and which is usually expressed in the following words: "And this the said plaintiff" (or defendant,) "is ready to verify." *Steph. Pl.* 433, 434.

VERIFY. [L. Lat. *verificare*, q. v.] In pleading. To make out to be true; to prove. See *Verification.*

VERITAS. Lat. [from *verus*, true.] Truth; verity. *Veritas à quocunque dicitur, à Deo est;* truth, by whomsoever it is spoken, is of God. 4 *Inst.* 153.

Veritas nihil veretur nisi abscondi. Truth fears nothing but to be hid. 9 *Co.* 20 b, *Case of avowry.*

Veritas nimium altercando amittitur. Truth is lost by excessive altercation. *Hob.* 344.

Veritas nominis tollit errorem demonstrationis. The truth of the name removes [the effect of] error of demonstration. *Bac. Max.* reg. 25. A well-known maxim frequently applied in construing wills. 8 *Taunt.* 313. 2 *Jones'* (N. C.) *Equity R.* 72. See **Præsentia corporis, tollit,** &c.

VERITE, *Veritee.* L. Fr. [from Lat. *veritas*, q. v.] Truth. *Puesse dire sa grosse veritee;* may relate the whole truth of his case. *Kelham.*

VERRAY, *Verrai, Verrey, Very.* L. Fr. [from Lat. *verus*, q. v.] In old English law. True. *A chescun* verray *heire;* to every true heir. *Britt.* c. 118. *Si la cause soit* verrey; if the reason be true. *Id.* c. 28. *Encontre les* verreys *heires. Id.* c. 43. *A la* very *value. Id.* c. 53. *Soun verrai tenaunt;* his immediate tenant. *Yearb.* H. 2 Edw. II. 27.

VERS. L. Fr. [from L. Lat. *versus*, q. v.] In old practice. Against. *Excepcions* vers *le juge, ou* vers *le pleyntyfe*, vers *qui il purra dire;* exceptions against the judge or against the plaintiff, against whom he may say. *Britt.* c. 57. The same with *envers*, (q. v.)

VERSARI. Lat. In the civil law. To be employed; to be exercised; to be continually engaged; to be conversant. *Versari male in tutelâ;* to misconduct one's self in a guardianship. *Calv. Lex. Versari in lucro;* to be in gain, or a gainer. *Id.*

VERSUS. L. Lat. In practice. Against; an abbreviation of the Lat. *adversus.* Used by Bracton indifferently with *contra*, (q. v.) *Actio competit* contra *eum;* an action lies against him. *Bract.* fol. 103 b. *Actio datur* versus *eum;* an action is given against him. *Id. ibid.* Retained in modern practice, in the titles of causes, but commonly in its contracted forms, *vs*, and *v.* The Fr. form *vers* frequently occurs in Britton. See *Vers, Vs.*

VERT. [from Fr. *verd*, from Lat. *viridis*, green.] In forest law. Every thing that grows and bears *green* leaf within the forest, that may cover a deer. *Manwood*, part 2, fol. 6, 33. Otherwise called *green-hue*, and by Blackstone *green-sword.* "Vert and venison" is an expression used to denote the wood of a forest, and the animals or deer in it. 4 *Inst.* 289. 3 *Bl. Com.* 71. 1 *Crabb's Real Prop.* 486. *Over-vert* is high wood, (*hault bois;*) *nether-vert* is underwood, (*south bois*, or *sub-bois.*) *Cowell.*

VERUS. In old English law. True. *Verus dominus;* the true lord. *Bract.* fol. 210. *Meum* verum *et legitimum, ordino, facio et constituo procuratorem;* I ordain, make and constitute my true and lawful attorney. *Reg. Orig.* 306. From this word were formed the L. Fr. *ver, verray, verrey, vereye*, and *very;* the last being also used as an English word. See *Very.*

VERY. L. Fr. and Eng. [from Lat. *verus*, q. v.] True; actual; immediate. "*Very* lord and *very* tenant" (*verus dominus et verus tenens,*) is used in the old books to denote those that were *immediate* lord and tenant one to the other. *Bro. Abr.* Hariot. 23. *O. N. B.* 42. A man was not "*very* tenant," until he had attorned to the lord by some service. *Cowell. A la* very *value;* to the true value. *Britt.* c. 53. *Le* very *cas fuit;* the case in fact was. *Dyer*, 62, (Fr. ed.)

VESQUE, *Veske.* L. Fr. A bishop. *Kelham.*

VESQUIR. L. Fr. To live. *Si il* vesquist; if he was alive. *Kelham.*

VESSEL is used, in maritime law, as a synonyme of *ship*, and in the same general sense. See 3 *Kent's Com.* 129—363. As

between the terms themselves, *vessel* seems to be the one of larger import, as it undoubtedly is in popular acceptation. "To the term *vessel* generally," observes M. Jacobsen, "we affix but a very indefinite idea; originating in the infancy of commerce, from L. 1. § 6, *D. de exercitoria actione*, [*Dig.* 14. 1. 1. 6.] in which all *vessels* are termed *ships*, and this want of precision still prevails in the law, and among its professors." *Jacobsen's Sea Laws*, citing *Stypmann Jus Marit.* pars. iii. cap. 148. *Straccha*, pars. i—2. *Casaregis* disc. i—29. By the English statute of 5 & 6 Will. IV. "ship" is declared to comprehend every description of *vessel navigating on the sea*, and "steam vessels" employed in carrying passengers or goods are *trading ships*. Under the term *vessel*, it was said by Mr. J. Patteson, in a late English case, a *boat* would, in common parlance, be included. 4 *Carr. & P.* 559. See *Id.* 569.

Vessel occurs as a L. Fr. word in the old books. *Des neyes hors de meer en nostre royalme cheys hors de* vessel, *volons ausi que le* vessel, *et*, &c. *Britt.* c. 1.

VEST. [from Fr. *vester*, Lat. *vestire*, to clothe.] To clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff.* *Spelman*, voc. *Vestire*. See *Devest*, *Invest*.

To pass to a person; to become fixed in a person; to give an immediate right of present enjoyment; to give a present fixed right of future enjoyment; to give a legal or equitable seisin.* 4 *Kent's Com.* 202. A statute or conveyance is said "to *vest* an estate in a person;" an estate is said "to *vest* or be *vested* in a person." *Id.* 238, 245. In the old books, a person is said to be "*vested* of" an estate. "Any interest whereof the king was vested." *Bacon's Works*, iv. 234.

VESTED LEGACY. A legacy, the right to which vests permanently in the legatee, though the legacy is not payable until a future time.* A legacy to one, *to be paid* when he attains the age of twenty-one years, is a vested legacy; an interest which commences *in præsenti*, although it be *solvendum in futuro;* and if the legatee dies before that age, his representative shall receive it out of the testator's personal estate, at the same time that it would have become payable, in case the legatee had lived. 2 *Bl. Com.* 513.

VESTED REMAINDER. A fixed interest [in lands or tenements] to take effect in possession, after a particular estate is spent. 4 *Kent's Com.* 202.—Vested remainders (or remainders *executed*, whereby a present interest passes to the party, though to be enjoyed *in futuro*,) are where the estate is invariably fixed, to remain to a determinate person, after the particular estate is spent. As if A. be tenant for twenty years, remainder to B. in fee; here B.'s is a vested remainder, which nothing can defeat or set aside. 2 *Bl. Com.* 168, 169.

In New-York, a vested remainder has been defined by statute, "when there is a person in being who would have an immediate right to the possession of the lands, upon the ceasing of the intermediate or precedent estate." 1 *Rev. St.* [723,] 718, § 13.

VESTER, *Vestre.* L. Fr. In old English law. To vest; to enure. *Kelham.*

Vestue; clothed. *Contract vestue;* a clothed contract. The opposite of *nue;* naked or nude. *Britt.* c. 28. *Obligation doit estre* vestue *de v. maneres de garnementz;* obligation ought to be clothed in five kinds of garments. *Id. ibid.*

VESTIGIUM. L. Lat. In the law of evidence. A trace, or track; a mark left by a physical object. *Vestigia carectæ;* the tracks of a cart. *Fleta*, lib. 1, c. 25, § 6.

VESTIMENTUM. L. Lat. [from *vestire*, to clothe.] In old English law. Clothing. A figurative expression denoting the character, quality or circumstance of *right*, as opposed to the negation or destitution of right, which was compared to a state of *nakedness. Possessio est* nuda, *donec ex tempore et seysina pacifica acquiratur* vestimentum; the possession is naked, until a clothing [i. e. of right] be acquired by time and peaceable seisin. *Bract.* fol. 160.

In feudal law. Investiture; seisin. Lord Mansfield, C. J. 1 *Burr.* 109, quoting *Bract.* fol. 160.

In old English law. The technical form of a contract, requisite to give it effect. *Fleta*, lib. 2, c. 56, §§ 3, 4.

VESTIRE. L. Lat. In feudal law. To deliver full possession of land or of an estate, (*plenam possessionem terræ vel prædii tradere;*) to give seisin; (*seisinam dare;*) to enfeoff or invest, (*infeodare.*) *Spelman.* To clothe with possession.

In old English law. To clothe a contract in the proper form to give it validity.

Such a contract was said to be *vestitum*, (clothed) as distinguished from *nudum*, (naked.) *Fleta*, lib. 2, c. 56, § 3.

VESTITURA. L. Lat. [from *vestire*, q. v.] In feudal law. Investiture; delivery of possession. *Spelman*, voc. *Vestire*.

VESTURA. L. Lat. [from *vestire*, to clothe.] In feudal and old English law. Literally, a garment. A possession, or admittance to a possession or seisin. *Cowell.*

In old English law. A crop of grass or corn, [grain.] *Cowell.*

Vest, vesture; livery, delivery. An allowance of some set portion of the products of the earth, as corn, grass, wood, &c. for part of the salary or wages to some officer, servant or laborer, for their livery or vest. *Id.*

VESTURA TERRÆ. L. Lat. In old English law. The vesture of the land, that is, the corn, grass, underwood, sweepage and the like. *Co. Litt.* 4 b. See *Keilw.* 48. 4 *Leon.* 43. *Palm.* 174. *Owen*, 37.

VESTURE. In old English law. Profit of land. "How much the *vesture* of an acre is worth." *Extent. Maner.* 4 *Edw.* I. *Cowell.*

VETERA STATUTA. Lat. Ancient statutes. The English statutes from Magna Charta to the end of the reign of Edward II. are so called; those from the beginning of the reign of Edward III. being contradistinguished by the appellation of *Nova statuta.* 2 *Reeves' Hist. Eng. Law*, 85.

VETITUM NAMIUM. L. Lat. [from *vetitum*, prohibited, and *namium*, taking; L. Fr. *vee de name*, q. v.] In old English law. A refused or prohibited taking or distress; a refusal to re-deliver a distress; a prohibition of its being taken again by the owner;* the detention of a distress, (*detentio namii.*) *Bract.* fol. 155 b. Lord Coke explains this to be, when the bailiff of a lord distrained beasts or goods, and the lord *forbid* the bailiff to *deliver them* when the sheriff came to replevy them, and to that end directed him to drive them to places unknown, or to take such a course as they should not be replevied; or where, without any word, they were eloined, or so handled by a forbidden course as they could not be replevied, for then they were forbidden in law to be replevied. 2 *Inst.* 140. *Vetitum namium* has sometimes been considered as the Latin form of *withernam.* 3 *Bl. Com.* 148. But Lord Coke has clearly shown it to have been a different act or proceeding. 3 *Inst. ub. sup.* And Bracton expressly calls it *detentio namii pro districtione facienda;* the detention of a thing taken by way of distress. *Bract.* fol. 155 b. And see *Fleta*, lib. 2, c. 47, §§ 32, 33. See *Vee de name.*

VETO. Lat. I forbid. The word by which the Roman tribunes expressed their negative against the passage of a law or other proceeding, which was also called interceding, (*intercedere.*) *Adam's Rom. Ant.* 13, 145, 146.

In modern times, this word has been used to designate the power enjoyed by the executive department of a government, of negativing bills which have been passed by the legislature. *Brande.* 1 *Kent's Com.* 239—241.

VETUS JUS. Lat. The old law; old law. A term used in the civil law, sometimes to designate the law of the Twelve Tables, and sometimes merely a law which was in force previous to the passage of a subsequent law. *Calv. Lex.*

A law, principle or doctrine of long standing. *Cod.* 9. 2. 6.

VETUSTAS. Lat. [from *vetus*, old.] In the civil law. Antiquity; ancient or former law or practice; the same with *antiquitas*, (q. v.) *Inst.* 3. 1. 15.

Time out of memory, (*tempus quod memoriam hominum excedit.*) *Calv. Lex.*

VEUTA TERRÆ. L. Lat. [from L. Fr. *veu de terre.*] View of land. Mentioned by Skene as a French term, corresponding with the Lat. *visus terræ. Skene* ad. lib. 1. *Reg. Maj.* c. 9. *Spelman.* See *Visus*, *View.*

VEXATA QUÆSTIO. L. Lat. A vexed question; a question often agitated or discussed, but not determined or settled; a question or point which has been differently determined, and so left doubtful. 7 *Co.* 45 b, *Kenn's case.* Lord Mansfield, C. J. 3 *Burr.* 1547. Lord Ellenborough, C. J. 9 *East*, 215. *Vexata et spinosa quæstio;* a vexed and thorny question. *Brownl.* (part 2,) 318.

VEY. L. Fr. Way. *Haut vey;* highway. *Kelham.*

VEYER. L. Fr. To see; to view. *Veyer est;* it is to be seen. *Kelham. Veyet;* sees. *Id.*

VEYLE. L. Fr. Elder. *Kelham.*

VEYLLE. L. Fr. A town. *Kelham.*

VEYN. L. Fr. [from Lat. *vanus.*] In

old English law. Void. *Et si rien soit fait devaunt ceux substitutz, volons que soit* veyn, *et de nule force;* and if any thing be done before those substitutes, we will that it be void, and of no force. *Britt.* fol. 3.

VEYSIN. L. Fr. [from Lat. *vicinus.*] In old English law. A neighbor. *Les* veysins *del hundred. Britt.* c. 62.

VI AUT CLAM. Lat. In the civil law. By force, or covertly. *Dig.* 43, 24. A thing was said to be done *vi*, when it was done contrary to a prohibition on the part of a possessor. Vi *factum videri, si quis contra quam prohiberetur, fecerit. Id.* 43. 24. 1. 5. Vi *factum id videtur esse qua de re quis, quum prohiberetur, fecit. Dig.* 50. 17. 73. 2. A thing was said to be done *clam*, which was done by a person having, or anticipating to have a controversy with another. Clam [*factum id videtur esse,*] *quod quisque, quum controversiam haberet habiturumve se putaret, fecit. Id. ibid.*

VI BONORUM RAPTORUM. Lat. In the civil law. Of goods taken away by force. The name of an action given by the prætor as a remedy for the violent taking of another's property. *Inst.* 4. 2. *Dig.* 47. 8. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 2.

VI ET ARMIS. L. Lat. [L. Fr. *ovesque force et armes.*] In old practice and pleading. With force and arms. Emphatic words in writs and declarations of trespass, in which an act of force and violence was charged. *Rex, vice-comiti Lincoln' salutem. Si A. fecerit te securum de clamore suo prosequendo, tunc pone per vadium et salvos pleg' B. quod sit coram justitiariis nostris apud Westm. in octavis sancti Michaelis, ostensurus quare* VI ET ARMIS, *in ipsum A. apud N. insultum fecit, et ipsum verberavit, vulneravit et male tractavit; ita quod de vita ejus desperabatur; et alia enormia ei intulit, ad grave damnum ipsius A. et contra pacem nostram. Et habeas ibi nomina pleg' et hoc breve.* (The King to the Sheriff of Lincoln, greeting: If A. make you secure of prosecuting his claim, then put B. by gage and safe pledges, that he be before our justices at Westminster, on the octave of St. Michael, to show wherefore, *with force and arms*, he made an assault upon the said A. at N. and beat, wounded, and ill treated him, so that his life was despaired of; and other wrongs to him did, to the grievous damage of the said A. and against our peace. And have you there the names of the pledges and this writ.) *Reg. Orig.* 93. This was the original writ in the action of trespass for an assault and battery, and its language is very closely followed in modern declarations of trespass. 2 *Chitt. Pl.* 846, 852. See *Force and arms.*

VIA. Lat. In the civil law. Way; a way; a road; a right of way. The right of walking, riding, and driving over another's land, (*jus eundi, et agendi, et ambulandi.*) *Inst.* 2. 3, pr. A species of rural servitude, which included *iter* (a foot-path,) and *actus*, (a drift-way.) *Id. ibid. Dig.* 8. 3. 1, pr. *Id.* 8. 3. 7. *Id.* 8. 3. 23, pr.

In old English law. A way; a public road; a foot, horse, and cart way. *Co. Litt.* 56 a. See *Fleta*, lib. 4, c. 27, §§ 1, 2.

VIA PUBLICA. Lat. In the civil law. A public way or road, the land itself belonging to the public. *Dig.* 43. 8. 2. 21.

VIA REGIA. L. Lat. In English law. The king's highway for all men. *Co. Litt.* 56 a. *Stat. Marlbr.* c. 15. The highway or common road; called *the king's* highway, because authorized by him and under his protection. *Cowell.* Called, also, *via regalis. Fleta*, lib. 1, c. 24, § 8.

Via trita via tuta. The beaten path is the safe path. The usual course of practice ought to be pursued. 3 *Bing. N. C.* 45. Courts of law will not sanction a speculative novelty, without the warrant of any principle, precedent, or authority. *Broom's Max.* 58. Otherwise expressed, **Via trita est tutissima.** The beaten way is the safest. 10 *Co.* 142 a. 4 *M. & S.* 168.

VIAGIUM, *Viaggium.* L. Lat. In old English and maritime law. Voyage; a voyage. *In nostri contemptum et deceptionem, ac* viagii *nostri prædicti, quantum in ipso fuit, retardationem manifestam;* in contempt and fraud of us, and to the manifest retarding of our said voyage as far as in him lay. *Reg. Orig.* 24 b. *Emerig. Tr. des Ass.* ch. 13, sect. 5, § 1. See *Voyage.*

VIAGE. L. Fr. A voyage; an expedition. *Kelham.*

VIANDER. In old English law. A returning officer. 7 *Mod.* 13.

VIATOR. Lat. [from *via*, a way or road.] In the Roman law. A summoner or apparitor; an officer who attended on the tribunes and ædiles. So called, be-

cause they were often on the road, (*quod sæpe* in via *essent,*) it being anciently their office to summon the senators from the country where they resided. *Adam's Rom. Ant.* 192. *Calv. Lex.*

A traveller; a foot passenger. *Id.*

VIC'. A common abbreviation of *vicecomes* in old writs.

VICAR. [L. Lat. *vicarius*, from *vicis*, place or stead.] One who acts in the place of another, (*qui* vicem *alterius gerit ;*) one who is deputed or authorized to perform the functions of another; a substitute; a deputy. See *Vicarius.*

In English ecclesiastical law. The incumbent of an appropriated benefice. The distinction of a *parson* and *vicar* is this: the parson has, for the most part, the whole right to all the ecclesiastical dues in his parish; but a *vicar* has generally an appropriator over him, entitled to the best part of the profits, to whom he is, in effect, perpetual curate, with a standing salary. 1 *Bl. Com.* 388. *Vicar* was a title not known till the reign of Henry III. 1 *Chitt. Bl. Com.* 387, note. See 1 *H. Bl.* 421.

VICARAGE. In English ecclesiastical law. The living or benefice of a vicar, as a parsonage is of a parson. See 1 *Bl. Com.* 387, 388. 1 *Wooddes. Lect.* 188—193.

VICARIUS. Lat. [from *vicis*, place or stead.] A deputy; a substitute; one who acts in the place of another, (*qui* vice *fungitur alterius.*) **Vicarius non habet vicarium.** A deputy has not [cannot have] a deputy. A delegated power cannot be again delegated. *Broom's Max.* 384, [665.] See **Delegata potestas, &c.**

In the civil law. The slave of a slave. *Dig.* 33. 8. 6. 3. The expression *vicarius vicarii* is used in the same passage. See *Tayl. Civ. Law*, 421, 422.

In old European law. The deputy of a count; a viscount. *Esprit des Lois*, liv. 30, c. 18. *Nullus comes*, vicarius, *villicus, &c. seu quilibet alius rem ab alio possessam sine judicio usurpet ;* no count, viscount, steward, &c. or any one else, shall take a thing out of the possession of another without judicial process. *LL. Wisegothor.* lib. 8, tit. 2, l. 5. See *Id.* lib. 9, tit. 2, l. 8. *Id.* lib. 12, tit. 1, l. 2. *Capitul.* lib. 3, c. 11. *LL. Longob.* lib. 2, tit. 47, l. 1. *Spelman.*

VICE. Fr. and L. Fr. [from Lat. *vitium.*] In old English law. Fault; defect. *Si le brefe soit abatu pur errour, ou pour autre* vice *ou defaute ;* if the writ be abated for error, or for other fault or defect. *Britt.* c. 46. *Et ausi par* vice *de escripture,* [*est le brefe abatable ;*] *et ausi par* vice *del parchemyn, ou* par *vice de rasure ;* and also by defect of the writing, [is the writ abatable,] and also by defect of the parchment, or by the defect of rasure. *Id.* c. 48.

In French law. A defect or imperfection in a thing sold. *Civil Code of Louis.* Art. 2496, *et seq.*

VICE. Lat. [ablat. of *vicis*, place.] In the place or stead, (*loco.*) *Vice mea ;* in my place. Used both in Latin and English, in the composition of words denoting a delegated or deputed authority. See *infra.* See *Vicis.*

VICE-ADMIRALTY COURTS. In English law. Courts established in the Queen's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize. 3 *Steph. Com.* 435. 3 *Bl. Com.* 69.

VICE-CHANCELLOR. [L. Lat. *vicecancellarius.*] An equity judge who acts as assistant to the chancellor, holding a separate court, from which an appeal lies to the chancellor. There are three vice-chancellors who hold courts in England,—the Vice-Chancellor of England, and two others. 3 *Steph. Com.* 418.

VICE-COMES, (or VICECOMES.) L. Lat. [L. Fr. *viscount.*] In old English law and practice. Sheriff; the sheriff of a county. *Mag. Cart.* 9 Hen. III. c. 17. *Id. Johan.* c. 24. *Reg. Orig.* passim. *Spelman.* So called, as being the deputy of the earl, or *comes*, to whom the custody of the shire is said to have been committed at the first division of England into counties. But the earls, in process of time, by reason of their high employments and attendance on the king's person, not being able to transact the business of the county, were delivered of that burden; reserving to themselves the honor, but the labor was laid on the sheriff. So that now the sheriff does all the king's business in the county, and though he be still called *vicecomes*, yet he is entirely independent of, and not subject to the earl; the king by his letters patent committing *custodiam comitatus* to the sheriff, and him alone. 1 *Bl. Com.* 339. 7 *Co.* 33, and pref. 9 *Co.* 49. *Dalton's Sheriff*, 2. *Sewell's Sheriff*, 3, 4. *Fortescue de L. L. Angliæ*, c. 24, note.

Viscount, the corresponding French term, has become, in England, like *earl*, exclu-

sively a title of nobility. In the Royal Court of the Island of Jersey, however, the sheriff is still called *viscount*. 7 *Ad. & Ell.* (N. S.) 989, 1002. See *Viscount*.

VICECOMES NON MISIT BREVE. L. Lat. The sheriff hath not sent the writ. The form of continuance on the record after issue and before trial. 7 *Mod.* 349. 11 *Id.* 231. See *Continuance*.

VICE-COMITISSA. L. Lat. In old English law. A viscountess. *Spelman. Vice-comitissa dotissa;* viscountess dowager. *Com.* 185.

VICE-CONSUL. L. Lat. In old English law. The deputy or substitute of an earl, (*comes*,) who was anciently called *consul;* answering to the more modern *vicecomes*. See *Consul*.

VICE-DOMINUS. L. Lat. In Saxon law. The governor of a province; (*præfectus provinciæ.*) *Ingulph.* p. 870, l. 46. Alfred is said to have divided this office into two, the *judex*, or justice, and *vicecomes*, or sheriff. *Id. ibid. Spelman.* Blackstone, quoting Camden, makes the title synonymous with *vidame* and *valvasor*. 1 *Bl. Com.* 403. In Cowell, it is translated *viscount*, or *sheriff*.

In canon law. A bishop's deputy. *Calv. Lex.* A vidame. (?) See *Vidame*.

VICE-GERENT. In old English law. A deputy or lieutenant, (*locum tenens.*) *Stat.* 31 *Hen.* VIII. c. 10. *Cowell.*

VICE-JUDEX. L. Lat. In old Lombardic law. A deputy judge. *LL. Longob.* lib. 2, tit. 30, l. 2. *Spelman.*

VICINAGE. L. Fr. and Eng. [from Lat. *vicinus*, near.] Neighborhood; near dwelling; vicinity. 2 *Bl. Com.* 33. *Cowell.*

VICINETUM. L. Lat. [from Lat. *vicinus*, near, adjacent.] In old English law. A neighborhood, or vicinage; visne or venue.* *Magna Charta*, c. 14. A place which neighbors inhabited, (*locus quem* vicini *habitant.*) *Spelman.* Anciently understood of the same vill or the parts adjacent, or of the same hundred; in later law, of the same county. *Id.* Answering to the Lat. *vicinia* and *vicinium*. *Visinetum*, *visinetus*, *visnetum*, are other forms of this word, which occur in the old books. In old Scotch law, it is written *voisinetum*, (from Fr. *voisin.*)

VICINIA. Lat. [from *vicinus*, near.] In the civil law. Nearness of dwelling; neighborhood; a neighborhood; a neighboring place. Distinguished from *confinium*, as being applied to urban estates. *Calv. Lex.*

VICINITAS. Lat. [from *vicinus*, near.] Neighborhood; vicinity.

In old Scotch law. The verdict of an assise or jury. *Quon. Attach.* c. 83. *Skene in loc. Spelman.*

VICINUS. Lat. In the civil law. Near; adjacent; neighboring. Applied more particularly to urban estates, or those which were separated by a common wall; *confinis* being the term applied to adjacent rural estates. *Calv. Lex.* Places were said to be neighboring (*vicini*,) when the voice of a person shouting could be heard from one to the other. *Id.*

In old English law. A neighbor. **Vicini viciniora facta præsumuntur scire.** Neighbors are presumed to know the acts that are done in their more immediate neighborhood. 4 *Inst.* 173.

VICIOUS. L. Fr. [from *vice*, q. v.] Faulty; defective; bad. *Respondre à cel escript* vicious; to answer to such faulty writing. *Britt.* c. 28. *Soit le brefe trove* vicious; the writ be found defective. *Id.* c. 46. *Est le brefe abatable et* vicious. *Id.* c. 48. *Le brefe purra estre* vicious *en plusurs maneres;* the writ may be faulty in many ways. *Id. ibid.*

VICIS. Lat. Change; turn. *Pro hac* vice; for this turn.

Place; stead; office; duty. See *Vice*.

VICONT. L. Fr. Sheriff. *Litt.* sect. 101. *Dyer*, (Fr. ed.) *passim.*

VICONTIEL, *Vicountiel.* L. Fr. and Eng. [from *vicont* or *vicount*, sheriff.] In English practice. Belonging to the sheriff. *Vicontiel* writs are such as were triable in the county or sheriff's court. *O. N. B.* 109. *Cowell.* Or they were such as were directed to the sheriff, and not to be returned to any superior court, till finally executed by him. 3 *Bl. Com.* 238.

VICONTIELS, *Vicountiels.* [L. Lat. *vicecomitilia.*] In old English law. Farms for which the sheriff paid a rent to the king, and made what profit he could of them. *Stat.* 33 & 34 *Hen.* VIII. c. 16. *Spelman. Cowell.* Called, also, *vicontiel rents*. *Stat.* 22 *Car.* II. c. 6. *Cowell.* Now placed under the management of the Commissioners of Woods and Forests. *Stat.* 3 & 4 *Will.* IV. c. 99, §§ 12, 13.

VICOUNT, *Vicounte.* L. Fr. An old form of *viscount*, (q. v.) *Stat. Westm.* 1, c. 15.

VICTUS. Lat. In the civil law. Sus-

tenance; support; the means of living. The word included every thing necessary to the support of human life, (*quæ ad vivendum homini necessaria sunt.*) *Dig.* 50. 16. 43.

VICUS. Lat. In old English law. A street in a town; a passage between two rows of houses, (*in oppido via est, domuum seriem complexa.*) *Fortescue de L. L. Angl.* c. 24, note. *Vici et venelli;* streets and lanes. *Reg. Orig.* 267.

A village; a neighborhood of houses out of a town. *Vicus ex domibus constat extra oppida. Fortesc. de L. L. Angl. ub. sup.*

VIDAME. In French feudal law. Originally, an officer who represented the bishop, as the viscount did the count. In process of time, these dignitaries erected their offices into fiefs, and became feudal nobles, such as the *vidame* of Chartres, Rheims, &c.; continuing to take their titles from the seat of the bishop whom they represented, although the lands held by virtue of their fiefs might be situated elsewhere. *Brande.*

A chief in the neighborhood of a church or abbey who acted as its protector. *Steph. Lect.* 236.

Blackstone, quoting Camden, makes *vidame* to be a title in old English law, synonymous with that of *valvasor.* 1 *Bl. Com.* 403.

Videbis ea sæpe committi, quæ sæpe vindicantur. You will see those offences often committed, which are often punished. 3 *Inst. Epilog.*

VIDEL'T. A contraction of *videlicet.* 1 *Inst. Cler.* 13.

VIDELICET. Lat. [from *videre*, to see, and *licet*, it is permitted.] To wit; that is to say; namely. Literally, it may be seen; you may see; it is to be seen. A term compounded similarly with *scilicet*, (q. v.) and of similar import, being used as prefatory to a particular statement of something that was just before mentioned in general terms.

Lord Hobart says of a *videlicet*, in its application to conveyancing, that it "is neither a direct several clause, nor a direct entire clause, but it is *intermedia.*" *Hob.* 172. And again, "it is clear that it is not a substantive clause of itself; and, therefore, you can neither begin a sentence with it, nor make a sentence of it, by itself; but it is, (as I may say,) *clausula ancillaris*, a kind of handmaid to another clause, and to deliver her mind, [i. e. the meaning of the other clause,] not her own." *Id.*

In modern pleading, a *videlicet* is used where a party alleges a fact, (such as time, quantity, or value,) which he does not wish to be held to prove strictly. The terms actually used for this purpose are the English "to wit," or "that is to say," immediately previous to the allegation, which is called "laying the time, &c. under a *videlicet.*" *Steph. Pl.* 293.

VIDENDUM EST. Lat. It is to be seen; it is to be considered. A common expression in Bracton.

VIDERE. Lat. In old practice. To view. *Fleta*, lib. 4, c. 6, § 4.

VIDETUR. Lat. It is seen; it appears; it seems; it is considered; it is supposed. **Qui tacet consentire videtur.** He who is silent is considered to consent.

VIDIMUS. L. Lat. (We have seen.) In old English practice. A species of exemplification of the enrolment of charters or other instruments. So called, from its initial words: Vidimus *quoddam scriptum*, &c. (We have seen a certain writing.) An *innotescimus* or *vidimus* are all one, and are always of a charter of feoffment, or some other instrument which is not of record. 5 *Co.* 54 a, *Page's case. Co. Litt.* 225 b. See *Barringt. Obs. Stat.* 5, note [*h.*]

VIDUA. Lat. In civil and old English law. Widow; a widow. *Dig.* 50. 16. 242. 3. *Reg. Orig.* 175 b. *Magna Charta*, c. 7. According to Javolenus in the Digests, this word in the Roman law was applied to women who had not been married. *Dig. ub. sup.*

VIDUA REGIS. L. Lat. In old English law. A king's widow. The widow of a tenant *in capite.* So called, because she was not allowed to marry a second time without the king's permission; obtaining her dower also from the assignment of the king, and having the king for her patron and defender. *Spelman.*

VIDUITAS. Lat. [from *vidua*, widow.] In old English law. Widowhood; viduity. *Burr. Sett. Cas.* 794. "Chaste viduity." Lord Ellenborough, 10 *East*, 520.

VIE. L. Fr. [from Lat. *vita.*] Life. See *Cestui que vie, En pleyn vie, Pour autre vie.*

VIEF, *Vif.* L. Fr. [from Lat. *vivus.*] Living; alive; live. *Vief naam;* a live distress. *Kelham.*

VIEL. L. Fr. Old; elder. *Vieles, viez dettes;* old debts. *Kelham.*

VIER. L. Fr. [from Lat. *videre.*] To see. *Vient;* they see. *Kelham.*

VIERS, *Vers.* [from Lat. *versus.*] Towards. *Kelham.*

VIEW. [L. Fr. *veue;* L. Lat. *visus.*] In practice. Inspection, or examination of a place or person, in the course of an action.

In many of the old real actions, the tenant might demand a *view* of the land in question; or, if a rent was to be recovered, a *view* of the land out of which it issued. In other actions, as in assise of novel disseisin and waste, the view was had by the jury. The reason of this proceeding was, that the tenant or jury might know with certainty what the demandant sought to recover, and that the defence might be shaped accordingly. *Roscoe's Real Act.* 247. 3 *Bl. Com.* 299. *Britt.* c. 45. *Cowell.*

In some modern actions, as in trespass *quare clausum fregit,* where it appears to the court, or a judge in vacation, to be proper and necessary that the jurors who are to try the issues, should, for the better understanding of the evidence, have a *view* of the messuages, lands, or place in question, the court or a judge will grant a rule or order for such view; and a similar proceeding may be had in criminal cases. 2 *Tidd's Pr.* 795—798. 1 *Burr.* 252.

VIEW. [Lat. *prospectus;* Fr. *vue.*] Prospect; the prospect from one's house or ground, of which his neighbor is not permitted to deprive him, by erecting a new building, or any other obstruction. A species of urban servitude, derived from the civil law. 3 *Kent's Com.* 448. *Dig.* 8. 2. 3. Defined in the Civil Code of Louisiana, to be "every kind of opening which may more or less facilitate the means of looking out of a building." *Art.* 711.

VIEW OF FRANK PLEDGE. [L. Lat. *visus franci plegii.*] In old English law. The office which the sheriff in his county court, or the bailiff in his hundred, performed in looking to the king's peace, and seeing that every man were in some frank pledge, or decennary.* *Cowell.* See *Stat.* 18 *Edw.* II. A. D. 1325. *Barringt. Obs. Stat.* 208.

The ancient name of the court leet. 4 *Bl. Com.* 275. See *Court leet, Frank pledge.*

VIEWERS. [L. Fr. *vejours;* Lat. *visores.*] In old practice. Persons appointed under writs of view, to testify the view. *Roscoe's Real Act.* 253.

Vigilantibus et non dormientibus jura subveniunt. The laws relieve or succor those who are vigilant, not those who sleep [upon their rights.] *Bract.* fol. 175 b. 2 *Inst.* 690. *Wingate's Max.* 672, max. 174. More briefly, **Vigilantibus jura subveniunt.** The laws assist the vigilant. 1 *P. Wms.* 297. A party who is entitled to a remedy at law, must be active and vigilant in its prosecution. If he neglects for a long and unreasonable time to ask the assistance of the law, to recover a right, it will be refused him, both as a punishment of his neglect, and on the principle of restraining litigation by limiting actions to certain periods. See 3 *Bl. Com.* 188. *Broom's Max.* 391, [692,] *et seq.* Called, by Sir William Scott, "a universal maxim." 5 *Rob. Adm. R.* 105. Bracton introduces this maxim in the following passage, which is probably the earliest instance of its application in the English books: *Sciendum quod statim et sine mora,* [*fieri debeat querela,*] *cum desides et sui juris contemptores non juvat juris beneficium, et* VIGILANTIBUS ET NON DORMIENTIBUS JURA SUBVENIUNT; it is to be known that [the plaint ought to be made] at once and without delay,—for the favor of the law does not help those who are slothful and neglect their rights, and the laws aid those who are vigilant, and not those who sleep. *Bract.* fol. 175 b. The maxim seems to be derived from the civil law. *Calv. Lex. Spiegelius.* It is applied to the contract of sale, as expressive of the same principle with **Caveat emptor,** viz.: that purchasers should exercise proper vigilance and caution. 2 *Kent's Com.* 487, 488, note.

VIGILIA. L. Lat. In old English law. Watch. *Fleta,* lib. 2, c. 52, § 28.

A wake. *Id.* lib. 2, c. 82, § 3.

VIGORE CUJUS. L. Lat. By force whereof. 1 *Ld. Raym.* 412.

VIIS ET MODIS. L. Lat. (By ways and means.) In practice. The technical name of a citation by which actions against non-residents are sometimes commenced, and which is served by posting up in certain public places; as on the Royal Exchange in London, according to the practice of the English admiralty; or at the Key in Leith, at the market cross of Edinburgh, and the pier aud shore of Leith,

according to the practice of Scotland.* *Story's Confl. Laws*, § 546.

VILL. [L. Fr. *ville*, from Lat. *villa*, q. v.] In English law. A word of various significations, as

A manor. *Spelman*, voc. *Villa*. *Cowell.*

A tithing. 1 *Bl. Com.* 114. *Spelman*, voc. *Hamel.*

A town. 1 *Bl. Com.* 114. *Litt.* sect. 171. *Co. Litt.* 5 a, 115 b. *Fortescue, de L. L. Angliæ*, c. 24, note.

A township. 2 *Stra.* 1004. 4 *M. & S.* 378.

A parish. *Cro. Car.* 150. *Cowell.*

A part of a parish. 1 *Bl. Com.* 115. *Cowell.*

A village. *Spelman.* 12 *Mod.* 546.

*** The original meaning of *vill* in England, seems to have been derived from the Roman sense of the term *villa;* a *single country residence* or farm; a manor, as Spelman defines it. See *Town*, In Bracton's time, this signification had become antiquated, for he expressly says that a single dwelling-house was not a vill. *Si quis in agris unicum faciat ædificium, non erit ibi* villa. *Bract.* fol. 211. The term, however, was applied to any collection of houses, consisting of more than two. *Id.* fol. 434. 2 *Stra.* 1004. And hence it finally came to comprehend towns and cities. See *Town.* Britton gives the relative signification of the terms *vill, parish* and *manor*, in the following passage: *Car en une* ville *purrount estre plusurs* parockes, *et en une* paroche *plusurs* maners; for in one *vill* there may be several *parishes*, and in one parish several *manors. Britt.* c. 50. This seems strictly to be the proper subordination of the terms in modern English law; although in some cases a parish may now contain several vills. 1 *Bl. Com.* 115. A farm consisting of a capital mansion, two ancient cottages and one modern one, all rented by one and the same farmer, who occupied the great house himself, and put four laborers and their families into the three cottages, was held to be no *vill*, in respect to the appointment of overseers of the poor. 1 *W. Bl.* 419. 3 *Burr.* 1391, S. C.

VILLA. Lat. [from *vehere*, to carry.] In the Roman law. A farm house; a country residence, (*domus in rure.*) Gloss. ad *Dig.* 50. 16. 27. So called, quasi *vehilla*, because the products of the land were *carried* (*vehebantur*) to it for keeping, and carried away for sale. *Calv. Lex. Adam's Rom. Ant.* 578. See *Dig.* 50. 16. 211.

VILLA. Lat. In Saxon law. A farm, or country residence; a manor. *Spelman.*

A collection of neighboring houses, consisting of more than two. *Bract.* fol. 212, 434.

A town or vill. See *Vill.* Villa *est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis; et sub appellatione* villarum *continentur burgi et civitates;* a vill (town) is a collection of several neighboring dwellings, consisting of several neighbors; and under the denomination of *vills* (or towns) are comprehended boroughs and cities. *Co. Litt.* 115 b. See *Town.*

VILLA REGIA. Lat. In Saxon law. A royal residence, (*qua ædes et curia regalis habentur.*) *Spelman.*

VILLAIN. An old form of *villein.* "A *villain* is such a servant as himself and whatsoever he possesseth is the lord's, if he claim it." *Finch's Law*, b. 2, ch. 10.

VILLAN. A form of *villein*, more closely following the Lat. *villanus.* It is used by Blackstone in the expressions *villan socage, villan services. Bl. L. Tracts*, 95, 96.

VILLANUS. Lat. [from *villa*, a farm, or village.] In old European law. A bondman employed in agricultural labors. So called, because annexed to a farm, or country estate, (*adscriptus villæ.*) Distinguished from a slave or serf, (*servus,*) by the circumstances that he paid a fixed rent to his master for the land which he cultivated, and after paying that, all the fruits of his labor and industry belonged to himself in property. 1 *Robertson's Charles V.* Appendix, Note ix. *Brande.*

In old English law. A bondman; an agricultural bondman; a villan, or villein, (q. v.) Villanus *amercietur, salvo wainagio suo;* the villein shall be amerced, saving his wainage, [i. e. his implements of husbandry.] *Magna Charta*, c. 14. 2 *Inst.* 28. *Bract.* fol. 116 b. *Donec* villanus *ad villanum convincatur;* until the villein shall be proved to be a villein. *Fleta*, lib. 4, c. 22, § 1. Bracton uses *villanus* and *servus* indifferently. *Bract.* fol. 246, 25.

VILLANUM SERVITIUM. L. Lat. In old English law. Villein service. *Fleta*, lib. 3, c. 13, § 1.

VILLATA. L. Lat. [from *villa*, a vill, or town.] In old English law. A township. *Stat. Marlbr.* c. 25. *Bract.* fol. 124 b, 150.

An inhabitant of a vill or town; a townsman. *Bract.* 143 b, 154.

VILLE. L. Fr. In old English law. A vill; a town. *Britt.* c. 50. *Litt.* sect. 171.

VILLEIN, *Villeine, Villeyn, Villain, Vileyn, Vyleyn.* L. Fr. and Eng. [from Fr. *ville*, Lat. *villa*, a country residence, a farm, or village.] In old English law. A feudal tenant of the lowest class, who held by base and uncertain services, and was employed in rustic labors of the most sordid kind; an agricultural bondman, of little better condition than a slave.

*** The word *villein* seems to be of Norman origin, although the class of persons to whom it was applied existed among the Saxons in a state of even grosser degradation. 2 *Bl. Com.* 92. "These villeins," observes Sir W. Blackstone, "belonging principally to lords of manors, were either *villeins regardant*, that is, annexed to the manor or land; or else they were *in gross*, or at large, that is, annexed to the person of the lord, and transferable by deed from one owner to another. They could not leave their lord without his permission; but if they ran away, or were purloined from him, might be claimed and recovered by action, like beasts, or other chattels. They held, indeed, small portions of land, by way of sustaining themselves and families, but it was at the mere will of the lord, who might dispossess them whenever he pleased; and it was upon villein services, that is, to carry out dung, to hedge and ditch the lord's demesnes, and any other the meanest offices; and their services were not only base, but uncertain both as to their time and quantity. A villien, in short, was in much the same state with us, as Lord Molesworth describes to be that of the *boors* in Denmark, and which Stiernhook attributes also to the *traals* or slaves in Sweden, which confirms the probability of their being, in some degree, monuments of the Danish tyranny." 2 *Bl. Com.* 93. As to the condition of villeinage, see *Yearb.* M. 7 Edw. II. 214. T. 8 Edw. II. 280. See a count for a villein, *Yearb.* M. 19 Hen. VI. 65.

The Lat. *villanus*, and Fr. *villeyn* are used by Bracton and Britton as respectively synonymous with *servus*, and *serf*, a slave. *Bract.* fol. 6 b, 7, 24 b, 25. *Britt.* c. 31. The following passage from the former author presents in few words a forcible picture of the villein's abject condition: *Servi autem sub potestate dominorum sunt, nec solvitur dominica potestas quamdiu manentes fuerint in* villenagio, *levantes et cubantes, sive terram tenuerint sive non. Item si non sunt manentes in* villenagio, *sed vagantes per patriam, euntes et redeuntes, semper sub potestate dominorum sunt quamdiu redierint, et cum consuetudinem revertendi habere desierint, incipiunt esse fugitivi ad similitudinem cervorum domesticorum.* (But slaves are under the power of their lords, nor is their lords' power dissolved as long as they are abiding in villenage, *levant et couchant*, whether they hold land or not. Also, if they are not abiding in villenage, but wandering through the country, going and returning, they are always under the power of their lords, as long as they continue to return, and when they cease to have the habit of returning, they begin to be fugitives, after the likeness of *tamed deer.*) *Bract.* fol. 66.

VILLEIN IN GROSS. In old English law. A villein who was annexed to the person of the lord, and transferable by deed from one owner to another. 2 *Bl. Com.* 93.

VILLEIN REGARDANT. L. Fr. and Eng. In old English law. A villein annexed to the lord's manor, or land, (*villæ ascriptus.*) 2 *Bl. Com.* 93. *Cowell.*

VILLEIN SERVICES. [L. Lat. *villana servitia.*] In old English law. Base services, such as villeins performed. 2 *Bl. Com.* 93. They were not, however, exclusively confined to villeins, since they might be performed by freemen, without impairing their free condition. *Bract.* fol. 24 b.

VILLEIN SOCAGE. [L. Lat. *villanum socagium.*] In old English law. A privileged kind of villenage; the tenants, (who were called *villein socmen*, or *sokemen*,) doing villein services, but of a certain and determinate kind. *Bract.* fol. 26 b, 209. 2 *Bl. Com.* 98—100.

VILLENAGE. [L. Lat. *villenagium.*] In old English law. The state, condition, service or tenure of a villein; bondage.* A servile kind of tenure belonging to lands or tenements, whereby the tenant was bound to do all such services as the lord commanded, or were fit for a villein to do. *Cowell.* See *Villein.*

VILLENAGIUM. L. Lat. In old English law. Villenage; the condition or tenure of a villein; bondage. *Glanv.* lib. 5, c. 1.

That part of a lord's lands where his villeins dwelt. *Bract.* fol. 6 b.

VILLENOUS JUDGMENT. [L. Lat. *villanum judicium.*] In old English law. A sentence which cast the reproach of villany and shame upon him against whom it was given. *Cowell.* This was formerly pronounced upon conspirators; and it was that they should lose their *liberam legem*, [frank-law,] whereby they were discredited and disabled as jurors or witnesses; forfeit their goods and chattels and lands for life; have their lands wasted, their houses razed, their trees rooted up, and their own bodies committed to prison. 4 *Bl. Com.* 136.

VILLEYN. L. Fr. In old English law. A villein. *Si ascun* villeyn *purchase tenement à luy et à ses heires, de autre que de son seigniour, et autre que son seigniour luy engette, pusse le* villeyn *recoverer par ceste assyse encontre toutes gentz, forsque vers son seigniour;* if any villein purchase a tenement to him and to his heirs, of another than of his lord, and another than his lord eject him, the villein may recover by this assise against all persons except against his lord. *Britt.* c. 38. *Car le pleyntyfe est mon* villeyn; for the plaintiff is my villein. *Id.* c. 49.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad sumendam vindictam, sed ad propulsandam injuriam. It is lawful to repel force by force, provided it be done with the moderation of blameless defence, not for the purpose of taking revenge, but to ward off injury. *Co. Litt.* 162 a.

VINCULACION. Span. In Spanish law. An entail. *Schmidt's Civ. Law*, 308.

VINCULO. Span. [from Lat. *vinculum.*] In Spanish law. The bond, chain or tie of marriage. *White's New Recop.* b. 1, tit. 6, c. 1, § 2.

VINCULUM. Lat. A chain; a connected series; a connection or relation. See *Consanguinity.*

A bond; a band; a tie. *Vinculum matrimonii;* the bond or tie of marriage; the matrimonial obligation.

The binding force of law. *Obligatio est juris vinculum;* obligation is a bond of law, or legal tie. *Bract.* fol. 99.

VINDICARE. Lat. In the civil law. To claim, or challenge; to demand one's own; to assert a right in or to a thing; to assert or claim a property in a thing; to claim a thing as one's own. *Calv. Lex.*

To avenge; to punish.

VINDICATIO. Lat. [from *vindicare*, q. v.] In the civil law. The claiming a thing as one's own; the asserting of a right or title in, or to a thing.

The name of an *action in rem*, by which a thing or right was claimed. *Appellamus autem in rem quidem actiones*, vindicationes; we call actions *in rem*, vindications. *Inst.* 4. 6. 15. *Id.* 4. 6. 1. See *Dig.* 6. 1.

VINUM. Lat. Wine. As to the interpretation of this word in the civil law, see *Dig.* 33. 6. 9.

VINUM ADUSTUM. L. Lat. In old English law. Brandy. *Bunb.* 119, case 185. Literally, burnt wine.

VIOL. Fr. In French law. Rape. *Barr. Obs. Stat.* 139.

VIOLENT PRESUMPTION. In the law of evidence. Proof of a fact by the proof of circumstances which necessarily attend it. 3 *Bl. Com.* 371. Sometimes called a *necessary* presumption. Violent presumption is many times equal to full proof. *Id.* **Violenta præsumptio [aliquando est] plena probatio.** *Co. Litt.* 6 b. As if a landlord sues for rent due at Michaelmas, 1754, and the tenant cannot prove the payment, but produces an acquittance for rent due at a subsequent time, in full of all demands, this is a violent presumption of his having paid the former rent, and is equivalent to full proof; for though the actual payment is not proved, yet the acquittance in full of all demands is proved, which could not be without such payment; and it therefore induces so forcible a presumption, that no proof shall be admitted to the contrary. 3 *Bl. Com. ub. sup.* See *Burr. Circ. Evid.* 60—67.

VIOLENT PROFITS. In Scotch law. The double of the rent of a tenement within a burgh, or the highest profits a party could make of lands in the country; recoverable against a tenant in a process of removing. 1 *Forbes' Inst.* part 2, p. 157. *Ersk. Inst.* b. 2, tit. 6, § 24. So called, because the law considers the tenant's possession, after the warning, as *violent. Id. ibid.* See *Bell's Dict.*

Viperina est expositio quæ corrodit viscera textus. That is a viperous interpretation which eats out the bowels of the text. 11 *Co.* 34 a, *Powlter's case.* The force of the very strong epithet *viperina* is much weakened by the translation "*bad* exposition," given in Branch and Wharton.

VIR. Lat. A man; a husband. Vir

et uxor sunt quasi unica persona, quia caro una et sanguis unus; res licet sit propria uxoris, vir *tamen ejus custos, cum sit caput mulieris;* husband and wife are, as it were, one person, because one flesh and one blood; though a thing may be the property of the wife, yet the husband is the keeper of it, since he is the head of the woman. *Co. Litt.* 112 a.

Vir et uxor censentur in lege una persona. Husband and wife are regarded in law as one person. *Jenk. Cent.* 27.

VIRGA. Lat. [L. Fr. *verge.*] In old English law. A rod or white staff, such as sheriffs, bailiffs, &c. carried as a badge or ensign of their office. *Cowell.*

VIRGA. L. Lat. [Sax. *gird, gyrd.*] In old English law. A yard. *Spelman.*

Virga alnaria; a yard measured according to the legal ell or true standard. *Cowell. Cartular. Radinges*, MS. fol. 120, cited *ibid.*

Virga ferrea; the iron yard; the standard yard which was of iron; a yard according to that standard. *Cowell. Lib. Cart. Prior. Leominstr.* cited *ibid.*

VIRGA TERRÆ, (or VIRGATA TERRÆ.) L. Lat. In old English law. A yard-land, (Sax. *girdland;*) a measure of land of variable quantity, containing in some places twenty, in others, twenty-four, in others, thirty, and in others, forty acres. *Cowell. Co. Litt.* 5 a. *Shep. Touch.* 93.

VIRGATA REGIA. L. Lat. In old English law. The royal verge; the verge; the bounds of the king's household, within which the court of the steward had jurisdiction. *Crabb's Hist.* 185. A space of twelve leagues in circuit around the king's palace or residence. *Fleta*, lib. 2, c. 2, § 2; c. 4, § 2.

VIRGATOR. L. Lat. In old English law. A verger. *Fleta*, lib. 2, c. 38.

VIRIDARIUS. L. Lat. In old English law. A verderor, (q. v.) *Reg. Orig.* 177 b.

VIRIDIS, *Viride.* Lat. In old English law. Vert, (q. v.) *Cowell*, voc. *Vert.*

VIRIDIS CERA. L. Lat. In old English law. Green wax, (q. v.)

VIRIPOTENS. Lat. [from *vir*, a man, and *potens*, capable.] In the civil law. Marriageable; viripotent, (*quæ* virum *pati* potest.) *Dig.* 36. 2. 30. *Calv. Lex.*

VIRO, *Virro.* L. Lat. In old European law. An old form of *baro*, (q. v.) and of the same signification. Answering to the Saxon *thane.* Spelman calls it a Norman word.

VIRTUS. Lat. In old English practice. The substance or tenor. *Tunc legat prothonotarius* virtutem *brevis;* then the prothonotary shall read the substance of the writ. *Bract.* fol. 185 b. *Virtus actionis;* the substance of the action. *Fleta*, lib. 2, c. 65, § 11.

VIRTUTE CUJUS. Lat. By virtue whereof. 1 *Ld. Raym.* 412. 3 *Salk.* 352.

VIRTUTE OFFICII. L. Lat. By virtue of office. 15 *Johns. R.* 269, 270. Distinguished from *colore officii*, (q. v.)

VIS. Lat. In the civil and old English law. Force; the onset or pressure of a greater thing, which cannot be repelled, (*majoris rei impetus, qui repelli non potest.*) *Paulus, Sent.* lib. 1, tit. 7. *Dig.* 4. 2. 2. *Calv. Lex. Prateus.* This definition of the civil law is slightly modified by Bracton, who is followed by Fleta; *majoris rei impetus cui resisti non potest. Bract.* fol. 162. *Fleta*, lib. 4, c. 4, § 1.

Violence; unlawful violence. *Co. Litt.* 161 b. Whatever is done without any authority of law, against the free will of any one (*quicquid nullo jure fit, contra liberam alicujus voluntatem.*) *Calv. Lex.* The opposite of law or right. *Id.*

The act of seeking one's remedy without authority or process of law. *Vis est quoties quis quod sibi deberi putat, non per judicem reposcit. Bract.* fol. 162 b. This is copied from *Dig.* 4. 2. 13.

Efficacy; virtue; power to produce an effect. **Scire leges, non est verba earum tenere, sed vim et potestatem.** To know the laws is not to observe their mere words, but their force and power. *Dig.* 1. 3. 17. *Vis* and *potestas*, however, were distinguished by the civilians; the former being considered the stronger term. *Heinecc. Elem. Jur. Civ.* lib. 1, tit. 13, § 203, note.

VIS ET METUS. Lat. In Scotch law. Force and fear. *Bell's Dict.*

VIS ABLATIVA. Lat. In the civil law. Ablative force; force which is exerted in taking away (*auferendo*) a thing from another. *Calv. Lex.* Bracton adopts this term, but seems to confine it to force used in removing a moveable thing from an immoveable one, and makes it convertible with *vis perturbativa*, (q. v.) *Bract.* fol. 162.

VIS ARMATA. In civil and old English law. Armed force; force exerted by

means of arms, weapons or any thing that can hurt or injure. *Est* vis armata, *non solum si quis venerit cum telis, verum etiam omnes illos dicimus* armatos, *qui haberent quo nocere possunt;* that is armed force, not only where one comes with weapons, but we call all those armed who have any thing with which they can hurt. *Bract.* fol. 162. *Telorum autem appellatione omnia in quibus singuli homines nocere possunt, accipiuntur; sed si quis venerit sine armis, et in ipsa concertatione ligna sumpserit, fustes et lapides, talis dicetur* vis armata; under the denomination of weapons are understood all things with which men may hurt each other; but if one comes without arms, and in the heat of strife takes up stakes, clubs and stones, this will be called armed force. *Id.* fol. 162 b. *Fleta*, lib. 4, c. 4, § 4. *Co. Litt.* 162 a. *Dig.* 43. 16. 3. 2, 3, 4, 5.

VIS CLANDESTINA. Lat. In old English law. Clandestine force; such as is used by night. *Alia* vis clandestina, *et de nocte. Bract.* fol. 162.

VIS COMPULSIVA. In civil and old English law. Compulsive force; that which is exerted to compel another to do an act against his will; force exerted by menaces or terror. *Est* vis compulsiva *quæ aliquando metum inducit, ubi scilicet quis alium in carcere et in vinculis detinuerit, vel evaginato gladio, compulerit ad aliquid dandum vel faciendum contra ipsius voluntatem;* compulsive force is that which sometimes induces fear, as, for instance, where one detains another in prison and in chains, or, drawing a sword, compels him to give or do something against his will. *Bract.* fol. 162.

VIS DIVINA. Lat. [Gr. θεοῦ βία.] In the civil law. Divine or superhuman force; the act of God. *Vinnius ad Inst.* lib. 3, tit. 15, § 2, n. 5. *Dig.* 19. 2. 25. 6.

VIS EXPULSIVA. Lat. In old English law. Expulsive force; force used to expel another, or put him out of his possession. Bracton contrasts it with *vis simplex*, and divides it into expulsive force with arms, and expulsive force without arms. *Bract.* fol. 162. *Expulsiva* [vis] *locum habet in rebus corporalibus et immobilibus, sicut in terris et tenementis. Item locum habet in rebus incorporalibus, sicut in iis quæ in jure consistunt, sed non ita omnino, sed in parte et alio modo;* expulsive force has place in [takes place, or may be exercised upon] corporeal and immoveable things, as in lands and tenements. It also has place in incorporeal things, as in those things which consist in right, though not altogether, but partly, and with modification. *Id. ibid.*

VIS EXTURBATIVA. Lat. In the civil law. Exturbative force; force used to thrust out (*exturbare*) another. Force used between two contending claimants of possession, the one endeavoring to thrust out the other. *Calv. Lex.*

VIS FLUMINIS. Lat. In the civil law. The force of a river or stream; the force exerted by the rapidity or magnitude of a current of water. *Quod si* vis fluminis *de tuo prædio attulerit, palam est, eam tuam permanere;* but if the force of a stream should sweep away a part of your land, and carry it to your neighbor's land, it is clear that it would still continue yours. *Inst.* 2. 1. 21. More fully expressed in the Digests: *Quod si* vis fluminis *partem aliquam ex tuo prædio detraxerit, et meo prædio attulerit, palam est eam tuam permanere. Dig.* 41. 1. 7. 2. This is copied, with some variation, in Fleta. *Fleta*, lib. 3, c. 2, § 6.

VIS IMPRESSA. Lat. Impressed force. The original act of force out of which an injury arises, as distinguished from *vis proxima*, the proximate force, or immediate cause of the injury. 2 *Greenl. Evid.* § 224. "There, the original motion, the *vis impressa*, is continued, though diverted." Blackstone, J. 2 *W. Bl.* 895.

VIS INERMIS. Lat. In old English law. Unarmed force; the opposite of *vis armata*, (q. v.) *Bract.* fol. 162.

VIS INJURIOSA. Lat. In old English law. Wrongful force; otherwise called *illicita*, (unlawful.) *Bract.* fol. 162.

VIS INQUIETATIVA. Lat. In the civil law. Disquieting force. *Calv. Lex.* Bracton defines it to be where one does not permit another to use his possession quietly and in peace, (*ubi quis non permittit alium uti possessione, quiete et in pace.*) *Bract.* fol. 162.

VIS LAICA. L. Lat. In old English law. Lay force; an armed force used to hold possession of a church. *Reg. Orig.* 59, 60. See *De vi laica amovenda.*

VIS LICITA. Lat. In old English law. Lawful force. *Bract.* fol. 162.

VIS MAJOR. Lat. In the law of bailment. Irresistible force, (*cui resisti non potest;*) such an interposition of human agency as is, from its nature and power,

absolutely uncontrollable; as the inroads of a hostile army, or public enemies, piracy and robbery by force. *Story on Bailm.* §§ 25, 26, 246, 249. *Fleta*, lib. 2, c. 72, § 16.

In the civil law, this term is sometimes used as synonymous with *vis divina*, or the act of God. *Calv. Lex.* See *Dig.* 19. 2. 25. 6.

VIS PERTURBATIVA. Lat. In old English law. Perturbative force. Force used between parties contending for a possession. Or, as Bracton explains it, where one contends that he possesses the thing, though he has not the right, and the other asserts that he is in possession, since he has the right, (*ubi quis contendit se possidere cûm jus non habeat, et alius dicat se esse in possessione, cûm jus habeat.*) *Bract.* fol. 162.

VIS PROXIMA. Lat. Immediate force. See *Vis impressa.*

VIS SIMPLEX. L. Lat. In old English law. Simple or mere force. Distinguished by Bracton from *vis armata*, and also from *vis expulsiva. Bract.* fol. 162.

VISCONTE, *Viscont*, *Viscounte.* L. Fr. In old English law. Sheriff. *Britt.* c. 2. *Stat. Westm.* 1, c. 17. *Fet Assaver*, §§ 52, 59. *A touz les* viscountes *des counteez ;* to all the sheriffs of the counties. *Conf. Cartar.* 25 Edw. I.

VISCOUNT, *Vicount.* [L. Fr. *viscounte*, *visconte*, *viscont*, *viconte*, *vicont*, from Lat. *vice-comes*, q. v.] In old English law. Sheriff. *Cowell. Reg. Orig.* 302 b. But the L. Fr. words just given were more commonly used in this sense. In the Royal Court of Jersey, however, the sheriff is still called *viscount.* 7 *Ad. & Ell.* N. S. 984.

In modern English law. A degree of nobility next to an earl. *Cowell.* 1 *Bl. Com.* 398. Strictly, a *vice-earl.* The Lat. *comes* and *vice-comes*, show more clearly than the English, the connection of these titles. *Viscount*, according to Camden, is an old name of office, but a new one of dignity, never heard of in England till the reign of Henry VI. who in his eighteenth year, in parliament, created John Lord Beaumont, Viscount Beaumont. *Camd. Brit.* 170. *Cowell. Co. Litt.* 69 b. 9 *Co.* 125 a.

VISINETUS. L. Lat. In old English law. Venue. *Tunc summoneas, &c. de* visinetu *suburbii London quod sint coram*, &c.; then summon, &c. of the visne of the suburb of London, that they be before, &c. *Reg. Orig.* 33.

VISITATION. Inspection; superintendence; direction; regulation. A power given by law to the founders of all eleemosynary corporations. 2 *Kent's Com.* 300—303. 1 *Bl. Com.* 480, 481. In England, the visitation of ecclesiastical corporations belongs to the ordinary. *Id. ibid.*

VISITATION, in the law of nations, is distinguished from *search*, though the terms are constantly used in connection with each other. The *right of visitation* is sometimes called the *right of visit.* The British government disclaim the right of *search* in time of peace, but they claim at all times the right of *visit*, in order to know whether a vessel, pretending, for instance, to be American, and hoisting the American flag, be really what she seems to be. 1 *Kent's Com.* 153, note. The *inter-visitation* of ships at sea is a branch of the law of self-defence, and is, in point of fact, practised by the public vessels of all nations, including those of the United States, when the piratical character of a vessel is suspected. The right of *visit* is conceded for the sole purpose of ascertaining the real national character of a vessel sailing under suspicious circumstances, and is wholly distinct from the right of *search.* It has been termed by the Supreme Court of the United States, the right of approach for that purpose. *Id. ibid.* See *Search, Right of.*

VISITATION BOOKS. In English law. A series of books belonging to the College of Arms, or Herald's College, containing the pedigrees and arms of the nobility and principal gentry in England, made out by the heads of the respective families, or some person on their behalf, and delivered to the heralds, who, by virtue of commissions from the crown, were authorized to require them to be made out, proved and delivered. *Hubback's Evid. of Succession*, 538, 541. By the terms of their commissions, the heralds were authorized to make circuits through the different counties within their respective provinces, and "to peruse and take knowledge, survey and view of all manner of arms, cognizances, crests and other like devices, with the notes of the descents, pedigrees and marriages of all the nobility and gentry therein," &c. *Id.* 541. The books or records compiled from the materials obtained during these visitations or progresses, were hence called *visitation books*, and they are

frequently admitted as evidence in the courts. *Id. ibid.* 1 *Bl. Com.* 105.

VISNE. L. Fr. [L. Lat. *visnetum*, q. v.] In old English law. Venue; vicinity; vicinage; neighborhood; a neighboring place. *Deux fraunks homes terre tenauntz del* visne; two freemen, terre-tenants of the neighborhood. *Britt.* c. 45. *Loialx gents de la* visne *ou tiel fact si fist;* lawful men from the vicinity where the act was done. *Rot. Parl.* 4 Hen. IV. See *Venue.*

A neighbor. *Qui ilz voisent somoundre lez* visnes *de estre à certien jour;* that they go to summon the neighbors to be at a certain day. *Britt.* c. 45.

Visne is often used as an English word in the old books. "A jury out of the *visne*." 1 *Leon.* 301. "The *visne* shall come from both places." *Id. ibid.* "The *visne* may better know the truth." *Id. ibid.* And see 3 *Id.* 172.

VISNETUM. L. Lat. In old English law and practice. Neighborhood; vicinity; vicinage; venue or visne. *Præcipimus tibi quod venire facias coram te, et coram custodibus placitorum coronæ nostræ in pleno comitatu tuo, xii tam liberos quam legales homines de* visneto *tali, per quos rei veritas melius sciri poterit;* we command you, that you cause to come before you, and before the keepers of the pleas of our crown, in your full county court, twelve free and lawful men of such a neighborhood [or venue] by whom the truth of the matter may be better known. *Bract.* fol. 309 b. See *Id.* fol. 397. *Per testimonium* visneti *sui deliberatus est;* is delivered or acquitted by the testimony of his neighborhood. *Id.* fol. 154. See *Fleta*, lib. 4, c. 5, § 4.

VISORES. L. Lat. [L. Fr. *vejours.*] In old English practice. Viewers; persons appointed to view one who had cast an essoin *de malo lecti*, or, in other words, had excused himself from appearing in court on the ground of infirmity or sickness. *Bract.* fol. 354, 361.

Jurors in certain actions. *Fleta*, lib. 4, c. 6, § 1.

VISUS. Lat. [from *videre*, to see.] In old English practice. View; inspection, either of a place or person. See *View.*

Examination or inspection by jurors of the subject of an action. *Fleta*, lib. 4, c. 6, § 1, *et seq.* *Id.* lib. 6, c. 21.

View or inspection of a person who had cast an essoin *de malo lecti*, made by four knights called viewers, (*visores;*) its object being to ascertain by personal inspection whether the sickness or infirmity was real, and what was its character. Bracton treats at length of the practice under this head. *Bract.* fol. 352—362.

VISUS FRANCI PLEGII. L. Lat. In old English law. View of frank-pledge. Otherwise termed *visus de franco plegio.* *Magna Charta*, 9 Hen. III. c. 35. *Bract.* fol. 155. *Fleta*, lib. 2, c. 52, § 2.

VISUS TERRÆ. L. Lat. In old English practice. View of land. *Stat. Westm.* 2, c. 48.

VITA. Lat. In old English law. Life. *Ad* vitam *vel in feodo;* for life or in fee. *Bract.* fol. 13 b. *Ad terminum* vitæ *vel annorum;* for a term of life or for years. *Id. ibid.*

VITAILLE. L. Fr. In old English law. Victual; provision; food. *De blee, ou de autre* vitaille, *ou des autres necessaries;* of grain, or of other victual, or of other necessaries. *Britt.* c. 45.

VITIOUS INTROMISSION. In Scotch law. An unwarrantable intermeddling with the moveable estate of a person deceased, without the order of law. *Ersk. Pr.* b. 3, tit. 9, § 25.—The irregular intermeddling with the effects of a deceased person, which subjects the party to the whole debts of the deceased. 2 *Kames' Equity*, 327.

VITIUM. Lat. In the civil law. Fault; defect; imperfection; blemish; bodily defect; vice. *Dig.* 21. 1. *Id.* 50. 16. 101. 2. Distinguished from *morbus*, (disease.) *Id. ibid.* See *Vice.*

In old English law. Fault; mistake; error. See *Vitium clerici*, *Vitium scriptoris.*

VITIUM CLERICI. L. Lat. In old English law. The mistake of a clerk; a clerical error. Lord Ellenborough, C. J. 4 *M. & S.* 100. **Vitium clerici nocere non debet.** A clerical error ought not to prejudice. *Jenk. Cent.* 23.

VITIUM SCRIPTORIS. L. Lat. In old English law. The fault or mistake of a writer, or copyist; a clerical error. *Gilb. For. Rom.* 185. *Comb.* 4.

VITRICUS. Lat. In the civil law. A step-father; a mother's second husband. *Dig.* 38. 10. 4. 6. *Calv. Lex.* *Cooper's Just. Inst.* Notes, *429.

VIVA AQUA. In the civil law. Living water; running water; that which issues from a spring or fountain, (*quæ fonte exit.*) *Calv. Lex.*

VIVA PECUNIA. L. Lat. In old English law. Live cattle. See *Pecunia.*

VIVA VOX. Lat. The living voice; oral utterance, as distinguished from written words. Hence the common phrase, *vivâ voce*, by word of mouth.

In old English law. A living witness, as distinguished from a writing offered in evidence. *Et quod ita sit, producat sectam sufficientem*, vivam vocem, *vel aliquem qui paratus sit hoc disrationare;* and [to prove] that it is so, he should produce a sufficient suit, a living witness, or any one who may be prepared to establish this. *Bract.* fol. 382. *Fleta*, lib. 6, c. 23, § 15. See *Vive voys.*

VIVARIUM. Lat. [from *vivus*, alive; Græco-barb. βιβρέον.] In the civil law. An enclosed place, where live wild animals are kept. *Calv. Lex. Spelman. A. Gell. Noct. Att.* ii. 20.

In old English law. A place in land or water where living things are kept; a vivary. Most commonly in law it signifies a park, warren or fishery. In the statute of Merton, (c. 11,) it is taken for a warren and fishery. 2 *Inst.* 100. See *Vivary, Viver. Fleta*, lib. 2, c. 41, § 2.

VIVARY. [Lat. *vivarium;* L. Fr. *viver*, qq. v.] In English law. A place for keeping wild animals alive, including fishes; a fish-pond, or fishery. See *Viver.*

VIVER. L. Fr. [from Lat. *vivarium*, q. v.] In old English law. A fish-pond; a fishery or fishing place. *De pescher en autry* viver; to fish in another's pond. *Britt.* c. 71. *Stat. Westm.* 1, c. 1, 20. *Les fosses, et les* vivers, *et les hayes;* the ditches, and the ponds, and the hedges. *Britt. ub. sup.*

Meat; food or victual, (Lat. *victus.*) *A trover estovers en* viver, *ou en vesture;* to find estovers in meat or in clothing. *Stat. Glocest.* c. 4.

VIVERE. Lat. To live. As to the interpretation of this word in the civil law, see *Dig.* 50. 16. 234. 2.

VIVEVOYS, *Vive voys.* L. Fr. [from Lat. *viva vox*, q. v.] In old English law. A living witness; the testimony of a witness; oral or parol testimony. *Et si la chartre soit de puyr feffement sauns condicion, et le done soit graunte ou prove, adonques n'est mester à crere nule* vivevoys *à parler de condicion, pur la presumpcion de la chartre que ne tesmoyne nule condicion;* and if the charter be of pure feoffment without condition, and the gift be granted or proved, then there is no necessity to listen to the testimony of any living witness to speak of a condition, in consequence of the presumption of the charter, which testifies to no condition. *Britt.* c. 51. Elsewhere written as two words; *vive voys. Id.* c. 85.

VIVUM VADIUM. L. Lat. [L. Fr. *vif gage.*] In old English law. A living pledge; that kind of a pledge in which the rents and profits of the thing pledged went towards the discharge of the debt. See *Mortgage. Vivum vadium*, or living pledge, is when a man borrows a sum (suppose 200*l.*) of another, and grants him an estate, as of 20*l.* per annum, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditioned to be void, as soon as such sum is raised. And in this case the land or pledge is said to be *living;* it subsists, and survives the debt; and immediately on the discharge of that, results back to the borrower. 2 *Bl. Com.* 157. In a pledge of this kind, the creditor took actual possession of the estate and received the rents, and applied them, from time to time, in liquidation of the debt. When it was satisfied, the debtor might re-enter, and maintain ejectment. *Coote on Mortg.* 8, 9.

VIX. Lat. Scarcely; hardly; rarely. **Vix ulla lex fieri potest quæ omnibus commoda sit, sed si majori parti prospiciat, utilis est.** Scarcely any law can be made which is adapted to all, but if it provide for the greater part, it is useful. *Plowd.* 369.

VOCABULA ARTIS. Lat. Words of art; "vocables" of art; technical terms. *Co. Litt.* pref. 5 *Co.* 121 b, *Long's case.*

Vocabula artium explicanda sunt secundum definitiones prudentum. Terms of arts are to be explained according to the definitions of the learned or skilled [in such arts.] *Puffend. de Offic. Hom.* lib. 1, c. 17, § 3. *Bl. L. Tr.* 6. See *Grotius de Jur. Bell.* lib. 2, c. 16, § 3.

VOCABULUM. Lat. A name. *Vocabula rerum;* the names of things. *Fleta*, lib. 4, c. 10, § 11.

VOCANS. Lat. [from *vocare*, to vouch.] In old practice. One who vouches another; a voucher. *Bract.* fol. 380.

VOCARE. Lat. To call; to call upon.

In old English practice. To vouch; to call upon one to warrant another's title (*vocare ad warrantum*) or defend it. *Si ita* vocaverit, voco *talem, filium et hæredem*

talis, valet talis vocatio; if he vouch thus, "I vouch such a one, son and heir of such a one," such a voucher is good. *Bract.* fol. 382 b. A. vocat B. *ad warantum versus* C.; A. vouches B. to warranty against C. *Id.* fol. 381 b.

VOCARE AD CURIAM. L. Lat. In feudal law. To summon to court. *Feud. Lib.* 2, tit. 22.

VOCARE IN JUS. Lat. In the Roman law. To summon to court; to cite or summon before the prætor or magistrate. *Calv. Lex. Adam's Rom. Ant.* 242.

VOCAT'. L. Lat. In old pleading. Called. An abbreviation of *vocatus, vocata, vocati*, &c. used apparently to avoid the necessity of varying the termination, in order to adapt it grammatically to the words with which it was connected. This word was constantly used in the old Latin pleadings, as immediately introductory to the English name of a thing, where no equivalent Latin word could be found, or where it was not deemed safe to frame one. Thus, "*instrumentum, vocat'* a plate for a jack;" an instrument called a plate for a jack. *Towns. Pl.* 102. Sometimes the word *Anglicè*, (in English,) was used for the same purpose, and occasionally both together. See *Law Latin.*

VOCATIO. L. Lat. [from *vocare*, to vouch.] In old practice. Voucher; a calling to warrant. *Bract.* fol. 382 b. See *Vocare.*

VOCATUS. L. Lat. [from *vocare*, to vouch.] In old practice. One who was called or vouched; a vouchee. *Bract.* fol. 381, 382.

In old European law. An advocate; a patron. *Chart. Alam.* 32. *Spelman.*

VOCHE. L. Fr. [from *vocher*, q. v.] In old practice. A vouchee. *Le* voche *n'est mye trove;* the vouchee is not found. *Britt.* c. 15.

VOCHEOUR. L. Fr. [from *vocher*, q. v.] In old practice. A voucher; one who vouches or calls another to warrant. *Si ad le* vocheour *fait defaut;* if the voucher have made default. *Britt.* c. 75.

VOCHER. L. Fr. [from Lat. *vocare*, q. v.] In old practice. To vouch; to call to warrant. *Britt.* c. 75.

A vouching, or voucher. *En tiel cas, cherrount les tenauntz en lour* vocher; in such case, the tenants shall fail in their voucher. *Id. ibid.*

A voucher; a person vouching. *Et issi de* vocher *en* vocher; and so from voucher to voucher. *Id. ibid.*

VOCHERESSE. L. Fr. A female voucher; a woman who vouched. *A defendre la* vocheresse *v's le pleyntyfe;* to defend the voucheresse against the plaintiff. *Britt.* c. 108.

VOCIFERATIO. Lat. In old English law. Outcry; hue and cry. *LL. Hen.* I. c. 12. *Cowell.*

VOCO. Lat. In civil and old English law. I call; I summon; I vouch. *In jus* voco *te;* I summon you to court; I summon you before the prætor. The formula by which a Roman action was anciently commenced. *Adam's Rom. Ant.* 242.

Voco talem; I call or vouch such a one. The old formula of vouching to warranty. *Bract.* fol. 382 b. *Fleta*, lib. 6, c. 23, § 20.

VODEGELDUM. L. Lat. In old English law. Woodgeld, (q. v.) *Spelman.*

VOER. L. Fr. In old English law. To view; to see or inspect. *Et puis vist le coroner, et les jurors ove luy,* voer *le cors, et les playes;* and afterwards let the coroner go, and the jurors with him, to view the body and the wounds. *Britt.* c. 1. *Que le tenaunt* voet *sauns jour;* that the tenant go without day. *Id.* c. 76.

VOEVE, *Voef.* L. Fr. Widow. *Kelham.*

VOID. [L. Fr. *voyde.*] Of no force, or effect; absolutely null; that cannot be confirmed, or made effectual. A thing may be void in several degrees; it may be void as to some persons or purposes, and valid as to others. Spencer, C. J. 18 *Johns. R.* 527, 528, citing *Bac. Abr. Vin. Abr.* h. t.

VOIDABLE. That may be avoided, or declared void; not absolutely void, or void in itself; that may be avoided or confirmed. Most of the acts of infants are *voidable* only, and not absolutely void. 2 *Kent's Com.* 234.

"The term 'void,' as applicable to conveyances, or other agreements, has not at all times been used with technical precision, nor restricted to its peculiar and limited sense, as contradistinguished from 'voidable;' it being frequently introduced, even by legal writers and jurists, when the purpose is nothing further than to indicate that a contract was invalid, and not binding in law. But the distinction between the terms 'void' and 'voidable,' in their application to contracts, is often one of great practical

importance; and whenever entire technical accuracy is required, the term 'void' can only be properly applied to those contracts that are of no effect whatsoever; such as are a mere nullity, and incapable of confirmation or ratification." Dewey, J. 6 *Metcalf's R.* 417.

VOIDANCE. [Lat. *vacatio.*] In ecclesiastical law. A want of an incumbent upon a benefice. *Cowell.*

VOIER, *Veier.* L. Fr. [from Lat. *videre.*] In old English law. To see. *Est à voier;* it is to be seen. *Kelham.*

VOILER, *Voiller.* L. Fr. In old English law. To will; to be willing. *L. Fr. Dict.*

VOILER (or VOLEIR.) L. Fr. In old practice. To mean; to purport or set forth. A term applied to written instruments, writs, &c. *Yearb.* M. 4 Edw. III. 45. M. 5 Edw. III. 26.

VOILOIR, *Voillour.* L. Fr. In old English law. A will; a testament. *Kelham.*

VOIR, *Voire, Voier, Voyer, Voiar.* L. Fr. [from Lat. *verum*, true.] In old English law. Truth; the truth. *Kelham.*

VOIRE DIRE. L. Fr. (To say the truth.) In practice. A preliminary oath administered to a witness, for the purpose of ascertaining whether he has such an interest in the cause in which he is offered to testify, as would disqualify him; he being sworn *to say the truth* touching matters in which he is thought or suspected to be an interested witness. *Cowell.* The old expression *à dire le verité*, conveyed the same idea. *Yearb.* H. 3 Hen. VI. 3. A witness may now, it seems, be examined on his *voire dire* at any time during the trial. *Holthouse.*

An oath of this kind is sometimes administered to infants, for the purpose of ascertaining their age. 3 *Bl. Com.* 332.

VOLENS. Lat. [from *velle*, to will or be willing.] Willing. He is said to be willing, who either expressly consents, or tacitly makes no opposition. *Calv. Lex.*

Volenti non fit injuria. An injury is not done to the willing. He who consents to a thing, or makes no opposition to it, cannot complain of it as an injury. This maxim occurs in the law of England in this form, as early as the time of Bracton. *Bract.* fol. 18. In the civil law, from which it is substantially derived, it is otherwise more clearly expressed, **Nulla injuria est quæ in volentem fiat.** That is no injury which is done to a willing party. *Dig.* 47. 10. 1. 5. It has been extensively adopted in the common law of England and the United States. *Yearb.* M. 4 Edw. III. 18. *Plowd.* 501. 1 *Salk.* 22, pl. 2. *Wingate's Max.* 482, max. 122. *Broom's Max.* 127, [201.] It is a general rule of the English law, that no one can maintain an action for a wrong, where he has consented or contributed to the act which occasions his loss. Tindal, C. J. 2 *Scott, N. R.* 257. It is held inapplicable in equity to the case of a usurious loan. "It would be absurd," it is said, "to apply this maxim to the case of a man who, from mere necessity, pays more [interest] than the other can in justice demand, and who has been significantly called the slave of the lender. He can in no just sense be said to pay voluntarily." 1 *Story's Eq. Jur.* § 302. It is also held inapplicable to cases of agreements to break the peace. 3 *Jones'* (N. C.) *Law R.* 131.

VOLENTES. Lat. (We being willing.) In old practice. The initial word of the Latin writs of *certiorari.* Volentes *de certis causis certiorari;* we being willing for certain causes to be certified. *Reg. Orig.* 169 b. *F. N. B.* 247 E.

VOLO. Lat. I will; I wish or desire. One of the appropriate words used in Roman testaments to create a trust. *Inst.* 2. 24. 3. Bracton uses it as a term of conveyance. *Bract.* fol. 18 b.

Voluit, sed non dixit. He willed, but he did not say. He may have intended so, but he did not say so. A maxim frequently used in the construction of wills, in answer to arguments based upon the supposed intention of a testator. 2 *Powell on Devises*, (by Jarman,) 625. 4 *Kent's Com.* 538. It is applied also in the construction of statutes. The English judges have frequently observed, in answer to the remark that the legislature meant so and so, that they, in that case, have not so expressed themselves, and therefore the maxim applied, **Quod voluit non dixit.** 1 *Id.* 468, note. As to the peculiar meaning of *velle* and *dicere* in the civil law, see *Dig.* 34. 5. 3.

VOLUMEN. Lat. [from *volvere*, to roll.] In the civil law. A volume; so called from its form, being *rolled* up. As to the distinction between a volume and a book (*liber,*) see *Dig.* 32. 52. 1.

VOLUMUS. Lat. (We will.) In old English practice. The first word of a clause inserted in writs of protection, expressing

the king's pleasure that the party should be quit of certain pleas and plaints for a certain period. Volumus *etiam quod idem W. interim sit quietus de omnibus placitis et querelis, exceptis*, &c. *Reg. Orig.* 22 b.

VOLUNT. L. Fr. [from Lat. *voluntas*, q. v.] In old English law. Will. *Per sa volunt;* by his will. *T. Jon.* 107. *Fist son volunt;* made his will. 1 *And.* 3. *Bendl.* pl. 3.

VOLUNTARIUS DÆMON. L. Lat. A voluntary madman. A term applied by Lord Coke to a drunkard, who has voluntarily contracted madness by intoxication. *Co. Litt.* 247. 4 *Bl. Com.* 25.

VOLUNTARY. [Lat. *voluntarius*, from *voluntas*, will.] Free; without compulsion or solicitation; in accordance with the will, intent, consent or agreement of a party.

Without consideration; without valuable consideration; gratuitous. 1 *Kames' Equity*, pref. See *infra.*

VOLUNTARY ASSIGNMENT. An assignment made by a debtor in trust for the benefit of his creditors. So called in contradistinction from *compulsory* assignments, or such as are made under statutes of bankruptcy and insolvency, or by order of some competent court. See *Burrill on Assignments*, chap. 1, pp. 4, 5. And see 10 *Paige's R.* 445. 1 *Comstock's R.* 201. 3 *Sumner's R.* 345.

VOLUNTARY CONVEYANCE. A conveyance without valuable consideration, such as a deed or settlement in favor of a wife or children. The term is usually applied to conveyances made by parties who are indebted at the time of making them. See 2 *Kent's Com.* 440—443, and notes.

VOLUNTARY DEPOSIT. In the civil law of bailment. A deposit arising from the mere consent and agreement of parties, as distinguished from a necessary deposit, which was made upon some sudden emergency, or from some pressing necessity. *Dig.* 16. 3. 2. *Story on Bailm.* § 44.

VOLUNTARY ESCAPE. In practice. An escape of a person from custody, by the express consent of his keeper. 3 *Bl. Com.* 415. An escape in consequence of the sheriff, or his officer, permitting a party to go at large. 1 *Arch. Pr.* See *Escape.*

VOLUNTARY JURISDICTION. In English law. A jurisdiction exercised by certain ecclesiastical courts, in matters where there is no opposition. 3 *Bl. Com.* 66. The opposite of *contentious* jurisdiction, (q. v.) *Id. ibid.*

VOLUNTARY MANSLAUGHTER. In criminal law. Manslaughter committed voluntarily upon a sudden heat of the passions; as if, upon a sudden quarrel, two persons fight, and one of them kills the other. 4 *Bl. Com.* 190, 191.

VOLUNTARY OATH. In practice. An oath taken in some extra-judicial matter, or before some magistrate or officer who cannot compel it to be taken.* 4 *Bl. Com.* 137.

VOLUNTARY WASTE. Waste done by acts of commission; as by pulling down a house.* 2 *Bl. Com.* 281. It is distinguished from *permissive* waste, which is matter of omission only. *Id. ibid.*

VOLUNTAS. Lat. [from *volo, velle*, to will.] In civil and old English law. Will; intent; design; purpose. **Voluntas et propositum distinguunt maleficia.** Will and purpose characterize crimes. *Bract.* fol. 2 b, 136 b. **Crimen non contrahitur, nisi voluntas nocendi intercedat, [interveniat.]** Crime is not contracted, unless the intention of doing harm be present. *Id. ibid. Fleta*, lib. 1, c. 31, § 4. **Tolle voluntatem, et erit omnis actus indifferens.** Take away will, and every act will become indifferent. *Bract.* fol. 2 b. **Voluntas in delictis, non exitus, spectatur.** The will, not the issue, is looked to in crimes. 2 *Inst.* 57. **Voluntas reputatur [reputabitur] pro facto.** The will is [shall be] taken for the deed. A maxim in the English law of treason. 3 *Inst.* 5, 69. *Broom's Max.* 145, 146, [228.]

Will; intention; desire. **Voluntas donatoris, in charta doni sui manifeste expressa, observetur.** The will or intention of a donor, clearly expressed in the deed of his gift, should be observed. *Co. Litt.* 21. **Voluntas testatoris est ambulatoria usque ad mortem, [ad extremum vitæ exitum.]** The will of a testator is ambulatory until death. 2 *Bl. Com.* 502. 4 *Co.* 61 b. Lord Loughborough observed that this was the most general maxim he knew of. 4 *Vesey, Jr.* 210. It seems to have been taken from that of the civil law: *Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. Dig.* 34. 4. 4.

A will; a last will. **Voluntas testatoris habet interpretationem latam et benignam.** The will of a testator has [should have] a broad and benignant interpretation. *Jenk. Cent.* 260. See *Dig.* 50. 17. 12. **Voluntas ultima testatoris est perimplenda secundum veram intentionem suam.** The last

will of a testator is to be fulfilled according to his true intention. *Co. Litt.* 322.

Will; pleasure. *Ad voluntatem;* at will. *Bract.* fol. 27.

VOLUNTE, *Volunt, Volounte.* L. Fr. [from Lat. *voluntas*, q. v.] Will; mind; intention. *Britt.* c. 43, 77.

VOLUNTEER. A grantee in a voluntary conveyance; one to whom a conveyance is made without valuable consideration. A party, other than a wife or child, to whom, or for whose benefit, a voluntary conveyance is made. See 1 *White's Equity Cases*, 167—193.

VOMENTUM. L. Lat. In old Scotch law. A cannon. *Cum* vomentis *curriculatis;* with pieces of ordnance mounted on wheeled carriages. 1 *Pitc. Cr. Trials*, part 1, p. 6.

VOUCH. [from L. Fr. *vocher, voucher*, from Lat. *vocare*, q. v.] In old practice. To call; to call to warranty; to call upon a person who has warranted a title (termed *warrantus*, or *warantus*, in the old books,) to defend the title which he so warranted.* 2 *Bl. Com.* 358.

To cite, or quote. "*Vouched* a precedent of a case." *Yelv.* 96. "The book that hath been *vouched*." 1 *Leon.* 79.

VOUCHEE. [L. Fr. *voche;* L. Lat. *vocatus.*] In old practice. One who is vouched or called to warranty. 2 *Bl. Com.* 358. 3 *Id.* 300.

VOUCHER. [L. Fr. *vocher;* L. Lat. *vocatio.*] In old practice. A calling to warranty; a calling upon one who has warranted a title, to defend it in an action.* The calling in of some person to answer an action, that has warranted the title to the tenant or the defendant. 3 *Bl. Com.* 300. See *Roscoe's Real Act.* 257—274.

The party who vouched, (*vocans;*) the tenant in a real action, who called upon another to defend his title. *Cowell.*

VOUCHER. In old English law. An account book wherein are entered the acquittances or warrants for the accountant's discharge. *Stat.* 19 *Car.* II. c. 1. *Cowell.*

Any acquittance or receipt, discharging a person, or being evidence of payment. *Jacob.* Shaw, C. J. 1 *Metcalf's R.* 218.

VOUS AVES (or AVEZ.) L. Fr. You have. *Vous aves cy;* you have here. The old form of commencing a pleading when delivered *ore tenus. Vous aves cy John qui dit que*, &c.; you have here John who says that, &c. *Yearb.* H. 9 Edw. III. 6. *Vous aves icy Richard que avowa cest prise;* you have here Richard who avows this taking. P. 8 Edw. III. 19. M. 19 Hen. VI. 1.

The same form of expression was used on other occasions, "*Vous avez* Sir William Roberts." The answer of the crier to the clerk of the crown, when a juror was called in court. 7 *How. St. Trials*, 161.

VOUS VEIES, (VOIES, or VEITZ) BIEN COMENT. L. Fr. You see well how. Formal words anciently used by counsel in addressing the court. *Yearb.* T. 1 Edw. III. 9. H. 2 Edw. III. 9. P. 8 Edw. III. 23. M. 4 Hen. VI. 1.

VOX. L. Lat. In old practice. Speech; saying; statement. *Fleta*, lib. 2, c. 61, § 1; c. 63, § 9. **Vox emissa volat; litera scripta manet.** The spoken word flies; the written letter remains. *Broom's Max.* [517.]

VOX SIGNATA. L. Lat. In Scotch practice. An emphatic or essential word. 2 *Alis. Crim. Pr.* 280.

VOYAGE. [L. Fr. *viage;* L. Lat. *viaggium, iter navis.*] In maritime law. The passage of a vessel upon the seas, either from one port to another, or to several ports.

VOYAGE INSURED. [Fr. *voyage assuré;* L. Lat. *viaggium.*] In insurance law. A transit at sea from the *terminus à quo*, to the *terminus ad quem*, in a prescribed course of navigation, (*iter viagii,*) which is never set out in any policy, but virtually forms parts of all policies, and is as binding on the parties thereto, as though it were minutely detailed. 1 *Arnould on Ins.* 333, (339, Perkins' ed.) This is a technical term, to be carefully distinguished from the actual voyage of the ship, (*iter navis.*) *Id.* See *Emerig. Tr. des Ass.* ch. 13, sect. 4, § 1. *Casaregis*, disc. 67, n. 31.

VOYAGE OF THE SHIP. [Lat. *iter navis.*] In insurance law. The course of navigation on and in which a vessel actually sails. 1 *Arnould on Ins.* 333, (340, Perkins' ed.) See *Voyage insured.*

VOYER. L. Fr. In old English law. To go; to issue. *A que le brefe* voyse *de la court;* to whom the writ goes [issues] from the court. *Britt.* c. 120.

VOYS. L. Fr. [from Lat. *vox*, voice.] In old English law. Voice; word; speech; saying; assertion. *Encontre sa soule* voys; against his single assertion. *Britt.* c. 29.

Soule voys, (simplex dictum, simplex loquela, qq. v.) *Id.* c. 93.

VS. In practice. A very common contraction of *versus*, (against,) used in entitling papers on the part of a plaintiff; "A. B. *vs.* C. D." Sometimes still further abbreviated to *v.* It seems to have been immediately derived from the L. Fr. *vers*, and occurs as early as the time of Britton, in the entries of essoins on the record. *Joha'* v's *Peres, d'play d' t'r, p'tel, (Johan* v's *Peres, de play de terre, par tiel ;)* John *vs.* Peter, of a plea of land, by such a one. *Johan* v's *Peres, T. et S. de tel plee, par tel ;* John *vs.* Peter, T. and S. of such a plea, by such a one. *Britt.* c. 123. And see the Year Books, *passim.*

VULGARIS OPINIO. Lat. Common opinion. Vulgaris opinio *est duplex, sc. opinio vulgaris orta inter graves et discretos, et quæ vultum veritatis habet, et opinio tantum orta inter leves et vulgares homines, absque specie veritatis ;* common opinion is two-fold, viz. common opinion which originates among grave and discreet men, and which has a countenance of truth, and an opinion which originates only among light and vulgar men, without a show of truth. 4 *Co.* 107 b. *Adams' & Lambert's case.*

VULGARIS PURGATIO. L. Lat. In old English law. Common purgation; a name given to the trial by *ordeal*, to distinguish it from the canonical purgation, which was by the oath of the party. 4 *Bl. Com.* 342.

VULGO CONCEPTI. Lat. In the civil law. Spurious children; bastards; those who cannot point out their father, or if they can, have him for a father whom it is not lawful to have; (*qui patrem demonstrare non possunt, vel qui possunt quidem, sed eum habent quem habere non licet.*) *Dig.* 1. 5. 23.

VULGO QUÆSITI. Lat. In the civil law. Spurious children; literally, gotten from the people; the offspring of promiscuous cohabitation, who are considered as having no father. *Inst.* 3. 4. 3. *Id.* 3. 5. 4.

VYCINE. L. Fr. [Lat. *vicinus.*] A neighbor. *Dyer*, 36 b, (Fr. ed.)

W.

WACREOUR. L. Fr. In old English law. A vagabond, or vagrant. *De* wacreours *per pays. Britt.* c. 29.

WACTA. L. Lat. [from Germ. wacht, Sax. *waecean*, Fr. *guet*, q. v.] In old European law. Watch; watch and ward, (*excubiæ.*) *Excubias, quas usitato vocabulo* wactas *dicunt, facere non negligant ;* they shall not neglect to perform watches, which in the common language they call *wacts. Capitul. Hludov. Pii*, A. D. 815, c. 1. *Esprit des Lois*, liv. 30, c. 13, and note. *Spelman.* 1 *Bl. Com.* 356. *Capitul. Caroli.* lib. 3, c. 68.

WADIA, *Guadia.* L. Lat. In old European law. Gage; pledge. *Si non habuerit unde summam persolvat, semetipsum per* guadiam *in servitio principis tradet ;* if he have not wherewith to pay the sum, he shall deliver himself up by pledge to the service of the prince. *LL. Longob.* lib. 1, tit. 15.

WADIARE. L. Lat. In old European law. To pledge. *Spelman.*

WADIUS, *Wadium.* L. Lat. In old European law. A pledge. *Spelman.*

WADRUS. L. Lat. In old European law. A term of frequent occurrence in the Formulæ Solennes, which Spelman supposes to mean *water. Do, trado, &c. N. N. &c. mansos tantos, cum domibus, ædificiis, curtiferis, cum* wadris, *sylvis, terris arabilibus, &c.* (I give, deliver, &c. to N. N. &c. so many manses, with the houses, buildings, curtilages, with the waters, woods, arable lands, &c.) *Form. Sol.* 18, 19, 20, 50, 58.

WADSET. [from *wad, wadia*, a pledge.] In Scotch law. A disposition of lands, answering to a *mortgage* in English law. 1 *Kames' Equity*, pref. Literally, a setting or putting to pledge; a close translation of the L. Lat. *in vadium* (or *wadium*) *positio.**—A right by which lands, or other heritable subjects, are impignorated by the proprietor to his creditor, in security of his debt. The debtor who grants the *wadset*, and has the right of reversion, is called the *reverser ;* and the creditor receiver of the wadset, is called the *wadsetter. Ersk. Pr.* b. 2, tit. 8, § 1.—A disposition whereby any real right of lands or other things passing by infeftment, is transmitted from one to another, in security of a special sum, and redeemable upon payment of the money in the way and manner therein expressed. 1 *Forbes' Inst.* part 3, p. 12.

WADSETTER. In Scotch law. A creditor to whom a wadset is granted; a mortgagee. *Ersk. Pr.* b. 2, tit. 8, § 1.

WAFTORES. L. Lat. In old English

law. A name given to certain naval officers, appointed 22 Edw. IV. chiefly to protect the fishermen on the coast of Norfolk and Suffolk. *Cowell.*

WAGA, *Vaga.* L. Lat. In old English law. A weigh; a measure of cheese, salt, wool, &c. containing two hundred and fifty-six pounds avoirdupois. *Cowell.* 1 *Mon. Ang.* 515. *Spelman. De una* waga *casei. Fleta*, lib. 2, c. 76, § 12.

WAGE. [from L. Fr. *gager;* L. Lat. *vadiare, wadiare, guadiare.*] In old English practice. To give security for the performance of a thing. *Cowell.* To *wage* battel, was to give gage or security for joining in the *duellum* or combat. See *Wager of battel.* To *wage* law, was to give gage or security to make one's law. See *Wager of law.*

WAGE. L. Fr. In old English law. Gage; pledge, (*vadium.*) *LL. Gul. Conq.* l. 6.

WAGER. A contract by which two parties or more agree that a certain sum of money or other thing, shall be paid or delivered to one of them, on the happening or not happening of an uncertain event. *Bouvier.* Wagers are founded either upon a fact already in existence, but not known to the parties, the one affirming that it *is* so, and the other that it *is not;* or upon some future event, the one affirming that it *will be* so, the other that it *will not.*

In New-York, all wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, are declared by statute to be unlawful; and all contracts for or on account of any money or property, or thing in action so wagered, bet or staked, are declared void. 1 *Rev. St.* [662,] 666, § 8. In Vermont and Pennsylvania, no action upon any wager or bet will be sustained. 2 *Vermont R.* 144. 6 *Wharton's R.* 173. 3 *Kent's Com.* 178, and note. At common law, however, a wager is considered to be a legal contract, which the courts are bound to enforce, unless it be on a subject which is illegal, or contrary to public policy, good morals, or the peace of society, or which affects the feelings or interests of third persons. *Story on Contracts*, § 566. *Chitty on Contracts*, 494—498. 3 *Kent's Com.* 277.

WAGER OF BATTEL. [L. Fr. *gager de bataille;* L. Lat. *vadiatio duelli.*] In old English practice. The giving of a gage or pledge to try a cause by battel, or single combat. This *gage* or *vadium* was originally an actual security given by *both* the parties; the appellee (in proceedings by appeal) giving *gage* to defend himself by his body, and the appellor giving *gage* to make good his charge in the same manner. *Dat appellatus* vadium *defendendi, et appellator* vadium *disrationandi. Bract.* fol. 137. *Done le defendaunt* gage *à soy defendre, et le appellour* gage *pur la cause dereiner. Britt.* c. 22. In writs of right, and other cases where the combat was by champions, the giving of gage was expressed by the mere formality of the tenant's champion throwing down his glove or gauntlet, which the demandant's champion took up. 3 *Bl. Com.* 339.

WAGER OF LAW. [L. Fr. *gager de ley, ley gager;* L. Lat. *vadiatio legis.*] In old practice. The giving of *gage* or sureties by a defendant in an action of debt, that at a certain day assigned, he would *make his law;* that is, would take an oath in open court, that he did not owe the debt, and at the same time bring with him eleven neighbors, (called *compurgators,*) who should avow upon their oaths that they believed in their consciences that he said the truth. *Glanv.* lib. 1, c. 9, 12. *Bract.* fol. 156 b. *Britt.* c. 27. *Fleta*, lib. 2, c. 47, § 5. 2 *Bl. Com.* 343. *Cro. Eliz.* 818. The sureties having been given, the defendant, on the day assigned, appeared in court with his compurgators, and standing at the end of the bar, was admonished by the judges of the nature and danger of a false oath. If he still persisted, he was to repeat this or the like oath: "Hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor any penny thereof, in manner and form as the said Richard hath declared against me. So help me God." The oaths of the compurgators then immediately followed. See *Compurgator.*

The whole proceeding is more minutely described in 2 *Salk.* 682, as follows: "Action of debt was brought on a by-law; the defendant waged his law, and a day was given upon the roll for him to come and make his law; and now, upon the last day of the term, he came. And Northby for the plaintiff insisted, that if he swear falsely or rashly and without reason, the court is not bound to receive him to it, and prayed a day to speak to that point. Sed per Holt, C. J. we can admonish him;

but if he will stand by his law, we cannot hinder it, seeing it is a method the law allows. And the defendant was set at the right corner of the bar, without the bar, and the secondary asked him, if he was ready to wage his law; he answered 'Yes.' Then he laid his hand upon the book, and then the plaintiff was called; and a question thereupon arose whether the plaintiff was demandable. [The court held that he was.] Then the court admonished him [the defendant,] and also his compurgators, which they regarded not so much as to desist from it. Accordingly the defendant was sworn, that he owed not the money *modo et forma*, as the plaintiff had declared, nor any penny thereof. Then his compurgators standing behind him were called over, and each held up his right hand, and then laid their hands upon the book, and swore that they believed what the defendant swore was true."

This formality of acquitting one's self of a claim by oath, was properly and technically called "*making law*" or "*perfecting law;*" the word "*law*" being used in its ancient sense of *oath*. See *Law*. Lord Coke, however, supposes the term to mean, "taking the benefit which the law allowed the party." *Co. Litt.* 295. *Wager of law* strictly signified merely the preliminary formality of giving gage or security, but (probably in consequence of the ambiguous character of the expression, "making law") is generally used in the books, to denote the whole proceeding. 3 *Bl. Com.* 341—348. See *Fleta*, lib. 2, c. 47, § 5.

Wager of law was one of the most ancient proceedings in English practice. It is distinctly described in Glanville, (*ub. sup.*) and was probably introduced by the Saxons. Montesquieu mentions it, under the name of the custom of negative proofs, (*l'usage des preuves négatives,*) as permitted by the laws of the Ripuarian Franks, and of the Allemans, Bavarians, Thuringians, Frisians, Saxons, Lombards and Burgundians. *Esprit des Lois*, liv. 28, c. 13. The last instance of its use in the English courts appears to have been in the case of King *v.* Williams, 2 *B. & C.* 538. It was abolished as late as the statute 2 & 4 Will. IV. c. 42, § 13. In the United States it seems never to have been practiced, but if it ever existed, it is now completely abolished. 8 *Wheaton's R.* 642.

WAGER POLICY. In insurance law. A policy without any real interest to support it; a policy in which the insured has no interest, being in fact nothing more than a wager or bet between the parties, whether such a voyage would be performed, or such a ship arrive safe.* 3 *Kent's Com.* 277, 278. A mere hope or expectation, without some interest in the subject matter, is a wager policy. *Id.* 275. Mr. Arnould defines a wager policy to be "one in which the parties, by express terms, disclaim, on the face of it, the intention of making a contract of indemnity." 1 *Arn. on Ins.* 276, (281, Perkins' ed.) Policies of this kind are now generally held to be illegal. *Id.* 285, (289.) 1 *Duer on Ins.* 93—95. *Id.* 154, 155.

WAGES. In maritime law. The compensation allowed to seamen for their services on board a vessel during a voyage.* 3 *Kent's Com.* 185, *et seq.* See *Abbott on Shipp.* [605,] 715, *et seq.*

WAIF, *Waife, Wayf, Wayfe, Weyfe.* [L. Fr. *weif, wef;* L. Lat. *wayvium, waivium, weyvium, weivium.*] In English law. A thing stolen, which is thrown away, (or *waived,*) by the thief in his flight, for fear of being apprehended. 1 *Bl. Com.* 296. 2 *Kent's Com.* 358. Goods *waived* are such as a thief having feloniously stolen, and being newly followed with hue and cry, or else overcharged with the burden or trouble of the goods, for his own ease, and more speedy flight, flies away and leaves the goods behind him. *Cowell.* Bracton (who is copied by Fleta) briefly defines a *waif* to be that which no one claims; (*est* wayvium *quod nullus advocat.*) *Bract.* fol. 125 b. *Fleta*, lib, 1, c. 27, § 13.

All goods waived are forfeited to the crown; but they may belong to a subject by special grant or prescription. 1 *Bl. Com.* 296. 1 *Crabb's Real Prop.* 520, §§ 673, 674. In American law, a similar right may be considered as belonging to the state as against the finder, though it is never exercised. 2 *Kent's Com.* 358.

WAINABLE. In old records. That may be ploughed or manured; tillable. *Cowell. Blount.*

WAINAGE. In old English law. The team and instruments of husbandry with which a villein or agricultural bondman performed his services.* 4 *Bl. Com.* 379. See *Wainagium.*

WAINAGIUM, *Wanagium, Waynagium.* L. Lat. [from Sax. *wæn*, a wain,

or wagon.] In old English law. Wainage; the furniture or appurtenances of a *wain*, with which a villein performed his services. *Et villanus alterius quam noster, eodem modo amerciatur, salvo* wainagio *suo;* and any other's villein than ours shall be amerced in the same way, saving his wainage. *Magna Charta*, c. 14. It answered to the *contenementum* of a freeman. *Id. ibid.* 2 *Inst.* 28. *Barringt. Obs. Stat.* 12. See *Contenementum.*

WAITING, *Waitinge.* In old English law. A species of service. *Yearb.* P. 10 Edw. III. 41.

WAIVE. [L. Lat. *waviare, waiviare, wayviare, weyviare.*] To throw away from one; to throw aside, as a thief does the thing he has stolen, in his flight; to give up that of which one has the possession; to abandon; to relinquish voluntarily; to relinquish a right which one may enforce if he chooses. In practice, a party is said to *waive* a default, to *waive* a right, or any advantage he may have regularly gained over his adversary. See *Waiver.*

In old English law. To forsake; to desert; to abandon. A man was said to *waive* the company of thieves. *Staundf. Pl. Cor.* fol. 26. The term was applied to a woman, in the same sense as *outlaw* to a man. A woman could not be *outlawed*, in the proper sense of the word, because, according to Bracton, she was never *in law*, that is, in a frank-pledge or decennary; but she might be *waived*, and held as abandoned. (*Fœmina utlagari non potest, quia ipsa non est sub lege*, i. Inlaughe, Anglice, *s. in franco plegio sive decenna*,—wayviari *tamen bene potest, et pro derelicta haberi.*) *Bract.* fol. 125 b. See *Fleta*, lib. 1, c. 27, § 12.

WAIVER. In practice, and pleading. A throwing aside; abandonment or relinquishment; a passing by, or passing over; the express relinquishment of a right or advantage, which one may enforce or insist upon, if he pleases; the implied relinquishment of a right or advantage, by neglecting to enforce it, or act upon it, in proper time or manner. Errors and irregularities are often cured by *waiver*, which in many cases is *implied* from the acts of a party. If a party, being aware of an irregularity in the other's proceedings, overlook it, and take subsequent steps in the cause, or where, after being fully put on inquiry, he neglect to inform himself of the irregularity, it is a *waiver* of the irregularity, and he cannot afterwards take advantage of it. 1 *Burr. Pr.* 474. See *Broom's Max.* 59, 60, [101—103.]

WAIVIARE, *Wayviare, Weyviare.* L. Lat. [from Lomb. *wifare, huifare*, or *guifare*, according to Spelman.] In old English law. To waive; to throw away; to forsake, or abandon; to hold as derelict. *Spelman.*

To waive; to outlaw a woman. *Reg. Orig.* 276 b, 277. *Fleta*, lib. 1, c. 27, §§ 12, 13.

WAIVIARIA. L. Lat. [from *waiviare*, q. v.] In old English practice. The waiving of a woman; a proceeding answering to the outlawry of a man; waiviary.* *Utlagaria et* waviaria. *Reg. Orig.* 132 b, 133.

WAIVIUM. L. Lat. In old English law. Waif; a waif. See *Wayvium.*

WAKENING. In Scotch law. The revival of an action. A process by which an action that has lain over and not been insisted in for a year and a day, and thus technically said to have "fallen asleep," is wakened, or put in motion again; or, in the quaint language of Forbes, "is roused and set a going." 1 *Forbes' Inst.* part 4, p. 170. *Ersk. Pr.* b. 4, tit. 1, § 33. *Bell's Dict.*

WALAPAUZ. Lomb. In old Lombardic law. The disguising the head or face, with the intent of committing a theft. *LL. Longobard.* tit. 15, cap. ult. Lindenbrog derives it from the Germ. wala, head, and pausen, to paint.

WALDA. L. Lat. [from Germ. wald; Sax. *weald.*] In old records. A wood, or wild woody ground. *Chartul. Abbat. Glaston.* MS. fol. 67 a. *Cowell.*

WALENSIS. L. Lat. In old English law. A Welshman. *Mag. Cart. Johan.* c. 56.

WALISCUS. L. Lat. [from Sax. *wealh*, a foreigner or stranger.] In Saxon law. A servant, or any ministerial officer. *LL. Inæ*, c. 34. *Cowell.*

WALL is distinguished by Callis from a *bank;* "for a bank is made *ex solo et fundo quæ ex suis propriis naturis sunt eadem cum terra super qua edificatur* (out of soil and ground, which, of their own natures, are the same with the land upon which it is built;) but so is not a wall, for it is an artificial edifice, not of the materials arising of the place where it standeth, but which be brought thither

and built there." *Callis on Sewers*, [74,] 92.

WALLA, *Wallia*. L. Lat. [from Sax. *wal;* Lat. *vallum*.] In old English law. A bank of earth cast up for a mound, or boundary; a wall; a sea-wall. 2 *Mon. Angl.* 920. *Cowell. Spelman*, voc. *Wallia*.

WALLARE. L. Lat. In old English law. To repair or keep up a wall. *Somner's Gavelk.* 181.

To wall or enclose. *Wallatur fossato vel haiâ;* it is enclosed with a ditch or with a hedge. *Fleta*, lib. 5, c. 9, § 16.

WALLESHERIA. L. Lat. In old English law. Walescherv; the fact of being a Welshman. *Stat. Walliæ*, 12 *Edw.* I. c. 4. 2 *Reeves' Hist.* 96. Answering to *Englescheria*, in case of an Englishman. See *Englecery*.

WALLIA. L. Lat. In old English law. A wall; a sea-wall; a mound, bank or wall erected in marshy districts as a protection against the sea. *Spelman. Questus est nobis A. quod B. quasdam* wallias *apud N. pro salvatione terrarum ibidem adjacentium contra fluxus et refluxus maris erectas, fregit;* A. hath complained to us that B. hath broken down certain walls erected at N. for the protection of the lands lying in that neighborhood, against the flowings and ebbings of the sea. *Reg. Orig.* 93.

WALLIA. L. Lat. In old English law. Wales. *Mag. Cart. Johan.* c. 56.

WALLIÆ STATUTUM. L. Lat. The Statute of Wales. 2 *Reeves' Hist.* 93. 1 *Chitt. Bl. Com.* 94. See *Statutum Walliæ*.

WALLICUS. L. Lat. Welsh. *Homines Wallici;* Welshmen. 1 *Leon.* 31. *Wallicam loquentes linguam;* speaking the Welsh tongue.

WAMPUM. In American law. Indian money or currency, called by the New-York Dutch, *seewan*, and *wampum* by the English. This continued to constitute the common currency of the country long after it ceased to belong to the Dutch. In 1693, the ferriage for each single person from New-York to Brooklyn was eight styvers in wampum, or a silver two-pence. *O'Callaghan's New-Neth.* vol. i. pp. 60, 61, and note.

WAND OF PEACE. In Scotch law. A wand or staff carried by the messenger of a court, and which, when deforced, (that is, hindered from executing process) he breaks, as a symbol of the deforcement, and protest for remedy of law. 2 *Forbes' Inst.* 207.

WANG. Sax. In old English law. A field. *Blount.*

The cheek or jaw wherein the teeth are set. "Hence with Chaucer," says Blount, "we call the cheek-teeth or grinders *wangs* and *wang-teeth*, which is also notified in that old way of sealing writings:

> And in witness that this is sooth,
> I bite the wax with my *wang*-tooth."

WANNAGIUM. L. Lat. A word occurring in Hoveden's Annals, which Spelman gives, but without definition. The following expressions would seem to denote it to be a quantity of land allotted to the working of one plough. *Quot carucarum* wannagia *fuerint in singulis villis*, &c. *Ad uniuscujusque carucæ* wannagium *centum acras terræ.* (How many wannages of ploughs there were in every vill, &c. For the wannage of every plough, one hundred acres of land.) *Hoved. Ann.* pars post. fol. 443, num. 30. It seems to be only another form of *wainagium*, (q. v.)

WAPENTAKE. [from Sax. *wæpen*, weapons, and *tac*, touch, or take; L. Lat. *wapentakium, wapentachium.*] In English law. A division of a county in the north part of England, (viz. in the counties of Yorkshire, Lincolnshire, Nottinghamshire, Leicestershire, and Northamptonshire) corresponding with a hundred. *Lamb. Explic.* voc. *Centuria. Cowell. LL. Edw. Conf.* c. 33, cited ibid. *Fleta*, lib. 2, c. 61, § 21. 1 *Bl. Com.* 115. *Qui convenire faciunt hundreda, sive* wapentachia. *Bract.* fol. 116 b. *Per hundreda* [*sive*] wapentakya. *Id.* fol. 155.

A hundred court, or hundred-gemote. *Crabb's Hist.* 27. The term seems to be still in use. 1 *Steph. Com.* 117.

*** Hoveden derives this word from the Sax. *wæpen*, and *tac*, (Lat. *tactus armorum*) literally, *weapon-touch*, an ancient ceremony performed in the hundred, and which he describes in the following words: *Cum quis accipiebat præfecturam* wapentachii, *die statuto, in loco ubi consueverunt congregari, omnes majores contra eum conveniebant, et descendente de equo suo, omnes assurgebant ei. Ipse vero erectâ lanceâ suâ, ab omnibus secundum morem fœdus accipiebat: omnes enim, quotquot venissent, cum lanceis suis* hastam tangebant, *et ita confirmabant per* contactum armorum, &c., &c. (When any one received the appointment of chief of a wapentake, on a day appointed, all the principal men came together to meet him, in the place where they usually

assembled, and as he alighted from his horse, all rose up before him. The chief then, raising his lance, received fealty from them all, according to custom; for all who were present *touched* his lance with theirs, and thus, by the *touch* of their *weapons*, expressed their submission to his authority.) *Hoved. Ann.* apud *Cowell.* The same ceremony is described by Fleta in nearly the same words. *Fleta*, lib. 2, c. 61, §§ 21, 22. This ceremony seems to have been derived from the use made of the spear or *framea* by the ancient Germans, in their popular assemblies, as described by Tacitus. *De Mor. Germ.* c. 11. *Spelman.* Ranulph of Chester, however, explains *wapentake* to mean a *taking of weapons*, observing, that as often as there was a new lord of a hundred, the vassals gave up their arms to him in token of subjection; (*quoties novus esset hundredi dominus, ei in subjectionis signum*, arma redderent *vassalli.*) *Ranulph Cestr.* lib. 1, c. 5, apud *Cowell.* And Sir Thomas Smith, (*De Repub. Anglor.* lib. 2, c. 16,) says that anciently musters were taken of the armor and weapons of the several inhabitants of every several wapentake, and from those that could not find sufficient pledges for their good abearing, their *weapons* were *taken* away and given to others. *Cowell.* See *Fortescue de L. L. Angliæ*, c. 24, note.

WAR. [Lat. *bellum;* Fr. *guerre;* L. Lat. *guerra, werra.*] A state of forcible contention; an armed contest between nations; a state of hostility between one or more nations or states. *Grotius de Jur. Bell.* lib. 1, c. 1. See *Bellum.*

WARA. L. Lat. In old records. A quantity or measure of ground. *Concedimus*—waram *et dimidiam, cum cotlandis et insuper medietatem totius nemoris;* we have granted a [ware] and a half, with the cotlands, and a moiety of the whole wood besides. 2 *Mon. Ang.* 128. *Cowell.*

WARACTUM. L. Lat. In old English law. Fallow; fallow-ground. *Quando tenementum jacet incultum et ad* waractum; when the tenement lies untilled, and at fallow. *Bract.* fol. 228 b. See *Warectum.*

WARANTIA. L. Lat. In old English law. Warranty; guaranty. Spelman gives the word in this form, which is used in Fleta, but in Bracton and the Register it is written *warrantia*, (q. v.)

WARANTIZARE. L. Lat. In old English law. To warrant. *Fleta*, lib. 5, c. 4, § 1. Warantizare *nihil aliud est quam tenentem vocantem defendere in sua seisina vel possessione erga petentem;* to warrant is nothing else than to defend a tenant, vouching in his seisin or possession, against the demandant. *Id.* lib. 6, c. 23, § 2.

WARANTIZATIO. L. Lat. In old English law. Warranty. *Fleta*, lib. 5, c. 4, § 5.

WARANTIZO. L. Lat. In old English law. I warrant. *Fleta*, lib. 5, c. 4, § 4.

WARANTUS, *Warrantus.* L. Lat. [L. Fr. *garaunt.*] In old English law. One who had covenanted to warrant another's title, and who might, therefore, be called upon, or vouched to warrant and defend it; a warrantor. *Habet forte tenens* warantum *et defensorem, qui eum defendere tenetur in seysina sua contra petentem;* the tenant perhaps has a warrantor and defender, who is bound to defend him in his seisin against the demandant. *Bract.* fol. 257 b. *Fleta*, lib. 5, c. 4, § 1. *Quis posset* warrantum *vocare;* who may vouch a warrantor. *Bract.* fol. 380 b. *Quis vocari possit ad* warrantum; who may be vouched to warranty. *Id. ibid.* Called, in Britton, *garaunt*, and *garaunt voche. Britt.* c. 75.

WARD. [from L. Fr. *ward, garde*, from *garder*, to guard or keep; L. Lat. *warda;* Lat. *custodia.*] In old English law. Guard; protection; defence; the duty of guarding a place. 1 *Bl. Com.* 356. See *Watch and ward.*

The state of being under protection or guardianship. An heir under age was said to be *in ward.* 2 *Bl. Com.* 67.

An infant under guardianship. *Stat.* 32 *Hen.* VIII. c. 46. Lord Hale uses the civil law term *pupil. Anal.* sect. xx.

A place under the protection of a person; a division of a city, under the charge of an alderman. *Stow. Cowell.* A division of a forest. *Manwood*, part 1, p. 97. *Spelman.*

A place of custody or confinement; a prison, (*carcer.*) *Spelman.*

A state of confinement; imprisonment, (*incarceratio.*) *Id.*

WARD. In modern law. A person under the charge or care of a guardian; a minor under guardianship. 1 *Bl. Com.* 463.

A division of a city, under the charge of an alderman. See *Ward, supra.*

WARD-CORN. [Fr. *corn*, horn.] In old English law. The duty of keeping watch and *ward*, with a *horn* to blow upon

any occasion of surprise. 1 *Mon. Angl.* 976.

WARD-FEGH, *Ward-feoh.* Sax. In old records. Ward-fee; the value of a ward, or the money paid to the lord for his redemption from wardship. *Blount.*

WARD-HOLDING. In old Scotch law. Tenure by military service; the proper feudal tenure of Scotland. Abolished by statute 20 Geo. II. c. 50. *Ersk. Pr.* b. 2, tit. 4, § 1. So called from the incident of ward or wardship belonging to it. See 1 *Forbes' Inst.* part 2, p. 97. *Bell's Dict.*

WARD-MOTE. [L. Lat. *wardemotus*, from *ward*, and Sax. *mote*, or *gemote*, a meeting.] In English law. A court kept in every ward in London, commonly called the *ward-mote-court*, or *inquest.* *Cowell.* 4 *Inst.* 249. 2 *Show.* 525.

WARD-PENNY, *Warth-penny*, *Warpen.* In old English law. Money paid to the sheriff or castellains, for the duty of watching and warding a castle. *Spelman. Chart. Gul. Conq. Eccles. S. Martini de Bello.*

WARD-STAFF. In old records. A constable's or watchman's staff. *Cowell.*

WARD-WIT, *Wardwyte*, *Warwite.* In old English law. Immunity or exemption from the duty or service of ward, or from contributing to such service. *Spelman.* Exemption from amercement for not finding a man to do ward. *Fleta*, lib. 1, c. 47, § 16. *Co. Litt.* 83.

WARDA. L. Lat. In old English law. Ward; guard; protection; keeping; custody, (*tutela, custodia.*) *Spelman.*

A ward; an infant under wardship. *Id.*

WARDA, *Varda.* L. Lat. In old Scotch law. An award; the judgment of a court. *In* wardis *et judiciis petitis;* in awards and judgments prayed for. *Quon. Attach.* c. 34, § penult. *Id.* c. 35, §§ 1, 2. *Spelman.*

WARDARE, *Vardare.* L. Lat. In old Scotch law. To award; to decree or adjudge; to pronounce judgment. *Spelman*, quoting *Skene.*

WARDEGEMOT. [from *ward*, and Sax. *gemote*, meeting.] In Saxon law. The meeting of a ward, or the inhabitants of a ward; a court held in, or for a ward. *Spelman*, voc. *Gemotum.* See *Wardmote.*

WARDEN. [L. Fr. *gardein;* Lat. *custos;* L. Lat. *gardianus.*] In English law. One who has the keeping or charge of any person or thing, by office; a keeper. Various officers under this name are mentioned in old statutes; as *Warden* of the marshes, *Warden* of the forest, *Wardens* of the rolls in the chancery, *Warden* or clerk of the hanaper in chancery, *Warden* of the stannaries, *Warden* of the Cinque Ports, *Warden* of the Fleet. *Cowell.*

WARDEN OF THE CINQUE PORTS. [L. Lat. *gardianus quinque portuum.*] In English law. The title of the governor or presiding officer of the Cinque Ports. Camden supposes this office to have been created in imitation of the policy of the Romans, who appointed a magistrate or governor over the eastern parts of England, for the special protection of the seacoast against invasion. *Camd. Brit.* 238. See *Cinque Ports.*

WARDS AND LIVERIES. In English law. The title of a court of record, established in the reign of Henry VIII. See *Court of Wards and Liveries.*

WARDSHIP. [L. Fr. *garde;* Lat. *custodia.*] In feudal and old English law. Guardianship; the right of acting as guardian to the heir of a tenant by knight-service.* This wardship consisted in having the custody of the body and lands of the heir, without any account of the profits, till the age of twenty-one in males, and sixteen in females. 2 *Bl. Com.* 67. *Britt.* c. 66.

WARE, *Wair.* O. Sc. [from O. Fr. *varech.*] In old Scotch charters. Seaweed, or that which is thrown up by the sea. *Spelman.*

WARECTARE. L. Lat. In old English law. To fallow ground; or plough up land (designed for wheat) in the spring, in order to let it lie fallow for the better improvement. *Cowell. Ad warectandum.* 1 *Mon. Angl.* 525. *Warectandi tempus. Fleta*, lib. 2, c. 73, § 10.

WARECT. L. Fr. In old English law. Fallow. *Gist warect;* lies fallow. *Yearb.* P. 11 Hen. VI. 9.

WARECTUM, *Waractum*, *Wareccum.* L. Lat. In old English law. Fallow ground; land that has been neglected and long untilled. *Fleta*, lib. 2, c. 72, § 5; c. 73, § 12. 2 *Mon. Angl.* 253. *Cowell. Co. Litt.* 5 b. Bracton writes this word, *waractum*, (q. v.)

WARENDA. L. Lat. In old European law. Warranty; a word of frequent occurrence in the Mirror of Saxony, corresponding to the *warantia*, or *warrantia* of old English law. *Spelman*, voc. *Warantia.*

WARENNA. L. Lat. In old English law. Warren; a warren. *Spelman. Li-*

bera warenna; free warren, (q. v.) *Quare vi et armis liberam* warennam *ipsius A. apud N. intravit, et in ea, sine licentia et voluntate sua, fugavit et lepores, cuniculos, phasianos et perdices cepit et asportavit,* &c.; wherefore, with force and arms, he entered the free warren of the said A. at N. and therein, without his license and consent, chased, took and carried away hares, conies, pheasants and partridges, &c. *Reg. Orig.* 93 b.

WARENTARE. L. Lat. [Lomb. *guarentare.*] In old European law. To warrant. *Spelman.*

WARENTIZARE. L. Lat. [Lomb. *guarentizare.*] In old English law. To warrant; to save one harmless. *Spelman.* The more common form was *warrantizare,* (q. v.)

WARGUS. L. Lat. In old European law. An outcast; an exile; a banished person. *Si quis corpus jam sepultum effoderit vel exspoliaverit,* wargus *sit; hoc est, expulsus de eodem pago, usque dum cum parentibus defuncti conveniret;* if any one shall disinter or rob a body that has been buried, he shall be *wargus,* that is, driven out of the country, until he shall make satisfaction for the offence to the relatives of the deceased. *L. Salic.* tit. 57, § 5. *L. Ripuar.* tit. 85, § 2. *LL. Hen.* I. c. 84. *Spelman.*

WARNIAMENTUM. L. Lat. [L. Fr. *garnement.*] In old records. A garment. *Chartul. Radinges, MS.* fol. 63, apud *Cowell.*

WARNISTURA. L. Lat. In old records. Garniture; furniture; provision. *Pat.* 9 *Hen.* III. *Cowell.*

WARNOTH. In old English law. An ancient custom, whereby, if any tenant holding of the Castle of Dover, failed in paying his rent at the day, he should forfeit double, and for the second failure, treble, &c. *Cowell.*

WARRANDICE. In Scotch law. Warranty; a clause in a charter or deed by which the grantor obliges himself that the right conveyed shall be effectual to the receiver. *Ersk. Pr.* b. 2, tit. 3, § 11. A clause whereby the granter of a charter obligeth himself to warrant or make good the thing granted to the receiver. 1 *Forbes' Inst.* part 2, p. 113.

A warrandice *contra omnes mortales* (against all mortals, or, as it is singularly translated, *against all deadly,*) or in other words an absolute warrandice, is one whereby the right is warranted against all legal defects in it, which may carry it off from the receiver, either wholly or in part. *Id. ibid.* 1 *Forbes' Inst. ub. sup.*

WARRANT. [from O. Fr. *guarent;* Lomb. *warens.*] In practice. An authority to do some judicial act; a power derived from a court, to take some person or property. A process under seal, issued by some court or justice, authorizing the officer to whom it is directed to arrest or apprehend a person named, or to take certain property.* A warrant is said to imply a *seal,* in all cases where a seal has not been dispensed with by statute. Bronson, J. 3 *Hill's* (N. Y.) *R.* 497.

An authority to do some act in court, for another; as to sue, to appear and defend a suit; to confess a judgment, &c. See *Warrant of attorney, Warrant to sue and defend.*

To WARRANT. [L. Lat. *warentare, guarentare, warentisare, guarentisare, warrantizare;* L. Fr. *garaunter.*] In conveyancing. To assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To bind one's self by a covenant in a deed, to defend the grantee in his title and possession. To stipulate by an express covenant that the title of a grantee shall be good, and his possession undisturbed. See *Warranty.*

In contracts. To engage, or stipulate in writing, or by words, that a certain fact in relation to the subject of the contract is or shall be as represented; as, in the contract of sale, that the thing sold is free from defect, or shall prove to be of the quality or quantity represented; in a policy of insurance, that a thing insured is neutral property, or that a ship shall sail on or before a certain day, &c. See *Warranty.*

WARRANT OF ATTORNEY. In practice. A written authority, directed to any attorney or attorneys of any court of record, to appear for the party executing it, and receive a declaration for him in an action at the suit of a person named, and thereupon to confess the same, or to suffer judgment to pass by default; and it also usually contains a release of errors. 2 *Burr. Pr.* 239.

Warrants of attorney to confess judgment are most commonly given where it is intended to secure a debt by giving to it the form of a judgment, without the necessity of an actual suit for the purpose. In these cases, they are accompanied by a

bond in a penalty double the amount due, or intended to be secured, conditioned to pay the amount due on demand, or as the parties may agree, and to this description of bonds the common warrants of attorney are adapted. 1 *Id.* 367.

WARRANT TO SUE AND DEFEND. In old practice. A special warrant from the crown, authorizing a party to appoint an attorney to sue or defend for him. *Gilb. C. P.* 32. 3 *Bl. Com.* 25.

A special authority given by a party to his attorney, to commence a suit, or to appear and defend a suit, in his behalf. These warrants are now disused, though formal entries of them upon the record were long retained in practice. See 1 *Burr. Pr.* 39.

WARRANTIA, *Warantia.* L. Lat. In old practice. Warranty. *Bract.* lib. 5, tract. 4.

WARRANTIA CHARTÆ. L. Lat. In old practice. Warranty of charter. A writ which lay for one who being enfeoffed of lands or tenements, with a clause of warranty, was afterwards impleaded in an assise or other action in which he could not vouch to warranty. In such case, it might be brought against the warrantor, to compel him to assist the tenant with a good plea or defence, or else to render damages and the value of the land, if recovered against the tenant. *Cowell.* 3 *Bl. Com.* 300. See *De Warrantia Chartæ.*

Warrantia chartæ was, in other words, an action brought to take advantage of a warranty, in lieu of voucher, and by judgment in it the plaintiff might bind the lands of the warrantor, and have damages awarded to him. *Roscoe's Real Act.* 142. See 4 *Kent's Com.* 469, 471. Fleta calls it *warantia cartæ. Lib.* 6, c. 35.

WARRANTIA DIEI. L. Lat. Warranty of day. See *De warrantia diei.*

WARRANTIZARE, *Warantizare, Warentizare, Warrantisare.* L. Lat. [L. Fr. *garaunter.*] In old conveyancing. To warrant; to bind one's self by covenant in a deed of conveyance, to defend the grantee in his title and possession. *Warrantizabo,* (I will warrant,) and *warrantizabimus,* (we will warrant,) were words used in old charters, to express a warranty. *Et ego et hæredes mei* warrantizabimus *tali et hæredibus suis tantum, vel tali et hæredibus suis et assignatis, et hæredibus assignatorum, et assignatis assignatorum, et eorum hæredibus, et acquietabimus et defendemus eis totum terram illam cum pertinentiis contra omnes gentes imperpetuum, per prædictum servitium.* (And I and my heirs will warrant to such a one and his heirs, only, or to such a one and his heirs and assigns, and the heirs of his assigns, and the assigns of his assigns and their heirs; and will acquit and defend to them all that land with the appurtenances, against all people forever, by the aforesaid service.) *Bract.* fol. 37. See *Fleta,* lib. 3, c. 14, § 10. By this word, *warrantizabimus,* Bracton observes, the donor takes upon himself the obligation to defend his tenant [or donee] in the possession of the thing given, and his assigns and their heirs, and all others, if the tenement given should happen to be claimed by any one in demesne. *Id.* fol. 37 b. Of *warrantizo,* (I warrant,) Littleton observes, "this word and verb makes a warranty, and is the cause of warranty, and no other word in our law." *Litt.* sect. 733. *Co. Litt.* 384 a.

In old practice. To defend and acquit a tenant who had vouched the warrantor, in his seisin. Warrantizare *nihil aliud est quam defendere et acquietare tenentem, qui warrantum vocavit, in seysina sua. Bract.* fol. 380 b. *Fleta,* lib. 6, c. 23, § 2. *Co. Litt.* 365. To fulfil one's covenant of warranty, either by successfully defending the title in an action, or, in case of failure, by indemnifying the tenant with other lands of equal value.

WARRANTIZATIO. L. Lat. [from *warrantizare,* q. v.] In old English law. Warranty. See *Warantizatio.*

WARRANTUS, *Warantus.* L. Lat. [L. Fr. *garaunt.*] In old English law. A warrantor; one who had warranted land by covenant, and might, therefore, be called upon or vouched to defend the title for the tenant. *Si* [*tenens*] warrantum *habuerit, illum statim vocat;* if he [the tenant] have a warrantor, he should immediately vouch him. *Bract.* fol. 380. The expressions *warrantum vocare,* (to call or vouch a warrantor,) and *ad warrantum vocare,* (to call to, or upon a warrantor,) are indifferently used by Bracton. *Id.* fol. 380 b, *et passim.* The former of these answers literally to the *garaunt vocher* of Britton. *Britt.* c. 75. "To vouch to warranty" is the usual English phrase in the old books.

WARRANTY. [L. Lat. *warrantia, warrantizatio;* L. Fr. *garaunty, garranty.*] In old English conveyancing. An undertaking by covenant to defend a tenant or

grantee in his seisin, against an adverse claimant of the land. *Bract.* fol. 37 b, 380 b. *Britt.* c. 75.

In old practice. The complying with or fulfilling one's covenant of warranty, by defending the title or seisin of a tenant or grantee, in an action brought against him by an adverse claimant of the lands conveyed; and in case of failure so to defend the seisin, by indemnifying the tenant for the lands he lost, by conveying to him others of equal value, which was called making exchange to the value, (*excambium ad valentiam.*) *Bract.* lib. 5, tract. 4. *Britt.* c. 75.

Warranty was one of the most important and extensive heads of the old law of real property, distinguished for its abstruseness and multiplied refinements. Lord Coke has pronounced the learning of warranties to be "one of the most curious and cunning learnings of the law." A leading distinction was into *lineal* and *collateral* warranty, (qq. v.) But this branch of the law has long fallen into disuse, never was generally adopted in American jurisprudence, has been expressly abolished in some of the states, and is now at length abolished also in England, by statute 3 & 4 Will. IV. cc. 27, 74. 1 *Steph. Com.* 455. See 4 *Kent's Com.* 468—472, and notes.

WARRANTY. In modern law. An undertaking or stipulation, in writing, or verbally, that a certain fact in relation to the subject of a contract, is, or shall be as it is stated or promised to be. *Warranty* forms an important part of the contracts of sale and of insurance, and though generally *expressed*, is frequently *implied* by law. The common *express* warranty of an article sold is, that it is free from defect, but the law will *imply* a warranty of the *title*, provided the seller sells it as his own, and for a fair price. See 2 *Kent's Com.* 478.

When a person *warrants* an article, he makes himself liable for any defect in the matter to which the warranty applies, whether he knew it or not; but when he makes a bare *representation*, it is necessary to aver and prove that he knew the representation to be false, otherwise he is not liable in damages. Dewey, J. 4 *Metcalf's R.* 155, and cases there cited. The distinction between a *warranty* and a *representation* is an important one in the law of insurance. See 5 *Hill's* (N. Y.) *R.* 188; and see *infra.*

WARRANTY. In insurance law. A stipulation or undertaking by a party insured, in reference to a vessel or property which is the subject of insurance.

An *express* warranty is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which the validity of the instrument depends. 1 *Arnould on Ins.* 577, (580, Perkins' ed.) These written stipulations either allege the existence of some fact or state of things *at* the time, or *previous* to the time of making the policy, as that the thing insured is neutral property, that the ship is of such a force, that she sailed on such a day, or was all well at such a time; or they undertake for the happening of *future* acts, as that the ship shall sail on or before a given day, that she shall depart with convoy; that she shall be manned with such a complement of men, &c. *Id. ibid.* The *implied* warranty in a policy is that the vessel is seaworthy. *Id.* 652, 653.

A *warranty* is generally a stipulation made and described in the policy itself, and must be complied with, whether material or not; but a *representation* is generally not given in detail in the policy, but verbally, or in a separate writing, if the property be situated at a distance. 2 *Woodb. & Min. R.* 472. In the law of insurance a *representation* is not a part of the contract, but is collateral to it; whereas an express *warranty* is always a part of the contract. Bronson, J. 5 *Hill's* (N. Y.) *R.* 188. But see 2 *Duer on Ins.* 644—646. "By the English and American law," observes Mr. Duer, "every affirmation of a fact contained in the policy, in whatever terms expressed, is construed as a warranty; but where the statement relates, not to facts, but to the information, expectation or belief of the party, it is plain that it cannot be thus construed; and it is equally clear that when the parties declare that the statement, although positive in its terms, shall be construed as a representation, and not as a warranty, the intention so disclaimed must supersede the general rule." *Id.* 644, 645.

WARREN. [L. Lat. *warenna, warrenna;* L. Fr. *garene*, from *garenner*, to prohibit; or from Germ. wahren, to protect, or defend.] In English law. A place privileged by prescription, or royal grant, for the keeping and preservation of certain animals, called beasts and fowls of warren, (q. v.) *Cowell.* 1 *Crabb's Real Prop.* 91, § 97. *Barringt. Obs. Stat.* 47, 48,

note [*d.*] Literally, a place protected by special privilege, or the use of which is prohibited to all but certain individuals.* The name is now chiefly preserved in grounds that are set apart for breeding hares and rabbits. 2 *Bl. Com.* 39.

A franchise, or sole and exclusive power of killing certain descriptions of game, so far as a person's warren extended, on condition of his preventing other persons.* 2 *Bl. Com.* 39. 2 *Steph. Com.* 21, 83. Generally termed *free-warren*, (q. v.)—A privilege which one has in his lands, by royal grant or prescription, of hunting and taking wild beasts and birds of warren, to the exclusion of any other person not entering by his permission. *Spelman.*

WARRETTEZ. L. Fr. In old English law. Fallow. *Yearb.* H. 3 Edw. II. 68.

WARRETS. L. Fr. Fallow. *Yearb.* T. 4 Edw. III. 7.

WARSCOT. In Saxon and Danish law. A customary contribution towards armor among the Saxons, mentioned in the forest laws of Canute. *Quieti ab omnibus armorum oneribus quod* Warstot *Angli dicunt;* quit of all burdens of arms which the English call *warscot. LL. Forest. Canut. Reg.* num. 9. *Cowell.*—Money paid for castle-guard, or for keeping watch and ward; the same as *ward-penny. Spelman.*

WARTH. In old English law. A customary payment, supposed to be the same with *ward-penny*, (q. v.) *Spelman. Blount.*

WAST. L. Fr. Waste. Wast *de boys;* waste of woods. *Britt.* c. 66.

WASTE. [L. Fr. *wast, gast;* L. Lat. *vastum.*] A spoil made either in houses, woods, lands, &c. by the tenant for life or years, to the prejudice of the heir, or of him in the reversion or remainder. *Cowell. Kitchin*, 168.—A spoil or destruction in houses, gardens, trees, or other corporeal hereditaments, to the disherison of him that hath the remainder or reversion in fee-simple or fee-tail. *Co. Litt.* 53. 2 *Bl. Com.* 284.—The destruction or material alteration of any part of a tenement, [by a tenant for life or years] to the injury of the person entitled to the inheritance; such, for example, as the demolition of buildings, or the cutting of timber. 1 *Steph. Com.* 241.—Spoil and destruction done, or allowed to be done, to houses, woods, lands, or other corporeal hereditaments, by the tenant thereof, during the continuance of his tenancy. 3 *Id.* 503.—A spoil and destruction of an estate, either in houses, woods or lands; by demolishing, not the temporary profits only, but the very substance of the thing, thereby rendering it wild and desolate; which the common law expresses very significantly by the word *vastum.* 3 *Bl. Com.* 223.

Waste and destruction, according to Bracton, are convertible terms, and signify the same thing, (*convertibiliter se habent* vastum *et* destructio, *et* vastum *idem est quod* destructio.) *Bract.* fol. 316 b. Fleta observes that they are almost equipollent, and are indifferently applicable to houses, woods and gardens, (*fere æquipollent, et convertibiliter se habent in domibus, boscis et gardinis.*) *Fleta*, lib. 1, c. 12, § 20. Britton, however, applies the term particularly to trees or woods, (wast *de boys*, destruccion *de tenementz.*) *Britt.* c. 66. See *Co. Litt.* 52 b, 53.

Waste is either voluntary, or permissive; the one by an actual and designed demolition of the lands, woods and houses; the other arising from mere negligence, and want of sufficient care in reparations, fences and the like. 3 *Bl. Com.* 223. 2 *Id.* 281. See *Voluntary waste, Permissive waste.*

Waste may be committed not only by destruction. but by *alteration* of any part of a tenement. Thus, the conversion of land from one species to another, as of woodland into arable, and *vice versâ*, is waste. 2 *Bl. Com.* 282. 7 *N. Hamp. R.* 171. The conversion of two chambers of a tenement into one is waste. 4 *Kent's Com.* 76, note. And, in general, whatever does a lasting damage to the freehold or inheritance, is waste. 2 *Bl. Com.* 281. As to what particular acts by a tenant constitute waste, see *Archb. Landl. & Ten.* 197—201. *Roscoe's Real Act.* 116—119. *Cruise's Dig.* tit. iii. ch. 2. For the American law of waste, see 4 *Kent's Com.* 76—82. 11 *Metcalf's R.* 304, 310—312. *United States Digest*, Waste. 1 *Hilliard's Real Prop.* 262—267. 1 *Greenleaf's Cruise's Digest*, 115—120, notes.

WASTE, *Writ or action of.* In old practice. A remedy given for waste in lands, houses, &c. partly founded upon the common law, and partly founded upon the statute of Glocester, which lay for one who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, tenant in dower, tenant by curtesy,

or tenant for years.* 3 *Bl. Com.* 227. It was a mixed action, partly real, so far as it recovered land, and partly personal, so far as it recovered damages. For it was brought for both these purposes, and if the waste were proved, the tenant recovered the thing or place wasted, and also treble damages. *Id.* 228. See *Roscoe's Real Act.* 107, 121—125.

This action, after having long fallen into disuse, was expressly abolished in England by the statute 3 & 4 Will. IV. c. 27. In the United States, it has been generally adopted, though little used, being for the most part superseded in practice by an action on the case in the nature of waste, to cover damages, or by bill in equity. 4 *Kent's Com.* 77, 79, 80. See 1 *Greenl. Cruise's Dig.* 122, note. 1 *Hilliard's Real Prop.* 268—276.

WASTE. In old English criminal law. A prerogative or liberty on the part of the crown, of committing *waste* on the lands of felons, by pulling down their houses, extirpating their gardens, ploughing their meadows, and cutting down their woods. 4 *Bl. Com.* 385. See *Year, day and waste.*

WASTEL. [L. Fr. *gastel;* L. Lat. *wastellum.*] In old English law. The finest sort of bread. *Britt.* c. 30. *Cowell.*

WASTELLUM. L. Lat. In old English law. Wastel; a kind of bread. *Fleta,* lib. 2, c. 9, §§ 1, 2.

WASTINUM. L. Lat. In old records. Waste ground, or desert. *Cowell. Chartul. Abbat. Glaston.* MS. cited *ibid.*

WASTORS. In old statutes. A kind of thieves. "There have been divers manslaughters, felonies and robberies, done by people called Roberdsmen, *Wastors,* and Drawlatches." *Stat.* 4 *Hen.* IV. c. 27. *Stat.* 5 *Edw.* III. c. 14.

WATCH AND WARD. In English law. The duty of keeping *watch* by night, and *guard* by day, in a town or other district.* One of the principal duties of constables, arising from the statute of Winchester. 1 *Bl. Com.* 356. *Ward,* guard, or *custodia,* is chiefly applied to the day time, in order to apprehend rioters and robbers on the highways. *Watch* (Teut. wacht or wacta) is properly applicable to the night only, and it begins at the time when *ward* ends, and ends when that begins.* *Id.* 356, 357. See 4 *Id.* 292.

WATER, [Lat. *aqua;* L. Fr. *awe, eawe, ewe;* Fr. *eau,*] is considered in law as a mere incident or appurtenant to land, and cannot be conveyed or recovered independently of the land which it covers. **Aqua cedit solo.** Water belongs to, or goes with the land. Land, on the other hand, includes water as well as other things that are upon it. "And therefore," observes Sir William Blackstone, "I cannot bring an action to recover possession of a pool or other piece of water, by the name of *water* only; either by calculating its capacity, as for so many cubical yards; or by superficial measure, for twenty acres of water; or by general description, as for a pond, a water-course, or a rivulet; but I must bring my action for the *land* that lies at the bottom, and must call it twenty acres of *land covered with water. Brownl.* 142. For water is a moveable, wandering thing, and must of necessity continue common by the law of nature; so that I can only have a temporary, transient, usufructuary property therein: wherefore, if a body of water runs out of my pond into another man's, I have no right to reclaim it. But the land which that water covers is permanent, fixed and immoveable: and, therefore, in this I may have a certain substantial property, of which the law will take notice, and not of the other." 2 *Bl. Com.* 18. See 1 *Hilliard's Real Prop.* 51. 2 *Id.* 100. By a grant of water, nothing passes but a right of fishing, or the right to use the water, as in the case of rivers and mill streams. 2 *Chitt. Bl. Com.* 19, and note. See 1 *Crabb's Real Prop.* 107, § 104. 1 *Chitt. Gen. Pr.* 189—191.

WATER-BAILIFF. In English law. An officer in port towns, whose duties in general relate to the searching of ships. *Cowell.*

WATER-BAYLEY. In American law. An officer mentioned in the colony laws of New-Plymouth, (A. D. 1671,) whose duty was to collect dues to the colony for fish taken in their waters. *Colony Laws,* (ed. 1836,) 164, 166. Probably another form of *water-bailiff,* (q. v.)

WATER-COURSE. [L. Lat. *aquæ cursus;* L. Fr. *cours del ewe.*] A running stream of water; a body of running water; a natural stream, including rivers and rivulets. See *Angell on Water-Courses,* § 3. A water-course consists of water, bed and banks. 3 *Ohio R.* 495. Cowen, J. 20 *Wendell's R.* 153. It may be artificial as well as natural. 3 *Kent's Com.* 442, note.

The easement of receiving water in its accustomed course. 1 *Crabb's Real Prop.*

355, § 405.—The right which a man may have to the benefit of the flow of a river or stream. 2 *Steph. Com.* 12.

This right most commonly refers to a stream passing through a person's own land, (1 *Tyr. & Gran.* 398,) and the banks of which belong either to himself on both sides, or to himself on one side and to his neighbor on the other; in which latter case, (unless the stream be navigable,) the proprietor of each bank is considered as *primâ facie* the proprietor also of half the land covered by the stream, that is, *usque filum aquæ*. *Hale de Jur. Maris*, pars 1, c. 1. 1 *Sim. & Stu.* 190. 2 *Rol. Abr.* 170. 2 *Steph. Com.* 12. In either case, however, it is distinguishable from the right of merely using the water upon the soil, (which is incident, as of course, to the property in the soil itself;) it is the right of having the course of the stream kept free from any interruption or disturbance to the party's prejudice, by the acts of persons from without and in parts not within his own territory, whether consisting in a diversion of it, or an obstruction, or a pollution by offensive commixture. *Id. ibid.* The maxim is **Aqua currit, et debet currere, ut currere solebat,** (q. v.) See further, 3 *Kent's Com.* 439, 447. A water-course is regarded in law as a part of the land over which it flows, and will therefore pass with the latter by a deed or patent, unless expressly reserved. 2 *Hilliard's Real Prop.* 100.

WATER-GANG. Sax. [L. Lat. *aquagangia, watergangium.*] In old records. A passage for water; a trench to carry a stream of water, such as were usually made in sea-walls, to drain water out of the marshes. *Cowell. Spelman*, voc. *Aquagium. Dugdale on Imbanking*, 21, *et passim.*

WATER-GAVEL. In old records. A gavel or rent paid for fishing in, or other benefit received from some river or water. *Cowell. Blount.*

WATER-MEASURE. In old statutes. A measure greater than Winchester measure by about three gallons in the bushel. *Stat.* 22 *Car.* II. *Cowell.*

WATER-ORDEAL. [L. Lat. *judicium aquæ.*] In Saxon and old English law. The ordeal or trial by water, which was of two kinds; by hot water, and by cold water.

The *hot water* ordeal, (*aqua fervida* or *calida*,) was performed by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby. 4 *Bl. Com.* 243. *Spelman*, vocc. *Judicium Dei, Ordalium.*

The *cold water* ordeal, (*aqua frigida*,) was performed by casting the person suspected into a river or pond of cold water, when, if he floated therein, without any action of swimming, it was deemed an evidence of his guilt; but if he sunk, he was acquitted. *Id. ibid.*

WATLING (or WETLING) STREET. [Sax. *Wæteling Stræte;* L. Lat. *Via Vetelingiana.*] One of the four great Roman ways or roads in Britain. *Cowell. Blount. LL. Gul. Conq.* l. 30. *Fleta*, lib. 2, c. 61, § 21. Otherwise called *Verlam Street*, from its passing through Verulam. *Spelman*, voc. *Ikenild Street.*

WAVESON. In old records. Such goods as, after a wreck, swim or float on the waves. This word occurs, in connection with *flotteson* and *lagason*, in a charter granted by Arthur Plantagenet, High Admiral of England, to the mayor and citizens of Rochester, dated Dec. 4. 18 Hen. VIII. *Cowell. Blount.* See *Flotsam.*

WAY. [Lat. *via;* L. Fr. *chemyn, chimin;* L. Lat. *chiminus, chiminum.*] A road; a street; a passage or path. A way, in the most general sense, includes highways as well as private ways. See *Co. Litt.* 56 a.

A private road, passage or path over another's ground. Lord Coke divides ways into three kinds: first, a foot-way, (*iter;*) second, a foot-way and horse-way, (*actus,*) which he says is vulgarly called pack and prime way, because it is both a foot-way, which was the first or *prime* way, and a *pack* or drift-way also; and third, [a way in the largest sense] *via*, or *aditus*, which contains the other two, and also a cart-way. *Co. Litt. ub. sup.* This division, and the terms of it, are obviously taken from the civil law. *Inst.* 2. 3, pr. See *Bract.* fol. 232.

The right of going over another man's ground. 2 *Bl. Com.* 35. A right of private passage over another man's ground. 3 *Kent's Com.* 419. A right of way, public or private, is held to be an incorporeal hereditament. Nelson, J. 12 *Wendell's R.* 98. Cowen, J. 20 *Id.* 99. Holman, J. 1 *Blackford's R.* 45. This sense of the term, importing a *right* to use a road or path, instead of the *road* or *path* itself, is taken from the civil law. Via *est* jus *eundi, et agendi, et ambulandi;* way is a right of

going and driving and walking. *Inst.* 2. 3, pr.

WAYA. L. Lat. In old English law. A way, (a measure or weight.) Two *ways* of wool made a sack. *Fleta*, lib. 2, c. 12, § 2.

WAY-GOING CROP. In the law of leases. A crop of grain to which tenants for years are sometimes entitled by cus tom; grain sown in the fall to be reaped at the next harvest; a crop which will not ripen until after the termination of the lease. See 1 *Hilliard's Real Prop.* 61, and note. See *Away-going crop.*

WAYF. An old form of *waif*, (q. v.)

WAYVIARE. See *Waiviare.*

WAYVIUM. L. Lat. In old English law. A waif; that which no one claims, (*est* wayvium *quod nullus advocat.*) *Bract.* fol. 125 b.

WEALD. Sax. A wood; the woody part of a country, as the *weald* of Kent. *Camd. Brit.* 247. 4 *Mod.* 343, arg.

WEAR, *Weir.* [from Sax. *were*, a taking; L. Lat. *wera*, *wara.*] A place in a river, artificially constructed for taking fish, by so narrowing the stream by dams projecting from each bank, that the passage may be easily closed by a net. *Spelman*, voc. *Wara.*

WEDBEDRIP. Sax. [from *wed*, a covenant, *biddan*, to pray or desire, and *rippan*, to reap or mow.] In old English law. A customary service which tenants paid to their lords, in cutting down their corn [grain,] or doing other harvest duties. As if a *covenant* to *reap* for the lord at the time of his *bidding* or commanding. *Cowell.*

WEDDE. Sc. [L. Lat. *vadium.*] In old Scotch law. A pledge. *Skene de Verb. Sign.* voc. *Vadium.*

WEDUE. L. Fr. [from Lat. *vidua.*] In old English law. Widow; a widow. *Wedues femmes;* widows. *Britt.* c. 21.

WEF. L. Fr. In old English law. A waif. *De* wefs *à nous apurtenauntz;* of waifs belonging to us. *Britt.* c. 17.

WEHADINC. In old European law. The judicial combat, or duel; the trial by battel. *De pugna duorum quod* wehadinc *vocatur. Decret. Tassilonis in LL. Baiwar.* § 5. So called, according to Spelman, from the Sax. *wead*, a pledge, being another form of *weading*, a giving of pledge, a covenanting. It seems to correspond closely to the English *wager of battel.*

WEIF. An old form of *waif*, (q. v.) *Ingulph. Hist. Croyl.* 875. *Spelman.* It occurs also in Britton. *Et* weifs *ou estray. Britt.* c. 17. *De* weifs *ou de wrekkes de meer. Id.* c. 29.

WELL. [Lat. *bene;* Fr. *bien.*] In the old reports. Good; sufficient; unobjectionable in law; the opposite of *ill.* "Held well" is a common expression in the reports. "And *per curiam*, well." 1 *Show.* 350. See *Bien, De bene esse.*

Advisable, or proper. See *Bien.*

Allowed as sufficient or valid, though not in strict form. "Well enough" was a common phrase. *Latch*, 196. 10 *Mod.* 270. 11 *Id.* 403. "Not proper, but *well* enough." 11 *Id.* 363.

WELL. In marine insurance. A word used in warranties of a ship's safety at a particular time and place, which are briefly expressed in or at the foot of the policy, "warranted *well*," (at such a date.) The word "well," in such warranty, refers solely to the state of the ship *on the day* of signing the policy. 1 *Arnould on Ins.* 586, (589, Perkins' ed.)

WELSH MORTGAGE. A species of mortgage frequently mentioned in the English books, though now out of use, resembling the ancient *mortuum vadium* described by Glanville; being a conveyance of an estate, redeemable at any time, on payment of the principal, with an understanding that the profits in the mean time shall be received by the mortgagee without account, in satisfaction of interest. *Coote on Mortg.* 9, 207. 4 *Kent's Com.* 137. The Welsh mortgage, under its strict contract, without any mitigation of its severity in equity, was analogous to the contract termed *antichresis*, (q. v.) in the Roman law. *Id. ibid.* note.

WEND. [L. Lat. *wendus;* from O. Eng. *wend*, to go.] In old records. A large extent of ground, comprising several *juga;* a perambulation; a circuit. *Spelman. Cowell.*

WERA. L. Lat. In Saxon and old English law. A were; the price or value of a person. *Spelman.* See *Were.*

A wear for taking fish. *Id.*

WERE. Sax. [L. Lat. *wera.*] In Saxon law. Price, (*pretium;*) the price or value of a man's life, (*æstimatio capitis;*) a sum paid for killing a man; the price of one's ransom. *LL. Edw. Conf.* c. 11. 1 *Reeves' Hist. Eng. Law*, 15. *Co. Litt.* 127 a, 287 b. *Spelman.* A fine which a mur-

derer had to pay to the family or relatives of the deceased. *Bosworth's Anglo-Sax. Dict.* voc. *Were and wite.* By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis. Crabb's Hist. Eng. Law*, 38. *LL. Gul. Conq.* ll. 8, 9, and Kelham's notes. The *were* is also considered to correspond with the modern *damages.* See *Sedgwick on Damages*, 10—17, and notes.

Spelman supposes this word, though literally importing *price*, to have reference also to the meaning of the Sax. *wer*, *wær*, a man, (*vir.*)

WEREGELT THEF. Sax. In old English law. A robber who might be ransomed. *Fleta*, lib. 1, c. 47, § 13.

WERELADA. Sax. and L. Lat. In Saxon and old English law. Purgation of a were or fine, (*purgatio weræ.*) *Spelman.* Purgation upon oath of other persons, according to the value or estimate of the person accused. *LL. Hen.* I. c. 12. *Cowell.*

WEREGILD, *Wergild*, *Weregelt.* Sax. [from *were*, price, or *wer*, a man, and *gyld* or *geld*, a payment; O. Sc. *wergelt*, *vergelt;* L. Lat. *wergildus*, *wergilda*, *wergildum*, *wergeldum*, *werigildus*, *werigeldum*, *geweregildum*, *barrigildum*, *varigildum.*] In Saxon and old European law. Payment of a were, (q. v.) compensation for a man; the payment of the price or value of a man slain, (*pretii vel æstimationis capitis solutio;*) otherwise called in Saxon, *manwyrth. Spelman.* A private pecuniary satisfaction paid to a party injured, or to his relations, where he was slain, in expiation of the offence. 4 *Bl. Com.* 312.

WERGELT, *Vergelt.* In old Scotch law. A sum paid by an offender, as a compensation or satisfaction for the offence; a weregild, or wergild. *De unoquoque fure per totam Scotiam est* wergelt 30 *vaccæ et una juvenca, sive fuerit liber homo sive servus;* of every thief throughout Scotland, the wergild is thirty cows and one heifer, whether he be a free man or a slave. *Reg. Maj.* lib. 4, c. 19.

WERP-GELD. Belg. [from werpen, to throw away, and Sax. *geld*, a payment.] In European law. Contribution for jettison; average. *Loccen. de Jur. Mar.* lib. 2, c. 8, § 1.

WERPIRE. L. Lat. [from Germ. werpen.] In old European law. To throw; to throw away; to waive. *Spelman.* Wreck is called in a charter granted by king Edward to the church of Ramesey, *seupwerp*, which Spelman thinks may be analyzed *sea-up-werp*, i. e. thrown up by, or out of the sea, (*ejectus maris.*)

WERRA, *Guerra.* L. Lat. In old English law. War; private war, as well as public. *Spelman. Nisi tempore* werræ; unless in time of war. *Artic. Mag. Cart. Johan.* c. 33. *Guerra* is the form used in continental law. *Calv. Lex.*

WERRINUS. L. Lat. [from *werra*, q. v.] In old English law. In a state of war; at war. *Spelman.*

WERVAGIUM. L. Lat. In old records. Wharfage; money paid at a wharf for lading or unlading goods. 1 *Mon. Angl.* 550. *Cowell.*

WESTMINSTER. [Sax. *Westmynster;* L. Lat. *Westmonasterium.*] A city immediately adjoining London, and forming a part of the metropolis; distinguished as the seat of the four superior courts of the kingdom. See *Superior Courts.*

WESTMINSTER THE FIRST, *Statute of.* A celebrated statute passed at a parliament holden at Westminster, in the third year of the reign of Edward I. A. D. 1275. It is written in Law French, and contains fifty-one chapters. Lord Coke has commented at large on this statute in his second Institute, and Mr. Reeves has given a synopsis of its contents. 2 *Reeves' Hist. Eng. Law*, 107—139. It was called *the first*, to distinguish it from two subsequent statutes, denominated likewise from parliaments held at the same place. See *Barringt. Obs. Stat.* 77—102.

WESTMINSTER THE SECOND, *Statute of.* A celebrated statute passed at a parliament holden at Westminster in the thirteenth year of Edward I. A. D. 1285. It is written in Law Latin, and is commented on by Lord Coke in his second Institute. It contains provisions on a variety of subjects, and its first chapter is called, from the subject of it, the Statute *de Donis Conditionalibus*, (q. v.) See *Barringt. Obs. Stat.* 127—148.

WESTMINSTER THE THIRD, *Statute of.* A statute passed in the eighteenth year of Edward I. A. D. 1290. More commonly known as the Statute of *Quia Emptores*, (q. v.) See *Barringt. Obs. Stat.* 167—169.

WESTMONASTERIUM. L. Lat. Westminster. A large proportion of the an-

cient English writs are tested and made returnable *apud Westmonasterium*, at Westminster. *Reg. Brev. per tot.*

WEST-SAXON LAGE. [Sax. *West-seaxna-laga.*] The laws of the West Saxons, which obtained in the counties to the south and west of England, from Kent to Devonshire. Blackstone supposes these to have been much the same with the laws of Alfred, being the municipal law of the far most considerable part of his dominions, and particularly including Berkshire, the seat of his peculiar residence. 1 *Bl. Com.* 65.

WEYVIARE, *Weyvare.* L. Lat. In old English law. To waive; to relinquish or abandon. *Bract.* fol. 80 b. *Fleta*, lib. 3, c. 10, § 3.

To outlaw a woman. *Fleta*, lib. 1, c. 27, §§ 12, 13.

WEYVIUM. L. Lat. In old English law. Waif; that which no one claims, (*est* weyvium *quod nullus advocat.*) *Fleta*, lib. 1, c. 27, § 13.

A wandering animal which no one seeks, follows or claims, (*pecus vagans quod nullus petit, sequitur, vel advocat.*) *Id.* lib. 1, c. 43, § 2. But this is rather the definition of an *estray.*

WHARF. [L. Lat. *wharfa.*] A perpendicular bank or mound of timber, or stone and earth, raised on the shore of a harbor, river, canal, &c. or extending some distance into the water, for the convenience of lading and unlading ships and other vessels. *Webster.* Defined by Cowell, "a broad, plain place near a creek or hithe of the water, to lay wares on, that are brought to or from the water." By Spelman, "a shore where wares are sold and exchanged," (*littus ubi merces vœneunt et permutantur.*) Spelman derives the word from the Sax. *hwyrfen*, to exchange.

WHARFAGE. [L. Lat. *wharfagium.*] Money paid for landing wares at a wharf, or for shipping or taking goods into a boat or barge from thence. *Cowell.*

WHARFINGER. One who owns or keeps a wharf, or has the oversight or management of it. *Cowell.* A wharfinger has a lien on goods deposited at his wharf, for the money due for the wharfage of those goods. 1 *Esp. N. P. R.* 109. 3 *Id.* 81. 2 *Kent's Com.* 642.

WHEEL. In criminal law. An instrument of a barbarous kind of capital punishment, called *breaking on the wheel*, said to have been first employed in Germany, according to some writers, on the murderers of Leopold, Duke of Austria, in the 14th century. According to the German method of this savage execution, the criminal was laid on a *cart-wheel*, with his arms and legs extended, and his limbs in that posture fractured with an iron bar. But in France, (where it was restricted to cases of assassination, or other murders of an atrocious description, highway robbery, parricide and rape,) the criminal was laid on a frame of wood in the form of a St. Andrew's cross, with grooves cut transversely in it, above and below the knees and elbows, and the executioner struck eight blows with an iron bar, so as to break the limbs in those places, sometimes finishing the criminal by two or three blows on the chest or stomach, thence called *coups de grace.* This punishment was abolished in France at the Revolution; but it is still resorted to in Germany, as the punishment for parricide, the last instance of which took place in 1827, near Gottingen. The assassin of the bishop of Ermeland in Prussia, in 1841, was sentenced to the wheel. *Brande.*

"WHERESOEVER," in a policy of insurance, construed. 1 *M. & S.* 418.

"WHILST," in a lease, construed. 7 *East*, 116.

WHITE ACRE. A fictitious name given to a piece of land, in the English books. See *Black acre.*

WHITE BONNET. In Scotch law. A fictitious offerer or bidder at a roup or auction sale. *Bell's Dict.* voc. *Articles of Roup.*

WHITE RENT. [L. Lat. *redditus albus.*] In old English law. Rent payable in silver, or white money. Otherwise called *white farm*, (*alba firma*, or *firma blanca*,) and *blanch farm*, or ferme, (Fr. *blanche fearme.*) See *Alba firma, Blanch ferme.*

WHITTANWARII. L. Lat. In old English law. A class of offenders who whitened stolen ox-hides and horse-hides so that they could not be known and identified. *Stat. Walliæ*, 12 *Edw.* I. *Barringt. Obs. Stat.* 124, note [*f.*]

WHOLE BLOOD. In the law of descent. Blood which is compounded wholly of the same ingredients; blood which is derived from the *same couple* of ancestors.* A kinsman of the *whole blood* is he that is derived, not only from the same ancestor, but from the same *couple* of ancestors. For, as every man's own blood is compounded of the bloods of his respective ancestors,

he only is properly of the *whole* or entire blood with another, who hath, (so far as the distance of degrees will permit,) all the same ingredients in the composition of his blood that the other had. Thus, the blood of John Stiles being composed of those of Geoffrey Stiles his father, and Lucy Baker his mother, therefore his brother Francis, being descended from both the same parents, hath entirely the same blood with John Stiles; or he is his brother of the *whole blood.* But if, after the death of Geoffrey, Lucy Baker the mother marries a second husband, Lewis Gay, and hath issue by him: the blood of this issue, being compounded of the blood of Lucy Baker, (it is true) on the one part, but that of Lewis Gay (instead of Geoffrey Stiles,) on the other part, it hath therefore only half the same ingredients with that of John Stiles; so that he is only his brother of the *half blood.* 2 *Bl. Com.* 227.

WHOLESALE. Sale in a whole or unbroken quantity; sale of goods by the piece or quantity.* "The term *wholesale* implies the selling in unbroken pieces or parcels, as [in the case of liquors,] by the barrel, pipe, cask, &c. or in a number of such pieces or parcels; while the word *retail* implies the cutting or dividing up such pieces, parcels or casks into small quantities, and selling to customers in such manner." 2 *Wisconsin R.* 237, 243.

WIC, *Wik, Wyc.* Sax. [from Gr. οἶκος, house.] In old English law. A house. *Spelman.* A country house, or farm, (*wica.*) *Cowell. Concessimus Andreæ de* wik, *pro homagio et servitio suo,* wicam *de manerio nostro;* we have granted to Andrew of the *wik,* for his homage and service, a *wic* of our manor. *Chartul. Abbat. Glaston. MS.* fol. 29, apud *Cowell.*

A castle, (*castrum.*) Called *wic,* according to Spelman, because constructed with a rampart, mound or embankment, in the sense of the Dutch *wiick.*

A town, (*villa,*) or village, (*vicus.*) In this sense, the word is more closely allied to the Lat. *vicus,* than the Gr. οἶκος, (*supra.*) *Spelman.*

WIC, *Wich, Wig.* Sax. [from Germ. weichen, to recede or go back.] In old English law. A bay of the sea, or of rivers, (*sinus maris vel fluviorum;*) as though formed by a recess of the land or stream. *Spelman.* A place where ships lie and unload. *Id.* See *Wig.*

In old European law. A grove, (*lucus;*) a small wood, (*minuta sylva.*) *L. Baiwarior.* tit. 21, § 6. *Spelman.*

WIC, *Wich, Wick.* A common termination of the names of towns and villages in England. In this connection, Spelman supposes *wic* to denote a village or wood; and *wich,* a bay, or sometimes a castle, as Norwich.

WICK. A termination of words denoting jurisdiction, or limits of jurisdiction or authority. *Bailiwick* is the district within which a bailiff or sheriff may lawfully exercise his office. *Sheriff-wick* is used in some of the old books, but is now superseded by the former word.

WIDRIGILD, *Widrigilt.* Lomb. In old Lombardic law. The same as *werigild* or *wergild,* (q. v.) *LL. Longob.* lib. 2, tit 1, c. 9. *Spelman.*

WIFA, *Wiffa.* L. Lat. In old European law. A mark, or sign, (*signum;*) a mark set up on land, to denote an exclusive occupation, or to prohibit entry. *L. Boior.* tit. 9, c. 12. *LL. Longob.* lib. 3, tit. 3, l. 6. *Spelman.*

WIFARE, *Guifare, Guiphare.* L. Lat. In old Lombardic law. To set or fix up a mark or sign, (*wifa,* q. v.) upon land or a house, [as a symbol of exclusive occupancy.] *Domus vel casæ* wifentur. *LL. Longob.* lib. 3, tit. 3, l. 6. *Terram alienam sine publico jussu* guifaverit; put a mark upon another's land, without public order. *Id.* lib. 1, tit. 27, l. 8. *Spelman.*

WIFE'S EQUITY. The equitable right or claim of a married woman to a reasonable and adequate provision, by way of settlement or otherwise, out of her *choses* in *action,* or out of any property of hers which is under the jurisdiction of the Court of Chancery, for the support of herself and her children.* 2 *Kent's Com.* 139. 1 *White's Equity Cases,* 305, note. *Id.* 323, Am. ed. note.

The wife's equity is a claim which attaches upon her personal property, whenever it is subject to the jurisdiction of the court, and is the object of a suit in any hands to which it may come, or in whatever manner it may have been transferred. It makes no difference whether the application to the court for the property be by the husband, or his representatives, or assignees, or by the wife or her trustee seeking a provision out of the property. 5 *Johns. Chanc. R.* 464. 2 *Kent's Com.* 140, and cases cited *ibid.* As between the husband and the wife, the principle is, that if

the husband wants the aid of chancery to enable him to get possession of his wife's property, or if her fortune be within the reach of the court, he must do what is equitable, by making a reasonable provision out of it for the maintenance of her and her children. *Id.* 139, and note. But the wife's equity does not, according to the adjudged cases, attach, except upon that part of her personal property in action which the husband cannot acquire without the assistance of a court of equity. *Id.* 141. And see further, *Id.* 139—143. 1 *White's Eq. Cas.* 305—323. *Id.* 323, Am. ed. note.

The doctrine of the wife's equity seems to be recognized throughout the United States, with the exception of North Carolina. *Id. ibid.*

WIG. Sax. and Germ. In old German law. A bay of the sea, or a river. *Spelman*, citing *B. Rhenan. Rer. Germ.* lib. 3, fol. 217.

A wood or grove. *Spelman.*

WIGREVE. Sax. [from *wig*, a wood, and *reve*, *refa*, an overseer.] In old European law. The overseer of a wood. *Spelman.*

WILL. [L. Fr. *volunt;* Lat. *voluntas*, *ultima voluntas*, *testamentum.*] A disposition of real and personal property, to take effect after the death of the person making it.* 3 *Kent's Com.* 501.—The legal declaration of a person's mind or intention, respecting the manner in which he *would* have his property or estate disposed of after his death.* 2 *Bl. Com.* 499. 1 *Jarman on Wills*, (by Perkins,) 1. This definition is founded essentially on that of *testament* in the civil law. See *Testament*, *Testamentum.*—An instrument in writing, executed in form of law, by which a person makes a disposition of his property, to take effect after his death.

A will, when it operates upon personal property, is sometimes called a *testament*, and when upon real estate, a *devise;* but the more general and the more popular denomination of the instrument, embracing equally real and personal estate, is that of *last will and testament.* 3 *Kent's Com.* 501. Of these several terms it may be observed that "*testament*" is directly derived from the *testamentum* of the civil law, and though formerly distinguished from a will, as importing the appointment of an executor, and as particularly applicable to personal property, is now generally used as synonymous with it. 1 *Steph. Com.* 544. See *Testament.* Or rather, it may be said to be comparatively disused, except in connection with *will.* See *infra.* "Devise" strictly means a disposition of real estate contained in a will, as distinguished from the instrument itself. A will may contain several devises. See *Devise.* "*Last will and testament*" is the formal denomination chiefly used as descriptive of the instrument, either in the will itself, or in other instruments referring to it; or in pleadings, statutes, &c. But the simple term *will* is the one most commonly used in the modern books, and even in statutes, as well as in common parlance, to denote an instrument containing dispositions of property to take effect after death. By the English statutes 7 Will. IV. and 1 Vict. c. 26, the word "will" is declared to extend to a testament, to a codicil, and to an appointment by will, or by writing in the nature of a will, in execution of a power. See 1 *Steph. Com.* 545, note. And in New-York, the term *will* is declared by statute to include a *codicil.* 2 *Rev. St.* [68, § 71,] 12, § 78.

WILL, *Estate at.* See *Estate at will.*

WILL. In Scotch practice. That part or clause of a process which contains the mandate or command to the officer. *Bell's Dict.* voc. *Inhibition.* 7 *Wils. & Shaw's R.* 519, 522.

WINCHESTER, *Statute of.* A statute passed in the 13th year of the reign of Edward I. by which the old Saxon law of police was enforced, with many additional provisions. 2 *Reeves' Hist. Eng. Law*, 163. *Crabb's Hist. Eng. Law*, 189. It was repealed by the statute 7 & 8 Geo. IV. c. 27. See *Constable.*

WINCHESTER MEASURE. The standard measure of England, originally kept at Winchester. 1 *Bl. Com.* 274.

WISBUY, LAWS OF. A code of maritime laws, compiled at Wisbuy, the ancient capital of Gothland in Sweden, towards the close of the thirteenth century; and which, soon after their promulgation, were adopted as laws of the sea, by all the nations of modern Europe. Even in the time of Cleirac, (who published them, with a commentary, in his work entitled *Les Us et Coutumes de la Mer*,) they were still observed in Sweden, Denmark, Flanders, and in the North of Germany. These laws resemble in many respects the laws of Oleron, to which, indeed, according to Cleirac, they were but a supplement, and they were

adopted as the basis of the later collection known as the Laws of the Hanseatic League. 3 *Kent's Com.* 13, and note. 1 *Duer on Ins.* 40, 41. Introd. Disc. Lect. ii. They have been published in the United States, in the Appendix to the first volume of *Peters' Admiralty Decisions.*

WISTA. L. Lat. [Sax. *wyst.*] In old records. A half a hide of land. *Spelman. Cowell.*

WIT, *Wyt, Wyte, Witt.* [Sax. *witan.*] In Saxon, old English and Scotch law. Know; to know. *To wit;* to know. See *To wit. Witt ze Ws to haif maid;* Know ye Us to have made. 1 *Pitc. Cr. Trials*, part 1, p. 171. An old charter of King Athelstan to the chapel of St. Wilfred of Rippon, given by Blount in rhyme, commences with this word:

> Wyt all that es and es gan,
> Yat ik King Adelstan
> As given als frelith as I may,
> And to ye Capitel of Seint Wilfrai,
> Of my free devotion,
> Yair pees at Rippon.
> On ilke side the kyrke a mile,
> For all ilk deeds and ylke agyle;
> And within yair Kyrke yate,
> At ye stan yat Grithstole hate.
> Within ye kyrke dore and ya quare,
> Yair have pees for les and mare.
> Ilkan of yis stedes sal have pees
> Of Frodmortel and ils deedes
> Yat yair don is, Tol, Tem,
> With Iron and with Water deme,
> And yat ye land of Seint Wilfrai
> Of alkyn geld fre sal be ay.
> At nai nan at langes me to
> In yair Herpsac sal have at do,
> And for ik will at yai be save
> I will at yai alkyn freedome have:
> And in all thinges be als free
> As hert may thinke or eygh may see.
> At te power of a Kinge
> Masts make free any thynge.
> And my seale have I sat yerto,
> For I will at no Man it undo.
>
> *Monast. Angl.* 1 pag. fol. 172 b.

WITA, *Wyta.* L. Lat. [Sax. *wite*, q. v.] In Saxon law. A fine, or mulct; a penalty; a sum paid by way of punishment for an offence. *Spelman.* See *Wite, Wyta.*

WITAN. Sax. In Saxon law. Wise men; persons of information, especially in the laws; the king's advisers; members of the king's council; the optimates, or principal men of the kingdom. 1 *Spence's Chancery*, 11, note. *Id.* 72, 74.

WITE, *Wit, Wyte.* In Saxon law. A fine for an offence; a pecuniary punishment or penalty. Distinguished from *were*, (q. v.) which answered to the civil damages of modern law. The *wite* was paid to the crown or magistrate, as a punishment for the offence; the *were*, to the injured party, or his relatives, as a satisfaction for the injury. *Bosworth's Anglo-Sax. Dict.* voc. *Were and wite. Sedgwick on Damages*, 10, 11, and notes.

An amerciament, or amercement. *Co. Litt.* 127 a. A pecuniary punishment imposed upon the lighter classes of offences, which was not fixed, but varied according to the quality of the offence. Spelman thus distinguishes *wite* from *were*, making the latter word to signify a fine imposed upon persons guilty of homicide, and other atrocious crimes. *Spelman*, voc. *Wyta.* See *Wyta.*

A freedom or immunity from an amercement. *Co. Litt.* 127 a. *Cowell.*

WITENA DOM. Sax. [from *witan*, wise men, and *dom*, judgment.] In Saxon law. The judgment of the county court, or other court of competent jurisdiction, on the title to property, real or personal. 1 *Spence's Chancery*, 22.

WITENA-GEMOTE, *Wettena-gemote, Gewitena-gemote.* Sax. [from *witan*, wise men, and *gemote*, a meeting.] In Saxon law. An assembly or meeting of the *wise men*, (*sapientes*,) or principal men (*optimates*) of the kingdom; an assembly or council of the more solemn kind, frequently called by the Saxon kings; otherwise termed *michel-synoth*, (q. v.) the great council. 1 *Bl. Com.* 148. 1 *Spence's Chancery*, 73. The superior court of the kingdom, (*curia regis.*) *Id.* 76. 1 *Reeves' Hist. Eng. Law*, 7. See 9 *Co.* pref.

These more solemn assemblies, according to Mr. Spence, appear to have been held in the open air, by public notice or by particular summons, in or near to some city or populous town; and they are the assemblies which are called *parliaments* by the writers after the Conquest. It appears to have been part of the business of the select council which usually attended the king, to determine when these more solemn councils should be held. On some occasions, when the throne was vacant, they met of their own authority, for the purpose of choosing a sovereign. 1 *Spence's Chancery*, 73, and notes.

WITERDEN, *Witereden.* Sax. [from *wite*, wise or principal men, and *rædan*, council.] In Saxon law. A kind of taxation among the West-Saxons, imposed by

the public council of the kingdom; a subsidy. *Spelman. Munita ab omnibus secularibus servitutibus, necnon regalibus tributis, sive taxationibus, quod nos dicimus* witereden; free of all secular burdens, and also of royal tributes or taxes which we call *witereden. Chart. Ethelwulf.* apud *Malm. de Gest. R.* lib. 1, p. 41, cited *ibid.*

WITEREDEN. [Sax. *wite-rædenne.*] In Saxon law. The payment of a *wite* or fine. *Spelman.*

WITH [L. Fr. *ove,*] is constantly used in the old books, in the sense of *for.* "Judgment *with* the plaintiff;" "of counsel *with* the defendant." See *Ove.* "He would have argued *with* the lease." *Dyer,* 126 b.

WITH STRONG HAND. [L. Lat. *manu forti.*] In pleading. A phrase used in describing a forcible entry in an indictment, and held to be indispensable. *Wharton's Prec. of Indict.* 219, note (*e.*)

WITHDRAWING A JUROR. In practice. The withdrawing of one of the twelve jurors impannelled to try a cause; a consent of parties that one of the jurors shall quit the jury-box, which, by leaving the jury incomplete, necessarily prevents any further proceedings in the cause. The withdrawing of a juror is always by the agreement of the parties, and is frequently done at the recommendation of the judge, where it is doubtful whether the action will lie; and in such case, the consequence is that each party pays his own costs. It is, however, no bar to a future action for the same cause. 2 *Tidd's Pr.* 861, 862. 1 *Arch. Pr.* 196.

WITHDRAWING RECORD. In practice. The withdrawing by a plaintiff, of the *nisi prius* or trial record filed in a cause, just before the trial is entered upon, for the purpose of preventing the cause from being tried. This may be done before the jury are sworn, and afterwards, by consent of the defendant's counsel. 2 *Tidd's Pr.* 851. 1 *Arch. Pr.* 189. 3 *Chitt. Gen. Pr.* 870.

WITHERNAM. Sax and Eng. [from Sax. *weder, oder,* other, and *naam,* a taking; L. Lat. *withernamium.*] In practice. A taking by way of reprisal;* a taking or a reprisal of other goods, in lieu of those that were formerly taken and eloined or withholden. 2 *Inst.* 141. A reciprocal distress, in lieu of a previous one which has been eloigned. 2 *Bl. Com.* 148.

A *capias in withernam* is a writ which issues in cases where goods distrained have been eloigned, i. e. carried away, concealed or otherwise withheld, so that they cannot be replevied; commanding the sheriff that he take other goods of the distrainor, *in withernam,* that is, by way of reprisal for the first distress, and as a punishment for withholding it.* 3 *Bl. Com. ub. sup. Reg. Orig.* 82. *F. N. B.* 69 A. 73 F.

*** *Withernam* has been sometimes said to be the same with the Lat. *vetitum namium,* and L. Fr. *vee de name,* (qq. v.) and is actually expressed by these terms in some of the books. But this, as Lambard and Lord Coke have shown, is clearly a corruption or mistake; for the import of the terms is widely different. *Vetitum namium* or *vee de name,* was a prohibited taking, or rather the prohibition of a retaking, being the *unlawful* detention of a distress, by the distrainor, by not suffering it to be replevied by the owner. *Bract.* fol. 155 b. But taking in *withernam* is, as Lord Coke observes, a *lawful taking* by authority of law, and therefore cannot be termed a *taking forbidden,* because it is expressly commanded to be done. 2 *Inst.* 140. *Withernamium* was in truth the remedy for *vetitum namium,* and followed immediately after it; and from this close connection of the proceedings, and the similarity in sound between their names, the error no doubt arose of taking the one for the other. *Withernam* and *vee de name* are both mentioned, and distinguished by their proper names, in the twenty-seventh chapter of Britton, *De prises des avers,* as clearly appears from the following passage. After describing *vee de name* (the withholding of a distress) and the remedy for it by writ of replevin, it is said,—*Et si les bestes soient clos dedens meson ou dedens parkes, ou si eles soient chases hors del counte, ou si le baillife autre desturbaunce trove, tauntost face prendre des bestes le deforceour à la double value* come withernam, *et cele destresse teigne, sauns lesser par plevine, jesques taunt que la destresse alloigne soit remene.* (And if the beasts be shut up in a house or in a pound, or if they be driven out of the county, or if the bailiff meet with other hindrance [in the execution of the process,] he shall forthwith cause the beasts of the deforcer [the distrainor] to be taken to the double value, *as a withernam,* and shall hold this distress without delivering it by plevin [shall hold it irreplevisable] until the distress eloigned be driven back.) *Britt.* c. 27. This passage is almost a literal

translation of the parallel one in Bracton, but in the latter the word *withernamium* is not used, though the proceeding itself is clearly indicated. *Si autem* [averia] *inveniri non possunt, eo quod alibi fugata sunt forte, vel extra comitatum in fraudem, et captor terram habuerit in comitatu et catalla, capiat serviens domini regis de averiis illius* in duplum, *et illa detineat donec averia sic abducta reducantur.* (But if the beasts cannot be found, in consequence of being driven elsewhere or fraudulently taken out of the county, and the distrainor have land and chattels [catals, cattle] in the county, the king's serjeant shall take of those beasts twofold [i. e. two for one] and shall detain them until the beasts which have been so eloigned be brought back.) *Bract.* fol. 157. In the parallel passage in Fleta, the words *nomine wythernamii* are added after the words *in duplum. Fleta*, lib. 2, c. 47, § 10. The word *withernamium* distinctly occurs in the Register. *Reg. Orig.* 79, 82.

WITHOUT CHILDREN. See *Sine liberis.*

WITHOUT DAY. [L. Lat. *sine die;* L. Fr. *sans jour.*] In practice. Without the appointment of a day to appear again; discharged from further attendance; finally dismissed. See *Sine die, Eat inde sine die.*

WITHOUT IMPEACHMENT OF WASTE. [L. Lat. *absque impetitione vasti;* L. Fr. *sauns impeschement de wast.*] In conveyancing. A clause frequently inserted in leases for life, where it is intended to give the tenant authority to cut down timber on the land leased, without making himself liable to an action, or to the statutory penalty in such cases. The clause itself strictly signifies, *without liability to suit for waste.* See *Impeachment of waste.* But according to Lord Coke, the tenant, by force of these words, is enabled not only to cut down timber, but to convert it to his own use; and a tenant for life, without impeachment of waste, has a right to the trees the moment they are cut down. 11 *Co.* 82 b. 1 *Term R.* 550. 2 *Crabb's Real Prop.* 72, § 1040. See 1 *Hilliard's Real Prop.* 275. The clause is sometimes more positively expressed, "with full liberty to commit waste." *Id. ibid.* But notwithstanding such a clause, tenants for life will be confined to a reasonable exercise of the right, and courts of equity will always restrain them from committing malicious waste, to the destruction of the estate. 2 *Crabb's Real Prop.* 73, 74, §§ 1040—1042. 1 *Hilliard's Real Prop.* 275.

WITHOUT MORE. [L. Fr. *sans pluis.*] Without further words. See *Sans pluis.*

WITHOUT RECOURSE. [Fr. *sans recours.*] In mercantile law. A clause used in the indorsement of negotiable instruments, where the indorser intends to exempt himself from liability to other parties. 3 *Kent's Com.* 92, 93. Such an indorsement transfers the whole interest, and the clause "without recourse" merely rebuts the indorser's liability to the indorsee and subsequent holder. 5 *Metcalf's R.* 201. *Story on Bills*, § 214.

WITHOUT STINT. Without limit; without any specified number. See *Sans nombre.*

WITHOUT THIS, THAT. [L. Lat. *absque hoc quod, sine hoc quod;* L. Fr. *sans ceo que.*] In pleading. Formal words used in pleadings by way of *traverse*, particularly by way of *special* traverse, (q. v.) importing an express denial of some matter of fact alleged in a previous pleading. *Steph. Pl.* 168, 169, 179, 180. *Id.* Appendix, Note (48.) See *Absque hoc.*

WITNESS. [Sax. *witnesse*, from *witan*, to know; Lat. *testis.*] A person who knows or sees any thing; one personally present. *Webster.*

In conveyancing. One who sees the execution of an instrument, and subscribes it for the purpose of confirming its authenticity by his testimony. *Id.*

In the law of evidence. A person who gives evidence to a judicial tribunal. *Best on Evid.* 140, § 114.

WITTEMON. [Sax. *wituma, weotoma.*] In old European law. Dower. *LL. Burgund.* tit. 69, § 1. *Spelman.*

WITTESCALCUS. L. Lat. [from Sax. *wite*, a fine, and *scalc*, an attendant.] In old European law. An officer by whom fines were collected; a bailiff. *LL. Burgund.* tit. 76. *Spelman.*

WLADARIUS. L. Lat. In old Polish law. A steward, (*villicus.*) *Stat. Poloniæ*, p. 520. *Spelman.*

WODEGELD. In old English law. A payment for wood. See *Woodgeld.*

WOLD. Sax. [L. Lat. *walda.*] In England. A down or champaign ground, hilly and void of wood. *Cowell. Blount.*

WOLF'S HEAD. [Sax. *wulves heved, wulves heofod;* L. Lat. *caput lupinum.*] In old English law. A term applied to a

person who had been outlawed, he being said to carry a *wolf's head;* implying that he had forfeited the protection of the law, as a man, and might be destroyed like a wild beast, in case he resisted being taken. See *Caput lupinum.*

WONG, *Wang.* Sax. In old records. A field, (*campus, arvum.*) *Spelman. Cowell.*

WOOD, [Lat. *boscus;* Fr. *bois,*] that is, growing wood, is distinguished from *trees,* in conveyancing. A grant or devise of an interest in *growing wood* is said to convey an interest in the soil itself. Shaw, C. J. 13 *Pick. R.* 44. *Co. Litt.* 4 b. *Shep. Touch.* 94. But it is otherwise with a grant or reservation of *trees.* 11 *Co.* 49 b, 50, *Liford's case.* 1 *Hilliard's Real Prop.* 56, [10.]

If a man seised of divers acres of wood grants to another *omnes boscos suos,* (all his woods,) not only the woods growing upon the land pass, but the land itself. *Co. Litt.* 4 b. Or at least these words pass an exclusive right to the land, so far as is necessary for the support of the trees. 4 *Mass. R.* 268. 2 *Hilliard's Real Prop.* 339, [356.]

WOOD, [Lat. *lignum,*] is held, in some of the old cases, to mean wood *cut down* or felled, not trees growing, according to the verse,

Arbor dum crescit, *lignum* cum crescere nescit.

1 *Ld. Raym.* 959. *Cro. Jac.* 166. See *Arbor, Lignum.*

WOOD-CORN. In old records. A certain quantity of oats or other *grain,* paid by customary tenants to the lord, for liberty to pick up dead or broken *wood. Cowell.*

WOOD-GELD. [from *wood,* and Sax. *geld,* a payment.] In old English law, Money paid for the liberty of taking wood in a forest. *Spelman. Cowell.*

Immunity from such payment. *Spelman. Co. Litt.* 233 a.

WOOD-MOTE. [from *wood,* and Sax. *mote,* a court.] In forest law. The old name of the court of attachments, otherwise called the forty days' court. *Cowell.* 3 *Bl. Com.* 71.

WOOD-STREET COMPTER. The name of an old prison in London. 11 *Mod.* 50. See *Counter.*

WOOD-WARD. [from *wood,* and Sax. *warde,* guard.] In forest law. A keeper; one whose office was to protect the wood, and who was sworn to present all offences against vert and venison, at the forest courts. *Cowell. Spelman.*

WOOLSACK. In English practice. The seat of the Lord Chancellor in the House of Lords; so called from its being a large square bag of wool, without back or arms, covered with red cloth. *Brande.*

WORTH, *Weorth.* Sax. In old records. A country house or farm, (*curtis sive habitatio.*) *Spelman. Cowell.*

WOUND. [Lat. *vulnus;* L. Lat. *plaga;* L. Fr. *playe.*] In criminal law. An injury to the person, by which the skin is divided, or its continuity broken. So defined in England, under the statute of 9 Geo. IV. c. 31, s. 12. Lord Lyndhurst, C. B. 6 *C. & P.* 684. By "skin" is said to be meant the whole skin; a separation of the *cuticle,* or upper skin only, is not sufficient to constitute a wound. 8 *C. & P.* 635. See 1 *Russell on Crimes,* 729—731. "In legal medicine, the term *wound* is used in a much more comprehensive sense than in surgery. In the latter, it means strictly a solution of continuity; in the former, injuries of every description that affect either the hard or the soft parts; and accordingly under it are comprehended bruises, contusions, fractures, luxations, &c." 2 *Beck's Med. Jur.* 106. See *Id.* 287, and notes.

WOUNDING. In criminal law. The offence of inflicting a wound. Defined by Blackstone, "an aggravated species of battery, consisting in giving another some dangerous hurt." 3 *Bl. Com.* 121. But the term has had a more specific sense given to it, under recent English statutes. 1 *Russell on Crimes,* 729. See *Wound.*

WORTHIEST OF BLOOD. In the English law of descent. A term applied to males, expressive of the preference given to them over females. See 2 *Bl. Com.* 234—240.

WREC. An old form of *wreck,* (q. v.)

WRECCUM, or WRECCUM MARIS. L. Lat. In old English law. Wreck; sea-wreck; goods cast ashore by the sea from a wrecked vessel; (*res e naufragio adductæ in terram.*) *Spelman.* 5 *Co.* 106 a, b, *Constable's case.* 2 *Inst.* 167. *Fleta,* lib. 1, c. 20, § 11. Written *wreckum* in Bracton and Fleta, *wrectum maris* in the Register. *Bract.* fol. 120. *Fleta,* lib. 1, cc. 43, 44. *Reg. Orig.* 102 b, 126 a. See *Wreck.*

WRECK. [from Sax. *wræc;* L. Fr. *wrek, wrekke;* O. Fr. *varech;* L. Lat. *wreccum,*

wreckum, wrectum; Lat. *naufragium;* Fr. *naufrage, bris, échouément.*] In English law. Goods which, after a shipwreck at sea, are by the sea cast upon the land. 5 *Co.* 106 b, *Constable's case.* 2 *Inst.* 167. Goods cast ashore from a wrecked vessel, where no living creature has escaped from the wreck alive; and which are forfeited to the crown, or to persons having the franchise of wreck. *Cowell.* 1 *Crabb's Real Prop.* 507, § 656; 509, §§ 658, 659. 1 *Bl. Com.* 290, 291.

In American law. Goods cast ashore by the sea, and not claimed by the owner within a year, or other specified period; and which, in such case, become the property of the state. 2 *Kent's Com.* 322. See *Wreckum.*

WRECK, *Wrec.* [L. Lat. *wreccum, wreckum.*] In old English law. Any thing thrown up on the land by the sea, (*maris ejectus.*) *Spelman. Lib. Rames.* § 95, cited *ibid.* Called in some old charters, *seupwerp*, quasi *sea-up-werp. Spelman. Cowell.*

A thing thrown out of a vessel, with the intention of throwing it away, and which is afterwards found; a thing derelict. *Bract.* fol. 120. See *Wreckum.*

WRECK. See *Shipwreck.*

WRECKFREE, *Wrecfree, Wrecfry.* In old English law. Exempt from the forfeiture of shipwrecked goods and vessels to the king. *Cowell.*

WRECKUM, *Wreccum.* L. Lat. In old English law. Wreck. A thing thrown out of a ship, without the intention of reclaiming it. *Et sciendum quod* wreckum *dici poterit, quasi derelictum, ut si quid* (*navis levandæ causâ,*) *à nave projectum fuerit ab aliquo, sine animo retinendi vel repetendi, id proprie dici poterit* wreckum, *cum res projecta habita sit pro derelicta; et si habita sit pro derelicta videri poterit per præsumptiones, ut si liber projectus fuerit, utrum inveniatur clausus vel apertus, cum commode claudi possit et bene; et sic de similibus.* (And it is to be known that a thing may be called *wreck*, as being derelict, as if any thing be thrown out of a ship by a person, (for the sake of lightening the ship,) without the intention of retaining or reclaiming it, it may be properly called wreck, when the thing thrown out is regarded as derelict; and whether it be regarded as derelict may be judged by presumptions, as if a book have been thrown out [such inference may be drawn from the circumstance] whether it be found shut or open, where it could conveniently be shut; and so of like cases.) *Bract.* fol. 120. See *Fleta*, lib. 1, c. 43, § 2. This definition of wreck seems to be nearly or quite that of *jettison*, (q. v.)

Goods or other things cast ashore by the sea from a wrecked vessel. This was regarded as the proper sense of the word. *Item magis propriè dici poterit* wreckum, *si navis frangetur, et de qua nullus vivus evaserit, et maxime si dominus rerum submersus fuerit, et quicquid inde ad terram venerit erit domini regis, nec aliquis alius aliquid à domino rege inde vendicare poterit vel habere, quamvis prope littus maris prædia possederit, nisi de* wrecko *habendo speciali gaudeat privilegio. Et quod hujusmodi dici debeant* wreckum *verum est, nisi ita sit quod verus dominus aliunde veniens, per certa indicia et signa, docuerit res esse suas; ut si canis vivus inveniatur, et constare possit quod talis sit dominus illius canis et illorum rerum. Et eodem modo si certa signa apposita fuerint mercibus et aliis rebus.* (Also, it may with more propriety be called *wreck*, if the ship be broken, and no living thing has escaped therefrom, and especially, if the owner of the property have been drowned, and whatever comes therefrom to land, shall be the king's, nor can any one else claim of the king any thing therefrom, or have it, though he may be the owner of lands near the seashore, unless he enjoy the special privilege of having wreck. And that things of this kind ought to be called *wreck*, is true, unless it so happen that the true owner, coming from another quarter, shall, by certain marks and signs, show the thing to be his property; *as if a dog be found alive*, and it can be evident that such person is the owner of that dog, and of those things. And in the same way, if *certain marks* have been put upon merchandize and other things.) *Bract.* fol. 120.

*** The foregoing passage of Bracton was written before the statute of Westminster the First, in which the law of wreck is laid down in the following terms: *De* wreck de mere *est accorde que la ou home, chien, ou chat escape vive hors de la neefe, la neefe ou batell', ou nul rien que la eins fuit ne soit* wreck, &c. (Concerning wreck of the sea, it is agreed that where a man, a dog, or a cat escape alive out of the ship, the ship or boat or any thing in them shall not be adjudged *wreck*, but the

goods shall be saved and kept, &c. So that, if any sue for those goods, and afterwards prove that they were his, or perished in his keeping, within a year and a day, they shall be restored to him without delay. And if not, they shall remain to the king.) *Stat. Westm.* 1, c. 4. See *Fleta*, lib. 1, c. 44, § 2. These two passages have often been quoted together, that of Bracton being relied on by those who have contended for a broader view of the law of wreck than seems to be authorized by the letter of the statute. Both mention the escape of a *live animal* from the vessel, as a circumstance which would take from the goods the character of wreck; the statute declaring it to be the absolute criterion by which it was to be determined whether the goods were wreck or not; but Bracton mentioning it only as a *means of proof* by which the owner might show his property. Bracton, however, it will be seen, goes farther than the statute, laying down the doctrine, in the important clause with which the passage quoted from him concludes, that if the owner could prove his property by *marks upon the goods*, they were not to be considered as wreck. In the case of Hamilton and Smith *v.* Davis, (5 *Burr.* 2732,) this clause was relied upon by the plaintiffs' counsel as an authority to show that the goods were *no wreck*, there being, in that case, marks apparent upon them. The defendant's counsel rested upon the strict letter of the statute, and contended that as no *living creature* had come from the ship to the shore, the goods were legally *wreck;* arguing, also, that Bracton had mis-stated the law, and was unsupported by any other writer, and was contradicted by the Mirror, ancient charters and ancient acts of parliament. Lord Mansfield, in delivering the opinion of the court, adopted the more liberal view of Bracton, which he considered as according with the common law before the statute, (the statute itself having always been recognized as declaratory of the common law.) See 2 *Kent's Com.* 322. It will be observed that Blackstone is quoted by the defendant's counsel in this case, as favoring the stricter interpretation of the statute, in opposition to Bracton. But, in the editions of Blackstone since published, the decision in this very case is quoted with approval, as settling the doctrine on the more liberal basis. 1 *Bl. Com.* 291, 292. As to the accordance of the American law with Bracton, see 2 *Kent's Com.* 322.

Lord Mansfield, in the case above quoted, observed, in allusion to the language of the statute, and the construction of it contended for on the part of the defendant, that there was no ground for a forfeiture of the goods upon the distinction between a man or other animal coming to shore *alive*, or not alive; that the coming to shore of a dog or a cat alive, could be no better proof than if they should come ashore dead; that the escaping *alive* made no sort of difference; and that if the owner of the dog, or cat, or other animal was known, the presumption of the goods belonging to the same person would be equally strong, whether the animal was *alive* or dead. That an importance, however, was attached to the circumstance of *life* in the animal, in such cases, seems clear, not only from the language of the statute, but from the express words of Bracton, who enumerates it as one (and, indeed, mentions no other) of the *indicia* and *signa* by which the owner might prove his property, supposing there were no marks upon the goods themselves. *Si canis vivus inveniatur*, if the owner's dog were found alive on the shore, the behavior of the animal towards his master would furnish in itself a natural *indicium* of the greatest importance in identifying him, so that *constare possit quod talis sit dominus illius canis*, and then the presumption followed, that *the owner of the dog* was the owner of *the goods that came ashore with the dog.* Such, at least, seems to be the reasonable interpretation of the passage, otherwise it is difficult to explain why the *canis vivus* is so prominently mentioned by this author.

It may be observed in addition, that in a writ in the Register, on the subject of wreck, the escape of a *live* animal from the ship is expressly made a criterion whether the goods washed ashore were forfeitable as wreck; the persons to whom it is directed being instructed to inquire whether any person escaped alive from the ship to land or not, and to award the goods to the claimants on their making proof of property, provided, however, some animal have escaped *alive* from the said ship, (*dum tamen aliquod* animal *à dicta navi* vivum *evaserit.*) *Reg. Orig.* 126.

WRECTUM. L. Lat. In old English law. Wreck. *Habere consueverunt* wrec-

tum *maris infra præcinctum manerii prædicti;* have been accustomed to have wreck of the sea, within the precinct of the manor aforesaid. *Reg. Orig.* 102 b. *Ac si* wrectum *fuissent, ceperunt et asportaverunt;* took and carried away, as if they were wreck. *Id.* 126.

WREK, *Wreke, Wrekke.* L. Fr. Wreck. *De wrek de meer trove;* of wreck of the sea found. *Britt.* c. 17, 33. *De* wrekkes *de meer trove. Id.* c. 29.

WRIT. [from Sax. *writan,* to write; Lat. *breve;* L. Fr. *brefe, bref, briefe, briefve;* Scotch, *brieve.*] In practice. A judicial instrument by which a court commands some act to be done by the person to whom it is directed. An instrument in writing, in an epistolary form, running in the name of the sovereign of a state, and issued out of a court of justice under seal, either as the commencement of an action or during its progress, directed to a sheriff or other ministerial officer, or to the party intended to be bound by it, and commanding some act therein mentioned to be done at, or within a certain time specified. Writs directed to officers always contain a command to return them on a certain day, called the *return* or *return day,* (q. v.) and all writs are usually witnessed or *tested* in the name of the chief justice or principal judge of the court out of which they are issued. The term *writ* is supposed by Mr. Reeves to have been derived from the fact of these *formulæ* having always been expressed in *writing,* being in this respect distinguished from all the other proceedings in the ancient action, which were conducted orally. 1 *Reeves' Hist. Eng. Law,* 95. 2 *Id.* 266.

*** The distinction of writs into *original* and *judicial,* was a fundamental and highly important one in old English law and practice. *Original* writs were mandatory letters, (so termed from their epistolary form,) issuing out of the court of chancery under the great seal, constituting the foundation of actions, and being the first proceeding in them. *Judicial* writs were those which issued after the action had been thus commenced, and they were issued out of the court in which it was pending, and under the seal of such court. 3 *Bl. Com.* 273, 282. See *Original writ, Judicial writ.* The *Register of Writs,* the great repository of these formulæ, is divided into two parts; the *Register of Original writs,* and the *Register of Judicial writs.* In modern times, original writs have fallen into disuse, and most of them have been expressly abolished in England. And indeed the proceeding *by writ,* in general, seems to have been superseded in a considerable degree by other judicial instruments, though none of these appear to equal it in point of expressiveness and formal effect.

WRIT. [Lat. *breve, litera, literæ.*] In old English law. An instrument in the form of a letter; a letter or letters of attorney, (*literæ procuratoriæ.*) This is a very ancient sense of the word. Bracton observes that where a person had a charter or deed of land, and a letter of attorney from the grantor to deliver seisin, it was said in English, ȝee ȝaȝ bothe ȝrit and ȝarter. *Bract.* fol. 40. See *Breve.*

Letters patent and letters close are otherwise called *writs* patent and *writs* close. 2 *Bl. Com.* 346.

WRIT. In Scotch law. A writing; an instrument in writing, as a deed, bond, contract, &c. 2 *Forbes' Inst.* part 2, p. 175—179. *Handwrit* is used for *handwriting.* 2 *How. St. Trials,* 715.

WRIT OF ENTRY. See *Entry, writ of.*

WRIT OF ERROR. [L. Lat. *breve de errore;* L. Fr. *brefe d'errour.*] In practice. A writ to correct error; called at length in the old books, *breve de errore corrigendo,* a writ about correcting error; the abbreviation of which (*breve de errore*) has been literally translated, *writ of error.* Sometimes simply termed *error.* Defined by Lord Coke to be a writ which "lieth where a man is grieved by any error in the foundation, proceeding, judgment or execution [of a suit,] and thereupon it is called *breve de errore corrigendo.* But without a judgment, or an award in nature of a judgment no writ of error doth lie; for the words of the writ be, *si judicium redditum sit,* [if judgment be given;] and that judgment must regularly be given by judges of record, and in a court of record, and not by any other inferior judges in base courts; for thereupon a writ of false judgment doth lie." *Co. Litt.* 288 b. See *Error, writ of.*

WRIT OF INQUIRY. See *Inquiry, writ of.*

WRIT OF RIGHT. [L. Lat. *breve de recto;* L. Fr. *brefe de droit.*] In old practice. A writ which lay to recover lands in fee simple, unjustly withheld from the true proprietor; the great and final remedy for the recovery of the *right of property,* (*jus*

proprietatis,) or mere right, (*jus merum*,) as distinguished from the right of possession. 3 *Bl. Com.* 194, 191. *Roscoe's Real Act.* 19. It was in its nature the highest writ in the law, and lay only of an estate in fee simple, and not for him who had a less estate. It lay concurrently with all other real actions, in which an estate of fee simple might be recovered; and it also lay after them, being, as it were, an appeal to the mere right, when judgment had been had as to the possession in an inferior possessory action. 3 *Bl. Com.* 193.

Writs of right have been abolished in England, by statute 3 and 4 Will. IV. c. 27. 3 *Steph. Com.* 492. They have been abolished also in some of the United States, and are, in general, disused in practice. See 4 *Kent's Com.* 70, note. But they may still be used as process in the Circuit Courts of the United States. 16 *Howard's R.* 354, 365.

To WRITE. [Sax. *writan;* Lat. *scribere.*] To express ideas by letters visible to the eye. Kent, C. 14 *Johns. R.* 491. To impress letters upon paper or parchment with pen and ink, with a pencil, or with any other instrument or material which can make them permanently visible.* The term includes the impression of letters with types and ink. See *Writing.*

WRITER TO THE SIGNET. In Scotch law. An officer nearly corresponding to an attorney at law, in English and American practice. Writers to the signet, called also *clerks to the signet*, derive their name from the circumstance that they were anciently clerks in the office of the Secretary of State, by whom writs were prepared and issued under the royal *signet* or seal, and when the signet became employed in judicial proceedings, they obtained a monopoly of the privileges of acting as agents or attorneys before the Court of Session. *Brande*, voc. *Signet.*

WRITING. [Lat. *scriptura;* L. Fr. *escript.*] The expression of ideas by letters visible to the eye. Kent, C. 14 *Johns. R.* 491.—The outward, visible form in which the contract, will or direction of a person is expressed; and which in many cases constitutes an essential part of it.* Termed in the old books, one of the *garments* (L. Fr. *garnements*, L. Lat. *vestimenta*,) of a contract or obligation. *Bract.* fol. 99. *Britt.* c. 28.

Writing is an essential requisite to the validity of a deed or conveyance of land, and to many other contracts, such as bonds, bills, notes, leases in certain cases, and even the informal memoranda required by the statute of frauds. 2 *Bl. Com.* 297. 4 *Kent's Com.* 450—452. Writing constitutes, also, an essential part of nearly all judicial proceedings. But *writing* is not, in these cases, confined to the ordinary and popular signification of the term,—the formation of letters by *pen and ink.* The mode or manner of impressing the letters is no part of the substance or definition of writing. Kent, C. 14 *Johns. R.* 491. The law has gone so far as to prescribe the material *upon which* the writing is to be made; and hence a deed is required to be written on *paper* or *parchment*, and not on wood or stone. This, it is observed, was for the sake of durability and safety, and is all the regulation that the law has prescribed. But the instrument, or the material *by which* letters are to be impressed on paper or parchment, has never yet been defined. Kent, C. *ub. sup.* Hence *printing* is *writing*, in the legal sense of the term, and an instrument the words of which are printed either wholly or in part, is equally valid with an instrument written with a pen. 2 *Bl. Com.* 297. Even writing with a *lead pencil*, (liable, as it is, to be effaced,) has been held sufficient in many cases. See 14 *Johns. R.* 491. See *Signature.* A promissory note in pencil is valid while legible. 14 *Texas R.* 329.

WRITING. [Lat. *scriptum;* L. Fr. *escript.*] A thing written; a written instrument or document. See *Scriptum. Best on Evid.* 239—241.

WRITING OBLIGATORY. [L. Lat. *scriptum obligatorium.*] The technical name by which a *bond* is described in pleading. See *Bond.*

WRITTEN LAW. [Lat. *jus scriptum, lex scripta;* Gr. νόμος ἔγγραφος.] One of the two leading divisions of the Roman law, comprising the *leges, plebiscita, senatusconsulta, principum placita, magistratuum edicta*, and *responsa prudentum. Inst.* 1. 2. 3.

Statute law; law deriving its force from express legislative enactment. 1 *Bl. Com.* 62, 85. See *Lex scripta.*

WRONG. [L. Fr. *tort;* Lat. *injuria.*] The violation of a right, or of law, either by a positive act, or negatively, by withholding from another that which is his due, or neglecting to comply with some express requirement of law; an injury. See *Injuria.*

Literally, *wrung*, or twisted; the opposite of *right*, which also literally means *straight*. The Fr. *tort*, (from Lat. *tortum*, twisted, from *torquere*,) has precisely the same meaning.

The idea of *rights* naturally suggests the correlative one of *wrongs*; for every right is capable of being violated. A right to receive payment for goods sold (for example,) implies a wrong on the part of him who owes, but withholds the price; a right to live in personal security, a wrong on the part of him who commits personal violence. And, therefore, while in a general point of view the law is intended for the establishment and maintenance of *rights*, we find it, on closer examination, to be dealing both with rights and wrongs. It first fixes the character and definition of rights, and then, with a view to their effectual security, proceeds to define wrongs, and to devise the means by which the latter shall be prevented or redressed. 1 *Steph. Com.* 126.

A private wrong, is otherwise termed a civil injury; a public wrong, a crime, or misdemeanor. See *Private wrongs*, *Public wrongs*.

WRONGOUS, *Wrangous*. In Scotch law. Wrongful; unlawful; as *wrongous* imprisonment. *Ersk. Pr.* b. 4, tit. 4, § 25.

WULTAVA, *Wulitava*. L. Lat. In old European law. A disfiguring of the face. *Addit. ad L. Frison.* tit. 3, § 16. *Spelman.*

WULVESHEVED, *Wulfesheofod*. Sax. [from *wulfe*, wolf, and *heofod*, head.] In Saxon law. Wolf's head; a term applied to an outlaw. *Si vero postea repertus fuerit, et retineri possit, vivus regi reddetur, vel caput ejus, si se defenderit.* Lupinum *enim gerit* caput, *quod Anglicè* Wulfesheved *dicitur*. (But if he be afterwards found, and can be taken, he shall be brought to the king alive, or his head, if he defend himself. For he carries a wolf's head, which is called in English *wulvesheved*.) *LL. Edw. Conf.* c. 7, [8.] *Spelman.*

WURTH. Sax. In Saxon law. Worthy; competent; capable. *Atheswurthe*; worthy of oath; admissible or competent to be sworn. *Spelman.* See *Othesworthe*.

WYTA, *Wita*. L. Lat. In Saxon and old English law. A fine, or mulct; a wite, (q. v.) *Ex his placitis, quædam emendantur centum solidis; quædam wera, quædam* wyta; *quædam emendari non possunt.* (Of these pleas, some may be made amends for, [satisfied or discharged,] by payment of a hundred shillings; some by a *were*, some by a *wite*; some cannot be made amends for.) *LL. Hen.* I. c. 13. *Spelman*, voc. *Wita*.

WYTE. Sax. In old English law. Acquittance or immunity from amercement. Used in the compound words, *frendwyte*, *ferdwyte*, *blodwyte*, *wardwyte* and *hengwyte*, (qq. v.) *Fleta*, lib. 1, c. 47, §§ 15, 16, 17.

X.

X. A contraction of the word *extra*, used in citing that part of the canon law called Gregory's Decretals, thus: cap. 8, X. *de regulis juris*.

XAIPEIN, Χαίρειν, Gr. [Lat. *salve*, *salutem*.] Hail; health; greeting. A word used in Greek conveyances, corresponding with the Latin *salutem*, (q. v.) *Dig.* 8. 3. 37. *Id.* 31. 34. 1.

XENODOCHIUM. Græco-Lat. [from Gr. ξενοδοχέω, from ξένος, a guest, and δέχομαι, to receive.] In the civil and old English law. An inn allowed by public license, for the entertainment of strangers, and other guests. *Calv. Lex. Cowell.*

A hospital; a place where sick and infirm persons are taken care of. *Cowell.* 10 *Co.* pref. In the civil law, the house itself was called *xenon* (ξένων;) the person who had charge of it, *xenodochus*, (ξενόδοχος.) *Cod.* 1. 3. 33. *Id.* 1. 3. 46. 1. *Nov.* 7, epilog.

XEURTE. L. Fr. A corruption of *seurte*, or *suerte*, (q. v.) *Kelham.*

XPHΣIΣ, Χρῆσις. Gr. [Lat. *usus*.] In the civil law. Use. *Calv. Lex.* See *Usus*.

Y.

Y is constantly used for *th* in old English and Scotch records. The use of *ye* or *y*^{e} for *the*, is a familiar illustration of this practice.

YA ET NAY. In old records. Mere assertion and denial, without oath. *Quod homines sui* (Ripponienses) *sint credendi per suum* Ya *et per suum* Nay, *in omnibus querelis et curiis*; that his men (of Rippon) may be believed on their *yea* and on their *nay*, in all plaints and courts. *Chart. Athelstan. Reg.* 1 *Mon. Angl.* 173 a. *Cowell. Blount.*

YALEMAINES, *Jalemiens*. L. Fr. At least; nevertheless; however. *Kelham. Plowd.* 219.

YARD. [from Sax. *gyrdan*, to enclose; Lat. *curtis*.] An enclosed space or area,

generally attached to a dwelling-house. A common term in deeds. 1 *Chitt. Gen. Pr.* 176.

YARD-LAND. [Sax. *gyrdland;* L. Lat. *virgata terræ.*] In old English law. A measure of land of uncertain quantity, varying from fifteen to forty acres. *Spelman*, voc. *Virgata terræ.*

YAUE, *Yave.* L. Fr. Corrupted forms of *eaue* and *ewe*, (qq. v.) following the pronunciation. *Kelham.*

YCEL. L. Fr. It; this; the same. *En ycel;* in it. *L. Fr. Dict. Kelham.*

YCEMENT. L. Fr. Thus; in like manner. *Kelham.*

YCESTES. L. Fr. These. *Kelham.*

YCEUX, *Yceaux.* L. Fr. Those; them. *Kelham.*

YCONOMUS, *Oeconomus.* L. Lat. In old records. An advocate or defender; a patron. *Cowell.*

YEAR. [O. Sc. *zeir;* Sax. *gear;* Lat. *annus;* L. Fr. *an, ann.*] The period of three hundred and sixty-five days, or twelve calendar months. 2 *Bl. Com.* 140. *Co. Litt.* 135. *Cro. Jac.* 166. 1 *N. Y. Rev. St.* [606,] 615, § 3. By the statute 21 Hen. III. the increasing day in the leap-year, together with the preceding day, were directed to be accounted for one day; and this rule has continued to be observed ever since. 2 *Bl. Com.* 141. 1 *N. Y. Rev. St. ub. sup.*

YEAR AND DAY. [O. Sc. *zeir and daie;* Germ. jar und tag; L. Lat. *annus et dies;* L. Fr. *an et jour.*] A period of time limited by law for many purposes, and which in some cases determines a right, in other works a prescription. Thus, wreck and estrays become the property of the crown or state, unless claimed by the owner within a year and a day. 1 *Bl. Com.* 292, 297. 2 *Kent's Com.* 359, 360. So, in criminal law, in order to make the killing of a person murder, it is requisite that the party die within a year and a day after the stroke received, or cause of death administered. 4 *Bl. Com.* 197, 306. *Co. Litt.* 254 b. So, in practice, execution, according to the English rule, cannot be issued after a year and a day from the time of perfecting judgment, without a *scire facias.* 2 *Tidd's Pr.* 1102. *Arch. N. Pract.* 566. So, in admiralty law, a claim to property captured as prize must be interposed within a year and a day, otherwise comdemnation follows as of course. 2 *Gallison's R.* 386, 388.

In the old law of England, the period of a year and a day was allowed or prescribed for other purposes; as for making claim upon a fine or final judgment in a writ of right, and for bringing an appeal of death by a wife or heir. *Co. Litt.* 254 b. Protections were allowed but for a year and a day, and if a villein remained in ancient demesne a year and a day, he was privileged. *Id. ibid.*

In the early maritime ordinances of France, in the laws of Oleron and in the *Consolato del Mare*, the same period is fixed as the limitation of right in cases of shipwreck. *Consol. del Mare*, ch. 252. *Les Us et Coutumes de la Mer*, 53, 54. *Laws of Oleron*, 30. *Ord. Mar.* liv. 4, tit. 9, art. 24. And this was in accordance with the civil law. *Cod. de Naufragiis*, lib. xi. tit. 5, l. 2. *Peckius ad Rem Naut.* 889. Story, J. 2 *Gallison's R.* 388.

In the Books of Feuds, the laws of the Lombards, and the Formularies of Lindenbrog, the same period is prescribed in the case of forfeitures, warranties, &c. and Spelman considers it to be essentially of German origin. *Gloss.* voc. *Annus et dies.*

The *day*, in this period, is in modern law the ordinary day of twenty-four hours. In the German law of the middle ages, however, it meant a period of six weeks. Spelman quotes an old German Glossary that Jar und tag ist sechs wochen und ein jar; Year and day is six weeks and a year. See *Heineccius De præscriptione annali juris Lubecensis à jure communi diversa*, (Opera Minora, Syll. I. Exerc. 26.) It is generally supposed to have been added to the year in order to remove any doubt as to the completion of the year by inclusive or exclusive computation of the first or last day. 2 *Chitt. Gen. Pr.* 107, citing *Palmer's Pr. Lords*, 115, note. Mr. Erskine observes that "a day is adjected to the year, *in majorem evidentiam*, that it may clearly appear that the year itself is elapsed." *Ersk. Pr.* b. 1, tit. 6, § 22. *Bell's Dict.* And see 2 *Gallison's R.* 388, 389, note.

YEAR-BOOKS. The oldest English reports extant, beginning with the reign of Edward II. and ending with the reign of Henry VIII. They derive their name from the circumstance of having been *annually* published, and are called by old law writers "books of the years and terms," or "books of the terms and years." 1 *Bl. Com.* 72. *Co. Litt.* 115 b. *Doct. & Stud.* Dial. 1, ch. 9. 2 *Reeves' Hist. Eng. Law*, 357. They

consist of eleven parts or volumes, written in Law French, and extend over a period of nearly two hundred years. The series, however, is in some parts broken, and many years are found without a single report. Thus, in the reign of Edward III. the 11th to the 16th, the 19th to the 20th, and the 31st to the 37th are without a report. The case is the same during the whole reign of Richard II. and the 3d, 4th and 6th years of Henry V.; the 5th, 6th, 13th, 15th, 16th, 17th, 23d, 24th, 25th, 26th and 29th of Henry VI.; the 17th, 18th and 19th of Henry VII.; and the 1st to the 12th, the 15th, 16th, 17th, 20th to the 25th, and the 28th to the end of the reign of Henry VIII. Many of the omitted cases are, however, to be found in the Abridgments of Statham, Brooke and Fitzherbert, as also in the reports of Dyer, Jenkins, Keilway and Benloe. The use of the Year Books was indeed superseded in a great degree by the abridgments just named, and in modern law they are rarely referred to. But they are still regarded as authority, and have been followed in some recent English cases. See 1 *B. & C.* 410. 14 *Mees. & W.* 589. 3 *Man. Gr. & Scott*, 51, arg.

YEAR, DAY AND WASTE. [L. Lat. *annus, dies et vastum;* L. Fr. *an, jour et wast.*] In English law. A privilege or prerogative of the crown to have the lands and tenements belonging in fee simple to persons attainted for murder, for a *year and a day*, and to commit waste therein at pleasure. 4 *Steph. Com.* 450. 4 *Bl. Com.* 285.

YEME. In old records. Winter; a corruption of the Lat. *hieme. Reddendo—ad festum S. Martini, in* yeme; rendering at the feast of St. Martin, in winter. *Cowell.* Kelham gives it as a law French word. *Yemis* (for *hiemis*) occurs in Fleta. *Lib.* 2, c. 73, §§ 16, 18.

YEMER. L. Fr. [from Lat. *hiemare.*] To winter. *Kelham.*

YEOMAN, *Yoman, Yeman.* [from Sax. *geman*, common.] In English law. A commoner; a freeholder under the rank of gentleman. *Cowell. Camd. Brit.* 105. A man who has free land of forty shillings by the year; who was anciently thereby qualified to serve on juries, vote for knights of the shire, and do any other act, where the law requires one that is *probus et legalis homo.* 1 *Bl. Com.* 406, 407. 2 *Inst.* 668. 3 *Steph. Com.* 16.

This term is occasionally used in American law, in the description of persons in legal instruments, but without any definite meaning. The fictitious bail, John Doe and Richard Roe, are generally described as *yeomen.*

YEOVEN, *Yeven, Yeuen.* O. Eng. In old records. Given. "*Yeoven*, (given,) the day and year first above written." *Cowell.* The Dictum de Kenilworth concludes, "*Yeoven* and proclaimed in the castle of Kenilworth, the day before the Calends of Novemb. Anno 1256." *Id.* The famous bull of Pope Gregory against Wycliffe ends with these words: "*Yeuen* at Rome, at S. Marie's the greater, xj Kalend of June," &c. Cowell supposes it to be a corruption of the Sax. *geofian*, to give.

YEULX, *Yeux, Yex, Yes.* L. Fr. Eyes. *Kelham.*

YIELD. [Lat. *reddere, cedere.*] To give as claimed of right; to resign; to give up; to surrender to; to give way; to give place to. *Webster*, arg. 1 *Cushing's R.* 405.

YIELDING AND PAYING. In conveyancing. The initial words of that clause in leases, in which the rent to be paid by the lessee is mentioned and reserved. Corresponding to the *reddendum* or *reddendo*, (qq. v.) of old conveyancing. Cowell and Blount suppose "yielding" to be a corruption of the Sax. *geldan*, or *gyldan*, to pay.

The words "yielding and paying" have been held to constitute an implied covenant, and not to bind the lessee after assignment of the lease. 9 *Vermont R.* 191.

YINGEMAN. A word occurring in the laws of Henry I. (c. 16) which Spelman thinks might be a mistake for Ynglishman, or Englishman.

YL. L. Fr. He; it. A corruption of *il. Yl semble;* it seems. *Kelham.*

YO, *Joe.* L. Fr. Water. *Kelham.* A corruption of *eau*, or *ewe.*

YORK, *Custom of.* A custom of the province of York in England, by which the effects of an intestate, after payment of his debts, are in general divided according to the ancient universal doctrine of the *pars rationabilis.* 2 *Bl. Com.* 518. 2 *Steph. Com.* 254.

YORK, *Statute of.* An important English statute passed at the city of York, in the twelfth year of Edward II. containing provisions on the subject of attorneys, witnesses, the taking of inquests by *nisi prius*, &c. 2 *Reeves' Hist. Eng. Law*, 299—302. *Crabb's Hist.* 203.

ΥΠΟΒΟΛΟΝ, Ὑποβολον. Gr. [from ὑποβάλλειν,

to add a less to a greater.] In the civil law. An addition to a woman's dowry, (*incrementum dotis.*) *Calv. Lex.* See *Hypobolon.*

ΥΠΟΘΗΚΗ, Ὑποθήκη. Gr. [from ὑποτιθέναι, to put under.] In the civil law. A kind of pledge in which the possession of the thing pledged remained with the debtor. *Calv. Lex.* See *Hypotheca.*

YRELOND. In old English law. Ireland. *Le def' fuist un marchand D'yrelo'd;* the defendant was a merchant of Ireland. *Yearb.* T. 5 Edw. III. 4.

YVER, *Yvre, Yverne.* L. Fr. Winter. *Kelham.*

YVERNAGIUM. L. Lat. [from Fr. *yverne*, winter.] In old records. Winterseedness; season for sowing corn, [grain.] *Cowell. Blount. Inbladatio yuernagii. Fleta*, lib. 2, c. 41, § 1.

YVERNAIL BLE. L. Fr. Winter grain. *Kelham.*

Z.

Z is frequently used for *y*, in old English and Scotch records. See *infra.*

ZABULUM. L. Lat. In old records. Coarse sand or gravel. *Blount.* See *Sabulo.*

ZARDE, *Zaird.* O. Sc. Yard. *Skene de Verb. Signif.*

ZE. O. Sc. Ye. *Skene de Verb. Sign.* voc. *Homagium.*

ZEIR. O. Sc. Year. "*Zeire* and day." Act A. D. 1594, c. 226. *Bell's Dict.* voc. *Houses.*

ZELDE. O. Sc. A gift or donation. *Skene de Verb. Sign.* voc. *Herezelda.*

ZOUNG. O. Sc. Young. 1 *How. St. Trials*, 915.

ZOUR. O. Sc. Your. *Skene de Verb. Sign.* voc. *Homagium.*

ZOW, *Zowe.* O. Sc. and O. Eng. You. *Skene de Verb. Sign.* voc. *Homagium.* 1 *How. St. Trials*, 154. See *To wit.*

ZUCARIUM. L. Lat. In old English law. Sugar. *Fleta*, lib. 2, c. 12, § 4.

ZUCHE. [L. Lat. *zucheus;* L. Fr. *souche.*] In old records. A withered or dry stock or stub of a tree. *Cowell. Blount.*

ZYGOCEPHALUM. Græco-Lat. [Gr. ζυγοκεφαλον, from ζυγον, a yoke, and κεφαλη, head.] In the civil law. A measure or quantity of land. *Nov.* 17, c. 8. As much land as a yoke of oxen could plough in a day. *Calv. Lex.*

ZYGOSTATES. Græco-Lat. [Lat. *libripens.*] In the civil law. A weigher; an officer who held or looked to the balance, in weighing money between buyer and seller; an officer appointed to determine controversies about the weight of money. *Spelman.*

ZYTHUM. Lat. A liquor or beverage made of wheat or barley. *Dig.* 33. 6. 9, pr.

A GLOSSARY

OF LATIN

NAMES OF PLACES.

A GLOSSARY

OF

ANCIENT LATIN NAMES OF PLACES IN ENGLAND, SCOTLAND, WALES AND IRELAND.

TAKEN FROM THE APPENDIX TO COWELL'S INTERPRETER, WITH CORRECTIONS AND ADDITIONS.

A.

ABALLABA, *Applebeia.* Appleby in Westmoreland.

ABBANDUNUM, *Abendonia, Abbendonia.* Abington in Berkshire.

ABERDONA, *Aberdonia.* Aberdeen.

ABLATO BULGIO. Bulness or Bolness in Cumberland. Now Bowness.

ABONE, *Abonis.* Avington or Aventon in Gloucestershire.

ABREVICUM. Berwick on Tweed.

ABUM, *Abus Æstuarium.* The river Humber in Yorkshire.

ACEMANNI CASTRA. Bath.

ACHELANDA. Bishop's Auckland in the county of Durham.

ADELINGIA. Athelney in Somersetshire.

AD-LAPIDEM. Stoneham in Hampshire.

AD-PONTEM. Pawnton in Lincolnshire.

ADROS, *Andros, Andrium.* Bardesey Island, between Wales and Ireland.

ADURNI PORTUS. Ederington in Sussex.

ÆBUDÆ. The Hebrides Islands.

ÆGLESBURGUS. Aylesbury in Buckinghamshire. *L. Lat. Dict.*

ÆTONA. Eaton in Buckinghamshire.

AGER MARIDUNENSIS. Caermarthenshire.

ALANNIUS. The river Avon in Wiltshire.

ALATA CASTRA, *Alatum Castrum.* Edinburgh. *L. Lat. Dict.*

ALAUNA. Alnwick in Northumberland. *L. Lat. Dict.*

ALAUNICUS PORTUS. Milford Haven.

ALAUNODUNUM. Maidenhead in Berkshire.

ALAUNUS, *Alanus.* The river Alne in Northumberland.

ALBUM MONASTERIUM. Whitchurch in Shropshire.

ALECTUM, *Allectum.* Dundee. *L. Lat. Dict.*

ALENUS. The river Alen in Dorsetshire, and another in Denbighshire. The river Alne in Warwickshire.

ALION, *Alione, Alone.* Lancaster. Whitby Castle in Cumberland.

ALONE. The river Aln in Northumberland.

AMBOGIANNA. Ambleside in Westmoreland.

AMBROSII BURGUS. Amesbury in Wiltshire.

ANDERIDA. Newenden in Kent.

ANDOVERA. Andover in Hampshire.

ANGLESEGA, MONA. Anglesey island.

ANGUILLARIA INSULA. The isle of Ely.

ANGUILLARIUM MONASTERIUM. The city of Ely in Cambridgeshire.

ANTIVESTÆUM. The Land's End.

APIACUM, *Epiacum.* Pap-Castle in Cumberland.

AQUÆ CALIDÆ, *Aquæ Solis.* Bath city in Somersetshire.

AQUÆDUNENSIS SALTUS. Waterdon.

AQUÆVADENSIS PONS. Eiford.

AQUILÆDUNUM. Hoxton. Eagles-town.

ARBEIA. Ireby in Cumberland.

ARGATHALIA. Argyleshire. *L. Lat. Dict.*

ARICONIUM. Kenchester near Hertford.

ARUNDELIÆ, *Arundellum, Aruntina vallis.* Arundel in Sussex.

ARUNDINIS VADUM. Redbridge in Hampshire.

ARUNUS. The river Arun in Sussex.

ARVONICA. Caernarvonshire.

ATHANATON, *Athanatos.* The isle of Thanet in Kent.

ATHESIS. The river Tees in the county of Durham.

ATREBATII. Inhabitants of Berkshire.

AUGUSTA TRINOBANTUM. London.

AUREA VALLIS. Golden Vale in Herefordshire. *L. Lat. Dict.*

AVALONIA. Glastonbury in Somersetshire.

AVONA. The river Avon, in various parts of England.

AVONA. Bungay in Norfolk. Hampton-court.

AVONÆ VALLIS. Avondale in Northhamptonshire.

AXELODUNUM. Hexham in the county of Northumberland.

B.

BACHELAGANÆ SYLVÆ. Bagley.

BADIZA. Bath in Somersetshire.

BADONICUS MONS. Bannes-down near Bath.

BAINUS PONS. Bainbridge in Yorkshire.

BALNEA, *Batha, Bathonia.* Bath city.

BANNAVENNA, *Bannaventa, Bennaventa.* Northampton.

BANUS. The river Ban in Lincolnshire.

BASENGA, *Basingum.* Basing in Hampshire.

BATERSEGA. Battersea in Surrey.

BEARROCSCIRA. Berkshire.

BEBBA. Bamburgh in Northamptonshire. *L. Lat. Dict.*

BEDEFORDIA, *Bedfordia.* Bedford.

BELGÆ. Inhabitants of Somerset, Wilts and Hantshire.

BELINUS SINUS. Belingsgate, Billingsgate.

BELLELANDA. Biland in Yorkshire.

BELLO DESERTUM, *Belloclivum, Bellus locus.* Beldesert or Beaudesert in Warwickshire.

BERCEIA, *Bercheria.* Berkshire.

BERECHINGUM. Barking in Essex.

BERCLEA, *Bercheleia.* Berkley in Gloucesterhire.

BERMUNDI INSULA. Bermondsey in Surrey.

BERWICUS. Berwick upon Tweed.

BEVERLEA. Beverley in Yorkshire.

BEVERLACENSIS. Of Beverley.

BIBROCASSI, *Bibroci.* The hundred of Bray in Berkshire.

BIMONIUM, *Binonium, Binovia, Binovium, Vinovia.* Binchester in the bishopric of Durham.

BLACAMORA. Part of the North Riding of Yorkshire.

BLANCOFORDA. Blandford in Dorsetshire.

BLATUM BULGIUM. Bowness or Bulness in Cumberland.

BLESTIUM. Old-Town in Herefordshire.

BOCCINUM. Buckingham.

BODOTRIA. Edinburgh Firth.

BOLERIUM. Land's End.

BORCOVICUM, *Borcovicus, Borovicum.* Berwick upon Tweed.

BOTELEGA. Boteley near Oxford.

BOVIUM. Boverton in Brecknockshire.

BRABONIACUM. Brougham in Westmoreland.

BRACCHIUM. Burgh in Yorkshire.

BRACHILEGA. Brackley in Northamptonshire.

BRANNODUNUM. Branchester in Norfolk.

BRANOVIUM. *Brannovium, Branoricum, Bravinum, Branconium.* The city of Worcester.

BRECHINIA. Brecknock city.

BREMENIUM. Rochester in Northumberland.

BREMENTONACUM. Overborough in Lancashire.

BREMENTURACUM. Brampton in Cumberland.

BRENTÆ VADUS. Brentford in Middlesex.

BRIGANTES. Inhabitants of Yorkshire, Lancashire, Durham, Westmoreland and Cumberland.

BRIGANTIUM. York city.

BRIGE, *Brage.* Broughton in Hampshire.

BRISTOLIA, *Bristowa.* The city of Bristol.

BROCAVUM, *Brocave, Broconiacum, Brovonacis, Brovonacum.* Brougham in Westmoreland.

BUCOSTENUM. Buxton in Derbyshire.

BUDEFORDA. Bedford.

BULLÆUM SILURUM. Buelth in Brecknockshire.

BURRIUM. Usk in Monmouthshire.

C.

CACARIA, *Calcaria, Calatum.* Tadcaster in Yorkshire.

CAER PERIS. Port-chester.

CAER SEVERUS. Sarisbury, Sandon.

CÆSAREA. The isle of Jersey.

CÆSARO-MAGUS. Burgsted and Brentwood in Essex.

CALACUM, *Calagum.* Overborough in Lancashire, Whealp Castle in Cumberland.

CALATERIUM NEMUS. The forest of Galtres in Yorkshire.

CALEDONIA. Scotland.

CALEDONIUS OCEANUS. The Scottish sea.

CALEVA, *Calena.* Wallingford in Berkshire.

CALNA. Calne in Wiltshire.

CALONIA. Coldingham in Scotland.

CAMBORICUM, *Camboritum.* Cambridge.

CAMBRIA. Wales.

CAMOLODUNUM, *Camoludunum, Camulodunum, Camudolanum.* Malden in Essex.

CANDALIA. Kendal in Westmoreland.

CANTABRIGIA. Cambridgeshire.

CANTIUM, *Kantium, Kancium, Kancia.* Kent.

CANTUARIA. Canterbury.

CANTUARIENSIS. Of Canterbury.

CARLEOLUM. Carlisle in Cumberland.

CARENII. Inhabitants of Cathness in Scotland, according to Camden.

CASSI, *Cassii.* The hundred of Cayshow in Hertfordshire.

CASSITERIDES. The isles of Scilly.

CASSIVELAUNI OPPIDUM. The old city of Verulam.

CASTRA ALATA, *Castrum Alatum, Castrum Puellarum.* Edinburgh in Scotland.

CASTRA EXPLORATORUM. Burgh on the Sands in Cumberland.

CASTRUM DE VIES, CASTRODUNUM. Devizes in Wiltshire.

CASTRUM LODANUM. Leeds in Kent. *L. Lat. Dict.*

CATARACTA. The river Swale in Richmondshire.

CATUELLANI, *Cattidudani, Cathricludani, Cattieuchlani.* The inhabitants

of Buckingham, Bedford and Hertfordshires.

CAVÆ DIRÆ. Holderness in Yorkshire.

CAVODA. Cawood in Yorkshire.

CERDICI VADUM. Chardford in Hantshire.

CERETICA. Cardiganshire.

CEROTI INSULA, *Certesia.* Chertsey in Surrey.

CERVI INSULA. Hartle-Pool in Durham.

CESTRIA, *Chestria, Chestrum.* Chester city.

CHINEGLISSI CASTRUM. Kenilworth castle.

CHEVA. Kew in Surrey.

CICEASTRIA, *Cicestria.* Chichester in Sussex.

CIRENCESTRIA. Circester or Cirencester in Gloucestershire.

CLAMOVENTA, *Clanoventa.* Wentsbeck. *L. Lat. Dict.*

CLARA-FONTANUS, *Clarus fons.* Sherburne in Dorsetshire.

CLAUDIA, *Claudiocestria, Clevum, Glevum.* Gloucester city.

CLAUSENTUM. Southampton.

COCCIUM. Ribchester in Lancashire.

COLONIA, *Coludi, Coldania.* Coldingham in Scotland.

COLCESTRIA, *Coleceastria.* Colchester in Essex.

COLNIUS. Colne River in Middlesex. *L. Lat. Dict.*

COLONIA VICTRICENSIS. Malden in Essex.

COLUNUM. Colnbrook in Middlesex.

COMBRETONIUM, *Combretovium.* Brettenham in Suffolk.

CONACTA. Connaught province in Ireland. *L. Lat. Dict.*

CONCANGIUM. The barony of Kendale.

CONDATE. Congleton in Cheshire.

CONDERCUM. Chester-le-street in the county of Durham.

CONONIUM. Chelmsford in Essex.

CONOVIUS. The river Conway that divides Caernarvonshire from Denbighshire.

CONVENNON, *Convennos Insula.* Convey island at the mouth of the Thames.

CONVENTRIA, *Coventria.* Coventry city in Warwickshire. *Reg. Orig.* 132 b.

CORIA, *Curia.* Corebridge in Northumberland.

CORINIA. Cornwall.

CORINIUM. Cirencester in Gloucestershire, according to Camden.

CORITANI, *Coritavi.* Inhabitants of Lincolnshire, Leicestershire, Rutland, Derby and Nottinghamshire.

CORNAVII, *Cornabii.* Inhabitants of Shropshire, Cheshire, and the adjacent districts.

CORNUBIA. Cornwall. *Bract.* fol. 407.

CORNUTUM MONASTERIUM. Hornchurch in Essex.

CORSTOPILUM, *Corstopitum, Curia.* Corebridge upon Tyne, according to Talbot. Morpeth in Northumberland, according to Camden.

COTTESWOLDIA. Cotswold in Gloucestershire.

COVI BERCHILEGA. Coberley in Gloucestershire.

CRECOLADA, *Græcolada.* Creeklade, or Cricklade in Wiltshire.

CRIDEA. Crediton or Curton in Devonshire.

CROCOCALANA, *Crocolana.* Ancaster in Lincolnshire.

CROYLANDIA, *Crowlandia, Crulandia.* Crowland in Lincolnshire.

CUMBRIA, *Cumberlandia.* Cumberland. *Reg. Orig.* 206 b, 207.

CUNETIO. Marlborough in Wiltshire. Kenet River in Wiltshire.

D.

DAMNONII, *Dumnonii.* Inhabitants of Devonshire and Cornwall.

DANICA SYLVA. Andredswald Forest in Sussex. The forest of Dean in Gloucestershire.

DAMNONIORUM PROMONTORIUM. The Lizard in Cornwall.

DANUBIÆ. The forest of Dean in Gloucestershire.

DANUM. Doncaster in Yorkshire.

DANUS. The river Dane in Lincolnshire. The Dan or Daven in Cheshire. The Don in Yorkshire.

DARBIA, *Derbia.* Derby.

DARBIENSIS COMITATUS. Derbyshire.

DARVENTIA, *Derventio.* The river Derwent in Derbyshire.

DARVERNUM. Rochester in Kent.

DE ALTO PECCO. High Peak; the Castle of the Peak in Derbyshire.

DEA, *Diva.* The river Dee in Scotland. *L. Lat. Dict.*

DEI LOCUM. Godstow in Oxfordshire.

DEIDONUM, *Taodunum.* Dundee. *L. Lat. Dict.*

DEIRA SYLVA, *Deirosylva.* Deirhurst in Gloucestershire.

DELA. Deal in Kent.

DELGOVITIA. Godmanham in Yorkshire.

DEMETÆ, *Dimeciæ.* Inhabitants of West Wales.

DEMETIA. West Wales.

DENBIGHIA. Denbigh in Denbighshire.

DERBIA. Derbyshire. *Reg. Orig.* 101 b.

DERENTIVADUM. Dertford in Kent.

DERWENTIO, *Derventio.* Auldby upon Derwent in Yorkshire. The river Derwent.

DEVA. The river Dee in Cheshire.

DEVANA URBS, *Deva.* Chester or Westchester.

DEVONIA. Devonshire. *Reg. Orig.* 63.

DIVILINA. Dublin. *L. Lat. Dict.*

DIVISÆ, *Divisio.* Devizes in Wiltshire.

DORCESTRIA, *Dorkcestria, Dorkecestria, Dornsetta.* Dorchester City in Dorsetshire. *Reg. Orig.* 179 b.

DORCINIA CIVITAS, *Durocastrum.* Dorchester in Oxfordshire.

DORFRIS, *Doris, Dubris.* Dover in Kent.

DOROBERNIA, *Dorovernum, Durovernum.* Canterbury in Kent.

DORSETANIA, *Dorsettia, Duria Provincia.* Dorsetshire. *L. Lat. Dict.*

DORUS. The river Dor in Hertfordshire.

DOVERIA, *Dovoria, Dovorria.* Dover in Kent. *L. Lat. Dict. Reg. Orig.* 193 b.

DUBLINIA, *Dublinium.* Dublin.

DUNELMENSIS COMITATUS. The county of Durham.

DUNELMIA, *Dunelmum, Dunelmus, Dunholmus, Dunolmum.* Durham city.

DUNUM, *Dunus Sinus.* Dunsbey near Whitby in Yorkshire.

DUNVICUS, *Felicis Oppidum.* Flixton in Suffolk.

DURIA PROVINCIA. Dorsetshire.

DURNOVARIA, *Durvonovaria.* Dorchester in Dorsetshire.

DUROBREVIS, *Durobrevum, Dorobrevum, Durobrovæ, Duroprovis.* Rochester city in Kent. *L. Lat. Dict.*

DUROCOBRIVÆ. Redburn in Hertfordshire.

DUROLENUM, *Durolevum.* Lenham in Kent.

DUROLIPONS. Gormanchester in Huntingdonshire.

DUROLITUM. Layton in Essex.

DUROTRIGES. Inhabitants of Dorsetshire, and the adjacent districts.

DUROVERNUM. Canterbury in Kent. *L. Lat. Dict.*

E.

EAST-SEXENA, *Essexia.* Essex.

EBLANA. Dublin. *L. Lat. Dict.*

EBODIA. The isle of Alderney.

EBORACUM, *Eburacum.* York city.

EBORUM. York. *Bract.* fol. 407. *Reg. Orig.* 61 b.

EBUDA. The island of Skye. *L. Lat. Dict.*

EDMUNDI BURGUS. Bury St. Edmonds in Suffolk.

EILECURIUM VALLIS. Aylesbury vale in Buckinghamshire.

EILIMENON GABRONTONICORUM. Sowerby in Yorkshire.

ELIENSIS INSULA. The isle of Ely.

ELLANDUNUM. The old name of Wilton in Wiltshire.

ELTESHAMUM. Eltham in Kent.

EMINENTIOR. Easton-ness in Suffolk.

EOVESUM, *Evestamum.* Evesham or Evesholm in Worcestershire.

EPEIACUM, *Epiacum.* Pap-Castle in Cumberland.

EPIDIUM. Cantire in Scotland.

ETOCETUM. Uttoxeter in Staffordshire, according to Camden.

EUBONIA. The Isle of Man.

EVONIUM. Dunstaffage in Scotland. *L. Lat. Dict.*

EXA. The river Exe in Devonshire.

EXONIA. Exeter city in Devonshire.

EXPLORATORUM CASTRA. Burgh-upon-Sands in Cumberland.

F.

FALA. The river Vale in Cornwall.

FALENSIS PORTUS. Falmouth in Cornwall.

FANUM SANCTI ALBANI. St. Albans in Hertfordshire.

FANUM SANCTI ILTUTI. St. Lantwit in Glamorganshire.

FANUM IVONIS PERSA, *Persiæ.* St. Ives in Huntingtonshire.

FANUM LEONIS. Leominster in Herefordshire.

FANUM NEOTI. St. Neots in Huntingtonshire.

FANUM REGULI. St. Andrews in Scotland.

FANUM SANCTI STEPHANI. Kirkby Stephen in Westmoreland.

FAUSTINI VILLA. Bury St. Edmonds in Suffolk.

FAWENSES. Inhabitants of Foy or Fowey in Cornwall.

FIBRILEGA, *Fibrolega.* Beverley in Yorkshire.

FLINTIA. Flint-town.

FONS AMNENSIS. Amwell in Hertfordshire. *L. Lat. Dict.*

FONS BRIDGIDÆ. Bride-well in London.

FONS CLARUS. Sherborne in Dorsetshire.

FONTANENSIS ECCLESIA. Wells in Somersetshire.

FRETUM BRITANNICUM, *Fretum Gallicum, Fretum Morinorum.* The Straits of Dover or Calais.

G.

GABRANTONICORUM, *Gabrantovicorum, Salutaris Portus, Portuosus Sinus.* Sowerby in Yorkshire.

GABROCENTUM, *Gabrosentum.* Gateshead in Durham.

GADENI. Inhabitants of Roxburgh, Selkirk, Peebles, and Lanarkshires in Scotland.

GADIVA. Aberfraw in Anglesey.

GALAVA, *Gallava.* Walwick in Northumberland.

GALLATUM, *Gallagum.* Whealp or Whealop Castle in Cumberland.

GALLENA, *Galleva.* Wallingford in Berkshire.

GALWEIA, *Gaelwallia, Gallovidia.* Galloway in Scotland. *L. Lat. Dict.*

GANGANORUM PROMONTORIUM. Lheyne in Caernarvonshire.

GARBANTORIGUM. Caerlaverock in Scotland. *L. Lat. Dict.*

GARIONUM, *Garonum.* Yarmouth in Norfolk.

GARRIENIS, *Gargenus.* The river Yare in Norfolk.

GAUSENNÆ, *Gausennis.* Brig-Casterton in Lincolnshire.

GELDEFORDA. Guildford in Surrey.

GENUMIA. North Wales.

GESORIACUM. The strait between England and the Isle of Wight.

GIPPEWICUS, *Gipwicus, Gippus.* Ipswich in Suffolk. 2 *Ld. Raym.* 1239. 2 *Salk.* 434. Anciently called Gyppenswich.

GLAMORGANIA, *Glamorgantia.* Glamorganshire.

GLASCONIA, *Glastonia, Glestonia.* Glastonbury in Somersetshire.

GLASCUA. Glasgow. *L. Lat. Dict.*

GLAVORNA, *Glevum.* Gloucester.

GLOCESTRIA, *Gloucestria, Gloveceastria, Glovernia.* Gloucester. *Reg. Orig.* 268 b.

GLOTTA, *Glota.* The river Clyde in Scotland. The isle of Arran.

GOBANIUM. Abergavenny in Monmouthshire.

GODERICI CASTRUM. Goodrich Castle in Herefordshire.

GRANTA. Cambridge, according to some.

GRAVESENDA, *Greva.* Gravesend in Kent. Called Grevesham in Domesday Book.

GRENOVICUS, *Grenovicum, Greenwicum.* Greenwich in Kent.

GUALÆ. Wales.

GUERFA. The river Wharf in Yorkshire.

GULDONICUS CLIVUS. Guy-Cliff near Warwick.

GUINETHIA. Wales.

GULDFORDA. Guildford in Surrey.

GUMICASTRUM, *Gumicaster.* Godmanchester in Huntingtonshire.

GWALLIA. Wales. *L. Lat. Dict.*

H.

HABITANCUM. Risingham in Northumberland.

HADRIANI MURUS. The Picts' Wall.

HAGULSTADUNUM. Hexham in Northumberland.

HAMPTUNA. Southampton in Hantshire.

HANTONIA. Hantshire, or Hampshire.

HAREFORDIA. Hereford city.

HASTINGÆ. Hastings in Sussex.

HEBUDA. The island of Skye. *L. Lat. Dict.*

HELENUM PROMONTORIUM. The Land's End.

HELIENSE CŒNOBIUM. Ely city in Cambridgeshire.

HENLEGA. Henley-upon-Thames in Oxfordshire.

HEREFORDIA. Hereford city.

HERTFORDIA. Hertford.

HERTFORDIÆ COMITATUS. Hertfordshire.

HEYA. Hithe in Kent. *Bract.* fol. 118.

HIBERNIA. Ireland. *Bract.* fol. 395 b.

HINCHESEGA. Hinkesey near Oxford.

HITHINUS PORTUS. Hithe in Kent.

HOLLANDIA, *Hoylandia.* Holland; a part of Lincolnshire.

HOMELEA. The river Humble in Hantshire.

HROFI CIVITAS. Rochester in Kent.

HUMBRA. The river Humber in Yorkshire.

HUNDESDENA, *Hunsdona.* Hunsdon in Herefordshire.

HUNGREFORDA. Hungerford in Berkshire.

HUNTINGDONIA. Huntingdon or Huntingdonshire. *Reg. Orig.* 105.

HUNTINGDONENSIS AGER. Huntingdonshire.

HURSTELEGA. Hurstley in Hants.

HYDROPOLIS. Dorchester in Oxfordshire.

I.

ICCIUS (ITIUS) PORTUS. Calais in France.

ICENI. Inhabitants of Suffolk, Norfolk, Cambridge, and Huntingtonshires.

ICIANI, *Isianos.* Ixworth in Suffolk.

ICTA. The Isle of Wight.

IDUMANUM AESTUARIUM. The river Blackwater in Essex.

INGIRVUM. Yarrow in the county of Durham.

INSULA OVIUM. Sheppey Island in Kent. *L. Lat. Dict.*

INSULA VECTA, *Vectis, Vectesis.* The Isle of Wight. *Reg. Orig.* 62.

INTERAMNA. Twinhamburn in Dorsetshire.

ISACA, *Isca.* The river Exe in Devonshire.

ISANNAVANTIA, *Isannavaria, Isannavatia.* Northampton town. *L. Lat. Dict.*

ISCA. The river Esk in Scotland.

ISCA DAMNONIORUM. Exeter city.

ISCHALIS. Inclchester or Ilchester in Somersetshire.

ISIDIS INSULA. Ouseney near Oxford.

ISIDIS VADUM. Ouseford or Oxford.

ISIS. The river Isis. The river Ouse.

ISURIA. Yorkshire.

ISURIUM. Aldborough in Yorkshire.

ITUNA. The river Eden in Westmoreland and Cumberland.

ITUNNA. The river Eden or Solway Frith, Scotland.

K.

KANCIA. Kent. *Fleta*, lib. 5, c. 31, § 10.

KANUS. The river Ken in Westmoreland.

KARLIOL. Carlisle. *Mem. in Scacc.* M. 9 Edw. I.

KENETA. The river Kennet in Wiltshire.

KERESBURGA. Carisbrook Castle in the Isle of Wight.

KESTEVENA. Kesteven; a part of Lincolnshire.

KINEBANTUM CASTRUM. Kimbolton Castle in Huntingtonshire.

L.

LACTODORUM, *Lactodurum, Lactorodum, Lactorudum.* Lutterworth or Loughborough in Leicestershire. Stony Stratford in Buckinghamshire.

LAGECIUM, *Legiolium.* Castleford in Yorkshire.

LAGENIA. Leinster province in Ireland. *L. Lat. Dict.*

LAMITHA. Lambeth in Surrey.

LANCASTRIA. Lancaster; Lancashire.

LANDAVA. Llandaff in Wales.

LANGANUM PROMONTORIUM. Lheyne promontory in Caernarvonshire.

LAUDENIA, *Laudonia.* Lothian in Scotland. *L. Lat. Dict.*

LAVATRES, *Lavatris.* Bowes upon Stanmore in Richmondshire. *L. Lat. Dict.*

LEGACESTRIA, *Legecestria.* Leicester.

LEICESTRIA, *Leiceastria, Licestria.* Leicester. *Leycestria*, Leicestershire. *Reg. Orig.* 196 b, 197.

LIMANIS PORTUS. Lime in Kent. *L. Lat. Dict.*

LEOGORIA, *Legoria.* Leicester.

LEONENSE (LEOFENSE, LEOVENSE) CÆNOBIUM, *Leonis Monasterium.* Leominster in Herefordshire.

LETHA. Leith in Scotland.

LEUCARUM. Loghor in South Wales.

LICHFELDIA. Litchfield.

LIDDENUS. The river Ledden in Herefordshire.

LIDEFORDA. Lidford in Devonshire.

LIMENUS. The river Rother in Yorkshire.

LIMERICENSIS COMITATUS. Limerick county in Ireland. *L. Lat. Dict.*

LIMODOMUS. Limehouse near London.

LIMPIDA SYLVA. Sherwood Forest in Nottinghamshire.

LINCOLNIA, *Lindecolnia, Lindecollinum, Lindecollina civitas.* Lincoln city. *Lincolnia;* Lincolnshire. *Bract.* fol. 309. *Reg. Orig.* 34, 65.

LINDESFARNA, *Lindisfarnum.* Holy Island, or Farn-Isle, on the coast of Northumberland.

LINDOCOLLINUM, *Lindocolina, Lindon, Lindum.* Lincoln city.

LINNUM (LINUM) *Regis.* Lynn in Norfolk, King's Lynn.

LOGII. Inhabitants of the east coast of Sutherland and Caithness-shires in Scotland.

LOMEA. Goodwin Sands. *L. Lat. Dict.*

LOMITHIS. Lambeth in Surrey.

LONDONENSE OPPIDUM, *Londinia, Londinium, Londinum, Londonia, Lundinum, Lundonia, Lundonium.* London. *Reg. Orig.* 24 b.

LONCASTRIA. Lancaster.

LUGUS. The river Lug in Herefordshire.

LUCOPIBIA, *Luguballia, Luguballum, Luguvallum.* Carlisle city in Cumberland.

LYCHEFELDIA. Lichfield city in Staffordshire.

M.

MADUS VAGNIACÆ, *Vagniacum.* Maidstone in Kent.

MAGÆ, *Magi, Magnæ, Magnis.* Old Radnor.

MAGLOVA, *Maglona.* Maclenith in Montgomeryshire.

MAGNA. Chester in the Wall, near Haltwhistle in Northumberland.

MAGNITUM, *Magionimum, Magovinium, Magiovintum.* Dunstable in Bedfordshire.

MAGNUS PORTUS. Portsmouth in Hampshire.

MAIDULPHI CURIA, *Maidulphi Urbs, Maldunense monasterium, Malmesburium.* Malmesbury in Wiltshire.

MALA PLATEA. Ilstreet in Cheshire.

MALVERNIA, *Malvernum.* Malvern in Worcestershire.

MALUS PASSUS. Malpas in Cheshire.

MAMMUCIUM, *Mancunium.* Manchester in Lancashire.

MANDUESSEDUM. Manchester in Warwickshire.

MANNIA. The Isle of Man.

MANNENSES. Inhabitants of the Isle of Man.

MANUCIUM. Manchester in Lancaster.

MARCHIDUNUM. Roxburgh in Scotland. *L. Lat. Dict.*

MARE SABRINIANUM. The Severn Sea.

MARIDUNUM. Caermarthen town.

MARLEBRIGIA. Marlborough in Wiltshire.

MASSAMENSIS PONS. Masham Bridge in Yorkshire.

MAUDITI CASTRUM. St. Mawe's Castle in Cornwall.

MEALDUNUM. Maldon in Essex.

MEDEGUAIA. The river Medway in Kent.

MEDENA. New Port in the Isle of Wight.

MEDEWEIA, *Medewaia, Medweia.* The river Medway in Kent. *Mag. Cart.* 1 *Hen.* III. c. 26. *Id.* A. D. 1217, c. 29. *Id.* 9 *Hen.* III. c. 23.

MEDIA, *Midia.* Meath county in Ireland.

MEDIOLANIUM. Middleham in Yorkshire.

MEDVAGA. The river Medway in Kent.

MELDUNUM. Malmesbury in Wiltshire.

MENAVIA, *Menavia Secunda.* The Isle of Man.

MENEVIA. St. David's in Wales.

MERIONITHIA, *Mervinia.* Merionethshire.

MERLEBRIGIA. Marlborough.

MERSIA. The river Mersey in Cheshire.

METARIS ÆSTUARIUM. The Washes in Norfolk.

MEVANIA. The Isle of Man.

MIDDLESEXIA. Middlesex. *Reg. Orig.* 261.

MOLIS. The river Mole in Surrey.

MOMONIA. Munster in Ireland.

MONA. The Isle of Anglesey.

MONA ULTERIOR. The Isle of Man. *L. Lat. Dict.*

MONABIA, *Monoeda.* The Isle of Man.

MONASTERIUM DE BELLO. Battle Abbey in Sussex.

MONASTERIUM DE MELSA. Meaux Abbey in Yorkshire.

MONMUTHIA, *Monumetha, Monumuthia.* Monmouth in Wales.

MONOCHAPOLIS, *Monarchapolis.* Newcastle-on-Tine.

MONS ACUTUS. Montacute in Somersetshire.

MONS DIVES. Richmond in Surrey.

MONS GOMERICUS, *Montgomeria.* Montgomery in Wales.

MONS ROSARUM. Montrose in Scotland.

MORAVIA. Moray in Scotland.

MORBIUM. Morsby in Cumberland.

MORIDUNUM, *Ridunum.* Seaton in Devonshire.

MORTUUS LACUS. Mortlake in Surrey.

MURIMINTUM, *Murivindum.* Silcester in Hampshire.

N.

NAUTICUS SINUS. Reatherhithe or Rotherhithe. Called Redriff.

NAVESBIA. Naseby in Northamptonshire.

NEOMAGUS, *Noviomagus.* Croydon in Surrey. *L. Lat. Dict.*

NEOPORTUS. Newport.

NEOPORTUS PAGANELLICUS. Newport Pagnel in Buckinghamshire.

NIDUM, *Nidus.* Neath in Glamorganshire.

NIGERIA. Blackney in Norfolk.

NIVICOLLINI. Snowdon Hills in Caernarvonshire.

NORDHUMBRIA. Northumberland.

NORDOVICUM. Norwich city.

NORDOVOLCA, *Norfolcia.* Norfolk.

NORTHANIMBRIA. Northumberland.

NORTHANTONIA. Northampton.

NORTHIMBRIA, *Northumbria.* Northumberland.

NORTHWICUM. Norwich. *Bract.* fol. 387.

NORWICUM. Norwich. *Reg. Orig.* 118.

NOTTINGHAMIA. Nottingham, Nottinghamshire.

NOVANTII. Inhabitants of Galloway in Scotland.

NOVANTUM PROMONTORIUM. The Mull of Galloway. *L. Lat. Dict.*

NOVIODUNUM. Newenden in Kent.

NOVIUS. Conway.

NOVUM CASTELLUM. Newcastle in Northumberland.

NOVUM CASTRUM SUPER TINAM. Newcastle-upon-Tyne. *Mem. in Scacc.* H. 18 Edw. I.

NOVUM FORUM, *Novum Mercatum.* Newmarket in Suffolk.

NOVUS BURGUS. New Port in the Isle of Wight.

NOVUS PORTUS. New Port.

NUBIRIA. Newbury in Berkshire.

O.

OCCELLUM PROMONTORIUM. Kelnesy in Yorkshire.

OCCIDUA WALLIA. Cornwall.

OCEANUS VERGIVIUS. The Vergivian or Western Ocean.

OCRINUM PROMONTORIUM. The Lizard point in Cornwall.

OCTOPITARUM PROMONTORIUM. St. David's Head in Pembrokeshire, Wales.

OLICANA. Halifax in Yorkshire.

ORDOVICES, *Ordevices.* Inhabitants of North Wales, bordering on England.

ORESTII. Inhabitants of Argyle and Perth in Scotland.

ORUS. The river Ore in Suffolk.

OSCA. The river Usk in Wales.

OTTADENI, *Ottadini.* Inhabitants of the east coast of Northumberland and the adjacent coast of Scotland.

OUSA. The river Ouse in Yorkshire.

OVINIA INSULA. The isle of Sheppey in Kent.

OXENFORDIA, *Oxonia.* Oxford city.

P.

PARATHALASSIA. Walsingham in Norfolk.

PEGELANDIA. Peckirk near Crowland.

PENBROCHIA. Pembroke in Wales.

PENDINAS. Pendennys castle in Cornwall.

PENGUERNUM. Shrewsbury town.

PENNORINUM. Penryn in Cornwall.

PERSCORA, *Persora.* Pershore in Worcestershire.

PETRIBURGUS, *Petropolis.* Peterborough city in Northamptonshire.

PETUARIA, *Petuaria Parisiorum.* Beverley in Yorkshire.

PEVENSEA. Pevensy in Sussex.

PLINLIMONIA. Plinlimmon in Wales.

PONS BURGENSIS. Borough-Bridge in Yorkshire.

PONS ÆLII. Ponteland in Northumberland.

PONTES. Reading in Berkshire. Colnbrook in Buckinghamshire.

PORTESMUTHA. Portsmouth in Hampshire.

PORTLANDIA, *Portuna Insula.* Portland isle.

PORTUS MAGNUS, *Portus Ostium.* Portsmouth.

PORTUS SALUTIS. Cromarty in Scotland.

PRÆSIDIUM. Warwick town.

PRÆTORIUM. Patrington in Yorkshire.

PROCOLITIA, *Protolitia.* Prudhow or Prodhow castle in Northumberland.

PROFUNDUM VADUM. Deptford.

PUTENEGA. Putney in Surrey.

R.

RAGANEIA. Raleigh in Essex.

RATÆ. Leicester.

RATOSTATIBIUS, *Rhatostatibius.* The river Taff in Glamorganshire. *L. Lat. Dict.*

REGIODUNUM HULLINUM. Kingston-upon-Hull in Yorkshire.

REGIODUNUM THAMESINUM. Kingston-upon-Thames in Surrey.

REGIS BURGUS. Queenborough in Kent.

REGNI. Inhabitants of Surrey, Sussex and the seacoasts of Hampshire.

REGNI SYLVA. Ringwood in Hampshire.

REGULBIUM. Reculver in Kent.

REPANDUNUM. Repton in Derbyshire.

RHEDUS. The river Read in Northumberland.

RHEMNIUS. The river Remney in Glamorganshire.

RHIBELLUS. The river Ribble in Lancashire.

RHOBOGDIUM PROMONTORIUM. Fair Foreland in Ireland.

RHUTUBI PORTUS, *Ritubi Portus, Rhutupiæ statio, Rhitupis portus, Rutupis portus.* Reptacester, Ruptimuth, Richberg, now Richborough near Sandwich in Kent.

RIBODUNUM, *Rigodunum.* Ribchester in Lancashire.

RICHMONDIA, *Richmundia.* Richmond in Yorkshire and in Surrey.

RIPADIUM. Ripton in Derbyshire.

RIPODUM. Rippon in Yorkshire.

ROBERTINUS PONS. Rotherbridge in Sussex.

ROFFA, *Roibis.* Rochester city in Kent.

ROISIÆ OPPIDUM. Royston in Cambridgeshire.

ROTHESIA. Rothsay in Scotland. *L. Lat. Dict.*

RUBER CLIVUS. Redcliff or Ratcliff near London.

RUGNITUNIA, *Ruitonia, Rutunia.* Riton upon Dunsmore in Warwickshire.

RUPIS AUREA. Goldcliff in Monmouthshire.

RUTHUNIA. Ruthin in Denbighshire.

RUTLANDIA. Rutlandshire.

RUTUNIUM. Rowton in Shropshire.

RUTUPIÆ. Richborough near Sandwich in Kent.

RUTUPIRUM LITTUS. The Foreland in Kent.

S.

SABAUDIA. The Savoy in London.

SABRIANA, *Sabrina.* The river S

SABULOVICUM. Sandwich in Kent.

SACANA, *Sena, Senus, Siambis, Sineus, Socinos.* The river Shannon in Ireland. *L. Lat. Dict.*

SACRA INSULA. Holy Island.

SACRA SYLVA, *Sacro bosco.* Halifax in Yorkshire.

SALENÆ, *Salinæ.* Saludy in Bedfordshire.

SALESBURIA, *Salisburia, Saresberria, Sarisburia.* Salisbury city in Wiltshire.

SALOPESBIRIA, *Salopia.* Shrewsbury.

SALOPIÆ COMITATUS. Shropshire.

SALTRIA. Sawtrey in Huntingdonshire.

SALTUS ANDRED. Weald of Kent. *L. Lat. Dict.*

SANDICUM, *Sandovicus, Sanwicum.* Sandwich in Kent. Sandwyz. *Bract.* fol. 118.

SARNA. Garnesey or Guernsey island.

SAVERNA. The river Severn.

SCEPTONIA. Shaftesbury in Dorsetshire.

SCHELSEGA. Chelsea near London.

SCHIRBURNIA. Sherburn in Dorsetshire.

SCONA. Scone in Scotland.

SCORBERIA, *Scorbesberia.* Shrewsbury town.

SECANDUNUM. Seckington in Warwickshire.

SEGEDUNUM. Seghill or Sighill in Northumberland.

SEGELOCUM, *Segelogum.* Ollerton in Nottinghamshire. Agle in Lincolnshire.

SEGONTIUM. Caer-sejont near Caernarvon town.

SEGUNTIUM. Silchester in Hampshire.

SEOLESIÆ. Seolsey or Selsey in Sussex.

SETANTIORUM PALUS. Winandermere in Lancashire.

SETEIA ÆSTUARIUM. Dee mouth.

SEVERIA. Salisbury city.

SHENUM. Shene or Richmond in Surrey.

SILURES. Inhabitants of that part of South Wales bordering on England, and of those parts of England between South Wales and the Severn.

SINNODUNUM. Sinodun Hill near Wallingford in Berkshire.

SIMOMAGUS, *Sinomagus, Sitomagus.* Thetford in Norfolk.

SLEPA. The old name of St. Ives in Huntingtonshire.

SNAWDONIA. Snowdon Forest in Caernarvonshire.

SOMARIDUNUM. Somerton in Lincolnshire.

SOMERSATA, *Somerseta, Somersetania, Somersetensis comitatus, Somertunensis comitatus.* Somersetshire. *L. Lat. Dict.*

SORBIODUNUM, *Sorviodunum, Soruriodunum.* Old Salisbury or Old Sarum.

SOUTHAMPTONIA. Southampton.

SOUTHERIA, *Southriona, Southria.* Surrey.

SOUTHSEXENA, *Southsexia.* Sussex.

SPEA. The river Spey in Scotland. *L. Lat. Dict.*

SPINARUM INSULA. Thorny Isle, the old name of Westminster.

SPINÆ, *Spiriæ.* Newbury in Berkshire, and Spine near Newbury.

STAFFORDIA. Stafford; Staffordshire.

STANFORDIA. Stanford in Lincolnshire.

STENUM. Stene in Northamptonshire.

STOURUS, *Sturus.* The river Stour in Kent, in Dorsetshire, in Suffolk, and in Derbyshire.

STRIGULIA. Chepstow in Monmouthshire.

STRIVILLINA. Stirling in Scotland.

STURODUNUM. Stourton and Stourminster in Dorsetshire.

SUALVA, *Swala.* The river Swale in Yorkshire.

SUDOVERCA, *Sudovolca.* Southwark in Surrey.

SUDRIA, *Sudurheia, Surria, Suthria, Suthriona.* Surrey. *L. Lat. Dict.*

SUFFOLCIA, *Suffolicia.* Suffolk.

T.

TAFFUS. The river Taff in Glamorganshire.

TAMA. The river Thame in Oxfordshire, and in Staffordshire.

TAMA. Tame in Oxfordshire.

TAMARA, *Tamarus, Tambra.* The river Tamer in Cornwall.

TAMAWORDINA, *Tamworthia.* Tamworth in Staffordshire.

TAMISIA, *Thamisia.* The river Thames. *Mag. Cart.* 9 Hen. III. c. 23.

TAMISIS, *Tamesis, Thamesis.* The river Thames.

TAVA. The river Tay in Scotland.

TAVISTOKIA. Tavistock in Devonshire.

TEDFORDIA, *Theodfordum.* Thetford in Norfolk.

TERENTUS. The river Trent.

TESA, *Teesa, Teisa, Tesis, Teesis, Teisis.* The river Tees in the county of Durham. *L. Lat. Dict.*

TETOCURIA. Tetbury in Gloucestershire.

THAMESIS. The river Thames.

THANATON, *Thanatos insula.* The isle of Thanet in Kent.

THEOCI CURIA, *Theokesberia.* Tewkesbury in Gloucestershire.

THEODORUNUM. Wells in Somersetshire.

THERMÆ. The city of Bath.

THONODUNUM. Taunton in Somersetshire.

THORNEGA, *Thornege, Thorneye.* The old name of Westminster.

THORNEIA. Thorney in Cambridgeshire.

TINA, *Tinna.* The river Tine in Northumberland.

TINDOLANA. Winchester in the wall.

TINEMUTHA. Tinemouth in Northumberland.

TINTAGIUM. Tintagel in Cornwall.

TOLIAPIS, *Toliatis.* The isle of Sheppey in Kent.

TORCESTRIA. Towcester in Northamptonshire.

TOTONESIUM. Totness in Devonshire.

TREHENTA. The river Trent.

TRENOVANTUM, *Trinovantum, Trinobantum.* London, called Troy Novant.

TRENTA. The river Trent.

TRINOBANTES, *Trinovantes, Trinoantes.* Inhabitants of Middlesex and Essex.

TRIPONTIUM. Towcester in Northamptonshire.

TRISANTON, *Trisantonis portus.* Southampton.

TUESIS. Berwick-upon-Tweed.

TUNNOCELLUM, *Tunocellum.* Tinemouth in Northumberland.

U.

UBBANFORDA. Norham in Northumberland. *L. Lat. Dict.*

ULCARUS. The isle of Oleron in France. *L. Lat. Dict.*

ULIDIA, *Ultonia.* Ulster in Ireland. *L. Lat. Dict.*

ULMETUM. Elmsley in Yorkshire.

UMBER. The river Humber in Yorkshire.

URICONIUM. Wroxeter in Shropshire. *L. Lat. Dict.*

URIVALLIS. Jorval in Yorkshire.

UROVICUM. York city. *L. Lat. Dict.*

USOCONNA. Okenyate in Shropshire.

UXANTISSENA. The isle of Ushant. *L. Lat. Dict.*

UXINUS PONS. Uxbridge in Middlesex. *L. Lat. Dict.*

V.

VADUM RUBRUM, *Vadum Corvinum.* Hertford. *L. Lat. Dict.*

VADUM PULCHRUM. Fairford in Gloucestershire.

VAGA, *Waya.* The river Wye in Herefordshire.

VAGNIACÆ, *Vagniacum.* Wrotham in Kent. Maidstone in Kent.

VALLIS ANANGIA. Annandale in Scotland.

VALLIS AUREA. Golden Vale in Herefordshire.

VALLIS CRUCIS. Vale of the Cross in Denbighshire.

VALLUM. The Picts' Wall.

VANDALIS. The river Wandle in Surrey.

VANDELBIRIA. Wandlesbury near Cambridge.

VANATINGA. Wantage or Wanting in Berkshire.

VARIS. Bodvary in Flintshire.

VECTA, *Vectis, Vectesis.* The Isle of Wight.

VEDRA, *Verus.* The river Were in Durham. *L. Lat. Dict.*

VENANTODUNIA. Huntingdonshire.

VENANTODUNUM, *Venatorum Mons.* Huntingdon.

VENEDOTIA. North Wales.

VENTA BELGARUM. Winchester in Hampshire.

VENTA ICENORUM. Caister near Norwich.

VENTA SILURUM. Caer-went in Monmouthshire.

VERLUCIO. Warminster in Wiltshire. *L. Lat. Dict.*

VEROLAMIUM, *Verulamium.* Verulam near St. Albans in Hertfordshire.

VEROVICUM, *Vervicus.* Warwick.

VERTERÆ, *Verteris.* Burgh upon Stanmore in Westmoreland. *L. Lat. Dict.*

VETELEGANUS PONS. Wheatley bridge near Oxford.

VETELINGIANA VIA. Watling Street.

VICUS MALBANUS. Namptwich in Cheshire.

VIDOGARA. Ayr in Scotland. *L. Lat. Dict.*

VIGORNIA. Worcester city.

VILLA FAUSTINI. Bury St. Edmonds in Suffolk.

VILLA NOVA. Newnham in Hertfordshire.

VILUGIANA PROVINCIA. Wiltshire.

VINCHELSEGA, *Vindagora.* Winchelsea in Sussex.

VINDELIS. Old Winchelsea.

VINDELISORA. Windsor in Berkshire.

VINDOBALA, *Vindomara.* Wall's end in Northumberland.

VINDOGLADIA, *Vindugladia.* Wimborne in Dorsetshire.

VINDOLANA. Old Winchester in Northumberland.

VINDONUM, *Vindonus.* Silcester in Hampshire. A doubtful position.

VIRECINUM, *Virecium.* Wroxcester in Shropshire.

VIRIDIS SINUS. Greenwich.

VIROCONIUM. Wroxeter in Shropshire. *L. Lat. Dict.*

VITREA INSULA. Glastonbury in Somersetshire.

VOLUBA. Falmouth in Cornwall.

VOLUCRUM DOMUS. Fulham in Middlesex.

VOREDA. Old Penrith in Cumberland.

W.

WALLIA. Wales. *Bract.* 395 b.

WARWICANA PROVINCIA, *Warwici Comitatus.* Warwickshire.

WASCONIA. Gascony. *Mem. in Scacc.* II. 5 Edw. I.

WELLÆ. Wells city in Somersetshire.

WENTANA CIVITAS. Winchester city.

WESTMARIA, *Westmoria, Westmorelandia.* Westmoreland.

WESTMONASTERIUM. Westminster city.

WICCIA. Worcestershire.

WICHCOMBIA. Wycombe in Buckinghamshire.

WIGORNIA. Worcester city. *Bract.* fol. 128.

WILTONIA. Wiltshire.

WINCELCUMBA, *Winchelcumba.* Winchcomb in Gloucestershire.

WINCESTRIA. Winchester city. *L. Lat. Dict.*

WINCHELSEGA. Winchelsea in Sussex. *L. Lat. Dict.*

WINDELESORUM. Windsor. *Mag. Cart. Johan.* ad fin.

WINDESORA, *Windlesora, Windesora.* Windsor in Berkshire.

WINTONIA. Winchester. *Bract.* fol. 188 b.

WITLESIA. Whittlesey in Huntingtonshire.

Y.

YARUM. Yare in Yorkshire.

YARMUTHIA, *Jernmuthia, Garanonum, Gariensis ostium.* Yarmouth in Norfolk.

A GLOSSARY

OF

LATIN SURNAMES.

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LATIN SURNAMES.

TAKEN FROM THE APPENDIX TO BLOUNT'S NOMO-LEXICON, WITH CORRECTIONS AND ADDITIONS.

A.

De ADURNI PORTU. Etherington.

ALA CAMPI. Wingfield.

De ALBA MARLA. Albemarle.

De ALBENEIO, *De Albinaco.* D'Aubeney, Albiney. *Bract.* fol. 417.

ALBERICUS, *Albrea.* Aubrey.

De ALBO MONASTERIO. Whitchurch. *Bract.* fol. 249, 259 b.

De ALDITHELEIA. Audley.

De ALNETO. Dauney.

De ALTA RIPA. Dantry.

AQUAPONTANUS. Bridgewater.

De ARCUBUS. Bowes.

De ARIDA VILLA. Dryton or Dreydon.

De AULA. Hall.

De AUREO VADO. Guldeford.

AURIFABER. Orfeur. [Goldsmith?]

B.

De BAJOCIS. Bacon. *L. Lat. Dict.*

De BEDA. Bacon. *L. Lat. Dict.*

De BELLA AQUA. Bellow or Bellew.

De BELLA FIDE. Beaufoy.

De BELLO CAMPO. Beauchamp.

De BELLO FAGO. Beaufo. *Bract.* fol. 350 b.

De BELLO FOCO. Beaufeu.

De BELLO LOCO. Beaulieu.

De BELLO MARISCO. Beaumarsh.

De BELLO MONTE. Beaumont.

De BELLO PRATO. Beaupre.

De BELLO SITU. Bellassise.

De BENEFACTIS. Benfield.

BENEVOLUS. Benlowes.

De BLOSSEVILLA. Blovile, Blofield.

De BONA VILLA. Bonevil.

De BONO FOSSATO. Goodrick, or Goodrich. *Bract.* fol. 293 b.

De BOSCO. Dubois, [Boys, Boyce. Wood?] *Bract.* fol. 320, 374.

De BOSCO ROARDI. Borhard, [Burrard?]

De BOVIS VILLA. Bovil.

De BULIACO. Busli, Bussey. Called *de Bully.* *Bract.* fol. 418.

De BURGO. Burgh, Burke. [Burrow?] *Bract.* fol. 290 b.

De BURGO CHARO. Bourchier.

C.

De CADURCIS. Chaworth.

De CALVO MONTE. Chaumont.

De CAMERA. Chamber, Chambers. *Bract.* fol. 266 b, 273 b, 304, 356 b.

CAMBERLANUS. Chamberlain. *Bract.* fol. 161.

De CAMPANIA. Champney.

De CAMPO ARNULFI. Champernoun.

De CAMPO FLORIDO. Chamfleur.

De CANTILUPO. Cantlou. *Bract.* fol. 142 b, 417.

De CAPRICURIA, *Capreolocuria.* Chevercourt.

De CAPELLA. Capel.

De CARO LOCO. Carelieu.

De CASA DEI. Godshall.

De CASINETO, *Chasineto.* Cheney, Chedney.

De CASTELLO MAGNO. Castlemain.

De CERASO. Cherry.

De CHAURIS. Chaworth.

CHELIGREVUS. Killigrew. *L. Lat. Dict.*

De CESTRIA. Chester.

CHIRCHEBEIUS. Kirkby or Kirby.

De CLARIFAGIO. Clerfay.

De CLARIS VALLIBUS. Clarival.

De CLARO MONTE. Clermont.

De CLIVO FORTI. Clifford.

De COLUMBARIIS. Columbers.

COCUS. Coke, or Cook. *Bract.* fol. 437 b.

De CONDUCTU. Chenduit.

De CORNUBIA. Cornwall.

De CORVO SPINÆ. Crowthorn.

De CREPITO CORDE. Crevecœur.

CUNETIUS. Kenet.

De CURVA SPINA. Creithorne.

D.

De AYNECURIA, *Daincuriensis.* Daincourt.

De DACO. [Day or Dane?] *Bract.* fol. 285.

De DIVA. Dive.

De DOITO. Brooke.

DISPENSATOR. Le Despencer, Spencer.

DROGO. Drew.

DUCHTIUS. Doughty.

E.

EASTERLINGUS. Stradling.

De EBROICIS. Devereux.

De ERICETO. Brewer.

De EROLITTO. Erliche.

D'ESTLEGA. Estley or Astley. *L. Lat. Dict.*

EXTRANEUS. L'Estrange. [Strange?] *Mag. Cart.* 1 *Hen.* III. pr.

F.

FABER. Smith. *Bract.* fol. 272 b.

De FAGO. Beech, Beecher.

De FERRARIIS. Ferrers. *Bract.* fol. 54 b.

De FILICETO. Fernham.

FILIUS ALANI. Fitz-Alan, [Alanson.]

FILIUS EUSTACHII. Fitz-Eustace.

FILIUS GEROLDI. Fitz-Gerold. *Mag. Cart. Johan.* pr.

FILIUS GUIDONIS. Fitz-Guy, Fitz-With.

FILIUS HENRICI. Fitz-Henry.

FILIUS HEREBERTI. Fitz-Herbert. *Mag. Cart. Johan.* pr.

FILIUS HUGONIS. Fitz-Hugh. *Bract.* fol. 417. *Mag. Cart. Johan.* pr.

FILIUS JACOBI. Fitz-James.

FILIUS JOHANNIS. Fitz-John, [Johnson.] *Bract.* fol. 298. *Fleta*, lib. 2, c. 3, § 9.

FILIUS LAMBERTI. Fitz-Lambert. *Bract.* fol. 292 b.

FILIUS MICHAELIS. Fitz-Michael. *Bract.* fol. 417.

FILIUS PETRI. Fitz-Peter. *Bract.* fol. 225 b, 420 b.

FILIUS RADULPHI. Fitz-Ralph. *Bract.* fol. 298, 418, 421.

FILIUS ROBERTI. Fitz-Robert. [Robertson.] *Bract.* fol. 393 b, 430 b.

FILIUS ROLANDI. Fitz-Roland. *Bract.* fol. 367.

FILIUS SIMONIS. Fitz-Simon. [Fitz-Simmons, Simonson?] *Bract.* fol. 409 b.

FILIUS GULIELMI. Fitz-William. [Williamson?] *Bract.* fol. 275 b, 370 b.

FILIUS WALTERI. Fitz-Walter. *Mag. Cart.* 9 Hen. III.

FLAVUS. Blund, Blount.

De FLUCTIBUS. Flood.

De FOLIIS. Foulis.

De FONTE AUSTRALI. Southwell.

De FONTE EBRARDI. Fonteverard.

De FONTE LIMPIDO. Sherburne.

De FONTIBUS. Wells. *Mem. in Scacc.* M. 2 & 3 Edw. I.

De FORTI SCUTO. Fortescue.

De FRAXINO. Frene, Ash. *Bract.* fol. 50. *Mem. in Scacc.* H. 5 Edw. I.

FRESCOBURNUS. Freshburn.

De FRISCA VILLA. Freshville.

De FOSSA NOVA. Newdike.

G.

De GANDAVO. Gaunt. *L. Lat. Dict.*

De GENEVA. Genevil.

De GENISTETO. Bromfield.

GIOVANUS. Young.

De GLANVILLA. Glanville.

De GORNIACO. Gornay. *L. Lat. Dict.*

De GRANA VILLA. Grenville.

De GRANDI VILLA. Granvil.

De GRENTEMAISNILLO. Grantmesnil.

De GROSSO MONTE. Grismond.

De GROSSO VENATORE. Grosvenor.

De GUNTHERI SYLVA. Gunter.

H.

De HAIA. Hay. *L. Lat. Dict.*

De HOSATO. Hosè, Hussey. Blount says he had seen *Johannes Usus Mare*, in Latin, for John Hussey.

De HYDA. Hyde. *Bract.* fol. 351.

I.

De INSULA. Lisle. *Bract.* fol. 234 b, 376. *Mag. Cart.* 9 Hen. III.

De INSULA BONA. Lislebone.

De INSULA FONTIS. Lilburne.

J.

JODOCUS. Joice.

K.

De KAINETO, *Kaineio.* Keynes. [Kennet or Kenney ?]

L.

De LÆTO LOCO. Lettley. *L. Lat. Dict.*

De LATO CAMPO. Bradfield.

De LATO VADO. Bradford.

LAURENTII FILIUS. Lawson.

De LEGA. Lee, Lea, Leigh.

De LEICHA, *Lecha.* Leach.

De LISORIIS. Lizurs, Lisors.

De LOGIIS. Lodge.

De LONGA SPATA. Longspee, Lungespey. *Bract.* fol. 422 b.

De LONGA VILLA. Longueville. *Bract.* 255 b.

De LONGO CAMPO. Longchamp.

De LONGO PRATO. Longmead.

LUPELLUS. Lovet, Lovel.

LUPUS. Wolf, Love, Loo.

M.

MACER. Le Meyre.

De MAGNA VILLA. Mandeville.

De MALIS MANIBUS. Malmains.

De MALO LACU. Mauley. *Bract.* fol. 319, 381, 433. *Mag. Cart.* 9 Hen. III.

De MALO LEONE. Malleon. *Mag. Cart.* 1 Hen. III. pr.

De MALO PASSU. Malpas.

De MALO VISU. Malvisin.

MALUS LEPORARIUS. Malevorer.

MALUS LUPELLUS. Maulove, Mallovel.

De MANNERIIS. Manners.

De MARCI VALLIBUS. Martival.

De MARISCO. Marsh.

De MEDUANA. Maine.

De MELSA. Mews.

De MEDIA VILLA. Middleton.

MEDICUS. Leech.

De MICENIS. Meschines.

De MINERIIS. Miners.

De MONASTERIIS. Musters.

De MOLENDINIS. Molines, [Mills?]

MONACHUS. Le Moigne, Monk.

De MONTE. [Mount, Dumont?]

De MONTE ACUTO. Montacute. *Bract.* fol. 63 b, 199 b.

De MONTE ALTO. Montalt, Moald.

De MONTE AQUILÆ. Mounteagle.

De MONTE CANISIO. Montchensey. *Bract.* fol. 87 b, 391, 407 b.

De MONTE FIXO. Montfichet.

De MONTE FORTI. Montfort. *Bract.* fol. 417.

De MONTE GOMERICO, *De Monte Gomery.* Montgomery. *Mem. in Scacc.* H. 22 Edw. I. in dorso.

De MONTE JOVIS. Montjoy.

De MONTE HERMERII. Monthirmer.

De MONTE PESSONIS. Montpesson, Mompesson.

De MONTE VEGONIS. Montbegon. *Bract.* fol. 50 b.

De MORTUO MARI. Mortimer. *Mem. in Scacc.* P. 22 Edw. I. *Mag. Cart.* 1 Hen. III. pr.

De MUSCO CAMPO. Muschamp.

De MORA. More. *Mem. in Scacc.* H. 6 Edw. I.

N.

De NODARIIS. Nowres. *Bract.* fol. 430 b.

De NOVA TERRA. Newland.

De NOVA VILLA, *De Nevilla.* Nevil.

De NOVO BURGO. Newburgh.

De NOVO CASTELLO. Newcastle.

De NOVO FORO. Newmarch.

De NOVO MERCATO. Newmarch. *Bract.* fol. 54 b.

O.

De OILEIO. D'Oyley.

P.

De PALUDE. Marsh.

PARMENTARIUS. Taylor.

De PARVA VILLA. Littleton.

De PASCUO LAPIDOSO. Stanley.

De PAVILIDRO, *Pauliaco.* Paveley.

De PAVILLIANO. Peiton. *L. Lat. Dict.*

De PECCATO. Peche, Peck.

De PETRA PONTE. Pierpont.

De PEDE PLANCO. Pauncefot.

PELLIPARIUS. Skinner.

De PICTAVIA. Peyto.

De PLANTAGENETÆ. Plantagenet.

De PORCELLIS. Purcell.

POULTENEIUS. Poultney. *L. Lat. Dict.*

De PRAERIIS. Praers.

De PULCHRO CAPELLITIO. Fairfax.

De PUTEACO. Pusac, Pudsey.

Q.

De QUERCETO. Cheney.

De QUINCIACO. Quincy.

R.

De RADEONA. Rodney. *L. Lat. Dict.*

De RAGENEIA. Raleigh.

De REDVERIIS. Rivers.

REGINALDUS. Reynolds.

De RICO MONTE. Richmond.

De RIPARIIS. Rivers. *Mem. in Scacc.* M. 2 and 3 Edw. I.

ROTARIUS. Wheeler.

De RUBRA MANU. Redmain.

De RUBRA SPATHA. Rospear, Rouspee, Rooper, Roper.

De RUBRO CLIVO. Redcliff, Radcliff.

De RUPE. Roche, Rock, [Laroche.] *Bract.* 146, 146 b, 280, 302 b.

De RUPE FORTI. Rochfort.

De RUPE SCISSA. Cutcliff.

RUFUS. Rous.

S.

De SABAUDIA. Savoy.

De SACRA QUERCU. Holyoak.

De SACRO BOSCO. Holywood.

De SACRO FAGO. Holybeech, Hollebech.

De SACRO FONTE. Holybrook.

SAGITTARIUS. Archer.

De SAIO. Say.

De SALCETO. Saucey.

De ALCHAVILLA. Salkeld.

De SALICOSA MARA. Wilmore.

De SALICOSA VENA. Salvein.

De SALSO MARISCO. Saltmarsh.

De SALTU CAPELLÆ. Sacheverel.

De SANCTA BARBARA. St. Barb, Senbarb, Simbarb.

De SANCTA CLARA. St. Clare, [St. Clair,] Sencleer, Sinclere.

De SANCTA TERRA. Holyland.

De SANCTO ALEMONDO. Salmon.

De SANCTO AMANDO. St. Amand, S'amand. *Bract.* fol. 312, 417.

De SANCTO AUDOENO. St. Owen.

De SANCTO ANDOMARO. St. Omer. *L. Lat. Dict.*

De SANCTO GELASIO. Singlis.

De SANCTO GEORGIO. St. George. *Bract.* fol. 83 b, 349.

De SANCTO JOHANNE. St. John. *Bract.* fol. 339 b. *Mag. Cart.* 9 Hen. III.

De SANCTO LAUDO. St. Laud, Sentlo, Senlo.

De SANCTO LIZIO. St. Liz, Senliz, Seyton.

De SANCTO LEODEGARIO. St. Leger, Sellenger.

De SANCTO LUPO. St. Low, Sentlow.

De SANCTO MARTINO. St. Martin, Semarton.

De SANCTO MAURO. St. Maur, Semaur.

De SANCTO MEDARDO. Semark.

De SANCTO PAULO. St. Paul, Sampol.

De SANCTO PETRO. St. Peter, St. Pierre, Sampier.

De SANCTO VEDASTO. Foster.

De SANCTO WALLERICO. St. Wallere.

De SANDWICO. Sandwich.

De SAXO FERRATO. Ironston, Ironson.

De SCALARIIS. Scales.

SCISSOR. Cutter, Taylor? *Bract.* fol. 141 b.

De SICCA VILLA. Sackville.

De SOLARIIS. Solers.

De SPINETO. Spiney.

De STAGNO. Poole.

De STIPITE SICCO. De la Zouche.

SUPER TYSAM. Surteys.

De SYLVA. Weld.

De SUTHLEIA, *Sutleia.* Suthley, Sudley. *L. Lat. Dict.*

T.

De TANAIA. Taney.

De TANKARDI VILLA. Tankerville.

TEUTONICUS. Teys.

De TULKA. Toke, Tooke.

De TURBIDA VILLA. Turberville.

De TURPE VADO. Fulford.

De TURRI PARVA. Torel, Tyrrel.

U.

De UMBROSA QUERCU. Dimmock.

De URTICO. Lorti, Lort.

V.

De VADO BOUM. Oxford.

De VADO SAXI. Stanford.

De VALLE. Wale, [Duval?]

De VALLE TORTA. Vautort.

De VALLIBUS. Vaux.

DE VETERI AULA. Oldhall, Oldham.

DE VETERI PONTE. Vipont. *Bract.* fol. 194 b. *Mag. Cart.* 9 Hen. III.

DE VICARIIS. Vicars.

DE VILLA MAGNA. Mandeville.

DE VILLARIIS. Villers.

DE VILLA TORTA. Croketon.

DE VINO SALVO. Vinesalf.

W.

WALERANUS. Walraud. *Bract.* fol. 436.

DE WARNEVILLA. Willoughby. *L. Lat. Dict.*

DE WARRENA. Warren. *L. Lat. Dict.*

DE WATELEGA. Wateley, Wheatley.

WOLSEUS, *Volvesius.* Wolsey. *L. Lat. Dict.*

THE END.

